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Attention: Leonard Blazeby

Heritage South Australia

Department for Environment and Water
81-95 Waymouth Street, Adelaide SA 5000
leonard.blazeby@sa.gov.au

Property Council of Australia: Proposed Amendments to the Heritage Places Act 1993

Dear Leonard,

Thank you for your time to meet last week.

The Property Council of Australia welcomes the invitation to comment on the proposed amendments to the Heritage Places Act 1993.

The Property Council of Australia's members lead the property sector with the largest direct economic footprint in the nation – producing \$232.7 billion towards GDP, employing 1.4 million Australians and generating \$178 billion in employee incomes. Property and shaping the future of our cities is central to our national prosperity and touches the lives of every Australian.

We understand that the state government has committed to protect State Heritage Places from demolition under its "Heritage for the Future" election commitments.

We acknowledge that whilst the protection of Heritage Places is important to the character of our city, the Property Council advocates for fast tracked development where possible and we hold concerns over anything that may hinder these development processes.

Our more detailed comments on the concepts that have been explained (but not provided in draft Bill format to us yet) are attached.

We appreciate the opportunity to comment and look forward to your response.

A handwritten signature in black ink, appearing to read "Bruce Djite", with a stylized flourish at the end.

Bruce Djite

SA Executive Director, Property Council

Introduction

Relevantly, the “Heritage for the Future” election commitment from 2022 (**Election Commitment**) committed the government to –

“Legislate to require proposed demolition of state heritage sites are subject to full public consultation and a public report from SA Heritage Council”.

Your outline of the proposed amendments to the *Heritage Places Act* 1993 (**HP Act**) and the consequential amendments to the *Planning Development and Infrastructure Act* 2016 (**PDI Act**), include:

- *The requirement that a proponent seek a report from the SAHC where they wish to demolish a whole State Heritage Place.*
- *The expansion of the role of the SAHC to allow it to prepare a report regarding the proposed demolition, which would consider heritage values of the State Heritage Place.*
- *The requirement for the SAHC to undertake public consultation on the SAHC Report and a method for it to take place.*
- *Establishing the process for the SAHC’s report to be tabled in Parliament by the Minister responsible for administration of the HP Act.*
- *The requirement that the Planning, Development and Infrastructure Act 2016 include provisions requiring a proponent to accompany their Development Application by a report prepared by the South Australian Heritage Council.”*

We respond to these concepts in detail below.

Concept 1 – that a proponent seek a report from the SAHC where they wish to demolish a whole State Heritage Place

1. We agree that this ought to be limited. Consistent with the Election Commitment, it is appropriate that this process apply only to proposals for the complete demolition of the whole of a State Heritage Place.
2. The SA Heritage Council (**SAHC**) ought to have a time limit for the production of its report (we suggest 8 weeks is adequate) and there ought to be a deemed satisfaction of the requirement if the SAHC fails to produce the report in that period. In other words, it is the process and the opportunity which is important – the proponent should not be prejudiced if the SAHC fails to prepare a report. To that end, a proponent should not be prevented from pursuing a development application if no report exists after the prescribed time frame.
3. We comment further below about the sequence of the report relative to the progress of a development application.

Concept 2 – *expansion of the role of the SAHC to allow it to prepare a report regarding the proposed demolition, which would consider heritage values of the State Heritage Place*

4. This task needs careful attention. The risk of the SAHC considering anything beyond the status of the heritage values of the place (described by s16 of the HP Act) is that it offers opinions about the development proposal. That assessment of the development should be left to the planning authority to determine.
5. The SAHC should not be asked whether to permit the demolition, merely to advise whether the place continues to satisfy the relevant criteria of heritage significance listed in s16(1) of the HP Act. It ought to be expressly prohibited from further comment on other matters in this exercise (eg “*The report shall be limited to ...*”).

Concept 3 – *requirement for the SAHC to undertake public consultation on the SAHC Report and a method for it to take place.*

6. The Election Commitment does not expressly require the SAHC to undertake the public consultation about demolition, nor does it require that public consultation occur prior to the report by the SAHC. Those are all independent and not interrelated elements of the Election Commitment.
7. With respect, it is inappropriate for the public consultation process to be invoked for the expert determination of whether the place maintains heritage values under s16 of the HP Act. That is an assessment properly reserved to the expertise of the members appointed to the SAHC. Public consultation on those matters of heritage expertise will not add value to the assessment.
8. Public consultation should properly take into account the overall development, including the relative benefits of the replacement development that is intended following the demolition. As is presently the case under the PDI Act for notifiable development, public comment is appropriate at that point.
9. The public consultation should occur as part of the PDI Act process. The Planning and Design Code and the Regulations under the PDI Act can be readily amended to provide that –
 - a. All developments which involve the total demolition of a SHP are notifiable (including State Agency development);
 - b. The notification process can, if required be enlarged beyond the present PDI Act process (eg by requiring notice in a newspaper of broad circulation, extending the period of notice and consultation etc).

Concept 4 – *Establishing the process for the SAHC's report to be tabled in Parliament by the Minister responsible for administration of the HP Act.*

10. This goes well beyond the Election Commitment and is in no way necessary to honour that commitment.
11. The Election Commitment refers to “*a public report from the SA Heritage Council*” only. Publication of the report can be achieved in various ways without politicising the process by tabling in Parliament.
12. The Report can be publicised by placement on the SAHC/DEW website and or on the Planning Portal under the PDI Act.
13. Similarly, the Report can be made available in the materials considered by the planning authority.

Concept 5 - *requiring a proponent to accompany their Development Application by a report prepared by the South Australian Heritage Council*

14. Again, the Election Commitment does not require this. Adding this obligation goes well beyond the terms of the Commitment.
15. Secondly, even if this extra obligation beyond the terms of the Election Commitment is to be pursued (and we say it should not), the obligation should not apply to prevent lodgement of the development application.
16. At most, the planning authority should simply be obliged to consider any report when making its decision on the development application.