



CITY OF ADELAIDE POSITION ON HERITAGE REFORM

NOVEMBER 2016



INTRODUCTION

1. The purpose of this position paper is to assist Council inform the numerous stakeholders and community members of its position on the State Government's heritage system reform.
2. This position has been informed by Councils submission of 27 September 2016 on the Minister's Local Heritage Discussion Paper.
3. This submission has also been informed by a review of publicly available submissions made to the Department of Planning, Transport and Infrastructure (DPTI) on the Minister's Local Heritage Discussion Paper that has identified areas of commonality as follows:
 - 3.1 Affirmation of the economic, tourism, cultural and sustainability value of built heritage.
 - 3.2 Any new system to recognise and manage change to built heritage being reflective of SA's accomplished past systems.
 - 3.3 The procedural importance of identifying and maintaining the independence of 'heritage listing' decision making from 'heritage management' decision making.
 - 3.4 The need for more engagement on the reforms.
 - 3.5 The need for clarity around heritage and character.
 - 3.6 Having a very high bar to assess the total demolition of a properly investigated and supported heritage listed building.
 - 3.7 Support for robust accrediting of professionals, with those professionals having planning assessment decision powers but limited to low risk forms of proposed development.
 - 3.8 Easy access to all heritage information.
4. Submissions affirmed that past work that has led to existing listings should be acknowledged and not undone. Alongside this, submissions from the development sector seek that existing listings at least be looked at rather than not looked at all.
5. Submissions flagged the risk of a 'framework document' applying historic themes leading to a 'Noah's Ark' approach.
6. The SA Heritage Council is the current authority regarding State heritage. The SA Heritage Council is '*... firm in its belief that there should be separate statutes for heritage listing and heritage management; and the Heritage Places Act 1993 or subsequent equivalent statute, should manage a single integrated heritage register facilitated by one setoff criteria (with different thresholds for state and local heritage places) for place-based heritage assessment.*'
7. The Department of Water, Environment and Natural Resources (DEWNR) is administratively responsible for State heritage. Whilst the DEWNR 'preferred' system is one integrated heritage listing process under a separate piece of legislation and Minister, DEWNR recognises the benefit of management and listing of local heritage under the planning system, provided the State and Local heritage systems are 'aligned'.
8. The LGA seeks more discussion including how this reform relates to broader reform and the 30 Year Plan Update.
9. The National Trust seeks further explanation of the problems with the current system.





CONTEXT

10. Council notes:

- 10.1 The intent of the SA Government to proceed with legislative reform associated with local heritage through the release of a Bill for discussion.
- 10.2 That non-legislative heritage related matters remain under consideration, these including policy to guide assessment of development and clarifying character and heritage. This is touched on in the DPTI Local Heritage Discussion Paper Fact Sheet of 15 September 2016 stating *'Submissions that cover other concepts such as heritage and character policy within the new Planning and Design Code and improved assessment pathways will be considered in the future as these elements of the system are developed. Ongoing consultation will occur about these elements.'*
- 10.3 The DPTI Discussion Paper outlining the reasons for reform as being:
 - 10.3.1 Clarity of criteria and inadequate hierarchy of heritage values (national, state, local).
 - 10.3.2 Poorly/inconsistently applied local heritage criteria.
 - 10.3.3 Uneven recognition of local heritage across the state.
 - 10.3.4 Lack of comprehensive review.
 - 10.3.5 Lengthy/unpredictable listing processes.
 - 10.3.6 Consultation processes that rely too often on 'interim operation'.
 - 10.3.7 Sensitive consultations occurring too late in the process.
 - 10.3.8 Confusion between 'heritage' and 'character'.
 - 10.3.9 Inconsistent Development Assessment procedures and policies.
 - 10.3.10 Formalising a role for accredited heritage professionals.

11. Current Local and State listing processes are different as outlined in Table 1:

TABLE 1: CURRENT LISTING PROCESSES

LOCAL HERITAGE LISTING PROCESS (COUNCIL LED)	STATE HERITAGE LISTING PROCESS
<ol style="list-style-type: none"> 1. Seek Council and Ministers agreement to a Statement of Intent. 2. Council prepares a Development Plan Amendment (DPA) with expert advice to support listing regarding Local heritage criteria. 3. With Minister’s consent, DPA released for two months of consultation followed by a public hearing. Owner specifically invited to comment. 4. With Minister’s consent, the DPA also provided ‘interim operation’ which provides listings with protection during consultation. 5. Council considers all submissions and forwards DPA to Minister. 6. Local Heritage Advisory Committee reviews objections and provides advice to Minister. 7. Minister considers DPA. 8. If approved by Minister, DPA reviewed by Environment, Resources and Development Committee of Parliament. 9. (Under PDI Act, new listings subject to appeal to Environment, Resources and Development Court) 	<ol style="list-style-type: none"> 1. Nomination made by anyone. 2. State Heritage Council or its delegate considers the nomination regarding the State heritage criteria. 3. If considered of State significance, provisionally State listed. 4. The provisional listing is released for three months of consultation. 5. The State Heritage Council then determines whether to confirm the provisional listing. 6. The Minister can request the Council to remove a provisional entry if the Minister of the opinion that its confirmation would be ‘contrary to the public interest’.

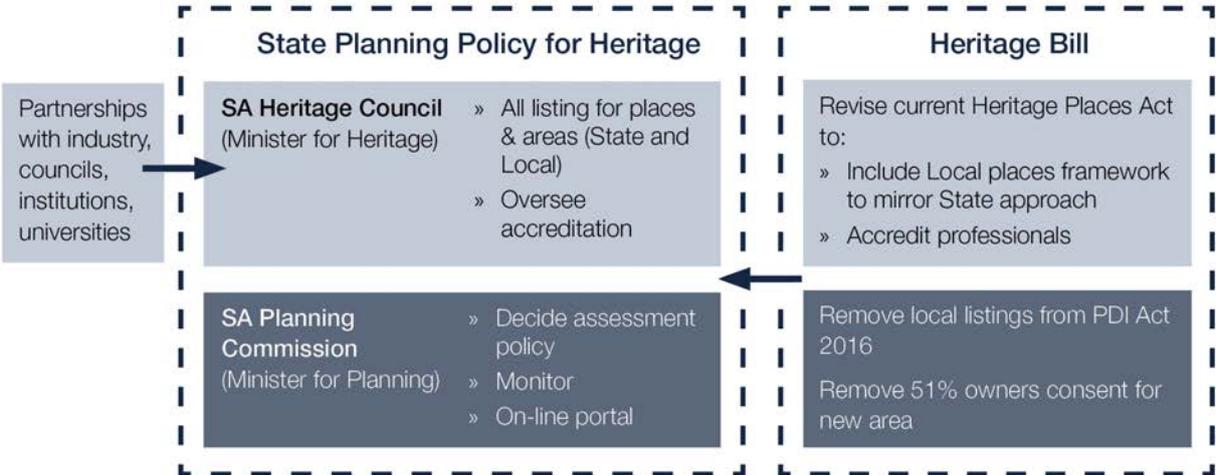


CITY OF ADELAIDE – HERITAGE SYSTEM POSITION – NOVEMBER 2016

- 12. Council seeks a heritage system that:
 - 12.1 Enables the full economic, tourism, cultural, community and sustainability value of our built heritage to be realised.
 - 12.2 Provides for consistent and transparent decision making based on merit and that meets community expectations.
 - 12.3 Enables the appropriate conservation, adaptation, sensitive re-use and development of heritage assets.
- 13. To fulfil these outcomes, Council seeks a single integrated system for the identification of heritage places. This would replace the current separation of State and Local heritage listing processes which results in two authorities, two administrative systems and two sets of differing processes.
- 14. Such an approach will provide the best platform for effective reform to enable consistency of approach, enhance opportunities for streamlining and administrative efficiencies.
- 15. Council’s ideal system illustrated below (Table 2: Framework for Heritage Management in SA) comprises:
 - 15.1 A new State Planning Policy for Heritage to provide overall and high level guidance for heritage management in South Australia (already enabled by the Planning, Development and Infrastructure Act (PDI) 2016).
 - 15.2 Merging of the local heritage listing and identification of historic conservation zone/areas into the existing ‘effective’ state heritage listing processes. This can be enabled through adjustments to the current Heritage Places Act 1993 and removal of Development Plan Amendment local listing processes from the PDI Act 2016.
 - 15.3 Determination of policy and development applications regarding heritage places and areas by planning authorities (already enabled by the PDI Act 2016).
 - 15.4 A partnership approach with government, industry, universities and cultural institutions to support the identification, understanding, measuring, celebrating and synergising of the acknowledged value of heritage. Head powers already exist for the SA Heritage Council in the Heritage Places Act 1993. Council is prepared to partner around heritage.

TABLE 2: FRAMEWORK FOR HERITAGE MANAGEMENT IN SA

Integrated – Transparent – Community Value – Certain – Enabling – Consistent



16. Council's preferred listing process is illustrated below (Table 3: Preferred Listing Process):

TABLE 3: PREFERRED LISTING PROCESS

1. Nomination made by anyone with or without advice from accredited professionals (including made by local government)
 2. SA Heritage Council (SAHC) or its delegate considers the nomination regarding criteria.
 3. If considered to meet criteria, provisionally listed.
 4. The provisional listing is released for three months of consultation.
 5. The SAHC then determines whether to confirm the provisional listing, with the SAHC decision subject to appeal rights by the owner:
 6. The Minister for Heritage can request the SAHC to remove a provisional entry if the Minister is of the opinion that its confirmation would be 'contrary to the public interest'. The 'actual decision' to remove should be by an expert body.
 1. The expert body should consider 'public interest' advice from the State Planning Commission (SPC). The SPC advice should cover impacts of confirming the listing on future development and other development alternatives.
 2. The expert body should provide a draft decision (along with the SPC advice) to the nominee, land owner, SAHC and local council in order to seek final comment
 3. The expert body's final decision with reasons and the advice received be public
 7. The process should be supported by practice directions and advisory guidelines
-
17. Ideally, if a heritage authority with expert advice considers a building to be of heritage value to warrant listing, the building will remain listed. The new Planning and Design Code should have the highest bar possible for the assessment of proposed demolition of heritage places.
 18. An ideal system has mechanisms to ensure 'independence' of advice received by a planning authority making decisions on change impacting a heritage listed building. This includes mechanisms to ensure 'arms-length' decisions by a planning authority when receiving advice from accredited professionals acting for proponents of development.
 19. Council has strong reservations about the use of private certification in heritage development assessment decisions and expects it will lead to inconsistent, convenient or inconclusive advice on applications involving heritage. The well-regarded heritage advisory system is recognised as independent best practice.
 20. It is acknowledged that the current State listing process provides a 'public interest' test, exercised in recent years regarding, for example, Maughan Church and Union Hall.
 21. If a public interest test is to continue, it is Council's position that:
 - 21.1 The legislative test be reviewed to be weighed as high as possible
 - 21.2 The decision maker to 'weigh' the public interest be expert in weighing 'development' and 'heritage'. A political role is not supported.
 22. To support strengthening exercise of 'public interest', Council proposes:
 - 22.1 The decision maker receives advice from the State Planning Commission (SPC) around 'public interest'. The intent would be that the SPC's expert planning advice would cover economic, social, cultural and environmental themes, as well as alternatives. As a decision to not confirm a provisional listing is invariably associated with a 'development', it makes sense that such advice be considered.
 - 22.2 The decision maker's draft decision with reasons be provided to the nominee, owner, SA Heritage Council, and local council to enable comment within defined times.

- 22.3 The final decision with reasons be made public.
- 22.4 The above process steps be transparent. It is acknowledged that community awareness and attention will likely be high but a process needs to be established that enables open consideration.
23. This proposed system can be readily achieved through simple amendments to existing legislation and in doing so, meet the recommendations of the Expert Panel on Planning Reform.
24. With the Heritage Places Act also being in place since 1993, the opportunity is presented now for a consolidated set of amendments to provide for the long term direction for heritage management in South Australia.
25. Council re-affirms that:
- 25.1 Buildings already listed should stay listed through the transition to the new legislation and will not be subject to appeal (as confirmed by the Minister for Planning).
- 25.2 Buildings proposed for listing in recent years, but not progressed, be at least 'considered' by the new heritage authority
- 25.3 It seeks the removal of the requirement that 51% of owners agree to a proposed heritage character or preservation zone or sub zone (as provided in section 67(4) and (5) of the PDI Act 2016). Council affirms that it is the 51% requirement that is the issue, not the intent for significant engagement and support for the introduction of policy seeking the 'conservation' of the historic character of a suburb or part of a suburb.
- 25.4 Historic (Conservation) Zones already existing should continue in the new system.
- 25.5 Proposed Historic (Conservation) areas should be established in the City's southern residential areas. These are proposed in the Residential and Main Street Development Plan Amendment Part 2. This Amendment has not progressed at all in the last two years.



ENGAGEMENT POSITON

26. Council seeks that:
- 26.1 DPTI sets up a 'Heritage Reform Roundtable' of peak bodies - inclusive of economic, business, tourism, heritage, development, design, planning, community and local government - to discuss the Bill, with information from this available and considered as a key input into heritage and planning reform.
- 26.2 DPTI provides information that:
- 26.2.1 explains the Bill in the context of the overall future heritage system.
- 26.2.2 outlines the engagement process (info sessions, workshops, websites etc) so people can easily find the info, know how to ask questions and understand and then how to comment.