

**South Australian Heritage Council**  
**Legislative Review Committee Presentation 17.11.20**

**Keith Conlon**  
**Chair, South Australian Heritage Council**  
Opening remarks

Presiding Member and committee members.

It is an honour to appear before you on behalf of the South Australian Heritage Council.

Thank you for giving us the opportunity to speak to you online at short notice, and thanks to your staff and Hansard staff who have made that possible at short notice.

My colleague on Council Marcus Rolfe will speak to the detail of our submission; he is an experienced and well regarded planner in private practice who has a keen interest in improving planning legislation and policy at this pivotal time.

My name is Keith Conlon. Some of you may know of my longtime passion for heritage and history in this state. It is now proving valuable in my role as Chair of the Heritage Council.

It brings together the expertise of heritage consultants, historians, planners and lawyers to the tasks detailed in the Heritage Places Act...  
essentially they are to protect, conserve and promote our heritage...  
and particularly to do that for our State Heritage Places and Objects and our State Heritage Areas.

The legislation directs the Council to advise the Minister on important matters relating to Heritage.

In the last two years, Council has been active in making submissions to the ERDC Inquiry into the future of Heritage and the State Planning Commission as it develops the new Planning Code.

At the crux of all of these submissions have been the proposals that we should be  
1 listing our heritage places under strict criteria, but with simple and transparent mechanisms  
2 maintaining them and adapting them for 21st century use

3 promoting our heritage for its significant cultural and social advantages to the community and - very importantly at this time - the substantial economic and environmental benefits it brings to South Australians.

4 making life easier and less expensive for heritage owners - the guardians.

The legislative and administrative mechanisms that support all this are critical. The Heritage Council is very supportive of legislative reform to enable this.

I will now hand over to Marcus Rolfe as we get to the detail in our submission.

### **South Australian Heritage Council member Marcus Rolfe:**

The Heritage Council has been invited to comment on “*the impact of the Planning, Development and Infrastructure Act on heritage*”.

There are 6 main comments of the Heritage Council in this regard:

1. The Council supports a single integrated system/legislation for the identification and listing of places and areas that are of State or Local heritage value. The PDI Act appears to only partially achieve this.
2. The Council supports a simple and relatively short process for nomination, assessment and listing for places and areas of State or Local heritage value. It is unclear whether the PDI achieves this.
3. The Council supports interim protection during nomination and assessment phases. This is already in place for State Heritage Places. It is recommended that this interim protection is extended to Local Heritage Places. The PDI Act does not appear to achieve this.
4. The decision maker for State Heritage Places is currently the Heritage Council under the Heritage Places Act, with the Minister responsible for that Act afforded an opportunity to defer and not confirm a provisional listing if the Minister considers it to be contrary to the public interest.

The Council considers this to be a robust process, providing both independence in decision making, and broader strategic overview by the Minister. The PDI Act appears to appropriately preserve this separation of powers, even if it does not always mean that places of identified heritage value are preserved.

5. The Council suggests that a body like the Heritage Council (with heritage expertise) should be responsible for all listing of Places and Areas. The PDI Act appears to give the State Planning Commission power to determine Local Heritage listings.

The Heritage Council considers that expert input from heritage practitioners is also critical to the local listing process.

6. The Council suggests that owners of provisionally listed Places should be granted appeal rights to contest or support the listing. The PDI Act appears to provide opportunity for such appeal.

The Heritage Council has also been asked if it has any “*specific concerns in relation to the implementation of the Planning and Design Code*”. The Council makes the following comments in this regard:

### **Referrals**

The Minister responsible for the Heritage Places Act will have powers of direction in relation to Development Applications that impact on State Heritage Places under the Planning & Design Code. In short, the Heritage Minister will appropriately be more powerful in the development assessment process for State Heritage Places.

In the new system, referral of development application to the Heritage Minister is mandatory, unless it is deemed “minor”. It is important that “minor” is clearly defined, otherwise too many or too few development applications will be referred. The Heritage Council is happy to work with the State Planning Commission to ensure this clarity is achieved.

### **Demolition Control**

The Council suggests that the test for demolition needs further interpretation in definition.

The definition of term “Irredeemably Beyond Repair” is defined in the Draft Practice Guideline (Interpretation of the Local Heritage Places Overlay, Historic Area Overlay and Character Area Overlay). This definition also applies to the State Heritage Area Overlay and the State Heritage Place Overlay.

The Heritage Council is concerned that, in the absence of enforcements powers relating to willful neglect, this may lead to some land owners neglecting their properties to the point that they are irredeemably beyond repair and this is used as justification for demolition.

### **Heritage Guidelines**

The Council seeks some clarity on where existing Heritage South Australia’s State Heritage Area “Guidelines for Development” fit in the new system. State Heritage

Areas are diverse in nature and therefore it may be difficult to prepare overarching guidelines applicable to all of these Areas.

## **Definitions**

It is noted that “Character” and “Heritage” are defined in the Draft Practice Guideline (Interpretation of the Local Heritage Places Overlay, Historic Area Overlay and Character Area Overlay).

The use of the word ‘historic’ should be avoided so as not to cause confusion. The previous Expert Panel on Planning Reform ‘*Heritage and Character in the Planning and Design Code*’ Report of December, 2019, reinforces this view.

## **Development in the Vicinity**

It is noted that the Planning and Design Code has a “visible from the public realm” test for the State Heritage Area Overlay. This is taken to mean that development not visible from the public realm does not require referral to the Heritage Minister.

The Council is concerned at the introduction of this test. It seeks clarity on the philosophy behind this public realm test, and seeks further discussion before commenting further.

The Council is also eager to see the detail of heritage adjacency provisions when they become available. This is because development adjacent to Heritage Places can have a significant impact on the heritage values of the Heritage Place.

## **Resources to operate the P& D CodeCode**

The Council recommends the re-instatement of State/Local Heritage Advisers in the field to assist property owners/ assessing planners, as well as funding by Government to facilitate this re-instatement. There is typically a need for professional advice in relation to development of State Heritage Places given the complex nature and variety of State Heritage Places.

The Council is supportive of independent modelling to clearly understand the ramifications of the Code in relation to the listing of State Heritage Places and Areas, as well as development assessment. It is understood that such modelling will identify potential “risks” to both the protection of heritage values, as well as clear and timely development assessment.

## **Consultation**

The Council is pleased that there is a second round of public consultation occurring in relation to the Draft Planning & Design Code, particularly given the changes made to the Draft Code to include “Representative Buildings”. The Council understood that the loss of Contributory Items in the previous Draft Code was of great concern to many in the community.