Senator Louise Pratt
Chair
JSCNET Public hearing CNMC Ordinance

Dear Senator Pratt

Addendum to my answer to your question on the Environmental Protection and Biodiversity Conservation (EPBC) Act 1999.

I seek your indulgence to make some points of clarification and to expand my answer

1. The proponent of a development that affects heritage listed values is required under Commonwealth legislation to prepare a report and refer it to the Minister. I have referred to such a referral report as a Heritage Impact Statement and I should make the point that, under the EPBC Act the process of submitting a referral report is known as an EPBC referral. In an EPBC referral the proponent should base their assessment on the Commonwealth heritage listed values (Statement of Heritage Values) and a relevant Conservation Management Plan (CMP). A CMP is prepared to provide guidance and management of the listed heritage values.

2. I omitted to say that the EPBC referral is structured into the process of decision-making at a very late stage in a proposal's development and that this may be too late if there have been earlier flaws in the process. I attempted to illustrate this situation in my submitted paper, from which I drew my answer to your question.

   To clarify my answer: In the example I used, the EPBC referral for the proposed WWI and II memorials would not have a proper basis for assessment where there has been a failure to properly assess the heritage values of the Rond Terraces in the Register citation and in a dedicated CMP. In the case of the proposed war memorials, a favourable decision in the EPBC referral, would be followed by NCA giving works approval to the Memorials Development Committee (MDC). This would result in an outcome which has been strongly opposed by the Canberra community, and by expert opinion. It would be an outcome not based on adequate heritage assessment process prior to the EPBC referral. Although they are listed and as part of the Central Parklands and the Parliament House Vista, and included in the CMPs for those places, the Rond Terraces are not considered to have been adequately assessed for such a very special place on the lake shore and centrally located on the land axis.

3. I guess my comment is that the EPBC referral is only as effective as the process which precedes it.

   Again the provisions for emergency nomination under the EPBC Act were not helpful to obtain a better basis for the assessment of an EPBC referral on the war memorials.

   The proponent has not yet submitted an EPBC referral but had expressed the intention to do so last June. The Lake War Memorials Forum (LWMF) out of concern for the unprotected values of the lake and its parklands (that included the Rond Terraces) submitted an emergency national heritage list nomination to the Minister for Sustainability, Environment, Water, Population and Communities, 1 March 2011, in order to use the emergency provisions of the EPBC ACT to ensure the values of the lake and parklands would be safeguarded. The response on behalf of the Minister (Attachment 2) stated that:

   > 'Lake Burley Griffin and Lakeshore Parklands were found to be a significant heritage place with areas and elements that might have National Heritage

values. It was also noted that a construction of two 20 metre high structures either side of Rond Terraces may have a significant adverse impact on potential National Heritage values. Finally, however, it was noted that a proposal to construct the structures must be approved by the National Capital Authority (NCA) under the *Australian Capital Territory (Planning and Land Management) Act 1988* and by the Minister under the EPBC Act. These approval processes, which would include public consultation, would likely take several months. To-date no submissions have been lodged with the NCA or the Minister; accordingly, the proposal could not be considered imminent as required by the Act.'

The Minister decided not to emergency list Lake Burley Griffin and Lakeshore Parklands. Of great concern to the LWMF and the Griffin Society is that the potential national heritage values have no way of being considered and listed prior to the referral the Minister which in turn means that the Minister will be making his decision on the impacts of the referral without the full suite of values being considered.

During a ten day period of public notification of the EPBC referral the public have the opportunity to comment - but the comments must address the heritage listed values for the place.

The Minister will decide if the action needs to be a controlled action. A controlled action requires expert reports on the impacts when the Minister decides the proposal is likely to have a significant impact on a matter of national environmental significance (places on the World Heritage List and National Heritage List) or the environment of Commonwealth land (places on the Commonwealth Heritage List). With regard to the proposed war memorials on the Rond Terraces, three heritage listed places are involved and have values that will be affected:

- The Australian War Memorial and the Memorial Parade, AHDB National Heritage List (AHDB 105889)
- Parliament House Vista, Commonwealth Heritage List (AHDB 105466)
- Parliament House Vista Extension - Portal Buildings (AHDB 105474)

In the view of the Griffin Society these listings do not fully take into account the special significance of the Rond Terraces as a place located on the Lakeshore and centrally on the Land axis as it was intended by Griffin.

Brief Point in reference to my submission:
My first point about registering national land suitable for national memorials in the National Capital Plan is intended to provide a recommendation for process to circumvent the present situation which again may be illustrated by the proposal for the WWI and WWII memorials. It is my understanding that the initial idea came from Vietnam veteran Mike Buick, supported by military colleagues and by the former Governor General, Michael Jeffrey. The NCA was then approached for a site, I imagine following an application to the CNMC. There was no transparency in regard to the selection of the site, seems to have been no record of the NCA selection process available through FOI. The wider public had no knowledge of this proposed use for the Rond Terraces until an illustration of the competition wining design was published in the Canberra Times. It seems to me that the process for the allocation of national land needs to be transparent.

Yours Sincerely
Rosemarie Willett