



Australian Government
National Capital Authority

File No: 09/173
Our Ref: 49887

Senator Kate Lundy
Chair
Joint Standing Committee on the National Capital
and External Territories
Parliament House
CANBERRA ACT 2600

Dear Senator Lundy

At the Committee's inquiry into the Immigration Bridge Australia Proposal hearing on 30 March 2009, Mr Andrew Smith undertook to provide further information on the application of the Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act).

The National Capital Authority has received the following advice from the Department of the Environment, Water, Heritage and the Arts (DEWHA):

You asked (1) whether a nomination for a listing means that proposals put forward after the nomination are subject to heritage impact assessment under the EPBC Act? This would include the public consultation process.

The short answer is no, a nomination to include a place in either the National (or Commonwealth) Heritage List does not create a requirement under the EPBC Act to assess the impact of a proposal on the potential heritage values of a place.

The referral of a proposed action, made after the nomination of a place to the National Heritage (or Commonwealth) List, but before formal listing cannot be assessed against potential National (or Commonwealth) Heritage values. A proposed action can only trigger Part 3 (section 15B) of the EPBC Act (National Heritage places) if the referral is made after a place has been included in the National Heritage List. A referral made and assessed under a provision other than the National Heritage provision cannot consider the National Heritage values even if the place is included in the National Heritage List, unless the Minister (for the Environment, Heritage and the Arts) decides to reconsider a decision under section 75 because 'there is substantial new information about the impacts of the action'.

You also asked (2) what statutory involvement DEWHA would have if a proposal were considered prior to a decision on listing?

A person must not take an action that has, will have or is likely to have a significant impact on the environment of Commonwealth land. Lake Burley Griffin is Commonwealth land and the definition of the environment in the EPBC Act includes heritage values of places. If a person intending to take an

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action considers that a proposal will have a significant impact on the environment, the person must refer the proposal to the Minister.

In considering such referrals the Minister (or delegate) may take into account all known heritage values available at the time of the referral. For example, NCA's draft management plan for Lake Burley Griffin and Adjacent Lands has been placed on public exhibition. Where it is relevant, information from a draft management plan that has followed a credible assessment process may be considered in any referral.

If a referral is made, the Minister (or delegate) will decide (pursuant to section 75 of the Act) whether or not the proposed action is a controlled action requiring assessment before a decision can be made as to whether it should be approved.

The Minister may, under section 70 of the Act, if he believes that an action may be an action prohibited by any of the provisions of Part 3 of the Act, request that the action be referred under the Act. Non-compliance with a request is a criminal offence. Alternatively, it would be possible for a Commonwealth agency to refer the action under section 71 of the Act. Under that section, a Commonwealth agency (eg NCA) that is aware of a proposal by a person to take an action, may refer the action if the agency has administrative responsibilities in relation to the action.

Under section 74AA of the Act it is an offence for a person to take an action if the action has been referred. Section 74AA ceases to apply if the Minister decides that the action is not a controlled action (i.e. none of the provisions of Part 3 apply to it) or approves the action under Part 9 of the Act.

I trust this advice will be of use to the Committee.

Yours sincerely



Gary Rake
Acting Chief Executive
8 April 2009