

Submission by Dr Johan Kamminga, Consultant Archaeologist, to the Standing Committee for Planning and Environment re: Draft Variation to the Territory Plan No.261

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In my capacity as a consultant archaeologist I wrote a professional report included as Appendix 2 in the response by the Watson Community Association Inc.

My report was titled: 'Cultural heritage values of part Block 2 & Block 3, Section 75, Watson ('Canberry Fair', renamed 'Australian Heritage Village'). Draft Interim Report to the Watson Community Association Inc'. National Heritage Consultants, January 2008. Since first writing this report I have made some revisions. This revised draft is available on request.

I attach a summary of my professional qualifications and experience (Attachment 1).

ACTPLA's response to my report was as follows:

3. Heritage values - 'Canberry Fair'

a) 'Canberra Fair' and its immediate context have significant heritage values, although not having a heritage listing. Buildings and precinct also have significant educational and social values.

b) Construction of motel and service station in former Canberry Fair Precinct and destruction of the existing railway are breaches of both the Principles of Intergenerational Equity and Principle of Cumulative Impacts which apply to both natural and cultural heritage values and preservation.

Response by ACTPLA

a) The heritage value of the site is not considered to be significant as identified in the Cultural Heritage Assessment undertaken by Navin Officer in September 2004.

b) See response a) above. The site is not considered to have values that warrant natural and cultural preservation.

Other relevant sections in ACTPLA's report are:

3. Preserve other beautiful buildings at Heritage Village

Response by ACTPLA

The existing buildings on the site are of modern construction and have no heritage significance. They are not considered to have any particular architectural merit that would warrant their preservation.

8. Loss of historical Australian architecture (8)

d) VBC's Cultural Heritage Assessment 2004 did not consider the buildings – an oversight and means the study was incomplete.

Response by ACTPLA

d) The heritage assessment considered all site features, it did not conclude that the buildings had any heritage significance.

My response to ACTPLA's comments/response are:

1. In my view the above statement by ACTPLA about the VBC's Cultural Heritage Assessment 2004 seriously misrepresents the contents of this report.

There is no indication in the text of the 2004 report that any meaningful research or explicit heritage evaluation was undertaken regarding identified or potential heritage values of the buildings or the built environment of the Canberra Fair precinct as a whole. This omission of discussion about the Canberra Fair buildings, master planning, architect, social values, educational values, etc, cannot be properly interpreted as a bona fide "heritage evaluation" of Canberra Fair, and it is extraordinary that ACTPLA has chosen to interpret it as such.

In the VBC's Cultural Heritage Assessment 2004 report there is a very short section of text on the history of Canberra Fair. The text appears to have been derived in large part on brief statements made by a MLA and reported in the ACT Hansard (referenced in my report) and on a very brief summary about the Australian Heritage Village on the Internet and apparently written by a journalist. In my view this information was anecdotal in nature and flawed. In my view, this brief summary on history cannot be interpreted as a professional assessment of Canberra Fair's heritage values.

A heritage assessment that had considered "all site features" of the Canberra Fair built environment, as claimed by ACTPLA, would have required explicit identification of those features and explicit assessment in reference to the criteria specified in section 10 of the ACT *Heritage Act 2004*, The relevant criteria in this Act are as follows:

(a) demonstrates a high degree of technical or creative achievement (or both), by showing qualities of innovation, discovery, invention or an exceptionally fine level of application of existing techniques or approaches;

(b) exhibits outstanding design or aesthetic qualities valued by the community or a cultural group;

(c) important as evidence of a distinctive way of life, taste, tradition, religion, land use, custom, process, design or function that is no longer practised, is in danger of being lost or is of exceptional interest;

(d) highly valued by the community or a cultural group for reasons of strong or special religious, spiritual, cultural, educational or social associations;

(f) it is a rare or unique example of its kind, or is rare or unique in its comparative intactness;

(g) it is a notable example of a kind of place or object and demonstrates the main characteristics of that kind;

(h) it has strong or special associations with a person, group, event, development or cultural phase in local or national history;

(j) it has provided, or is likely to provide, information that will contribute significantly to a wider understanding of the natural or cultural history of the ACT because of its use or potential use as a research site or object, teaching site or object, type locality or benchmark site;

No such explicit evaluation of “all site features” is evident in the 2004 report. The only heritage evaluation is of the post commemorating the official opening of Canberry Fair by Prime Minister Malcolm Fraser.

2. In my view, ACTPLA’s decision not to professionally evaluate, but instead to peremptorily dismiss my report (including my preliminary assessment of heritage values of Canberry Fair) is a breach of procedural fairness.

According to Justice Preston (2008) once a duty to consult arises, the consultation must be undertaken properly, and the product of consultation must be conscientiously taken into account when the ultimate decision is taken (in this case the decision to state emphatically to the Standing Committee that Canberry Fair has no heritage values). Justice Preston emphasises that “It would render futile the process of consultation if the decision-maker could ignore, or pay mere lip service to, the product of consultation.” As far as I can ascertain, ACTPLA has chosen to dismiss my report out of hand without referring this report for evaluation by the ACT Heritage Unit or seeking any other professional advice from a qualified heritage specialist. My report provided new and relevant information and professional judgements that were not previously known to the ACT Heritage Unit, the development proponent, the authors of the 2004 heritage report or to ACTPLA. It appears that ACTPLA chose instead to simply dismiss the substance of my report out-of-hand, without professional advice, and favour of the earlier report of 2004 which had only a superficial historical review and no explicit heritage evaluation of the Canberry Fair buildings and precinct. My report contained:

- a critical examination of the 2004 report which indicated that there was no explicit heritage evaluation of the buildings and precinct, and
- an explicit (preliminary) assessment of the heritage values of Canberry Fair in reference to section 10 of the *ACT Heritage Act 2004*.

In the circumstances of these new findings presented in my report, procedural fairness required at least that ACTPLA seek the views (or otherwise consult) with the ACT Heritage Unit.

- 3. In asserting that the Canberra Fair buildings are ‘modern’ and therefore cannot have heritage values, ACTPLA indicates that it fails to understand the nature of cultural heritage and the ACT *Heritage Act 2004*. It also appears to indicate that ACTPLA has not adequately read or understood my report.**

The fact that the Canberra Fair buildings are of modern construction does not mean that they can not or do not have significant heritage values. I had explicitly dealt with this issue in my report. I believe I made it very clear that the ACT legislation did not specify that heritage values were time dependant, and that a number of relatively ‘modern’ buildings in the ACT have been assessed as having heritage values. It is the case that a large number of ‘modern’ buildings are declared protected heritage on the ACT Heritage List. Whether or not such buildings are inspired by or replicas of colonial era buildings also does not mean that they can not or do not have significant heritage values. If it were otherwise, buildings such as courthouse, houses of parliament, and many other neo-classical building could be demolished at will.

Reference

Preston, Chief Judge The Hon. Justice Brian J. 2008. Consultation: one aspect of procedural propriety in administrative decision-making. Land and Environment Court of NSW. A paper presented to Australian Institute of Administrative Law 2008 Seminar Series: Administrative Law: Musings from the Bench, 26 June 2008, Sydney.