

DIT:Planning Reform Submissions

From: Michelle Hogan [REDACTED]
Sent: Friday, 18 December 2020 5:14 PM
To: DIT:Planning Reform Submissions
Subject: Fw: draft submission - due today can go via email
Attachments: PoANT December submission.docx

Please find below and attached the submission from the Port of Adelaide National Trust

Regards

Michelle Hogan
Chair. PoANT

----- Forwarded message -----

From: Julia Beachhouse [REDACTED]
To: Michelle Hogan [REDACTED]; Clare Shuttleworth [REDACTED]; Pat Netschitowsky [REDACTED]
Sent: Friday, 18 December 2020, 03:51:53 pm ACDT
Subject: draft submission - due today can go via email

Email: DIT.planningreformsubmissions@sa.gov.au

To whom it may concern

I write with regard to the final consultation on Planning and Design Code, which is on public consultation until December 18 2020.

The Port of Adelaide National Trust (PoANT) is a community organisation dedicated to conservation of cultural heritage, working within the aims of our parent/affiliate organisation, the National Trust of SA. We contribute to:

- **Preservation, protection and display of natural environment and cultural heritage**
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- **Influencing government policy and development outcomes**

PoANT's focus on advocacy gives our members opportunities to relay their heritage concerns to all levels of government and to business where necessary. PoANT hosted the Planning Commissioner at our community meeting about the draft Code on 30 January 2020, and provided a submission of the proposed code. We are yet to receive a response to that submission.

Acknowledging positive amendments

One of the most significant improvements is the creation of the Established Neighbourhood Zone. This zone is applied wherever the Historic Area Overlay (current Residential Historic Conservation Zones) and Character Area Overlay (current Character Zones) applies. Provision for **Technical and Numerical Variations**: is a significant concession to local flexibility needs.

The value of Contributory/Representative Items lies in their collective contribution to the heritage values of a particular area, and we welcome the Minister's leadership in responding to overwhelming community support for their retention albeit under a new title of representative buildings. We note that the policy content in this new zone is relatively limited, placing reliance on the Historic Area Overlay or Character Area Overlay (and the Statements) to provide the assessment detail. We also welcome the subjecting of heritage demolition applications to public notification.

CONCERNS

Historic and Character Area Overlay policies

Historic and Character Area Overlay policies continue to lack substantial detail. Significant local policy content is being lost in the transition to the Code for both historic and character areas. A significant weakness is that very few characteristics are described in Historic Area Statements, meaning guidance for development action and demolition is lacking / provides limited protection

Historic Area Statements (HAS)-

- The template although extended is still generic and focused on architectural attributes which lack the depth of context that will help users recognise a given site's historical, cultural and social significance.
- The Historic Area Overlay can only protect all contributing structures within the Area if the HAS captures the Area's attributes. Definitions need to be tightened and more context/detail must be developed to complement broad context on the wider Area's heritage values.

Design guidance is Non-statutory/non-binding

- Non-statutory Advisory Guidelines supporting the interpretation of historical areas and character areas overlays have no statutory effect. These should be formalised in the policy framework to ensure they are provided with an appropriate legislative status, and also include more refined and localised design guidance.
- The proposed Design Guidance is a very important document, but hasn't been written in time for consideration in this consultation process. It needs to be consulted upon.

Contributory items/ representative buildings

- The definition is too narrow and needs more clarity in the policy framework, particularly in relation to the demolition policy in the Historic Area overlay.
- In particular, limiting scope to representative **buildings** is too narrow – the definition needs to incorporate structures, and should incorporate reference to contribution to the historic character of the area. We believe a more acceptable definition for Representative/Contributory Items that has been available for SA since 2001, was forwarded in our previous submission, as follows:

*are ... 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.**" (Planning Bulletin 2001, p.63).^[1]*
- The proposed process for including or removing additional 'representative buildings' is cumbersome and piecemeal and presumes that these items have been adequately scoped to begin with.
- We are also concerned about the lack of protection of representative/contributory places outside of historic zones and overlays.
- We are extremely concerned that not all heritage and contributory items listed in previous development plan that are not captured in historic area in the Code appear to have migrated into the SA Planning and Property Atlas (SAPPA). While the Commission advises that these are now referenced in the Historic Area Statements and Character Area Statements as appearing in SAPPA, a brief navigation of that portal (necessarily limited in the timeframe) indicates that some items are not fully mapped into the SAPPA. For example:
 - 23 and 25 Jetty Road Largs Bay (dwellings, contributory items): SAPPA available information - 'Not currently under PDI Act'
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Demolition Controls

In essence, demolition controls are still too weak.

- The interpretation of demolition policy is critical, and needs to prioritise heritage protection values.

- The applicable demolition policy (now improved) is contained in the Historic Area Overlay. However there is no clear link made to Representative Buildings – this is implied only and needs to be clarified.
- Demolition is to be performance assessed yet there is currently no requirement that assessors in this context must have specialist heritage expertise, only that they are ‘*suitably qualified*’. Expertise should be specified. The requirement for a heritage impact statement to inform performance assessment is supported in principle. However under the new regime, this work can be commissioned by the developer who is more likely to seek expertise aligned to the development objectives (ie low cost/immediate return on investment). As expressed in our meeting.
- We welcome the amendment of Performance Outcome 6.1(c) “beyond economic repair” to reasonableness but there are still problems with the vagueness/subjectivity of this term and the risk of litigation around what is a reasonable decision about whether to demolish a historic place or not. This does not bring certainty to owners or developers.
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Public notification

The Code notification triggers are either hard to ascertain or complex and varied making it challenging to compare differences between notification triggers in the Code compared to the Development Plan, (in other words, to see if ‘like for like’ applies) without seeking further advice from professional planners who would be prepared to undertake road testing of the triggers on our behalf.

However we are advised that large numbers of development applications are now removed from any form of public scrutiny through deemed-to-satisfy and deemed-consent processes, reduced public notifications and a failure to implement the direct public notification facility mandated under section 48 of the *PDI Act*.

Appeal procedures

Appeal procedures remain weighted towards proponents, with substantial loss of natural justice to those who object to heritage demolition/re-development.

Inadequate representation of heritage interests and expertise

Planning commission decision making structure and representation - the exclusion of elected council members and the community from decision-making further reduces accountability and transparency. Better representation of heritage interest in the SCAP would be reflected in dedicated roles for expertise in heritage and character preservation in development, and local government

Inadequate consultation and consultation approach

The draft Phase Three Planning and Design Code approach to consultation continues to breach the spirit and terms of the prescribed Community Engagement Charter under the legislation:

- It is our understanding that the Commission is indicating that all people or organisations that previously provided a submission have been contacted with a response and invitation to participate in this limited consultation. PoANT was NOT contacted with information about further consultation, and this left extremely limited time in which to inform and consult with membership to prepare our submission.
- The amended version of the Phase Three Code has more than doubled in size, and appears to be still a working document, with an additional 100 pages appearing to have been added during the consultation period. The Code is almost inaccessible to non-experts. It is unreasonable to expect informed consultation in the timeframe provided. It remains that there still has not been adequate or appropriate consultation on this once-in-a-generation reform of the planning system
- The guide to using the Code and SA Property and Planning Atlas supporting submissions is welcome but was not well publicized – our members attended a webinar on 4 December and community drop in on 14 December. At the 4 December event a document outlining how to navigate the portals was requested – but the webinar facilitator informed us that such a tool did not exist. At the December 14 event (a mere five days before the consultation closure due date) the document was available in hardcopy.

Combined, poor communication and lack of access to navigation tools has been a barrier to meaningful consideration of the revised Code provisions. Our community needed the Planning Commission to respectfully listen to our concerns, to be in a position to adequately consider the revised Code, with adequate time for consultation.

PoANT February 2020 submission – outstanding concerns that have not received a response

In its February 2020 submission PoANT advocated that

- The Planning Commission work with local councils and communities to define and benchmark an agreed contributory Item policy framework.
- Conduct an adequately resourced audit of local and state heritage places and Contributory Items – as recommended by the Environment, Resources and Development Committee (2019) and supported by the Expert Panel on Planning Reform's (2014/2020) Reports.
- Urgently needs to happen
- Our previous submission raised concerns about the inadequate timeframe (20 days) to consider a complex heritage application. We have not been able to ascertain change to this
- PoANT has sought clarification from Commission regarding potential Conflict of interest in Historic Area Impact Assessment. The Code does not preclude developers sub-contracting the production of Historic Area Impact Statements for development assessment, giving rise to potential conflict of interest with the public interest in preserving heritage.
- Maintaining heritage expertise and values in accreditation and assessment under the new scheme: Section 88 of the Act provides for an Accreditation Scheme to ensure that accreditation fits the specific function or role that an accredited development assessment professional is to perform (e.g. heritage assessment), and to specify this in relation to heritage assessment

Your response to our second submission is appreciated.
Yours faithfully

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