



Australia ICOMOS Secretariat
Faculty of Arts & Education
Deakin University
221 Burwood Highway
Burwood VIC 3125
ph: +61 3 9251 7131
e: [REDACTED]
w: www.icomos.org/australia

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Department of Planning, Transport and Infrastructure
Level 5, 50 Flinders Street, Adelaide 5000
GPO Box 1815
Adelaide SA 5001

Email: DPTI.PlanningReformSubmissions@sa.gov.au

Dear Sir / Madam

**DRAFT PLANNING AND DESIGN CODE: PHASE THREE (URBAN AREAS)
AUSTRALIA ICOMOS RESPONSE**

I provide this submission on behalf of Australia ICOMOS to the Department of Planning, Transport and Infrastructure in response to the Phase Two of the Draft Planning and Design Code for Rural Areas.

ICOMOS is the International Council on Monuments and Sites. We are a non-government professional organisation that promotes expertise in the conservation of cultural heritage. ICOMOS is also an Advisory Body to the World Heritage Committee under the World Heritage Convention. Australia ICOMOS, formed in 1976, is one of over 100 national committees comprising ICOMOS. Australia ICOMOS has over 600 members in a range of heritage professions. We have expert members on a large number of ICOMOS International Scientific Committees and Australian expert committees, heritage councils and boards. We are the author and custodian of *The Burra Charter: the Australia ICOMOS Charter for Places of Cultural Significance, 2013*, a world renowned charter promoting best practice heritage assessment and management.

Australia ICOMOS supports the need to review and amend heritage management in South Australia through the planning reform process. We provide the following feedback on the draft Code.

State Heritage Place Overlay

Australia ICOMOS supports the change for statutory referrals for the Minister administering the *Heritage Places Act 1993* (SA) to have the power of 'direction' for non-Crown developments. It is understood that the existing process of 'regard' for advice provided will continue for development proposals for Crown owned State Heritage Places. Through delegation, the Department for Environment and Water (DEW) will be able to refuse, approve or add conditions to a planning consent. We feel this will have a positive outcome for development of State Heritage Places.

We have reviewed the Draft Practice Guideline that was prepared by DPTI for Local Heritage Places Overlay, Historic Areas Overlay and Character Areas Overlay with comments below under relevant headings. It is recommended that a similar guideline be prepared for the State Heritage Places Overlay, or equivalent mention and weighting is given to the Heritage Impact Assessment Guidelines already prepared by DEW (which would require updating to respond to the Code).

Overall, the wording of various policies has a lack of clarity, which weakens the intent and meaning of the policy. Generally, the term 'should' is used throughout Development Plans under Principles of Development Control, and this term (or others) should be included in the Code. Several examples are provided below, however we have not examined every policy. Additional words in **bold**. Words to delete as ~~strikethrough~~.

Alterations and Additions - PO 2.1

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

We recommend that the term 'subject building' is replaced with 'heritage place', as some heritage places are not buildings, and alterations and additions should be considered in a similar manner.

Landscape Context and Streetscape Amenity - PO 5.1

Individually heritage listed trees, parks, historic gardens and memorial avenues **should be** 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.

If trees / plantings are removed, mitigation measures should be considered to determine if replanting / replacement of the same species, or other landscaping, is required to conserve heritage values or landscape character.

Whilst the intent of Policy PO 5.1 is supported, the policy should be further expanded to include the consideration of appropriate mitigation for the loss of any trees or plantings, if it affects heritage values or landscape character. For example, if a tree is removed from a tree-lined avenue, a replacement tree of the same or similar species may be appropriate, depending on the associated heritage values or character.

Conservation Works - PO 7.1

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

The intent of Policy PO 7.1 is supported, however we are concerned about who is making decisions based on whether existing materials are appropriate. For example, a dwelling may have a roof with unsympathetic materials to its architectural style. Whilst different materials may be appropriate, and reinstating original materials may not be necessary, certain materials may not be appropriate, such as Zinalume instead of a traditional galvanised iron, due to its high gloss finish.

Whilst traditional work methods are supported for conservation works to heritage places, it is the detail of the conservation process that requires careful checking to ensure no adverse impacts to fabric. For example, some paint systems may lead to accelerated deterioration of historic fabric (i.e. acrylic v silicate-based mineral paint). Another example is the inappropriate use of mortars with a mixture of cement, lime and sand instead of hydraulic limes for early historic buildings.

Procedural Matters

In the referrals table, the wording is not clear (i.e. when a referral is required). Is the intention that all development applications for State Heritage Places will be referred 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.

We are concerned about the potential lack of 'heritage' expertise available for those making decisions in relation to referring a DA to the Minister administering the Heritage Places Act. How is 'minor in nature' determined? What may seem 'minor in nature' or 'like for like maintenance' may propose, for example, a fence or colour scheme that is out of character with a particular dwelling, or a proposed conservation approach using inferior products or process that may have an adverse impact on heritage fabric. Producing guidelines to assist determine what may be 'minor in nature' may not be the solution, as heritage places vary in terms of why they are significant.

It is recommended that Local Councils are supported by the re-establishment of the State and Local Heritage Advisor Scheme (or similar process), where professional heritage advice is provided to local planners and pre-DA advice available to property owners. It is also recommended that Heritage South Australia still have the ability to provide pre-DA advice to applicants.

With the Minister having the power of 'direction' for State Heritage Place referrals, if a decision is made where an application is not referred, but should have been, there may be legal ramifications for the decision authority, such as if works were supported that may have an adverse impact on a place's heritage values.

State Heritage Areas Overlay

We note that there are generic policies for State Heritage Areas. At present some State Heritage Areas have specific policies under Development Plans, as their significance value varies. We recommend that each State Heritage Area has a statement of significance, and where necessary, specific policy added under this Section of the Code. This may look similar, but more detailed to that proposed under the Code for Historic Area Overlays on p. 1484, Statement and table of prevailing characteristics.

We are concerned about the potential lack of 'heritage' expertise in Local Councils, and the consistency and support provided to make a decision based on what may be 'minor in nature' or 'like-for-like'. It is recommended that Local Councils are supported by the re-establishment of the State and Local Heritage Advisor Scheme (or similar process), where professional heritage advice is provided to local planners and to property owners. This would have the aim of ensuring that appropriate development to State Heritage Places that is of a minor nature does not get referred under the Heritage Places Act for assessment and direction. However, it would ensure that any potential issues are resolved to conserve heritage places.

There are many examples where minor works would not require referral, such as repair of a fence, however some State Heritage Areas have specific fence styles that are significant or consistent, and without knowing these details, what may seem a like-for-like replacement fence, may be an inappropriate style or material. The ability to provide pre-DA heritage expertise and appropriate guidelines, would assist in ensuring that referrals are clearly minor in works and supportive of the area's heritage values.

Local Heritage Place Overlay

The process for existing local heritage listings has been varied over the years in terms of veracity, and as such some listings provide further detail than others as to their 'extent of listing'. If this information is provided in the Code and becomes definitive for the purposes of undertaking development assessment, our concern is that some listings may be well articulated and understood, whilst other listings may not have had the benefit of going through a comprehensive process with all their elements identified in the local listing.

The process for nominating a Local Heritage Place is recommended to align with the National and State Heritage nomination process, which means that any member of the community can self-nominate a place to the relevant authority for assessment.

In terms of referrals, we are concerned about the potential lack of 'heritage' expertise in Local Councils, and the consistency and support provided to make a decision based on what may be 'minor in nature' or 'like-for-like maintenance'. It is recommended that Local Councils are supported by the re-establishment of the State and Local Heritage Advisor Scheme (or similar process), where professional heritage advice is provided to local planners and pre-DA advice available to property owners of Local Heritage Places.

It is unclear if any processes are in place to ensure Local Councils establish an 'extent of listing' for Local Heritage Places, if there will be any review of existing 'extent of listing' or how the decision-making process will affect places that don't have an 'extent of listing'. The 'extent of listing' for a Local Heritage Place should go through a process, which involves review and consultation.

Similar comments are made in relation to the wording of policies in the Local Heritage Place Overlay to those made above for State Heritage Place Overlay. For example, PO 1.7 is recommended to say: Development of a Local Heritage Place **should retain** ~~retains~~ elements contributing to its heritage value.

Another concern is the weighting that may be attributed to demolition policy as mentioned on page 2 of the Practice Guideline, being:

No single Performance Outcome is mandatory. Rather, a planning judgement must be made against all relevant Code provisions as to the merits of any proposal.

Whilst it is understood that the 'general intent of the Overlay is to preserve places of Local Heritage value, there is concern that decisions may have an adverse impact on a place's heritage values if a proposal was to meet all other applicable Codes, for example.

In terms of the Local Heritage Place Impact Assessment, having a checklist is supported, as it provides applicants with an understanding of what is required. It is unknown where any such guideline may be physically located or referred to, so as to be read and understood in conjunction with the Code. In relation to 'Heritage Significance', it mentions what detailed information should include, however this does not correspond with the criteria under Section 67(1) of the PDI Act. It is important to consider aspects, such as setting, views and use, however referring to or listing the criteria in addition to these aspects is recommended.

In relation to the definition of 'Conservation Works' on page 5 of the Practice Guideline, it is unclear what is meant by conservation works include 'explaining and campaigning'. The definition for Heritage Impact Assessment would benefit from the addition of a statement that includes 'consideration of mitigation measures'. The definition for 'Minor in nature' should also be expanded to include 'where they do not have an adverse impact on the heritage values of a place or area'. The definition of Setting should have the word 'item' replaced with 'place'.

Historic Area Overlay and Historic Area Statement

Formerly Historic Conservation Zones, these areas will become Historic Areas under the new Code. Whilst we support the alternative term 'Local Heritage Area', we understand that these areas were not established through assessment of the local heritage criteria under the Development Act.

Australia ICOMOS has some concern in relation to the expertise of persons making decisions and the process for assessing demolition of places within a Historic Area, especially where there may not be clearly defined attributes for each area. Whilst we support the intent of wording in the Code, the process for assessment is unknown and may have implications for poor decisions and outcomes for Historic Areas if sufficient information is not provided as part of any demolition decision and heritage expertise is part of the decision-making process. It is recommended that Local Councils are supported by the re-establishment of the State and Local Heritage Advisor Scheme (or similar process), where professional heritage advice is provided to local planners and pre-DA advice available to property owners in a Local Heritage Area.

There is high community concern in relation to what will happen to contributory items under the Code, and that they may be afforded a lower level of protection. We strongly recommend there be much further discussion around the legal status of contributory items, given they have previously been incorporated in Development Plans by past Planning Ministers and are now to not be recognised under the Code. We note that in NSW (Sydney) and Victoria (Melbourne) the contributory item category is used and these contributory items are scheduled in Planning Schemes and in heritage surveys to ensure their protection that contribute to the character of the area. In NSW the legal status of Contributory Items is confirmed via the Land and Environment Court Decision known as the Helou Principle 2006, thereby showing a precedent for the legality of this category of heritage.

We understand that Local Councils have been presented with an opportunity to reassess contributory items to determine if they meet the threshold for Local Heritage listing or whether they may be of historic character and adjust their status accordingly under the Code. We recommend a five-year sunset clause, which would provide ample opportunity for Local Councils to reassess contributory items, with the opportunity for community and owner consultation.

The **Historic Area Statements** prepared are generic and repetitive. It is recommended that the generic Historic Area Statement be included at the beginning of the section once and not repeated. There is variation in the characteristics for each Historic Area, which is recommended to be developed into a specific Historic Area Statement for each one. It is recommended that the maps be the same scale, include a key and parcel cadastre, as land division plays an important component in many areas. The tables are a good summary for each Historic Area, however they need a heading (i.e. Summary of Key Attributes). It is unclear where these specific Historic Area statements would be located within the Code.

Character Area Overlay and Character Area Statement

We support the differentiation between heritage, historic areas and character areas, and the intent for this overlay. As with comments above, the wording of the policies is unclear and requires the use of the word 'should' in many instances. It is recommended that there be a generic definition of what a Character Area is, such as on p. 1427 of the Draft Planning and Design Code for Rural Areas. Each Character Area should then have its own specific statement about or as a minimum a labelled table that summaries

characteristics for each Character Area. It is unclear where these specific Character Area statements would be located within the Code.

National Heritage Places

Under existing legislation and mapping, and under the Code and new mapping, there is no identification of National Heritage Places, and as such there is no identification of whether a development proposal may impact National Heritage values. The Department of Environment (Com) 'Matters of National Environmental Significance: Significant Impact Guidelines' requires actions, such as development, to undertake a self-assessment process to determine if a referral to the Commonwealth Government is required to ensure that actions to, or in the vicinity of a National Heritage place do not impact on National Heritage values.

National and Commonwealth Heritage Places should be an overlay, such as 'for information', in new mapping linked to the Code. This is already undertaken in NSW, with an example being the National Heritage listing of 'Bondi Beach' which is shown on the Heritage Map under the Waverley Local Environment Plan.

Whilst it is appreciated that the current focus of DPTI is the Code, the 'Approval Bilateral Agreement' between the Commonwealth Government and State Government of South Australia has been in a draft format for several years and should be finalised, which would give DEW powers under the EPBC Act to provide advice and direction in relation to heritage impact assessment of National Heritage places in South Australia as part of our development process.

Mapping

The mapping for State and Local Heritage Place Overlays in the new portal makes it difficult to understand individual heritage places. There should be the ability to search for a single listed place and understand its curtilage, and also any heritage places in the vicinity. We also support establishing a curtilage for all State Heritage Places, which is inclusive of all elements of heritage value.

Summary

As Australia's peak NGO for heritage management, Australia ICOMOS appreciates the opportunity to provide advice on Phase Three of the Draft Planning and Design Code. We welcome any opportunity to continue to provide advice in relation to any of the matters raised in our submission.

We are concerned however that the Code as proposed, contains errors, requires considerable editing and change, and the proposed time frame of final release by September 2020 will not allow sufficient consultation on changes to the Code. We would support a further extension of timeframe, to ensure the Code is up to standard.

Yours faithfully



HELEN LARDNER
President, Australia ICOMOS