

**Item No:** 18.1  
**To:** Council  
**Date:** 27 August 2019  
**Author:** Aaron Schroeder – Strategic Projects and Planning Manager  
**General Manager and Division:** Michelle Kennedy – Acting General Manager, Urban and Community  
**Subject:** STATE PLANNING REFORMS – HERITAGE IN TRANSITION  
**Attachments:**  
A. Historic Conservation Zone Policy Area Figures Hcpa1-9  
B. Draft DPTI Guide Heritage In Transition  
C. Burnside letter to DPTI and State Planning Commission  
D. State Planning Commission Response Letter  
**Prev. Resolution:** C12197, 23/7/19

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### **Officer's Recommendation**

1. That the Report be received.
2. That Council, through the Administration, prepares a Statement of Intent to progress a Local Heritage Transition Development Plan Amendment to list nine Local Heritage Places comprising nine distinct geographical areas as defined by the boundaries of the City of Burnside's current Historic Conservation Zone Policy Areas.
3. That Council writes to the Premier, Minister for Planning, and the State Planning Commission, and forwards a copy to the Department of Planning Transport and Infrastructure (DPTI) regarding:
  - 3.1. The importance of not reducing the City of Burnside's existing level of heritage protections, particularly with respect to the demolition criteria of existing Contributory Items; and
  - 3.2. Council's support for the Environment Resources and Development Committee's Heritage Report (Parliamentary Inquiry) recommendations, as supported by the Greater Adelaide Region Organisation of Councils, the Local Government Association, and Eastern Region Alliance (ERA) Councils.

### **Confidentiality Recommendation**

1. That having considered Agenda Item 18.1 'Planning Reforms – Heritage in Transition' in confidence under section 90(2) and (3)(m) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) and (9) of that Act orders that:
  - 1.1 The Report and Minutes remain confidential on the basis that the disclosure of this information would involve the disclosure of information relating to a Development Plan Amendment prior to its release for public consultation pursuant to section 90(3)(m) of the *Local Government Act 1999* as the information relates to a possible Development Plan Amendment which is to be submitted to the Minister for Planning prior to community consultation.
  - 1.2 The Report and Minutes will not be available for public inspection until the Development Plan Amendment is released for public consultation; and this confidentiality order will be reviewed by the Council at least once in every 12-month period.
  - 1.3 The Chief Executive Officer is delegated authority that the order be revoked in whole or part.

- 2 That for the item named in clause 1 and associated sub clauses, unless:
    - 2.1 The period in respect of any order made under Section 91(7) of the Local Government Act 1999 lapses; or
    - 2.2 Council resolves to revoke an order made under Section 91(7) of the Local Government Act 1999; or
    - 2.3 The Chief Executive Officer determines pursuant to delegated authority that the order be revoked.
  - 3 Any discussions of the Council on the matter and any recording of those discussions are also confidential.
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### **Purpose**

1. To provide Council with information regarding the invitation from the Minister for Planning to undertake a Local Heritage Transition Development Plan Amendment (DPA) for the purpose of reviewing existing Contributory Items to determine their suitability for listing as Local Heritage Places.

### **Strategic Plan**

2. The following Strategic Plan provisions are relevant:
  - “Conservation and enhancement of the historic character of the City.”*
  - “A range of housing that meets the varying needs of the community”*
  - “Environmentally sustainable development which complements the City’s Character”*
  - “A vibrant and diverse community that has a strong sense of belonging”*

### **Communications / Consultation**

3. The following communication / consultation has been undertaken:
  - 3.1. Discussions with Department of Planning Transport and Infrastructure (DPTI) in relation to various Planning Reforms matters, including concerns about heritage preservation;
  - 3.2. Discussions with the General Manager Corporate and Development and the Group Manager City Development and Safety;
  - 3.3. Discussions with LGA and other Councils; and
  - 3.4. Discussion with Anita Allen, Manager, Planning Reform at DPTI on 8 August 2019.
  - 3.5. Meeting with Helen Dyer, Member of State Planning Commission on 19 August 2019.

**Statutory**

4. The following legislation is relevant in this instance:

*Development Act 1993*

*Development Regulations 2008*

*Heritage Places Act 1993*

*Local Government Act 1999*

*Planning, Development and Infrastructure Act 2016*

**Policy**

5. The following Council policies and strategy documents are relevant in this instance:

*Be the Future of Burnside Strategic Community Plan 2016-2026*

*Burnside (City) Development Plan*

*Heritage Policy*

*Streetscape Policy*

**Risk Assessment**

6. If Council does not respond to DPTI's invitation to submit a Statement of Intent to undertake a Local Heritage Transition DPA to convert Burnside's existing Contributory Items to Local Heritage Places, or the existing level of heritage protection is not transferred across to the new Planning and Design Code, there is the potential for loss of built heritage within Council's existing Historic Conservation Zone.

**CEO Performance Indicators**

7. At the time of writing this report the CEO's Performance Indicators for the 2019/20 financial year have not been set.

**Finance**

8. Estimated costs for the four options presented in this Report range from \$10,000 to \$200,000.
9. The adopted 2019/20 Annual Business Plan and Budget does not currently include a separate budget for a Local Heritage Transition DPA. DPTI raised the option of a DPA in May 2019 but there was not sufficient detail regarding the acceptable parameters, scope and processes at that time to allow an appropriate budget estimate.
10. Should Council decide to proceed with the Officers Recommendation, the approximate cost of \$10,000 can be funded within existing operational budgets. Should Council choose to proceed with an alternative option, any associated budget would need to be determined and if necessary, included at the next quarterly budget review.

## Discussion

### Current Council Resolution

11. At the meeting held on 23 July 2019, Council resolved (C12097):
  1. That the Council Administration brings a report to Council in September 2019 with regard to:
    - 1.1. The possibility of and process for reclassifying Council's Contributory Items as Local Heritage Places.
    - 1.2. The possibility of and process for giving State Heritage recognition to some existing Historic Conservation Policy Areas within the City of Burnside.
    - 1.3. The process for listing or removing Local Heritage Place status.
12. This Report addresses the Council Resolution by presenting options to respond to the Minister for Planning's invitation to undertake a DPA for the purpose of reviewing Council's existing Contributory Items to determine their suitability for listing as Local Heritage Places.

### Background

13. Heritage protection of buildings in South Australia is currently set by the *Development Act 1993*, which addresses the establishment of Local Heritage Places, and the *Heritage Places Act 1993*, which administers State Heritage Places.
14. The City of Burnside has been a strong advocate for heritage protection for many years and has undertaken a number of heritage surveys and Development Plan Amendments to ensure the protection of Council's valued heritage. In this regard, the City of Burnside has:
  - 14.1. 55 State Heritage Places;
  - 14.2. 322 Local Heritage Places;
  - 14.3. One Historic Conservation Zone (HCZ), with nine different Historic Conservation Policy Areas based around the original era of construction in each unique area (refer Attachment A); and
  - 14.4. 1,567 HCZ Contributory Items, all located within the HCZ.
15. Over the past decade, there has been some inconsistency in the policy and approach to heritage across different councils in South Australia. As part of the State Government Planning Reforms, the State Planning Commission is proposing changes to the heritage policy framework in South Australia to improve consistency and clarity.

### Current Local Heritage Places

16. A Local Heritage Place is described within the Development Act as a place of heritage value as designated by a development plan.
17. The *Development Act 1993* currently stipulates that for buildings or items to be listed as Local Heritage Places they must meet one of the following criteria set out under Section 23(4):

- 18.1 It displays historical, economic or social themes that are of importance to the local area;
- 18.2 It represents customs or ways of life that are characteristic of the local area;
- 18.3 It has played an important part in the lives of local residents;
- 18.4 It displays aesthetic merit, design characteristics or construction techniques of significance to the local area;
- 18.5 It is associated with a notable local personality or event;
- 18.6 It is a notable landmark in the area; or
- 18.7 In the case of a tree, it is of special historical or social significance or importance within the local area.

#### *Current Historic Conservation Zones and Contributory Items*

18. Historic Conservation Zones (HCZs) are designated areas of high concentrations of historic buildings which reflect the historic development of an area at the time of the original subdivision as a collective group. They are referred to in the *Development Regulations 2008* and were introduced into the Development Plans of councils through a DPA process which required staged endorsement and approval by the Minister for Planning.
19. An HCZ reveals the history of an area through the retention of its collective group of historic buildings. The City of Burnside's Historic Conservation Zone is divided into nine separate HCZ Policy Areas, each reflecting the differing eras of development in those nine locations.
20. Contributory Items identify the original historic buildings within a HCZ, the retention of which contributes to the preservation of the historic development of the Zone area. Each Contributory Item in the collective contributes to the complete historic picture of the HCZ. In comparison, a Local Heritage Place is an item of individual heritage significance.
21. Contributory Items were included in many Councils' Development Plans also through the DPA process, with endorsement and approval by the Minister for Planning.
22. The City of Burnside's nine HCZ Policy Areas comprise a collective group of Contributory Items which are the intact original historic buildings constructed at the time of original subdivisions.
23. Burnside's HCZ Policy Areas have high concentrations of Contributory Items with very few later built intrusions and are high quality building stock located within attractive, well maintained streets. The HCZs of some Councils are not as intact as the City of Burnside's HCZ.
24. Burnside's Contributory Items are individually identified on maps in the Burnside (City) Development Plan (refer Attachment A). The individual identification of each Contributory Item provides clarity and certainty to property owners and the development sector regarding the protections and development opportunities surrounding these buildings.
25. The intent of Burnside's current Development Plan policy is to ensure the retention and protection of each of these Contributory Item buildings. The dwellings within the HCZ

Policy Areas which are not identified as Contributory Items were constructed at later times.

#### *Current Demolition Criteria*

26. The demolition of both Local Heritage Places and Contributory Items is controlled by merit assessment of a Development Application against the relevant council's Development Plan policy.
27. "Demolition Control" refers to the requirement and process for applicants to submit a Development Application in order to request demolition of a building. However, it is the "Demolition Criteria" against which the application is assessed which determines if the assessing professional will grant approval for demolition.
28. Different councils across South Australia currently have their own different demolition criteria for assessment of Local Heritage Places and Contributory Items.
29. In the City of Burnside, both Local Heritage Places and Contributory Items are currently assessed similarly accordingly to similar demolition criteria. This affords Local Heritage Places and Contributory Items the same level of protection in the City of Burnside. Some other councils do not have the same demolition criteria and level of protection for their Contributory Items as for their Local Heritage Places.
30. The City of Burnside's demolition criteria for its Contributory Items is therefore currently more stringent than for some other councils and has ensured that Burnside's Contributory Items have been protected and its HCZ has not been eroded over time by demolition.
31. Both Local Heritage Places and Contributory Items can be appropriately renovated and extended or adapted to suit modern living arrangements.

#### *New Heritage Framework under the Planning, Development and Infrastructure Act (PDI) 2016*

32. The PDI ensures that Council's existing Local Heritage Places will be transitioned across to the new planning system within a Local Heritage Place Overlay.
33. The State Government has also indicated that existing HCZ areas will transition into a new HCZ Overlay. However, Contributory Items will not be individually identified and will not transition to the new system in their current form.
34. The Overlays will introduce a standardised approach across the boundaries of all councils and are intended by the State Planning Commission to ensure the planning system has greater consistency, clarity and certainty.

#### *New Demolition Criteria in the New Code*

35. In separate discussions with DPTI and the Planning Commission, Council staff have been advised that the new demolition criteria proposed for the new Local Heritage Place Overlay will afford similar protection to the current demolition criteria for existing Local Heritage Places.
36. However, Council staff have also been advised that the demolition criteria for the HCZ Overlay will not afford the same protection as Burnside's current Contributory Items. The proposed new demolition criteria introduce options for demolition which do not currently exist in the City of Burnside Development Plan and which will enable applicants to more readily argue a case for demolition. This could result in the erosion of Burnside's HCZ over time.

37. Both the Local Government Association and the Greater Adelaide Region Organisation of Councils have expressed opposition to the State's intended approach to Contributory Items, which is also contrary to the recommendations of the Environment Resources and Development Committee's 2019 Heritage Report.

*Letter to DPTI and State Planning Commission*

38. On 26 June 2019, Council wrote to DPTI (refer Attachment C) suggesting that the Demolition Criteria for all levels of heritage should be based solely on structural condition, with the difference between levels being distinguished by the extent of the building to be protected, as detailed on the building's statement of heritage value. For State Heritage Places, this included both the exterior and interior of the building, whereas for Contributory Items it would be limited to the front façade, side facades and roof of the original historic dwelling. This letter was distributed to Elected Members via Information Document in early July.
39. Council has received a written reply from DPTI (Refer Attachment D) with the content of the original letter discussed in part, at a meeting between Council Administration and Anita Allan, DPTI Planning Reforms Manager on 8 August 2019.
40. At this meeting, DPTI advised they are still finalising the policy and are considering some revisions to the proposed demolition criteria. These revisions, however, would not match the level of protection currently afforded to Contributory Items in the City of Burnside.
41. The response now received from the commission sets out the Commission's commitment to transitioning all existing HCZs into the Code in the form of a policy Overlay, which will contain policies which seek to protect local heritage values through demolition control.
42. However, the Commission's response does not address the nature of the new demolition criteria that will be applied to the new HCZ Overlay. As mentioned previously in this Report, the Administration has been advised through discussions with DPTI, and remain concerned that the new demolition criteria applicable to the new HCZ Overlay will not afford the same level of protection that currently exists for Burnside's Contributory Items.

*Local Heritage Transition DPA*

43. As part of the transition process, the Minister for Planning recently invited Councils to submit a Statement of Intent (SOI) to undertake a Local Heritage Transition DPA to convert existing Contributory Items to Local Heritage Places.
44. Under the new Code, Local Heritage listing will offer demolition protection for Burnside's Contributory Items equivalent to that of Council's existing HCZ. Council has at least four options in response to this invitation, each of which has relative advantages and disadvantages:
- 44.1. Submit a SOI to undertake a DPA for all of Council's 1,567 HCZ Contributory Items;
- 44.2. Submit a SOI to undertake a DPA for a few HCZ Contributory Items that may be considered most likely to meet the criteria and DPTI guidelines for the Transition DPA;
- 44.3. Submit a SOI to undertake a DPA to list Burnside's nine existing HCZ Policy Areas as Local Heritage Places; or

- 44.4. Elect not to undertake a DPA but continue to advocate for change to the proposed demolition criteria and for the continued identification of Contributory Items.

#### Local Heritage DPA Process

45. The *Development Act 1993* sets out the steps for listing a property as a Local Heritage Place through a DPA. DPTI have provided the following outline of their required process for this particular DPA. All steps must be completed by December 2020:

1. Assess existing Contributory Items for potential Local Heritage Place listing including: <ul style="list-style-type: none"> <li>• Street assessment</li> <li>• Completion of Data Sheets</li> <li>• Photographs</li> <li>• Historic data search including year built, original owner, etc.</li> </ul>
2. Preparation of Statement of Intent (SOI) including: <ul style="list-style-type: none"> <li>• Preliminary Background Research and Investigations</li> <li>• Amendment instructions</li> <li>• Preliminary Mapping</li> <li>• Completed Data sheets</li> </ul>
3. Lodge SOI with DPTI for consideration by the Minister for Planning
4. Following approval of SOI by the Minister, Prepare DPA including: <ul style="list-style-type: none"> <li>• Completion of detailed research and investigations</li> <li>• Finalise Data Sheets</li> <li>• Finalise any associated textural entries</li> </ul>
5. Lodge DPA and Data Sheets with DPTI: <ul style="list-style-type: none"> <li>• Liaise with DPTI to prepare mapping requirements and input to heritage database</li> </ul>
6. Consultation with affected landowners and occupiers: <ul style="list-style-type: none"> <li>• Minimum 8 weeks</li> <li>• Letter sent to each landowner or occupier (which details process, implications of listing on development rights and any incentives available)</li> <li>• No Interim Operation will be permitted for this particular DPA</li> </ul>
7. Council considers submissions
8. Local Heritage DPA and information package sent to DPTI for approval by mid-2020
9. State Planning Commission (SPC) conducts hearing for objectors and prepares recommendations: <ul style="list-style-type: none"> <li>• If amendments are proposed, SPC must consult with Council and provide advice to Minister for Planning for approval</li> </ul>
10. Minister considers Commission's advice and either: <ul style="list-style-type: none"> <li>• Approves all listings proposed by Council or</li> <li>• Amends list provided by Council (if amendments are proposed, Minister will consult Council on the proposed amendments)</li> </ul>
11. Council responds to Minister on proposed amendments
12. Minister finalises their decision on DPA



13. DPA gazetted and listings entered into Planning and Design Code
14. DPA referred to Environment Resources and Development Committee of Parliament for Review

46. Removal of Local Heritage Place status is also by means of a DPA, which follows the same steps in the process tabulated above.

*Option 1: DPA for all 1,567 Contributory Items*

47. If successful, undertaking a DPA to convert all 1,567 of Council's Contributory Items to Local Heritage Places is likely to afford them protection similar to that which currently exists in the City of Burnside.
48. The *Development Act 1993* requires that proposed Local Heritage Places must meet one of the legislated criteria stipulated under Section 23(4) of the Act. However, the Minister has the discretion to approve or reject the proposed listing without necessarily referring to the criteria. Experience by other local councils suggests that the previous Minister and DPTI have required that each building be individually special. Consequently, they have taken a "Noah's Ark" approach towards any proposed large group listings and have ultimately authorised only one or two "representative" examples of each building style.
49. DPTI have also recently prepared draft guidelines for Local Heritage Transition DPAs. These guidelines indicate that over and above the established legislated criteria, DPTI will also apply additional new "Assessment Guidelines". These additional requirements are extensive (Refer Attachment B) and reflect a "Noah's Ark" approach.
50. It is therefore likely that only a few representative examples of Burnside's existing Contributory Items would be endorsed by the State Government for Local Heritage status, should this option be pursued. This outcome would not maintain the current protection of all Burnside's Contributory Items.
51. It is also noted that Heritage DPAs are emotive forums and many property owners, may not be receptive to individual Local Heritage listing.
52. A DPA to list of all 1,567 Contributory Items within the City of Burnside would be a high cost endeavor. Other councils have received quotations in excess of \$200,000 to engage consultants to undertake such a DPA. If Council staff undertook the majority of the work, this upfront cost could potentially be reduced to approximately to around \$50,000 to cover public consultation and input from a heritage consultant.
53. For the reasons identified above, this option is not recommended by the Administration.

*Option 2: DPA for Selected Contributory Items*

54. Council could choose to undertake a DPA to propose the listing of a small selection of properties, which may be considered most likely to meet the criteria set out by the legislation and draft DPTI guidelines. The cost to undertake this DPA would only be slightly less than Option 1 as all 1,567 properties would still need to be reviewed in order to make the selection.
55. This approach would only maintain a "representative" group of properties and would not preserve the overall history of Burnside's existing HCZ Policy Areas. There are also reputational risks to this approach where the community may not understand the basis

for the “representative” selections and be unsatisfied with the final reduced number of protected properties.

56. This option is not recommended by the Administration.

*Option 3: DPA for HCZ Policy Areas – Recommended Option*

57. Although the Local Heritage listing process is primarily used to list individual buildings, the relevant legislation leaves open the opportunity for a Local Heritage Place to be an “area” of land where:

57.1. The *PDI Act 2016* states that “a place will be taken to be any place within the meaning of the *Heritage Places Act 1993*”; and

57.2. The *Heritage Places Act 1993* states that “place” means “(a) any site or area, with or without improvements; (b) any land ... “

58. With this in mind, an alternative approach to submitting a DPA to list every individual Contributory Item as separate Local Heritage Places may be to prepare a DPA to list Council’s nine geographical HCZ Policy Areas as nine Local Heritage Places. As historic geographical locations, each of the nine areas may satisfy the technical requirements for two or more of the statutory criteria for listing as a Local Heritage Place.

59. Under this approach, each individual Contributory Item within each “Area”, could be put forward as a significant historic element within that defined area. Since each of the nine geographical areas would be distinctly different from one another, the “Noah’s Ark” principle would not be applicable. This could ensure all of Burnside’s existing Contributory Items would be protected as a collective synonymous to their current situation and is more likely to be positively received by residents.

60. As in Burnside’s current policy, the proposed DPA would only identify the key historic building elements of existing Contributory Items for protection and not existing non-Contributory Items or Council infrastructure.

61. There does not appear to be a precedent for this approach and therefore there is a risk that it may not be successful. The likely response by the Minister to such a DPA is uncertain. It is recognised that the State (either DPTI or the Minister) has the final say at every stage of any DPA process and they can refuse or amend Council’s recommendations at any point. If this approach is unsuccessful, Council may be asked to revise the extent of its proposed listing and resubmit accordingly.

62. Independent legal advice regarding this option states that a DPA to designate each of Council’s nine HCZ Policy Areas as a place of local heritage value, subject to satisfying one or more of the relevant criteria to support designation, would be unusual but lawfully possible.

63. A Statement of Intent to undertake this alternative DPA could be prepared relatively quickly by the Administration with minimal consultant input, estimated to cost approximately \$10,000.

*Option 4: Do not proceed with a DPA*

64. After consideration of associated time and costs, Council may elect not to proceed with a DPA.

65. However, there are possible reputational risks if Council decides not to proceed with a DPA and the new heritage policy and Demolition Criteria do not sufficiently protect Burnside's existing Contributory Items.
66. This option to not proceed is not recommended by the Administration.
67. Irrespective of whether or not Council decides to undertake a DPA, it may be considered prudent for Council to write to the Premier, Minister for Planning, and the State Planning Commission regarding:
- 67.1. The importance of not reducing the City of Burnside's existing level of heritage protections, particularly with respect to the demolition criteria for existing Contributory Items; and
- 67.2. Council's support for the Environment Resources and Development Committee's Heritage Report recommendations, as supported by the Greater Adelaide Region Organisation of Councils, the Local Government Association, and Eastern Region Alliance (ERA) Councils.

*Recommended Option 3: DPA for HZC Policy Areas*

68. It is proposed that Option 3 be pursued and that a Statement of Intent is prepared to progress a Local Heritage Transition DPA to list Burnside's current nine HCZ Policy Areas as nine Local Heritage Places.
69. Although without precedent, this option presents the best likelihood of preserving the current level of protection for Council's Contributory Items at a reasonable cost that can be funded within existing operational budget. It is noted, however, that DPTI or the Minister can refuse or amend Council's recommendations at any point in the process. If this approach is unsuccessful, Council may be asked by the State Government to revise the extent of its proposed listing, depending on the Planning Reforms timeframes.
70. DPTI have advised that the Commission is willing to meet with local councils to discuss Planning Reform issues. After lodgement of a Statement of Intent, Council may consider it of benefit to accept the invitation to meet with the Commission for an informal workshop, acknowledging that according to Council's Informal Gatherings Policy, no undertakings or decisions can be made or given in a workshop, in line with legislation and local policy.

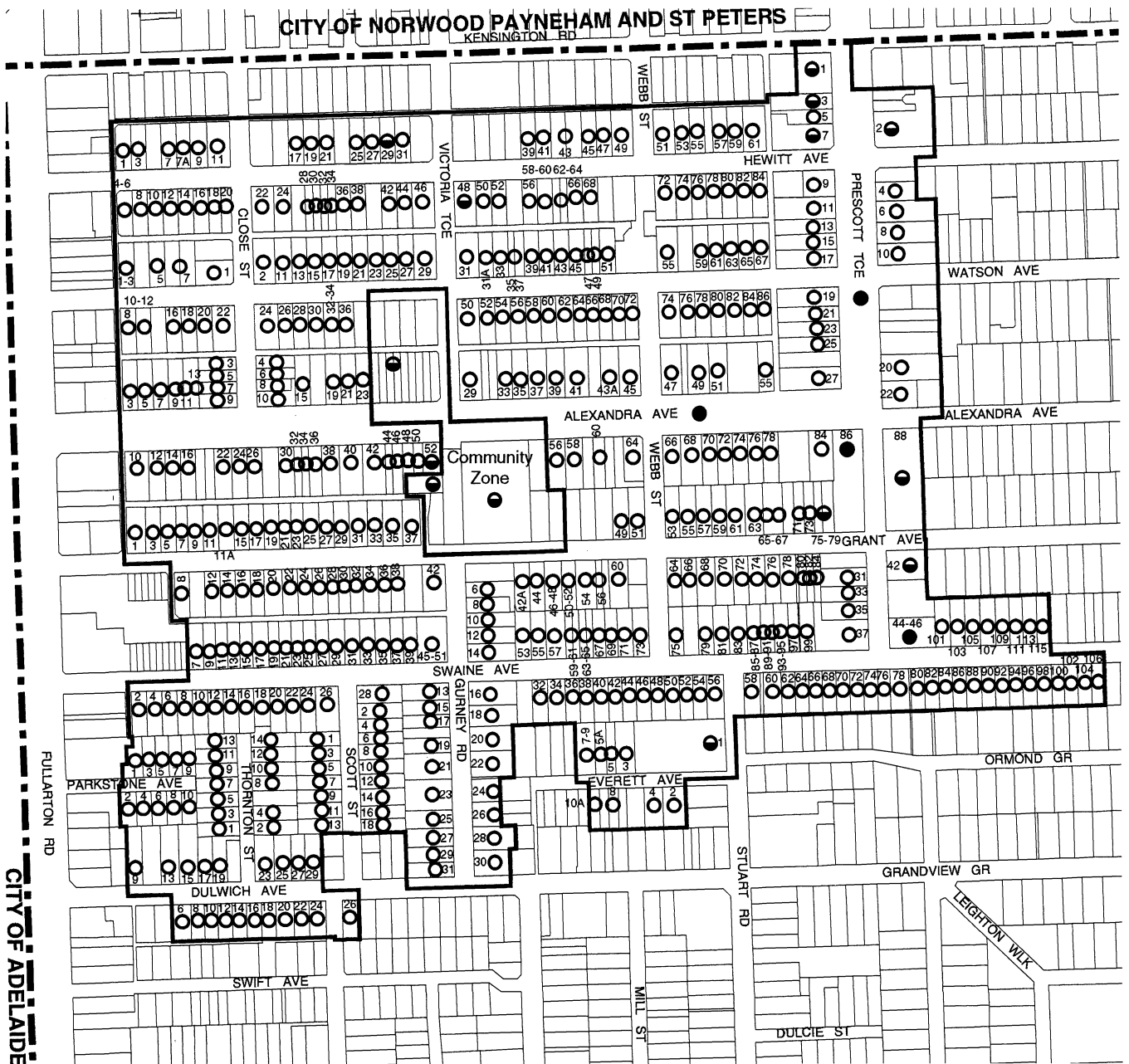
*State Heritage Recognition of Existing Historic Conservation Policy Areas*

71. A State Heritage Area is a clearly defined region with outstanding natural or cultural elements significant to South Australia's development and identity.
72. Protection within a State Heritage Area is determined by whatever is specified on the Statement of Heritage Value for that specific Area as prepared at time of listing. Anyone including a Council can nominate a place or object in South Australia to be considered for State Heritage listing. Nominated State Heritage places are assessed by the South Australian Heritage Council against criteria outlined in the *Heritage Places Act 1993*.
73. A place would be considered as having State Heritage value if one or more of the following criteria are met:
- 62.1 It demonstrates important aspects of the evolution or pattern of the State's history;

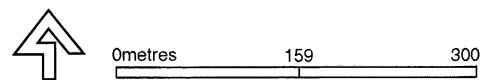
- 62.2 It has rare, uncommon or endangered qualities that are of cultural significance;
  - 62.3 It may yield information that will contribute to an understanding of the state's history, including its natural history;
  - 62.4 It is an outstanding representative of a particular class of places of cultural significance;
  - 62.5 It demonstrates a high degree of creative, aesthetic or technical accomplishment or is an outstanding representative of particular construction techniques or design characteristics;
  - 62.6 It has strong cultural or spiritual associations for the community or a group within it; or
  - 62.7 It has a special association with the life or work of a person or organisation or an event of historical importance.
74. If Council were to nominate its HCZ Policy Areas as State Heritage Areas, similar to the situation in Colonial Light Gardens, a Statement of Heritage Value could be written to provide Burnside's Contributory Items with a level of protection similar to that which they currently have.
75. However, the process required to seek State Heritage recognition, is lengthy and the outcome is uncertain. While the HCZ Policy Areas are significant to Burnside's local history, it may be difficult to demonstrate the same level of significance in the context of the settlement of the State as a whole.

#### *Conclusion*

76. The State Government's invitation to undertake a DPA to convert Contributory Items to individual Local Heritage Places is likely to result in the listing of only a small number of properties, which would not maintain the current level of protection of Council's Contributory Items or prevent the erosion of Burnside's HCZ.
77. Submission of such a DPA runs the risk of expending large amounts of time, cost and resources on a process which is unlikely to result in the desired outcome.
78. Independent legal advice suggests a DPA which proposes the Local Heritage listing of Council's nine HCZ Policy Areas (Option 3 above) may be possible. If successful, this option is considered more likely to ensure an adequate level of protection for Council's Contributory Items, commensurate with the existing system.
79. It is noted, however, that this option is without precedent and the likely response by the Minister to such a DPA is uncertain. The Minister or DPTI can refuse or amend Council's recommendations. If this approach is unsuccessful, Council may be asked by the State Government to revise the extent of its proposed listing, depending on the Planning Reform timeframes.



CITY OF ADELAIDE



**BURNSIDE (CITY)  
POLICY AREAS OF  
THE HISTORIC CONSERVATION ZONE  
HISTORIC CONSERVATION  
POLICY AREA 1  
-ROSE PARK  
Fig Bur HCPA/1**

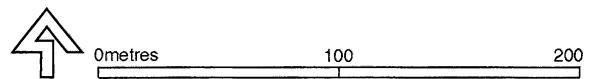
- State Heritage Place
- Local Heritage Place
- Contributory Item
- 23 House / Property Number
- Policy Area 1 Boundary
- - - Development Plan Boundary



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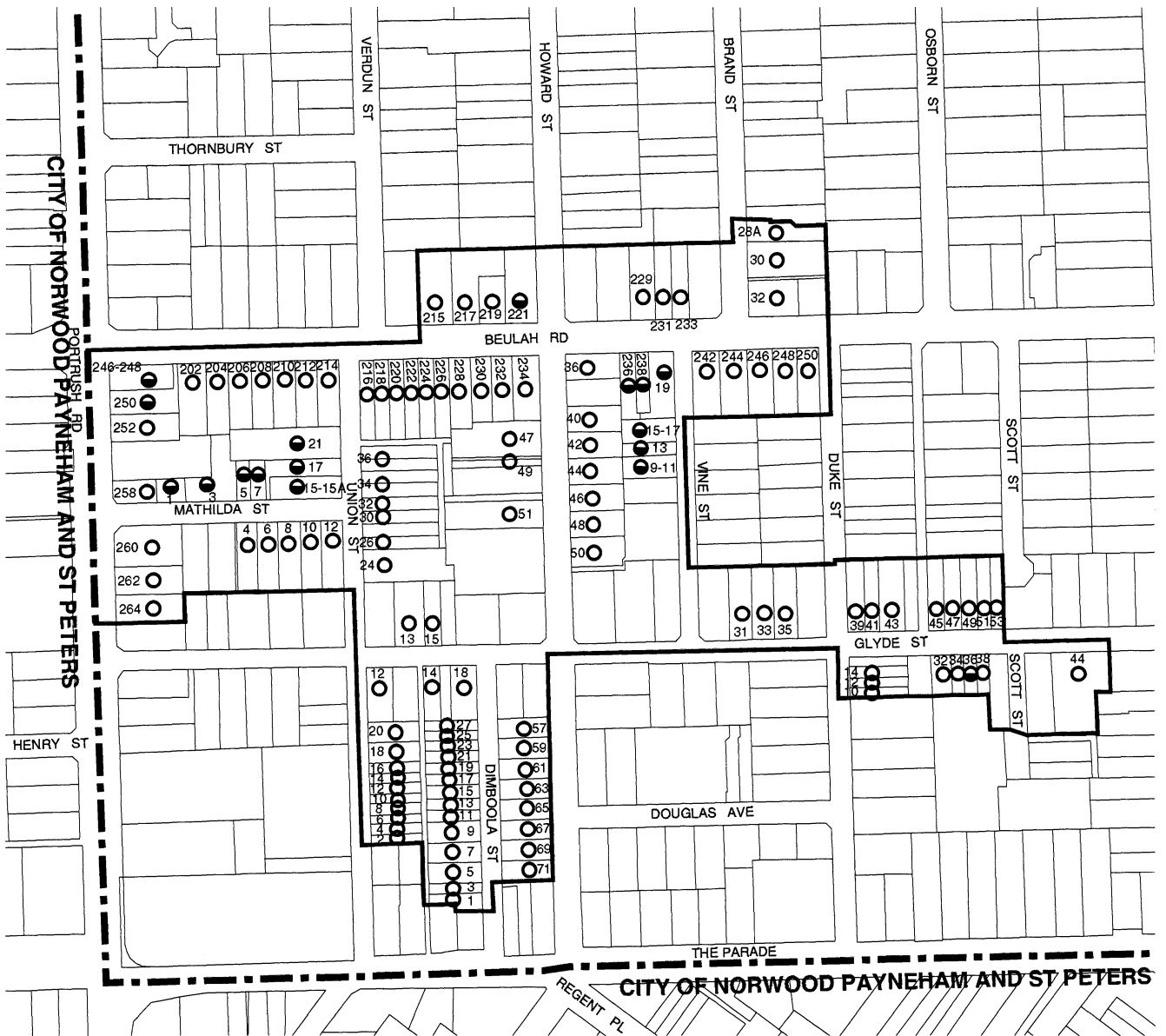
**BURNSIDE (CITY)  
POLICY AREAS OF  
THE HISTORIC CONSERVATION ZONE  
HISTORIC CONSERVATION  
POLICY AREA 2  
-EASTWOOD  
Fig Bur HCPA/2**

- Local Heritage Place
- Contributory Item
- 23 House / Property Number
- Policy Area 2 Boundary
- - - Development Plan Boundary



**BURNSIDE (CITY)  
 POLICY AREAS OF  
 THE HISTORIC CONSERVATION ZONE  
 HISTORIC CONSERVATION  
 POLICY AREA 3  
 -St GEORGES (WOOTOONA TCE)  
 Fig Bur HCPA/3**

- Local Heritage Place
- Contributory Item
- 23 House / Property Number
- Policy Area 3 Boundary

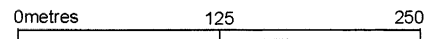
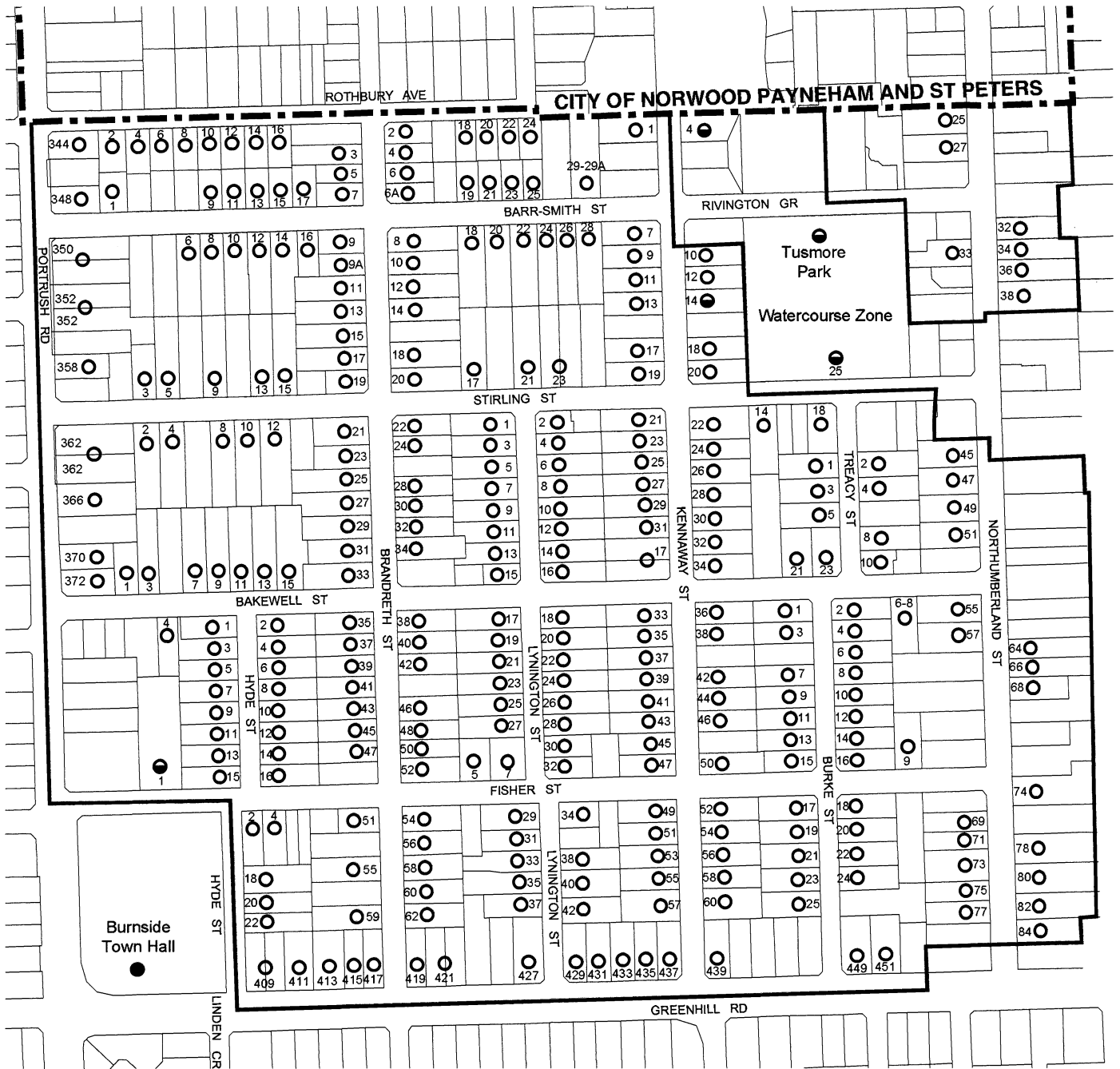


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**BURNSIDE (CITY)  
POLICY AREAS OF  
THE HISTORIC CONSERVATION ZONE  
HISTORIC CONSERVATION  
POLICY AREA 4  
-BEULAH PARK  
Fig Bur HCPA/4**

- Local Heritage Place
- Contributory Item
- 23 House / Property Number
- Policy Area 4 Boundary
- - - Development Plan Boundary



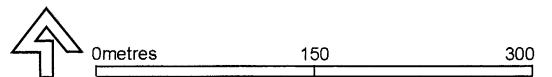
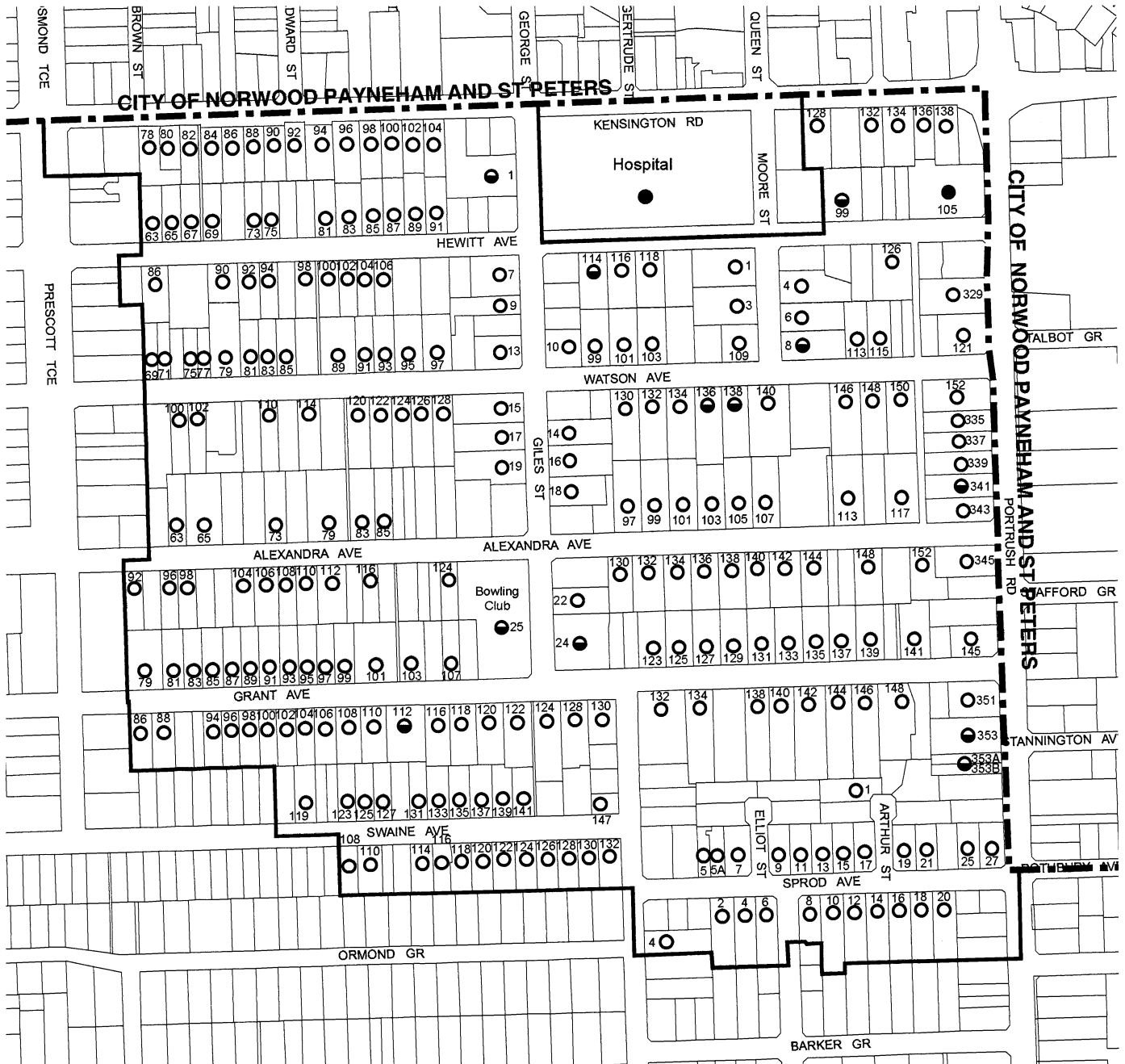


**BURNSIDE (CITY)**  
**POLICY AREAS OF**  
**THE HISTORIC CONSERVATION ZONE**  
**HISTORIC CONSERVATION**  
**POLICY AREA 5**  
**-TUSMORE**

- State Heritage Place
- Local Heritage Place
- Contributory Item
- 23 House / Property Number
- Policy Area 5 Boundary
- - - Development Plan Boundary

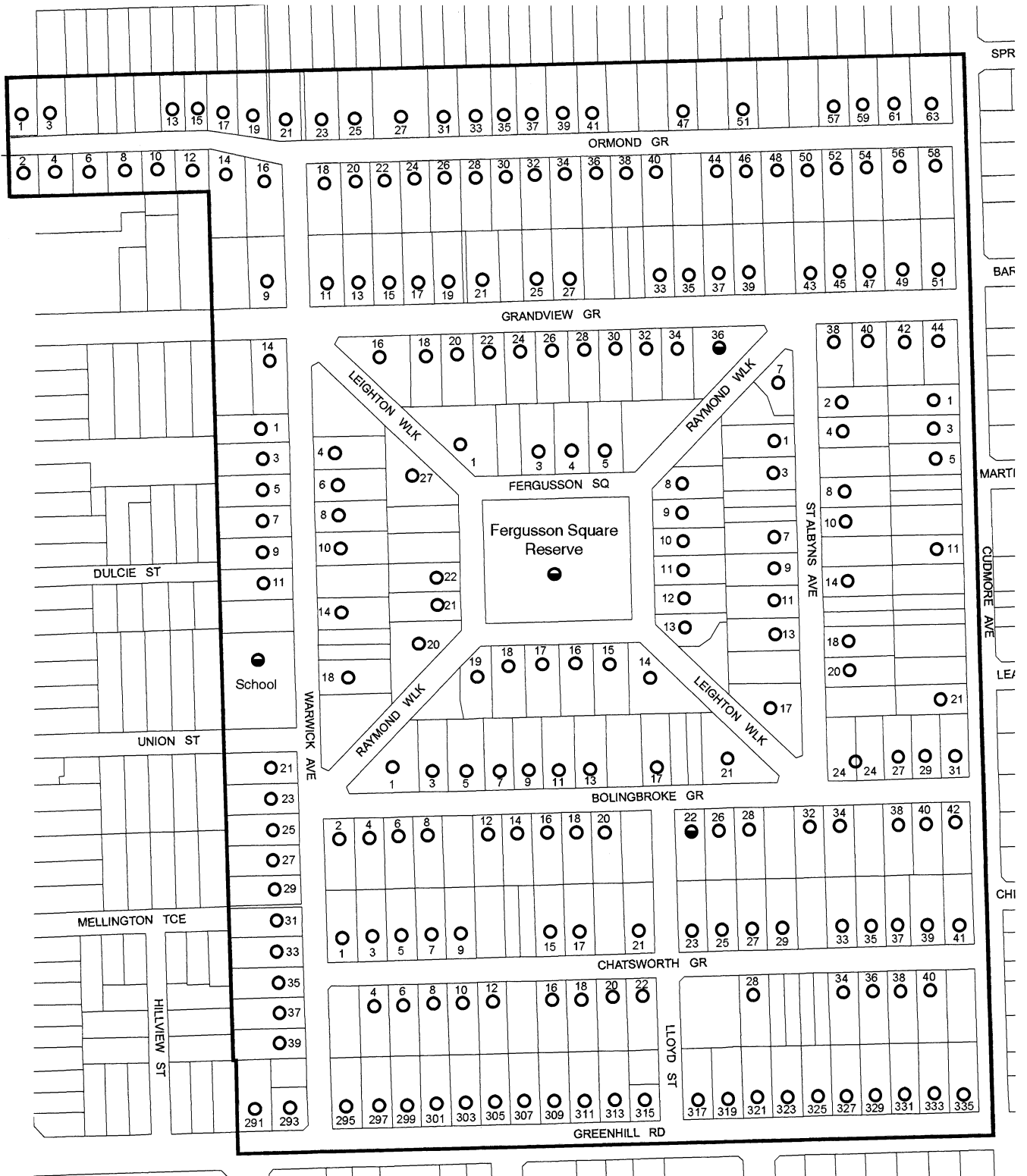
**Fig Bur HCPA/5**

Consolidated - 19 December 2017



**BURNSIDE (CITY)  
POLICY AREAS OF  
THE HISTORIC CONSERVATION ZONE  
POLICY AREA 6  
-TOORAK GARDENS (NORTH)  
Fig Bur HCPA/6**

- State Heritage Place
- Local Heritage Place
- Contributory Item
- 23 House / Property Number
- Policy Area 6 Boundary
- - - Development Plan Boundary

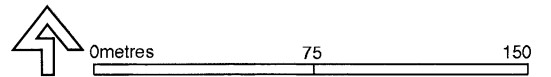


- Local Heritage Place
- Contributory Item
- 23 House / Property Number
- Policy Area 7 Boundary



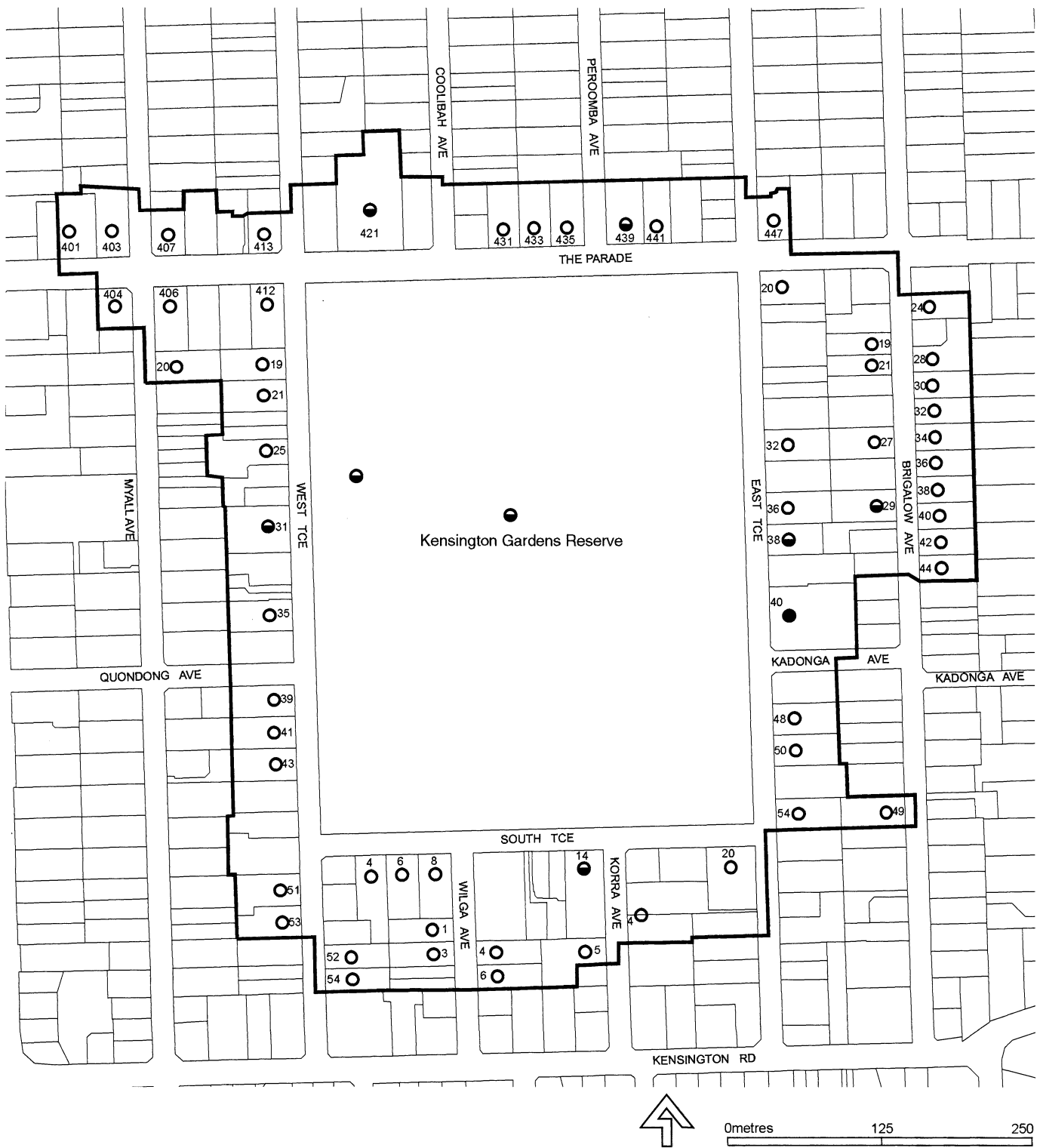
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**BURNSIDE (CITY)  
POLICY AREAS OF  
THE HISTORIC CONSERVATION ZONE  
HISTORIC CONSERVATION  
POLICY AREA 7  
-TOORAK GARDENS (FERGUSSON SQUARE)  
Fig Bur HCPA/7**



**BURNSIDE (CITY)  
POLICY AREAS OF  
THE HISTORIC CONSERVATION ZONE  
HISTORIC CONSERVATION  
POLICY AREA 8  
-GLENUNGA PARK  
Fig Bur HCPA/8**

- Local Heritage Place
- Contributory Item
- 23 House / Property Number
- Policy Area 8 Boundary
- - - Development Plan Boundary



**BURNSIDE (CITY)  
POLICY AREAS OF  
THE HISTORIC CONSERVATION ZONE  
HISTORIC CONSERVATION  
POLICY AREA 9  
-KENSINGTON GARDENS  
(RESERVE)  
Fig Bur HCPA/9**

- State Heritage Place
- Local Heritage Place
- Contributory Item
- 23 House / Property Number
- Policy Area 9 Boundary

## HERITAGE IN TRANSITION

### CONTEXT

South Australia has a long and proud legacy of heritage protection since 1978, when places of State heritage value were first entered in the then Register of State Heritage Items. Local heritage recognition followed in 1993, through the newly established Development Act.

The precinct-focused heritage protection, at a state and also at a local level, has existed since early 1980s.

The following Local Heritage Place guidelines provides a useful framework to assist with the identification and evaluation of the potential heritage value of a place. The guide builds upon the material published in the 2001 South Australian 'Planning Bulletin - Heritage' document. Local heritage criteria are unchanged, but are now supported by a series of inclusion and exclusion tests, to provide an analytical framework to assist in the determination of the relative heritage significance of a place against the criteria. This approach has been used to evaluate places nominated for State heritage listing in the South Australian Heritage Register for several years and is supported by the SA Heritage Council.

This guide will also promote consistency in heritage assessment decisions and ensure clarity in the use of the most appropriate local heritage criteria. It is a step towards providing a degree of uniformity between the State and local heritage listing processes and open the way to a long sought after integrated system for South Australia.

**Keith Conlon**

**Chair, South Australian Heritage Council**

# BACKGROUND

## Heritage in Transition

The Government of South Australia and the State Planning Commission's (the Commission) intention is that all State Heritage Places, State Heritage Areas and Local Heritage Places currently identified in Development Plans will transition directly to the Planning and Design Code (the Code).

It is also our intention that existing historic conservation type zones and policy areas as well as character type zones and policy areas will be transitioned (i.e via new overlays) into the Code in direct collaboration with councils, ahead of formal community consultation. More detail about the proposed approach is outlined in documents on the SA Planning Portal ([www.saplanningportal.sa.gov.au](http://www.saplanningportal.sa.gov.au)).

## Contributory Items

The Development Act 1993 did not provide a definition or assessment criteria for the nomination and listing of Contributory Items. The basis and justification of such listings are therefore unclear in most Development Plans, which has led to significant inconsistency and a lack of clarity around these Items. Given the unclear basis of listing, Contributory Items will not be scheduled in definition in the Code.

However, the importance of these items in contributing to the broader character values of various areas is recognised and, as such, the Commission is proposing the use of specific overlays and/or zone policies to ensure the ongoing protection of the character of valued places and neighbourhoods. The Commission is proposing:

- *Local Heritage Area Overlays:* In transitioning Development Plans to the Code, it is intended to apply this Overlay to all existing Historic Conservation Zones/Areas. The Local Heritage Area Overlay will contain policies which seek to protect local heritage values through demolition control (performance assessed), heritage assessment and promotion of adaptive reuse solutions.
- *Character Overlays:* It is intended to apply Character Overlays to existing Character Zones and Areas. This Overlay will provide strengthened policies around design outcomes, including contextual analysis to ensure any new development either maintains or improves existing character.

Consideration is also being given to the use of new tools such as an optional Design Review in both Local Heritage Area Overlays and Character Overlays.

**The Government of South Australia also acknowledges that there may be existing Contributory Items that are potentially of Local Heritage Place significance. Council Development Plan Amendments (DPAs) that seek to undertake this listing process will be prioritised.**

**This Guide provides Councils with the steps and guidance required for undertaking such a DPA. No interim effect will be given to the proposed listings.**

## Heritage Areas and Local Heritage Places - listing post Transition

The heritage listing framework under the Development Act 1993 was directly transitioned into the Planning, Development and Infrastructure Act 2016 without any refinements. If a Council wishes to undertake a DPA to list new Local Heritage Place (not current Contributory Items) or a State or Local Heritage Area, this can commence after the implementation of the Code for that Council area. Further advice and guidance about these processes will be provided at the end of 2019.

The Environment Resources and Development Committee of State Parliament has recently completed an inquiry, which has examined longer term changes to the future listing of National, State and Local heritage Places/ Areas, separate to the transition to the Code. The Government of South Australia will consider the recommendations of the inquiry with the Commission, with the intention of considering heritage reform after the completion of transitioning Development Plans to the Code.

# Starting a Local Heritage ‘Transition’ Development Plan Amendment

## Timeframe for preparing a Transition DPA

It is recommended that the Council meet with the Department of Planning, Transport and Infrastructure (DPTI) before starting a DPA process and investigations to discuss the timing, resource and information requirements. This should be undertaken as soon as possible.

**Contact:** Abi Coad – 7109 7039, Nadia Gencarelli- 7109 7036, Sally Jenkin -71097038

A significant amount of investigation and consultation is required in preparing Heritage DPAs. Transitional Regulations will enable Local Heritage DPAs to be finalised within a 6-month period post-implementation of the Phase 3 Code (effectively up to December 2020) without the need to initiate a Code Amendment process. This timeframe applies to all Councils seeking to undertake a Heritage DPA, regardless of what Phase they fall into.

Heritage DPAs not finalised by December 2020 will cease to operate, as the Development Act provisions will cease, and a new Code Amendment process will need to be undertaken.

## The DPA Process

The table below sets out the key steps for Council to prepare a Local Heritage DPA.

STEPS FOR A TRANSITION LOCAL HERITAGE DPA	
Step 1	<b>Assess the Contributory Item</b> for potential Local Heritage Place listing. Refer below for more information.
Step 2	<b>Prepare Statement of Intent (SOI) with the Local Heritage Data Sheets</b> for recommended places. Local Heritage Data Sheet can be found in the Practitioner’s guide to preparing heritage DPA.
Step 3	<b>Lodge SOI</b> with DPTI for consideration by the Minister for Planning.
Step 4	<b>Following approval by the Minister, prepare the DPA and Lodge the Local Heritage Data Sheets</b> with DPTI to prepare the mapping requirements and put into the Heritage database. Local Heritage Places must be correctly identified as inaccuracies can cause invalid listings.
Step 5	<b>Consultation</b> - 8 weeks consultation including letters to affected landowners and occupiers. It is imperative that Council is transparent with its community about the process, the implications of the proposed listings would have on development rights and any incentives available. <b>There will be NO Interim Operation</b>
Step 6	<b>Council considers the submissions</b> and provides the Local Heritage DPA (and information package) for approval to DPTI <b>by Mid 2020</b> (Note: additional information requirements are outlined in the Practitioners Guide to Preparing Heritage DPAs).
Step 7	The <b>State Planning Commission conducts hearing</b> for objectors and prepares its recommendations. If amendments are proposed, the State Planning Commission will need to consult with Council and then provide advice to the Minister for Planning for approval.
Step 8	The <b>Minister considers the Commission’s advice</b> and decides whether to approve all listings as proposed by Council or amend the list as provided by Council.
Step 9	If Amendments are proposed the <b>Minister will consult with Council</b> on the proposed amendments.
Step 10	Following Council’s response, <b>the Minister will finalise his decision</b> on the DPA. The DPA is then gazetted and the listings entered into the Planning and Design Code.
<b>This must be done by December 2020 (Transitional Provisions to Apply).</b>	
Step 11	The DPA will be referred the <b>Environment Resources and Development Committee</b> of Parliament for Review.

Refer to the requirements of *Practitioners Guide to Development Plan Amendments* ([https://www.saplanningportal.sa.gov.au/current\\_planning\\_system/planning\\_policy/practitioners\\_guide\\_to\\_preparing\\_development\\_plan\\_amendments](https://www.saplanningportal.sa.gov.au/current_planning_system/planning_policy/practitioners_guide_to_preparing_development_plan_amendments)) for all process, administrative and template requirements.



## Recommending a Local Heritage Place - criteria and thresholds

A Local Heritage Place must meet at least one of the criteria pursuant to Section 23 (4)(a) of the *Development Act*. The professional advice of a heritage specialist is recommended in the evaluation of the potential Local Heritage Place. Note that, a place will not be listed if it is determined to be structurally unsound, has public safety issues or is irredeemably beyond repair.

The heritage investigations will need to involve:

1. Consideration of themes of activities and historical forces. These may have been previously identified in existing Council heritage reviews.
2. Review each contributory item against the local heritage place criteria (section 23(4) of the *Development Act 1993*) in accordance with the Assessment Guidelines.
3. Clearly and accurately describe to what extent the building or property is proposed to be listed (i.e. Is it just the façade? Does it exclude additions?) A site visit is strongly advised.
4. Investigate whether the building may be structurally unsound, has public safety issues or is irredeemably beyond repair (this may also be identified during the consultation process).
5. Ensure that the property details are correctly and accurately recorded. Inaccuracies can lead to invalid listings if affected property owners have not been appropriately notified.

Other investigations (by Council Planner) will need to involve:

6. A Strategic Assessment including consideration of any disparities between existing improvements and likely development opportunity.

*For instance a single detached dwelling on a key road corridor would need a compelling argument to be retained over a similar dwelling on a suburban street.*

The legislation requires that all DPAs consider the relevant Planning Strategy. At the Statement of Intent stage, the relevant policies of the Planning Strategy must be identified. At the consultation and approval stages of the DPA the Chief Executive Officer must sign certificates (Schedule 4a and 4b of *Development Regulations*) confirming that the DPA will be consistent with those policies.

7. If current, Council should refer to how the proposal for listings fits with its other strategic priorities.

Heritage protection provided through Development Plans is not just a statutory process. It requires additional processes, including support and commitment and the input of heritage expertise throughout the listing process and for landowners once their place is listed.

## Local Heritage Places - criteria – assessment guidelines

**A) It displays historical, economic or social themes that are of importance to the local area.**

### **Guidelines for inclusion**

The place should be closely associated with events, developments or cultural phases which have played a significant part in local history. Ideally, it should demonstrate those associations in its fabric, although in some cases there may be no such evidence.

The history of a particular place must be understood through an overview history of the local area, including the identification of important themes. The significance of the place must be demonstrated in relation to the overview history and themes. A place is likely to satisfy this criterion if the following steps are met.

#### **Step 1: A Basic Test for satisfying Criterion A**

Does the place have a CLEAR ASSOCIATION with an historic event, phase, period, process, function, movement, custom or way of life in the local area, as supported by the overview history and identified themes?

AND

Is the place's association to the historic event, phase, etc. EVIDENT in the physical fabric of the place or in documentary sources or oral history?

**CRITERION MAY BE SATISFIED**

#### **Step 2: A Basic Test for determining Local Significance**

Is the event, phase etc. of HISTORICAL IMPORTANCE to the local area, having made a strong, noticeable or influential contribution to the evolution or pattern of the local community or environment, with reference to the overview history and themes?

AND

Does the place allow the association with the important event, phase etc. to be BETTER APPRECIATED THAN MOST OTHER PLACES IN THE LOCAL AREA WITH SUBSTANTIALLY THE SAME ASSOCIATION? IS IT AN EXEMPLAR?

**CRITERION IS LIKELY TO BE MET**

#### **Step 3: Exclusion Guidelines for Criterion A**

The place may not satisfy this criterion if any of the following apply.

<b>Not related to important local history</b>	It does not relate to an <u>important</u> theme in local history.
<b>Common place</b>	It is of a class of places that is <u>common or frequently replicated</u> across the local area.
<b>Little local interest</b>	It is associated with events that are only of <u>interest to a disparate or small number of people</u> and not to a local community.
<b>Low or questionable importance</b>	It is associated with an historical event, phase etc. of <u>low or questionable</u> importance.
<b>Incidental, indirect or unsubstantiated associations</b>	Its associations to the significant event, phase etc. are either incidental, indirect or <u>cannot be substantiated</u> .
<b>No evidence</b>	There is no surviving reliable or verifiable physical, documentary or oral history evidence to <u>demonstrate the association</u> of the place with the historical event, phase, etc.

***Illustrative example of Criterion A being satisfied***



Telephone Exchange, Prospect. Photo source: Prospect Heritage Review, McDougall and Vines

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## B) It represents customs or ways of life that are characteristic of the local area.

### **Guidelines for inclusion**

The place should demonstrate a way of life or social custom, which is distinctive locally, being one of a small number of places remaining that demonstrates specific customs or a way of life which reflects the cultural history and identity of the local area.

A place is likely to satisfy this criterion if the following steps are met.

#### **Step 1: A Basic Test for satisfying Criterion B**

Is the place's association to the distinctive characteristic custom/way of life EVIDENT in the physical fabric of the place and/or in documentary sources or oral history?

AND

Is the place DISTINCTIVE locally, being one of a small number of places remaining that demonstrates the particular customs or way of life, etc?

**CRITERION MAY BE SATISFIED**

#### **Step 2: A Basic Test for determining Local Significance**

Is the CUSTOMS or WAY OF LIFE a noticeable or influential part of the evolution or pattern of the local community or environment?

**CRITERION IS LIKELY TO BE MET**

#### **Step 3: Exclusion Guidelines for Criterion B**

The place may not satisfy this criterion if any of the following apply.

<b>Not related to important local history</b>	It does not relate to an important theme in local history.
<b>Common place</b>	It is of a class of places that is common or frequently replicated across the local area and other areas.
<b>Little local interest</b>	It is associated with customs and the ways of life only of interest to a disparate number of people and not to a local community.
<b>Low or questionable importance</b>	It is associated with a custom and ways of life of low or questionable importance.
<b>Incidental, indirect or unsubstantiated associations</b>	Its associations to the customs or ways of life are either incidental, indirect or cannot be substantiated.
<b>No evidence</b>	There is no surviving reliable or verifiable physical, documentary or oral history evidence to demonstrate the association of the place with the custom or way of life.

**Illustrative example of Criterion B being satisfied**



Ukrainian Catholic Church of St Volodymyr & Olha, Woodville (City of Charles Sturt). Photo source: City of Charles Sturt Local Heritage Places and Policies Review, Grieve Gillett, 2017

**C) It has played an important part in the lives of local residents.**

**Guidelines for inclusion**

The place should form the basis of community structure which is important in the cultural history of the local area. These building types are often repeated in each local government area, but each community will also have specific places to which they will have special attachment due to the particular circumstances of local development and sense of place. This may encompass early schools, hotels, institutes, hospitals and churches.

A place is likely to satisfy this criterion if the following steps are met.

**Step 1: A Basic Test for satisfying Criterion C**

Is the place's association to community structure, etc EVIDENT in the physical fabric of the place and/or in documentary sources or oral history?

AND

Is the place SPECIAL locally, being a place that is a key part of community establishment or the social structure of importance to many ?

**CRITERION MAY BE SATISFIED**

**Step 2: A Basic Test for determining Local Significance**

Is the place's reflection of COMMUNITY STRUCTURE a noticeable or influential part of the evolution or pattern of the local community or environment?

**CRITERION IS LIKELY TO BE MET**

**Step 3: Exclusion Guidelines for Criterion C**

The place may not satisfy this criterion if any of the following apply.

<b>Not related to important local history</b>	It does not relate to an important part in the lives of local residents.
<b>Common place</b>	It is of a class of places that is common or frequently replicated across the local area and other areas.
<b>Little local interest</b>	It is associated with an important of life of only a disparate number of people and not to a local community.
<b>Incidental, indirect or unsubstantiated associations</b>	Its association's lives of local residents are either incidental, indirect or cannot be substantiated.
<b>No evidence</b>	There is no surviving reliable or verifiable physical, documentary or oral history evidence to demonstrate the association of the place with the lives of local residents.

*Illustrative example of Criterion C being satisfied*



Keyneton Institute, 903 Keyneton Road, Keyneton. Photo source: Mid Murray Council Heritage Review 2016 – Southern Places, Flightpath Architects

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**D) It displays aesthetic merit, design characteristics, or construction techniques of significance to the local area.**

**Guidelines for inclusion**

The place should:

- display important aesthetic qualities (e.g. natural or designed qualities of merit), reflecting the distinctive conditions or materials available within the district. These places will often immediately come to mind when the locality is mentioned as being 'typical' of the area, or
- display design qualities of acknowledged merit, creative invention, formal design, or represent a new design achievement of its time. Developments in technology or the application of new techniques in design or construction would also qualify, if clearly illustrated in the place.

A place is likely to satisfy this criterion if the following steps are met.

**Step 1: A Basic Test for satisfying Criterion D**

Does the FABRIC of the place exhibit EVIDENCE that clearly demonstrates aesthetic, design or construction ACHIEVEMENT?

or

Does the PHYSICAL FABRIC of the place clearly exhibit particular construction techniques or design characteristics distinctive to the local area,

or

contain VISIBLE PHYSICAL EVIDENCE that clearly demonstrates creative or technical ACHIEVEMENT for the period in which it was created?

... AND

Does the visible physical evidence demonstrate a HIGH DEGREE OF INTEGRITY and is intact?

**CRITERION MAY BE SATISFIED**

**Step 2: A Basic Test for determining Local Significance**

Is there evidence that the characteristics have been APPRECIATED OR VALUED by the wider local community or recognised by an appropriately expert discipline group e.g.

- wide local community ACKNOWLEDGEMENT OF THE MERIT in mediums such as songs, poetry, literature, painting, sculpture, publications, print media etc
- Is the nature and/or scale of the achievement OF A HIGH DEGREE or 'beyond the ordinary' for THE PERIOD IN WHICH IT WAS UNDERTAKEN
- CRITICAL RECOGNITION of the technical or creative characteristics of the place by an appropriately expert discipline group (such as peer awards, or critical publications) as an important example within the local area.

**CRITERION IS LIKELY TO BE MET**

Aesthetic characteristics are the visual qualities of a place that invite judgement against the ideals of beauty, picturesqueness, evocativeness, expressiveness, grotesqueness, sublimeness and other descriptors of aesthetic judgement. The visual qualities of a place lie in the form, scale, setting, unity, contrast, colour, texture and material of the fabric of a place.



**Step 3: Exclusion Guidelines for Criterion D**

Places would not normally be considered under this criterion if they were simply regarded as being pleasant or somewhat attractive, or if their integrity was diminished so that the aesthetic characteristics were no longer apparent in the place.

The place may not satisfy this criterion if any of the following apply.

<b>Average qualities</b>	It has aesthetic or creative/design/construction qualities that lack distinctiveness and do not exceed those of the general class to which they belong
<b>Qualities not recognised</b>	Its qualities have received little public recognition or recognition within a discipline (for example peer awards).
<b>Degraded qualities</b>	Its qualities have been irreversibly degraded through changes to the fabric or setting.
<b>Qualities not clearly definable</b>	Its qualities are not clearly definable (e.g. being simply regarded as 'pretty' or 'attractive' is not sufficient).
<b>No technical evidence</b>	There is insufficient documentary or technical evidence to prove or substantiate a high degree of achievement.

**Illustrative Example of Criterion D Being Satisfied**



Lattice Bridge; Railway bridge and stone abutments. This is considered a good example of early railway infrastructure.

Photo source: Upper North Heritage Review Volume 1 The Flinders Ranges Council, Habitable Places Architects and John Mannion, March 2009.

## E) It is associated with a notable local personality or event.

### Guidelines for inclusion

The place must have a:

- Close association with a person, group or organisation which played an important part in past local events that is readily demonstrated in the fabric of the place. The product of a creative or sports person, would be more closely associated with that person's workplace or sporting venue than would his or her home, grave, school etc.  
Most people are associated with many places in their lifetime, and it must be demonstrated why one place has a special association. As an example, architects are associated with every place they design and there must be a special association beyond the ordinary or common association between an architect and the place they designed, such as a design exemplar; or the first or a rare example of a design style they are noted for, or
- The place should be closely associated with a notable event which has played a significant part in local history. Ideally it should demonstrate those associations in its fabric, although in some cases there may be no such evidence.

The history of a particular place must be understood through an overview history of the local area, including the identification of important themes. The significance of the place must be demonstrated in relation to the overview history and themes.

A place is likely to satisfy this criterion if the following steps are met:

#### **Step 1: A Basic Test for satisfying Criterion E**

Does the place have a CLEAR ASSOCIATION with the life or work of a person, group or organisation?

or

Does the place have a CLEAR ASSOCIATION with an historic event, as supported by the overview history and themes?

... AND

Is the ASSOCIATION of the place to the person, group or organisation EVIDENT in the physical fabric of the place and/or in documentary sources and/or oral history?

or

Is the place's association to the historic event, EVIDENT in the physical fabric of the place and/or in documentary sources or oral history?

**CRITERION MAY BE SATISFIED**

#### **Step 2: A Basic Test for determining Local Significance**

Is the person, group of persons or organisation clearly IMPORTANT, having made a strong, notable or influential CONTRIBUTION to the course of local history?

or

Is the event. of HISTORICAL IMPORTANCE to the local area, having made a strong, noticeable or influential contribution to the evolution or pattern of the local community or environment, with reference to the overview history and themes?

... AND

Is the association SPECIAL being directly related to achievements of the relevant person, group or organisation at the place, or to an ENDURING and/or CLOSE INTERACTION between the place and the person, group or organisation?

or

Does the place allow the association with the important event to be BETTER APPRECIATED THAN MOST OTHER PLACES IN THE LOCAL AREA WITH SUBSTANTIALLY THE SAME ASSOCIATION?

**CRITERION IS LIKELY TO BE MET**

**Step 3: Exclusion Guidelines for Criterion E**

The place may not satisfy this criterion if any of the following apply.

<b>Weak association</b>	It has a brief, incidental, distant, indirect or unproven association with the person, group or organisation. i.e <i>the residence of a notable scientist is not a strong association, if the scientist was only born or lived there.</i>
<b>Person etc not significant</b>	It is associated with a person, group or organisation of little significance.
<b>Person etc not locally important</b>	The person, group or organisation is not important in the local community.
<b>Association cannot be demonstrated</b>	The association cannot be demonstrated.
<b>Similar association with many places</b>	A similar association could be claimed for many places, with none being special.

For example, generally the home or the grave of a notable person will not be eligible unless it has some distinctive attribute or DIRECT special association, or there is no other physical evidence of the person's life or career in existence.

**Illustrative Example of Criterion E Being Satisfied**



“Warrakilla” House, former Wheatsheaf Inn. The place has strong associations with surveyor George Goyder and notable architect Daniel Garlick.” Photo source: DC Mount Barker Heritage Survey, Part 3: Local Heritage Recommendations: Biggs Flat to Hahndorf, Heritage Online, Anna Pope and Claire Booth, 2004

## F) It is a notable landmark in the area.

### **Guidelines for inclusion**

The place should be a notable landmark in the area which has played a significant part in local history. A landmark building, landscape feature or structure should be visually prominent and a reference point for the whole community or a significant part of it.

The history of a particular place must be understood through an overview history of the local area, including the identification of important themes. The significance of the place must be demonstrated in relation to the overview history and themes.

A place is likely to satisfy this criterion if the following steps are met.

#### **Step 1: A Basic Test for satisfying Criterion F**

Does the place CLEARLY identify as a notable landmark in the area, as supported by the overview history and themes?

AND

Is the place's notable value EVIDENT in the physical fabric of the place and/or in documentary sources or oral history?

**CRITERION MAY BE SATISFIED**

#### **Step 2: A Basic Test for determining Local Significance**

Is the landmark of IMPORTANCE to the local area, having made a strong, noticeable or influential contribution to the evolution or pattern of the local community or environment, with reference to the overview history and themes?

**CRITERION IS LIKELY TO BE MET**

#### **Step 3: Exclusion Guidelines for Criterion F**

The place may not satisfy this criterion if any of the following apply.

<b>Not related to important local history</b>	It does not relate to an important theme in local history and culture.
<b>Common place</b>	It is of a class of places that is common or frequently replicated across the local area.
<b>Little local interest</b>	The landmark is of interest to a disparate number of people and not to a local community.

*Illustrative examples of Criterion F being satisfied*



Clock Tower, Lot 150 Playford Boulevard, Elizabeth. Source: N Gencarelli

**G) In the case of a tree (without limiting a preceding paragraph) - it is of special historical or social significance or importance within the local area.**

**Guidelines for inclusion**

The tree should be one held in high regard by the local community or significant cultural group within it, for an extended period. This must be stronger than people’s frequent attachment to their usual surroundings. The association may in some instances be in folklore rather than in reality.

A tree is likely to satisfy this criterion only if the following steps are met.

**Step 1: A Basic Test for satisfying Criterion G**

Does the tree demonstrate a DIRECT social, cultural or spiritual association with the PARTICULAR COMMUNITY OR CULTURAL GROUP?

AND

Is the tree an IMPORTANT EXAMPLE of the association between it and the community or cultural group by reason of its regular or long term use of/engagement with the tree, or the enduring ceremonial, ritual, commemorative, spiritual or celebratory use of the tree?

**CRITERION MAY BE SATISFIED**

**Step 2: A Basic Test for determining Local Significance**

Is the particular community or cultural group of HISTORICAL IMPORTANCE, having made a notable or influential CONTRIBUTION to the course of local history?

**CRITERION IS LIKELY TO BE MET**

**Step 3: Exclusion Guidelines for Criterion G**

The place may not satisfy this criterion at the local level if any of the following conditions apply.

<b>Associations common or not widely held</b>	Its associations are commonplace or not widely held within the community.
<b>No enduring attachment</b>	An enduring attachment is not substantiated, or the associations are of recent origin.
<b>Associations not widely held/not strong</b>	Its associations are recognised by only a small number of people or are not held very strongly.
<b>Weak community or cultural group</b>	The community or cultural group lacks definition or is not widely recognised.
<b>Associations cannot be demonstrated</b>	The associations cannot be demonstrated satisfactorily to others or are not considered relevant to the current generation.

*What is Social Value?: A discussion paper* (Australian Heritage Commission, Technical Publications Series Number 3, 1992) may be of assistance when considering Criterion G. It points out that examples of places of ‘social value’ can be grouped into the following categories (see pages 7-10): public places, places of ‘meeting’, places of ‘resort’ and public entertainment, ‘communities’, places associated with recent significant events, commemorative places and places with special meaning for particular communities.

26 June 2019

Ms Anita Allen  
Manager Planning Reform  
Planning and Land Use Services  
Department of Planning, Transport and Infrastructure  
GPO Box 1815  
ADELAIDE SA 5001

By email: [anita.allen@sa.gov.au](mailto:anita.allen@sa.gov.au)

Dear Ms Allen

### **Heritage Reform Information Documents**

In response to the release of the DPTI/State Planning Commission Heritage Reform position papers of May 2019, and subsequent information disseminated on the SA Planning Portal and videos, the City of Burnside requests urgent consideration of the following matters prior to the release of Phase 2 of the Planning and Design Code.

#### **1. General**

The matters regarding heritage are of high interest and concern to the City of Burnside. Whilst it is recognised that there are currently some inconsistencies in the management of heritage in South Australia, in our experience, the current heritage framework, while not perfect, has generally been positive and effective. Heritage buildings, streetscapes and areas make a significant contribution to our society in terms of lifestyle and wellbeing, amenity, sustainability, tourism and the economy.

The City of Burnside's Historic Conservation Zone (HCZ) embodies the key aims and objectives of the planning reforms and the principles of good urban planning including liveable and walkable neighbourhoods, design quality, sustainable development and high quality spaces, places and streetscapes and as such should be seen as an asset, not a liability.

## **2. Proposed Heritage and Character Overlays**

DPTI/Commission position papers propose different overlays for Local Heritage Areas and Character Areas, however, there appears to be little distinction between the two, particularly with respect to demolition criteria and potential outcome i.e. the end result is the demolition of a building, regardless of the process the application goes through.

The terms 'heritage' and 'historic' express a state of original history. If original historic fabric is demolished and replaced, the 'heritage' no longer exists. It is therefore inappropriate to have an area called "Local Heritage" which can evolve over time to move from a state of predominantly original historic fabric, to a state of increasing new fabric. The term "Local Heritage Area" should therefore be reserved only for an area in which a very high percentage of buildings of genuine original historic fabric currently exist, and where the intent is that these are retained and conserved. In contrast, a 'Character Area' is a locality where constant evolution can take place by replacement buildings which meet desired design criteria.

If the primary aim of the Local Heritage Area is not the retention of original historic fabric, then that overlay has no purpose and everything should just fall into a Character Overlay.

## **3. HCZ Contributory Items and ERDC Recommendations**

It is recognised that currently there exists some variation in policy and intent of HCZs across different councils. The ERDC has recommended that a proposed comprehensive audit of all State, Local and Contributory Items be commenced in 2020 to enable a holistic review and greater integration with the other levels of heritage. Any significant changes to the protections currently afforded to Historic Conservation Zones and Contributory Items within respective councils would be premature ahead of such an audit.

Rather than penalising councils who currently have tight, highly intact and clearly defined HCZ policy areas, an appropriate way forward to accommodate the variation across councils would be for councils to undertake an audit of their existing HCZs and Contributory Items, as recommended by the ERDC Report, to determine which of their areas (or portions of areas) are appropriate for retention as genuine intact heritage areas, and to be embraced by a Local Heritage Area Overlay, in which conservation and retention is paramount. On the other hand, where councils have current HCZ areas (or part areas) in which they are comfortable for appropriate replacement of original historic fabric with new dwellings to occur, these areas should be transitioned to the Character Overlay, and not the Local Heritage Area Overlay.

## **4. Purpose of Historic Conservation Zone**

The Historic Conservation Zone in the City of Burnside (and the nine HCZ Policy Areas within the zone) were created to conserve the original historic fabric of the buildings which were constructed at the time of original subdivision, as a living historic record of our Council's history. Burnside's HCZ Policy Areas are highly intact, clearly defined, tightly knit locations which reveal our important and valued history of the original subdivision phases of our council. The intent in our HCZ has always been to conserve, preserve and retain, and not to demolish and replace these original buildings. The group of buildings in our HCZ



Policy Areas are a valued collective of local heritage revealing the original historic subdivision and development, and are as valuable to our history as our individual Local Heritage Places.

## 5. Demolition Control & DPTI/Commission Proposed Demolition Criteria

The City of Burnside is extremely concerned by the proposed demolition criteria for both Local Heritage Places, and in particular for former 'Contributory Items' in Local Heritage Areas.

Information released by DPTI/Commission indicating that 'Demolition Control' will maintain current protection measures is misleading. Demolition Control relates only to process, not the substance of the policies. Demolition Control simply means that an application is required to be submitted requesting demolition, but does not influence the outcome of that application. The outcome is dependent on the demolition assessment criteria, against which the assessor will make a judgement. Unfortunately the general public do not understand this distinction and are unlikely to appreciate the potential negative implications of the proposed criteria released to date.

The *Snapshot for Practitioners* paper refers to a number of demolition criteria which are inappropriate as detailed below:

### 5.1 "Economic Viability" Test:

- Any manipulation of figures can readily produce cost estimates that suggest that a replacement cost option is more economical than a restoration option.
- There are an endless number of variables in design and construction materials and methods for a new build which could be used to justify new buildings as a more economical option than restoring original buildings.
- The ratio of repair cost to capital value varies with location. For unrenovated properties, the capital value of properties close to the city will be almost entirely equivalent to the land value, with little value attributed to the building. As you move away from the city, however, the ratio of building value to land value usually progressively increases.

### 5.2 "Heritage value of the existing building and contribution to the heritage value of the area":

- This is criteria for initial listing when doing a HCZ DPA. It is NOT something to assess existing CIs which are already marked as CIs because they contribute.
- The only reason that the level of contribution might have changed from original listing would be due to severe structural unsoundness which has occurred since listing, due to events such as fire, flood, earthquake etc.

### 5.3 "Contextual Analysis":

- Existing Contributory Items have already been subject to consideration of their context when they were included in the HCZ, and have already been verified as contextually relevant. It does not make sense to reuse this same criteria when considering

applications for demolition. All properties listed as Contributory Items have already been deemed to meet this criteria.

#### 5.4 "How well the theme is represented":

- Suggestion of this criteria indicates a fundamental misunderstanding of the whole intent of listing a heritage 'Area', which is about the conservation of a collective group of buildings.
- It is the very intent of a Historic Conservation Policy Area to capture those buildings of a common historic era and common theme, as a collective group.
- The fundamental purpose of the Historic Conservation Zone is to capture a theme which is well represented, to tell the complete story of the history of settlement in that locality. If the theme is not well represented, the mechanism for protection would be individual heritage listing of individual items.

### 6. Suggested Demolition Criteria

All levels of heritage items should be subject to the same demolition criteria. The difference should be the extent of the building that must be retained. Demolition criteria for all levels of heritage protection should be based solely on structural condition.

It is recommended that the same demolition criteria should apply across all heritage properties, (State Heritage Places, Local Heritage Places and Local Heritage Area buildings of heritage significance) and solely based on structural condition, as proposed by the Phase One Code for State Heritage Places.

The difference between State and Local Places and Heritage Areas should be defined by the extent of the building fabric to be retained and the extent of the building which can be demolished, as follows:

- State Heritage Places: retention of both exterior and interior of the building and/or as identified on the State Heritage Register statement of heritage significance. (Control includes control of painting and materials.)
- Local Heritage Places: retention of the whole of the exterior of the building.
- Local Heritage Area heritage buildings: retention of original front façade, roof form and side facades.

The following demolition criteria are recommended for P & DC policy:

State Heritage Place	Local Heritage Place	Local Heritage Area Overlay
<p><b>PO 2.1</b>  <i>State Heritage Places</i> are not demolished, destroyed or removed unless any of the following apply:</p> <p>(a) The portion of the place to be demolished, destroyed or removed is excluded from the extent of the place that is of heritage value; or</p> <p>(a) The structural condition of the place represents and unacceptable risk to public or private safety and results from actions and unforeseen events beyond the control of the owner and is irredeemably beyond repair.</p>	<p><b>PO 2.1</b>  <i>The original external walls, roof and any other key historic elements of a Local Heritage Place</i> are not demolished, destroyed or removed unless any of the following apply:</p> <p>(b) The portion of the place to be demolished, destroyed or removed is excluded from the extent of the place that is of heritage value; or</p> <p>(c) The structural condition of the place or element of the place, represents and unacceptable risk to public or private safety and results from actions and unforeseen events beyond the control of the owner and is irredeemably beyond repair.</p>	<p><b>PO 2.1</b>  <i>The original front façade, side facades, roof and other key historic elements of any building constructed in or before 1946</i> are not demolished, destroyed or removed unless any of the following apply:</p> <p>(a) The portion of the place to be demolished, destroyed or removed is excluded from the extent of the place that is of heritage value; or</p> <p>(b) The structural condition of the place or element of the place, represents and unacceptable risk to public or private safety and results from actions and unforeseen events beyond the control of the owner and is irredeemably beyond repair.</p>

## 7. Lack of Identification of buildings of heritage value within Local Heritage Areas

One of the key stated aims of the new Planning Reforms is to remove ambiguity and provide clarity and certainty to property owners and developers. Without designating specific buildings as Contributory Items enormous uncertainty surrounds the heritage status of each building, and will necessitate 'performance assessment' each time the building is considered. This process will be highly subjective and dependent on the assessor's interpretation at the time. Different accredited professionals will have different views. The identification of designated buildings of value as Contributory Items gives clarity for owners, buyers, developers as well as adjacent neighbours as to the heritage status of all buildings within the Local Heritage Area. This level of upfront identification and clarity must be continued in the new Code, and certainly in the first iteration of the Code, until Councils have opportunity to undertake a comprehensive audit of properties, as recommended by the ERDC Report.

If you would like any further information in relation to the City of Burnside's submission, please contact Ms Wendy Hoare, Planner - Policy, Projects & Heritage on Ph. 8366 4241 or email [whoare@burnside.sa.gov.au](mailto:whoare@burnside.sa.gov.au)

Yours sincerely

A handwritten signature in black ink, appearing to read 'Barry Cant', with a stylized, cursive script.

**Barry Cant**  
Acting Chief Executive Officer

c Mr Michael Lennon – Chair State Planning Commission



9 August 2019

Mr Barry Cant  
Acting Chief Executive Officer  
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SCANNED

16 AUG 2019



State Planning Commission

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Dear Mr Cant

### HERITAGE REFORM INFORMATION DOCUMENTS

I write in response to your letter to the Department of Planning, Transport and Infrastructure, which was copied to the Commission. Given the role of the Commission in the preparation of the Planning and Design Code (the Code), I provide the following response to the matters raised in your correspondence.

#### Heritage Areas and Contributory Items

I again wish to express my commitment that all existing historic conservation zones will transition into the new Planning and Design Code (the Code), taking the form of a policy Overlay. By identifying these areas as an Overlay, as opposed to a zone, their status is immediately elevated within the Code. The Overlay will contain policies which seek to protect local heritage values through demolition control (performance assessed), heritage assessment and promotion of adaptive reuse.

With specific reference to contributory items, it should be understood that both the *Development Act 1993* (Development Act) and the *Planning, Development and Infrastructure Act 2016* (PDI Act) set up a scheme for heritage. The scheme recognises:

- State Heritage Places established under the *Heritage Places Act 1993*
- Local Heritage Places – being “places of local heritage value”, which must satisfy 1 or more of the listed criteria in section 23 of the Development Act or section 67 of the PDI Act.

There is no recognition within either Act for another level of heritage protection (i.e. contributory items).

To be listed, both State and Local Heritage places must go through a rigorous process of assessment against legislated review. They must be assessed by experts in the field of heritage. Under the new planning legislation, landowners have the right to be directly consulted of the proposed listing and have a right of appeal against the final decision to designate a place as a place of local heritage value.

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It is not in a practical sense, nor in a legal sense, appropriate to set up an alternative scheme in policy that has the same effect as the legislative one but that removes the rights of landowners in the process.

There must be a material difference between the policy controls for places of local heritage value listed through a statutory process under the PDI Act, and the policy controls for other places which do not satisfy 1 or more of the criteria set out in section 67 of the PDI Act, are not assessed in the same way, and will not have the same appeal rights for owners.

The Commission cannot therefore transition existing policy controls applying to contributory items into the new system under the PDI Act it would not be fair or legally sound to do so. We can acknowledge that some councils have undertaken significant work to identify contributory items against a backdrop of advice from the Government and Department of the day, but this is a new planning system, and we cannot begin by compromising it and its legislative basis.

It is also important to note that such contributory items as they currently exist in development plans lack consistent application across the State, and it is in fact the zones and policy areas those items are located within, rather than independent listings themselves, which provide various levels of protection across council areas.

Therefore, whilst 'Contributory Items' will not exist in the new system as individual entities, it does not mean they will not have protection. The intent is that they will not need to be singled out because the Overlay itself will provide them with performance assessed demolition control. It is worth noting that this is consistent with the approach taken in the current system, whereby demolition is considered 'on merit' in the overwhelming majority of cases.

Furthermore, the Overlay will also help to ensure places which are not currently 'Contributory Items' are redeveloped over time in a way which is sympathetic to the area they are located in, having consideration to heritage values and streetscape characteristics.

In this context, I confirm that Council may undertake a Heritage DPA in order to elevate contributory items to the status of Local Heritage Places; however this pathway is not a necessity to secure their protection.

Furthermore, it should be noted that in order for an existing contributory item to be elevated, Council will need to clearly demonstrate that it meets the heritage criteria as stipulated under section 23(4) of the *Development Act 1993*.

The proposed policy framework is to provide clarity and certainty around when demolition can be contemplated, and to ensure that the assessments are fair and consistent across the State when applications are received to undergo thorough consideration. These assessments are yet to be finalised and the Commission is working closely with officers from councils and heritage practitioners to ensure the right balance is achieved. To that end, I am advised that officers from the Department have recently met with officers from Council to discuss the matters raised in your letter. It should also be noted that, when the demolition criteria have been set, the Commission will develop Practice Directions/Guidelines to clearly articulate the intent of the policy and how it should be interpreted.

It should be noted that the new system offers a range of tools not currently available, including the ability to provide additional guidance in the form of Practice Directions and Guidelines, mandating the provision of additional information to support development applications (e.g. heritage assessments and/or contextual analysis), and optional Design Review processes.

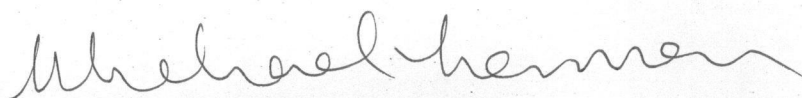
I therefore consider that the proposed policy framework, together with the new tools mentioned above, provide the opportunity not only to ensure the ongoing protection of our valued heritage areas, but to further enhance the way in which heritage and character are managed across the State.

#### **Environment, Resources and Development Committee Inquiry into Heritage Reform**

In relation to your concerns regarding the Parliament's Environment, Resources and Development Committee (ERDC) Inquiry into Heritage Reform, it should be noted that a standardised code, by its very nature, demands a consistent approach to policy issues across the State where it is logical to do so. To not address heritage protection and contributory items, would be to retain the current inconsistent, unfair and confusing approach to how heritage works within the planning system. This was considered to be an untenable situation for a new state-wide Code where the ambition is to have clear and consistent set of planning rules.

The ERDC's report makes sound recommendations on the long-term strategy for heritage protection, and we have followed it specifically in relation to State and Local Heritage Places, which have a legislative basis. However, the Commission considers that contributory items are a construct of policy, rather than legislation, and therefore it is a responsibility of the Commission to address this in the development of the first Code.

Yours sincerely

A handwritten signature in cursive script that reads "Michael Lennon". The signature is written in dark ink and is positioned above a horizontal line.

**Michael Lennon**  
Chair