

File Number: S/04363
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City of
 Norwood
 Payneham
 & St Peters

[Insert Date]

The Parliamentary Officer
 Environment, Resources and Development Committee
 By Email: ERDC.Assembly@parliament.sa.gov.au

Dear Sir/Madam

ERD COMMITTEE HERITAGE INQUIRY

I refer to the Environment, Resources and Development Committee Inquiry into the operation of the Heritage system in South Australia.

Thank you for the opportunity to provide a submission on this important issue. To this end, the announcement of the Heritage Inquiry presents a timely opportunity for much needed investigation and provision of clarity on heritage matters, as part of broader planning reforms.

The management of built heritage is of particular interest and importance to the City of Norwood Payneham & St Peters. The rich and varied heritage character that exists throughout the City of Norwood Payneham & St Peters, reflects the City's association with the original settlement of South Australia and the cultural influences that have played a significant role in its development since that time. This unique and attractive heritage character, sets the City apart from other areas and makes the City's neighbourhoods a desirable and much sought after place to live, visit and conduct business. In particular, the City comprises one of Adelaide's best concentrations of early, mid and late Victorian residential development, ranging from small settler cottages to large Italianate villas and mansions. It is only through the conscious efforts in identifying and protecting these buildings and places through planning controls, that many of these remain today. In recognition of the valued heritage character, the City of Norwood Payneham & St Peters is the only Local Government Authority in South Australia which has been admitted as a member of the International League of Historical Cities.

Built heritage is an irreplaceable and precious asset that is inherited from the past, helping to define who we are and reminds us of where we have come from. Built heritage can be found in our urban environment and in our cultural environment, all of which provide a window to the past and play an important role in telling the story of our history and our culture. By protecting our City's unique heritage character (in fact, the built heritage of South Australia generally), as policy makers we will ensure that it is appropriately managed for future generations to interpret and enjoy.

This Council has significant experience in undertaking heritage surveys and the preparation of heritage policies, through a number of Local Heritage Place and other associated Development Plan Amendments and through the careful, conscious and practical application of policy through the Development Assessment process over the past forty years.

The Council's Development Plan contains:

- 73 State Heritage Places;
- 664 Local Heritage Places;

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- 2 Historic (Conservation) Zones with 26 differentiated Policy Areas based on the unique attributes of each area, expressed through Desired Character Statements; and
- 1475 Contributory Items.

In recent years, the uncertain future of local heritage brought about by a lack of understanding of how the planning system works and a lack of clarity of what is being sought to be achieved has been of significant concern to local councils and communities. In its publication entitled *'The Planning System We Want'* (2014), South Australia's Expert Panel on Planning Reforms, sought to *'place heritage on new foundations'* recognising the value of heritage and outlining several recommendations for changes to the heritage framework including: a single integrated statute for heritage laws, statutory body, and integrated heritage register; establishing a heritage code of practice; accreditation of heritage professionals; audit of existing heritage listings; and stable financial support for heritage conservation and protection.

The subsequent Local Heritage Discussion Paper titled *'Heritage reform – an exploration of the opportunities'*, which was released by the Department of Planning, Transport and Infrastructure (DPTI) in 2016, continued the conversation. Unfortunately however, a number of the Expert Panel's recommendations were not pursued in this Paper. The City of Norwood Payneham & St Peters provided a submission on this Discussion Paper, which outlined several concerns, including the narrow and unbalanced focus, the lack of evidence for the conclusions which were reached and recommended strategies, the proposed new local heritage criteria and suggestions of threshold tests/numeric quotas, among other issues. The outcome, status and direction of heritage reform has not been communicated those persons and organisations which made submissions on Discussion Paper with the state strategic position on local heritage remaining concerningly silent since 2016.

This vacuum has resulted in a number of conclusions being drawn, ranging from there being no change to the current system through to the theory that there is a clear strategy of dismantling the whole system. The lack of resolution has also prevented this Council from pursuing heritage related Development Plan Amendments (DPAs). In this respect, in June 2016, the former Minister for Planning declined to proceed with the Interwar Housing Heritage DPA, which had an agreed Statement of Intent signed between the Minister and Council, on the basis that the South Australian heritage framework and listing criteria was outdated and the *"justification for Heritage Areas has become inconsistent and lacking rigour"*. This position is fundamentally flawed and to further add confusion there has been no explanation of how this conclusion was reached. The decline to allow Council to proceed with the DPA was accompanied by the offer to progress a review in *"unpacking the issues around heritage and how we untangle the issues of heritage and character into the future"*. It is disappointing that these important policy and legislative issues have to date not been resolved and at this point, built heritage does not appear to be a State priority in the draft State Planning Policies which have been released.

As the broader planning reforms progresses, the uncertain policy framework for local heritage and especially the status of Historic (Conservation) Zones and Contributory Items remains a significant obstacle to resolving the transition of current planning policy into the new planning system. The recently released draft State Planning Policies underrepresent the importance and detail relating to cultural heritage and character areas and disappointingly contain no State Planning Policies relating to built heritage. As the *Planning and Design Code* has not yet been formulated, it is not clear what processes and policies will apply to heritage identification and protection (at all levels) in the future.

In light of this uncertainty, the Committee's Heritage Inquiry is considered a welcome opportunity for the issue of State and Local heritage to be addressed, discussed and form recommendations for the implementation of a policy framework through the PDI Act and the Planning and Design Code. Please find below comments outlined under the questions in the Inquiry Terms of Reference.

1. Highlighting the differences in, and consistency of, processes and criteria between listing and assessing local, state and national heritage

The significance, value and contribution of heritage listed items necessarily varies between the three tiers of heritage (local, state and national), so it is considered reasonable for there to also be variation in the process and criteria for listing of each tier. An item which warrants national level heritage listing must satisfy a greater and different 'test' of heritage, cultural value and context compared to an item which is being considered as a place of local heritage value.

It is noted that criteria for Commonwealth and National heritage listings, as outlined in the *Environment Protection and Biodiversity Conservation Act 1999*, differ only in the use of the term 'significant' or 'outstanding'. However, there are separate and distinct criteria for listing State Heritage Places (as outlined in the *Heritage Places Act 1993*), as compared to Local Heritage Places (as outlined in the *Development Act 1993*).

In 2016, the *Local Heritage Discussion Paper* recommended new criteria for listing Local Heritage Places which were closely modelled on the State Heritage Place criteria, with differences generally limited to the replacement of 'state' with 'local' (i.e. a similar framework to Commonwealth vs National listings). In its submission, the Council did not support this approach as it was not seen as necessary, would risk the removal of existing Local Heritage Places which may not meet new criteria and it fails to acknowledge that the value of a Local Heritage Place lies more intrinsically in its context within, and contribution to, the local area. The Council's position on this issue remains unchanged.

The policy applying to the proposed demolition of buildings or structures specifically identified at the various layers within the heritage/ character hierarchy (including Contributory Items), is a priority for resolution in the South Australian planning system. Currently, demolition control policies differ between the tiers of heritage, which is warranted, however there is also significant variation *between* council Development Plans in the policies which govern the demolition of buildings, for each tier of the heritage 'hierarchy'. This has occurred through the absence of a robust oversight mechanism which is a role which the State Government must play in providing direction.

By way of example, in the City of Norwood Payneham & St Peters Development Plan, the policy states that a State Heritage Place must be '*so seriously unsound as to be unsafe and irredeemable*' and in some zones is listed as non-complying development, whilst demolition is treated 'on merit' in other zones, reflecting the scope of previous heritage policy amendments, or the listing philosophy of the time.

The benefits or otherwise of greater consistency in demolition controls should be investigated as part of this Inquiry and through the planning reforms more generally. Given the importance of this issue, it is expected that the *People and Neighbourhoods Discussion Paper*, which the Council understands will shortly be released by DPTI as part of the discourse associated with the drafting of the Planning & Design Code, will address in detail the issue of heritage definitions, listing criteria and the direction for Code policies which seek retention of heritage properties and specify demolition control.

Historic (Conservation) Zones and Areas are envisaged by the *Development Act 1993*, however there are no specific criteria for identifying these areas. The *Planning Bulletin – Heritage* prepared by Planning SA and Heritage South Australia in 2001, provides the only guidance for establishing Historic (Conservation) Zones and Areas, which includes the need to provide supporting investigations including a heritage survey. Notwithstanding the absence of specific criteria, the identification of an Historic (Conservation) Zone/Area occurs through a Development Plan Amendment (DPA). The process of a DPA is clearly articulated in the *Development Act 1993* and includes the need for Ministerial approval at various stages of the process and (as appropriate to the nature of the amendment) a transparent and often extensive public consultation process. Despite this legislative recognition of Historic (Conservation) Zones and the established planning controls for these areas, the ability to introduce new or extend existing Historic (Conservation) Zones, has been the subject of uncertainty for many years. In short there is no clear direction.

The *Development Regulations 2008* provide different assessment pathways for development in Historic (Conservation) Zones and Areas compared to development outside of these areas, including demolition control, and ancillary residential structures such as fencing and verandahs. Desired Character Statements are incorporated into Development Plans to describe the unique policy context of a Historic (Conservation) Zone/Area, and articulate which type, age, and style of buildings contribute to the character of the area and should not be demolished. Desired Character Statements also guide the assessment of development to ensure development outcomes will complement the character and context of the site.

In the City of Norwood Payneham & St Peters Development Plan, some demolition control policies apply to character buildings which were constructed prior to 1920s or 1940s, while some areas have specifically identified Contributory Items. This policy approach was supported by the Minister for Planning in 2005, through two Heritage Plan Amendment Reports. As with State and Local Heritage

policies, demolition control policies for Historic (Conservation) Zones and Contributory Items also differ between Councils.

Unlike Historic (Conservation) Zones/Areas, Contributory Items are not envisaged within the *Development Act 1993*. However, as with Historic (Conservation) Zones/Areas, the *Planning Bulletin – Heritage* provides guidelines for identifying Contributory Items, and the identification process occurs through a DPA. According to the *Planning Bulletin – Heritage*, Contributory Items “are surviving examples of the particular period and its character”. The Council has applied this test in nominating Contributory Items across the City, of which there are 1475 identified by property in the Development Plan.

Despite all being identified through a Development Plan Amendment process as there are no set legislated criteria for identifying Historic (Conservation) Zones or Contributory Items, the approach and ‘test’ for their identification has differed across Councils, even amongst Councils which have a similar context and built form. In light of this, it is recommended that legislated criteria be developed to provide consistency in the identification of Historic (Conservation) Zones/Areas and Contributory Items. However, the criteria must be carefully formulated to ensure that existing Zones and Contributory Items are not at risk of wholesale retrospective removal or ‘de-listing’ based on the new criteria.

The formulation of new criteria needs to recognise and build upon the former *Heritage Bulletin* guidance of Contributory Items comprising the “surviving examples of the particular period and its character. Historic (Conservation) Zones and Contributory Items are overwhelmingly held in high regard and valued by local communities as representing and preserving the character of the local area and establishing community expectations of development control. Historic upward trends in property values within the City’s Historic (Conservation) Zones also reflect the value of these areas by the broader community and they are highly desirable and sought after areas to live in.

Any changes to the process of identifying Historic (Conservation) Zones/Areas will also need to consider Section 67 of the *Planning Development and Infrastructure Act 2016 (PDI Act)*, which requires the designation of a heritage character, preservation zone or subzone to be approved by 51% of relevant owners of the affected allotments. While it is appreciated that the intent of the ‘51% test’ is to require community support, this could lead to inconsistencies between the listing of different areas of equal merit (i.e. areas with very similar qualities have different outcomes because the majority of owners in each area voted differently). The application of this legislative 51% support test is expected to be impractical to implement and does not reflect the listing process as having a broader support or value than those of the property owners.

It is considered appropriate for the criteria for State Heritage Places, Local Heritage Places, Historic (Conservation) Zones/Areas and Contributory Items, to be tailored for each type of listing in the hierarchy as each type of listing is dealt with differently in legislation and policy. However it is considered appropriate for each set of criteria for the different tiers to be consistent across the state, as outlined above. It is not considered necessary for there to be national consistency for the state and local level heritage items due to the nature of Australia’s state-based planning systems.

It is recommended that practice directions be provided regarding the process and consideration of each level of heritage listing. The *Planning Bulletin – Heritage* provides useful discussion and guidance beyond what can be provided in legislation, however a new set of guidance notes will be required for the new planning system. This will help to address any issues around interpretation and application of the heritage listing criteria.

2. How heritage should be managed in the future; including, but not limited to investigating:

- a) **How should the process for listings (from initiation to final placement on the appropriate register) be managed, and by whom?;**
- b) **Who should have the right to be heard in relation to listings?;**
- c) **Who should be the decision maker for listings and review?; and**
- d) **What processes should be in place for the review of listings?**

The thoroughness of the current Local Heritage DPA procedure results in a lengthy and resource intensive process that is often not desirable for Councils, land owners or the community more generally. As such, a simplification of the listing process would be supported in principle, provided the

streamlining is not at the expense of obtaining appropriate professional (heritage) advice, community input and review by an independent body.

It is recommended that the process of nominating Historic (Conservation) Zones/Areas, Contributory Items and Local Heritage Places, continues to be initiated and managed by the local Council, with the exception of private Code Amendments as discussed further below.

In determining which properties to propose for heritage listing, assessing the heritage value of a place should be undertaken thoroughly, with appropriate expert advice and against established criteria. The assessment of the heritage value of a building should take into account the qualities of the place and its local context but should not be subject to predetermined threshold tests or numeric quotas, based on limits to the number of places for each heritage theme or era. Numeric quotas could prevent genuinely deserving places from being listed and could potentially lead to places being listed arbitrarily in order to 'make up' the quota. Identification of Historic (Conservation) Zones/Areas should involve an assessment of the qualities and character of the area in balance with the relevant Regional Plan and clarity of policy expression in the conservation of the desired attributes for that area. It remains unclear as to why this concept of quotas was introduced.

In recent years, despite the criteria and process for listing Local Heritage Places under the *Development Act 1993* being unchanged, there appears to have been a shift in the consideration of Heritage DPAs by the Minister and the Department of Planning, Transport and Infrastructure, with the effect of reducing opportunities for heritage protection. Rather than independently assess each proposed place against the legislative criteria, a "quota" system of considering similar representative buildings elsewhere, has pervaded into the review process, reducing the extent to which new heritage listings can be considered. This appears to have been based on the underlying premise that a heritage listing will reduce or constrain development outcomes for a site.

It would be undesirable for Councils and property owners within any new system, to be unclear about what evidence or tests need to be satisfied to demonstrate whether a place meets local heritage criteria. As such, it is recommended that Practice Directions be provided outlining the expectations of the Commission (or future body) with respect to both the criteria and the evidentiary basis supporting proposed heritage listings.

Unlike the State Heritage listing process, current Local Heritage DPAs do not facilitate individual or pro-active heritage listing nominations from members of the public. Due to the time, resources and complexity of the DPA process, a Local Heritage DPA would not ordinarily be initiated based on single (or very few) nominations for listing. This has resulted in requests to include or remove a property on a Local Heritage list to remain unprogressed for many years (if at all). Section 73(2) of the new *PDI Act 2016* will permit a person who has an interest in land to propose an amendment to the *Planning & Design Code*. As such, in the future, a "person who has an interest in land", with the approval of the Minister, will be able to initiate a Code Amendment to alter a heritage overlay/table etc. It is unclear who will constitute a person with an interest in the land and how the Minister would progress single listing nominations or conflicting nominations, if the nominator and owner did not agree. The wording of this new legislative provision does not appear to preclude a proposal to delist a heritage place, which has the capacity to undermine the integrity of the heritage listing process and removes certainty for all. Again, there has been no transparent justification for this new provision.

Whilst a reduction in the 'red tape' surrounding heritage listings is generally supported, careful consideration must be given to the implications of this process. For example, assessing the heritage value of a Local Heritage Place should involve a contextual assessment of how the Place 'sits' within the local area. A thematic, comprehensive local area heritage survey is currently undertaken by a heritage expert as part of a Council-led DPA process and proposed heritage places ordinarily share commonalities such as the era of construction. However, a comprehensive, thematic local area survey is unlikely to be undertaken for a private code amendment. As such, the complexity of this issue will need to be explored further and it is recommended that the future *Planning Development and Infrastructure Regulations* and/or Practice Directions should provide clear parameters for what is required for all Code Amendments to ensure a consistent and comprehensive process for any changes to the *Planning & Design Code*. The Practice Direction should also address who pays for the costs associated with a private code amendment to list or delist a property (including investigations such as a heritage survey) to ensure equity.

Currently, the initiation of a Local Heritage DPA occurs through a confidential process to prevent demolition or other undesirable development outcomes, until the draft DPA is ready for public consultation and concurrent interim operation. The interim operation period has been criticised for being secretive and not transparent. There is potential to shift to early engagement with owners and properties which have been reviewed for potential listing, as it may give rise to broader nominations and provides greater community knowledge of and appreciation for the context of local heritage. However, this transparency needs to be carefully balanced against not undermining the listing process through the risk of demolition applications being lodged whilst listing processes are under construction. Careful consideration will need to be given to how interim operation or similar can be introduced through these early stages. That said, a formal public consultation period notifying both directly affected property owners and the public more generally, regarding the listing of specifically identified sites, must be retained as part of any future processes.

Historically, following community consultation, heritage DPAs and associated submissions, were reviewed by the Local Heritage Advisory Committee (LHAC) as a sub-Committee of the Development Policy Advisory Committee (DPAC). It is understood that in the new planning system, amendments to heritage listings within the Planning & Design Code will occur through a Code Amendment process, which are approved by the Minister for Planning and this decision may be made in consultation with the Commission. It is recommended that any changes to heritage listings or zones are approved by a third party body, and that the same body, be responsible for consideration of both state and local heritage matters to provide some connection and consistency of this decision making (while maintaining the recommendation that different levels of listing be determined by different criteria). It is recommended that the third party body is an independent entity operating under the Minister responsible for Heritage matters.

Although property owners and others making a submission or objection had the ability to be heard by LHAC, there was no opportunity to appeal a heritage listing once LHAC had issued a decision. The PDI Act introduces the opportunity for the owner of a property designated as a place of local heritage value to appeal to the ERD Court against the decision to make the designation. It is expected that the yet to be drafted PDI Regulations will provide parameters for this appeals process, such as the timeframe within which the appeal must be made. Outside of this process, it is expected that the designation of local heritage places could also be amended through a Code Amendment process, which can be initiated by "*any person with an interest in the land*". This provision of the Act needs careful consideration and the setting of parameters to guide under what circumstances this may be warranted without undermining the zoning or listing process.

The concept of retrospective reviews of heritage listings (i.e. a re-assessment of existing listed places) is one which should be approached with great caution. To determine the appropriateness or otherwise of an existing listing would require an expert review(s) of the heritage qualities of each place or area. In the case of the City of Norwood Payneham & St Peters this could involve the re-assessment of 73 State Heritage Places, 664 Local Heritage Places, 1475 Contributory Items and a large proportion of the Council area which is currently designated as Historic (Conservation) Zone. Such an immense task would be exceptionally resource intensive and not supported by many members of the community who may object to the cost and/or may object to the potential loss of heritage protection within their local community. It is unclear whether the second generation of Code Amendments to implement the Planning Reforms will propose the wholesale retrospective review of listings. This requires clarification.

Notwithstanding the above, it is acknowledged that a review process could be explored if it facilitates the review of heritage listings (or omissions) which were not applied fastidiously. As the interpretation and application of heritage criteria can differ between councils and over time, there may be some properties which do not meet the currently accepted standards and some properties which do (or did at the time) meet the necessary standards but were not listed.

3. What is the relationship between 'character' and 'heritage'?

It is acknowledged that the relationship between 'character' and 'heritage' can easily become confused resulting in the terms incorrectly being used interchangeably. The Council has on several occasions expressed its desire to work with State Government to inform the relationship between character and heritage and the implications of this for planning policy.

Character, in a built form or geographic sense, relates to the qualities of an area including street and allotment pattern, building scale, building materials and details, level and nature of activity, extent of mature vegetation etc. It is these features which distinguish one area from another. Character can include desirable or undesirable attributes and planning policies will generally seek to preserve or change these attributes depending on the desired future character of the area.

A character zone, such as a Residential Character Zone, is envisaged within the South Australian Planning Policy Library, as typically being an area with a 'high quality' character which is desirable to retain and preserve, but does not necessarily contain homogenous building stock as may be the case for a Historic (Conservation) Zone. For example, a character zone may contain a range of building ages and styles but have an intact allotment pattern, generally consistent building heights and roof forms, spacious building settings and established gardens. Design criteria or policies for a character zone may not be as specific as a Historic (Conservation) Zone, but still require new buildings to complement the existing built form character through elements such as wall height, setbacks, roof pitch etc. Planning controls in a Residential Character Zone do not extend to preventing demolition, but are likely to set out desired allotment size and the design considerations for replacement dwellings.

In its most simplistic sense, **heritage** is what the community values from the past. What a community values will differ both between and within communities based on the different experiences and cultural groups within that area. In the planning and development framework, 'heritage' is commonly, although not always correctly, used as a synonym for a 'historic place'. Identifying heritage places and areas for planning policy is a process of identifying one 'experience' of heritage, and aims to preserve a particular place or theme which is important in the history or identity of that area. In this sense, built form **heritage** is often (but not always) a contributor to the **character** of an area.

The qualities or contribution of built heritage can differ amongst the different types of heritage places. A State Heritage Place may be an iconic and significant building within an area, such as a Town Hall; a Local Heritage Place may be an high quality example of a building or land use which was important in establishing the local community, such as a school or church; and a Historic (Conservation) Zone/Area may be an area which contains a high concentration of original or early buildings and subdivision patterns, generally containing buildings of a particular theme or era such as cottages, villas etc. These buildings which contribute to the historic landscape are often protected through identification as Contributory Items, as recognised in the guiding document, the *Planning Bulletin – Heritage*.

If future policies 'water down' recognised heritage areas to character areas and without unique attribute identification, there is significant risk that the heritage value and identity of that area will be lost through demolition or detrimental building alterations, and significantly change its character. As such, it is recommended that the future planning framework provides for continued protection of places and areas with recognised heritage value – for what is currently described as State and Local Heritage Places/ Areas, Historic Conservation Zones with Contributory Items. This level of heritage value should also be recognised and reflected in the draft State Planning Policies.

Character Zones should continue to be a zone offered through the Planning and Design Code, with very limited use of Deemed to Satisfy assessment pathways, to allow for careful "on-merit" planning assessment of development applications, taking into account the unique character attributes of the particular locality.

4. Have there been unexpected or perverse outcomes?

The listing of Heritage Places at both the State and local level has not always resulted in successful retention and appreciation of the heritage asset. The 'Bell's Plumbers Shop' is a State Heritage Place located at 15 Payneham Road, College Park. The property has deteriorated over many years and experienced significant damage from an explosion which occurred in 2010 and a fire in 2017, with no restorative or even active maintenance action taken by the property owner. Whilst it is most unfortunate that the building has been allowed to deteriorate to its current condition, the Bell's Plumbers Shop still retains important heritage value, not just to the local community. The building represents an important example of a Victorian-era dwelling and shop and is visible to tens of thousands of commuters and pedestrians every day, given its prominent location adjacent the intersection of Payneham, Magill and Fullarton Roads. The SA Heritage Council recently considered and re-affirmed the former Bell's Plumbers Shop status as a State Heritage Place. Whilst the Heritage

Council's decision is commended by the Council, its ongoing listing as a State Heritage Place may well be a futile exercise if the building is continued to be allowed to deteriorate further, given its fragile structural condition.

This property has been the subject of extensive enforcement and legal action by the Council and the Department of Environment and Water, due to the unsafe condition of the building and inaction by the property owner to maintain the building in a safe and orderly condition. In September 2010, a Protection Order was issued by the Department of Environment & Natural Resources in relation to the Place, pursuant to Section 39A of the *Heritage Places Act 1993*. The Order was issued for the purpose of securing compliance with the requirement imposed by Section 36 of the *Heritage Places Act*, to take reasonable care of a State Heritage Place. The Order was appealed, however the appeal was dismissed and in 2016, and the owner was successfully prosecuted under the Act for disregarding the Order.

Despite the legal action which has been undertaken to date, no restorative or active maintenance action has been undertaken and the building remains at significant risk of further deterioration. In April 2018, the Council wrote to the Minister for Environment and Water requesting that the State Government intervene by compulsorily acquiring the property, restoring it to a condition which is fit for use and either lease it or re-sell it, to allow a sensitive and sustainable re-development of the site while retaining the heritage building.

While the *Heritage Places Act* currently allows for prosecution and penalties for damage, deterioration or neglect, the Act appears to not extend to the ability to issue an order requiring the Place to be refurbished to a standard which is fit for use or occupation. The Act does allow for the Minister to enter into collaborative Heritage Agreements, however this would not appear to be a suitable option for this property, given the clear lack of co-operation to date from the owner to even maintain the premises in a safe and orderly condition. As such, it is recommended that the Act be amended to allow the Minister and/or the Court, in defined circumstances, to compel an owner to restore a State Heritage Place to a condition which is fit for use or occupation.

In another example of undesirable listing outcomes, the properties located at 157, 159 and 161 Kensington Road, Kensington contain three attached bluestone cottages. The properties at 157 and 161 Kensington Road are both listed as State Heritage Places, while the central dwelling at 159 is listed as a Local Heritage Place. While the properties are under separate ownership, the dwellings form one integrated building and each dwelling is in a similar condition, so it is unusual and illogical for the properties to have different levels of heritage protection, with differing levels of planning controls. Correspondence in 2001 from Heritage SA confirmed that all three dwellings were nominated in 1984, however "for no apparent reason" in February 1989, the South Australian Heritage Committee only recommended 157 and 161 Kensington Road for inclusion as State Heritage Places and only these two properties were ultimately approved in 1990. It appears as though 159 Kensington Road was only identified as a Local Heritage Place in 2005, so presumably this dwelling remained unlisted in the period between 1990 and 2005. It is possible that this discrepancy resulted from the differing desires of the owners at the time of listing. The process of identifying and listing heritage places can require a difficult balance between preserving heritage for the greater good of the community and the objections or concerns of the property owner. However, this particular scenario is not considered to be a desirable, sensible or logical outcome.

Another example of undesirable outcomes of heritage listing is where Heritage Places have not been sufficiently considered or integrated into planning policy, specifically with the recent introduction of the Urban Corridor Zones. The introduction of Urban Corridor Zones was part of the State Government's Inner Metropolitan Growth project, which included DPAs to introduce a new zone to allow mixed use development outcomes of between five (5) to ten (10) storeys, with large tracts of Kent Town and selected sites on The Parade being rezoned to accommodate such development. An important 1860s bluestone cottage on King William Street was listed as Local Heritage Place and rezoned Urban Corridor Zone.

The Council's Heritage Advisor determined that the house was constructed in 1863/4 for the brewer for Logues Brewery located across the road, making it one of the oldest surviving houses in Kent Town. It was later occupied by a Blacksmith and Coach Builder. This Local Heritage Place had a strong relationship to the early development of Kent Town and strong links to the themes of brewing and early horse drawn trams in the area.

The siting options for development included the ability to focus any new buildings to the rear of the site, albeit that this may have had a reduced commercial viability than the proposal to demolish the building and build a new mixed use development. The Council's advice to the Inner Metro Development Assessment Commission (IMDAC) which assessed the application, requested the Commission to carefully consider the weight and importance of these two Development Plan objectives – (ie. retention of Local Heritage Places on one hand and facilitating appropriate development on the other). Of particular relevance was the following clause from the Desired Character Statement for the Urban Corridor Zone:

“Development adjacent to, or on the same site as a State or Local Heritage Place, will be respectful of its heritage character and setting and ensure that new development sensitively interfaces with the original building form. This may, in some circumstances, limit the scale and intensity of development on a site.”

Ultimately the IMDAC determined that the Local Heritage Place could be demolished as part of an application that was approved for the construction of modern mixed use development. This is an example where urban infill policy is not well integrated with the consideration of heritage places. This will need to be given careful examination in the drafting of the Planning and Design Code in designating sites and areas within heritage overlays, but also subject to other layers of zoning objectives.

5. Any other relevant matter

While assessment pathways and development requirements differ between heritage and non-heritage areas and places, there are numerous ways for property owners to make improvements to a heritage listed property and maintain or improve property values. There are sometimes opportunities to subdivide large allotments and there are various ways to sensitively develop adjacent to heritage places. With respect to heritage zones or areas, the intact and established character, combined with a greater level of certainty about development outcomes on adjoining land, are often what makes an area desirable to those who choose to live, work or invest there.

It is also not necessary for all areas to be made available for all types of development. A good planning policy framework identifies areas suitable for different types and intensity of development, such as designating heritage and character areas, as well as areas for medium and high density development. This has been a long standing practice and provides some level of certainty to property owners, residents, business operators etc. However, recent messages and narrative from DPTI indicates a desire for a more 'flexible' planning framework, opening opportunities for a mix of development across a much broader area, which is not supported.

There is a perception that heritage protection results in unreasonable restrictions on development opportunities and is seen by property owners and indeed the development industry generally as a 'burden'. In its 2015 report, *South Australia's Expert Panel on Planning Reform* recognised ways of overcoming this by recommending:

8.8 Financing of heritage should be placed on a stable, long term footing, with discounts on property-related taxes and a heritage lottery providing the basis for heritage grants.

Recognising the contribution which heritage conservation makes to communities and urban areas generally and providing financial support for owners of listed properties, was unfortunately not pursued further through the Local Heritage Discussion Paper nor via any subsequent legislative reform. In its submission on the Discussion Paper, the Council expressed the view that this was a missed opportunity to present a balanced heritage conservation framework, which addresses perceived concerns of owners in the listing process and creates a divided, adversarial heritage system.

Heritage preservation should not be simply about financial cost-benefit outcomes as this fails to recognise that Heritage Places and Historic (Conservation) Zones are of intrinsic value to communities. However, to address one aspect of an economic perspective, over the period 2006 – 2014 the Council committed \$442,000 towards a Heritage Incentives Package (including a free Heritage Advisory Service, a generous grant scheme and the waiving of Development Application fees). The Council's grant funding generated approximately \$2.5 million worth of building work, incorporating renovation to heritage listed buildings, including Contributory Items.

In addition, millions of dollars annually is spent in this City by the private sector on purchasing heritage listed properties and in turn millions of dollars annually is spent on renovating and constructing alterations and additions to existing heritage listed buildings, including Contributory Items. The economic impacts of this part of the housing market cannot and should not be underestimated.

The Council supports the financial support measures and tax incentives to “*place heritage on a stable, long-term footing*”. Financial assistance, in addition to some policy flexibility (with parameters) should be encouraged to demonstrate to heritage property owners and the public more generally, that heritage is a positive and valued aspect of our communities.

Thank you for the opportunity to participate in the Heritage Inquiry process. As set out in this letter, the uncertain future of heritage within South Australia has been a significant concern and the Inquiry presents a timely opportunity for this issue to be addressed. The Council requests that the current draft of the State Planning Policies with its inadequate detail on built form heritage, be reconsidered, acknowledged and to take into account recommendations which seek to achieve an improved heritage system. The lack of a strategic position on heritage at a State level has created a barrier in dealing with heritage in the current framework as well as moving forward with the planning reforms process. The Council hopes that the Committee will consider the concerns and recommendations contained in this submission to contribute to a strong and balanced heritage framework within the new South Australian planning system.

Should you have any questions regarding the Council’s submission or require any further information, please do not hesitate to contact me or the Council’s General Manager, Urban Planning & Environment, Carlos Buzzetti on 8366 4501 or email cbuzzetti@npsp.sa.gov.au

Yours sincerely

Mario Barone PSM
CHIEF EXECUTIVE OFFICER

cc: Mr Matt Pinnegar, Chief Executive Officer, Local Government Association SA
Members of State Parliament
Elected Members