

Securing our heritage

Introduction

- 6.1 The committee is aware of several disputes between heritage advocates and the National Capital Authority (NCA) over the years. Examples include the York Park Oaks and the National Library forecourt. In these cases, the quality of the oversight by the NCA to ensure compliance with heritage protection by the lead department in the proposed development was challenged.
- 6.2 In more recent times, the Albert Hall debacle stands out as a clear example of the complexities associated with heritage protection in areas where the NCA has jurisdiction.
- 6.3 The passions ignited when the heritage of such a profound example of Canberra's civic history was scrutinised led to the formation of a friends group.
- 6.4 The committee believes that Canberra's status as the national capital places an extremely high priority on heritage protection in all areas of Canberra, but perhaps nowhere more so than areas identified as having national significance. Ironically, it is these areas that the processes and guidelines are at best unclear and, at worst, lacking completely.
- 6.5 This Chapter analyses the situation and offers some remedies.

Background

- 6.6 The National Capital Plan (NCP) provides that ‘the Territory’s natural and cultural heritage should be identified, preserved, protected and conserved in accordance with internationally accepted principles, and in order to enhance the character of Canberra and the Territory as the National Capital.’¹
- 6.7 This Chapter outlines the adequacy of NCA control, protection and consultation relating to protection for places with heritage values on Territory Land in Designated Areas.
- 6.8 The ACT Heritage Council stated:

The mechanisms adopted by the NCA to protect heritage places in designated areas are not robust, transparent or comprehensive and they do not guarantee the identification and conservation of the heritage values of the ACT.

While the National Capital Plan 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 or the ACT Heritage Register, there is no transparent mechanism for carrying out that function, there is no guarantee of the provision of professional heritage advice in the NCA’s decision-making processes and there is no obligation placed on owners of heritage places in territory land within designated areas to protect or conserve the heritage values of those places.²

The heritage legislation ‘gap’

- 6.9 The *Environment Protection and Biodiversity Conservation Act 1999* protects all registered heritage places in Canberra. There are 4 national heritage places, 44 Commonwealth heritage places and 55 heritage places listed on the Register of the National Estate (the Register).

1 National Capital Authority, 2008, *Consolidated National Capital Plan*, NCA, Canberra, p. 130.

2 ACT Heritage Council, Dr Michael Pearson, *Transcript T3*, p. 30.

- 6.10 The *Heritage Act 2004* (ACT) protects heritage places under Territory management. The *Heritage Act* establishes the ACT Heritage Council (the Council), which is primarily responsible for ‘identifying, assessing, conserving and promoting places and objects in the ACT with natural and cultural heritage significance, including Aboriginal places and objects.’ The Council is advisory and liaises with the NCA about heritage issues.³
- 6.11 The committee is aware of serious flaws in the heritage protection in certain areas in the national capital and understands that many of the problems are a product of amendments by the previous Government to the heritage laws in the Commonwealth’s *Environment Protection and Biodiversity Conservation Act 1999*.
- 6.12 The ACT Heritage Council outlined their concerns in their submission in this way:
- 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.⁴
- 6.13 The *Heritage Act 2004* (ACT) is enacted by the ACT Legislative Assembly and has no statutory effect on Territory Land within Designated Areas. This shortcoming is an identified ‘gap’ in heritage protection for Canberra. The National Trust ACT had this to say:
- There are problems with the current structure in that heritage places on NCA controlled land which have no Commonwealth interest are not protected by the EPBC Act and not protected by the ACT Heritage Act. This is clearly untenable and needs to be rectified. There needs to be some legal and /or administrative arrangement implemented between Territory/Federal Authorities to correct this anomaly.⁵

3 ACT Heritage Council, *Submission 34*, p. 1.

4 ACT Heritage Council, *Submission 34*, p. 1.

5 ACT Heritage Council, *Submission 34*, p. 1.

- 6.14 In relation to the Albert Hall issue, the Walter Burley Griffin Society also commented on the gap in encompassing protective legislation for heritage:

Its heritage significance is effectively in limbo because it is not on the Commonwealth list... and its heritage status is entirely dependent upon analysis by the NCA.⁶

- 6.15 The NCA also commented on the 'gap' in regard to heritage:

The authority does recognise that there has been confusion related to heritage places on territory land that are in the current designated areas, such as the Albert Hall. This confusion derives from the overlap – or should I say lack of it – of ACT and Commonwealth heritage legislation, asset management and development approval.⁷

- 6.16 The committee believes that this 'gap' needs to be rectified as part of general planning reforms to ensure that a suitable level of heritage protection is applied, maintained and updated as necessary.

The NCA's role in heritage protection

- 6.17 The NCP provides that planning and development should give due protection to any natural or cultural heritage place in the ACT included on the Register of the National Estate and/or heritage register of the ACT Government.⁸

- 6.18 The NCP provides for management of heritage places through conservation management plans, which are based on the principles of the Australia ICOMOS⁹ Guidelines for the Conservation of Places of Cultural Significance (The Burra Charter).¹⁰ Planning policies and

6 Walter Burley Griffin Society, Professor James Weirick, *Transcript T1*, pp. 8-9.

7 National Capital Authority, Ms Annabelle Pegrum, *Transcript T1*, p. 33.

8 National Capital Authority, 2008, *Consolidated National Capital Plan*, NCA, Canberra, p. 130.

9 International Council on Monuments and Sites (ICOMOS) formed in Moscow 1979 is an international body, which administers the treaty on the International Charter for the Conservation and Restoration of Monuments and Sites adopted by Australia in Burra Burra on 19 August 1979. Peter Marquis Kyle Conservation Architect, viewed 18 June 2008, <<http://www.marquis-kyle.com.au/burra88.htm>>.

10 The Burra Charter (so called because it was adopted in Burra, South Australia), provides guidance for the conservation and management of places of cultural significance (cultural heritage places), and is based on the knowledge and experience of Australia's ICOMOS members., viewed 18 June 2008, <<http://www.icomos.org>>.

applications for development are required to adhere to conservation management plan (CMP) requirements.

- 6.19 The committee notes that the only protection for heritage places on Territory Land in Designated Areas is through the NCP. Only the NCA is empowered 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.¹¹

- 6.20 The ACT Heritage Council advised that CMPs designed to protect heritage places are not sufficient and only partially provide for best practice management heritage planning in Australia. The ACT Heritage Council stated:

The NCA believes that the preparation of conservation management plans, or CMPs, for RNE – the Register of the National Estate – and ACT heritage listed places in the designated areas is sufficient protection for those places. However, CMPs would only be required where appropriate in the terms of the National Capital Plan and, generally, that is only considered appropriate in relation to major works proposals. However, CMPs only provide a part of best practice heritage planning systems in Australia. For the designated territory land there is, for example, no equivalent of a heritage impact assessment process for works.¹²

Options for reform

- 6.21 The ACT Heritage Council believes that to incorporate heritage issues into planning in addition to amending legislation to increase

11 ACT Heritage Council, *Submission 34*, pp. 1-2.

12 ACT Heritage Council, Dr Michael Pearson, *Transcript T3*, p. 31.

protection for relevant areas, that there should be a heritage advisory body created at the Commonwealth level within or parallel to the NCA. This would have the effect of incorporating heritage expertise into the NCA. The ACT Heritage Council advocated:

The high standards of design, including heritage planning, would be enhanced by the establishment by the NCA of a heritage advisory body with direct involvement in the NCA's ongoing planning processes. One of my perceptions of the NCA is that it sees itself primarily as a planning and a design body. It is not a heritage conservation body. It does not have any formal mechanisms for ensuring that heritage considerations are slotted into its planning considerations at an early enough stage for them to be effective. The Heritage Council would welcome the expansion of the NCA's advice-seeking processes to include the establishment of such a heritage advisory body with direct involvement in its ongoing planning projects. The NCA in fact itself 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 this matter.¹³

6.22 The Council also commented on the need for earlier and expanded public consultation with the Canberra community in relation to NCA planning for places with heritage values. The Council believes that best practice standards should be applied to planning in Canberra.¹⁴

6.23 Friends of the Albert Hall mirrored this sentiment and stated that they would like to see the NCA take more of an active role in incorporating heritage issues into planning decisions. The Friends of the Albert Hall stated:

We want an NCA or a successor body that understands, respects and takes account in its planning of the particular history and heritage values of our city, including in the Albert Hall precinct.¹⁵

6.24 Friends of the Albert Hall advocate that extensive community consultation should take place where development in nationally significant areas is concerned.¹⁶

13 ACT Heritage Council, Dr Michael Pearson, *Transcript T3*, p. 31.

14 ACT Heritage Council, Dr Michael Pearson, *Transcript T3*, p. 31.

15 Friends of the Albert Hall Inc., Dr Lenore Coltheart, *Transcript T1*, p. 14.

16 Friends of the Albert Hall Inc., Dr Lenore Coltheart, *Transcript T1*, p. 15.

- 6.25 Another way to protect Canberra's heritage is to seek world heritage listing for the city. Dr David Headon advocated that the advantage of world heritage listing Canberra is that the original planning intentions for Canberra would remain protected. Dr David Headon stated:

The most obvious disadvantage is that you have constrictions placed upon you, but they are not constrictions that overwhelm. So, to answer the second part, the advantages that come through are ones that pertain to tourism and to getting the best kind of input into a city, because it has the stature of that World Heritage listing. It is naturally going to lead to decisions made about your city being placed at a higher level rather than at a lower level. Any debate you have about changes is going to be based on the best kinds of attitudes and the best responses to the plan of the past.¹⁷

- 6.26 On a related matter, the committee notes with concern the RNE will cease to exist in 2012, placing at risk the heritage protection of territory assets on the RNE in designated land after that time. The ACT Heritage Council noted:

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.¹⁸

Conclusions

- 6.27 The committee acknowledges the gaps in legislation and policy protecting the heritage of Canberra and agrees that there should be better Commonwealth heritage management in Designated Areas. This situation should be remedied by amending existing heritage

17 Dr David Headon, *Transcript T7*, p. 9.

18 ACT Heritage Council, *Submission 34*, p 3.

legislation so that the appropriate government agency can take responsibility for the heritage management of such areas.

- 6.28 As heritage matters affect the Canberra community and the national community, there should be thorough and consistent consultation with the ACT Heritage Council and The National Trust ACT in relation to the preparation and consideration of draft amendments to the NCP.
- 6.29 The committee believes that a heritage advisory council consisting of people with relevant experience and qualifications similar to that in operation in the ACT jurisdiction would be well placed to advise the National Capital Authority on heritage matters.
- 6.30 The committee supports the ACT Heritage Council suggestion that it represents an appropriate body to be formally consulted by the NCA on ACT heritage matters.

Recommendation 8

- 6.31 **That existing relevant Commonwealth and Territory legislation be amended to protect the heritage of all Designated Areas in Canberra.**