



# AGENDA

## Development Strategy and Policy Committee Agenda

Notice is hereby given pursuant to the provisions of the Local Government Act, 1999, that a meeting of the Development Strategy and Policy Committee will be held in the Council Chambers, 181 Unley Road Unley on

***Tuesday, 12 September 2016 at  
7pm***

for the purpose of considering the items included on the Agenda.

Peter Tsokas  
**Chief Executive Officer**

## **DEVELOPMENT STRATEGY AND POLICY COMMITTEE**

### **MEMBERS**

Councillor Don Palmer – Presiding Member  
Mayor Lachlan Clyne – ex officio  
Councillor J Koumi  
Councillor A Lapidge  
Councillor J Boisvert  
Councillor L Smolucha  
Councillor R Salaman  
Mr D Wallace  
Mr G Pember  
Mr S Yarwood  
Mr L Roberts

### **ACKNOWLEDGEMENT**

We would like to acknowledge this land that we meet on today is the traditional lands for the Kurna people and that we respect their spiritual relationship with their country.

We also acknowledge the Kurna people as the custodians of the Adelaide region and that their cultural and heritage beliefs are still as important to the living Kurna people today.

### **CONFIRMATION OF MINUTES**

MOVED  
SECONDED

That the Minutes of the Development Strategy and Policy Committee, held on Monday, 18 July 2016 as printed and circulated, be taken as read and signed as a correct record.

### **APOLOGIES**

### **DEPUTATIONS**

## **OFFICER'S REPORTS**

21	Conflict of Interest	1-1
22	Local Heritage Reform Discussion Paper	2-6

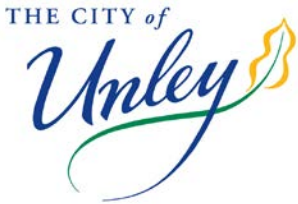
## **CONFLICT OF INTEREST**

**TITLE:** CONFLICT OF INTEREST  
**ITEM NUMBER:** 21  
**DATE OF MEETING:** 13 SEPTEMBER 2016  
**ATTACHMENT:** 1. CONFLICT OF INTEREST DISCLOSURE  
FORM

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Members to advise if they have any material, actual or perceived conflict of interest in any Items in this Agenda.

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**CONFLICT OF INTEREST DISCLOSURE FORM**

I, \_\_\_\_\_ have received a  
*[insert name]*

copy of the agenda for the (Ordinary / Special) **Council / Committee / Board**  
*[delete that which is not applicable]*

meeting to be held on \_\_\_\_\_  
*[insert date]*

I consider that I have a **\*material** conflict of interest pursuant to section 73 / **\*actual** or **\*perceived** conflict of interest pursuant to section 74 *[\*delete that which is not applicable]* of the *Local Government Act 1999* (“the LG Act”) in relation to the following agenda item:

\_\_\_\_\_  
*[insert details]*

which is to be discussed by the **\*Council / \*Committee / \*Board** at that meeting.  
*[delete that which is not applicable]*

The nature of my **material** conflict of interest is as follows *[ensure sufficient detail is recorded, including the reasons why you (or a person prescribed in section 73(1) of the LG Act) stands to obtain a benefit or suffer a loss depending on the outcome of the consideration of the matter at the meeting of the Council in relation to the agenda item described above].*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**OR**

The nature of my **actual** conflict of interest is as follows *[ensure sufficient detail is recorded, including the reasons why the conflict between your interests and the public interest might lead to a decision that is contrary to the public interest in relation to the agenda item described above].*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I intend to deal with my **actual** conflict of interest in the follow transparent and accountable way *[ensure sufficient detail is recorded as to the manner in which you intend to deal with the actual conflict of interest in a transparent and accountable way]*

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**OR**

The nature of my **perceived** conflict of interest is as follows *[ensure sufficient detail is recorded, including the reasons why you consider that an impartial fair-minded person could reasonably consider that you have a perceived conflict of interest in the matter]*

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I intend to deal with the **perceived** conflict of interest in the following transparent and accountable way *[ensure sufficient detail is recorded as to the manner in which you intend to deal with the perceived conflict of interest in a transparent and accountable way]*

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*Signature*

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*Date*

## DECISION REPORT

**REPORT TITLE:** LOCAL HERITAGE REFORM DISCUSSION PAPER  
**ITEM NUMBER:** 22  
**DATE OF MEETING:** 13 SEPTEMBER 2016  
**AUTHOR:** DAVID BROWN  
**JOB TITLE:** PRINCIPAL POLICY PLANNER

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### 1. **EXECUTIVE SUMMARY**

- 1.1 The State Government has released a discussion paper '*Heritage reform – an exploration of the opportunities*' to outline the issues and proposals for heritage reforms as part of the new planning system.
- 1.2 In response, the Local Government Association (SA) has liaised with practitioners and prepared a draft Position Paper on behalf of members.
- 1.3 Feedback is sought to refine the proposals before inclusion in legislative amendments later in 2016.
- 1.4 An effective and efficient system to manage and value heritage is desirable but there are a range of concerns with the proposals raised, including a lack of their context, clarity and certainty going forward.
- 1.5 These concerns, as outlined in the report, should be submitted to the Department of Planning Transport and Infrastructure (DPTI) to assist with the review of the proposed heritage reforms.

### 2. **RECOMMENDATION**

That:

1. The report be received.
  2. The Local Government Association (SA) draft *Local Heritage and Character Revised Draft Position Paper* be supported.
  3. The issues and concerns arising within the discussion paper '*Heritage reform – an exploration of the opportunities*', as outlined in the draft submission contained in Attachment 1 to this report, be submitted to the Department of Planning Transport and Infrastructure (DPTI) to assist with the review of the proposed local heritage reforms.
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### **3. RELEVANT CORE STRATEGIES/POLICIES**

#### 3.1 Unley Community Goals

##### Goal 1 Emerging – Our Path to a Future City

*1.1 A thriving and prosperous business community*

##### Goal 2 Living – Our Path to a Vibrant City

*2.1 Highly desirable and diverse lifestyle*

*2.3 Cultural and artistic diversity*

##### Goal 4 Greening – Our Path to a Sustainable City

*4.1 Renowned for its lifestyle and environmental balance*

3.2 The designation and control of State Heritage Places is pursuant to the Heritage Places Act (1993) Part 4. The discussion paper does not deal with State Heritage.

3.3 The designation and control of Local Heritage Places is currently pursuant to the Development Act (1993) Part 3, Division 2, Sub-division 2, Sections 24, 25 and 27. It is proposed to further amend the new Planning Development and Infrastructure Act to reform the criteria and process.

3.4 The designation and control of Historic and Character areas currently occurs within the Development Plan pursuant to the Development Act (1993) Part 3, Division 2, Sub-division 2, Sections 24, 25 and 27. It is proposed the policy tools and criteria be refined as part of the new Planning and Design Code.

### **4. DISCUSSION**

The State Government Expert Panel on Planning Reforms in 2014 recommended changes to the criteria and process for heritage management. However, given the complexity and sensitivity of such heritage reforms they were largely excluded from the initial Planning, Development and Infrastructure Act (PDI Act) in 2015. It was proposed these reforms be explored in a discussion paper *Heritage reform – an exploration of the opportunities* before further legislation changes were introduced later in 2016.

The discussion paper was initially only distributed to targeted stakeholders, eg councils and those who raised heritage issues in their previous submissions on the planning reforms. Wider public release would have been preferable.

The paper was released on the 9 August 2016 with responses initially requested by the 9 September 2016, but then extended until the 23 September 2016 and now until the 7 October 2016 given the continued high interest in the matter.

The Administration has contributed to workshops with the Local Government Association (LGA) in their continued activity in coordinating and collaborating on the planning reforms with Department of Planning Transport and Infrastructure (DPTI). Further individual discussions have occurred with DPTI officers.



The discussion paper has been reviewed in regard to Unley's experience and a draft submission prepared as contained in Attachment 1.

*Attachment 1*

The Local Government Association *Local Heritage and Character Revised Draft Position Paper* provides a comprehensive review of the context and issues surrounding local heritage and character. The paper represents a good representation of the collective views of local government. The position paper is contained in Attachment 2.

*Attachment 2*

The discussion paper *Heritage reform – an exploration of the opportunities* is contained in Attachment 3.

*Attachment 3*

There may be a high level of community concern and controversy regarding the perceived direction and nature of proposals explored in the discussion paper. It is important objective feedback from a wide range of interests is provided to help shape the outcome.

Further opportunities to discuss the reform proposals and ultimately the fundamental detail will be provided as part of the proposed legislative changes. The supporting subordinate regulations, policy instruments and practice directions will be critical and need similar thorough exploration, discussion and wide community engagement. An effective and efficient approach is desirable but one that reasonably serves and balances the values within the whole community.

## **5. ANALYSIS OF OPTIONS**

Option 1 – Receive ‘*Heritage reform – an exploration of the opportunities*’ discussion paper and make a submission in accord with the report.

The ‘*Heritage reform – an exploration of the opportunities*’ discussion paper outlines issues and proposals for reform of the local heritage identification, management and listing process.

While an effective and efficient system is desirable there are a range of issues arising from the discussion paper about a lack of context, clarity and ongoing surety for valuing heritage and its proper management into the future.

The LGA position paper should be supported as a good analysis of the context, issues and local government position. A submission in accord with the report should assist with addressing these concerns and ensuring a positive outcome for all stakeholders. As part of this further genuine broad community engagement should occur.

Option 2 – Receive ‘Heritage reform – an exploration of the opportunities’ discussion paper and make a submission in accord with the report together with further points.

The ‘Heritage reform – an exploration of the opportunities’ discussion paper outlines issues and proposals for reform of the local heritage identification, management and listing process.

There are a range of issues arising from the discussion paper about a lack of context, clarity and ongoing surety for valuing heritage and its proper management into the future.

The LGA position paper could be supported as a good analysis of the context, issues and local government position. A submission in terms of the report, as well as further or alternative concerns held by Council, could be formulated to assist in the reform.

Option 3 – Receive ‘Heritage reform – an exploration of the opportunities’ discussion paper and not make a submission.

The ‘Heritage reform – an exploration of the opportunities’ discussion paper outlines issues and proposals for reform of the local heritage identification, management and listing process.

If Council is satisfied the proposals are appropriate there is no need for a submission.

## **6. RECOMMENDED OPTION**

Option 1 is the recommended option.

## **7. POLICY IMPLICATIONS**

### **7.1 *Financial/budget***

- There are no immediate budget implications but this would need to be reassessed once the implications of the resultant reforms are known.
- The potential issues with translation of current heritage places and areas, audit and review of status could pose major resource implications.

### **7.2 *Legislative/Risk Management***

- While the new Planning, Development and Infrastructure Act will provide the fundamentals there will need to be careful practical management.
- Community engagement is critical to disseminating and hearing all views and arriving at a mutually understood and appreciated system.

### **7.3 *Staffing/Work Plans***

- Monitoring, contribution and review of heritage reforms would be managed within current resources.

#### **7.4 Environmental/Social/Economic**

- A clear, robust and refined system will facilitate better management while it duly respects the wishes of all stakeholders in regard to the value and protection of heritage and character.

#### **7.5 Stakeholder Engagement**

- Targeted stakeholder engagement was undertaken as part of the release of the discussion paper.
- More comprehensive consultation, in accord with the State Governments promoted new Community Engagement Charter, would be beneficial to fully and properly engage all views and facilitate widespread debate.

### **8. REPORT CONSULTATION**

The specific nature of the issue and time constraints has limited the extent of internal consultation. Limited liaison has occurred within the Economic Development and Planning Division.

### **9. ATTACHMENTS**

- City of Unley draft Submission on Local Heritage Reform
- Local Government Association (SA) *draft Local Heritage and Character Revised Draft Position Paper*
- Department of Planning Transport and infrastructure '*Heritage reform – an exploration of the opportunities*' *Local Heritage Discussion Paper*

### **10. REPORT AUTHORISERS**

<b><u>Name</u></b>	<b><u>Title</u></b>
Paul Weymouth	Acting/General Manager Economic Development and Planning
Peter Tsokas	Chief Executive Officer

## RENEWING OUR PLANNING SYSTEM Placing Local Heritage on Renewed Foundations

### *Heritage reform – an exploration of the opportunities* Local Heritage Discussion Paper

#### *City of Unley submission*

The State Government Expert Panel on Planning Reforms in 2014 recommended changes to the criteria and process for heritage management. The complexity and sensitivity of such heritage reforms meant they were largely excluded from the initial Planning, Development and Infrastructure Act (PDI Act) in 2015. It is appropriate these reforms be further explored through further discussion before further legislation changes are contemplated later in 2016.

The *Heritage reform – an exploration of the opportunities* discussion paper produced by the Department of Planning Transport and Infrastructure (DPTI) was only initially distributed to targeted stakeholders, eg councils and those who raised heritage issues in their previous submissions on the planning reforms. It was released on the 9 August 2016 with responses initially requested by the 9 September 2016 but then extended to the 23 September 2016, and now until the 7 October 2016 given the continued high interest in the matter.

It is not known if wider public debate is proposed, albeit it has attracted media attention based upon discussion at the City of Adelaide Council meeting on the 23 August 2016. Subsequently, the Minister has been in the media and been encouraging public feedback. For such a fundamental and important issue within the community, it is appropriate much broader, longer and organised engagement be undertaken, reflecting the State Governments own widely promoted proposed new best practice *Community Engagement Charter*.

#### Local Heritage Context

The context for the role of heritage in the planning system has been revised. The new PDI Act removes any mention of 'conservation' that exists in the current objectives in favour of '*creating an effective, efficient and enabling planning system*' and to '*foster urban renewal*' amongst others. Supporting Principles of good planning seek high-quality design respecting and responding to local context and character and support for adaptive re-use, which is positive, but there is no specific mention of heritage.

The *30-year Plan for Greater Adelaide 2016 Update* indicates support for heritage places and areas but the importance of balanced integration of increased growth against the value and desired extent of heritage places and particularly meaningful expanse of areas is not clearly set out. Nor is the critical supporting role and importance of character areas within the spectrum of zoning controls.

This context is fundamental to the future of local heritage and character in the planning system going forward.

## Local Heritage Place Governance

Updating and refinement of local heritage criteria, listing, recording and assessment practices are laudable, however concerns are held with the clarity, certainty and appropriateness of:

- criteria still being overly subjective, technical and not sufficiently self-evident (as illustrated by need for comprehensive practice direction but which can also subsequently change that interpretation and application);
- having a 'threshold' test level, subject to potential future unilateral practice direction changes, and determination by as yet unknown governance arrangements;
- 'representative' examples (*'How many is too many?'*) Noah's Ark approach and the dis-regard this has for the individual merits of places, their relative importance in their context and part in the overall value;
- review and retrospective change in translation to the new system of the status of current listings and areas, plus the significant resource implications of potential audit reviews and research for new proposed listings;
- sound and enforced accreditation standards for private assessment to avoid 'advocacy' and ensure 'independent' transparent, accountable and credible professional advice.

The 'expert advice' reported in the Planning Reforms noted high objection rates of over 70% with the listing process, however, this has not been the experience in Unley. With proper investigations and comprehensive, accessible and personal consultation practices there have been good levels of support overall and reasonably low objection rates, eg Historic (Conservation) Zones in 2009 and Local Heritage Places review in 2013.

While there are pros and cons with proposed listings having 'interim operation', as it can set-up an adversarial situation, there also needs to be protection of the place from ill-considered destruction and/or demolition until the listing is resolved.

Currently local heritage listing occurs through the long and convoluted Development Plan Amendment (DPA) process. The streamlining of the local heritage listing process through a specific and tailored approach in-lieu of the DPA process could be appropriate. Good engagement can largely address the cons of the generally beneficial 'interim operation' safe-guard.

A new provision under the PDI Act includes an option for owners to appeal to the Environment, Resources and Development (ERD) Court against the decision to designate a Local Heritage Place. This will provide a further independent expert review of successful listings for owners, but excludes councils or third parties similarly seeking review of dismissed proposed listings.

## Development Assessment

The development assessment process captures a wide range of additional and minor 'development' in relation to local heritage places and triggers an increased

number of applications subject to full investigation. Through the new Planning and Design Code these could be reviewed for appropriateness and streamlined through more commensurate assessment pathways appropriate to their nature and risk. This could allow low risk and minor works to be facilitated by council processes, or with appropriate accreditation and monitoring, private heritage professionals. Such an approach with suitable designation and accreditation (and enforcement of standards) could be appropriate to simplify assessment processes and facilitate adaptive re-use of heritage buildings.

A controversial question raised in the paper is the demolition of listed local heritage places being considered on-merit. The rigor applied to potential demolition, and even alterations and additions to maintain integrity, of local heritage places is fundamental. In Unley, like many areas, demolition is currently assessed 'on-merit' against the planning policies within the Development Plan. This has been robust and without much issue to date. Some councils have demolition as non-complying which provides an absolute and dual authority assessment control but can become an extreme and unwieldy approach where circumstances may warrant demolition. 'On-merit' with sound policy and a rigorous assessment process should be appropriate.

### Heritage versus Character Areas

While an attempt is made to conceptually clarify 'heritage' versus 'character' it does not go on to adequately address how a system of area controls is to be determined or applied. This is a major aspect of concern and one of great complexity that requires much further investigation and discussion.

The translation of existing Historic Conservation Zones and Policy Areas is indicated to occur in accord with the provisions in the new Planning and Design Code as heritage overlays or character sub zones. It is indicated the future status of existing areas will be determined by the distinction between heritage and character. This infers existing areas will be respected, but the determination per new criteria and future practice directions raises concerns about the security of their ongoing and future status.

The implementation of new heritage character or preservation sub-zones, and by inference possibly character areas, is made more difficult by the very high threshold test introduced into the PDI Act for 51% of property owners (1 per allotment) in an area required to support such designation. Eliciting that level of response to policy change, and a supporting majority of the total number of property owners, could be challenging.

The current discussion should be confined to local heritage places, although it is vitally important the context of all the components, and particularly heritage and character areas, in each part of the ongoing review are made clear.

The discussion paper does not set out the strategic context nor the value (and validity) of the contribution of conserving the heritage and character of Adelaide, its suburbs, main streets etc and value to our society, culture and identity. Building conservation, adaptation and improvement also offers significant tourism value,

embedded energy savings and increased skilled employment compared to demolition and modern replacement.

### Conclusion

The discussion of local heritage reform proposals before embarking on more detailed proposals and ultimately legislation reform is positive. Desirably the discussion should be broader and longer to engage more widely with all stakeholders and the community.

It is trusted there will be further opportunities to discuss the reform proposals and ultimately the fundamental detail will be provided for review as part of the proposed legislative changes. The critical supporting subordinate regulations, policy instruments and practice directions will be critical and need similar thorough exploration, discussion and wide community engagement. An effective and efficient approach is desirable but one that reasonably serves and balances the values within the whole community.

**Concise.**

# **Local Heritage and Character Revised Draft Position Paper**

**Local Government Association of South Australia  
1 September 2016**



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### **Local Heritage and Character Draft Position Paper 1 September 2016**

Prepared for the Local Government Association of South Australia by:

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## Executive Summary

As part of a significant program of reform of South Australia's planning system, in August 2016 the Minister for Planning released a Local Heritage Discussion Paper for public consultation. The Discussion Paper identifies opportunities for reform around processes for identifying and managing local heritage through the *Planning Development and Infrastructure Act 2016* (the PDI Act) and non-legislative mechanisms.

The Local Government Association of South Australia (LGA) intends for this Local Heritage and Character Position Paper to form a guide and resource for the Department for Planning, Transport and Infrastructure (DPTI) as it progresses these reforms in consultation with local government. The Position Paper has been developed through review of relevant documents, and engagement with metropolitan local governments.

Local governments are a key partner in government and are committed to being constructive partners in local heritage reform, as shown by the sector's engagement with the Expert Panel on Planning Reform, and general support for the Panel's heritage recommendations.

Local government is the level of government closest to the community, and experiences firsthand the great extent to which their communities value local heritage, and the value local heritage contributes to their streets, suburbs and beyond. Councils invest in local heritage through grants programs, advisory services, promotions and education, and research. The strength of this investment is borne out by studies that demonstrate the economic significance of cultural heritage and its important role in tourism attraction and expenditure.

As reform is implemented, local governments will continue to have substantial responsibilities both administratively and to their communities in the management of local heritage. Changes to local heritage arrangements will have physical, cultural, and economic impacts across Councils and communities, particularly within Greater Adelaide.

In terms of the statutory and strategic framework, the objects and principles of the PDI Act are consistent with the ongoing protection of local heritage and recognition of its social, cultural, and economic value, as is the draft update of The 30-Year Plan for Greater Adelaide. The latter highlights the need to carefully consider the approach to achieving objectives seeking both increased urban infill and the preservation of heritage and character value.

In this context, while some specific reforms and policy directions suggested by the Local Heritage Discussion Paper are supported by local governments, significant concerns exist about the processes and levels of consideration and consultation to date. Local governments are of the view that prior to development of a draft Bill incorporating local heritage reforms, further consideration, clarification, and consultation is required in relation to:

- The relationship of local heritage reforms and the objectives of the planning system and planning strategy as expressed in the PDI Act and 30-Year Plan;
- How and why currently proposed reforms differ from the suite of recommendations of the Expert Panel on Planning Reform;
- The operation and implementation of reforms, in particular governance and roles and responsibilities for decision making;
- Opportunities for economic benefits of heritage conservation to be realised, including holistic consideration of funding and incentives for economic use alongside policy reforms;
- New heritage listing criteria, particularly on the methodology for selection of themes, and issues of thresholds and over- and under-representation;
- Existing Historic Conservation Areas/Zones and how they will be identified and protected in the future;
- Interim demolition control for proposed local heritage listings;
- Mechanisms for policy clarity, effective guidance, and clear decision making roles in development assessment; and
- Effective engagement of the community in development and implementation of reforms.

Importantly, appropriate consideration of these issues requires a program of consultation with sufficient time and information for Councils to engage with their elected members and communities, and contribute constructive feedback to the reform process. This is likely to involve additional rounds of consultation to that currently underway.

Local governments will continue to seek further engagement with DPTI both directly and through the LGA to contribute to a local heritage reform package that appropriately reflects the aspiration, priorities, and values of the State government and metropolitan local governments and their communities.

## 1.0 Background

In December 2014 South Australia's Expert Panel on Planning Reform delivered their recommendations for a new planning system, including eight proposals designed to, in the words of the Panel, "place heritage on renewed foundations".<sup>1</sup>

The reform proposals sought to consolidate and improve heritage policy and management, and increase the planning system's capacity to deal effectively and efficiently with Aboriginal and non-Aboriginal heritage in the context of broader planning and development objectives.

In March 2015 the South Australian Government officially responded to the Expert Panel's recommendations, supporting the proposed heritage reform in principle, and committing to further investigations.<sup>2</sup>

The Minister for Planning released a Local Heritage Discussion Paper for public consultation in August 2016. The Discussion Paper identifies opportunities for reform around listing of local heritage places, development assessment, and terminology. Proposed reforms would be undertaken via the new *Planning Development and Infrastructure Act 2016* (the PDI Act), or non-legislative mechanisms.

No changes to the listing and assessment of State Heritage places under the Heritage Places Act are proposed.

## 2.0 Purpose

Planning system reforms proposed by the State Government to change the management of local heritage in South Australia will have physical, cultural, and economic impacts across Local Governments and communities, particularly within Greater Adelaide.

The Local Government Association of South Australia (LGA) intends for this Local Heritage and Character Position Paper to form a guide and resource for the Department for Planning, Transport and Infrastructure (DPTI) as it progresses these reforms in consultation with Local Government.

## 3.0 Methodology

Development of this Position Paper has involved:

- Review of documents including
  - Previous LGA and Council planning reform submissions and investigations relating to heritage and character;
  - Relevant sections of the PDI Act and draft update of The 30-Year Plan for Greater Adelaide; and
  - The State Government's Local Heritage Discussion Paper.
- Feedback on the Local Heritage Discussion Paper provided by 18 Councils over 2 facilitated workshops held in August 2016.

## 4.0 Context for heritage reform

Throughout the Expert Panel on Planning Reform, metropolitan Councils shared their views on a range of issues including heritage and character both through the LGA,<sup>3</sup> and directly to the Expert Panel.<sup>4</sup>

During the Expert Panel's consultation process the LGA identified a number of key challenges for Councils in managing heritage and character through the planning system, including:

- A lack of consistency in heritage listing, leading to confusion, uncertainty and frustration regarding what is appropriate to list;
- A heritage management process that is highly resource intensive and predisposed to conflict;
- Poor understanding of what character is and how it differs from heritage value; and
- Poor and inconsistent expression of character in Development Plans.

<sup>1</sup> *Our Ideas for Reform* prepared by South Australia's Expert Panel on Planning Reform, July 2014

<sup>2</sup> *Transforming Our Planning System: Response of the South Australian Government to the final report and recommendations of the Expert Panel on Planning Reform* prepared by the Government of South Australia, March 2015

<sup>3</sup> *Planning Reform Issues Paper: Heritage & Character* prepared for the Local Government Association of SA by Jensen Planning + Design, July 2014

<sup>4</sup> <http://www.thinkdesigndeliver.sa.gov.au/report/?a=120183>

Overall, Councils reported that current arrangements tend to create ongoing uncertainty and conflict around heritage and character issues, in turn impacting upon their efficiency, resourcing, and relations with their communities.

Following multiple stages of research, consultation and deliberation, the Expert Panel developed key planning reform ideas in relation to heritage and character in two iterations, as shown in Table 4.1.

While the LGA's subsequent consultation indicated general support amongst metropolitan Councils for the key planning reform ideas, there was an awareness of the challenges and costs involved implementing the ideas, and a further concern that local character, heritage and design policy could be watered down or lost.

**Table 4.1: Summary of Expert Panel Heritage and Character Reforms<sup>5</sup>**

<i>Our Ideas for Reform</i> August 2014 (Reform 10)	<i>The Planning System We Want</i> December 2014 (Reform 8)
<p>10.1 Heritage recognised as relating to place, culture and community development, not simply physical structures</p> <p>10.2 Heritage laws consolidated into one integrated statute</p> <p>10.3 An integrated statutory body to replace existing multiple heritage bodies, e.g. based on the existing heritage council or a subcommittee of the planning commission</p> <p>10.4 Governance arrangements that embrace the capabilities and expertise of the state's key cultural institutions.</p> <p>10.5 A new integrated heritage register to include existing state and local listings and have an expanded capacity to recognise special landscapes, building fabric and setting, and place historic markers</p> <p>10.6 A legislated heritage code of practice to outline how listed properties can be maintained and adapted</p> <p>10.7 Legislative basis for accredited heritage professionals to undertake specified regulatory functions for private property owners on a similar basis to private certifiers</p> <p>10.8 Audit of existing heritage listings to better describe their heritage attributes</p> <p>10.9 Consideration of financial subsidies such as discounts on property-related taxes for private owners of listed properties</p>	<p>8.1 Heritage laws consolidated into one integrated statute</p> <p>8.2 Heritage terminology reviewed and updated as part of new statute</p> <p>8.3 An integrated statutory body replacing existing multiple heritage bodies, with links to the state's cultural institutions</p> <p>8.4 The new body to be responsible for administering a single integrated register of heritage sites, including state and local listings, and have the power to add special landscapes and historic markers to the register</p> <p>8.5 A legislated heritage code of practice to outline how listed properties should be described, maintained and adapted</p> <p>8.6 Legislative basis for accredited heritage professionals to (similar to private certifiers) to provide advice and sign-off on changes to listed properties that are consistent with the code of practice</p> <p>8.7 Audit of existing heritage listings to better describe their heritage attributes</p> <p>8.8 Stable, long term financing of heritage with discounts on property-related taxes and a heritage lottery providing the basis for heritage grants</p>

<sup>5</sup> *Our Ideas for Reform* prepared by South Australia's Expert Panel on Planning Reform, July 2014  
*The Planning System We Want* prepared by South Australia's Expert Panel on Planning Reform, December 2014

## 5.0 Legislative and strategic context

### 5.1 Planning, Infrastructure and Development Act 2016

Emerging from the reform discussions generated by the Expert Panel on Planning Reform, the PDI Act was assented to in April 2016, and will be brought into operation over the next 3 to 5 years.

The primary object of the PDI Act is to

*support and enhance the State's liveability and prosperity in ways that are ecologically sustainable and meet the needs and expectations and reflect the diversity, of the State's communities by creating an effective, efficient and enabling planning system that ...*

*promotes and facilitates development, and the integrated delivery and management of infrastructure and public spaces and facilities, consistent with planning principles and policies; and*

*provides a scheme for community participation in relation to the initiation and development of planning policies and strategies.<sup>6</sup>*

In association with this principal intention, the PDI Act intends to facilitate amongst other goals:

- Certainty as well as scope for innovation for developers;
- High standards of design quality in the built environment;
- Financial mechanisms and incentives to support development and investment opportunities; and
- Cooperation, collaboration and policy integration between State and local government.

Section 14 of the PDI Act further sets out principles of good planning to inform application of the legislation and functions of the planning system, as reasonably practicable and relevant. These principles relate to seven themes and those of relevance to the role of local heritage in urban environments and the planning system are summarised in Table 5.1.

**Table 5.1: Principles of good planning under the *Planning, Infrastructure and Development Act 2016***

Theme	Summary of relevant principles	Links to local heritage management
<b>Long-term focus</b>	Informed and equitable long term planning to address current and future challenges and priorities	The role of heritage conservation as a long term priority for the benefit of current and future generations
<b>Urban renewal</b>	Accommodation of urban growth in existing urban areas through renewal activities that make best appropriate use of the latent potential of land, buildings and infrastructure	Opportunities for realising latent potential in heritage places through conservation, continued use and adaptive reuse
<b>High-quality design</b>	Development that:  Reflects local setting and context, with a distinctive identity that responds to existing character of the locality; and  Is durable and adaptive, and inclusive and accessible to people with differing capabilities	Contribution of heritage to local setting, context and character  How to enable heritage places to inclusive and accessible through conservation works and adaptive reuse
<b>Activation and liveability</b>	Promotion of neighbourhoods and buildings that support diverse economic and social activities, a range of housing options, active lifestyles and diverse cultural and social activities	Opportunities for heritage places to support economic activity and contribute to social and cultural life
<b>Sustainability</b>	Urban environments that are energy efficient and address the impacts of climate change	Embedded energy in heritage places and opportunities for sustainable adaptive reuse

<sup>6</sup> PDI Act Section 12 (1)

Theme	Summary of relevant principles	Links to local heritage management
<b>Investment facilitation</b>	Planning and design undertaken with a view to strengthening the economic prosperity of the State and employment growth, and coordinated approaches to planning that promote public and private investment toward common goals	Opportunities for heritage places to support economic activity through of conservation activities and adaptive reuse (multiplier effect) and contribution to tourism
<b>Integrated delivery</b>	Coordination of policies within and outside the planning system to ensure efficient and effective achievement of planning outcomes	Role of local heritage to contribute to and complement desirable planning outcomes including those relating to economic development, streetscape and character, housing choice and sustainable urban form

## 5.2 The 30-Year Plan for Greater Adelaide

A draft update to The 30-Year Plan for Greater Adelaide was released for community consultation by the Planning Minister on 25 August 2016.

The update maintains the broad directions set out in The 30-Year Plan released in 2010, whilst streamlining the format of the strategy, revisiting some priorities (such as climate change and healthy neighbourhoods), and addressing challenges that have arisen from additional development within existing urban areas as envisaged by the original Plan.

The update presents a planning strategy for metropolitan Adelaide in the form of six strategic high level targets, 14 policy themes, 119 policies, and 47 actions.

Of the six targets, four of them (Targets 1, 2, 4 and 6) relate to concentrating new urban development in established areas or a more compact urban form. Policy themes, policies, and actions relevant to local heritage management are summarised in Table 5.2.

**Table 5.2: Summary of heritage related content of the draft update of The 30-Year Plan for Greater Adelaide**

Policy theme	Policies/Actions
<b>Adelaide City Centre</b> Reinforce and enhance Adelaide's reputation as a liveable and vibrant place	<b>P13- 24</b> Policies relating to character, streetscape, urban form and housing diversity P17 seeks to reinforce the special character of main streets through design responses that increase activity while preserving the elements that make these places special P22 seeks to sustain the heritage and character of North Adelaide and south west and south east residential precincts with appropriate well serviced development
<b>Design quality</b> Good design outcomes are necessary to ensure new development positively and sensitively contributes to existing neighbourhoods, their local identity, distinctive character, and valued heritage	<b>P29 – 31</b> Encourage development that is compatible and complementary of its context Support the characteristics and identities of different neighbourhoods, suburbs and precincts Recognise areas' unique character by identifying valued physical attributes <b>A 7, 9, 10</b> Release guidelines for medium density urban development in local heritage and character areas Explore reviewing local heritage listing processes within an integrated strategic framework Ensure local area plans manage interface issues in the local context and identify appropriate locations for sensitive infill and areas of protection

<b>Policy theme</b>	<b>Policies/Actions</b>
<b>Heritage</b> Heritage is valued by communities and its conservation and adaptive reuse contributes to precinct revitalisation, energy efficiency and sustainability, and local economic development	<b>P32 – 35</b> Ensure new development is sensitive and respectful of the value of heritage Ensure local heritage places and areas of heritage value are identified and their conservation promoted Promote economic development through innovative reuse of heritage places and older buildings Explore reviewing local heritage listing processes within an integrated strategic framework
<b>Housing mix, affordability and competitiveness</b> Provision of diverse housing options within the existing urban footprint	<b>P39/A15</b> Explore flexibility for ancillary residences in local heritage areas for social benefit and heritage protection
<b>The economy and jobs</b> Linking people with jobs in employment centres and supporting new economic drivers such as services, information and communications technology, retail, and commercial sectors	<b>P61</b> Provide for sustainable tourism development by protecting, enhancing and promoting valuable qualities, providing appropriate infrastructure and facilitating value adding activities

## 6.0 Local Heritage Discussion Paper 2016

The State Government's Local Heritage Discussion Paper *Heritage reform – an exploration of the opportunities* was released for public consultation in mid-August 2016. The Discussion Paper sets out to address the following issues:

- Clarity of criteria and inadequate hierarchy of heritage values (national, state, local);
- Poorly/inconsistently applied local heritage criteria;
- Uneven recognition of local heritage across the state;
- Lack of comprehensive review;
- Lengthy/unpredictable listing process;
- Consultation process that rely too often on 'interim operation';
- Sensitive consultation occurring too late in the process;
- Confusion between 'heritage' and 'character';
- Inconsistent Development Assessment procedures and policies; and
- A formal role for accredited heritage professionals.

The Discussion Paper excludes consideration of general heritage governance, funding arrangements, and listing and development assessment issues relating to State heritage (other than minor matters).

The Paper's exclusive focus on local heritage is based on:

- The large and increasing numbers of local heritage places compared to State heritage places;
- The incompatibility of existing local listing criteria with national best practice; and
- The opportunity for immediate benefit from reforms managed solely through the new Planning, Development and Infrastructure Act.

Key aspects of the suite of reforms presented in the Discussion Paper include standardisation of processes for local heritage listing through practice directions prepared by the State Planning Commission, a role for accredited heritage professionals, and management of places through the state-wide Planning and Design Code and heritage overlay.

Development of the Discussion Paper included consideration of other Australian jurisdictions that have undertaken heritage reforms in the last ten years.

Tables 6.1 and 6.2 below summarise the reform opportunities raised in the Discussion Paper, along with potential benefits and challenges/risks of the proposed approach identified by the LGA. Reforms are grouped in relation to local heritage listing (reference L1 to L6) and development assessment (D1 to D7).

**Table 6.1: Discussion Paper Reforms - Local Heritage Listing**

Ref	Reform opportunity	Benefits	Challenges/Risks
L1	<p>Statutory listing criteria with thresholds described in a practice direction</p> <p>Local heritage criteria based on thresholds similar to State heritage criteria under the <i>Heritage Places Act 1993</i><sup>7</sup></p> <p>Inclusion/exclusion guidance for professionals and the community on what is likely to meet thresholds for heritage value</p>	<p>Provides clear guidance as to what constitutes different levels of heritage value</p> <p>Contributes to greater certainty in assessments of heritage value</p> <p>Supports compliance with best practice</p>	<p>Achieving agreement amongst stakeholders of different levels of value and thresholds</p>
L2	<p>Implement a framework and practice direction that enables understanding, evaluation and presentation of objects, places and events in the context of broad historical themes</p>	<p>Integrated rather than piecemeal approach to preserving heritage across the state</p> <p>Enables comparison of multiple similar nominations</p> <p>Allows understanding of over and under representation in listings</p>	<p>Ensuring local values are incorporated in development of broader themes</p>
L3	<p>Implement early engagement with communities and property owners from heritage survey to decision making stages through a heritage listing practice direction prepared by the Planning Commission</p> <p>Reduce public consultation timeframe</p>	<p>Potential to reduce conflict</p> <p>Potential to reduce consultation and listing process timeframes</p> <p>Shorter process reduces the need for interim operation</p>	<p>Responsibility for and monitoring of compliance with the practice direction</p> <p>Responsibility for dispute resolution where early engagement does not remove conflict</p>
L4	<p>Simplify the process to amend the Planning and Design Code to incorporate a listing, involving the Planning Commission, experts, accredited professionals and community representatives</p>	<p>Shorter and more efficient process for listing</p>	<p>Perceived or actual reduced community input</p> <p>Options for challenging a listing</p> <p>Mechanisms to resolve conflict arising within or from outside the Commission led process</p>

<sup>7</sup> The Discussion Paper suggests:

*"A place is deemed to have local heritage value if it satisfies one or more of the following criteria:*

- a) *It is important to demonstrating themes in the evolution or pattern of local history; or*
- b) *It has qualities that are locally rare or endangered; or*
- c) *It may yield important information that will contribute to an understanding of local history, including natural history; or*
- d) *It is comparatively significant in representing a class of places of local significance; or*
- e) *It displays particular creative, aesthetic or technical accomplishment, endemic construction techniques or particular design characteristics that are important to demonstrating local historical themes; or*
- f) *It has strong cultural or spiritual associations for a local community; or*
- g) *It has a special association with the life or work of a person or organisation or an event of local historical importance.*



Ref	Reform opportunity	Benefits	Challenges/Risks
L5	<p>Require clear and comprehensive descriptions of listings, prepared by accredited professionals governed by a practice direction</p> <p>Review and update existing statements of heritage value and listed elements at some time in the future</p>	<p>Provides clarity for professionals and the community about the elements of a place that are important to heritage value</p> <p>Provides relevant information for any future development applications and appeals</p>	<p>May generate large quantities of material</p> <p>Requires monitoring and updating over time in relation to condition of places</p> <p>Providing descriptions for existing local heritage places may be time and cost prohibitive</p>
L6	<p>Discontinue a traditional register of local heritage places, instead identifying listings by gazette as amendments to the Planning and Design Code, on a heritage overlay, and through the online planning portal</p>	<p>Avoids duplication through multiple instruments</p> <p>Maintains heritage information in functional instruments and active information sources</p>	<p>Loss of dedicated repository of local heritage information</p>

**Table 6.2: Discussion Paper Reforms – Development Assessment**

Ref	Reform opportunity	Benefits	Challenges/Risks
D1	<p>Clearly distinguish between ‘character’ and ‘heritage’ in the Planning and Design Code</p> <p>Distinguish between heritage and character value in translation of existing Historic Conservation areas into the Code via character subzones or heritage overlays<sup>8</sup></p>	<p>State-wide clarity of interpretation across all planning policy</p> <p>Appropriate planning controls for heritage and character protection respectively</p>	<p>Developing a shared understanding of terms acceptable to all stakeholders</p> <p>Communicating the defined terminology effectively to all stakeholders</p> <p>Considering stakeholder perceptions and community values in distinguishing between heritage and character for existing protected areas</p> <p>Consistent use of terminology in new policy including local variations</p>
D2	<p>Develop hierarchy of heritage values (national, state, and local places and areas)</p>	<p>Greater policy clarity and guidance in assessment pathways</p>	<p>Achieving agreement amongst stakeholders of different levels of value and thresholds</p> <p>Accommodating all forms of heritage value in a hierarchical system</p>
D3	<p>Review definition of development relating to heritage places to reduce the number of potential applications</p>	<p>Reduced number of assessments relating to straightforward and minor matters</p> <p>Encourages improvement of heritage places</p>	<p>Actual or perceived dilution of heritage protections leading to loss of heritage value</p>

<sup>8</sup> In reference to reform opportunity D1, the Discussion Paper notes the following distinctions:

***“Heritage** is about retaining cultural ‘value’, not simply identifying with a history. It generally involves conservation of the fabric of a place to help **reconcile its cultural value with its asset value**.*

***Character** is less about a ‘value’ and is more a tool to recognise the presence of, or desire for, particular physical attributes to determine **how similar or different the future character of areas should be**”.*

Ref	Reform opportunity	Benefits	Challenges/Risks
D4	Introduce 'exempt', 'accepted' or 'deemed to satisfy' assessment pathway for defined minor and low risk works	Shorter and more efficient process commensurate to the potential impact of proposed works  Encourages improvement of heritage places	Actual or perceived dilution of heritage protections leading to loss of heritage value
D5	Introduce statements of significance, descriptions of elements, and tables of controls for all heritage places (refer to example in Figure 5.1)	Greater clarity of relationship of physical fabric to heritage value  Contributes to transparency and clarity in assessment process  Provides information resources for heritage managers	May generate large quantities of material  Requires monitoring and updating over time in relation to condition of places
D6	Allow 'on merit' assessment of demolition of heritage places	State-wide consistency of demolition controls and public notification requirements	Actual or perceived dilution of heritage protections leading to loss of heritage value
D7	Empower accredited heritage professionals to provide heritage equivalent of current Building Rules Consent Only	Expedites simple assessments  Frees up Council planners to focus on more complex applications	Removes decision making power of Councils over local heritage places

Figure 6.1: Example table of controls from a Victorian planning scheme<sup>9</sup>

<p>aribrnong Planning Scheme</p>	<p><i>Example of a Heritage Overlay schedule</i></p>
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<sup>9</sup> Excerpt from the *Heritage Overlay Guidelines* published by the Victorian Government Department of Sustainability and Environment, January 2007

## 6.1 Local government response

On 17 and 18 August 2016 the LGA held two local heritage and character workshops with metropolitan Councils to facilitate local government responses to the Local Heritage Discussion Paper. Workshop participants were planning and heritage staff representing 18 metropolitan Councils.

Local governments have previously expressed general support for the recommendations of the Expert Panel on Planning Reform relating to heritage. However, while some reforms suggested by the Local Heritage Discussion Paper were supported, there was broad concern expressed in the workshops about the processes and levels of consideration and consultation surrounding the local heritage reforms.

Table 6.3 summarises the main areas of concern and key messages communicated by workshop participants.

**Table 6.3: Reform areas and key messages from local governments**

Reform area	Key messages from local governments
<b>Reform context and process</b>	The Discussion Paper reforms lack a strategic framework, clarity of detail, and clarity of governance arrangements. The information provided and consultation process underway is insufficient for Councils to effectively contribute on behalf of their communities.
<b>Status of heritage areas</b>	The future of Historic Conservation Areas/Zones must be clarified. These areas are highly valued by local communities.
<b>Economic drivers for heritage protection</b>	The economic benefits of heritage conservation should be encouraged and communicated. Funding and incentives are essential to getting the balance right in heritage protection and should be considered holistically with policy reforms.
<b>Local heritage listings</b>	Clear and consistent local heritage criteria are supported. Significantly more discussion and detail is required around thresholds, selection of themes, and overrepresentation.
<b>Communication and engagement</b>	Early engagement is supported, as is better communication with owners about opportunities for economic use. Policies and incentives should support economic use. Currently interim demolition control saves heritage from demolition.
<b>Development assessment</b>	Reforms must enable policy clarity, effective guidance and clear roles in decision making.
<b>Accredited heritage professionals</b>	Heritage accreditation is supported to expand the pool of qualified professionals and maintain expertise within Councils.

### Local Government Position

Local governments are a key partner in government and are committed to being constructive partners in local heritage reform, as shown by the sector's engagement with the Expert Panel on Planning Reform, and general support for the Panel's heritage recommendations (refer Table 4.1 above).

Local government is the level of government closest to the community and experiences firsthand the great extent to which their communities value local heritage, and the value local heritage contributes to their streets, suburbs and beyond.

Heritage has a significant local economic benefit. As well as implementing planning and heritage controls, Councils invest in local heritage through grants programs, advisory services, promotions and education, and research. The strength of this investment is borne out by studies that demonstrate the economic significance of cultural heritage and its important role in tourism attraction and expenditure.<sup>10</sup>

<sup>10</sup> Adelaide City Council (2015) *Economic Value of Heritage Tourism*; Presentation by the National Trust at LGA workshop "Tourism and Heritage – a Winning Combination" October 2014; The Allen Consulting Group 2005, *Valuing the Priceless: The Value of Heritage Protection in Australia, Research Report 2*, Heritage Chairs and Officials of Australia and New Zealand, Sydney.

Local governments support the principles of good planning set out in the PDI Act, and see effective development and implementation of local heritage reforms in appropriate consultation with stakeholders as consistent with those principles, and as contributing to the objects of the Act.

The draft update to The 30-Year Plan for Greater Adelaide contains many policies that acknowledge the value of local heritage, character, and context, as well as many policies to support growth and development within existing urban areas. As consultation continues on the draft update, it will be important to understand how these strategic directions work together to provide for the best possible planning outcomes.

From a local heritage perspective, urban infill development is compatible with heritage conservation, and with good design offers opportunities for improving streetscapes and areas in ways that can benefit local heritage places and incentivise their restoration and use.

Conversely, such development also has the potential to impact negatively on local heritage, and clear policies and frameworks for decision making are required where heritage conservation must be considered alongside other objectives in pursuit of infill targets.

In this context, prior to development of a draft Bill incorporating local heritage reforms, local governments are of the view that further consideration, clarification, and consultation is required in relation to:

- The relationship of local heritage reforms and the objectives of the planning system and planning strategy as expressed in the PDI Act and 30-Year Plan;
- How and why currently proposed reforms differ from the suite of recommendations of the Expert Panel on Planning Reform;
- The operation and implementation of reforms, in particular governance and roles and responsibilities for decision making;
- Opportunities for economic benefits of heritage conservation to be realised, including holistic consideration of funding and incentives for economic use alongside policy reforms;
- New heritage listing criteria, particularly on the methodology for selection of themes, and issues of thresholds and over- and under-representation;
- Existing Historic Conservation Areas/Zones and how they will be identified and protected in the future;
- Interim demolition control for proposed local heritage listings;
- Mechanisms for policy clarity, effective guidance, and clear decision making roles in development assessment; and
- Effective engagement of the community in development and implementation of reforms.

Importantly, appropriate consideration of these issues requires a program of consultation with sufficient time and information for Councils to engage with their elected members and communities, and contribute constructive feedback to the reform process. This is likely to involve additional rounds of consultation to that currently underway.

Local governments will continue to seek further engagement with DPTI both directly and through the LGA to contribute to a local heritage reform package that appropriately reflects the aspiration, priorities, and values of the State government and metropolitan local governments and their communities.



# RENEWING OUR PLANNING SYSTEM

Placing Local Heritage on Renewed Foundations

## Heritage reform – an exploration of the opportunities

### Local Heritage Discussion Paper

The State Government is committed to improving the ways we recognise and manage local heritage places in South Australia.

This discussion paper has been prepared to encourage high-level ideas and feedback from experts and practitioners involved in local heritage practice in this state. Responses will inform planning policies in this specialised area, including the creation of a new Bill.



## Key local heritage issues addressed in this discussion paper

Many of the procedures associated with South Australia's local heritage have not been reviewed since 1993 and the following issues have been identified as warranting reform:

- Clarity of criteria and inadequate hierarchy of heritage values (national, state, local)
- Poorly/inconsistently applied local heritage criteria
- Uneven recognition of local heritage across the state
- Lack of comprehensive review
- Lengthy/unpredictable listing processes
- Consultation processes that rely too often on 'interim operation'
- Sensitive consultations occurring too late in the process
- Confusion between 'heritage' and 'character'
- Inconsistent Development Assessment procedures and policies
- Formalising a role for accredited heritage professionals.

This discussion paper does not deal with:

- State heritage listings or the assessment of development affecting State Heritage Places, other than relating to typical minor matters and some internal works
- General heritage governance
- Funding matters.

Furthermore, the State Government has agreed that all existing Local Heritage Listings will be transitioned as Local Heritage Places into the Planning and Design Code<sup>1</sup> which is required to be developed under the new *Planning, Development and Infrastructure Act 2016* (PDI Act).

## Context

A widely shared desire for heritage reforms was identified by the Expert Panel on Planning Reform in its final report to Minister Rau in December 2014. The panel's findings in relation to heritage were subsequently considered by the State Government and agreed to in principle, foreshadowing the preparation of a discussion paper. However, heritage reforms were largely excluded from the Planning, Development and Infrastructure Bill 2015 (PDI Bill), reflecting their significance in their own right. Several new features were introduced into the PDI Act, including the ability for owners to seek court-based review of proposed local heritage listings, widening the possibility of initiating heritage nominations to individuals and consultation requirements under the proposed community engagement charter.

This discussion paper builds on the substantial consultation conducted by the Expert Panel and now provides a wider examination of local heritage matters.

## Why focus on Local Heritage?

Consistent with best practice, the **state** heritage criteria are generally compatible with the national model heritage criteria (HERCON<sup>2</sup>). However, **local** heritage criteria, as described in the Development Act 1993 and their equivalent in the PDI Act, are not as compatible with these criteria.

Additionally, there are over 8,000 local heritage places, almost four times as many as there are state heritage places (some 2200); few state heritage listings occur annually; and the numbers of local heritage listings and objections are increasing. Given the substantial number of local heritage places as compared to state heritage places, the benefits of focusing on local heritage practice and its associated frameworks will be more readily apparent.

Focusing on local heritage would also prioritise this policy area for immediate benefit as local heritage reforms can be entirely managed under the provisions of the PDI Act.

### Expert Panel on Planning Reform

"...current arrangements for heritage management are fragmented, inconsistent, out-of-date and result in poor decision-making"

<sup>1</sup> Information about the Code is available at [http://dpti.sa.gov.au/planning/planning\\_reform](http://dpti.sa.gov.au/planning/planning_reform) A User's Guide to the Planning, Development and Infrastructure Act 2016

<sup>2</sup> The Heritage Convention (HERCON) criteria were agreed to by all states and territories through the Environment Protection and Heritage Council in 1998. The criteria are intended to provide a national standard for guiding heritage significance assessment.



## Applying lessons learnt from similar reforms interstate

Many of the heritage statutes of states and territories have been the subject of review in the last few years, the most recent being Victoria in 2015. Before this, the other states to undertake this work have been Queensland (2014), Western Australia (2011), Australian Capital Territory (2010), New South Wales (2007) and Tasmania (2005). South Australia last conducted such a review in 2003/2004.

There are numerous insights we can use from the more recent of these reviews including:

- Supporting the criteria with thresholds to distinguish levels of heritage value (as described in a Practice Direction)<sup>3</sup>
- Providing inclusion/exclusion guidance on what is likely to be recognised with heritage value
- Proposing comparative analysis against historic themes to understand over and under-representation of listings within specific themes
- Enhancing development assessment, prescribing certain works to heritage places as 'exempt' from the need to obtain a consent and formalising roles for accredited heritage professionals.

## Local Heritage Reform could include...

### *Updating our current Local Heritage Listing Criteria*

South Australia's local heritage criteria are unique in Australia and, as stated earlier, are inconsistent with the commonly used heritage criteria interstate.

This is an opportunity to develop **new local heritage criteria**—to be incorporated into the PDI Act—to provide more certainty in listing processes and enable greater compliance with best practice. What we need are clear, contemporary criteria.

One way to achieve this would be to use the state heritage criteria to inform the drafting of new local heritage criteria. These would of course be amended to substitute state-wide thresholds with local heritage values.

For the purposes of this paper, local heritage criteria—as derived from the Heritage Places Act 1993—might comprise:

A place is deemed to have local heritage value if it satisfies one or more of the following criteria:

- a. It is important to demonstrating themes in the evolution or pattern of local history; or
- b. It has qualities that are locally rare or endangered; or
- c. It may yield important information that will contribute to an understanding of local history, including its natural history; or
- d. It is comparatively significant in representing a class of places of local significance; or

**Should our local heritage criteria be replaced to better match national best practice?**

<sup>3</sup> Under the PDI Act a practice direction is a statutory instrument that specifies procedural requirements or steps in connection with any matter arising under the Act.



- e. It displays particular creative, aesthetic or technical accomplishment, endemic construction techniques or particular design characteristics that are important to demonstrating local historical themes; or
- f. It has strong cultural or spiritual associations for a local community; or
- g. It has a special association with the life or work of a person or organisation or an event of local historical importance.

**However, the introduction of new criteria will not be enough to provide the more assured local heritage listing processes needed.**

### **Implementing a framework document and ‘practice direction’**

Central to any improvements would be a **framework document** to ensure that objects, places and events can be understood, evaluated and presented in the context of broad historical themes rather than as separate local heritage nominations. The use of these themes would enable comparison between similar local heritage nominations and help answer questions such as ‘How many are too many?’.

The use of themes would also enable strengths and weaknesses of listings to be monitored and each listing to be considered in the context of the wider set of existing heritage places. This framework document could form the basis of a **practice direction** mentioned earlier.

A practice direction could provide greater clarity and parameters for inclusion on, or exclusion from, a local heritage register. An example is Victoria’s ‘Framework of Historical Themes’<sup>4</sup>, which is used to generate historical themes which apply locally (For example, the City of Stonnington’s Thematic Environmental History).

The importance of a thematic framework was demonstrated in the pilot local heritage review by the City of Port Adelaide Enfield with support from the Department of Planning, Transport and Infrastructure. That pilot also recommended a common set of criteria being used for heritage listings. Putting public history to work in such ways is typical of the better practices generally found interstate.

**Should local heritage criteria be supported by the more sophisticated forms of guidance found interstate?**

### **Streamlining our listing process**

Currently the operational arrangements needed to recognise a property for local heritage listing are cumbersome as they require a full Development Plan Amendment process. They could be streamlined under the future Planning and Design Code. As well as new criteria, suitable contemporary guidance could be developed as well as changes to the timing and nature of consultation and decision making.

These may involve simplifying the formal processes to amend the Planning and Design Code, involving the Planning Commission, its expert heritage committee, accredited heritage professionals<sup>5</sup> and the community in different relationships to those currently existing.

There are at least three important aspects of streamlining the listing process. Each involves engagement, firstly with the community during the early phases of heritage surveys, secondly with owners of properties likely to be identified as having local heritage value and finally the formal public consultation and decision-making phase. Engaging with owners early and comprehensively allows sufficient time to have their issues heard and addressed. Early engagement with aggrieved owners may help resolve their issues and save them having to pay for expensive heritage and legal advice to contest a proposed listing.

Such early engagement could reduce the numbers of objections to nominations received during the process of identifying local heritage proposals\*.

**The listing process can give rise to conflict within communities, and between landowners and technical experts. Are there ways this can be improved?**

**\* Expert advice indicates that where engagement with the community and owners has been poorly managed and late, rates of objection can be over 70%; early engagement can result in objections as low as 1%.**

<sup>4</sup> Victoria’s Framework of Historical Themes aims to provide a ‘tool for developing a wider recognition and appreciation of Victoria’s diverse Aboriginal, historical and natural histories and the rich heritage resources these have created.’

<sup>5</sup> Provisions of the PDI Act envisage accredited professionals assisting various statutory functions. Currently there are no accredited heritage professionals, but a clear role could be established to assist listing, auditing and assessment functions.

Successful early engagement and consultation processes would throw into serious doubt the need for 'interim operation' and indeed the length of formal processes currently undertaken.

Accordingly, an outline of a new listing process could involve:

- Ensuring accredited heritage professionals survey and identify proposed local heritage nominations with the early assistance of the **community** in accordance with a **heritage listing practice direction** prepared by the Commission
- Early notification of an **owner** of a property likely to be identified as having local heritage value in accordance with a heritage listing practice direction
- Listing nominations finalised through completion of both statements of significance and descriptions of the elements of the place in accordance with a heritage listing practice direction
- Reducing the set time for **public consultation** consistent with the Community Engagement Charter (possibly 4 weeks in lieu of the current 8 weeks) owing to improved earlier engagement and owner notification
- Extending the primary role of the **expert heritage committee** (currently the Local Heritage Advisory Committee) from considering individual objections to more broadly considering proposed listings in the context of the local area established through a heritage listing practice direction
- Under delegation from the Planning Commission, the expert heritage committee finalises heritage related amendments for **incorporation into the Planning and Design Code**
- **Periodical** review and updating of the statements of heritage value and descriptions of the listed elements of the place.

**Should the recognition of heritage value be undertaken by accredited professionals? If so, who should have the final decision?**



It is worth noting that local heritage proposals in South Australia (and incidentally the composition of whole registers) have rarely been reviewed as a whole. They have tended to be reactively amended due to the impact of individual objections.

Local heritage listing processes could also be made **more accountable and transparent** if done in the context of existing registers and using new criteria that are supported by new guidance (practice direction) to replace current material that is up to 32 years old.

This, of course, would need to be coupled with **comprehensive descriptions of the fabric and setting of the heritage place** to understand which elements are important to retaining heritage value. These could be prepared by an accredited professional and governed by a practice direction.

Clear descriptions of listing would also assist the consideration of appeals to nominations in the Environment, Development & Resources Court, as provided for in the PDI Act.

Separate from a new process for listing, there could also be the opportunity to review existing statements of heritage value and descriptions of the listed elements of the place within a future set timeframe.

The listing of local heritage places will also need to be considered in balance with the broad strategic objectives of the State.

## Improving how we record local heritage places

With the proclamation of the PDI Act local heritage listings will now be:

- gazetted as amendments to the Planning and Design Code
- spatially identified by heritage overlay
- made accessible through the new planning portal

A new planning portal is intended to give digital access to the new planning system<sup>6</sup>. It will allow searches to be undertaken on a state-wide, local or property-specific basis and enable checking of heritage places/areas for representation of historical themes. The portal will also have the added benefit of including readily accessible, comprehensive descriptions of heritage places, which are essential to the work of accredited heritage professionals and provide valuable advice to owners and proponents of development.

Is a traditional local heritage register required?

## Clarifying the difference between 'Character' and 'Heritage'

The confusion between 'character' and 'heritage' is common in South Australia and interstate. The new Planning & Design Code will delineate the difference between these terms and remove the confusion arising from the use of at least four different descriptions of the term 'character' by the current planning system.

(The confusion is most evident in the varied forms of Historic (Conservation) Zones (and Policy Areas) and divergent policy found in current Development Plans.)

The following distinctions are useful when considering this issue:

**Heritage** is about retaining cultural 'value', not simply identifying with a history. It generally involves conservation of the fabric of a place to help **reconcile its cultural value with its asset value**.

**Character** is less about a 'value' and is more a tool to recognise the presence of, or desire for, particular physical attributes to determine **how similar or different the future characters of areas should be**.

In Historic Conservation Zones and Policy Areas, the confusion of heritage and character could be addressed by their translation into the Planning and Design Code as either character sub zones or heritage overlays. This process could be substantially determined by current Development Plan Policies. Distinctions would need to be made based upon the existing policies that seek to conserve buildings (heritage) as compared with other policies that seek to continue prevailing neighbourhood characteristics (character).

Do you agree that there is confusion between heritage and character? If so, how can this be addressed?

## Streamlining our Development Assessment Processes

There are a number of opportunities to improve the assessment of development applications affecting local heritage places.

Firstly, a clear hierarchy of heritage values (national, state and local heritage places and areas) could give clarity in policy and better guidance in development assessment paths.

The development of this hierarchy could begin with a review of the current definition of activities that constitute 'development' of heritage places in order to reduce the number of potential development applications. As all proposed development currently requires consent, a large number of development applications are triggered. Too many of these assessments are undertaken because simple assessment pathways are not currently offered in South Australia.

For example, there are opportunities to **streamline minor, low-risk works to heritage places** based on the assessment pathways of the Planning and Design Code of 'exempt', 'accepted' or 'deemed to satisfy'. This could cover minor activities not needing any approvals; minor works needing building rules consent only; and low-risk works where consent is given if set criteria are met.

Do you agree that descriptions of heritage value and physical description of listed elements for each place should be kept up-to-date?

<sup>6</sup> The planning portal is intended to deliver planning and assessment information and services (including the Planning and Design Code) through a new website.



Of course thorough development assessment processes rely on a solid understanding of the heritage fabric of the place. A **current statement of significance** is needed to ensure appropriate and timely decision-taking. So too is a **description of the elements** that link significance with the physical fabric of the place. Both are vital to guide the proponent of a development, the assessor, the heritage professional and the owner.

Another improvement could involve considering the **demolition of local heritage places 'on merit'**.

In Victoria, controls that treated the demolition of local heritage places as 'prohibited' were phased out in 1999. However, in South Australia, these provisions are inconsistent; sometimes demolition is listed as non-complying and subject to public notification, and sometimes not. This has contributed to the belief that de-listing is the only path that can be taken.

Additionally, the same assessments have tended to apply irrespective of the complexity of the proposal or its impact on heritage value. To assist the **'scaling' of development assessment pathways** against a range of development proposals, heritage statements and descriptions of the place should be clear and kept up to date. Victoria for example, associates each place with a table indicating whether or not paint controls, internal alterations, outbuildings/fences and tree controls apply. Such simple Y/N tables, in conjunction with a heritage overlay, will be essential to successful operation of the planning portal, in relation to local heritage places. They will assist anyone involved in the management of local heritage places, including **accredited heritage professionals**.

There could also be opportunities for accredited heritage professionals to provide the **heritage equivalent of a current Building Rules Consent Only**, where, on balance, their judgements reveal that a full assessment is not warranted in relation to internal alterations.

Subject to specified criteria, what types of minor works could become exempt, accepted or even 'deemed-to-satisfy'?

Should a demolition proposal be able to be more robustly argued for consideration on its merits?

Using accredited professionals to assist statutory functions is envisaged by provisions of the PDI Act. But to what extent could they provide advice or even heritage approvals?



## Where to from here?

Following consultation on the content of this discussion paper, suggestions and comments received will be considered as part of future legislation.

Any suggestions and comments are to be submitted before 9 September, 2016 by the methods listed below.

E: Local Heritage Reform Discussion Paper Feedback [planningreform@sa.gov.au](mailto:planningreform@sa.gov.au)

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