

State Planning Commission

7 August 2019

RE: HERITAGE AND CHARACTER IN THE NEW PLANNING SYSTEM

The Environmental Defenders Office (SA) Inc (“the EDO”) is an independent community legal centre with over twenty five years of experience specialising in environmental and planning law. EDO functions include legal advice and representation, law reform and policy work and community legal education.

The EDO appreciates the opportunity to provide a response to the recent release of suite of policy papers covering this topic by the State Planning Commission (the Commission).

Our heritage is a lasting legacy for society and is subject to particular protections in our legal system including planning laws. The most important thing that planning as a discipline can achieve, is to protect that which is good and sought by the community in a given place, town or city. Determining how that place including it’s heritage is subsequently managed and allowed to change follows this principle. Good planning is about what benefits the public good, not just private interests. It is for the well-being of the whole community, the environment and future generations.

As per Judge Gray :

Planning legislation promotes the retention of heritage properties because to do so is in the public interest. The public interest is not to be overridden simply on the ground that the public interest may conflict with the private interests of the owner.^[46]

It is important to keep original historic fabric but also facilitate adaption for contemporary use, by alterations and additions internally and to rear, for new uses and flexible arrangements. Retaining fabric saves embedded energy and employs skilled tradespeople. Heritage preservation provides opportunities for creative design and use of the original building and it’s surround. Heritage preservation can aid urban consolidation and population

growth by the splitting of one house into several dwellings and using rear gardens for 'hammerhead' type development.

An important part of heritage are our state's Historic Conservation Zones (HCZs) and Contributory Items (CIs). There are just under 12,000 CIs registered in South Australia. All but 112 are located within HCZs. This figure represents just 1.8% of the total 741,748 separate and medium-density dwellings in our state (ABS 2016).

HCZs are residential areas which show the history of society as a collective and the interaction of the participants within that society. Their role is to conserve the original historic fabric not to create an area of particular desired character, although this is usually a resultant side effect of conservation. In contrast individually listed Heritage Places/Items are important for their individual unique and specific characteristics, (such as historic construction, aesthetics, cultural representation or association with a notable person). The critical aspect is the 'collective' ie retention of the collective as *the whole is far greater than the sum of the individual parts*.

The Heritage Planning Bulletin provides the framework for "an integrated and balanced approach to identifying, protecting and managing South Australia's heritage" and has been used by Local Government since 2001. CIs are defined, as "not a near equivalent to a Local Heritage Place, but are surviving examples of the particular period and its character" (Bulletin, page 17).

The Bulletin provides guidelines to Councils for the establishment of HCZs, including the retention of, and mapping of, CIs. Some but not all CIs have been through thorough assessment processes and authorised by the Minister of the day. There has been varying owner support through these processes, for example with the Norwood, Payneham St Peters Council process in 2005/06 only 4% of owners objected. We note however that the approach to listing CIs prior has not been consistent across Councils.

In relation to development applications the Bulletin states:

Development Plan policies for Historic (Conservation) Zones or Policy Areas should:

- conserve the elements which contribute to the historic values of the area;
- clearly identify how opportunities for infill development are to occur by providing policies to guide infill/replacement development within the area;
- ensure that new buildings reinforce and enhance the historic character of the zone; and
- encourage, where appropriate, sensitive additions to the built form.

Contributory Items

Where contributory items have been identified it is expected that they would only be located within Historic (Conservation) Zones or Policy Areas.

Contributory items are not a near equivalent to a Local Heritage Place, but are surviving examples of the particular period and its character. Policies applying to contributory items should be directed at preserving the historic elements identified through investigations as contributing to the historic character of an area. For example, policies may state:

- that contributory items should be retained;
- that alterations and additions to contributory items should be developed to reflect and or complement the style and historic era of the item/area; and
- that redevelopment of places and sites that are not deemed as 'contributory' should reflect and or complement the historic character of the Zone.

Also, as with State and local places, different categories of public notification assigned to development affecting contributory items may be applied through policy. For example in some circumstances it may be appropriate to recommend that 'demolition' of a contributory item be designated as a Category 2 development, supported by policies seeking retention of contributory items.



Nova Cinema, Adelaide

- 3 *(Conversion note: optional policy (use only where relevant in a Development Plan))* Places such as land, buildings, structures and landscape elements that contribute to the historic character of the area identified on the *Overlay Maps - Heritage* and more specifically identified in the respective [Table X/X - Contributory items](#), should be retained and conserved.
- 4 *(Conversion note: optional policy (use only where the Development Plan contains contributory items))* Development of a contributory item should:
 - (a) not compromise its value to the historic significance of the area
 - (b) retain its present integrity or restore its original design features
 - (c) maintain or enhance the prominence of the original street facade
 - (d) ensure additions are screened by, and/or located to the rear of the building
 - (e) ensure original unpainted plaster, brickwork, stonework, or other masonry is preserved, unpainted.

Some Councils have adopted the State-recommended policy wording for CIs, others have policy variations to the above. An application for partial or complete demolition is assessed against the provisions of the relevant Council's Development Plan. Complete demolition of CIs is usually only considered if the structure is proven to be unsound (by a suitably qualified expert) and in a state of disrepair. Such policy has generally been successful in preventing demolition by deterring such applications.

Proposed Reforms

The policy papers released in May set out a number of proposals including the recognition of existing HCZs via a new Local Heritage Area Overlay in the planning and design code (the Code). CIs will not be specifically identified, but where they are located within an existing HCZ, they will be contained within the Overlay which will have controls in place to manage demolition.

It is unclear as to the fate of CIs outside of HCZs but it is likely that demolition of these buildings would be a form of accepted development with no planning assessment being applicable. Demolition within the Overlay is proposed to be a 'performance assessed' type of development.

The proposed demolition test for buildings within the Overlay includes consideration of:

- the heritage values of the existing building and its contribution to the heritage values of the area;
- proposed replacement dwelling;
- contextual analysis outcomes; and
- how well the theme is represented.

The EDO understands that the structural integrity/safety test currently in many development plans is likely to be included.

The EDO is very concerned that what is proposed could make current CIs more vulnerable to demolition at the same time increasing uncertainty, assessment timeframes and applicants' costs in determining whether their building contributes. There is also the potential for negative impacts on the value of properties in HCZs if demolition controls are weaker. The property values in areas such as St Peters rely on the area's historical buildings not new replacements or reproductions.

By not transferring CIs into the Code, the Commission appears to be at odds with it's own stated process for introducing like for like policy. In addition, the current proposals do not

show a clear intent to properly protect CIs. Depending on how they are worded and applied the new reforms could seriously erode the current policy strength with significant impacts on streetscapes and neighbourhoods.

Having a list of places and clear policies is essential to provide certainty. Rather than being able to identify a property with heritage values on a list and map, each application will have to be assessed regardless of whether the building is original or built more recently. There is a high degree of subjectivity with arguing each building's value.

It is concerning that the assessment may involve new and potentially more flexible demolition policy tests. For example, the new demolition test of thematic representation brings with it all the "Noah's Ark" connotations. This test together with the new contextual analysis is evidence in our view of weakened policy intent.

The criteria of "proposed replacement building" could suggest that if the replacement generally fits within a loose streetscape context, then demolition should be approved. This could be worse if it is assessed by a council planner or consultant who doesn't have any understanding of why the HCZ was created in the first place and what the values are to be protected. Decisions to demolish could be based on a replacement building considered to have a 'good design'. Such decisions fundamentally confuse the value of built form 'heritage' with 'character'. 'Heritage' is not something that can be created or reproduced today. It is not a copy of something which existed in the past, it is the actual (original) thing that existed. In contrast, 'character', can be created, copied, mimicked or reproduced. Everything has 'character' of some form. Items built today have '2019 character', even if they are a reproduction 'revival' style of the past. New construction can never maintain the character that is comprised of actual historic character homes. Reproduction houses, in place of original historic houses, that are not authentically done, with lower ceiling heights and compromised detailing, diminish the genuine historic character, and good reproduction houses, whilst they might visually fit in and not spoil an area, confuse the story of how our suburbs evolved, and should not replace the genuine article.

Recommendations

Our key submission is that the recommendations of the Environment, Resources and Development Committee into heritage reform should be the basis for the Government's and the Commission's approach to heritage places, conservation areas, CIs and character areas in the new planning system. The Committee's Report recommends that a "review be undertaken of local and state heritage places and contributory items, with the aim of working collaboratively with community and local government" (page 4) ... "to commence in the year

2020” (page 7) and”irrespective of how contributory items are categorised, assessed and listed, the community expects contributory items to have some protection” (Page 41) .

The proposed changes threaten to pre-empt this reform process via a rushed and poorly considered set of changes that have not been adequately discussed with the public. The status quo should not be dismantled, or squeezed into the “lowest common denominator” in an effort to meet statutory deadlines.

The EDO recommends that the transfer of heritage items into the Code include CIs and all CIs should be located within HCZs. This will enable a level of interim protection. This should be followed by a full review and assessment of their eligibility for continuing to hold such status in a measured expert way. Such a process should also allow for reasonable, timely and meaningful opportunities to be given to members of the community regarding if and how CIs can be described in future generations of the Code. This approach is in line with the Community Engagement Charter.

If the present process is followed this could potentially expose some of the most valuable and irreplaceable properties in the state to a heightened risk of demolition without a careful assessment of the risks and possible costs. The PDI Act does allow discretion on the part of the Commission to include matters in the Code and we urge the Commission to do so in the case of lists of CIs.

The EDO further recommends that clear heritage protection policy be drafted for decision makers to ensure consistency across the system. Importantly priority and significant weighting should be given to heritage values and structural condition in the first instance. In the case of CIs the policy framework in the Norwood, Payneham and St Peters Development Plan is, in our view a leading example of how policy in this area should operate.

If you have any queries please email the writer melissa.ballantyne@edo.org.au.

Yours faithfully

A handwritten signature in cursive script that reads "M Ballantyne". The signature is written in dark ink on a light-colored background.

Melissa Ballantyne

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