
PLANNING REFORM ISSUES PAPER: HERITAGE & CHARACTER

Prepared for the Local Government Association of SA

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INTRODUCTION

This paper is written to assist South Australian Councils in their consideration of Planning Reform recommendations.

It provides a succinct summary of the following:

- the coverage of Heritage and character in the existing planning framework
- key issues in relation to heritage and character
- the benefits and considerations of potential reform options that address key issues. The options are based on a review of best practice approaches.

The meaning of ‘Heritage’ and ‘Character’ in the Context of This Paper

The terms “heritage” and “character”, are regularly confused and intertwined but have distinct meanings:

Character

All areas have a character that can be analysed and described. Character is a value neutral concept that captures the interrelationship between built form, vegetation and topography in the public and private domains that distinguishes one place from another.

The concept of character is broader than just architectural style or the era of development. It is also about recognising the distinctive characteristics or urban forms and their relationship to topography, vegetation and other natural features (ie the buildings and the spaces and features around them and how they relate to each other).

Heritage

Heritage on the other hand has an established international frame of reference (ICOMOS / Burra Charter) and is about how a place represents history and evolution of an area and its people or activities that have taken place. Heritage and cultural significance is embodied in the fabric and setting of the place.

A. EXISTING PLANNING FRAMEWORK

This section is an overview of how heritage and character is addressed in the existing South Australian planning system. We include both statutory and non-statutory activities with a focus on planning undertaken by Councils.

A.1 Legislative Framework

A.1.1 Heritage Places Act 1993

The Heritage Places Act 1993 sets out a framework for the establishment of the South Australian Heritage Register which lists Places and Areas of significance to the State. Significance is assessed against the following criteria:

- (a) *it demonstrates important aspects of the evolution or pattern of the State's history; or*
- (b) *it has rare, uncommon or endangered qualities that are of cultural significance; or*
- (c) *it may yield information that will contribute to an understanding of the State's history, including its natural history; or*
- (d) *it is an outstanding representative of a particular class of places of cultural significance; or*
- (e) *it demonstrates a high degree of creative, aesthetic or technical accomplishment or is an outstanding representative of particular construction techniques or design characteristics; or*
- (f) *it has strong cultural or spiritual associations for the community or a group within it; or*
- (g) *it has a special association with the life or work of a person or organisation or an event of historical importance.*

The Act also establishes the SA Heritage Council which provides advice to the Minister in determining whether nominated places or areas should be listed on the SA Heritage Register.

A.1.2 Development Act 1993

Strategic Planning and Policy Development

The Development Act, 1993 requires the preparation of a Planning Strategy to include the **objects under character preservation law** (see 2.1.3 below) and address the **character values** of a district that are identified within character preservation law.

The Act also calls for the preparation of Development Plans which must be consistent with the Planning Strategy and can specifically include policies relating to:

- the management and conservation of land, buildings, heritage places and heritage areas
- describing the characteristics of the natural or built environment that are desired within the community.

These are commonly reflected within Development Plans as Local Heritage Places (in Tables), Historic Conservation Areas (either in Zones, Policy Areas or more recently within General section) and desired character statements (in zones and policy areas).

The legislation identifies specific criteria for the listing of local heritage places within the Development Plan. These are:

- (a) *it displays historical, economic or social themes that are of importance to the local area; or*
- (b) *it represents customs or ways of life that are characteristic of the local area; or*
- (c) *it has played an important part in the lives of local residents; or*
- (d) *it displays aesthetic merit, design characteristics or construction techniques of significance to the local area; or*
- (e) *it is associated with a notable local personality or event; or*
- (f) *it is a notable landmark in the area; or*
- (g) *in the case of a tree – it is of special historical or social significance or importance within the local area.*

Local Heritage Places, Historic Conservation Areas, Character Zones / Policy Areas and desired character statements can only be inserted within Development Plans through Development Plan Amendments (DPAs) which undergo appropriate investigations, consultation and consideration by both Councils and the Minister. In the case of DPAs proposed by a Council, these can only occur with the agreement of the Minister.

Development Assessment

The Development Act 1993 provides additional development controls for State and Local Heritage Places and Historic Conservation Areas which includes:

- demolition of heritage places and replacement buildings
- painting of State heritage places
- additions and alterations to heritage places
- some forms of fencing
- minor installations (such as antennas, air conditioners etc) in certain circumstances

Any development that involves a State Heritage Place (whether directly or materially affecting its setting) requires referral to the Minister responsible for the Heritage Places Act 1993. The Minister can provide comments and recommend conditions for the relevant authority's consideration and application.

In assessing proposals against Development Plans, authorities are required to have regard to desired character statements and supporting policies that guide how development should occur. Character Statements document important character traits and how future development needs to be designed and located to respect and complement those important traits.

However, it is important to note that an assessment of a development application needs to be on balance of all policies within the Development Plan, some of which may be in conflict with heritage and character policies.

A.1.3 *Character Preservation Laws*

The Character Preservation (Barossa Valley) Act 2012 and the Character Preservation (McLaren Vale) Act 2012 were introduced to provide greater controls and certainty to protect the distinct character of these locations from inappropriate development in recognition of the important economic, social and environmental attributes of these locations. Specifically these two pieces of legislation:

- identify the specific character attributes of value to each of the two regions
- identify forms of development that are undesirable in the two regions (principally land division for residential purposes)

Character Preservation Laws are integrated with the Development Act, 1993 through the need to consider their objectives as part of the preparation of a Planning Strategy, and therefore, as part of any Development Plan Amendment.

A.2 Other Guidelines

A.2.1 Planning Bulletin - Heritage

The Planning Bulletin – Heritage was prepared in 2001 by the (then) Planning SA to guide practitioners and the general public about the use of heritage control provisions available under the Development Act, 1993. Specifically, the Bulletin provides guidance on:

- preparation of heritage surveys
- engaging with the community
- issues to consider when preparing an amendment to the Development Plan
- an outline of the differences in controls related to State Heritage Places and Areas, Local Heritage Places and Historic Conservation Areas
- guidance on identifying Historic Conservation Areas

A.2.2 Guide to Preparing Desired Character Statements

The Guide to preparing Desired Character Statements was prepared by the Department for Planning Transport and Infrastructure in response to changes to legislation which recognised the role of desired character statements within Development Plans. The Guide sets out the matters to consider in assessing character attributes, as well as to the language to be used in describing future character.

A.2.3 SA Planning Policy Library

The SA Planning Policy Library is a state suite of standardised policy modules, Zones and Policy Area. The following standard modules provide coverage of heritage and character matters:

- Heritage Places (covering both State Heritage Places and Local Heritage Places)
- Historic Conservation Area
- Character Preservation District Overlay
- Residential Character Zone

Local variations to the policies are provided for (principally to zones and policy areas) to accommodate specific policy responses that respond to localised characteristics or issues.

B. KEY ISSUES

Issues relating to heritage and character in the SA planning system have been identified. These issues are drawn from earlier LGA planning reform dialogue and our own experience. The following key issues have been identified specifically relating to heritage and character.

B.1 Heritage

B.1.1 Lack of consistency in application of listings / political influence

The listing of heritage places via Council Development Plan Amendments have in the past resulted in inconsistent outcomes which has contributed to a degree of confusion, uncertainty and frustration regarding what is appropriate to list. This has been as a result of:

- Council decisions to not pursue listing of specific properties or areas following community and land owner opposition (despite recommendations of heritage experts in support)
- Ministerial decisions to reject listings despite being presented by Councils and supported by the Local Heritage Advisory Committee (LHAC). It is considered that there has been a changing of the 'goal posts' in regard to the acceptance of places listed by the government (without any specific debate or communication to that effect)
- the decision of the government to no longer accept contributory items within Historic Conservation Areas (decided without consultation or discussion with Councils or the community)
- rejections for listings based on reasons which are not covered within the criteria set out within Section 24 of the Development Act, 1993, such as arguments of a site being a strategic site (in CBD or within corridors) or a form of place being over-represented.
- the criteria within Section 23 of the Development Act, 1993 being somewhat open-ended and broad which means considerable scope for a varied interpretation by various experts. In the past this has led to differences in approach between Councils and the LHAC. This does not assist in providing certainty for the listing process for all parties and contributes to an adversarial approach to heritage listing, as well as potentially significant waste of money in the process.

What this highlights is that the process is open to political intervention which can be arbitrary and open to question on the grounds of lack of consistency, transparency and robustness.

B.1.2 Process and management of heritage is resource intensive

The process of listing a local heritage place or Historic (Conservation) Area is a complex and time consuming process that requires a Development Plan Amendment. This is due to:

- the rationale and research behind recommendations for listing requiring a detailed assessment by a qualified heritage consultant against the relevant criteria within the legislation
- findings of a survey often, as is good practice, placed on consultation with the community for comments and amendments before being endorsed and translated into a draft DPA for the Minister's approval for release on interim operation
- Councils often requiring the engagement of an independent heritage consultant, and building surveyor to review and respond to submissions objecting to listings

The entire process requires significant resource commitments from Councils and their community, sometimes with uncertainty as to the resultant success of listings. It also can take considerable time, with some DPAs running into four to five years from commencement to completion.

Similarly land owners are faced with the burden of paying for professional opinions in support of their objections, including representation to the Local Heritage Advisory Committee, and often face significant anxiety as a result of the interim operation of the listing on their property, as well as over the uncertainty of the listing of their property. This can sometimes extend for a considerable amount of time until the DPA is finalised.

Ongoing funding is required by Councils to provide an appropriate level of services and advice relating to heritage places. This is not only to get advice for development applications affecting heritage places and areas, but also to provide additional advisory service and incentive schemes that are typically provided to assist owners of heritage places as an incentive to offset the perceived additional burdens of heritage listing.

B.1.3 Planning system's management of heritage is adversarial

The manner in which the planning system deals with heritage is typically viewed as adversarial due to:

- the perception that heritage is an impediment to development and an imposition to property owners who suffer financial consequences as a result
- a result of a lack of understanding of the actual implications of local heritage listing and the lack of effective communication of these along with the benefits and trade-offs
- the application / use of interim control and the lack of transparency and engagement earlier in the process which does not assist with communicating with those affected by the listings.

These perceptions need to be balanced with other 'carrots' which offset the limitations potentially imposed on properties by heritage listing, such as tradeable development rights, above and beyond the existing advisory services and incentive schemes already provided by most Councils. Additional controls and policy responses also need to be more relevant and 'fit for purpose'.

B.2 Character

B.2.1 Lack of understanding and clarity on what character is and how it is different to heritage

Unlike for heritage, the concept of character and special character is not defined or adequately covered within the Development Act, 1993, other than identification that Development Plans can include statements of character within their contents. The implications of this are:

- there is a lack of understanding of character and how it differs to heritage, which is central to the confusion of desired policy approaches by the community to the management of character. As such, character arguments are commonly grounded in a historic rationale with an expectation that heritage controls be applied
- there is no guidance on how to address this issue within the system for Councils. The Guide to Preparing Desired Character Statements is a useful start to exploring the elements that make up character, however, it does not explore the concept of character and importantly why it is different from heritage.

There needs to be far greater effort within the planning system (either legislatively or not) to inform and educate practitioners, elected members and the broader public about the difference between heritage and character and why they need a different policy response.

B.2.2 Lack of guidance and criteria about when special character areas are appropriate

There is little guidance as to what specifically constitutes a special character area which would inform when and where such additional policy measures are warranted. The implications of this are:

- conflicts between Councils and the State Government in progressing the identification of additional special character areas
- contributes to an argumentative relationship between the state government and Council and their communities
- there is a perception that Residential Code exempt areas are 'character areas', requiring further protection, particularly within growth corridors and inner rim locations
- increases uncertainty, inconsistency and lack of transparency in the system

A series of criteria are required to inform future investigations and policy decisions. The criteria should:

- consider the distinctiveness of such areas relative to surrounding areas, how consistent / intact the area is and whether the location is under threat or about to be under threat
- differentiate from those for Historic Conservation Areas identified within the Planning Bulletin – Heritage, so as not to reinforce the confusion between the two different concepts
- build upon and elaborate further from the Residential Code Exemption criteria released by the Minister and considered by DPAC in 2009. While that was a good starting point, the criteria and process was not robust enough and lacked meaningful engagement with the community and debate about appropriate criteria and weighting.

B.2.3 Character is poorly expressed within Development Plans

Development Plans have for some time included some form of character statement. However this has not been consistent across Development Plans. The Guide to Desired Character Statements explores the manner in which desired character needs to be central to character statements and is a good guide to better expressing character and desired character within the Development Plans.

The Better Development Plan project was intended to facilitate the update of all Development Plans in the state to the new structure which included Desired Character Statements. However, the take up of this conversion process has not been completed and the political will of the state government for this project has disappeared.

Regardless, there is some concern about whether Desired Character Statements are the best way to express how development should occur to people not experienced with the development system or design. The Statements can be lengthy, confusing and not adequately linked to supportive policies which leads to questioning whether other tools would be more valuable in expressing what development needs to do.

There is scope for Development Plans to include a range of other techniques and visual tools to better express and communicate character attributes and design responses. Examples include design guidelines, sketches and use of photos (such as precedent images) which are commonly used

techniques to communicate other urban concepts and projects to the community. The BDP structure, including the use of colour in mapping and format generally can facilitate this.

B.2.4 Limitations of existing legislation's coverage

The planning system only has the ability to guide and control what is defined by the legislation as development. However, there are many aspects of localities that make a meaningful contribution to the makeup of character of a particular location which are currently not defined as development and therefore not controlled by planning legislation. This includes most forms of front fencing, garden areas, vegetation on the site and driveways / crossovers.

Expansion to activities that are development are currently only available to heritage places and areas, or specific locations / zones within Council areas (such as for the City of Unley). These need to be negotiated with the Minister and result in inconsistencies and a more complex system.

It is appropriate to consider additional triggers for development that can be applied to special character areas to provide this level of control to those elements of value.

B.2.5 Character versus growth – achieving a balanced approach

There is a perception that character cannot coexist with growth or development. This conflict is as a result of:

- the policy approach adopted to most character areas which are used to stifle development and act as density control tools (such as minimum site areas and limiting dwelling types)
- growth corridors typically being in locations that have a valued character (whether formalised or not) which initially represents a conflict in objectives

The reality is that, in most cases, character locations can accommodate increases in density and alternative building forms. However, this is not recognised because typically:

- proposals to introduce character areas are undertaken in isolation and do not consider a holistic approach which includes how they either impact or contribute to growth targets, and as such tend to be resisted by the state government
- policy approaches to character areas tend to be more about restricting development rather than guiding development.
- there is no discussion and informed engagement about the potential positive relationship between character and growth.

C. BEST PRACTICE PLANNING REFORM OPTIONS FOR HERITAGE AND CHARACTER

The following reforms are suggested to stimulate thought and debate about resolving the key issues identified. They are listed as they link to each of the specific issues detailed in Part B.

C.1 Heritage

	Best Practice Planning Reform Options	Benefits	Considerations
CONSISTENCY AND POLITICAL INFLUENCE			
1.	Amend the Section 23 criteria for local heritage listing and/or provide greater clarity in interpretation of Section 23 criteria for heritage listing by updating the Planning Bulletin - Heritage	<ul style="list-style-type: none"> • Can provide for greater clarity and consistency in application of criteria • Potential to reduce contestability of merit to listing to more limited range of factors • Ensures consistency in approach to preparation of Heritage Surveys and expectations of LHAC in assessing and making final recommendations 	<ul style="list-style-type: none"> • Is it appropriate for the criteria to include broader objectives (such as Planning Strategy target considerations)? • Need to ensure criteria do not become too restrictive and not provide flexibility for consideration of broad range of potential places of value to the community • Need to ensure consistency is retained with ICOMOS / Burra Charter framework
2.	Place final decision for listing of Local Heritage Places with LHAC (mandate their recommendations)	<ul style="list-style-type: none"> • Removes political influence in final decisions • Creates a greater level of consistency in listings • Provides a greater level of transparency 	<ul style="list-style-type: none"> • The ongoing membership of LHAC and how members are appointed needs to be further considered to avoid politicisation and maintain independence • The process and criteria to appointment will need to be transparent to the public • May create difficulty where broader planning considerations are required – such as Planning Strategy targets - particularly if only consideration is specific criteria within legislation
3.	Remove process of heritage listing from planning system (like for State heritage places)	<ul style="list-style-type: none"> • Planning system focus becomes the management of development outcomes • More potential for individual listings / delisting as required which allows it to be more 	<ul style="list-style-type: none"> • Can create conflict with overall objectives • Can complicate understanding of what is heritage listed to the general public • Requires consideration of how

	Best Practice Planning Reform Options	Benefits	Considerations
		proactive and less resource consuming (ie doesn't have to go through a formal DPA process / updates can occur via Section 29)	identification of heritage places within the Development Plan is maintained and kept up to date.
RESOURCE INTENSIVE PROCESS			
4.	Provide for and regulate better funding mechanisms for the management of heritage for Councils (similar to planning and development fund for open space)	<ul style="list-style-type: none"> • Provides ongoing funding source for Councils to tap into for specific projects (such as incentive schemes, survey updates or advisory services) 	<ul style="list-style-type: none"> • Need to determine how the contribution will be distributed, for example percentage of fees from development applications (amendment to Schedule 6) • Need to setup legislative framework which limits and guides the circumstances and manner in which the funds are used.
5.	Allow for consultation and determination of eligibility of listing before DPA process (ie gain endorsement (or otherwise) of recommended listings from Survey from LHAC before DPA is commenced)	<ul style="list-style-type: none"> • Can reduce overall timeframe of uncertainty for land owners and Councils • Allows Councils to consider whether a DPA is necessary / appropriate (if listings are successfully challenged) 	<ul style="list-style-type: none"> • Will still require an extensive consultation process with the opportunity for the land owner to contest the listing • Can make the DPA process seen as a 'fait accompli' before it is started • Potential loss of integration with the planning system
ADVERSARIAL APPROACH			
6.	Provide better education and discussion amongst community of the 'myths' of heritage listing (particularly addressing concerns about loss of values, sales, insurance difficulties etc)	<ul style="list-style-type: none"> • More informed discussion about what heritage listing means for land owners • Potential reduction in anxiety and challenges to heritage listings by property owners 	<ul style="list-style-type: none"> • Will require resourcing to prepare local and up to date studies examining implications around heritage listing (such as to values, sales, costs of development, insurance implications etc) – to effectively 'bust the myths' (or confirm the myth and suggest ways of alleviating the issue) • Needs to be coordinated and consistent across the State and points to State Government /LGA leadership role
7.	Provide and regulate policy options that provide greater incentives for heritage properties (such as	<ul style="list-style-type: none"> • Can dilute perception of negatives associated with heritage listing 	<ul style="list-style-type: none"> • Incentives need to be balanced with other planning objectives and may be difficult to apply at a

Best Practice Planning Reform Options	Benefits	Considerations
tradeable development rights, adaptive re-use exemptions to non-complying development)	<ul style="list-style-type: none"> • Can cover lost development opportunities for specific properties • Make it easier to find uses for heritage buildings 	legislative level (may need to be location/context specific) <ul style="list-style-type: none"> • Previous poor take up of these policy responses – no guarantee that will achieve objectives.

C.2 Character

Best Practice Planning Reform Options	Benefits	Considerations
LACK OF UNDERSTANDING AND CLARITY ABOUT CHARACTER		
1. Provide definition of character within legislation	<ul style="list-style-type: none"> • Provides clarity about the term as a concept • Provides a statutory framework on which to guide decisions • Helps differentiate between heritage and character 	<ul style="list-style-type: none"> • The definition of the concept needs discussion and debate to ensure it reflects what the community and relevant professions interpret the concept to be
2. Clearer separation of policy controls and policy approach between heritage and character	<ul style="list-style-type: none"> • Helps distinguish the difference between character and heritage • Provides more appropriate responses to objectives – heritage = preservation of fabric, character = management of attributes 	<ul style="list-style-type: none"> • Discussion about specific development controls and policy responses needs to be had about how the two should be dealt with. • Potential to debate whether some existing heritage areas are more appropriate as character areas (sensitivity about reducing importance / controls)
3. Provide guide to better express concept of character and differentiation to heritage – Similar to Guide to Preparing Desired Character Statements / Planning Bulletin	<ul style="list-style-type: none"> • Helps distinguish the difference between character and heritage • Provides more appropriate responses to objectives – heritage = preservation of fabric, character = management of attributes • Greater clarity and consistency in decision making • Better informed practitioners and decision makers 	<ul style="list-style-type: none"> • Resource intensive • Requires leadership from State Government to get consistency • Needs to go through a discussion of the issue with the professions of relevance which could be time consuming and create difficulties in reconciling conflicting views / interests
4. Provide better education and skills development for Staff, Elected Members, the development community and the general public	<ul style="list-style-type: none"> • Greater clarity and consistency in decision making • Better informed practitioners and decision makers • Improved acceptance of a particular policy response for a 	<ul style="list-style-type: none"> • Resource intensive • Requires leadership from State Government to get consistency • Does not negate political influences in processes

Best Practice Planning Reform Options	Benefits	Considerations
	particular location	
CRITERIA FOR SPECIAL CHARACTER		
5. Develop a process and criteria for identifying special character areas	<ul style="list-style-type: none"> • Creates clarity and more certainty about expectations of what and where these areas would apply • Provides more transparency for local Councils to determine local character areas • Creates consistency in quality of areas determined across South Australia 	<ul style="list-style-type: none"> • Will require consideration of Planning Strategy objectives – can't be isolated from its broader framework • Needs to consider and be flexible enough to accommodate a wide variety of character attributes and scenarios
6. Include the need to consider character at strategic planning stage – what is valued and where – ensure community debate occurs	<ul style="list-style-type: none"> • Discussion and debate held upfront with community before key decisions are made • Greater clarity and certainty about valued character elements and areas – better informed outcomes 	<ul style="list-style-type: none"> • Difficult to engage with community about these issues. • Can result in polarisation of community
DEFINING CHARACTER IN DEVELOPMENT PLANS		
7. Ensure desired character statements are meaningful in describing how development should respond to positive character elements	<ul style="list-style-type: none"> • Greater clarity in what is expected of new development • Better decisions • More informed development proposals • Quicker approvals 	<ul style="list-style-type: none"> • Requires most Councils to update their Development Plans – which is time consuming and not necessarily a resource priority
8. Provide other tools to help envision future character than just the DCS	<ul style="list-style-type: none"> • Easier to understand concepts being discussed within character statement • Allows for the use of images and photos • Greater clarity by using images of good examples 	<ul style="list-style-type: none"> • Needs to align with statutory role of Development Plan • If outside of Development Plan, does not have statutory recognition unless referenced by Development Plan (such as a Design Guideline / Ministers Code)
LIMITATIONS OF EXISTING LEGISLATION		
9. Amend legislation to include controls of other elements that make up character within character areas	<ul style="list-style-type: none"> • Can create additional support in managing important components of character 	<ul style="list-style-type: none"> • Can be viewed as more red-tape • Can complicate assessments • Would require education so land owners are aware of new triggers for development

	Best Practice Planning Reform Options	Benefits	Considerations
CHARACTER VERSUS GROWTH			
10.	Ensure DPAs considering character are holistic in their assessment of broader objectives (ie consider whether targets associated with growth areas can be met and respond accordingly with extent of areas identified and policy responses)	<ul style="list-style-type: none"> • A more detailed picture of the balance across the policy spectrum is achieved • More likely to get support from state government 	<ul style="list-style-type: none"> • Requires understanding of targets and their likely distribution across Council area / region • Potentially requires trade-off on some character areas if targets not able to be achieved – difficulty in prioritising which areas to retain.