



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ENVIRONMENT, CLIMATE CHANGE AND BIODIVERSITY
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Exhibit

Inquiry into ACT's heritage arrangements

Exhibit Number: 006

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**STATEMENT OF REASONS
DECISION UNDER SECTION 324JJ
ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999**

Canberra the Planned National Capital

BACKGROUND

1. In June 2009, the Australian Heritage Council (the **Council**) received two public nominations of Canberra for the National Heritage List (**NHL**): 'Canberra - Central National Area and Inner Hills' and 'Canberra and Surrounding Areas'.
2. Due to the similarities between the nominated areas, the Council chose to assess the nominations together as 'Canberra the Planned National Capital' (the **Place**).
3. The Council completed its assessment of the Place, in accordance with section 324JH of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**), on 7 December 2012. The Council recommended renaming the place for listing to 'Canberra the Planned National Capital'.
4. Successive ministers and officials from the Department of Agriculture, Water and the Environment (the **department**) have been working to seek a formal position from the ACT Government on the proposed listing since this time. The ACT Government has continued to raise concerns with the proposed listing.
5. Under section 324JJ of the EPBC Act, I must make a decision about the inclusion of the Place in the NHL.
6. This Statement of Reasons explains my decision not to include the Place in the NHL.

LEGISLATION

7. Relevant extracts of the Act are provided at **Annexure A**.
8. Relevant extracts of the Environment Protection and Biodiversity Conservation Regulations 2000 (**EPBC Regulations**) are provided at **Annexure B**.

EVIDENCE OR OTHER MATERIAL ON WHICH MY FINDINGS WERE BASED

9. In making my decision, I had regard to:
 - a. The usual process for the inclusion of places in the NHL as outlined in Part 15, Division 1A, Subdivisions B and BA of the EPBC Act.
 - b. The National Heritage criteria for a place to be included in the NHL outlined in Division 10.2, Regulation 10.01A of the Regulations.
 - c. The briefing and recommendation of the department in March 2022, which included the following attachments:
 - i. The Council's assessment report of the Place, given to me in accordance with s 324JH of the Act

- ii. Public comments received in 2012 by the AHC and considered as part of its assessment of the Place, in accordance with s 324JG of the Act
- iii. Correspondence between the department and the ACT Government on the proposed listing of the Place since 2020
- iv. The boundary map of the proposed listing.

FINDINGS ON MATERIAL QUESTIONS OF FACT

10. Under section 324C(2) of the EPBC Act, a place may be included in the NHL only if:

- a. the place is within the Australian jurisdiction, and
- b. I am satisfied that the place has one or more National Heritage values.

11. In deciding whether or not to include a place in the NHL, the Act specifies (s 324JJ(5)) that I must have regard to:

- (a) the AHC's assessment of the nominated place as to whether it meets any of the National Heritage criteria, and
- (b) any comments received under section 324JH(1) of the Act.

12. I may also seek and have regard to information or advice from any source in deciding whether or not to include a place in the NHL (section 324JJ(5)(b)).

Whether the nominated place is within the Australian jurisdiction

13. The boundary of 'Canberra the Planned National Capital' is contained within the Australian Capital Territory and is therefore in the Australian jurisdiction.

Whether the nominated place has National Heritage values

14. I noted that, under section 324D(1) of the EPBC Act, a place has a National Heritage value if the place meets one or more of the criteria prescribed in the Regulations (Regulation 10.01A(2), reproduced at **Annexure B**). The National Heritage values of the place are the place's heritage values that cause the place to meet the National Heritage criteria.

Whether the nominated place meets any or all of the National Heritage criteria

15. In accordance with the EPBC Act, the Council assessed 'Canberra the Planned National Capital' against the National Heritage criteria, taking into account public comments received.

16. The Council found that 'Canberra the Planned National Capital' meets the threshold for National Heritage criteria (a), (e), (f), (g), and (h) and recommended listing the place on the NHL, for the following reasons;

- i. *Criterion (a) - Events and processes:* Canberra has outstanding heritage value to the nation against criterion (a) because of the place's importance in the history of Australia's urban planning and Australia's evolving democracy.
- ii. *Criterion (e) – Aesthetics characteristics:* Canberra has outstanding heritage value to the nation because of the place's importance in exhibiting an ensemble

of designed urban landscapes and settings that display the national capital and project its status, function and significance as the national capital. These features are valued highly by the Canberra and Australian communities for their aesthetic appeal.

- iii. *Criterion (f) – Creative or technical achievement:* Canberra demonstrates a high degree of creative and technical achievement in town planning, urban design and urban horticulture. Its ensemble of planned city features demonstrating successive twentieth century urban design and planning approaches adds up to a showcase of outstanding value to the nation.
- iv. *Criterion (g) – Social value:* Canberra the Planned National Capital has outstanding heritage value to the nation because of its special association with Australia as a nation's capital and seat of the federal democracy. Canberra also has a special association for Indigenous Australians as the place where significant progress has been made towards Indigenous rights and reconciliation.
- v. *Criterion (h) – Significant people:* Canberra has outstanding heritage value to the nation because of the place's special association with the lives and works of Prime Ministers and Governors General of Australia as a group and individual town planners Walter Burley Griffin and Marion Mahony Griffin.

PUBLIC COMMENTS

17. Public comments were sought on both nominations in 2009 and combined due to the Council's decision to assess the nominations as 'Canberra the Planned National Capital'. Two written submissions were received in response to the section 324JG notice. The two submissions were from the National Capital Authority (NCA) and the then ACT Government and were both in support of listing the nominated place.

RECOMMENDATION OF THE DEPARTMENT OF AGRICULTURE, WATER AND THE ENVIRONMENT

18. The department considered that the AHC's report conclusively addressed each National Heritage criteria, taking into account the information provided as well as undertaking research and comparative analysis against other heritage sites and the National Heritage criteria.
19. The department also noted the consultation that occurred between 2012-2021, including the receipt of public comments and direct consultation with stakeholders. In particular, the department noted the current ACT Government has not provided a clear position either in support of, or opposition to, the place being included in the NHL, despite being asked to do so on numerous occasions.
20. The ACT Government has expressed concerns due to the perceived regulatory burden that listing may entail and how this could delay projects or limit growth and development within Canberra.
21. Overall, given the dual role of the NHL to both recognise places of outstanding value to the nation and to protect them, the department concluded that without the explicit support of the ACT Government it would prove difficult to achieve positive outcomes

associated with listing, in particular the promotion of the heritage values of 'Canberra the Planned National Capital' as part of the NHL.

22. Based on consideration of the Council's assessment report, the public comments received and ongoing correspondence with the ACT Government as a key stakeholder, and in the interests of bringing this long-standing issue to a close, the department recommended to me that 'Canberra the Planned National Capital' not be included in the NHL.

REASONS FOR DECISION

23. I have made my decision after thorough consideration of the Place's assessment by the Council, public comments received, consultations with stakeholders and the recommendation of the department.
24. Accordingly, I decided, pursuant to section 324JJ(1)(b) of the EPBC Act, not to include the nominated place in the NHL.



Sussan Ley

Minister for the Environment

81 April / 2022

ANNEXURE A

Environment Protection and Biodiversity Conservation Act 1999

324C The National Heritage List

- (1) The Minister must keep a written record of places and their heritage values in accordance with this Subdivision and Subdivisions BA, BB and BC. The record is called the *National Heritage List*.
- (2) A place may be included in the National Heritage List only if:
 - (a) the place is within the Australian jurisdiction; and
 - (b) the Minister is satisfied that the place has one or more National Heritage values (subject to the provisions in Subdivision BB about the emergency process).
- (3) A place that is included in the National Heritage List is called a *National Heritage place*.
- (4) The National Heritage List is not a legislative instrument.

324D Meaning of *National Heritage values*

- (1) A place has a *National Heritage value* if and only if the place meets one of the criteria (the *National Heritage criteria*) prescribed by the regulations for the purposes of this section. The *National Heritage value* of the place is the place's heritage value that causes the place to meet the criterion.
- (2) The *National Heritage values* of a National Heritage place are the National Heritage values of the place included in the National Heritage List for the place.
- (3) The regulations must prescribe criteria for the following:
 - (a) natural heritage values of places;
 - (b) indigenous heritage values of places;
 - (c) historic heritage values of places.

The regulations may prescribe criteria for other heritage values of places.

- (4) To avoid doubt, a criterion prescribed by the regulations may relate to one or more of the following:
 - (a) natural heritage values of places;
 - (b) indigenous heritage values of places;

- (c) historic heritage values of places;
- (d) other heritage values of places.

324JG Australian Heritage Council to invite comments on places in finalised priority assessment list

- (1) In relation to each place included in the finalised priority assessment list for an assessment period, the Australian Heritage Council must publish a notice inviting people to make comments on the place.
- (2) The Australian Heritage Council may, under subsection (1), publish a single notice relating to all of the places on the finalised priority assessment list, or may publish a number of separate notices, each of which relates to one or more of the places.
- (3) A notice under subsection (1), in relation to a place or places:
 - (a) must be published in accordance with the regulations referred to in paragraph (4)(a); and
 - (b) must identify the place or places to which the notice relates; and
 - (c) must invite people to make comments, to the Australian Heritage Council, about:
 - (i) whether the place or places meet any of the National Heritage criteria; and
 - (ii) whether the place or places should be included in the National Heritage List; and
 - (d) must specify the date (the *cut-off date*) by which comments must be received, which must be at least 30 business days after the notice has been published as required by paragraph (a); and
 - (e) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (4)(b), apply to making comments; and
 - (f) may also invite people to comment on other matters that the Australian Heritage Council considers appropriate; and
 - (g) may also include any other information that the Australian Heritage Council considers appropriate.
- (4) The regulations must provide for the following:
 - (a) how a notice under subsection (1) is to be published;
 - (b) the manner and form for making comments.

324JH Australian Heritage Council to assess places on finalised priority assessment list and give assessments to Minister

- (1) In relation to each place included in the finalised priority assessment list for an assessment period, the Australian Heritage Council must (by the time required by section 324JI):
 - (a) make a written assessment whether the place meets any of the National Heritage criteria; and
 - (b) give to the Minister:
 - (i) the written assessment (or a copy of it); and
 - (ii) a copy of the comments referred to in paragraphs (2)(a) and (b) (whether or not they have all been taken into account under subsection (2)).
- (2) In making an assessment in relation to a place, the Australian Heritage Council, subject to subsections (3) and (4):
 - (a) must take into account the comments the Council receives in response to the notice under subsection 324JG(1) in relation to the place; and
 - (b) may take into account the comments the Council receives in response to the opportunity referred to in paragraph (5)(c); and
 - (c) may seek, and have regard to, information or advice from any source.
- (3) The Australian Heritage Council is not required to take a comment referred to in paragraph (2)(a) into account if:
 - (a) the Council does not receive the comment until after the cut-off date specified in the notice under subsection 324JG(1) in relation to the place; or
 - (b) the Council considers that regulations referred to in paragraph 324JG(4)(b) have not been complied with in relation to the comment.
- (4) In making an assessment, the Australian Heritage Council must not consider any matter that does not relate to the question whether the place meets any of the National Heritage criteria.
- (5) If, in making an assessment, the Australian Heritage Council considers that a place might have one or more National Heritage values, the Council must:
 - (a) take all practicable steps:

- (i) to identify each person who is an owner or occupier of all or part of the place; and
 - (ii) if the Council considers the place might have an indigenous heritage value—to identify each Indigenous person who has rights or interests in all or part of the place; and
 - (b) take all practicable steps to advise each person identified that the Council is assessing whether the place meets any of the National Heritage criteria; and
 - (c) give persons advised at least 20 business days to comment in writing whether the place should be included in the National Heritage List.
- (6) If the Australian Heritage Council is satisfied that there are likely to be at least 50 persons referred to in subparagraph (5)(a)(i), the Council may satisfy the requirements of subsection (5) in relation to those persons by including the information referred to in paragraphs (5)(b) and (c) in one or more of the following:
- (a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;
 - (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the place;
 - (c) displays in public buildings at or near the place.
- (7) If:
- (a) the Australian Heritage Council considers that the place might have an indigenous heritage value; and
 - (b) there are Indigenous persons who:
 - (i) have rights or interests in all or part of the place; and
 - (ii) are neither owners nor occupiers of all or part of the place; and
 - (c) the Australian Heritage Council is satisfied that there is a body, or there are bodies, that can appropriately represent those Indigenous persons in relation to those rights and interests;
- the Australian Heritage Council may satisfy the requirements of subsection (5) in relation to those Indigenous persons by giving the information referred to in paragraphs (5)(b) and (c) to that body or those bodies.

324JJ Decision about inclusion of a place in the National Heritage List

Minister to decide whether or not to include place

- (1) After receiving from the Australian Heritage Council an assessment under section 324JH whether a place (the *assessed place*) meets any of the National Heritage criteria, the Minister must:
 - (a) by instrument published in the *Gazette*, include in the National Heritage List:
 - (i) the assessed place or a part of the assessed place; and
 - (ii) the National Heritage values of the assessed place, or that part of the assessed place, that are specified in the instrument; or
 - (b) in writing, decide not to include the assessed place in the National Heritage List.

Note: The Minister may include a place in the National Heritage List only if the Minister is satisfied that the place has one or more National Heritage values (see subsection 324C(2)).

- (2) Subject to subsection (3), the Minister must comply with subsection (1) within 90 business days after the day on which the Minister receives the assessment.
- (3) The Minister may, in writing, extend or further extend the period for complying with subsection (1).
- (4) Particulars of an extension or further extension under subsection (3) must be published on the internet and in any other way required by the regulations.
- (5) For the purpose of deciding what action to take under subsection (1) in relation to the assessed place:
 - (a) the Minister must have regard to:
 - (i) the Australian Heritage Council's assessment whether the assessed place meets any of the National Heritage criteria; and
 - (ii) the comments (if any), a copy of which were given to the Minister under subsection 324JH(1) with the assessment; and
 - (b) the Minister may seek, and have regard to, information or advice from any source.

Additional requirements if Minister decides to include place

- (6) If the Minister includes the assessed place, or a part of the assessed place (the *listed part of the assessed place*), in the National Heritage List, he or she must, within a reasonable time:

- (a) take all practicable steps to:
 - (i) identify each person who is an owner or occupier of all or part of the assessed place; and
 - (ii) advise each person identified that the assessed place, or the listed part of the assessed place, has been included in the National Heritage List; and
 - (b) if the assessed place:
 - (i) was nominated; or
 - (ii) was included in a place that was nominated; or
 - (iii) includes a place that was nominated;
 - by a person in response to a notice under subsection 324J(1)—advise the person that the assessed place, or the listed part of the assessed place, has been included in the National Heritage List; and
 - (c) publish a copy of the instrument referred to in paragraph (1)(a) on the internet; and
 - (d) publish a copy or summary of that instrument in accordance with any other requirements specified in the regulations.
- (7) If the Minister is satisfied that there are likely to be at least 50 persons referred to in subparagraph (6)(a)(i), the Minister may satisfy the requirements of paragraph (6)(a) in relation to those persons by including the advice referred to in that paragraph in one or more of the following:
- (a) advertisements in a newspaper, or newspapers, circulating in the area in which the assessed place is located;
 - (b) letters addressed to "The owner or occupier" and left at all the premises that are wholly or partly within the assessed place;
 - (c) displays in public buildings at or near the assessed place.

Additional requirements if Minister decides not to include place

- (8) If the Minister decides not to include the assessed place in the National Heritage List, the Minister must, within 10 business days after making the decision:
- (a) publish the decision on the internet; and
 - (b) if the assessed place:

- (i) was nominated; or
- (ii) was included in a place that was nominated; or
- (iii) includes a place that was nominated;

by a person in response to a notice under subsection 324J(1)—advise the person of the decision, and of the reasons for the decision.

Note: Subsection (8) applies in a case where the Minister decides that none of the assessed place is to be included in the National Heritage List.

ANNEXURE B

Environment Protection and Biodiversity Conservation Regulations 2000

10.01A National Heritage criteria (Act s 324D)

- (1) For section 324D of the Act, subregulation (2) prescribes the National Heritage criteria for the following:
 - (a) natural heritage values of places;
 - (b) indigenous heritage values of places;
 - (c) historic heritage values of places.
- (2) The National Heritage criteria for a place are any or all of the following:
 - (a) the place has outstanding heritage value to the nation because of the place's importance in the course, or pattern, of Australia's natural or cultural history;
 - (b) the place has outstanding heritage value to the nation because of the place's possession of uncommon, rare or endangered aspects of Australia's natural or cultural history;
 - (c) the place has outstanding heritage value to the nation because of the place's potential to yield information that will contribute to an understanding of Australia's natural or cultural history;
 - (d) the place has outstanding heritage value to the nation because of the place's importance in demonstrating the principal characteristics of:
 - (i) a class of Australia's natural or cultural places; or
 - (ii) a class of Australia's natural or cultural environments;
 - (e) the place has outstanding heritage value to the nation because of the place's importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;
 - (f) the place has outstanding heritage value to the nation because of the place's importance in demonstrating a high degree of creative or technical achievement at a particular period;
 - (g) the place has outstanding heritage value to the nation because of the place's strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;
 - (h) the place has outstanding heritage value to the nation because of the place's special association with the life or works of a person, or group of persons, of importance in Australia's natural or cultural history;
 - (i) the place has outstanding heritage value to the nation because of the place's importance as part of indigenous tradition.

- (3) For subregulation (2), the *cultural* aspect of a criterion means the indigenous cultural aspect, the non-indigenous cultural aspect, or both.