LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

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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Standing Committee on Environment, Climate Change and Biodiversity
Inquiry into ACT Heritage arrangements 2023

31 March 2023

To:
Chair, ECCB Committee
ACT Legislative Assembly
Canberra City

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

Dear Dr Paterson

This submission is in response to the Inquiry Heading: **any other related matters with respect to the ACT's heritage arrangements.**

My family settled in this valley prior to Federation and the establishment of the National Capital. In my own lifetime, growing up in Canberra and moving, as an adult, to the inner south, I have witnessed the rapid progress of the city and the surrounding regions. Since self-government I have been a community representative on a number of committees, both in an elected and a government appointed capacity. At present I am the Deputy Chair of the Inner South Canberra Community Council (ISCCC).

However,I must emphasise that I write this brief submission, in a personal capacity, as a long standing resident of a heritage precinct in the inner south.

I have read the submissions which have been uploaded to the ECCB Committee website as well as the extensive documents which point to the proposed new planning regime. I support the views of concerned former Heritage Council members and the ISCCC in particular.

Having been engaged in 'grass roots' heritage deliberations for more than 30 years, I feel compelled to focus on the specific issue of development applications (DAs) involving properties which have heritage recognition and properties for which heritage protection is sought.

In reality, there appears to be no clearly delineated pathway when a buyer / owner is intending to embark on work involving a property on (or nominated to) the ACT heritage Register.

The process which ensues leads to many unanswered questions, as follows:

1. Does the realestate agent marketing the **property** know that it is **on- or nominated to- the ACT heritage Register?**
2. Does the agent inform prospective buyers of the heritage overlay?
3. Is the agent required by law to reveal this information? If not, why not?
4. If deciding to make alterations to the property, is there a clear pathway for the owner to follow?
5. What legislation spells out the necessary steps which must be followed?
6. Does the owner have to consult a heritage expert before embarking on seeking approval of proposed changes?

7. How does the **Heritage Advisory Service** fit into this scenario?
8. Does the Heritage Advisory Service have any legal standing?
9. What of the costs to the wider community for this service if it does not have any legal standing?
10. Is there any benefit in maintaining a Heritage Advisory Service if it has no legal standing?
11. How does the role of an assessing officer in the Heritage Unit differ from that of a professional, employed by the Heritage Advisory Service, whose professional advice cost is being met by government?

12. Do staff members in the Heritage Unit hold **professional qualifications** which equip them to respond to proposals to carry out alterations and additions to properties with heritage protection?
13. Do staff members in the Heritage Unit have the knowledge and expertise which would enable them to respond to proposed changes to /demolition of properties with potential heritage value?
14. What office holder has the **power**, in legislation, to **make these decisions**?

On the ground, on a day to day level, it appears that there is **no legislated pathway** to pursue inquiries about properties with heritage "protection". Indeed, the owner may approach a **private certifier** and a **builder** who are unaware that the property has heritage protection. In such a case, the RZ1 rules are applied without any understanding of the mandatory requirements of the applicable Heritage Register

- Is informative **signage** erected on the property?
- Does anyone check whether signage has been erected and whether it is accurate?
- Is signage now even required by law?
- Note: if signage even appears outside a property with heritage protection the approval, such as it is, has already been granted. Consequently, the signage only serves to inform the passer by about building works on the block.
- If neighbours are even provided with an outline of a proposal, what reliance can they place on the accuracy of the material provided?
- Does ACTPLA have any role in this process?
- Is there a legislated requirement to respond to concerns of neighbours?
- Even if the initial proposal appears to respond to heritage requirements, what government entity is going to intervene if the subsequent work far exceeds the initial proposal?
- It appears that even when **neighbours** become aware of a proposal, they have no legal standing during the assessment process.
- Furthermore, they **have no right of appeal.**

Following the establishment of the ACT Heritage Register in the 1990s,development proposals involving heritage listed properties were routinely classified as development applications. These DAs were publicly notified, signage was erected on the block, and, "affected" neighbours and other interested parties had a set time to respond to the DA. When the period for comment had closed and the assessment was finalised, "objectors" would receive a written response from the Planning and Land Authority outlining the approval, or refusal, in view of the comments received. Within a set timeframe there was a limited right of appeal.

This well-defined pathway fell away following major changes to the Territory Plan more than 10 years ago. The Planning and Land Authority relinquished the role. However, the Heritage Council / Taskforce was not then given the authority to be the final decision maker when assessing a proposal with heritage implications. In fact, the Heritage Council is defined as an entity with a defined period in which to provide entity advice. Furthermore, if advice is not provided within the specified timeframe "the entity is taken to have given advice that supports the application."

Specifically, the (revised) Territory Plan 2007 and Planning and Development Regulation 2008 introduced changes with far reaching consequences for Heritage Precincts in RZ1 zones, in particular.

The following scenarios attempt to illustrate the problem of the apparent random nature of the assessment of proposed developments involving properties with heritage identified heritage values.

Pathway 1.

An applicant submits a development application (DA) to the planning authority. On the form the applicant notes the heritage status of the property and notes that heritage advice has not been sought. The authority then forwards the DA to the Heritage Unit. The Unit, apparently supported by a Heritage Council Taskforce, is required to provide an opinion/**advice** (a Tick the Box exercise) to the Authority within a very brief timeframe. The Authority then treats the DA as a **minor merit** application. Neighbours may not be aware of the DA because neighbour consultation is not mandatory. Amendments to the approved plans may radically alter the original proposal without the knowledge of Heritage. Even if neighbours have concerns about the work there is **no third party right of appeal**. In contrast, if the DA is refused on heritage grounds the **applicant does have appeal rights**.

Pathway 2.

An applicant submits a development proposal to the Heritage Unit for "advice". At some point the applicant will receive a letter outlining what, if anything needs to be addressed. Alternatively, the applicant may receive a letter of support for the proposal. If the proposed development complies with the relevant planning rules it can become a building application (BA) enabling the applicant to engage a builder and a private certifier. The proposed work is routinely classified as exempt, and the onus is on the private sector to follow the rules which apply i.e. the applicable mandatory requirements in the Heritage Register.

refer : Planning and Development Regulation 2008
refer also:
https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/exempt-work/da-exemption-self-check

Conclusion:

The pathway for assessment of development proposals affecting/ involving properties with heritage value must be clarified, simplified and legislated. Furthermore, the power to approve or reject these development proposals must reside with the Heritage Council, or a properly constituted Heritage Council Taskforce. **The final approving body must be the Heritage Council** independent of day to day political pressures.

If the Committee conducts public hearings I am willing to appear to answer questions relating to heritage matters with which I am familiar.

Yours faithfully,

Anne Forrest