



NATIONAL TRUST SOUTH AUSTRALIA

Port of Adelaide Branch
PO Box 63 PORT ADELAIDE SA 5015

Patron-in-Chief
His Excellency the Honourable
Hieu Van Le AO
Governor of South Australia

Thank you for the opportunity to provide input into the draft Planning and Design Code, which is on public consultation until February 28 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**
- **Conservation of Industrial, built and maritime heritage and culture**
- **Community consultation and engagement, liaison with First Nations people and organisations**
- **Networking and promotion of heritage values, amenity and sense of place**
- **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 was therefore very pleased to host the Planning Commissioner at our community meeting about the draft Code on 30 January 2020. However our community's questions and concerns were not addressed through this process. This submission reflects our membership's expressed concerns across a number of the Code's policy directions, and our belief that these issues must be addressed prior to the Code's implementation if we are to have clearer, more robust heritage protections.

Recommendations

- 1. Extend consultation to incorporate and allow for consideration of amendments undertaken during the Code implementation deferral period.**
- 2. Address issues identified from consultation and consolidate in one consultation document for further community and stakeholder consideration before the Code is implemented**

3. **Retention of Contributory Items' and transition over to the Planning and Design Code**
4. **Planning Commission/Planning Reform to work with local councils and communities to define and benchmark an agreed Contributory Item policy framework.**
5. **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.**
6. **Include reference to the state heritage place overlay in the Practice Guideline (Interpretation of the Local heritage Places Overlay, Historic Area Overlay and Character Area Overlay) 2019.**
7. **DPTI Planning Reform to collaborate with PoAE, working with its community, to consult further on the PoAE Historic Area Statement (HAS) to provide for scenario testing with the fully functional e-planning portal, and to then re-consult on the corrected HAS.**
8. **Scheme provisions pertaining to roles in heritage assessment should include recognition of the Burra Charter and International Council On Monuments And Sites (ICOMOS) Australia guidelines for heritage assessment.**
9. **Scheme provisions pertaining to Heritage Impact Statement should provide for a fund to finance independent expert Heritage Impact Statement development/governance**
10. **Reverse weakening of demolition controls and rights of appeal**
11. **Address under-resourcing of heritage conservation planning in South Australia**

Inadequate consultation

The draft Phase Three Planning and Design Code consultation and submission process is not in the spirit of SA's Community Engagement Charter. The draft code itself is inaccessible to non-experts, and this is a barrier to meaningful and transparent engagement. The poorly timed release of supplementary policy statements including the Historic Area Statement, the Update Report amendments, and additional material from the Expert Panel only exacerbated the confusion about, and frustration with the consultation process

While we welcome the Government's 7 February 2020 announcement of a three-month deferral of the Code's implementation, we are dismayed that the Minister has also insisted that there will not be an extension to the consultation period beyond 28 February. The Minister's assertion that the community is "*asking for more time to understand the Code and become familiar with the new e-Planning system*" is inaccurate and disappointing. The community needs the Planning Commission to respectfully listen to our concerns, to genuinely address a revised draft, with adequate time for consultation. The PoANT urges the Minister to take this opportunity for meaningful, fully informed stakeholder consultation that the deferral of implementation presents, and to address issues identified in consultation.

CONTRIBUTORY ITEMS

PoANT does not support the removal of Contributory Items from the Code. The proposal to remove schedules/maps of current contributory items removes clarity, dilutes policy controls that previously provided protection and adds uncertainty, cost and delays for

people who seek to demolish or modify a property. There are concerns for protection of contributory places outside of historic zones and overlays, particularly those important to the community.

The value of Contributory Items lies in their collective contribution to the heritage values of a particular area, and there is broad community support for their retention. Property values increase with heritage/demolition protections, and people invest in maintaining their properties with more certainty. The erasure of Contributory Items by the draft Code seriously weakens protections—even for those ‘migrating across’—undermines area heritage values, erodes character over time as the number of houses demolished and replaced grows, and diminishes resident investment returns. Demolition controls for current Contributory Items includes consideration of proposed replacement building. However our experience in residential infill has repeatedly shown that new construction never replaces historic character.

The argument has been repeatedly put that Contributory Items must cease to exist when the Code is ‘turned on’ in 2020 because the ‘Contributory Items’ concept has no set criteria and there is a legal impediment to establishing such criteria. PoANT categorically rejects this assertion, and the proposal to remove Contributory Items from the Code upon which it purports to be based.

There are a wealth of sources for developing and implementing an agreed definition for the Code/policy under the *Planning Development and Infrastructure Act (2016)* (the Act):

- **Public policy criteria for Contributory Items has been available for SA since 2001, as follows:**

Contributory Items 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

These criteria are in use at local government level – Council Contributory Item schedules exist along with maps for individual items/sites.

- The Act empowers the Commission to provide advice on initiatives that are consistent with or promote principles that relate to the planning system established by the Act; the regulatory controls, standards or rules that apply, or should apply, with respect to development; and the making of instruments (eg policy) under this Act.
- The Minister can direct Crown Law to assist in resolving *any issue* associated with the formulation or implementation of a planning policy under this Act.
- The “People and Neighbourhoods” discussion paper outlines the government’s intention to develop a universal policy for Character Areas to address the absence of “*legislated criteria for the creation of a Character Area ... (and to)*

¹ Planning SA and Heritage SA (2001) **Planning Bulletin – Heritage**. Government of South Australia

provide nuanced guidance of individual areas of value” (People and Neighbourhoods Discussion Paper 2019, p.53). This suggests that when government has the will to develop a consistent policy framework, such an outcome can be facilitated by government.

In summary, the Planning Commission is empowered to provide advice, the Minister can direct the translation of any advice/issue into legislation, and there is a will do this in relation to development of policy in other areas of the Code.

DRAFT STATE HERITAGE AREAS OVERLAY

The practice guideline (Interpretation of the Local heritage Places Overlay, Historic Area Overlay and Character Area Overlay) 2019 currently does not reference, nor provide guidance on, the state heritage place overlay. This needs to be included. The overlay must take into account the diversity of heritage-listed areas (see also feedback on Historic Area Statement for PoANT).

HISTORIC AREA STATEMENTS (HAS)-

Whilst the inclusion of HAS within the Code’s suite of policy guidance is supported in principle, PoANT is concerned that insufficient time was provided for the City of Port Adelaide Enfield (PoAE) HAS development, and that there may be omissions and inaccuracies which cannot be tested in the current context. The template lends itself to genericised lists of architectural attributes which lack the depth of context that will help users recognise a given site’s intrinsic 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.

HISTORIC AREA IMPACT ASSESSMENT

PoANT is concerned that the Code does not preclude developers sub-contracting the production of Historic Area Impact Statements for development assessment. There should be no potential conflict of interest with the public interest in preserving heritage. An alternative mechanism could be the establishment of an independent fund financed by developers (similar to the developer contribution fund established by DPTI to finance public realm development) and overseen by suitably qualified heritage experts (see also recommendation for Accreditation Scheme - below).

MAINTAINING HERITAGE EXPERTISE AND VALUES IN ACCREDITATION AND ASSESSMENT UNDER THE NEW SCHEME

PoANT is concerned at the loss of heritage consultancy and expertise arising from both the denuding of local government’s role in heritage assessment and conservation, and unintended impacts of inadequate heritage competency within the incoming code’s performance assessment provisions and new providers.

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)

DEMOLITION CONTROLS

Demolition controls appear to be greatly weakened within the draft Code despite assurances otherwise.

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:

'How can independent opinion be truly independent when specialist assessors are paid by the developer?'

Independent assessment of impact is more likely to deliver a balanced outcome. The interpretation of demolition policy is critical, and needs to prioritise heritage protection values. Economic values are currently the key assessment criteria. Performance Outcome 6.1(b) focuses only on the building façade. Other characteristics are not protected. The Code should also include demolition controls that provide for side facades and roof shape.

Performance Outcome 6.1(c) *"beyond economic repair"* (Practitioner Guidance/PO 6.1) lends itself to a low decision making threshold about building retention. This approach places buildings in a poor state of repair at particular risk. This definition needs to defend not weaken heritage values and inclusion as a term in the Practice Guideline heritage and character overlays definitions. Appropriate timeframes have not been provided for in the code, with only 20 days to consider a complex heritage application. Applications that should be subject to public notification—demolition of a State Heritage place or Local Heritage Place— are not subject to public notification. This appears to be a recipe for fast tracked demolition.

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

In conclusion, all South Australians can enjoy Hart's Mill as a stunning example of how the preservation of today's contributory/ character items may protect tomorrow's 'heritage'. Yet we believe that considered in the current planning environment and the Code's proposed assessment criteria, this landmark building would be vulnerable to demolition. As it stands today, the buildings and structures surrounding Harts Mill (all of which contribute to the precinct's social cultural and historical value) have not been listed, and are at risk. To defend these assets from incursion and destruction will take resources, yet there is a very significant under-resourcing of heritage conservation planning in South Australia. It was gratifying therefore to hear the Planning Commissioner agree that to make the new system work and have heritage assets properly described, this under-resourcing needs to be addressed.