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The Honourable Hieu Van Le AO  
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Submissions  
DPTI Planning Reform  
Government of South Australia  
ADELAIDE SA 5000

To whom it may concern

RE: DRAFT PLANNING AND DESIGN CODE

Please find attached a submission from the National Trust of South Australia in respect of the draft Planning and Design Code (urban areas).

Yours sincerely

Ms Deborah Morgan  
President

## **SUBMISSION ON THE DRAFT PLANNING AND DESIGN CODE**

The National Trust of South Australia (NTSA) is the state’s leading non-government heritage conservation organisation, with more than 6 000 members and volunteers across the state. For more than 60 years the Trust has played a leading role in preserving South Australia’s heritage, working with government, councils and communities in all parts of the state.

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## 1. INTRODUCTION

Our state's unique heritage is vitally important to South Australians for its cultural, economic and environmental value. Interstate and international visitors, be they tourists or future residents, are drawn to our intact stock of historic buildings, streets, neighbourhoods and towns which add significant appeal and amenity to Adelaide and South Australia. However, heritage is not protected in the way that the public expects. In a rush to promote any type of development, the development assessment controls under the State's planning system allow inappropriate infill and the needless demolition of the historic buildings that constitute the state's built heritage and which define the historic character of many areas.

The proposed new planning controls as currently outlined in the draft Planning and Design Code will continue to allow inappropriate development and have the potential to make the situation much worse, with significant costs to community members and their environment, as well as long term economic detriment to the state as a whole. The changes proposed also represent a significant reduction in the democratic rights of all South Australians. Although it is claimed that the changes will achieve 'better outcomes for South Australia's economy, environment and communities' there appears to be little evidence to support this view.

The Blueprint for South Australia's Planning and Design Code outlines the perceived benefits, including one clear planning rule book for the state and certainty in decision making. However, for the reasons outlined in this submission, the Trust considers that the draft Planning and Design Code (the Code) is unfit for purpose, with major omissions, errors and inconsistencies. It foreshadows weakened protections for natural and built heritage along with provisions for unfettered urban infill and high rise in metropolitan residential areas. Despite attempts to clarify, supplement and justify its policy and implementation provisions since its release, in our view the draft Code remains a very poor policy document. It fails to fulfil the purposes set out for it in the *Planning, Development and Infrastructure Act (PDI Act)*.

The Code embraces the idea of a 'one size fits all' policy approach which the Trust does not support. We are not aware of any other comparable jurisdiction with such a Code. The 'one size fits all' approach includes a failure to transition a great deal of specific local policy from current development plans (such as that contained in desired future character statements) to the Code. For the Code to be effective it must have the right balance of general and specific policy.

In trying too hard to be uniform, the draft Code has resulted in what former NTSA President Professor Norman Etherington has described as "mediocrity through uniformity". Without more detailed policy, the level of certainty and transparency around planning decisions will dramatically reduce.

NTSA considers that because the Code is a complex, error ridden document it is very difficult to comprehend fully and to comment upon. Code policy and processes are ambiguous, vague, missing and poorly drafted. This creates a lack of certainty and clarity for everyone.

It is appalling that on the release of the Code on 1 October 2019 the State Planning Commission were aware that the Code many errors because it provided a document outlining known errors at the same time. Many more errors have been found since that time.

From what can be discerned in the draft Code, many current planning policies have been removed, new weaker policies created, or areas rezoned completely. No evidence base, rationale or risk assessment for these proposals has been provided by the State Planning Commission, making it unclear as to how or why some things have been drafted and whether the Commission understands the history of some policies and areas and the impact that these changes would create. Examples include demolition policies in the Historic Area Overlay, the exclusion of critical local heritage policy and the failure to transition Contributory Items (CIs) into the Code, by either a map or list of addresses. Such ill-informed and ill-considered policy changes will create uncertainty and confusion for owners, prospective buyers, neighbours and developers. The uncertainty, ambiguity and confusion of such poor policy formulation will increase levels of litigation, at significant cost to all parties.

Furthermore, were these types of changes to be made under the Development Plan Amendment processes under the current *Development Act* there would be a requirement that the proponent of the changes provide a clear and strong argument justifying those proposed changes.

The Code is such a train-wreck that council planners have spent and continue to spend countless hours identifying the problems and making recommendations to fix the problems. An enormous amount of time and effort has been expended unnecessarily by many people because of the manifold deficiencies of the draft Code.

The Code is such a flawed document in terms of structure and content that it is hard to imagine how it could be rejigged to create a code that could meaningfully guide future development.

By all accounts the Code's e-Portal is far from being ready to use - a finished product would have assisted everyone to be better informed when making submissions on the Code. As a result of this problem and other poor engagement issues, the principles of the Community Engagement Charter have not been met. Unless the Code is significantly revised there will be many negative consequences including an unacceptable loss of local character and amenity in many urban neighbourhoods and much more of our built heritage will be lost in the decades to come.

In response to publicly expressed concerns about the process, the Minister announced on the 7 February 2020 that implementation of Phase 2 of the Code (rural areas) would be delayed until the 1 July 2020 and phase 3 to a later date to give the community more time to understand the Code.

However, the NTSA is aware that the real reason for the Minister's decision to delay full implementation is lack of readiness. In an email dated 14 February which responded to an inquiry about the 'consultation' deadline DPTI replied as follows:

*“Good Morning*

*The Minister for Planning has already determined that there will be no extension to the consultation for the Code. The extension of time is for implementation of the e-planning system.*

*Regards*

*Planning Reform Team, Department of Planning, Transport and Infrastructure”*

It is clear that both the Code and the Electronic Planning Portal system are far from ready. Both need significantly more time for public consultation. If implementation is rushed the result will be a less than ideal planning system with many unintended consequences. Many areas of the Code, including heritage protection provisions, need substantial change. NTSA considers that drafting of the Code is an opportune time to strengthen our heritage policies – we do not want to risk losing any more of our precious built heritage.

The NTSA strongly recommends a significant delay to full implementation of the Code thereby enabling necessary comprehensive work to be carried out together with a thorough testing and review of the Electronic Planning Portal. Once done, there needs to be further public consultation on the Code and the ePortal.

## **Recommendations**

- a. Urgently fix errors and reinstate all policies in current development plans.***
- b. Introduce improved, consistent and clear planning controls in areas where the current policies in development plans are inadequate.***
- c. Postpone finalisation of the Code until all of the major errors in the Code have been corrected and the ePortal is completed; flawed policies are rewritten and further comprehensive public consultation on the revised document has occurred.***

## 2. BACKGROUND TO THE CODE

Under the new *Planning, Development and Infrastructure Act, 2016* (the PDI Act) the Code plays a pivotal role in the development assessment process because it is the planning policy document against which development proposals must be assessed by the relevant planning authority. It is worth noting that the PDI Act contemplates that the Code ‘...be simple and easily understood and... provide consistency in interpretation and application’.

Under the *Development Act 1993* there are development plans for each local council area. These plans contain planning policy objectives and principles of development control, as well as designating the land use zones and policy areas applicable to development occurring within the council area. It was a requirement that any development proposal be assessed against the policy contained within the relevant development plan. The Code is similar in its function.

## 3. CONSULTATION PROCESS

The Community Engagement Charter created under the PDI Act is meant to:

“Provide greater opportunities for South Australians to influence how we live, work and move in our urban and rural areas.....Simplified information to improve understanding of the planning system and encourage greater participation earlier in the planning process.”

“The Act places the emphasis on engaging communities early, when the rules, such as the Planning and Design Code and other regulatory instruments are being developed rather than at the later stages of the planning process when it may be too late to influence outcomes.”

“People in South Australia now have greater opportunities to help shape their neighbourhoods, under the new Charter.”

Currently there is a widespread lack of understanding in communities about the proposed planning changes. The scope and significance of the changes proposed has not reached the attention of many people. Those who are aware of them cannot interpret the draft Code with its excessive complexities and inaccessible format.

There is a lack of time for involvement - residents do not have the time, lead very busy lives and part of the consultation on phase 3 has occurred over Christmas New Year when the community's attention was focussed elsewhere.

In the heritage policy space there are also other serious timing issues. The People and Neighbourhoods Policy Discussion Paper was released just before the 1 October release of the Code but was many months late. This paper focusses on the key issues of neighbourhood amenity and heritage. Unlike other policy areas such as the environment, the public were given no prior period of consultation which enabled feedback to be given and a response from the State Planning Commission as to possible policy positions.

Instead, in May 2019 the State Planning Commission released "policy position papers" (not discussion papers accompanied by a period of public consultation). The public was given no opportunity at that time to respond to key changes to heritage policy including the proposal not to transition Contributory Items into the Code. We make further comment on the People and Neighbourhood Paper later in Section 8 of this submission.

When the Code was released for consultation in October it was *not* accompanied by draft Historic Area and Character Area Statements. Provision of those Statements did not occur until 23 December 2019. On the same date, the State Planning Commission released a General Policy Update (including heritage policy) and an Updated Classification Tables document. The release of these documents some three months after consultation began further compromised informed consultation.

The consultation process has featured an extremely low key campaign to inform the community of the reforms generally and the Code. For example, only owners of properties in historic conservation zones were notified by letter of changes (in vague

terms) that could impact them. The notification letter was not sent until late January 2020 and did not contain any detail on current and proposed policy and made erroneous statements to the effect that protection levels would be the same. Whilst the proposed changes to planning policies will affect all property owners in the state, only a very small number of owners have been directly notified.

The vast majority of South Australians are unaware of these matters. Department of Planning Transport and Infrastructure (DPTI) forums have had minimal advertising on the portal or in newspapers, and nothing on social media. From all accounts attendance has been poor at DPTI Information sessions and given the magnitude of change, few sessions have been organised. There was little opportunity for the community to access DPTI staff over December/ January. It is reported that at information sessions DPTI staff have spent most of the time explaining the reforms and they have struggled using the online mapping tool to correctly identify policy relating to particular street addresses. DPTI staff have often been unable to answer specific questions about particular policy matters. The sessions have not been conducted in a manner or form to be truly collaborative consultation meetings.

Feedback on the DPTI telephone helpline and email query line has also been largely negative. Problems have included failure to respond or delays in responding to callers /email inquiries, confusing or misleading advice.

For the above reasons the NTSA strongly recommends that once the Code is rewritten and the e-planning portal is fully operational, that a further round of appropriately resourced and comprehensive public consultation *must* occur.

#### 4. CODE CONTENT – HERITAGE

Our submission here relates to key aspects of the Code which impact on heritage and related matters. Attachment A sets out proposed changes to overlay policies in more detail.

##### **Draft State Heritage Areas Overlay**

The NTSA submits as follows:

- a. The Overlays are generic across all listed Areas within the State and do not take into account that individual Heritage Listed Areas often have very different and distinctive characteristics.
- b. Key provisions relating to Colonel Light Gardens should be brought across from the Development Act Regulations into the Overlay.
- c. The table approach to recording the heritage values of an Area is inappropriate - we submit that each Area should have a detailed Statement of Heritage Significance.
- d. Policy provisions which cover development adjacent to heritage places need to be included (as noted in the Update Report) and should be based on existing policy.
- e. There are significantly less prescriptive requirements than in current Development Plans, signifying less rigorous and well-defined protections.
- f. Requirements for assessment are unclear.
- g. As development is no longer defined as non-complying there is now no ability for an early rejection of a development proposal, creating greater uncertainty.

##### **Draft State and Local Heritage Places Overlay**

All existing State and Local Heritage Places have been transferred across in the draft Code to a State Heritage Overlay and a separate Local Heritage Overlay. The Overlays provide the policies for assessment of developments impacting heritage places.

The NTSA supports the transition but makes the following comments and recommendations:

- a. The Update Report proposes adjacency policy provisions for State Heritage Places which should be based on existing policy.
- b. The assessment of the impacts of development on State Heritage Places will hinge on having an appropriate Statement of Heritage Significance for each heritage place – such Statements do not currently exist for all such places.
- c. The phrase “irredeemably beyond repair” in the demolition controls needs clarification.
- d. While we support the referral to the Heritage Minister of non – Crown developments - which is mandatory unless the development is deemed “minor”- clarification is however needed as to what constitutes “minor” and NTSA recommends that guidelines be developed to assist decision makers to determine what is “minor” in nature.
- e. Include “should“ throughout policy provisions in line with current policy e.g. PO 1.7 LHP Overlay- development of a Local Heritage Place should retain elements contributing to its heritage value.
- f. Include clear definitions of heritage and character.
- g. Clarification as to whether current Design guidelines particular to State Heritage Places will form part of the assessment process is required.
- h. Land division policies that consider heritage impacts, in particular incremental impacts, should be included.
- i. Include policies aimed at reinstating historic subdivision patterns and in any event not altering those patterns any further.
- j. Policy should clearly express the importance of preserving heritage values.
- k. Useful pictorial guides should be included.
- l. Use of “deemed to satisfy“ provisions should not be used for conservation work.
- m. Clarity is required as to what is suitable development for applications involving alterations and/or additions to State Heritage Places.
- n. Policy should preserve whole landscapes not just trees.

- o. Clarification regarding the operation of the phrase of “extent of listing” for local heritage places and how it will operate for places that do not presently have an “extent of listing” statement.
- p. Establish curtilage for all State Heritage Places.
- q. NTSA opposes the “visible from the public realm” test as it excludes referrals to the Heritage Minister of development not visible in the public realm. Policy emphasis should be on the assessment of a proposed development’s impact on the heritage value of the listed place rather than just what is visible in the public realm.
- r. Applications which should be subject to public notification, such as demolition of a State Heritage Place or Local Heritage Place are not required to undergo public scrutiny under the Draft Code. However, an application for ‘conservation work’ to a heritage place would default to ‘all other code assessed development’ and would require public notification. This would appear to be an adverse outcome that does not support the aims of the Code.
- s. Procedural pathways are accompanied by timelines, which would result in 20 days to determine a complex demolition application, and 70 days to assess simple conservation works. **The 4 week timeframe puts unreasonable and unrealistic pressure on the planning authority and won’t allow for negotiation of better design solutions with a heritage architect.**

### **Draft Character Area Overlay**

The NTSA makes the following comments / recommendations:

- a. There needs to be a contextual statement included in the Code emphasising streetscape values and insight into the intent of the Character Overlay.
- b. Include a definition of a Character Area.
- c. Use clearer policy wording.
- d. Use “should” throughout in line with current development plan policy.

## **Draft Historic Area Overlay**

All existing Historic (Conservation) Zones have been transferred across to the Code to become Historic Areas in an Overlay format. The Historic Area Overlay provides policies to conserve the important historic attributes of an area and applies to a historic area in its entirety, as compared to the State Heritage and Local Heritage Place Overlays which apply only to those listed places and their ancillary development.

## **Contributory Items**

The State Planning Commission has proposed that lists of current Contributory Items (CIs) not be transferred over into the Code. CIs are basically buildings which make a valuable contribution to the heritage character of an area. They are surviving examples of older buildings and they collectively contribute to the historic and architectural character of a particular area. They are located primarily in Historic Conservation Zones (HCZs). They are generally the building blocks of these zones. They play a fundamental role in protecting the heritage values and unique qualities of historic areas.

Retention of CIs through listing was advocated by Planning SA in 2001 and its Heritage Planning Bulletin provides guidelines to Councils for the establishment of HCZs, including the retention of, and mapping of, CIs. Regrettably, the State's framework for these zones and their CIs has become unclear since that early guidance, with zones and character protection the subject of planning agency review for many years. A CI is identified through policy formulation and amendment and deemed to have historic value by contributing to the heritage values of a Historic (Conservation) Zone or Policy Area. Since 2001 CIs have, for the most part, been protected from demolition in Council development plans where policy wording advocates their retention.

A number of Councils, in consultation with owners, have devoted much time and attention to have CIs listed. After a lengthy review process, many were signed off by the Minister of the day.

The reconvened Expert Panel on Planning Reform when tasked with considering the question of including CIs in the Code stated in their December 2019 Report that “there was nothing in the way of evidence to justify their inclusion”. For many CIs this is simply not the case.

There are approximately 12,000 CIs registered in South Australia. This figure represents just 1.8% of the total 741,748 separate and medium-density dwellings in SA (ABS 2016). Currently CIs are recognised through Policy Areas specific to the era and style of development. Desired Character Statements provide the detail of design and siting requirements for development in these areas.

CIs are valued heritage but do not usually meet the statutory criteria to be classified as Local Heritage Places. Nor should they be expected to. Their value lies in the contribution they make as a collective group to the heritage character of an area and are therefore quite distinct in law and fact from state and local heritage places. If too many are removed the elements that give the Historic Conservation Zones/policy areas their significance will be destroyed. Once assessed and identified, CIs have been listed within development plans.

Many owners of CIs invest heavily in them and consider they are entitled to be protected from building alterations in their neighbourhood in the knowledge that their property and similar properties in the HCZ have protections from demolition and inappropriate changes. Not listing CIs will negate this investment and the high worth attached to these properties by their owners. We note that many CIs are valued at the same level as listed heritage properties.

Property values increase with heritage/demolition protections when they are implemented comprehensively. The reason why St. Peters/College Park has Adelaide's highest average real estate value is because its historic character is comprehensively protected (by way of CIs) such that people can buy into the area knowing that the historic character homes around the property they are bidding on

will remain in place. That property values decrease, north of the HCZ, is evidence of the converse. Hence residential property values are increased, not because of the listing of one's own house, but because the neighbour across the street cannot damage or demolish their historic home and the streetscape continues to reflect a consistent historic character.

### **State Planning Commission's proposal not to transition CIs to the Code**

There appear to be three reasons promulgated by the State Planning Commission for why CIs should not be included in the new Code:

- a. They have no statutory basis.
- b. They create confusion and unnecessary regulation.
- c. In the process of listing individual buildings as CIs, landowners have not been afforded the same rights of notification and representation that apply to the listing of Local and State heritage places.

None of these arguments withstands scrutiny.

It is correct that there is no current definition of CIs in the Development Act; however, that should not be a reason to discard the existing 12,000 contributory items when setting up the new Planning and Design Code. Indeed, until 2012, the State government was supportive of contributory items and even published a planning bulletin providing guidance on their creation. Certainly planning ministers who were required to authorize Development Plan amendments appear to have had no qualms about authorizing amendments that set up lists of CIs. CIs are a concept used in some other states including Victoria and NSW in a very similar format to SA-without any apparent problems.

There is broad community acceptance and support of the concept of CIs except, it would seem, among vociferous members of the development industry.

Norwood Payneham and St Peters Council recently undertook a survey of the owners of CIs within its council area - 80% were either accepting or indeed

supportive of the listing of their properties. They do not appear at all confused or concerned about such listing. Indeed, the vast majority of landowners view it as a positive move, helping protect the unique heritage character of their area and their property's value.

To obtain some idea about planning and environmental issues which are of community concern it is instructive to examine the decisions of the specialist Environment Resources and Development Court. Bearing in mind that less than 20% of all applications lodged with the Court actually proceed to a hearing, of the 1900 cases decided by the Court since its inception, only 14 concerned CIs and in some of those cases only peripherally. There is certainly not the angst about contributory items that the powerful building lobby claims.

It is incorrect to say that there is no opportunity for landowners to comment on the listing of their property as a contributory item. Lists of CIs were made in development plans and those plans when in a draft form had to be publicly notified with any member of the public having the opportunity to comment on any aspect of the draft plan. A landowner concerned about the listing of their property as a CI could make a submission to that effect. The council was required by the legislation to consider that submission and if it was thought the submission warranted it, amend the draft plan accordingly. Yes, the listing of someone's property as a CI could affect what they can do with their property but so might a change of zoning designation, changes to land division requirements and alteration of policies on building heights and setbacks to name just a few matters. In all those cases, the landowner had the right to make a submission on the proposed changes.

The designation of State and Local heritage places requires that the owner of the affected property be individually notified. This is appropriate, as the undertaking of a range of works in relation to both State and Local heritage places is a specific element of the definition of development. CIs are in a different category.

Comments have also been made about the designation of buildings as CIs being an infringement of an individual's property rights. Such arguments ignore the fact that as soon as you have some system for land use planning controls you are affecting to

some extent a person's individual property rights. That is a given if you want to live in an urban setting. Everyone who owns land will find that the planning system imposes some sort of restriction on how that person may use his or her land. That is a price we must pay for the right to live in an orderly urban environment that provides safe buildings, adequate roads and transport systems, parks and recreation areas, sanitation, water, power and other utilities and the separation of incompatible land uses. Would any rational urban dweller oppose these essential urban measures?

Even though CIs do not have a legislative basis they can be included in the Code as a matter of policy in the same way as minimum allotment sizes and height limits, which are also not specifically referred to or defined in the legislation yet also potentially have significant impact upon individual property rights. By that rationale, any planning policy could/should not be allowed by virtue of not being recognised in legislation. This is the view of many planning professionals and the clearly stated opinion of Gavin Leydon, a planning lawyer of many years' experience in his recent advice to Norwood, Payneham and St Peters Council.

NTSA notes that New South Wales and Victoria schedule CIs in their planning schemes and heritage surveys to ensure their contribution to the character of an area is protected. We see no justifiable reason for a different approach in South Australia.

Furthermore, under the Development Act 1993 CI owners have the same rights as local heritage owners to be notified of listings and rights to object to them. The PDI Act gives increased rights to owners of proposed local heritage (appeal rights against listing) and owners of properties in HCZs (right to be consulted - s67 (3)(b) of the PDI Act). In addition owners of properties within proposed HCZs have a right of veto. If CIs continue to be included in SA's planning policy, objection rights can continue which is arguably a fair system. We note that in the past, as a matter of practice, very few owners of CIs have objected to listings.

People are generally more comfortable with heritage listing if all of the original houses in an area or commercial buildings in a street have the same designation and any new development is required to be consistent in scale to the historic streetscape,

such that the property controls are equitable and no-one is necessarily disadvantaged. There are well established property price premiums for designated heritage areas which would be eroded by the lack of protection for CIs proposed in the draft Code. This is an issue of great significance for existing property owners who rightly fear a loss of property values from the weakening of heritage protections in historic conservation zones.

This is in contrast to local heritage which can be listed in isolation and have the potential to cause significant impact on property rights. For example, an original farmhouse with a 25m front setback, remaining in the middle of a 2000 m<sup>2</sup> allotment might be worthy of being Local Heritage listed, but might be in a zone that might otherwise allow 4 or more dwellings in its place, and might be in a low socio economic area, where house prices are low. By contrast a CI, which can only ever exist in a context of being surrounded by similar if not identical properties with the same development and demolition controls, cannot logically be disadvantaged. Indeed the contrary is likely, whereby the CIs within an historic area, where they and their neighbouring properties are identified through lists and maps in the Development Plan, as not being able to be demolished, will be more valuable in amenity and importantly real estate terms.

As no other matters of policy attract appeal rights and less policy protection applies there is no legal or factual case not to continue recognising CIs in the Code by way of schedules attached to the Historic Area Overlay together with a policy definition in the Part 8 of the Code and the definitions section in Attachment 1 to the draft Practice Guideline (Interpretation of the Local Heritage Places Overlay, Historic Area Overlay and Character Area Overlay) 2019.

### **Why listing CIs matters**

In practice, if a property is listed as a CI in a Development Plan, it makes it much harder to argue that that particular property should be allowed to be demolished because there is clear intent to protect it by way of its articulated identification in the development plan. Furthermore, the general principles that speak to retention have

been argued to justify demolition in situations where specific listing does not exist, such as for the Built Form Zones in Unley and even in the HCZs in Kent Town.

Listing creates a high degree of certainty, clarity and transparency. Lists clearly highlight those places within the Overlay that should be retained over time. Developers and home buyers need to know whether a building can be demolished or must be retained. That is what is achieved through delineating buildings spatially. It would be profoundly unfair if a purchaser could purchase a property and then demolish it, having bid against others bidding on a different premise.

The lack of lists would create massive uncertainty and confusion for property purchasers and would be profoundly unfair to people who have already purchased next door to a CI, on the basis that the adjacent house can only be demolished in limited circumstances. No list, equals no clear intent. If there is no list, a person looking to purchase a property covered by the Overlay will need to go through the planning assessment process irrespective of its heritage values. There is also an inherent unfairness as current owners of CIs were not consulted prior to the release of the draft code about the loss of designation and have only received in the last month or so a vague letter saying the system has changed but the controls are the same – which is patently untrue.

If the number of CIs is eroded then the property values of all buildings within the HCZ are diminished as the integrity of the historic streetscape is eroded. If even one CI is demolished this can change the character and values of an historic area forever. New construction can never maintain the character that is comprised of actual historic character homes. Reproduction houses, in place of original historic houses, that are not authentically done, with lower ceiling heights and compromised detailing, diminish the genuine historic character, and good reproduction houses, whilst they might visually fit in and not spoil an area, confuse the story of how our suburbs evolved, and should not replace the genuine article. Any suggestion that CIs could be suitably replaced by well-designed new buildings lacks understanding of the nature of a HCZ and the significance of each CI. There are very few design principles in the Code- despite its title - and this is largely due to lacking local content for restoration and replacement matters.

“Grandfathering” across lists of CIs into the Code maintains the status quo in a policy sense and there is no legal impediment to doing this.

The NTSA is strongly opposed to the policy process taken by the Planning Commission, the Expert Panel on Planning Reform and the Government on the issue of CIs.

We put the same policy position on CIs to the Environment Resources and Development (ERD) Committee of State Parliament with respect to its inquiry into heritage laws and policies - the ERD Committee included our position in its recommendations.

In summary, NTSA contends there is no logical basis to the exclusion of CIs in South Australia’s planning policies.

### **Proposed planning controls**

The NTSA agrees that the Code needs to have planning controls that are applied consistently and fairly so as not to give unfair advantage to one who goes against or exceeds the planning controls and further that there should be an appropriate balance in the policy between generally seeking the retention and conservation of heritage buildings, whilst allowing for renewal of building stock in appropriate circumstances.

Policy provisions are currently less stringent for CIs than local heritage but they generally discourage the demolition of such places. Complete demolition of CIs is usually only considered if the structure is proven to be unsound (by a suitably qualified expert) and in a state of disrepair.

Whilst polices vary from Council to Council many have adopted the South Australian Planning Policy Library (SAPPL) policy on demolition within HCZs (or a slight variation thereof). However proposed policies in the Historic Area Overlay are weaker than currently in particular demolition controls. The differences between current controls and what is proposed is outlined in the table overleaf:

### **Old system (SAPPL -most councils)**

Buildings and structures should not be demolished in whole or in part, unless they are:

- (a) structurally unsafe and/or unsound and cannot reasonably be rehabilitated
- (b) Inconsistent with the desired character for the policy area
- (c) Associated with a proposed development that supports the desired character for the policy area.

Other councils included a structural test, but not economic viability.

### **Proposed Planning and Design Code**

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.

There is no justification provided in the accompanying documentation as to why the demolition provisions are so different from the generally accepted policy provisions across relevant council development plans. The proposed policies do not strike the right balance and are poorly worded. They are clearly at odds with the many statements by the State Planning Commission claiming that there is no change to policy protection. It is true that the same policies will apply across the state but certainly there has been no complete transfer over of 'like for like' policy as repeatedly promised by the Commission.

Essentially the proposed policies place inappropriate emphasis on front elevations, visibility of building facades and contribution to streetscape character and economic viability. Policies across the 24 current council development plans with CIs are not limited in this way and neither should the proposed Code demolition policies.

An undue focus on the façade as the measure of heritage value would risk the loss of historic homes in good condition simply because of superficial, out of character alterations.

Similarly, an overemphasis on streetscape character opens up the possibility that a sound historic home could be demolished if it is obscured to the street by a high fence and/or vegetation.

The greater emphasis on economic viability of repair proposed in the Code is out of kilter broadly with current demolition policies for CIs (or similar buildings). These typically refer to whether the building can be 'economically rehabilitated' (in 3 development plans) or 'reasonably be rehabilitated' (in 17 Development Plans), the latter normally taking into consideration much more than just the cost of the repairs including consideration of the historic value of the building, the likelihood the issues will reoccur once repaired and the cause of the issue. The test regarding economic viability in relation to heritage places is open to wide interpretation. For example, a developer could argue that the owner of a CI cannot afford to repair the verandah so the home is economically unviable to retain. By inserting "or" after criteria (a) demolition could be approved simply on the narrow test of economic repair rather than as a result of carrying out a comprehensive review of the value of the building and the nature of the repairs needed.

The current proposal is similar to policy found in the Unley Council's Development Plan RESIDENTIAL STREETSCAPE (BUILT FORM) ZONE "character areas" where retention and refurbishment is sought without specific listing or map designation of such buildings over 50 historic homes in the last 5 years have been demolished. This compares to stronger policies and listing and map designation of Contributory Items in the Norwood Payneham St Peters Council development plan which have resulted in only about 10 historic homes (CIs) in the last 10 years having been demolished.

The NTSA is seriously concerned that the combination of failure to list CIs, failure to include much local policy and vague and weaker policies such as demolition controls would lead to delayed assessments and poor development outcomes. Any person wanting to demolish a property or make changes will have no clear guidance as to its significance or recommendation for retention or otherwise. This has the potential for substantially more costly litigation.

Particularly at risk are historic buildings in poor condition or buildings with owners who allow the properties to fall into disrepair and then apply to demolish. Consultants will need to be employed to assess and argue the case on a case by case basis, adding cost and time to the whole process. Decisions will be made using weak and open ended planning policies with too great an emphasis on economic viability. NTSA acknowledges that there are some inconsistencies in Development Plans regarding CI identification processes, listings and controls, but we do not consider the inconsistencies should give rise to overturning a system that has provided significant and valuable protection for many years.

If the Code is implemented in its current form, this would destroy and fragment HCZs. The ' long term focus principles' contained within the Principles of good planning in s14 of the PDI Act include the requirement that policy frameworks 'be ecologically sound'. There is also an emphasis on sustainability. Section 57(1) (e) requires that rules and standards must seek to protect the environment and the pursuit of ecologically sustainable development. The precautionary principle is a key component of sustainability. It would dictate that in a time pressured situation such as that confronting the Commission regarding the transfer of existing CIs across into the new Code, that transfer should include all existing items to enable a full review and assessment of their eligibility for continuing to hold such status to take place in a measured, expert environment with appropriate community input.

It is disappointing that the reconvened Expert Panel on Planning Reform when asked by the Minister last year to "review the heritage and character policies proposed by the State Planning Commission for the draft Planning and Design Code" the panel concluded at page 6 of its December 2019 report that "the Panel is not in a position to review the policies proposed by the Commission..". Many of the Commission's statements over the last 12 months have promised no lessening of protection, for example in May 2019 State Planning Commission Chair Michael Lennon stated on ABC radio that "Contributory Items have the same controls over demolition as they do now" and "there is no change to the demolition control applying to those dwellings now compared to the future. Everything in that sense will stay the same." On our analysis there clearly are significant changes to the demolition controls proposed for the Historic Area Overlay covering Contributory Items.

## Recommendations

- a. Contributory Items should be retained and transitioned over to the new system in a clearly identified schedule and/or database (e.g. spatially identified on a map or by address).***
- b. There needs to be clarity as to what constitutes acceptable changes and what is meant by the phrase “visible from the public realm”***
- c. The Code must include demolition controls which maintain the integrity of the front and side facades and roof form of CIs not just the front or street facade, as well as allowing opportunity for sensitive alterations and extensions to the rear and interior. In some instances, the retention of a CI at the front of an allotment can support opportunities for the construction of a new dwelling to the rear.***
- d. The inclusion of demolition controls which emphasise structural integrity and the economics or reasonableness of rehabilitation and remediation as an alternative to demolition. The NTSA recommends the inclusion of demolition policy similar to those applicable to Heritage Places/Contributory Items in the current Norwood Payneham St Peters Development Plan.***

## 5. DRAFT HISTORIC AND CHARACTER AREA STATEMENTS

In late December 2019 (almost 3 months after consultation began on Phase 3) the State Planning Commission released draft Historic and Character Area Statements for Phase 3 Council areas. The Code provides that with respect to Historic Area Statements:

*“Historic Area Overlays identify areas that comprise unified, consistent streetscape characteristics of an identifiable historic, economic or social theme associated with an earlier era of development. They comprise built form characteristics, and at times natural features and sub-division patterns that provide a legible connection to the historic development of the local area. Development within the Overlay will preserve these attributes. The redevelopment of existing places, through refurbishment or adaptive reuse, will maintain, and where possible enhance or reinforce, this unified, consistent historic streetscape character. New development will be generally limited to the replacement of places that either do not contribute towards this unified, consistent historic streetscape character, or towards the rear of sites that do, so as to not adversely impact the legibility and interpretation of the prevailing historic, economic or social themes as viewed from the public realm.”*

Advice from Premier Marshall’s office claims that the Statements “will be used to identify elements of heritage value within a particular area, which may include characteristics such as building style or theme”. Further “policy within Council’s existing development plans is being used to develop Historic Area Statements in order to assess development with the Historic Area Overlay, which captures existing contributory items”.

The Historic Area Overlay has the potential to protect all contributing buildings within the historic area, but only if the Historic Area Statements adequately encapsulate the attributes of the area which many Councils currently do in their existing development plans with detailed policy statements for particular local areas. The statements typically describe the type and era of and include detail of the dwellings which

contribute to the desired character of the area, which is then used to determine whether a dwelling proposed for demolition should be retained. They have the level of detail which is critical to protecting heritage from inappropriate development or destruction. However it is unclear what level of content is expected in these Statements and how they relate to other policy in the Overlay.

The proposed table format in the draft Code has no title and no headings, and it is not clear what the function of the table is. This needs to be clarified for it to make sense. Information provided in the tables is confused, inadequate and would provide no basis against which to measure development applications. Whilst not explicitly stated it appears that the Commission is strongly resistant to these Statements containing any real forward policy positions which will underpin decision making. The tables simply do not include the current level of policy principles found in, for example, the Desired Character Statements contained in existing development plans. The statements **are vastly inadequate, generic and repetitive**. No development objectives or policies are included resulting in very minimal and vague guidance. The draft statements are completely inadequate as they stand, appear to follow no consistent standard or format and are not backed by any clear policy intent.

As currently drafted the Statements would provide no assistance for the development assessment process and development could be approved which would destroy the historic values of an Historic Area. For example, the drafts require new development to reflect the design of surrounding buildings and do not provide sufficient customisation and detail to guide new development in these areas. The generic introduction makes no reference to the Historic Area Overlay being described, so that no context is set about historic background, development pattern or heritage values of the Area. Some of the information comes from existing Development Plan provisions, but is selective and *ad hoc*. These tables as outlined do not *“identify and articulate the key elements of historic importance in a particular area.”*

For example, the following policies from Norwood Payneham St Peters Council development plan are missing in the draft Code:

- a. Policy governing not rendering or covering original brickwork and stonework
- b. Site coverage consistent with buildings which contribute to character
- c. Wall height and window placement
- d. Vertical and horizontal proportions
- e. Minimisation of unbroken walling, treatment of openings, depths of reveals
- f. Roof form, pitch and colour
- g. Verandah, balconies and eaves detail
- h. Upper level in the roof space or not resulting in excessive mass or overshadowing
- i. Total width of upper level windows not exceeding 30% of total roof width
- j. Corner site redevelopment to address both frontages
- k. Use of stone, brick, natural coloured bagged render and/ or brick as main external wall finish
- l. Avoidance of brightly coloured or highly reflective materials/ surfaces
- m. Development not fronting an un-serviced laneway
- n. Historic Guidelines Table NPSP/4 (illustrated design principles)
- o. Row dwelling garaging to the rear
- p. Retention of front gardens and substantial landscaping
- q. Fencing to not restrict visibility of dwelling
- r. Fencing material and height detailed for each Policy Area
- s. Carports/ garages not extending verandah elements or historic detailing across the same alignment as main face of building
- t. Not incorporating under croft car parking not consistent with historic character
- u. Garaging to rear of allotment where laneway exists

In the case of Gawler Council's development plan the following policies are missing:

- a. The Heritage Area encompasses the original streets and allotments of the town of Gawler, as designed and laid out in town plans undertaken by Light, Finniss and Co in 1839. It clearly shows the extent of the original town and the urban design principles on which it was based.
- b. This area is also of historic significance as it contains many of the early buildings of Gawler – residential, commercial, public and ecclesiastical – which illustrate the built form of the town in the 19<sup>th</sup> century.
- c. The public squares around the churches and other terraces and parklands bordering the rivers.
- d. Total roof heights in the order of 5.6 metres or 6.5 metres.
- e. Single and small pylon signs restrained associated with buildings set back from road frontages or free-standing signage is appropriate. For buildings that are close to the street boundary, flat wall, projecting or under verandah signage associated with buildings constructed to road frontages.
- f. Variable garden depths. Slate kerbs of the Willaston Township, which was officially laid out on 21 Oct 1848. The historic significance of the Willaston Township is evident to this day, with many of the original buildings of the settlement, dating from the period 1848-1900, remaining in use and defining the historic and desired character of built form.

There is a clear mechanism in the PDI Act for including local content via sub zones. However as currently drafted the Code has 37 Councils with no sub zones, 20 Councils with 1 sub zone, 10 Councils with 2 sub zones, 2 Councils with 3 sub zones and the City of Adelaide - 13 sub zones. The detailed policy has gone from the General Development Policies, not included in zones (e.g. Suburban Neighbourhood Zone), and gone from the Historic Area Overlay. No explanation has been provided in the accompanying documentation for this significant omission.

Given this situation, the Historic Area Statements have, by default, become the only place where the Code may include policy on local circumstances or design / siting outcomes. However, the current absence of detailed policy in these Statements

means that there is very little guidance on what should be considered in applications impacting heritage and applications approved if development broadly complements or is consistent with the local characteristics set out in the Historic Area Statements. If the Statements are not amended to include detailed local policy or this policy is not included elsewhere such as in subzones, there are increased risks of poor planning decisions and the loss of historic values.

## **Recommendations**

- a. Draft statements must be redrafted, edited and rewritten by experts to expand the content, incorporate necessary additional information and provide a statement which can be used to guide appropriate development in these historic areas. They must reference very specifically the individual characteristics of historic conservation zones including the era of development, the pattern of subdivision, themes (e.g. workers' cottages, mansions and the like), reference to architectural periods of development that reflect historic periods of boom/bust etc. In addition, the statements need to cover issues such as road patterns and topography, building heights and roof pitches, types of fencing and gardens being of specific importance.***
  
- b. Incorporate important unique local policy in subzones, including in relation to characteristics that may be contained in policy areas in current development plans.***

## 6. DRAFT PRACTICE GUIDELINE FOR (INTERPRETATION OF THE LOCAL HERITAGE PLACES OVERLAY, HISTORIC AREA OVERLAY AND CHARACTER AREA OVERLAY)

**The draft practice guideline for** (interpretation of the local heritage places overlay, historic area overlay and character area overlay) 2019 ( **the draft Guideline ) aims to set out information requirements to support we believe all proposals, including a Historic Area Impact Statement which can be prepared by a heritage expert and would help identify the values of the place. It is meant to assist with the interpretation of the heritage policy proposed by the Code and in particular, to provide definitions of standard terms, to specify the contents of Heritage Impact Statements and provide guidance on the demolition provisions contained in the various heritage policy tools. Expert heritage advice needs to be provided as part of an Historic Area Impact Statement. Developers will pay their own contractors to complete the components of the Historic Area Impact Assessment.**

**A fundamental concern is that the matters in the Guideline should be in Regulations to protect their integrity. A guideline can be altered at whim without proper notification and consultation with practitioners and the general public. Additionally the draft Guideline entrenches a flawed system where developers prepare Historic Area Impact Statements.** This process creates a fundamental conflict of interest with the public interest in preserving heritage. The NNTSA proposes the implementation of an alternative system as set out in the recommendations below.

**More general concerns include that it is not clear if the guideline is to be used for all development in these locations, not just for demolition (as the front of the Guideline indicates) and** the terminology also needs work including clarifying definitions particularly as they relate to the economic costs of replacement vs repair.

### Recommendations

- a. Include contents of this Guideline in Regulations.**

- b. Similar Guideline should be prepared for the State Heritage Place Overlay.***
- c. Clarify that it applies to all applications.***
- d. Process to include all the information requirements e.g. criteria to be met in a quantity surveyor report or structural engineer's for demolition approval.***
- e. Include definition of "reasonably, economically restored" in Historic Area Overlay PO 6.1(a).***
- f. As an alternative to developer funded statements establish an independent fund, financed by developers but overseen by independent decision makers.***
- g. Clarify meaning of "explaining and campaigning" in relation to conservation work.***
- h. Support the use of a checklist for Impact Assessments but details of what it should contain needs to be included. Further clarification of what information is needed in relation to "Heritage Significance".***
- i. Include definitions in the Code's definitions section.***

## 7. CODE CONTENT - OTHER POLICY ISSUES

Proposed policy in other areas of the Code could impact severely on the amenity of neighbourhoods. The draft Code works directly against conserving existing value and amenity in and around historic areas and places by facilitating larger developments.

The NTSA's concerns are:

### **Significant and regulated Trees**

For many reasons it is imperative that we increase the urban tree canopy. Adelaide has the lowest tree canopy of the leading capital cities in Adelaide at 27%. A very significant amount of tree cover has been lost over the metropolitan area. In the Unley Council area for example between 2013 and 2016 26% of the tree canopy in the Unley Council's area was lost.

However the 2017 30 Year Plan for Adelaide sets a goal of increasing tree canopy by only 20% by 2045. This cannot be done only through preservation of trees on public lands. On the basis of the policy in the draft Code the target will be impossible to reach and will leave Adelaide, arguably the hottest and driest of the Australian capital cities, with an unenviable reputation for limited tree canopy cover and therefore an increasing urban heat island effect.

Many trees which have heritage values are listed as significant in development plans and we support the inclusion of a list in the Code. The draft Code presently contains a single Regulated Tree Overlay. This is in direct contrast with current Development Plan policy, which distinguishes between and provides separate policy for both regulated and significant trees. The overall 'tree policy' in the Code means that there will be diminished protections for trees. More trees will be lost as crowded urban infill is implemented. It is not clear whether significant trees under the current definition will have the same level of protection under the Code

There is concern that regulated tree policy appears to have been consolidated within a single Regulated Tree Overlay with no higher order of policy relating to the

proposed removal of a regulated tree that is a significant tree. It is unclear as to whether the omission of a separate Significant Tree Overlay is a deliberate policy decision or an inadvertent omission. In any event, the proposed criteria for a tree damaging activity that is not to be undertaken with other development does not reference the current test that “all other reasonable remedial treatments and measures must first have been determined to be ineffective”. The omission of this requirement, at least in respect of significant trees, would result in a severe weakening of the current level of protection. This must be rectified to ensure that the Code affords at least the same level of protection to such trees as presently exists under the Development Plan.

## **Recommendations**

- a. Significant tree policy should be in a separate overlay.***
  
- b. Significant Tree Overlay should include reference to trees that are indigenous to the locality, important habitat for native fauna, part of a wildlife corridor of a remnant area of native vegetation and important to biodiversity of the local area and replace the test for retention of significant trees to “retained where they make an important visual contribution to local character and amenity” to “Significant Trees should be preserved”. In the case of significant trees the Code needs to include the test of “all other remedial treatments and measures have been determined to be ineffective”. All development applications affecting trees should be made subject to public notification and consultation.***

## Other issues

There is a total lack of effective policy direction on a wide range of urban design issues in the Code including:

- a. high-rise development
- b. urban infill
- c. corporate branding and signage of buildings
- d. new development in traditional high streets
- e. big box developments
- f. heritage led urban regeneration

In many instances the proposed policy is weaker than current development plan policy and inconsistent throughout the Code. If not substantially changed, there is a risk that infill development will be little better or even worse than infill development that currently occurs under the *Development Act* system, especially with the low standards outlined in the deemed to satisfy requirements. Policy in some zones is entirely at odds with current zone policy and allows for a far greater intensity of development than existing. South Australia has the lowest average site size in the country – 361 square metres in 2017.

Unless the deemed to satisfy and performance outcomes in the Code are radically changed we will have poor planning outcomes for decades to come. It would be a travesty for our State and its people if this major reform of the Planning system results in a less desirable and less sustainable urban environment than we have at present. The Code, as it stands, is not consistent with key purposes for it established under the PDI Act.

The NTSA supports the recommendations of the Local Government Association of South Australia for changes to policy in relation to the following concerns:

- a. Inconsistent or missing frontage provisions, loss of minimum site coverage provisions, reduced building heights, diminished setbacks from side and rear boundaries particularly at upper levels.

- b. It is not clear how the policy will differentiate locations which require single storey at front/ two storey possible at the rear. Existing siting, setback and floor area criteria should be maintained throughout all our residential areas.
- c. Change to the interface building envelope angle from 30 degrees to 45 degrees. This means that buildings can be higher and closer to boundaries.
- d. Inclusion of policy allowing 30% additional height bonus for 'Strategic Development Sites' over 2000 sq. m where they meet certain criteria. Therefore, a building application with a nominal height of six storeys could go to eight storeys.
- e. Non-residential/ non corridor Zones which have either incorrect, missing or inconsistent policy enabling 6 storey development or unrestricted height limits for a number of zones.
- f. No protection for development of laneways.
- g. Proposed development previously non-complying e.g. in some residential areas will allow non-residential uses which will adversely impact traffic, parking, noise, neighbour's amenity and the character of our suburbs. All uses which are currently non-complying in our residential areas (e.g. office and shop) should be "restricted development". Alternatively, a new zone should be created purely for residential land use.
- h. Large scale centres are placed in the same zone as small local shops, allowing large scale development and more intensive land uses throughout all these areas. A hierarchy of centres should be maintained. Additional zone(s) are needed to cater for the lower intensity local centres, particularly in older established areas.
- i. No draft Design Standards have been developed.

## 8. PEOPLE AND NEIGHBOURHOODS POLICY DISCUSSION PAPER

As noted, this Discussion Paper was released just prior to the start of consultation on the Code. This has completely precluded a collaborative approach to policy development in this area, particularly with regards to the critical issue of heritage conservation and protection.

The NTSA provides the following comments on the People and Neighbourhoods Policy Discussion paper, noting that the paper's value was significantly diminished by its absurdly late arrival and its scant substance:

### **Case study by Damien Madigan, pp 18-20**

This study is to be commended for its ideas on infill development that will better serve community needs. Its suggestions for reuse of houses on large blocks in areas of established character show that demolition is not the only path to greater density. The difficulty with these and other recommendations to fill the allegedly 'missing middle' is that planning permission alone cannot guarantee that anyone will build this kind of housing. Experience across Australian cities demonstrates that left to itself the market will never deliver the desired diversity of housing. The market will build to the allowable maximum in the styles and sizes most in demand. From the NTSA's perspective Madigan's preferred model for development in suburbs of established character and amenity can only be achieved through prescriptive rules that prohibit demolition of established houses but permit their internal division and allow new building to the rear of blocks. Even this form of development poses threats to historic conservation zones where preservation of existing diversity depends on the continued existence of small cottages and units.

## **Section on Heritage and Character, pp. 51-55**

This section, like other documents on the subject emanating from the State Planning Commission, cites the Parliamentary Environment, Resources and Development Committee Inquiry while ignoring the much larger Consultation on Local Heritage carried out by DPTI in 2016<sup>1</sup>. That consultation showed overwhelming community support for existing heritage policies, including listing of CIs. There is clearly an intention to pretend the hundreds of submissions from local government, community groups and individuals never happened. This is consistent with the Planning Commission's evident intention to ignore and override public opinion.

Diversity of approaches to planning and heritage by local government is rejected for no better reason than its diversity. The idea that every community must bend to dictates of unelected public officials is undemocratic. Over the last 180 years the cities and towns of our state have grown in different ways. We regard this as cause for celebration rather than regret. Forcing them into the same mould now defies common sense.

For the NTSA the only character worth concern is historic character. For the rest, community needs and objectives change over time. The discussion of character independent of historic character is nothing more than a discussion about controls on development: the humdrum core business of urban planning.

The paper says nothing about the procedure for nominating and establishing further Heritage Conservation Zones. If this means that no further historic zones are to be created we face a grim future in which South Australia grows more and more like everywhere else.

We are puzzled by the prominence given to 'Character Overlays'. This is something no one asked for. The references to 'established character' seem to allude to character acquired over the course of time, i.e. historic character: something best achieved by the designation of historic conservation zones.

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<sup>1</sup> Report can be found at: <https://bit.ly/37W4G0L>

The most reprehensible proposal in the paper is the elimination of Contributory Items, a category of heritage on which the State Planning Commission and its spokesmen have been consistently wrong and confused. Contributory Items do not and never have constituted a separate, inferior species of local heritage. The purpose of identifying and listing them was to make plain the kind of historic fabric that needs to be preserved into the indefinite future in Historic Conservation Zones. Demolition of any one threatens to set off a process of destruction that must in the long run eliminate the Historic Conservation Zone as something worthy of any kind of protection. This is well understood in New South Wales and Victoria, from which the State of South Australia drew the concept of Contributory Items.

In summary, refusing to transition Contributory Items into the Planning and Design Code we submit will:

- a. Break faith with the citizens and local governments that spent significant time, money, energy and emotional capital creating them;
- b. Unfairly alter the property values of CIs to the detriment of owners who bought them on the basis of their status;
- c. Endanger the integrity of existing Historic Conservation Zones.

The final attachment to this submission (Attachment A) offers more proposed amendments to particular policies, noting once again the overall inadequacy and deficiencies of the policy material covered in the draft Code and its poor organisation and inaccessibility.

## ATTACHMENT A

### PROPOSED CHANGES IN RED

#### A. STATE HERITAGE AREA OVERLAY

Assessment Provisions (AP) Desired Outcome (DO)

DO 1

Development maintains the heritage and cultural values of State Heritage Areas through conservation, ongoing use and adaptive reuse.

Performance Outcomes and Deemed to Satisfy / Designated Performance Outcome

Criteria Built Form

PO 1.1

The form of new buildings and structures that are visible from the public realm consistent with the heritage values and characteristics of the State Heritage Area.

DTS 1.1

None are applicable.

PO 1.2

Development is consistent with the prevailing building and ceiling heights in the State Heritage Area.

DTS 1.2

None are applicable.

PO 1.3

Design and architectural detailing of street facing buildings consistent with the prevailing characteristics expressed in the State Heritage Area.

DTS 1.3

None are applicable.

PO 1.4

Development is consistent with the prevailing front and side boundary setback pattern in the State Heritage Area.

DTS 1.4

None are applicable.

PO 1.5

Materials are either consistent with or complement those within the State Heritage Area. DTS 1.5

None are applicable.

Alterations and Additions

PO 2.1

Alterations and additions complement the subject building and are sited to ensure they do not dominate the primary facade, streetscape and employ a contextual design approach.

DTS 2.1

None are applicable.

Ancillary Development

PO 3.1

Ancillary development, including carports, outbuildings and garages, complements the heritage values of the Area.

DTS 3.1

None are applicable.

PO 3.2

Ancillary development, including carports, outbuildings and garages, is located behind the building line of the principle building(s).

DTS 3.2

None are applicable.

PO 3.3

Advertising and advertising hoardings are designed to complement the State Heritage Area, be unobtrusive, not conceal or obstruct heritage elements and detailing, or dominate the building or the setting of the Area.

DTS 3.3

None are applicable

Land Division

PO 4.1

Land division creates allotments that:

(a) are compatible with the surrounding pattern of subdivision of the State Heritage Area;

and

(b) are of a dimension to accommodate new development that reinforces and is compatible

with the heritage values of the State Heritage Area.

DTS 4.1

None are applicable.

Landscape Context and Streetscape Amenity

PO 5.1

Individually heritage listed trees, parks, historic gardens and memorial avenues within the State Heritage Area retained unless:

(a) trees / plantings are, or have the potential to be, a danger to life or property; or

(b) trees / plantings are significantly diseased and their life expectancy is short.

DTS 5.1

None are applicable.

Demolition

PO 6.1

Buildings and other features of identified heritage value within a State Heritage Area are not demolished, destroyed or removed in total or in part unless either of the following apply:

(a) the portion of any building or other feature is determined to not contribute to the heritage value of the State Heritage Area; or

(b) the structural condition of the building represents an unacceptable risk to public or

private safety and results from actions and unforeseen events beyond the control of the owner and is irredeemably beyond repair.

DTS 6.1

None are applicable.

Conservation Works

PO 7.1

Conservation works to the exterior of buildings and other features of identified heritage value match existing materials to be repaired and utilise traditional work methods.

DTS/DPF 7.1

Conservation works involving:

- (a) replacement of roof materials, guttering or downpipes with the same or substantially the same materials and detailing;
- (b) replacement of timber building elements (structural or decorative) with the same or substantially the same material, dimension and detailing; or brick and stone repair/repointing to match original.

Procedural Matters (PM)

Referrals

Class of Development / Activity Referral Body

Except where:

- (i) the development is to be undertaken in accordance with a Heritage Agreement under the Heritage Places Act 1993; or
- (ii) the development is, in the opinion of the relevant authority, minor in nature or like for like maintenance and would not warrant a referral when considering the purpose of the referral the following forms of development:

- (a) demolition of external building fabric and other features of identified heritage value within the State Heritage Area;
- (b) freestanding advertisements, signs and associated structures that are

Purpose of Referral

The Minister responsible for administering the Heritage Places Act 1993

To provide expert assessment and direction to the relevant authority on the potential impacts of development on State Heritage Areas

Class of Development / Activity Referral Body

visible from a public street, road or thoroughfare within the State Heritage Area;

- (c) alterations or additions to buildings and other features of identified heritage value that:

- (i) are visible from a public street, road or thoroughfare within the State Heritage Area;

- (i) are visually dominant within the State Heritage Area; or

- (ii) involve substantive physical impact to the fabric of significant buildings;

- (d) new buildings that:

- (i) are visible from a public street, road or thoroughfare within the State Heritage Area; or

- (ii) are visually dominant within the State Heritage Area;
- (e) conservation repair works that are not representative of 'like for like' maintenance;
- (f) solar panels that are visible from a public street, road or thoroughfare within the State Heritage Area;
- (g) land division;
- (h) the removal, alteration or installation of fencing where visible from a public street, road or thoroughfare within the State Heritage Area; or
- (i) the removal of an individual tree or a tree within a garden or park of identified heritage significance within the State Heritage Area.

#### Purpose of Referral

#### Referrals

#### Class of Development / Activity Referral Body

visible from a public street, road or thoroughfare within the State Heritage Area;

(c) alterations or additions to buildings and other features of identified heritage value that:

(i) are visible from a public street, road or thoroughfare within the State Heritage Area;

(i) are visually dominant within the State Heritage Area; or

(ii) involve substantive physical impact to the fabric of significant buildings;

(d) new buildings that:

(i) are visible from a public street, road or thoroughfare within the State Heritage Area; or

(ii) are visually dominant within the State Heritage Area;

(e) conservation repair works that are not representative of 'like for like' maintenance;

(f) solar panels that are visible from a public street, road or thoroughfare within the State Heritage Area;

(g) land division;

(h) the removal, alteration or installation of fencing where visible from a public street, road or thoroughfare within the State Heritage Area; or

(i) the removal of an individual tree or a tree within a garden or park of identified heritage significance within the State Heritage Area.

#### Purpose of Referral

## **B. STATE HERITAGE PLACE OVERLAY**

Assessment Provisions (AP) Desired Outcome (DO)

DO 1

Development maintains the heritage and cultural values of State Heritage Places through conservation, ongoing use and adaptive reuse.

Performance Outcomes and Deemed to Satisfy / Designated Performance Outcome

Criteria

Built Form

PO 1.1

The form of new buildings and structures maintains the heritage values of the Place.

DTS 1.1

None are applicable.

Heritage values

PO 1.2

Massing and scale of development maintains the heritage values of the Place.

DTS 1.2

None are applicable.

PO 1.3

Design and architectural detailing maintains the heritage values of the Place.

DTS 1.3

None are applicable.

PO 1.4

Development is consistent with boundary setbacks and setting.

DTS 1.4

None are applicable.

PO 1.5

Materials and colours are either consistent with or complement the heritage values of the Place.

DTS 1.5

None are applicable.

PO 1.6

New buildings are not placed or erected between the front street boundary and the façade of a State Heritage Place.

DTS 1.6

None are applicable.

PO 1.7

Development of a State Heritage Place retains elements contributing to its heritage value. DTS 1.7

None are applicable.

Alterations and Additions

PO 2.1

Alterations and additions complement the subject building and are sited to be unobtrusive, not conceal or obstruct heritage elements and detailing, or dominate the Place or its setting.

DTS 2.1

None are applicable.

Ancillary Development

PO 3.1

Ancillary development, including carports, outbuildings and garages, complement the heritage values of the Place.

DTS 3.1

None are applicable.

PO 3.2

Ancillary development, including carports, outbuildings and garages, is located behind the building line of the principal building(s).

DTS 3.2

None are applicable.

PO 3.3

Advertising and advertising hoardings are designed and located to complement the State Heritage Place, be unobtrusive, not conceal or obstruct heritage elements and detailing, or dominate the building or the setting.

DTS 3.3

None are applicable.

Land Division

PO 4.1

Land division creates allotments that:

(a) are compatible with the surrounding pattern of subdivision of the State Heritage Place; and

(b) are of a dimension to accommodate new development that reinforces and is compatible with the heritage values of the State Heritage Place.

DTS 4.1

None are applicable.

Landscape Context and Streetscape Amenity

PO 5.1

Individually heritage listed trees, parks, historic gardens and memorial avenues retained unless:

(a) trees / plantings are, or have the potential to be, a danger to life or property; or

(b) trees / plantings are significantly diseased and their life expectancy is short.

DTS 5.1

None are applicable.

Demolition

PO 6.1

State Heritage Places are not demolished, destroyed or removed in total or in part unless either of the following apply:

(a) the portion of the Place to be demolished, destroyed or removed is excluded from the extent of listing that is of heritage value; or

(b) the structural condition of the Place represents an unacceptable risk to public or private safety and results from actions and unforeseen events beyond the control of the owner and is irredeemably beyond repair. (definition?)

DTS 6.1

None are applicable.

Conservation Works

PO 7.1

Conservation works to the exterior of a Place and other features of identified heritage value match existing materials to be repaired and utilise traditional work methods.

DTS 7.1

None are applicable.

Procedural Matters (PM)

Referrals

Class of Development / Activity Referral Body

Except where:

- (i) The development is to be undertaken in accordance with a Heritage Agreement under the Heritage Places Act 1993; or
- (ii) the development is, in the opinion of the relevant authority, minor in nature or like for like maintenance and would not warrant a referral when considering the purpose of the referral

the following forms of development: (a) demolition of internal or external significant building fabric;

(b) freestanding advertisements, signs and associated structures that are visible from a public street, road or thoroughfare that abuts the State Heritage Place;

(c) alterations or additions to buildings that:

The Minister responsible for administering the Heritage Places Act 1993

#### Purpose of Referral

To provide expert assessment and direction to the relevant authority on the potential impacts of development on State Heritage Places

#### Referrals

#### Class of Development / Activity Referral Body

(ii) are visible from a public street, road or thoroughfare that abuts the State Heritage Place;

(iii) may materially affect the context of a State Heritage Place; or

(iv) involve substantive physical impact to the fabric of significant buildings;

(d) new buildings that:

(i) are visible from a public street, road or thoroughfare that abuts the State Heritage Place; or

(ii) may materially affect the context of the State Heritage Place;

(e) conservation repair works that are not representative of 'like for like' maintenance;

(f) solar panels that are visible from a public street, road or thoroughfare that abuts the State Heritage Place;

(g) land division;

(h) the removal, alteration or installation of fencing where visible from a public street, road or thoroughfare that abuts the State Heritage Place; or

(i) the removal of an individual tree or a tree within a garden or park of identified heritage significance.

## Purpose of Referral

### **C. LOCAL HERITAGE PLACE OVERLAY**

#### Assessment Provisions (AP) Desired Outcome (DO)

##### DO 1

Development maintains the heritage and cultural values of Local Heritage Places through conservation, ongoing use and adaptive reuse.

##### Built Form

##### PO 1.1

The form of new buildings and structures maintains the heritage values of the Place.

##### DTS 1.1

None are applicable.

##### PO 1.2

Massing and scale of development maintains the heritage values of the Place.

##### DTS 1.2

None are applicable.

##### PO 1.3

Design and architectural detailing maintains the heritage values of the Place.

##### DTS 1.3

None are applicable.

##### PO 1.4

Development is consistent with boundary setbacks and setting.

##### DTS 1.4

None are applicable.

##### PO 1.5

Materials and colours are either consistent with or complement the heritage values of the Place.

##### DTS 1.5

None are applicable.

##### PO 1.6

New buildings are not placed or erected between the front street boundary and the façade of a Local Heritage Place.

##### DTS 1.6

None are applicable.

PO 1.7

Development of a Local Heritage Place retains elements contributing to its heritage value.

DTS 1.7

None are applicable.

Alterations and Additions

PO 2.1

Alterations and additions complement the subject building and are sited to be unobtrusive, not conceal or obstruct heritage elements and detailing, or dominate the Place or its setting.

DTS 2.1

None are applicable.

PO 2.2

Encourage the adaptive reuse of Local Heritage Places by enabling compatible changes to buildings to accommodate new land uses.

DTS 2.2

None are applicable.

Ancillary Development

PO 3.1

Ancillary development, including carports, outbuildings and garages, complements the heritage values of the Place.

DTS 3.1

None are applicable.

PO 3.2

Ancillary development, including carports, outbuildings and garages, is located behind the building line of the principle building(s).

DTS 3.2

None are applicable.

PO 3.3

Advertising and advertising hoardings should be designed to complement the Local Heritage Place, be unobtrusive, not conceal or obstruct heritage elements and detailing, or dominate the building or its setting.

DTS 3.3

None are applicable.

Land Division

PO 4.1

Land division creates allotments that:

- (a) are compatible with the surrounding pattern of subdivision of the Local Heritage Place; and
- (b) are of a dimension to accommodate new development that reinforces and is compatible with the heritage values of the Local Heritage Place.

DTS 4.1

None are applicable.

Landscape Context and Streetscape Amenity

PO 5.1

Individually heritage listed trees, parks, historic gardens and memorial avenues retained unless:

- (a) trees / plantings are, or have the potential to be, a danger to life or property; or
- (b) trees / plantings are significantly diseased and their life expectancy is short.

DTS 5.1

None are applicable.

Demolition

PO 6.1

Local Heritage Places are not demolished, destroyed or removed in total or in part unless either of the following apply:

- (a) the portion of the Place to be demolished, destroyed or removed is excluded from the extent of listing that is of heritage value;
- (b) the structural integrity or condition of the building represents an unacceptable risk to public or private safety and is irredeemably beyond repair.

DTS 6.1

None are applicable.

PO 6.2

The demolition, destruction or removal of a building, portion of a building or other feature or attribute is appropriate where it does not contribute to the heritage values of the Place.

DTS 6.2

None are applicable.

## Conservation Works

### PO 7.1

Conservation works to the exterior of a Place match existing materials to be repaired and utilise traditional work methods.

### DTS 7.1

None are applicable.

## Procedural Matters (PM)

### Referrals

Class of Development / Activity Referral Body

None

Purpose of Referral

None

None

## **D. HISTORIC AREA OVERLAY**

### Assessment Provisions (AP)

#### Desired Outcome (DO)

DO 1 Reinforce historic themes and characteristics through conservation and contextually responsive development, design and adaptive reuse that responds to **existing coherent patterns of land division, site configuration, streetscapes, building siting and built scale, form and features as exhibited in the historic area and expressed in the Historic Area Statement.**

#### Built Form

##### PO 1.1

The form of new buildings and structures that are visible from the public realm are consistent with the prevailing historic attributes and characteristics of the historic area.

##### DTS 1.1

None are applicable

##### PO 1.2

Development is consistent with the prevailing building heights, widths and wall heights and overall proportions in the historic area.

DTS 1.2

None are applicable

PO 1.3

Design and architectural detailing of street facing buildings complement the prevailing characteristics in the historic area.

DTS 1.3

None are applicable

PO 1.4

Development is consistent with the prevailing front and side boundary setback pattern in the historic area.

DTS 1.4

None are applicable

PO 1.5

Materials are either consistent with or complement those within the historic area.

DTS 1.5

None are applicable

Alterations and additions

PO 2.1

Alterations and additions complement the subject building and are sited to ensure they do not dominate visible building elevations and streetscape perspective of the subject building: are discreet, proportionally minor elements do not alter the principal building roof form , and employ a contextual design approach .Alterations or additions to the rear of the existing principal building and /or roof either:

- (a) Are minor in extent and integrated sympathetically :or
- (b) Do not compromise a rearwards extension of the existing roof form: or
- (c) Are set well behind the existing principal building and roof so as to be inconspicuous in the primary streetscape while avoiding imposing unreasonable building bulk or visual intrusion to neighbours.

DTS 2.1

Alterations and additions are fully contained within the roof space of an existing building with no external alterations made to the building elevation facing **and visible to** the primary street.

PO 2.2

Encourage the adaptive reuse of buildings that complement the prevailing historic values and character of the locality, by enabling complementary changes to buildings to accommodate new land uses.

DTS 2.2

None are applicable

Ancillary development

PO 3.1

Ancillary development, including carports, outbuildings and garages, complements the historic character of the area and associated buildings.

DTS 3.1

None are applicable

PO 3.2

Ancillary development, including carports, outbuildings and garages, are located **well** behind the building line of the principal building(s) **by more than half of the width or height of the ancillary development, whichever is the greater.**

DTS 3.2

None are applicable

**DTS 3.3**

**The width of ancillary development is not more than 25% of the width of the site frontage or 7 metres, whichever is the lesser**

PO 3.3

Advertising and advertising hoardings are located and designed to complement the building, be unobtrusive, not conceal or obstruct significant architectural elements and detailing, or dominate the building or its setting.

DTS 3.3

None are applicable

**PO 3.4**

Front fencing and gates forward of the front façade of the principal building ( including on secondary streets on corner sites) are low in height, see-through and consistent with the historic characteristics , traditional era period, style and form of the associated built form, streetscape and area.

#### DTS 3.4

Front fencing and gates on narrow-fronted sites up to 16 metres in street frontage are typically of 1.0 metre in height but may extend up to 1.2 metres total height.

#### DTS 3.5

Front fencing and gates on sites greater than 16 metres in street frontage, may be a more substantial masonry pier and plinth style with decorative open sections up to 1.8 metres in total height.

### Land Division

#### PO 4.1

Land division creates allotments that are capable of accommodating buildings of a bulk and scale, **proportions, form and siting**, that reflect existing buildings and setbacks in the historic area.

#### DTS 4.1

None are applicable

### Context and Streetscape Amenity

#### PO 5.1

The width of driveways and other vehicle access ways are consistent with the prevalent width of existing driveways of the historic area.

#### DTS 5.1

None are applicable

#### PO 5.2

Development maintains the valued landscape patterns and characteristics that contribute to the historic area, except where they compromise safety, create nuisance, or impact adversely on existing buildings or infrastructure.

#### DTS 5.2

None are applicable

### Demolition

PO 6.1

Buildings and structures that demonstrate the historic characteristics as expressed in the Historic Area Statement, **including identified Contributory Items, should not be demolished in total or in part unless:**

**(a) the building or structure has been substantially altered and cannot be reasonably and economically restored in a manner consistent with its original style; or**

**(b) the condition of the building or structure is structurally unsound and substantial rehabilitation work is required to an extent that the building or structure is beyond reasonable economic repair.**

DTS 6.1

None are applicable

DTS 6.2

None are applicable

PO 6.3

Buildings, or elements of buildings, that do not conform to the values described in the historic areas statement may be demolished.

DTS 6.3

None are applicable

Ruins

PO 7.1

Development that conserves and complements features and ruins associated with former activities of significance including those associated with mining, farming and industry.

DTS 7.1

None are applicable

Procedural Matters (PM) Referrals Development Type

None

Referral Body

None

## **E. CHARACTER AREA OVERLAY**

### Character Area Overlay

#### Assessment Provisions (AP) Desired Outcome (DO)

##### DO 1

Reinforce valued streetscape characteristics through contextually responsive development, design and adaptive reuse that responds to the attributes expressed in the Character Area Statement.

#### Performance Outcomes and Deemed to Satisfy / Designated Performance Outcome Criteria

##### Built Form

##### PO 1.1

The form of new buildings and structures that are visible from the public realm consistent with the valued streetscape characteristics of the character area.

##### DTS 1.1

None are applicable.

##### PO 1.2

Development is consistent with the prevailing building and wall heights in the character area. DTS 1.2

None are applicable.

##### PO 1.3

Design and architectural detailing of street facing buildings consistent with the prevailing characteristics in the character area.

##### DTS 1.3

None are applicable.

##### PO 1.4

Development is consistent with the prevailing front and side boundary setback pattern in the character area.

##### DTS 1.4

None are applicable.

##### PO 1.5

Materials are either consistent with or complement those within the character area.

##### DTS 1.5

None are applicable.

## Alterations and Additions

### PO 2.1

Additions and alterations do not adversely impact on the streetscape character.

### DTS/DPF 2.1

Additions and alterations:

- (a) fully contained within the roof space of an existing building with no external alterations made to the building elevation facing the primary street; or
- (b) where including a second storey addition, the additions are not visible from the primary street assuming a 45 degree view angle measured from the primary frontage allotment boundary; and
- (c) do not include any development forward of the front façade building line; and
- (d) that comprise side or rear extensions that are no closer to the side boundary than the existing building and are not visible from the primary street. PO 2.2

Encourage the adaptive reuse of buildings that complement the prevailing characteristics of the locality, by enabling complementary changes to buildings to accommodate new land uses.

### DTS 2.2

None are applicable.

## Ancillary Development

### PO 3.1

Ancillary development, including carports, outbuildings and garages, complements the character of the area and associated building(s).

### DTS 3.1

None are applicable.

### PO 3.2

Ancillary development, including carports, outbuildings and garages, is located behind the building line of the principal building(s).

### DTS 3.2

None are applicable.

### PO 3.3

Advertising and advertising hoardings are located and designed to complement the building, be unobtrusive, not conceal or obstruct significant architectural elements and detailing, or dominate the building or its setting.

### DTS 3.3

None are applicable.

PO 3.4

Front fencing and gates should be consistent with the traditional period, style and form of the associated built form.

DTS 3.4

None are applicable.

Land Division

PO 4.1

Land division creates allotments that are capable of accommodating buildings of a bulk and scale that reflect existing buildings and setbacks in the character area.

DTS 4.1

None are applicable.

Context and Streetscape Amenity

PO 5.1

The width of driveways and other vehicle access ways are consistent with the prevalent width of existing driveways in the character area.

DTS 5.1

None are applicable.

PO 5.2

Development maintains the valued landscape pattern and characteristics that contribute to the character area, except where they compromise safety, create nuisance, or impact adversely on existing buildings or infrastructure.

DTS 5.2

None are applicable.

Procedural Matters (PM)

Referrals

Class of Development / Activity Referral Body

None

None

Purpose of Referral

None

## **F. REGULATED TREE OVERLAY**

## Regulated Tree Overlay

### Assessment Provisions (AP) Desired Outcome (DO)

#### DO 1

The conservation of regulated trees to provide aesthetic and environmental benefits and to mitigate tree loss through appropriate development and redevelopment.

#### Performance Outcomes and Deemed to Satisfy / Designated Performance Outcome Criteria

##### Tree Retention and Health

###### PO 1.1

Regulated trees are retained where they make an important visual contribution to local character and amenity. DTS / DPF 1.1

None are applicable.

###### PO 1.2

Regulated trees listed as rare or endangered under the National Parks and Wildlife Act 1972 are conserved. DTS / DPF 1.2

A tree not listed as rare or endangered.

###### PO 1.3

A tree damaging activity not in connection with other development is undertaken to:

- (g) remove a diseased tree where its life expectancy is short;
  - (h) mitigate an unacceptable risk to public or private safety due to limb drop or the like;
  - (i) rectify or prevent extensive damage to a building of value:
    - (iv) a Local Heritage Place;
    - (v) a State Heritage Place;
    - (vi) a substantial building of value;
- and there is no reasonable alternative to rectify or prevent such damage other than to undertake a tree damaging activity;
- (j) reduce an unacceptable hazard associated with a tree within 20m of an existing residential, tourist accommodation or other habitable building from bushfire;
  - (k) treat disease or otherwise in the general interests of the health of the tree;
  - (l) maintain the aesthetic appearance and structural integrity of the tree.

###### DTS / DPF 1.3

None are applicable.

###### PO 1.4

A tree damaging activity in connection with other development is undertaken to accommodate the reasonable development of land in accordance with the relevant zone or subzone where it might not otherwise be possible and, in the case of a significant tree, all reasonable development options and design solutions have been considered to prevent substantial tree- damaging activity occurring.

DTS / DPF 1.4

None are applicable.

Ground work affecting trees

PO 2.1

Regulated trees, including their root systems, are not unduly compromised by excavation and/or filling of land, or the sealing of surfaces within the vicinity of the tree to support their retention and health.

DTS / DPF 2.1

None are applicable.

Land Division

PO 3.1

Land division results in an allotment configuration that enables its subsequent development and the retention of regulated trees as far as is reasonably practicable.

DTS/DPF 3.1

Land division where:

there are no regulated trees located within or adjacent to the plan of division; or the application demonstrates that an area exists to accommodate subsequent development of proposed allotments after an allowance has been made for a tree protection zone around any regulated tree within and adjacent to the plan of division.

Procedural Matters (PM)

Referrals

Class of Development / Activity Referral Body

None

None

Purpose of Referral

None

