



Agenda Report for Decision Meeting Date: 14 December 2023

Item Name	Heritage Sub-Committee Update
Presenters	Chair
Purpose of Report	Decision
Item Number	5.2
Strategic Plan Reference	3. Leading on Planning Policy
Work Plan Reference	3.5 Support the effective protection of heritage and character
Confidentiality	Not Confidential (Release Immediately)
Conflicts Declared	Nil
Related Decisions	<ul style="list-style-type: none">• 5 December 2019 – Item 4.4 – Formation of a specialist Heritage Sub-Committee for providing advice to the Minister on Heritage DPAs• 30 January 2020 – Item 4.2 – Appointment of specialist Heritage Sub-Committee membership• 24 March 2022 – Item 4.2 – Heritage Sub-Committee – Reappointment of Members• 24 August 2023 – Item 5.6 – Heritage Sub-committee Membership Update

Recommendations

It is recommended that the State Planning Commission (the Commission) resolves to:

1. Approve the designation of this item as Not Confidential (Release Immediately).
2. Note the Heritage Sub-committee Terms of Reference (**Appendix A**).
3. Approve the new approach for the Heritage Sub Committee.
4. Approve the review of the Heritage Sub Committee Terms of Reference and approach in December 2024, following 12 months of operation.

Background

On 5 December 2019, the Commission resolved to seek the former Minister's approval to establish a Heritage Sub-Committee (the Sub-Committee) under section 29 of the *Planning, Development and Infrastructure Act 2016* (the Act).

On 9 January 2020, the former Minister endorsed the request for the establishment of the Sub-Committee and the Terms of Reference for the Sub-Committee. In April 2020, the State Planning Commission (the Commission) appointed the specialist Sub-Committee for a period of two years. The new term of the Sub-Committee commenced on 27 April 2022. The revised Terms of Reference are provided in **Appendix A**.

The Sub-Committee is responsible for providing advice to the Commission relating to the listing of Local Heritage Places, and/or additional areas to be included in the Historic Area Overlay in the Planning and Design Code, including at the Proposal to Initiate stage of a Code Amendment under section 73 of the Act.

Discussion

Development Act procedures – Local Heritage Advisory Committee

Under the *Development Act 1993*, the Minister for Planning (Minister) was able to seek advice from the Local Heritage Advisory Committee (LHAC) on proposals to list new Local Heritage Places (via a Development Plan Amendment), where an owner objected to the listing as part of the public consultation stage.

In addition, the Minister had the ability to request advice from LHAC on proposed heritage listings in instances where owner objections were not received. This was common practice where there were concerns about the level of justification provided.

Planning, Development and Infrastructure Act procedures – Heritage Sub-Committee

Under the new planning system, the listing of Local Heritage Places occurs through the Code Amendment process, with each place required to meet the same legislated criteria as those applicable in the former system. The Act does not specifically require expert consideration of proposed local heritage listings by the Commission. However, the Minister must seek the advice of the Commission on Proposals to Initiate a Code Amendment. The Commission has been utilising the expertise of the Heritage Sub-Committee (since January 2020) in order to gain expert heritage advice on proposals to initiate heritage Code Amendments.

At its meeting of 30 November 2023, the Commission discussed the current practices of the Heritage Sub-Committee, including the pre-initiation site visits, and advised of a preference for a more efficient processing of Local Heritage Code Amendments, while balancing the need to seek specialist advice.

The purpose of the Sub-Committee as outlined in the Terms of reference (ToR) is to, as required by the State Planning Commission (the Commission):

- a) Provide advice to the Commission relating to the listing of Local Heritage Places, and/or additional Areas to be included in the Historic Area Overlay in the Planning and Design Code (the Code), including at the Proposal to Initiate stage of a Code Amendment under section 73 of the *Planning, Development and Infrastructure Act 2016* (the Act).
- b) Hear and consider submissions from owners of proposed Local Heritage Places, objectors to proposed listings and/or affected councils.
- c) Provide advice to the Commission on how to proceed with proposed listings as prescribed in *Practice Direction 2 – Preparation and Amendments of Designated Instruments*.
- d) Provide advice to the Commission on other heritage matters as requested by the Commission.

There is no requirement for a site inspection of proposed listings at the initiation stage within the ToR. However, this has emerged as common practice since the Sub-Committee's inception and has occurred for all Local Heritage Code Amendment initiation proposals to date.

This process has meant that it can take some time to consider proposals for initiation because of the logistics involved to organise the site visits. The Commission seeks to expedite consideration of local heritage code amendment initiations and requested that the process and role of the Sub-Committee be reviewed.

Proposed new approach

As per the discussion with the Commission, it is recommended that the pre-initiation site visits are not undertaken by the Sub Committee. This will assist in progressing initiation requests in a more timely manner. However, given the specialist nature of local heritage code amendments it is proposed to maintain a panel of heritage experts that PLUS can draw upon in the considering code amendment requests. This expertise will be sought where PLUS staff have concern with proposed listings in meeting the statutory criteria, as set out under section 67(1) of the Act.

Following the consultation process, the Sub-Committee may be engaged at the direction of the Commission to provide advice to the Commission and Minister, or where a Minister determines to refer a Code Amendment to the Commission prior to making a final decision on whether to adopt or alter the proposal, or determine that it should not proceed.

At this stage of the Code Amendment process, the Sub-Committee may choose to undertake a site visit and hear and consider submissions from owners of proposed Local Heritage Places, objectors to proposed listings and/or affected councils. This would not involve visiting all sites but rather those where submissions have been received.

In closing, it is noted that heritage can be a sensitive and emotive planning issue in the community where opinion often varies. The continued advice from heritage experts, through PLUS, will assist the Commission for the purposes of providing advice to the Minister for Planning. The proposed approach is considered an appropriate balance to achieve greater efficiency while not compromising on the quality of the heritage assessment.

This approach is proposed to be reviewed in 12 months. This will allow time to review the process for local heritage code amendments currently being considered.

Appendices:

- A. Heritage Sub-Committee Terms of Reference, 15 September 2022 (#20010252)

Prepared by: Kate Southcott

Endorsed by: Sally Smith

Date: 14 December 2023



HERITAGE SUB-COMMITTEE

Terms of Reference

1. PURPOSE

The purpose of the Heritage Sub-Committee (the Sub-Committee) is to, as required by the State Planning Commission (the Commission):

- (a) Provide advice to the Commission relating to the listing of Local Heritage Places, and/or additional Areas to be included in the Historic Area Overlay in the Planning and Design Code (the Code), including at the Proposal to Initiate stage of a Code Amendment under section 73 of the *Planning, Development and Infrastructure Act 2016* (the Act).
- (b) Hear and consider submissions from owners of proposed Local Heritage Places, objectors to proposed listings and/or affected councils.
- (c) Provide advice to the Commission on how to proceed with proposed listings as prescribed in *Practice Direction 2 – Preparation and Amendments of Designated Instruments*.
- (d) Provide advice to the Commission on other heritage matters as requested by the Commission.

2. PRINCIPLES

The Sub-Committee and its Members will operate consistently with the following principles:

- (a) act lawfully
- (b) act impartially
- (c) remain open, acting with integrity and providing frank and fearless advice
- (d) work with purpose and alignment to achieve quality outcomes and the delivery of results
- (e) maintain the confidence of the Commission, Government, Parliament and the community
- (f) maintain appropriate confidentiality of Sub-Committee discussions and advice.

3. MEMBERSHIP

- (a) Membership of the Sub-Committee is limited to no more than nine specialist Members appointed by the Commission.
- (b) In addition to the specialist Members, a Member of the Commission will be appointed to each of the following positions on the Sub-Committee:
 - Chair
 - Deputy Chair.
- (c) Members will be appointed for a term not exceeding three years, and on conditions determined by the Commission. On the expiration of this term, Members may be eligible for reappointment as determined by the Commission.
- (d) Membership must, as far as practicable, comprise equal numbers of women and men.
- (e) In making appointments to the Sub-Committee, the Commission should consider that the Members collectively have qualifications, knowledge and expertise in the following areas:
 - experienced historian
 - experienced heritage architect
 - urban/regional planner with heritage listing experience.

4. REMUNERATION

Sessional fees will be paid to Sub-Committee Members in accordance with Department of the Premier and Cabinet Circular *PC016 – Remuneration for Government Appointed Part-Time Boards and Committees* (September 2016), and the *Boards and Committees – Remuneration Framework* (Approved by Cabinet on 10 December 2007).

5. ROLES AND RESPONSIBILITIES

5.1. State Planning Commission

The Commission will be responsible for instructing the Sub-Committee on its activities and referring particular matters to the Sub-Committee for advice to the Commission.

5.2. Chair

- a) The primary role and function of the Chair (or the Deputy Chair if acting as Chair) is to lead and manage the processes and practices of the Sub-Committee, and to ensure the effective delivery of the Sub-Committee's functions.

- b) The Chair will also act as the primary conduit between the Sub-Committee and Commission to communicate key messages from the Sub-Committee to the Commission and vice versa.

5.3. Department for Trade and Investment

- a) Planning and Land Use Services (PLUS) will support the Sub-Committee in accordance with a Service Level Agreement between the Commission and PLUS.
- b) A Governance Officer will be assigned to support the Sub-Committee. The Governance Officer will ensure agendas, minutes, an actions register and any other relevant documentation is prepared and distributed.
- c) The Code Amendment Team within PLUS will provide advice in relation to heritage policy and Code Amendment issues following a referral to the Sub-Committee by the Commission.

6. GOVERNANCE

6.1. Returns and Declarations

- a) Members must, within 60 days of appointment, submit a Primary Return identifying any financial or other interests.
- b) Members must, within 60 days of 30 June annually, submit an Ordinary Return identifying any financial or other interests.
- c) Members must also submit a Pecuniary Interest declaration at the end of each financial year to identify the nature of any transaction entered into by PLUS with any the Member or with any firm, trust or company in which the Member has either a direct or indirect financial interest.
- d) PLUS will maintain a register which records the Member's main business activities, involvement with other business organisations, vendors, business interests and other associations that might produce a conflict of interest with the activities of the Sub-Committee.

6.2. Conflicts of Interest

- a) Members must, as soon as he or she becomes aware of an actual or potential conflict of interest, or the potential for a perceived conflict of interest, disclose the nature and extent of the interest to the Chair (or the Deputy Chair if acting as Chair) of the Sub-Committee.
- b) If a Member declares a conflict of interest, that Member must not take part in any discussion or decision on the matter and must be absent from the meeting when any deliberations are taking place or a decision is being made.
- c) If a conflict of interest has been declared by a Member, the general nature of the interest must be recorded in the minutes of the meeting of the Sub-Committee.

6.3. Independent Commission Against Corruption

- a) In accordance with the *Directions and Guidelines for Public Officers* (Directions and Guidelines) published by the Independent Commissioner Against Corruption (ICAC), Sub-Committee Members are classified as 'public officers'.
- b) In accordance with the Commissioner's Directions and Guidelines all 'public officers' have an obligation to report a matter that is reasonably suspected of involving corruption, misconduct or maladministration in public administration to the Office for Public Integrity (OPI). The process for reporting such a matter to the OPI is outlined in the Directions and Guidelines document and on the ICAC website at www.icac.sa.gov.au.

6.4. Confidentiality

- a) Members must ensure that any confidential information remains confidential and is not disclosed improperly to others.
- b) Members must refer all enquiries from all external parties (including media) directly to the Governance Officer for action.

7. MEETINGS AND PROCEDURES

7.1. Appointment of Members to a Panel

For each matter referred to the Sub-Committee for advice to the Commission, the Chair of the Commission will appoint members of the Sub-Committee to form a Panel. Several meetings of a Panel may be required to address a particular matter.

7.2. Quorum

- a) For Panel meetings, the quorum is three Members (and no business may be transacted at a meeting of a Panel unless a quorum is present).
- b) A meeting of a Panel will comprise:
 - the Chair (or the Deputy Chair if acting as Chair) of the Sub-Committee
 - at least two specialist Members of the Sub-Committee.

7.3. Meeting schedule

- a) The meeting schedule will be ad hoc and will depend on timing and scope of matters referred to the Sub-Committee by the Commission.
- b) Where reasonably practicable, Members appointed to a Panel will be given at least two weeks' notice of a future meeting.

7.4. Agenda and meeting papers

- a) An agenda and any associated meeting papers for prior reading will be distributed by the Governance Officer five working days prior to the meeting.
- b) As the agendas are for the purpose of advice to the Commission, they will remain confidential until the publication of the Commission's meeting papers for the matter.

7.5. Proceedings

- a) The Chair (or Deputy Chair) will preside over meetings of a Panel to which he or she is appointed and presiding. The Deputy Chair will preside over meetings if the Chair is absent. In the absence of the Chair and the Deputy Chair, another member of the Sub-Committee will be chosen by those members present to chair the meeting.
- b) The Chair or Deputy Chair (as the case may be) will facilitate the meeting in a manner which promotes healthy, orderly, constructive, respectful and expeditious discussion and not allow repetitious or irrelevant discussion having regard to the function of the Panel.
- c) Each Member has one vote, and the Chair has a casting vote, if required to address an even vote.
- d) Decisions of the Panel are carried by the majority of votes cast. The minutes will only record the decision and not the votes for or against.
- e) If required, Panel business may be conducted 'out-of-session' by electronic correspondence between the Governance Officer on behalf of the Chair or Deputy Chair (as the case may be) and the Members of the Panel.

7.6. Proxy

Proxy Members will not be appointed. Members are encouraged to attend via online meeting facilities if they are not available to attend in person, otherwise an apology is to be tendered.

7.7. Minutes

- a) The Governance Officer will minute the meeting. The minutes will be concise and record:
 - the names of Members present
 - apologies received from Members
 - the names of departmental staff in attendance
 - any disclosure of interest or conflicts made by a Member or departmental staff
 - the resolution (which may include a brief summary of how the Panel reached its decision if deemed necessary).

- b) Discussion and actions will not be recorded in the minutes. A separate actions register maintained by the Governance Officer will document any actions to be undertaken.
- c) The minutes of the meeting will be confirmed at the end of each meeting by those Members present. The minutes will be included in the agenda of the next Commission meeting for noting.
- d) Minutes of the Panel meeting will be published or maintained in confidence as provided in the Commission's *Governance Manual*.

7.8. Attendance of external parties

- a) Where the Panel chooses to do so, affected landowners and council administration are permitted to bring experts to support their provision of evidence to the Panel.
- b) If a party has made a written submission to a forthcoming agenda item which has been put out for public comment, that party may also be invited to attend for that particular item.
- c) Panel meetings are not open to members of the general public or media.
- d) The Panel will provide the Designated Entity and its consultant(s) with an opportunity to make a verbal response to verbal submissions with respect to Code Amendment matters.

7.9. Advice to the Commission

The Chair or Deputy Chair (as the case may be), as soon as practical after finalisation of the Panel Report, will present the Panel's findings to the Commission.

8. REVIEW

These Terms of Reference will be reviewed by the Sub-Committee Chair in consultation with the Commission Chair following the appointment of a new Sub-Committee Chair or every three years (whichever occurs first).

Adopted by the State Planning Commission on:

- 27 April 2022 (version 1)
- 15 September 2022 (version 2).

A handwritten signature in black ink, appearing to read 'Craig Holden', with a long horizontal flourish extending to the right.

Craig Holden
Chair, State Planning Commission
20 / 09 / 2022

A handwritten signature in black ink, appearing to read 'Stephanie Johnston', with a large, stylized flourish at the end.

Stephanie Johnston
Chair, Heritage Sub-Committee
20 / 09 / 2022