



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ENVIRONMENT, CLIMATE CHANGE AND BIODIVERSITY
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Submission Cover Sheet

Inquiry into ACT's heritage arrangements

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Standing Committee on Environment, Climate Change and Biodiversity
ACT Legislative Assembly
GPO Box 1020
Canberra ACT 2601

By email: LcommitteeECCB@parliament.act.gov.au

Dear Dr Paterson

Inquiry into the ACT's heritage arrangements

We would like to offer our observations and comments for consideration in this inquiry.

We are both former Chairs of the ACT Heritage Council — Michael Pearson was Chair in 2005-2011 (and a member in 2002-2014), and Duncan Marshall was a member from 2011 and Chair in 2012-2015. We have both been involved in heritage management and planning for many decades, both as former staff members of the Australian Heritage Commission in the 1980s and subsequently as heritage consultants.

We will address the Terms of Reference of the Committee below.

a. The effectiveness and adequacy of the operations under the Heritage Act 2004 including First Nations heritage, and approvals provided under the Act

The review of the effectiveness and adequacy of the *Heritage Act* is highly appropriate for a piece of legislation that is now 19 years old, mindful that a statutory review was completed in 2010. Consideration should be given to:

- the actual robust evidence of effectiveness, rather than just anecdotal information;
- the fit between the statutory functions of the Council and the current processes of the ACT planning system, including only an advisory role for the Council, not a decision-making role, in development applications impacting heritage;
- the adequacy of the Act in protecting the ACT's heritage (for example as compared with the evolution of legislation in other jurisdiction, as indicated in reference d), including compliance monitoring and action;
- the appropriateness or otherwise of the Council, either in its current form or more generally, in representing the interests of the First Nations community in protecting its heritage, given the developing sophistication of such mechanisms in Australia over the last 20 years;
- the range of opportunities that might exist to rationalise/coordinate/improve the protection and management of heritage places in the ACT by better integration between the Commonwealth and ACT planning and heritage systems;
- the need to embed in the Act the requirement for a regularly reviewed ACT Heritage Strategy, and its implementation through administrative processes; and
- the extent to which the recommendations of the 2010 review have been addressed.

By way of observations:

- the lengthy delays in responding to tasks publicly indicated by ACT Heritage seriously undermines the effectiveness of the Act;
- there is an impression that much of the Council's work is reactive rather than proactive, including regarding protection and sympathetic development, and the development of the register. Best practice involves a more pro-active approach;
- the approach to First Nations' heritage in other jurisdictions has evolved well beyond the provisions of the current Act, with a much greater recognition that First Nations should play a central role in the care and management of their heritage;
- it is also understood that there is a statutory impediment to the Council advising on developments adjacent to a heritage place. This is inconsistent with good heritage practice, and should be fixed; and
- while there will probably always be a statutory division of heritage responsibilities between the ACT and the Commonwealth, this should not prevent enhanced integration of the two heritage systems for the benefit of the community (eg. regarding register databases, standards for heritage impact statements and conservation management plans, policies regarding First Nations' heritage, and interpretation programs).

b. The effectiveness of the structure, administration, and operation of the ACT Heritage Council, including the adequacy of governance arrangements between the ACT Heritage Council and ACT Heritage Unit

While we are not privy to the full report of the *Review of the ACT Heritage Council* (Nous Group November 2022), the summary *Public Report* indicates that the relationships within the Heritage Council and between it and the Heritage Unit have become dysfunctional. The resolution of such a situation is impossible to suggest from an external perspective without far more information and discussion, but we would suggest steps that might be worth considering as follows.

- Clarifying the role and direction of the Council and the Unit by developing the long-discussed ACT Heritage Strategy, either by embedding the concept in the Act (as suggested above), or as a Ministerial/regulatory directive. This would give the Council and the Unit a role in developing the Strategy (with external input including by the community), and a clear direction to implement it through Council and Directorate action. Obstacles in the delivery of Strategy outputs could then be addressed by the Directorate as administrative actions or as new policy proposals, and by the Council as submission to and dialogue with the Directorate, and then to the Minister if the Strategy becomes stalled.
- Establishing in the first instance and maintaining clear lines of advice by the Minister regarding Councillors' roles, consistent with statutory provisions, and by appropriate briefing of new members by the Directorate/Heritage Unit. This is particularly relevant when new Council members are appointed from other jurisdictions, and the particular context of the local Act and administration needs to be clarified.
- Establishing and maintaining a clear understanding within the Council as to its statutory functions, the mechanisms within Council for developing Council positions and decisions (such as delegating work to sub-committees or taskforces), the respective roles and responsibilities of Council members and the Chair in decision-making and representation of Council, and the methods of formal requests by Council for Unit advice or action.

- Establishing and maintaining a clear understanding within the Heritage Unit of the Council's statutory functions as an independent statutory body, the mechanisms available for Council requests for Unit advice or action, and the avenues for indicating any obstacles in responding to such requests.
- Requiring a more active role by the ex-officio members of Council to raise and seek resolution within the Directorate of issues that are causing concern or friction within Council, the Unit, or between the two, with referral to the Minister if not resolvable within the Directorate.
- The Heritage Unit can have a difficult role in serving two masters – the Council on the one hand and the Directorate on the other. This needs to be better understood and aired. Mechanisms need to be established and agreed, perhaps through a memorandum of understanding, to manage difficulties which arise because of this situation.

c. The adequacy of resourcing for the ACT Heritage Unit

- The *Review of the ACT Heritage Council Public Report* (Nous Group November 2022) indicates that the Heritage Unit resources do not match the increasing demand or complexity of the work required. It is our experience that the mis-match between demands and resources, both involving Council workplans (including processing heritage nominations) and complying with Directorate planning procedures (such as input to DAs) arises from time to time, and nearly always there is an impression that there is too much work for the resources available. This is sometimes due to the fact that both Council and Unit members have been committed to trying to achieve the best possible outcomes, but clearly there has also been an increase in Unit workload in recent times without a corresponding increase in resources. The extent to which this increase in workload is due to Council functions, and how much to planning system processes and administration, is not clear to us. Some relief has been achieved in the past by outsourcing some of the recurrent work to contractors (such as the Heritage Advisory Service and specific studies to provide context for heritage listing and other Council objectives).
- While we support an increase in resources, it is also prudent to review systems and processes to ensure they are efficient and effective in achieving the objectives of the Act.
- One current area of revenue raising relates to the review of conservation management plans. We find this measure completely unreasonable and counterproductive. Such a measure only increases the impression that heritage is a burden on managers/owners who should be supported and encouraged in caring for heritage places, not effectively punished. The current measures should be abolished.
- The ACT Heritage Council should also be resourced to enable it to be the active expert public champion for the ACT's heritage. It is also vital to maintain an active heritage listing program, and the old-fashioned online register database must be modernised to make it much easier to access vital information about the ACT's heritage, ideally including that in the Commonwealth realm.
- The ACT Heritage Library should be substantially enhanced to play the role of a heritage resource centre and focus, continue with its current role as well as supporting/integrating the work of other key information keepers in the ACT. Important collections of ACT documents should be considered for listing in the Heritage Register as objects, and the ACT should seriously investigate the listing of important ACT document collections for the UNESCO Memory of the World

Register, as are a number of Canberra-related documents held by the Commonwealth.

d. The operation of heritage legislation in other Australian jurisdictions

The heritage systems in Australian jurisdictions differ substantially one from another. Some have been updated relatively recently (Victoria 2017, WA 2018, and NSW 2021), some separate heritage listing from planning processes, as in SA where the Heritage Act 1993 has not been updated, but a totally revised planning system, backed up by heritage overlays and an electronic ‘atlas’ was put in place in 2020. Our observation is that updated heritage acts do not necessarily demonstrate constant improvement in heritage outcomes.

The review of the operation of heritage legislation should therefore focus on the successful advances that might be relevant to the ACT, rather than expecting to find an overall model that fits in all respects. In a number of jurisdictions the improvements in heritage and related planning processes have been facilitated by database advances (see below).

One measure which we suggest should be avoided is the tendency in some jurisdictions to have a separate planning process for ‘state significant’ developments. These processes have been deeply controversial, with the strong perception of political interference in heritage matters. The use of ministerial call-in of projects is similarly controversial. If there is any concern about achieving timely heritage decisions, then the obvious answer is to adequately resource good heritage processes.

e. How the ACT’s heritage arrangements might be improved to guarantee the ACT Heritage Council achieves its statutory functions

It is to be hoped that the investigation of the operation of heritage legislation and its relationship to the planning system in other jurisdictions will suggest some potential improvements in the ACT heritage arrangements. Areas where we could foresee improvements include the following.

- Perhaps the most important challenge is the need to re-set the community, industry and government conversation regarding heritage in the ACT. The ACT community is relatively wealthy and educated, yet there continues to be an impoverished dialogue about the value of our heritage, its conservation and sympathetic integration within a modern society. There appears to be a continuing lack of awareness and knowledge about heritage, what it means to register heritage places and their management into the future.

There is a lingering and powerful view that heritage is a problem, not an opportunity, and that heritage is for the elite few rather than the broad community.

There needs to be an active and ongoing outreach/engagement program to challenge these perceptions and present the positive and best-practice case studies that exist within the ACT and from elsewhere. This program should be led by the ACT Heritage Council and Minister for Heritage, supported by ACT Heritage, and it should be a key feature of the ACT Heritage Strategy (discussed below).

- The current ACT Heritage Register is not fit for purpose. It is hard to navigate, limited to the formal listing citation, has no photographs unless included in the citation, or links to related documents or sites, and is not easily linked to the planning system or ACTMapi. It could fulfil a more active information and

education function by allowing other searches, such as for places related by type or history.

- We have raised the issue of the need for an ACT Heritage Strategy several times above. In 2016 a discussion paper was released about a forthcoming ACT Heritage Strategy. At the time, the Minister noted,

The preparation and implementation of a Heritage Strategy will determine a range of strategic priorities and actions that will further recognise, protect, conserve and promote our heritage assets, building on the framework of the existing legislation and initiatives such as Canberra Tracks, the Canberra and Region Heritage Festival and the ACT Heritage Grants. Similar strategies have proved effective in other Australian jurisdictions, major cities and local municipalities.

The strategy has never appeared, and this perhaps reflects ongoing resourcing problems.

The strategy should be finalised in a timely fashion as the framework document for the ACT's heritage, including the re-set of the conversation about this heritage.

f. Any other related matters with respect to the ACT's heritage arrangements

As a general comment, we are not aware that the current Act requires major overhaul. There are certainly aspects which appear to need updating, such as regarding First Nations' heritage, but much of the Act seems generally adequate. On the other hand, the resourcing for the heritage system which operates under the Act is clearly inadequate. There are also a range of subsidiary processes and systems which have also not worked well given recent events. It is in these areas that reform and improvement are needed.



We would be happy to provide further advice if requested, or to appear before the Committee. The contact is Duncan Marshall on [REDACTED].

Your sincerely

[REDACTED]

on behalf of

Duncan Marshall AM
Former Chair, ACT Heritage Council

Dr Michael Pearson AO
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