

**JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL AND
EXTERNAL TERRITORIES**

INQUIRY INTO THE ROLE OF THE NATIONAL CAPITAL AUTHORITY

SUBMISSION BY THE ACT HERITAGE COUNCIL

INTRODUCTION.

The ACT Heritage Council was established under the *ACT Heritage Act 2004*, as the ACT's principle heritage body. Its functions are:

- (a) to identify, assess, conserve and promote places and objects in the ACT with natural and cultural heritage significance;
- (b) to encourage the registration of heritage places and objects;
- (c) to work within the land planning and development system to achieve appropriate conservation of the ACT's natural and cultural heritage places and objects, including Aboriginal places and objects;
- (d) to advise the Minister about issues affecting the management and promotion of heritage;
- (e) to encourage and assist in appropriate management of heritage places and objects;
- (f) to encourage public interest in, and understanding of, issues relevant to the conservation of heritage places and objects;
- (g) to encourage and provide public education about heritage places and objects;
- (h) to assist in the promotion of tourism in relation to heritage places and objects;
- (i) to keep adequate records, and encourage others to keep adequate records, in relation to heritage places and objects; and
- (j) any other function given to it under this Act or another Territory law.

The ACT Heritage Council had a good working relationship with the National Capital Authority with regards to heritage issues in the ACT up to the point of the recent funding cuts to the NCA. This provided a mechanism for information exchange and resolving some of the confusion and overlapping responsibilities resulting from the unique planning relationship between the NCA and the Heritage Council. New modes of working cooperatively in the new environment have not yet been addressed.

The following comments are in relation to the existing pattern of Designated Areas, and does not expand on the prospect of returning to ACT planning (and therefore heritage) control the currently Designated Territory Land, with specific guidelines to protect the Commonwealth's national interests, which the Heritage Council regards as

a desirable approach. The Council's understanding of Designated Areas, and a list of some of the heritage places located on Territory Land in Designated Areas, is included in Attachment 1.

SUMMARY OF MAIN POINTS RAISED

The main points raised by this submission are:

- there is a gap in the protection of heritage places on Territory Land within Designated Areas due to the *ACT Heritage Act* having no statutory effect in those areas;
- the mechanisms adopted by the NCA to protect heritage places in the Designated Areas are not robust, transparent or comprehensive, and do not guarantee the identification and conservation of the heritage values of the ACT;
- there is a need for the NCA to adopt and actively implement a heritage overlay approach to the development of Development Control Plans, so that the heritage of the ACT is not inadvertently destroyed;
- the high standards of design (including heritage planning) would be enhanced by the establishment of a heritage advisory body by the NCA with direct involvement in the NCA's ongoing planning projects;
- there is a need for earlier and expanded public consultation with the Canberra community in relation to NCA planning for places with heritage values.

RESPONSE TO THE TERMS OF REFERENCE

Heritage Council comments are provided in relation to three of the Committee's Terms of Reference.

- (a) The administration of the National Capital Plan with particular emphasis on the reduction of red tape and duplication of municipal and local planning functions, the jurisdiction of ACT spatial policy and harmonisation of planning systems;*

There is considerable confusion, duplication of effort, and unnecessarily complicated division of responsibilities between the NCA and the Heritage Council in the field of heritage identification and management embedded in the National Capital Plan (NCP). The Heritage Council's view is that the heritage of the ACT is often put at risk because of these problems. The specific area where confusion abounds is in the Designated Areas.

In effect, the only protection for heritage places in Designated Areas (on both National and Territory Land) is through the National Capital Plan, which empowers the NCA with planning approval in those areas. The provisions of the *ACT Heritage Act* have no statutory effect in Designated Areas. While the NCP requires the NCA to give 'due protection' to any natural or cultural heritage places in the ACT included in

the Register of the National Estate (RNE) and/or the ACT Heritage Register, there is no transparent mechanism for that carrying out that function, no guarantee of the provision of professional heritage advice in the NCA's decision making, and no obligation placed on owners of heritage places on Territory Land within Designated Areas to protect and conserve the heritage values of those places.

The Register of the National Estate, one of the triggers under the NCP, ceases to exist in 2012 under amendments to the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC). The provisions of the EPBC Act for the identification of a Commonwealth Heritage List do not apply to Designated Territory Land, as the places on Territory Land are specifically defined in the EPBC Act as not being Commonwealth Areas, and hence not eligible for the Commonwealth List. (see article at Attachment 1 for background to this heritage gap).

The NCA has undertaken in correspondence with the Heritage Council to require the preparation of conservation management plans (CMPs) for RNE or ACT heritage listed places on Territory Land in Designated Areas 'where appropriate', but generally only in relation to major works proposals. However, there is no equivalent of a heritage impact assessment process for works, and no proactive process for identifying or protecting heritage places not yet on registers but subject to development applications before the NCA. In effect, if a place is not on the RNE or the ACT Heritage Register already, the NCA will not consider it to be of heritage value.

(c) The appropriate level of oversight required to achieve the highest standards in design for areas of national significance.

In the interests of achieving the highest standards in the design and management of Designated Areas, the ACT Heritage Council contends that the NCA should take a more proactive role in identifying heritage values and integrating them into its planning processes. In its preparation of Development Control Plans (DCPs) the NCA relies on existing heritage registers, such as the Register of the National Estate (RNE), ACT Heritage Register, as the basis for identifying places with heritage value. While the reference to these registers is strongly supported, it needs to be recognised that they are not based on a comprehensive survey of the heritage values of the areas concerned. In the case of the RNE, it will cease to exist in 2012. The need to proactively identify heritage values exists both in the Territory and National Land components of the Designated Areas. An example of the latter, of concern to the ACT Heritage Council, is the lack of heritage planning within the ANU Campus, where NCA is the planning authority and the Heritage Council has no statutory role to play. There are heritage values within the campus that relate to the Canberra community, not just the national responsibilities of the NCA, yet the NCA has no role to identify or promote these 'local' Territory values. As a result they go largely unidentified, and individual planning approvals are made by NCA in isolation of the broader heritage context.

As currently prepared, DCPs can ignore either individual places of heritage value that are not already registered, or area-wide heritage characteristics worthy of protection in the planning process. An example is the specification of uniform minimum building

height limits along the main avenues, regardless of the actual lower building heights of the existing residential and commercial development that may have heritage importance. This is a directive to developers to demolish existing buildings with potential heritage values.

The Heritage Council contends that best-practice standards should be applied to the planning of Canberra, and that the NCA should include the preparation of a 'heritage overlay' as one element of its DCP development. This would entail an historical review of the area of any DCP, be it a suburb, avenue or other land area, followed by an assessment of the heritage values of the buildings, landscape and urban design characteristics of the area. In order to provide an adequate context for such an assessment, it may be necessary to extend the heritage overlay study beyond the area that is actually administered by the NCA (for example to include a whole suburb, rather than just the Designated Area components, or the curtilage around a site or building of heritage importance).

While heritage registers would form one valuable source of information for the development of a heritage overlay, it would be necessary to carry out an independent review of all potential heritage values within the subject area.

The heritage overlay would then be a basis for the DCP that becomes the guiding document in subsequent ACT planning processes on designated land.

The Heritage Council would welcome the expansion of the NCA's advice seeking processes to include the establishment of a heritage advisory body with direct involvement in the NCA's ongoing planning projects. The NCA flagged its intention to establish such an advisory body as long ago as 2003, but the Heritage Council is not aware of any progress in its establishment.

(d) Opportunities to ensure cooperation with the ACT planning authority and increased engagement with the Canberra community;

The ACT Heritage Council welcomes the NCA's recent preparation of conservation plans for heritage places on National Land, such as the High Court and National Gallery Precinct, and the seeking of public input in those documents. While these places (largely within the Parliamentary Zone) are of undoubted national importance, and their planning is guided by the EPBC Act, they are also an integral part of the heritage of the ACT and the Canberra Community. Other places on Territory Land in Designated Areas are also of high significance to the Canberra Community, as shown by the strength of the recent public response to the proposed redevelopment of the Albert Hall precinct.

The Heritage Council would encourage the Committee to investigate expanding the scope of the NCA's consultation with the Canberra community on heritage matters, and making that consultation an early and ongoing process in relation to any proposed development.

Dr Michael Pearson
Chair, ACT Heritage Council

8 April 2008

ATTACHMENT 1

Copy of article by the Chair of the ACT Heritage Council published in the *Canberra Times* 11/4/07

Is the Commonwealth allowing the National Capital to become a heritage ghetto?

The recent discussion in the *Canberra Times* about the National Capital Authority (NCA) plans to redevelop the Albert Hall Precinct has raised questions about the roles of the ACT and Commonwealth Governments in the management of this land. This has been highlighted more recently by the ACT Minister for Heritage, John Hargreaves' flagging of the threats for some places in the ACT posed by the imminent demise of the Commonwealth's Register of the National Estate (RNE). What is the story here?

The ACT is anomalous in the history of Australian states and territories. It is a Territory set aside for the development of the national capital, and the determination of responsibility for management of the land within the Territory has been an evolving saga balancing demands for self-determination of a growing ACT community and the interests of the Commonwealth in retaining control over its capital. Both are legitimate concerns, but the administrative arrangements are complex.

When the ACT gained self-government in 1988, the Commonwealth retained direct control of 'National Land' seen to be essential to the operations and dignity of the Commonwealth Government, such as the Parliamentary Triangle, and planning and development approval control over large areas of 'Territory Land' that had 'the special characteristics of the National Capital'. Collectively these areas of land are called 'Designated Areas'. Territory Land falling within Designated Areas includes a broad belt of lake-side land and the vegetated hills forming Canberra's Nature Parks. The ACT Government owns and manages these areas, but the NCA retains planning control.

So far so good. Then the issue becomes complicated.

The Commonwealth and the states and territories agreed several years ago to rationalise their heritage registers to reduce administrative duplication, and to reduce confusion and conflict. The Commonwealth agreed to protect those heritage places it owned or managed directly (through the Commonwealth Heritage List), and those places that clearly had national heritage significance (through the National Heritage List). The states and territories would protect through their own heritage registers those places that had state or territory levels of significance, and the local governments would look after the places with local significance. The RNE, which covered all levels of significance, is to be abolished.

However, this neat heritage regime solution does not work so neatly in the ACT because of that complex split of ownership and planning control between the Commonwealth and the ACT Government. In the Designated Areas the

Commonwealth retains planning control over places with heritage values that are not owned or managed by the Commonwealth, and therefore cannot be placed on the Commonwealth Heritage List. In addition, many of these places are unlikely to meet the high threshold set by the Commonwealth for the National Heritage List. The ACT Heritage Act can not apply in Designated Areas, so even though places such as Albert Hall may be placed on the ACT Heritage Register, the ACT planning law does not apply, and the heritage controls within the ACT Heritage Act have no effect.

Places in Designated Areas that fall into this heritage gap include (with heritage registers indicated):

- Albert Hall (RNE and ACT Heritage Register)
- Hyatt Hotel Canberra (RNE and ACT Heritage Register)
- Canberra Croquet Club (RNE and ACT Heritage Register)
- St. John the Baptist Church and Churchyard, Reid (RNE and ACT Heritage Register)
- Duntroon Dairy, Campbell (RNE and ACT Heritage Register)
- Civic Square (RNE)
- Yarralumla Woolshed (RNE)
- Civic Olympic Pool (RNE)
- Duntroon woolshed (RNE and ACT Heritage Register)
- Jerrabombora Wetlands
- Weston Park (RNE)
- Westbourne Woods (RNE)
- Kurrajong Hotel (RNE and ACT Heritage Register)
- Hotel Acton (RNE and ACT Heritage Register)
- Woolshed Creek Fossil Site City Hill (RNE and ACT Heritage Register)
- Rosebud Apiary (RNE)
- Sewerage outfall chimneys and sites, Yarralumla (RNE)

The NCA argues that the National Capital Plan adequately protects all places in the Designated Areas. But the National Capital Plan only requires the NCA to 'give due protection' to heritage places included in the Register of the National Estate and/or the heritage register of the ACT Government. The detailed heritage controls and procedures required under both the Commonwealth's and the ACT's heritage legislation does not apply to the NCA in Designated Areas. For heritage places in Designated Areas there is:

- no required process of assessment of heritage impacts of planning proposals;
- no specified development approval processes appropriate for heritage places; and
- no mechanism to allow members of the community to nominate new places for a heritage register, that will have any effect.

With the shutting down of the Register of the National Estate by 2012, and the downgrading of its role in the interim, there is no clear link between the Commonwealth's heritage requirements under the *Environment Protection and Biodiversity Conservation Act* (EPBC Act) and the operations of the NCA. And the ACT Heritage Act will still not apply.

The solution, to give all heritage places in the ACT a secure future, is to have the ACT and Commonwealth Governments agree to fill this gap in heritage protection, and to amend the Commonwealth and/or ACT laws as necessary. This solution was urged in the report of the Senate Standing Committee on Environment after its November 2006 hearings on the amendments to the EPBC Act, amendments that dropped the RNE.

The consequences of no action are that within Canberra, the nation's capital, there will continue to be a large area of land where no heritage legislation applies, when all other parts of Australia have such legislated heritage protection.

The ACT will have its very own heritage ghetto, where the NCA can make decisions about heritage places without any formal referral to or input by a heritage authority, and where the community has no means of identifying and protecting its own heritage.

Dr Michael Pearson
Chair, ACT Heritage Council