



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

Submission Number: 051

Date Authorised for Publication: 18 April 2023

30 March 2023

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

Via Email: LACommitteeECCB@parliament.act.gov.au

Dear Sir/Madam,

Submission - Inquiry into ACT Heritage Arrangements

Thank you for the opportunity for the Planning Institute of Australia (ACT) to provide input to the Inquiry by the Standing Committee on Environment, Climate Change and Biodiversity into the ACT Heritage arrangements.

The Planning Institute of Australia (PIA) is the national association representing professional town planners throughout Australia. The Institute has a total membership of about 5,500 people. The ACT Division of the Planning Institute of Australia (PIA ACT) is led by a committee of members who voluntarily help advance the planning profession in the ACT.

Many PIA members are involved in ACT heritage arrangements through their daily activity including managing (applying for, or determining) development proposals, due diligence research on future development sites and strategic planning research on broader land areas.

Our submission below is structured to directly reflect the Terms of Reference published for the Inquiry.

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

PIA ACT considers that the current Heritage Act 2004 is a comprehensive piece of legislation that appropriately covers the relevant aspects of heritage management. In essence the current Heritage Act establishes the Heritage Council and the Heritage Register. It then sets out procedures for registration of a Heritage item, with separate procedures for Aboriginal Places and Objects. The Act has comprehensive provisions detailing the various processes and procedures in relation to accessing information, assessing Development Applications, Tree Damaging Activity with additional provisions on permissions, approvals and rights for review of decisions. In essence, we consider it is not the legislative framework itself that is causing issues, it is the implementation of the legislation.

Although we do not advocate for a total review of the current Heritage Act, we do consider that there is some opportunity to 'fine tune' some of the provisions. In this regard we suggest a selected review of:

- Provisions that overlap with current (and emerging) Planning Legislation as well as with the current Tree Protection Act (and new Urban Forest legislation).
- Provisions that respond to climate change, such as procedures for modifications to heritage buildings to install solar panels or to facilitate solar passive design.
- Details on the interpretation of the criteria for determining whether a place or object has heritage significance. Many of the criteria (as listed below) relate to consideration of 'importance' and while this must remain a subjective term, some specific guidance on the interpretation of these criteria would assist users of the system.

- (a) *importance to the course or pattern of the ACT's cultural or natural history;*
- (b) *has uncommon, rare or endangered aspects of the ACT's cultural or natural history;*
- (c) *potential to yield important information that will contribute to an understanding of the ACT's cultural or natural history;*
- (d) *importance in demonstrating the principal characteristics of a class of cultural or natural places or objects;*
- (e) *importance in exhibiting particular aesthetic characteristics valued by the ACT community or a cultural group in the ACT;*
- (f) *importance in demonstrating a high degree of creative or technical achievement for a particular period;*
- (g) *has a strong or special association with the ACT community, or a cultural group in the ACT for social, cultural or spiritual reasons;*
- (h) *has a special association with the life or work of a person, or people, important to the history of the ACT.*

The Heritage Act is supported by the Heritage Regulation 2006 which is mostly limited to specific activities of the Heritage Council. We consider that if there is going to be an over-arching review of the current Heritage Act 2004 that this review should investigate opportunities to include day-to-day operational activities as part of the Regulations, rather than in the current Act, or alternatively, implemented as Guidelines or protocols. We consider this would allow some degree of flexibility for the Heritage Council and Heritage Unit staff which would hopefully lead to increased productivity and improved customer service for users of the system.

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.

We understand that through the public report on *Review of the ACT Heritage Council – November 2022* prepared for EPSDD that there were strained relationships between the former Heritage Council and Heritage Unit. We are not privy to the details on this, but consider the structure and statutory responsibilities of the Heritage Council is appropriate.

c. the adequacy of resourcing for the ACT Heritage Unit.

We are not aware of any published data on the level of resourcing of the Heritage Unit in relation to workloads nor any comparisons with other jurisdictions. We encourage the Inquiry to obtain and publish such data to allow the community to understand whether the resourcing of the Heritage Unit is adequate.

Notwithstanding, the responsiveness of the ACT Heritage Unit is probably the biggest concern to PIA members. When undertaking initial research on sites earmarked for future development, our members have advised that it can take many months to obtain restricted information from the Heritage Unit (mostly in relation to previous records of aboriginal artefacts in the locality), even if the applicant applying for the restricted information is registered with the Heritage Unit as a person able to obtain the restricted information.

The negative implication of these delays is that research on a site continues and decisions are made to progress with master planning or development proposals without the full heritage information. This results in a high level of 'ownership' to a development proposal as plans continue to progress meaning that when any later information is provided by the Heritage Unit about the presence of aboriginal artefacts, the response by the consultant team is a reactive one, rather than a strategic one.

We consider that the Heritage Unit could set up a formal register of qualified persons and enable such persons direct and immediate (electronic/remote) access to the digital database of previous archaeological records, thereby freeing up internal Heritage Unit resources and allowing key heritage information to be immediately available to users in the first phase of site planning and due diligence research.

d. the operation of heritage legislation in other Australian jurisdictions.

PIA ACT is not familiar with Heritage legislation in other jurisdictions and we are not in a position to comment on this matter.

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

PIA ACT consider that there are two key areas where heritage arrangements could be improved. The first is detailed under Item 'c' above.

The second is to impose specific time limits on the decisions relating to heritage nomination and registration. We consider that when a building or place is nominated and provisionally listed, a time limit should apply for either (or both) the Heritage Unit and the applicant for nomination to provide a report detailing the nomination against the specific criteria for heritage listing within a set timeframe (with removal of the item from provisional listing if the report is not completed in the set timeframe). In addition, the report should be a public report that allows review by the land owner and community with opportunity for both to address the Heritage Council in a public forum at the time a decision is made on the final registration.

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

We consider the Heritage Unit has an integral role in the determination of development proposals and is appropriately located within the EPSDD. We do not consider a separate Directorate, or location within a different Directorate is appropriate.

As the ACT Government pursues a compact city policy and looks to the established urban areas to meet 70% of growth, heritage considerations are more likely to contrast with

planning policy outcomes. This will necessitate a more refined and nuanced consideration of the interplay between planning and heritage outcomes. This necessitates a more detailed consideration of the planning outcomes within the heritage discussions. The benefit from improved urban planning skills through the close interaction between Planning Authority officers and Heritage Unit officers will lead to better heritage outcomes.

PIA ACT members are aware of a number of examples where the constructive interaction between heritage officers, planners and proponents for development has resulted in positive outcomes with different solutions for different sites. For example, in some cases where there was some heritage significance but the sites were not registered, the negotiated agreement resulted in representative samples of building types preserved allowing redevelopment consistent with the ACT Government's compact city policies. In other cases, the agreed outcomes have resulted in new development being framed around the design intent and planning objectives that underpinned the initial development of the site.

Thank you, again for the opportunity to provide input to this important inquiry. Should you require any further information or clarification of the above, please do not hesitate to contact me on [REDACTED] or [REDACTED]

Yours sincerely



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PIA ACT President