

South Australian
HERITAGE COUNCIL

DEW-D0020037

14 December 2022

Mr John Stimson
Presiding Member
Planning System Implementation Review
Via Email: dti.planningreview@sa.gov.au

Dear Mr Stimson

RE: Submission to Expert Panel for the Planning System Implementation Review

Thank you for your invitation to provide an updated submission in relation the Planning System Implementation Review.

The Council has been actively involved in past heritage reform reviews including:

- Environment, Resources and Development Committee of Parliament Inquiry into heritage reform.
- Each of the draft Planning and Design Code engagements.
- The South Australian Parliament Legislative Review Committee.

Furthermore, I served on the Heritage Reform Advisory Committee 2021 and the Council is supportive of these recent reform recommendations.

Given these reports are all available to your expert panel, the Council thought it appropriate to provide you with a summary of matters that are pertinent to your reviewing the context of your three Discussion Papers where they relate to heritage matters.

Please see enclosed the Council's comments in [Attachment 1](#).

The South Australian Heritage Council looks forward to playing a part in your important review of the implementation of the Planning and Design Code and associated legislation. We trust protection of South Australia's heritage assets will be an important consideration.

Yours sincerely



Keith Conlon

Chair, South Australian Heritage Council

CC/: Hon Dr Susan Close MP, Minister for Climate, Environment and Water

CC/: Hon Nick Champion MP, Minister for Planning

CC/: Mr Craig Holden, Chair State Planning Commission

SOUTH AUSTRALIAN HERITAGE COUNCIL SUBMISSION

The legislation

Listing matters

Council is very supportive of establishing clear processes and governance for heritage listing. This can be achieved through amendment to the *Heritage Places Act 1993* (the HP Act) and the *Planning Development and Infrastructure Act 2016* (the PDI Act).

Council continues to support legislative reform, preferably by amendment, which gives effect to the ERDC Report recommendation that there should be a simple, transparent, more responsive and lower-cost method of listing of Local Heritage Places (as exists for State Heritage Places).

The Council supports this review prioritising the remaining actions from the 2014 Expert Panel on Planning Reforms, including the following:

- Consolidation of heritage law under one statute
- Provision of one integrated statutory body
- Financing of heritage

Council requests that the listing process for local and State heritage come under the HP Act. This would involve amending the HP Act to include Local Place listing and removing it from the Code amendment process in the PDI Act. This would overcome the current perverse practise of places being nominated for State Heritage consideration given there is currently no alternative simple and cost effective process.

Alignment of State and Local Heritage criteria is required. A new integrated heritage assessment structure would have the ability, based on aligned criteria, to identify, formally recognise and celebrate places, areas and objects of State and Local Heritage value, including their setting where appropriate.

Council requests that such legislative reform also enables the audit and review of the current places on the Local and State Heritage lists as recommended by the Environment Resources and Development Committee in its Inquiry into Heritage Reform.

An integrated system of Local and State Heritage identification and listing would enable greater efficiencies in the re-consideration and re-attribution of places based on the revised and aligned hierarchy of heritage criteria. It would also offer a simple and transparent nomination system for the community. It would allow for a number of places on the SA Heritage Register that were entered prior to local heritage protection under the previous *South Australian Heritage Act 1978* (ceased) to be re-assessed and re-attributed accordingly without the threat of losing heritage protection.

Council request the use of HERCON criteria as is required for a consistent national approach to heritage protection. This is the case irrespective of whether Local Heritage designation is to continue to occur pursuant to s67(1) of the PDI Act. It is further noted that the Council pursuant to s67 (2) (c) is available to provide advice to the State Planning Commission as to the development and adoption of guidelines to interpret and apply the listing criteria.

By way of background, the SAHC submitted to the ERDC the following, which remains relevant:

The SAHC supports a simplified process for Local Heritage assessment aligned to that of State heritage listing. The detail of any such process needs careful consideration beyond the scope of this submission, and may not necessarily directly align with all of the processes and protections afforded to State Heritage Places.

The HERCON criteria are common criteria adopted by the Environment Protection and Heritage Council of the Australian & State/Territory Governments in April 2008 (comprising the model criteria developed at the National Heritage Convention (HERCON) in Canberra, 1998).

To reinforce Council's request for heritage nominations to come under the HP Act it offers these further observations.

Local Government is often unable to progress worthy Local Heritage Place identifications, due to the need to process these through costly and time-consuming Code Amendment processes. Councils are often waiting for economies of scale in being able to accumulate a large group of proposed local heritage places or awaiting a large and costly Heritage Survey, to commence a Code Amendment process. Under the former Development Plan Amendment process this became cumbersome, unwieldy and political, which in many instances compromised the listing outcomes. A revised and integrated process for consideration of Local Heritage Places similar to that of State Heritage Places would enable more timely and responsive heritage listing processes. Known gaps in heritage listing (such as an assessment against the draft *Historic Themes of South Australia*) could then be more readily addressed and prioritised by Councils and other nominators. It would also allow for those areas of SA that are not within a local Council boundary to have places assessed for local heritage protection. This is currently approximately 60% of the State.

Definition of development

Council requests a review of the definition of "development" and greater certainty of the referral triggers under the PDI Act for State Heritage Places. It also requests mechanisms to remove unnecessary approval processes and referrals for heritage place owners. This may involve a refinement of the definition of "development" for State Heritage Places/Areas to exclude "minor" matters or refining the Code policy to facilitate "accepted" or "DTS" development, subject to certain parameters for low risk works to heritage places. The Heritage Council has heard that in some local Council areas the cost of submitting a DA to replace a window in a home within a State Heritage Area can cost them what is equivalent to their weekly income.

Remove "popularity" requirement

Council agrees that s67(4) & (5) should be deleted.

Compliance and demolition

While the HP Act establishes obligations to maintain State Heritage Places and penalties for failing to do exist, the regulatory powers are inadequate. Only one compliance matter has been pursued under the provisions of the Act in the past 30 years. Bells Plumbers Shop continues to sit in disrepair, telling a sad tale of the failure of the current system to address matters such as demolition by neglect.

Similarly demolition controls of Local Heritage places within now revoked Development Plans have historically been stringent. Most, however, included allowances based on poor condition or economic viability to rehabilitate. Collectively, this incentivised property owners to allow their properties to fall into disrepair in order to satisfy such provisions. This resulted in poor outcomes on many levels, including loss of places of heritage value, and decay of social and neighbourhood culture.

Thus, Council requests a strengthening of protections by way of changes to the Act to deal with active and intentional dilapidation with appropriate penalties applied that are effective and less cumbersome for both State and local heritage. Policy amendment is also required within the Local Heritage Place Overlay, to reflect this approach.

Cost recovery development fees

Council is aware of anecdotal reports of perverse behaviour linked directly to the increase in fees for development applications involving State Heritage Areas and Places. There are reports of instances, particularly in regional areas, where people will not seek permission to undertake works due to the high cost of application.

This is combined with a reduced surveillance in rural and remote areas, resulting in building work that is incompatible with the values of the State Heritage Place and would not get approval, had a development application been lodged.

By way of example, a shade sail that can be purchased from the local hardware store for around \$1,000 would require a development application attracting a fee of approximately a further \$1,000 - the same cost for buying the sail. This high fee in relation to small development is a real disincentive to owners. On the other hand, a DA fee of \$1,000 for a large commercial company to build a 15-storey building worth millions of dollars is very insignificant. The current small home owner appears to be subsidising agency costs for large corporates.

The current inflexible fee structure also disincentivises staged work to heritage places, which is often necessary due to the complexity and nature of works to heritage buildings.

Council requests that a sliding scale is introduced in relation to development application fees and the ability, in certain circumstances, to waive fees for State Heritage Places. It is not reasonable or equitable that small inexpensive developments attract the same development application fee as large scale developments.

Planning and Design Code

Demolition test

Council requests refinement of the demolition test in Local Heritage Place Overlay (PO 6.1) to exclude deterioration due to neglect as a supporting factor for demolition as is the case with the State Heritage Place Overlay (PO 6.1)

Advisory material for heritage

Council also requests the introduction of a refined Practice Guideline pursuant to s43 of the *Planning, Development and Infrastructure Act 2016* as per a previous (but withdrawn) draft put out for consultation on 1 October 2019. This would assist with the interpretation of heritage criteria and local heritage surveys

Heritage Minister referral

It is noted that the Code has a 'visible from the public realm' test, which means that in some circumstances development not visible from the public realm / streetscape does not require referral to the Heritage Minister. This is not adequate. Council therefore requests Code amendment to protect the heritage value of the whole of places – not merely those elements that are visible from the public realm.

Adaptive reuse

Council seeks the inclusion of strong adaptive reuse policies in the Code, giving greater concessions or scope for the redevelopment of State and Local Heritage Places e.g. a broader range of possible land uses than listed in the relevant Zone or Subzone.

Historic Statements

Council requests an improvement in Historic Area Overlay Policy and Historic Area Overlay Statements so that they provide more direct linkage and specificity to the design outcomes sought for compatible new development and also linkage to any designated Representative Buildings.

Advice for Heritage Code Amendments

The Council requests the preparation of support materials, templates etc. for the level of documentation and any internal evaluation criteria required for Code Amendments which propose application of new Historic Area Overlay and / or Representative Buildings as distinct from the Character Area Overlay.

Out of Councils local heritage

The Council requests that assistance is provided to the identification and assessment of Local Heritage Places in Land not within a Council Area. Over 60% of South Australia is not covered by a Local Council. It is noted that it is the responsibility of the State Planning Commission to prepare Heritage Code Amendments for these areas.

Local heritage place review

The Council consider a review of current Local Heritage Place information should be undertaken following the refinement of any legislative listing criteria in s67(l) of the Act to determine if they should they remain there.

E-planning System, Planning Portal and Website

The South Australian Heritage Database, in which the Register is recorded, is more than twenty years old and is inflexible and difficult to access.

Heritage owners, consultants and planners cannot easily find the information they need about why a place is considered to be of heritage significance and therefore which values should be protected. Spatial information, descriptions and other listing information should be reviewed to ensure accuracy and completeness of heritage information for the user of the planning system.

Council requests that particular attention be given to an audit or review with appropriate resourcing of State / Local Heritage – as per the recommendations of the ERD Committee review.

Council requests that better integration is implemented between the Heritage Register, South Australian Property and Planning Atlas (SAPPA), data sheets and Heritage and Historic Area Overlays within the Planning and Design Code, associated advisory Guidelines and other materials. Further, Council requests that a modern database and website is developed where people can easily access the information needed to understand the significance of the State's heritage so as to conserve it for the benefit of future generations.

Council considers it would be appropriate for the database to be managed within DEW with appropriate resource allocation underpinning that.

Council also requests that the State Heritage Place Overlay adjacency layer within the SAPPA be comprehensively reviewed to ensure it provides accurate and consistent information regarding State Heritage Places and the referral trigger for adjoining properties.

In conclusion, the South Australian Heritage Council reiterates its willingness to assist in refining and strengthening the Planning and Design Code and complementary legislative amendments, particularly in relation to heritage protection.