

# Heritage in a nutshell

An overview of heritage protection  
in South Australia under the Heritage Act  
and Development Act



**Government  
of South Australia**

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Department for  
Environment and Heritage

# Heritage in a nutshell

an overview of South Australia's current heritage protection framework for State and local heritage places, and how it will be affected by proposed changes to the *Heritage Act 1993* and the *Development Act 1993*

\*The *Heritage (Heritage Directions) Amendment Bill 2005* received Royal Assent on 14 July 2005, thereby becoming the *Heritage (Heritage Directions) Amendment Act 2005* — it is expected to come into operation on 1 October 2005, whereupon the *Heritage Act 1993* will become the *Heritage Places Act 1993*.

\*\*Note that the information in this document relating to the *Development (Sustainable Development) Amendment Bill 2005* is provisional and subject to change. This document reflects the draft provisions of the Bill as introduced in the Legislative Council on 7 April 2005.

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The <i>Heritage Act 1993</i> ...		...is re-named the <i>Heritage Places Act 1993</i> because it deals mainly with significant <u>places</u>			
The purpose of the <i>Heritage Act</i> ...	...is stated in the Long Title as 'an Act to conserve places of heritage value'	...is more clearly expressed with a more descriptive Long Title and new Objects [Section 2]			
The <i>Development Act 1993</i> ...				...gains references under the Objects of the Act [Section 3] to its State and local heritage functions	
<b>Heritage registers</b>					
The <i>State Heritage Register</i> ...	...lists <i>State heritage places</i> , and is supplemented by an Inventory that records <i>local heritage places</i> , <i>State Heritage Areas</i> , places listed in Commonwealth heritage registers and <i>Heritage</i>	...is renamed the <i>South Australian Heritage Register</i> [Section 13]  ...is expanded to create a single heritage register for SA that incorporates the information formerly recorded in the Inventory, plus local heritage zones <sup>1</sup> and policy areas [Section 14]			

<sup>1</sup> currently known as *Historic (Conservation) Zones* or HCZs, but the term *local heritage zone* is used in the two Bills, in accordance with possible Development Plan policy changes proposed by Planning SA

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Local heritage registers...	Agreements [Section 14]	<p>...can include objects intrinsically related to the heritage significance of a <i>State heritage place</i>, including objects located elsewhere [Section 14]</p> <p>...may withhold information on the location of a place or protected object that would otherwise be at risk [Section 15]</p>			
			...list places of local heritage value <sup>2</sup> , and are contained within a Council's <i>Development Plan</i>		
<b>Statutory bodies</b>					
The <i>State Heritage Authority</i> ...	<p>...comprises eight members appointed by the Governor following a public call for nominations</p> <p>...represents the fields of history, archaeology, architecture, natural sciences, heritage conservation, public administration, property management and local government</p> <p>...is responsible for administering the <i>State Heritage Register</i>, entering <i>State heritage places</i> in the Register, identifying potential <i>State</i></p>	<p>...is renamed the <i>South Australian Heritage Council (SAHC)</i> [Section 4]</p> <p>...comprises a minimum of seven and a maximum of nine members</p> <p>...with the addition of urban and regional planning, and with property development replacing property management</p>			

<sup>2</sup> the terms *local heritage place*, *place of local heritage value* and *place of local heritage significance* all have the same meaning in both Acts and Bills

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	<p><i>Heritage Areas</i> and promoting their creation through the <i>Development Act</i> [Section 5]</p> <p>...provides advice to the <i>Minister for Environment and Conservation</i> (MEC), councils, owners and others on matters relating to heritage management at the State level [Section 5]</p> <p>...can issue a <i>Certificate of Exclusion</i> stating that a particular property will not be listed as a <i>State heritage place</i> for a period of five years [Section 22]</p>	<p>...is elevated to a more strategic and policy-related level, widened to include national and local heritage policy and practice, and to include strategic heritage advice to the MUDP [Section 5A]</p> <p>...will set criteria for recognition of suitably qualified/experienced heritage practitioners, and maintain a register of recognised practitioners [Section 5A]</p> <p>...with discretionary consultation provisions to enable prompt processing of routine applications [Section 22]</p>		<p>LHAC will gain SAHC representation through a regulatory provision for the MEC to nominate two SAHC members to become members of LHAC</p>	
The <i>Development Policy Advisory Committee</i> (DPAC)...			<p>...advises the <i>Minister for Urban Development and Planning</i> (MUDP) on local heritage matters through a sub-committee – the <i>Local Heritage Advisory Committee</i> (LHAC)</p>		
<b>Places of State heritage significance...</b>					
> are referred to...	...as <i>registered places</i>	...as <i>State heritage places</i> (and in some instances as <i>places of State heritage significance</i> )	...as <i>State heritage places</i>		
> are assessed for provisional entry in the Register...	...by the <i>State Heritage Authority</i> [Section 17]				
– against criteria set out...	...in Section 16				

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ER&D Court *Environment, Resources and Development Court*

PAR *Plan Amendment Report*  
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DPAC *Development Policy Advisory Committee*  
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HCZ *Historic (Conservation) Zone*  
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– with objections considered...	...by the <i>State Heritage Authority</i> [Section 18]				
> can include...	...special designation as places of geological, archaeological and palaeontological significance [Section 17]	...plus places of speleological significance [Section 17]			
> are created...	...by entry in the <i>State Heritage Register</i> on a provisional basis, with confirmation occurring after public consultation [Sections 17-20]				
> can be removed from the Register...	...at the direction of the MEC where a provisional entry is deemed contrary to the public interest [Section 18]  ...in whole or in part if the Authority is of the opinion that the registration is no longer justified, subject to public consultation [Section 23]	...subject to a new provision requiring the MEC to state in writing how the public interest is affected [Section 18]  ...with a requirement that the SAHC take into account the Section 16 criteria for assessing heritage significance			
> can be changed to <i>local heritage places</i> , in whole or in part...	...by first being created as <i>local heritage places</i> in the relevant <i>Development Plan</i> by means of a PAR under the <i>Development Act</i> , and then being removed from the Register [Section 24]	...by the SAHC first consulting with the owner and local council on the proposed changes, and then recommending to the MUDP that an administrative amendment be made to the relevant <i>Development Plan</i> under Section 29 of the <i>Development Act</i> (refer to <b>Development Act</b> column 3 at right). The SAHC may alter the designation of a place to a <i>local heritage place</i> in the new single Register once the <i>Development Plan</i> has been amended. [Section 24]	As explained in <b>Heritage Act</b> column 1 at left, places deemed by the SHA to be of local rather than State significance can be removed from the Register once they have been created as <i>local heritage places</i> through the PAR process		The <i>Heritage Bill</i> amends Section 29 of the <i>Development Act</i> to allow a <i>State heritage place</i> to be changed to a <i>local heritage place</i> as an administrative amendment to a <i>Development Plan</i> – by means of Ministerial gazettal – on the SAHC's recommendation following the consultation process in Section 24 of the revised <i>Heritage Places Act</i> (refer to <b>Heritage Act</b> column 2 at left).

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> are protected...	<p>...against intentional damage [Section 36]</p> <p>...by criminal penalties ranging from \$4,000 to \$60,000</p> <p>...by <i>Heritage Agreements</i> negotiated with the owner [Sections 32-35]</p> <p>...by <i>Stop Orders</i> [Section 30], <i>Restoration Orders</i> [Section 37] and <i>No Development Orders</i> [Section 38]</p>	<p>...against damage on three different levels [Section 36]:-</p> <ul style="list-style-type: none"> <li>• damage with proof of intent;</li> <li>• damage without proof of intent;</li> <li>• and neglect or failure to take reasonable care</li> </ul> <p>...by criminal or civil penalties of up to \$120,000</p> <p>...subject to consultation with the occupier or lessee as appropriate [Section 32]</p> <p>...plus ER&amp;D Court Orders [Section 38A] – which replace <i>Restoration Orders</i> – and Ministerial <i>Protection Orders</i> [Section 39A]</p>	<p>...against unauthorised work [Section 32] defined in Section 4 as 'development in relation to a <i>State heritage place</i>'</p> <p>...plus <i>Enforcement Notices</i> [Section 84] and ER&amp;D Court orders [Section 85] in relation to breaches of the <i>Development Act</i></p>		
– in the case of designated archaeological, geological or palaeontological places...	<p>...against unauthorised excavation, and removal of specimens or artefacts [Sections 25 &amp; 26]</p>	<p>...with protection extended to designated speleological places and specimens [Section 25]</p>			
– in the case of all other <i>State heritage places</i> ...	<p>...against unauthorised excavation in search of cultural artefacts [Section 27]</p>	<p>...and note that the provisions for protecting artefacts of State heritage significance will extend to the whole of SA – see below under the heading <b>Objects of State heritage significance</b></p>			
<b>Objects of State heritage significance...</b>					
> can include...		<p>...non-Aboriginal archaeological artefacts and geological, palaeontological or speleological specimens meeting the criteria in Section 16...</p>			

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<ul style="list-style-type: none"> <li>&gt; are assessed for provisional entry in the Register...               <ul style="list-style-type: none"> <li>– with objections considered...</li> </ul> </li> <li>&gt; are created...</li>   <li>&gt; can be removed from the Register...</li>   <li>&gt; are protected...               <ul style="list-style-type: none"> <li>– in the case of archaeological artefacts...</li> </ul> </li>   <li>– in the case of artefacts from designated archaeological places, and specimens from designated geological or palaeontological places...</li> </ul>	<p>...against unauthorised damage, destruction or disposal, including those removed before the place was listed [Section 28]</p>	<p>...and objects intrinsically related to the heritage significance of a <i>State heritage place</i> or <i>State Heritage Area</i> [Section 16]</p> <p>...by the <i>South Australian Heritage Council</i> [Section 17]</p> <p>...by the <i>South Australian Heritage Council</i> [Section 18]</p> <p>...by entry in the <i>South Australian Heritage Register</i> on a provisional basis, with confirmation occurring after public consultation [Sections 17-20]</p> <p>...in conjunction with the removal of the <i>State heritage place</i> with which they are associated – see above under the heading <b>Places of State heritage significance</b></p> <p>...by needing a permit to excavate anywhere in SA in search of artefacts of State heritage significance...</p> <p>...or to excavate for any other purpose where artefacts of State heritage significance might reasonably be expected to exist [Section 27]</p> <p>...with protection extended to specimens from designated speleological places [Section 28]</p>			

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<ul style="list-style-type: none"> <li>– in the case of any specimen or artefact recovered without a permit or in contravention of a permit...</li> <li>– in the case of an object intrinsically related to the heritage significance of a <i>State heritage place</i>...</li> </ul>		<ul style="list-style-type: none"> <li>...against unauthorised trading – ie buying or selling [Section 29A]</li> <li>...against unauthorised damage, destruction or disposal...</li> <li>...and against unauthorised alteration (including conservation or restoration) that materially affects its heritage significance [Section 28]</li> </ul>			
<b>Places of local heritage significance...<sup>3</sup></b>					
> are referred to...	...as <i>places of local heritage value</i>	...as <i>places of local heritage value</i> (and also in some instances as <i>local heritage places</i> and <i>places of local heritage significance</i> )	...as <i>places of local heritage value</i> (and also in some instances as <i>local heritage places</i> )	...as <i>places of local heritage value</i> (and also in some instances as <i>local heritage places</i> and <i>places of local heritage significance</i> )	...according to the definition of <i>place</i> in Section 3 of the <i>Heritage Places Act 1993</i> [Section 23]
> can include...					...any component, other item, feature or attribute relevant to its heritage significance [Section 23]
> are assessed for listing...			...by the local council and the <i>Minister for Urban Development and Planning</i> (MUDP) after having regard to a heritage survey	...on the recommendation of a heritage practitioner recognised by the <i>South Australian Heritage Council</i> (SAHC) under the <i>Heritage Act</i> , with the final list determined by the MUDP on local council advice after a public hearing	
– against criteria set out...			...in Section 23(4) of the Act	...with a new provision requiring the MUDP to consult the SAHC over any proposed changes to local heritage criteria	...and a new provision enabling the MUDP, on advice from the SAHC, to set guidelines for the interpretation and application of

<sup>3</sup> see footnote 2 on page 2



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> are assessed...	...by the <i>State Heritage Authority</i> [Section 5]	...according to criteria that may be established by the new SAHC [Section 5]			
> are created...	...by the <i>State Heritage Authority</i> making a recommendation through the MEC to the MUDP [NB: this occurs administratively, and is not set down by the Act]		...and by the MUDP then including them in a <i>Development Plan</i> through a Ministerial PAR, subject to public consultation [Section 24]		
<b>Areas of local heritage significance...</b>					
> are referred to...		...as <i>local heritage zones</i>	...as <i>Historic (Conservation) Zones (HCZs)</i> and <i>Historic (Conservation) Policy Areas (HCPAs)</i>	Note that HCZs and HCPAs may become <i>local heritage zones</i> and <i>local heritage policy areas</i> under proposed policy changes relating to <i>Development Plans</i> (without requiring amendment of the Act or Regulations)	
> are assessed...			...by Planning SA		
> are created...			...by including them in a local council <i>Development Plan</i> through a PAR	...by the same process, and subject to the same new provisions, as outlined above for <i>local heritage places</i>	
<b>Areas of valued neighbourhood character...</b>					
> can be managed...				...through <i>Desired Future Character</i> policies being included in, and setting the vision for, particular Zones or Policy Areas of a <i>Development Plan</i> (policies are based on professional study and advice to local councils)	

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<b>Emergency protection...</b>					
	...is available for a potential <i>State heritage place</i> through a temporary <i>Stop Order</i> issued by the <i>State Heritage Authority</i> , preventing any work that may reduce or destroy its heritage value while its eligibility is being assessed	...and the period for which a <i>Stop Order</i> remains valid before a Court order must be issued is extended from 4 to 12 days	...is available for proposed <i>local heritage places</i> during Interim Operation of a heritage PAR used to protect places and areas during public consultation (local councils have been required to maintain heritage policies since 1993)		
<b>Demolition control...</b>					
			...applies to <i>State heritage places</i> (including all places within a <i>State Heritage Area</i> ), <i>local heritage places</i> and to places within <i>Historic (Conservation) Zones (HCZs)</i> ...applies to all places within the City of Adelaide	...and remains unchanged – but note that HCZs may be renamed <i>local heritage zones</i> under proposed <i>Development Plan</i> policy amendments as outlined above	
<b>Heritage funding</b>					
The <i>State Heritage Fund</i> ...	...is established by the <i>Heritage Act</i> for application by the MEC (on advice from the <i>State Heritage Authority</i> ) to further the objects of the Act	...is renamed the <i>South Australian Heritage Fund</i> , for application by the MEC (on strategic advice from the SAHC) to further the objects of the Act			
Local heritage funding...			...is made available by some local councils operating heritage incentive programs		

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