



OFFICE OF THE COMMISSIONER
FOR SUSTAINABILITY AND
THE ENVIRONMENT

Standing Committee on Environment,
Climate Change and Biodiversity
Email: LAcommitteeECCB@parliament.act.gov.au

To whom it may concern

Inquiry into the ACT's Heritage Arrangements

The Commissioner for Sustainability and the Environment is an independent statutory position established by the *Commissioner for Sustainability and the Environment Act 1993*. My Office (OCSE) advocates for an environmentally sustainable future for the Territory and supports reforms that work to protect the many values of the ACT's unique environment.

Heritage matters are a critical consideration in planning of the ACT. Reviewing heritage arrangements through this Inquiry presents an invaluable opportunity for the ACT Government to re-evaluate the scope of the ACT's heritage considerations and modernise approaches to recognise existential threats, such as the climate emergency.

1. Integrated legislative and policy frameworks for climate and heritage

Nationally and internationally there has been recognition of the interactions between heritage and the environment, most particularly in relation to climate change. That is, there are clear examples where i) climate change is already posing existential threats to heritage sites and must be responded to, and ii) climate change adaptation and mitigation responses are incompatible with heritage preservation.

In other jurisdictions, there are examples of sophisticated integration of heritage and climate adaption legislation. By way of example, the regional development strategy for Northern Ireland describes the need to conserve, protect and, where possible, enhance built heritage and natural environment, including protection from the impacts of climate change.¹ In Victoria, the Heritage Council of Victoria has commenced a dedicated project on how cultural heritage places and objects will be impacted by climate change, in order to guide future policies.² At the global scale, UNESCO recognises that World Heritage properties are affected by the impacts of climate change at present and in the future³.

Overall, no such recognition, planning or consideration is evident in the ACT. Foremost, the *Heritage Act 2004* (the Act), does not mention climate change. Heritage and climate change policies in the ACT do not interact, and legislation in the ACT fails to identify and address climate change impacts on

¹ [The Regional Development Strategy for Northern Ireland](#)

² <https://heritagecouncil.vic.gov.au/research-projects/heritage-and-climate-change/>

³ <https://whc.unesco.org/en/climatechange/>

heritage and how preservation of heritage values might impact climate change mitigation and adaptation measures.

Such considerations are not abstract. Sites of immense heritage value were deeply impacted by the 2019-20 Black Summer bushfires⁴. These included Ngunnawal rock art and archaeological sites, stone arrangements and significant trees, as well as the loss of several stockmen's huts in Namadgi National Park.⁵

There is limited evidence that planning has occurred at the interface of climate change and heritage, and any such measures are cursory. For example, there are provisions for owners to apply for exemptions to modify heritage building facades to install solar panels⁶. In the current legislation, there is no capacity to consider the future needs and impacts of heritage sites in a changing climate, despite the recognition that *"owners of heritage places are custodians for the present community and for future generations."*

The limited scope for interaction in the legislative framework can be demonstrated through the following:

- The *Heritage Act 2004* makes no explicit mention of climate change
- The *Climate Change and Greenhouse Gas Reduction Act 2010* makes no explicit mention of heritage
- The *Nature Conservation Act 2014* does not mention heritage
- The *Tree Protection Act 2005* considers heritage but not climate change
- The *Urban Forest Strategy 2021-2045* includes considerations of both heritage and climate change but not their interactions

This submission has focussed on climate change, but it warrants mention that there are numerous environmental domains where heritage and environmental values and objectives are poorly aligned and require deliberate review to ensure strategic alignment. For example, under the current planning system, heritage matters form part of the Territory Plan and consequently are considered as part of development assessment processes, and hence supersede environmental and sustainability matters. Serious consideration should be given as to whether this hierarchy is appropriate given the dual climate and biodiversity crises we are living through. Conversely, there is no recognition of the role heritage places often play in conserving greenspace within Canberra's urban areas, contributing to the city's wildlife corridors and urban cooling. A more holistic and nuanced approach to how heritage and environmental matters are considered in the planning system could provide co-benefits to both areas.

Such understandings are clearly inherent within ACT Government approaches, as demonstrated by the approach to the loss of the Namadgi huts, whereby there was immediate recognition that we cannot replace lost heritage places with exact facsimiles, given our changing climate, environment, and community expectations. That is, we must not try to recreate the same thing, when the context - including the climate context - has changed considerably.

Recommendation: Introduce explicit recognition of climate change risks to the Heritage Act 2004 to enable systematic assessment of sites at risk from climate change and to introduce climate change considerations into the management of heritage sites.

⁴ https://www.environment.act.gov.au/ACT-parks-conservation/bushfire_management/orroral-valley-fire-impact-report

⁵ <https://yoursayconversations.act.gov.au/namadgi-national-park-huts-proposal>

⁶ <https://www.environment.act.gov.au/heritage/development-at-heritage-sites>

2. Ngunnawal Heritage

While commentary on what constitutes a heritage matter is beyond the purview of the Commissioner's role, the treatment of Ngunnawal cultural sites under the same legislative framework as that used for European heritage appears problematic from an environmental perspective. Ngunnawal traditional culture is living and thriving and includes deep knowledge of the ACT which could aid in the protection of its natural environment. Many significant sites for the Ngunnawal people provide links to the way that humans on this Country have interacted with the land for tens of thousands of years and continue to do so today. Preservation of these sites needs to be considered in this context, including facilitating access to significant sites for members of the Ngunnawal community to ensure a continuation of culture and knowledge across generations. This should be explicitly provided for in heritage arrangements.

In addition to physical sites, the ACT's heritage arrangements need to better recognise and protect Ngunnawal cultural knowledge and traditions. This is a well-established concept globally. UNESCO⁷ has given consideration specifically to 'intangible cultural heritage', which includes oral traditions and language, craftsmanship, and knowledge and traditions related to nature. UNESCO further considers this latter domain to include

'numerous areas such as traditional ecological wisdom, indigenous knowledge, knowledge about local fauna and flora, traditional healing systems, rituals, beliefs, initiatory rites, cosmologies, shamanism, possession rites, social organisations, festivals, languages and visual arts.'

This integration of traditional and western knowledge is occurring elsewhere in Australia and internationally. For example, a study⁸ looking into conservation of the white sturgeon in Canada concludes that 'a biocultural diversity conservation approach, that reflects both ecological and socio-cultural values, and is informed by scientific and Indigenous knowledge systems, is a more sustainable approach to the management of the white sturgeon and other species at risk.' While there is increasing recognition by white Australia that Indigenous cultural knowledge is crucial to the preservation of the country's ancient and fragile ecosystems, to date little has been done to formalise this recognition. This review provides an opportunity for the ACT Government to study global best practice in this emerging area and apply it to our local context with the Ngunnawal people.

Recommendation: Review the way in which Ngunnawal traditional sites, practices and knowledge are considered and protected under heritage arrangements to ensure these are appropriate for a living and ongoing culture.

3. Natural heritage

OCSE finds the definition of 'natural heritage' in the Act to be unhelpful. Under this definition, 'natural heritage' is described based on its 'scientific value', which seems incongruous with other aspects of the Act which make no mention of science being a consideration in determining heritage values. The Act also notes that sites may only be registered if they have 'natural heritage significance of a kind not protected under the [Nature Conservation Act 2014](#)'. This definition by negation makes it difficult to determine what exactly constitutes natural heritage and how the requirements for this differ from those for other instruments such as the ACT [Nature Conservation Act 2014](#) and Commonwealth

⁷ <https://ich.unesco.org/en/intangible-heritage-domains-00052>

⁸ <https://www.mdpi.com/2071-1050/12/18/7320>

Environment Protection and Biodiversity Conservation Act 1999. It is also not clear how it is applied in practice.

For example, the ACT Heritage Register entry for Hall Village Heritage Precinct (gazetted in 2001) includes the following:

The landscape setting of Hall Village is valued for its social and natural values. The ridgelines enclosing the Village support an endangered Yellow Box/Red Gum grassy woodland ecological community. Five bird species, declared vulnerable under the Nature Conservation Act 1980, have either been recorded or are likely to occur within the grassy woodland. The cemetery includes the habitat of the endangered Leek Orchid, Prasophyllum petilum.

The Leek Orchid and Yellow Gum/Red Box Endangered Woodland Community are included in the entry and listed as elements of 19 and 20 of its heritage significance. However, other sites in the ACT with these two elements are not registered as heritage places under the Act. It is not apparent from the available information why endangered species and habitats are considered to be 'natural heritage' in some instances and not in others. Further, these elements are both protected under the *Nature Conservation Act* (Box-Gum Grassy woodland was listed in 1997 and the *Prasophyllum petilum* Leek Orchid in 1996, so prior to the heritage gazettal). This appears at odds with the requirements of the Act.

The arrangements to support the registration and management of natural heritage matters also appear awkward. The ACT Heritage Council is required to consult with the ACT Scientific Committee (another statutory expert body in the ACT) for any matters relating to places of natural heritage significance, or of a place that 'forms part of the natural environment'. This definition appears very imprecise and could arguably be applied to any site. The Act is silent on whether the Heritage Council must act on advice it receives from the Scientific Committee.

The arrangements for the protection of natural heritage in the ACT appear unwieldy and their application seems inconsistent based on available information.

Recommendation: Review the way in which natural heritage is defined and assessed in the broader context of environmental protections in the ACT to determine whether the current arrangements represent the best approach to ensuring the protection of matters of natural significance in the ACT.

4. Protection of heritage matters

ACT Heritage and the ACT Heritage Council appear to operate on an 'all care and no responsibility' model. Under current arrangements, management and preservation of heritage is the responsibility of the land manager. ACT Heritage is therefore responsible for setting management conditions but has no practical or financial role in the implementation of these conditions. Implementation of these management recommendations falls largely on other ACT Government areas, notably the Parks and Conservation Service (PCS) in EPSDD and City Services in TCCS. These agencies have no expert staff dedicated to heritage management, and heritage management is not their core business. This situation is likely to result in sub-optimal outcomes for both heritage and the land managers, as the responsible government areas may lack the resources, funding and in-house expertise to attend sufficiently to management of heritage matters. Heritage management may also detract from other core areas of work for these agencies, such as environmental management.

For example, during preparations for the 2019-2020 bushfires, considerable time and resources were invested by PCS in the implementation of protective measures for European heritage sites in the Namadgi National Park. Similarly, inspection and remediation of heritage sites following the fires formed a significant part of the bushfire response. The creation of a function within ACT Heritage to provide practical support and resources for heritage management could provide better on-ground outcomes and free up other ACT Government staff to focus on their own areas of expertise.

Recommendation: Investigate models for the implementation of heritage management plans which better support land managers through the provision of resources, funding and expertise for the management of heritage places.

Thank you for your consideration and please do not hesitate to contact me if you have any further queries.

Yours sincerely

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

Dr Sophie Lewis
Commissioner for Sustainability
and the Environment

24 February 2023