



**LEGISLATIVE ASSEMBLY**  
**FOR THE AUSTRALIAN CAPITAL TERRITORY**

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STANDING COMMITTEE ON ENVIRONMENT, CLIMATE CHANGE AND BIODIVERSITY  
Dr Marisa Paterson MLA (Chair), Ms Jo Clay MLA (Deputy Chair), Mr Ed Cocks MLA

## Submission Cover Sheet

Inquiry into ACT's heritage arrangements

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**ACT Government Submission to the  
Standing Committee on Environment, Climate Change and  
Biodiversity Inquiry into ACT's Heritage Arrangements**

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March 2023**

## Introduction

On behalf of the ACT Government and as the Minister for Heritage I am pleased to make a submission to the Legislative Assembly Standing Committee on Environment, Climate Change and Biodiversity (Committee) inquiry into ACT heritage arrangements.

The Government welcomes the opportunity to assist the Committee's inquiry by providing information on existing statutory arrangements and delegations, resourcing and challenges for ACT Heritage, and the current large-scale jurisdictional review and other reforms that are being undertaken by the Environment, Planning, and Sustainable Development Directorate (EPSDD). This information directly addresses key parts of the Inquiry's Terms of Reference.

The Government notes that the Committee's inquiry is occurring in parallel with the comprehensive review into heritage that I announced in December 2022. The government offers to work with the Committee to ensure the comprehensive review and the inquiry progress in a coordinated and harmonious manner and there is the opportunity for information sharing between the two processes. Most importantly, this cooperation will ensure that engaged stakeholders are fully aware of the two matters and target their engagement and information accordingly.

## Statutory Arrangements

The ACT Heritage Council and ACT Heritage work together to recognise, protect, conserve and celebrate the ACT's unique heritage places and objects. The *Heritage Act 2004* (Act) guides much of the work.

The Heritage Council is established under the Act as an independent, statutory body responsible for a range of provisions including:

- identifying, assessing, conserving and promoting heritage places and objects in the ACT;
- making decisions about the registration of heritage places and objects;
- providing advice on works and development matters in accordance with the ACT's land planning and development system;
- encouraging and assisting with appropriate management of heritage places and objects; and
- encouraging public interest in, and awareness of, heritage places and objects in the ACT.

The Council comprises of the Chief Planning Executive and Conservator of Flora and Fauna and nine members appointed by the Minister for Heritage. Three of these appointments are public representatives, including a representative from the ACT community, the Aboriginal community and the property ownership, management and development sector. The remaining six appointed members are experts in one or more heritage related disciplines.

The Council meets approximately every six weeks to consider matters in relation to their functions under the Act. In addition, a number of sub-committees – Taskforces – have been established to meet out of session to consider matters in detail ahead of Council meetings, and to make recommendations to the full Council. The Taskforces relate to Registration, Development Assessment, Conservation Management Plans and Aboriginal Heritage. The

Registration Taskforce meets regularly ahead of Council meetings, while other Taskforces meet on an as-needs basis.

ACT Heritage, a business unit in the Environment, Planning and Sustainable Development Directorate (EPSDD), provides administrative support to the Council and advice to the Minister for Heritage about the range of heritage matters for which they are responsible. ACT Heritage staff are employees of the ACT Government.

Under the Act, the Heritage Council is the independent statutory authority and decision maker for heritage applications, including nominations to register places and objects on the ACT Heritage Register, applications to investigate and conserve heritage places and objects, and applications to undertake activities that may diminish or damage heritage places and objects. The Heritage Council also provides entity advice to other statutory authorities, when applications relate to heritage places and objects, such as the ACT Planning and Land Authority and the Conservator of Flora and Fauna.

ACT Heritage supports the Heritage Council by providing administrative support and secretariat functions. Some ACT Heritage staff also exercise some Council functions under delegations, especially in relation to heritage advice and approvals. Delegated functions are exercised to ensure timeliness, efficiency, and effectiveness in carrying out the administrative functions of the Act and allowing matters of relatively minor consequence to be more easily expedited by ACT Heritage, on behalf of the Council. In this context, ACT Heritage provides most advice and approvals under delegation. However, where complex, contentious, or sensitive applications are being assessed, a collaborative approach between ACT Heritage and the Council is adopted, where assessment is provided by Council Taskforces and advice is provided by the Council Chair.

ACT Heritage does not have delegated authority to make decisions on whether a place or object is provisionally registered or registered on the ACT Heritage Register, as those key decisions are only made by the Council.

The management of heritage in the ACT is also subject to the provisions of the *Planning and Development Act 2007*. Under this Act, heritage advice is sought by the ACT Planning and Land Authority on a wide range of applications, including development applications, Territory Plan Variations and Environmental Impact Statements. Under this Act, owners also need to obtain prior heritage endorsement before undertaking exempt development at registered heritage places.

The ACT Government is currently progressing the ACT Planning System Review and Reform Project, to deliver a modern planning system focused on delivering outcomes for the people of Canberra. The new *Planning Bill* was introduced to the Legislative Assembly in September 2022 and includes key improvements relating to heritage – such as the recognition of First Nations culture, knowledge and tradition, and the inclusion of cultural heritage conservation principles in the definition of good planning. Improved consideration of heritage in the planning system is likely to increase demand for heritage advice by the planning authority.

The ACT Planning Strategy recognises the heritage values of the ACT and sets out that delivery of infrastructure and new development will require heritage investigations to consider cultural and heritage values. The ACT Planning Strategy also sets out that urban redevelopment must consider and respond to issues such as the neighbourhood character of

heritage areas. Achieving such land release and development outcomes requires substantial heritage advice and approvals, which form part of the integrated planning system in the ACT.

Through the National Capital Design Review Panel (NCDRP), the ACT Government is also working to the design quality of the built environment, through its collaboration with the National Capital Authority and the advice of independent design professionals. The NCDRP's Design Principles for the ACT sets out that high quality design must respond to the cultural elements of a place, including heritage buildings and values of the local area. In this context, the NCDRP actively seeks heritage advice on design proposals relating to heritage places and precincts, and ACT Heritage meets regularly with the NCDRP Secretariat to identify heritage considerations to upcoming projects.

The management of heritage trees in the ACT is also subject to the provisions of the *Tree Protection Act 2005*, which is likely to be superseded by the *Urban Forest Bill 2022* in July 2023. Both legislations require the Conservator of Flora and Fauna to seek ACT Heritage Council advice on applications relating to heritage trees, and to seek advice from Representative Aboriginal Organisations (RAO) on applications relating to Aboriginal cultural trees. With the introduction of the new Bill, the volume of referrals to the ACT Heritage Council is likely to increase, with the reduction of the regulated tree threshold from 12m to 8m.

## **Heritage Council Review**

In August 2022, Nous Group was engaged by EPSDD to undertake a review of the ACT Heritage Council's functions and its relationship with ACT Heritage. The review was in response to concerns raised about the nature and effectiveness of the relationship between members of the Council and between the Council and ACT Heritage, the current performance of the Council and its ability to discharge its functions under the Act.

The final report was released in November 2022 and identified significant structural and behavioural issues that presented an imminent risk to ACT heritage sites. The report found that there were strained relationships among Council members and between the Council and ACT Heritage, frustration with structural and workload issues together with inefficient business systems, including the heritage database.

In response to the report and after consulting with Council Members and the Committee, I decided to end the appointment of all ministerially appointed members and undertake a comprehensive review. To support the comprehensive review and ensure the Council's functions continue I am working to appoint an interim Council. The report from the review is available on the [ACT Heritage website](#).

## **ACT Heritage Reform Program**

To address the challenges discussed in this submission, ACT Heritage is scoping and planning a comprehensive reform program for heritage in the ACT. The program has five elements:

- *Heritage Model*
- *Heritage Council*
- *Business systems*
- *Capability and capacity*

- *Heritage Strategy*

## **Review of Heritage Model**

A request for quotation to engage a consultant to undertake the review was released on 23 December 2022 and closed on 30 January 2023. The aim of the review is to research, identify and propose a model for future heritage laws, frameworks, systems and arrangements that is fit for purpose in the ACT and reflects best practise. It will include the governance, processes, policy and procedures for heritage advice and management across the ACT. The outcomes of the Inquiry will also be considered in determining the model for implementation.

The review will be undertaken in two phases: Phase 1 will commence with a jurisdictional review to examine how heritage matters are dealt with across the country, and the role of Council equivalents and the operation of heritage legislation in other jurisdictions. This jurisdictional review will inform the development of a roadmap and a new model for the Minister's consideration. Phase 2 – the specifics are dependent on the recommendations of the first phase but will focus on consultation with stakeholders and the community and development of an action plan for implementation. Of critical importance through this review is enhancing protections for First Nations heritage. The final report is expected to be provided by July 2023.

There will be opportunities for stakeholders and the community to contribute to the review and reform through multiple channels including the ACT Government YourSay Conversations platform. The RAOs and First Nations groups will be consulted and engaged at all phases of the review.

## **Heritage Council**

While the review is being conducted, an interim Heritage Council will be appointed for a period of no less than 12 months, with the possibility of extension or reappointment. The recommendations of the review and the Committee's Inquiry will be considered in establishing the permanent Council at the end of the interim Council's term.

The functions of the interim Heritage Council will continue to deliver their responsibilities under the current legislation, including their ability to make decisions on the registration of heritage places and objects as outlined in the Act. The interim Heritage Council will also play a key role providing expert advice to support the review.

Recruitment of members is through an open merit-based process. An expression of interest for membership of the interim Council was released on 22 December 2022 and closed 30 January 2023. The interim Council is expected to be in place by April 2023. The chair and deputy chair roles will also be filled from the successful members.

Terms of Reference (TOR) will be developed for the interim Council and will be in place when it is convened. They will include improved and clearly articulated governance arrangements, clarity around roles and responsibilities, membership and taskforces, meeting and taskforce processes. The development of TOR is seen as a priority in establishing the interim Council, noting that the draft MOU from the previous Council was never agreed and this was noted

by the Heritage Council review as a source of strain and misalignment of expectations between the parties.

## **Review of ACT Heritage Business Systems**

The information stored in the Heritage Register and database has enormous value to a range of user groups and is essential to support the work of ACT Heritage and the ACT Heritage Council in the delivery of its functions. Maintaining an accurate and functioning heritage information system is a government priority as well as a statutory requirement under the Act.

The existing database is a bespoke system developed in 2005 and was assessed as obsolete and inefficient in a discovery review in 2020-21. The review of the Heritage Council in 2022 also highlighted that ACT Heritage's current business systems and database are outdated and are not fit for purpose to support ACT Heritage's performance and had added to the stress on staff.

As part of my announcement of the review of heritage arrangements on 7 December 2022, I supported the review of heritage systems and specifically the development of a heritage database. The database development is an initiative in the 10<sup>th</sup> Assembly Parliamentary and Governing Agreement (PAGA).

EPSSD has commenced an internal review of its systems, internal workflow policies, business processes and developing a new database. The goal is to create an improved and efficient business systems that are fit for purpose, minimise duplication, standardise processes and provide accurate and real time information for the community and other user groups.

Under the PAGA, funding has been committed for a new ACT Heritage Register Database and website (Appendix 1, C. Action to improve Canberra's planning system, 3.v.). Through an allocation of \$150,000 in the ACT Budget 2020-2021, the initial discovery phase has been completed. The discovery phase comprised deep and wide consultation with more than 70 stakeholders across the ACT Government and externally to understand the current state, including how, when and why heritage data is used, where it is accessed from and what the experience of the current systems and processes is. This comprehensive review was carried out by Nous Consulting Group.

Following the Nous report, in 2022 ACT Heritage engaged the Digital, Data and Technology Solutions (DDTS) within the Chief Minister, Treasury and Economic Development Directorate to review the discovery phase outputs, recommend future state requirements, identify options and costs, and present an Engagement Plan for the Future State Design Description and Requirements to the Project Board. This engagement plan was delivered in November 2022.

In early 2023, ACT Heritage will work with DDTS to undertake Core Data hiring for digital skills to build a data dictionary, proof of concept and requirements; and to develop a Statement of Requirements and user cases. DDTS will then continue to support ACT Heritage by providing technical input into a detailed business case for 2024-25 to seek funding for the full direction, development and build, and ongoing resourcing of this project in 2024-2025.

Over 2023, the database project will also include a cleansing and extraction of historical data so that it can be more efficiently searched.

## **Capability and capacity**

Workload pressures in ACT Heritage, particularly in the Approvals and Advice area, have increased over several years and are reflective of a growing City. These pressures have resulted in delays in the timely processing of approval and advice submissions which is impacting development across the City.

The number of requests for Heritage Council advice more than doubled between 2014 and 2021 due to growing demand for advice on urban infill projects, greenfield development and residential works. Approximately 60% of all submissions relate to built and historic heritage, and many of these submissions are for proposed alterations and additions to residential homes in heritage precincts. Increased demand has impacted the ability of the Council to provide advice on development applications. In the 2021-22 financial year, 64 per cent of advice was issued within the statutory referral period which is below the 90 per cent target.

There are risks associated with delays in obtaining the required heritage approvals and advice for development projects. Non-Council advice responses issued by ACT Heritage have increased disproportionately and these are more complex and require significant time to compile. In 2022, the number of Conservation Management Plan (CMP) applications to the Heritage Council awaiting assessment reached 18, significantly more than usual. CMPs are large scale and complex applications, and their assessment requires heritage conservation expertise and significant assessment time, and when associated with major projects such as the Canberra Brickworks redevelopment, also require referral to Heritage Council Taskforces. Taskforce referrals increased 480% between 2014 and 2021, primarily due to an increase in major ACT Government projects including CMPs.

Statutory referrals to the Heritage Council require a response within statutory timeframes. For example, development application (DA) referrals require a heritage response within 15 working days, and a nil response is assumed to be a non-objection. To ensure heritage conservation requirements are considered by the ACT Planning and Land Authority in their decisions about development, advice on statutory referrals is prioritised. In this context, private owners are unfortunately disproportionately impacted by advice delays, as most private submissions seek exempt development endorsement which does not have a statutory timeframe by which the Council must respond. Some owners have waited over 60 working days for advice, and some are waiting 80 to 130 working days for advice. This has resulted in an increased number of complaints and requests for updates, creating further work pressures.

The review into the Heritage Council noted ACT Heritage's increased workload and increasing complexity of the work required. From 2014 to 2022 the amount of Council advice issued increased by 70% which was greater than the growth of the Advice and Approvals team staffing.

Action has been taken to engage additional staff under temporary contracts. Two temporary positions were put in place in 2022 to focus on CMP and major complex project submissions. Additional staff to support the reform work have also been recruited. Recruiting staff to

these position that possess the required level of experience and qualification remains a challenge.

Following the completion of the ACT Heritage model and business systems work, workforce planning will be possible to identify gaps against future needs. Working with the EPSDD People and Capability Branch and specialist workforce planning consultants, ACT Heritage will develop a roadmap and plan for predictive recruitment, future focused workforce strategies, learning and development and improved career pathways. This will include internal workshops to assess current capabilities and skills, identify areas where capacity building is possible and strengthen the ACT Heritage team.

It is intended that the development of a new model for ACT heritage, combined with the implemented workforce plan will result in a faster and more streamlined approvals process for the ACT community. It is hoped that these improvements will help address the current wait times.

### **Strategic Heritage Framework**

A key aspect of the heritage reforms being delivered by this Government will be the development of a strategic framework for the management, conservation and protection of heritage in the ACT. It will provide the government, the Heritage Council and the community with a comprehensive direction for heritage in the ACT. It will ensure we have an overarching framework for ongoing decision making and public engagement on heritage.

The initial document to support this will be the Strategic Business Plan for ACT Heritage which is proposed for development in 2023/2024. This will highlight the proposed pathway to implement the reforms identified in this submission and include key performance indicators to ensure that the success of ACT Heritage can be measured and reported on.

A strategic and outward facing Heritage Statement of Intent will be developed as part of future reform that will clearly state the future vision for heritage and define the objectives and direction of heritage in the ACT. This Statement will reflect the combined learnings from the Government's comprehensive review and the establishment of the interim Council, as well as the findings of this Inquiry.

There will be opportunities for stakeholders and the community to contribute to the review and reform through multiple channels including the ACT Government YourSay Conversations platform.

### **First Nations Engagement**

The ACT Government recognises the importance of managing, conserving and protecting the ACT's built, natural and First Nation's heritage and is committed to strengthening our heritage arrangements to better position the ACT to meet the current and future challenges of managing heritage within a growing city. The protection and conservation of First Nation's cultural heritage and places through active engagement with First Nation's people in a way that harmonises with the present and future development needs of the ACT is a key priority for the Government.

The stories of the First Nations people are the first stories of our region, and we have much to learn from these about how we respect and care for this beautiful country we get to call

home. A key aspect will be continuing to work with RAOs and groups such as the Dhawura Ngunnawal Caring for Country Committee to ensure our heritage laws and approach appropriately recognises the role of traditional custodians and ensures that understanding and responding to First Nations cultural heritage is front and centre in our approach. It means working with traditional owners to ensure our cultural heritage protections reflect contemporary understanding and are a positive contribution to our reconciliation journey.

### **Making Heritage More Sustainable**

While we need to “conserve” our history, we do not necessarily want to “preserve” it, especially if that means we have placed unnecessary constraints on our ability to improve the sustainability of our heritage buildings. It would be a perverse outcome indeed if we “preserved” older, heritage buildings so that they were adversely affected through very high energy bills, poor occupant comfort, and poor resilience in the face of a changing Canberra climate. A balance must be struck so that these buildings can retain their character and other attributes that heritage listing seeks to preserve, while being adapted to suit the needs of present and future occupants and ensuring they are accessible for all.

No building is kept in its original form and used forever. This process does not need to be costly or onerous but requires a sensible reflection of how we can support building owners and the community to ensure that heritage is valued and celebrated, while ensuring that we continue to work to ensure our built fabric is climate wise. This may include:

- Enabling building owners to contribute to the ACT’s effort to cut greenhouse gas emissions from the built environment and reduce energy use;
- Enabling public heritage listed buildings to meet community expectations with respect to sustainability, for example, being all-electric and removing barriers for renewable energy such as solar panels;
- Helping to truly conserve historic buildings by making them sustainable over the long term. In fact, this could extend their life by preventing them from becoming unfit for use, for example, by having unacceptably high energy costs; and
- Creating niche business opportunities in the skilled field of retrofitting historic buildings. For example, custom window manufacturers can make high performance windows that retain the appearance of original windows.

A key aspect of making heritage more sustainable is ensuring heritage is for everyone. This includes making heritage sites accessible for all members of the community. In 2022, the heritage festival introduced Kids Week to pique the curiosity of all ages. Running through the school holidays, Kids Week focuses on family friendly, fun events that will entertain the kids during the holidays and give them an opportunity to learn about Canberra’s unique heritage. Work needs to continue, to ensure that members of the ACT community no matter their age or background, are actively involved in the future of heritage in the ACT.

As Minister for Heritage, strengthening the ACT’s heritage arrangements and restoring trust and confidence in the Heritage Council and ACT Heritage will be a priority for me over the coming twelve months. The comprehensive review and current work funded by the government to upgrade the ACT Heritage database will help build a better, stronger and more effective heritage arrangements that best suit government and community needs within a growing city and for future generations. We welcome the Committee’s inquiry and again the government offers to work with the Committee to ensure the comprehensive review and the inquiry progress in a coordinated and harmonious manner and there is the opportunity for information sharing between the two processes.