

# 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"

1 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

2 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%.**

4 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.’

5 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.

### 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).

### 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.

Is a traditional local heritage register required?

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

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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