

INQUIRY INTO THE ADMINISTRATION OF THE NATIONAL MEMORIALS ORDINANCE 1928

Submission to the Parliamentary Joint Standing Committee on the National Capital & External Territories

12 September 2011

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1.0 Executive Summary

- The Walter Burley Griffin Society (WBGS) thanks the Parliamentary Joint Standing Committee on the National Capital & External Territories (PJSCNCET) for the opportunity to participate in this inquiry and comment on the administration of the *National Memorials Ordinance 1928*.
- 1.2 This submission, prepared on behalf of the Sydney-based Management Committee of the WBGS, is separate from but complements the submission by the Canberra Chapter of the Society, dated 1 September 2011, which was prepared by Brett Odgers in consultation with the Canberra members of the Society.
- 1.3 The Management Committee of the WBGS supports the content, conclusions and comprehensive recommendations of the Canberra Chapter submission. For reference, the recommendations of the Canberra Chapter are attached as Appendix 1 to this submission.
- 1.4 The Management Committee of the WBGS makes the following overall recommendations with respect to the National Memorials procurement process:

Recommendation 1: The National Memorials procurement process should consist of the following ten (10) steps: (1) Project Initiation; (2) Determination of National Memorial Status and Commemorative Intent with respect to the Mandatory Criteria and Evaluation Criteria of the policy document, *Guidelines for Commemorative Works in the National Capital*; (3) Nomination of Alternative Sites; (4) Site Selection; (5) Approval of Budget and Business Plan for Construction, Maintenance and associated Infrastructure costs; (6) Selection of a Memorial Design through an open competitive process; (7) Validation of the selected Memorial Design against Commemorative Intent, Budget, Business Plan and Infrastructure costs; (8) Approval of the Memorial Design in accordance with the National Capital Plan; (9) Certification of Construction Documentation; (10) Monitoring of the Commemorative Role and Maintenance of the Memorial against the Commemorative Intent. (Para. 2.40) **Recommendation 2**: The NCA should carry out and/or oversee steps (1) Project Initiation; (3) Nomination of Alternative Sites; (6) Selection of a Memorial Design through an open competitive process; and (9) Ceritification of Construction Documentation. (Para. 2.41)

Recommendation 3: The CNMC should carry out and/or oversee steps (2) Determination of National Memorial Status and Commemorative Intent with respect to the Mandatory Criteria and Evaluation Criteria of the policy document, *Guidelines for Commemorative Works in the National Capital*; (4) Site Selection from a range of alternatives; (5) Approval of Budget and Business Plan for Construction, Maintenance and associated Infrastructure costs; (7) Validation of the selected Memorial Design against Commemorative Intent, Budget, Business Plan and Infrastructure costs; and (10) Monitoring of the Commemorative Role and Maintenance of the Memorial against the Commemorative Intent. (Para. 2.43)

Recommendation 4: The PJSCNCET should carry out step (8), recommending to both Houses of Parliament, and through Parliament to the Minister responsible for the Australian Capital Territory approval of the National Memorial Design in accordance with the National Capital Plan. (Para 2.44)

Recommendation 5: The public should be involved in steps (2) Determination of National Memorial Status and Commemorative Intent with respect to the Mandatory Criteria and Evaluation Criteria of the policy document, *Guidelines for Commemorative Works in the National Capital*; (4) Site Selection from a range of alternatives; (7) Validation of the selected Memorial Design against Commemorative Intent, Budget, Business Plan and Infrastructure costs; and (8) Approval of the Memorial Design in accordance with the National Capital Plan. (Para. 2.47) 1.5 In addition, the Management Committee of the WBGS makes the following recommendations with respect to the Terms of Reference of the Inquiry:

Membership of the CNMC

Recommendation 6: Ideally the CNMC should retain its political membership as established in 1928, with the Prime Minister, the Leader of the Opposition and others on both sides of Parliament coming together on a regular basis to make decisions on National Memorials in the national interest.

However, as a return to these 1928 political arrangements appears to be unrealistic, the WBGS supports the recommendation of the Canberra Chapter that the CNMC should be chaired by the Minister responsible for the Australian Capital Territory, with political membership comprising three members of the House of Representatives and three members of the Senate, with the aim of forming a Committee whose political members have an interest in Canberra, and time to devote to the task. (Para. 3.8)

Recommendation 7: To provide balance and expertise to the CNMC from both a Canberra and national perspective, the non-political positions on the Committee should be filled in accordance with the recommendation of the Canberra Chapter WBGS comprising one or two residents of the ACT and one or two recognised authorities in Australian history from outside the ACT. (Para. 3.14)

The Process for Decision-making by the CNMC

Recommendation 8: The decisions of the CNMC on National Memorials that are found to be invalid by not being made by a duly constituted Committee or in accordance with administrative law should not be remade by executive fiat but be re-examined from first principles, in strict accordance with the Mandatory Criteria and Evaluation Criteria of the *Guidelines for Commemorative Works in the National Capital*, 2002. (Para. 3.16)

Mechanisms for the CNMC to seek independent, expert advice

Recommendation 9: The CNMC should be resourced to seek independent, expert advice in the carrying out of its responsibilities, particularly in relation to project costings, and the proponent's Budget and Business Plan. (Para. 3.21)

Recommendation 10: In assessing the accuracy and adequacy of the proponent's Budget and Business Plan, the CNMC should consider the source of funds in relation to the significance of National Memorials in general, and the Commemorative Intent of individual proposals, in particular. It is inappropriate for citizens to buy the right to have names inscribed on a National Memorial, not earn the right – as was the case with the 'History Handrail' national promotion of Immigration Bridge Australia. It is inappropriate in the case of War Memorials for funding to come from the weapons industry. (Para. 3.22)

Recommendation 11: The role of the NCA in the National Memorials procurement process should be made clear from the outset, with formal Memoranda of Understanding with Proponents made public documents from the time of their initial endorsement by the NCA Board. (Para. 3.26)

Recommendation 12: To ensure that NCA advice to the CNMC is recognised as expert advice, but not *independent* expert advice, the Secretariat functions of the CNMC should be placed with the Department of the Minister responsible for the Australian Capital Territory, not with the NCA – and the NCA should not have formal representation on the CNMC. (Para. 3.27)

The appropriate level of parliamentary oversight for proposed National Memorials

Recommendation 13: In the procurement phases leading to formal development consent, the NCA must be recognised as a co-sponsor of the project. The NCA should not be in the position of approving a project it has initiated, managed and coordinated for years. (Para. 3.35)

Recommendation 14: As stated in Recommendation 4 (above), PJSCNCET should determine whether or not development consent should be granted to a National Memorial proposal in the form of advice to Parliament, and through both Houses of Parliament to the Minister responsible for the Australian Capital Territory, to grant approval under the *Australian Capital Territory (Planning & Land Management) Act 1988*, in accordance with the National Capital Plan. (Para. 3.37)

Recommendation 15: In making this determination in accordance with the National Capital Plan, PJSCNCET should conduct a full public inquiry, or a roundtable, consulting widely on all matters relating to the planning, design and management of the memorial in the National Capital on the basis of a joint submission from the proponent and the NCA, and submissions from the public. (Para. 3.38)

The level of public participation in the development of proposed National Memorials

Recommendation 16: As stated in Recommendation 5 (above) the public should be involved in the following key steps in the National Memorials procurement process:

- determination of National Memorial Status and Commemorative Intent with respect to the Mandatory Criteria and Evaluation Criteria of the policy document, *Guidelines for Commemorative Works in the National Capital* (CNMC);
- site selection from a range of alternatives (CNMC);
- validation of the selected Memorial Design against Commemorative Intent, Budget, Business Plan and Infrastructure costs (CNMC); and
- development consent of the proposal Memorial in accordance with the National Capital Plan (PJSCNCET). (Para. 3.46)

Recommendation 17: The process of public consultation adopted by the CNMC and PJSCNET at each of the key steps in the National Memorial procurement process listed above should follow the definition of 'consultation' in the NCA's *Consultation Protocol*, 2007 – i.e. a commitment of these bodies to:

inform the community and stakeholders;

- listen to the community and stakeholders;
- acknowledge submissions;
- consider submissions; and
- provide feedback on how submissions were addressed. (3.47)

Recommendation 18: To facilitate this level of consultation and feedback, the CNMC should be made accessible, transparent and accountable by the introduction of a CNMC website similar to the PJSCNCET website, which provides up-to-date notices of inquiries; meeting agendas, minutes and supporting documents; submission requirements and deadlines; on-line copies of submissions received; and on-line copies of Committee reports. (Para. 3.48)

Transition provisions for current proposals for memorials not yet constructed

Recommendation 19: To validate decisions made by the CNMC convened outside the requirements of the *National Memorials Ordinance 1928*, the decisions should be re-visited by a duly constituted Committee in strict accordance with the Mandatory Criteria and Evaluation Criteria of the *Guidelines for Commemorative Works in the National Capital* 2002. (Para. 3.52)

Recommendation 20: The Site Selection, National Significance and Commemorative Intent of the World Wars I & II Memorials proposed for the northern lakeshore of Lake Burley Griffin at the Rond Terraces do not conform to the Mandatory Criteria and Evaluation Criteria of the *Guidelines for Commemorative Works in the National Capital* 2002. The CNMC decisions concerning these memorials made on 1 March 2007 and 16 August 2007 should be re-visited by a duly constituted Canberra National Memorials Committee and rescinded. (Para. 3.53)

2.0 National Memorials in Canberra

- 2.1. The WBGS notes that the current inquiry has been established in the context of widespread public concern about the role of the Canberra National Memorials Committee (CNMC) in the approvals process for the proposed World Wars I & II Memorials planned for the Rond Terraces, a much used and visually sensitive site on the northern foreshore of Lake Burley Griffin, centred on the Land Axis of Canberra.
- 2.2 The WBGS further notes that detailed information on the membership, meeting protocols and decision-making of the CNMC has become public knowledge following the release of extensive CNMC files on the proposed World Wars I & II Memorials under the provisions of the *Freedom of Information Act 1982*.
- 2. 3 Hitherto, little was known about recent operations of the CNMC.
- 2. 4 The historical significance, prestige and role of the CNMC, established by Prime Minister Bruce in 1927–1928 as a politically bipartisan, expert committee has been long recognised – and applauded – as a means of ensuring that the memorial function and nomenclature of the National Capital 'would be the subject of scrutiny at a high level in order to maintain the propriety, dignity and standard necessary for a National Capital.'1
- 2.5 However, it is clear from the public record and the Fol documents that this standard has dropped in the past decade.
- 2.6 The CNMC has been managed, manipulated, and marginalised in the process of initiating and procuring National Memorials driven by the National Capital Authority.

¹ C.S. Daley, 'Canberra nomenclature,' in P.A. Selth (ed.) *Canberra Collection*, Lowden, Kilmore, 1976, p.8; see also, Lionel Wigmore, *The Long View, Australia's National Capital*, Cheshire, Melbourne, 1963, p.194; Jim Gibbney, *Canberra, 1913–1953*, AGPS, Canberra, 1988, p.137.

- 2. 5 The result has been a series of politically embarrassing, time wasting and totally inappropriate decisions that have deflected attention and scarce resources from the main task at hand: the planning, design and management of the National Capital.
- 2.6 Three memorial ventures promoted by the NCA since 2001 demonstrate this failure of process: (1) the Centenary of Women's Suffrage Memorial, Federation Mall, 2002–2003 ('The Fan'); the Immigration Bridge proposal, West Basin, Lake Burley Griffin, 2002–2010; and the proposed World Wars I & II Memorials, Rond Terraces, 2005 to date.

The Centenary of Women's Suffrage Memorial, Federation Mall, 2002–2003 ('The Fan')

- 2.7 In June 2002, Senator Amanda Vanstone then serving as Minister assisting the Prime Minister for the Status of Women announced that a public art work to commemorate the centenary of women's suffrage in Australia would be erected on the northern end of Federation Mall between the Old and New Parliament Houses. The site was located 'on the Land Axis which connects Parliament House to the War Memorial and Mount Ainslie' a site that could be 'clearly seen as you look out from the New Parliament House from Queen's Terrace.'²
- 2.8 A design competition for a memorial on this site, conducted by the NCA, was launched in August 2002, and in December that year a distinguished Design Jury chaired by Betty Churcher AO (former Director of the National Gallery of Australia) chose a spectacular 'fan' design by Sydney sculptors Jennifer Turpin and Michaelie Crawford as the winning scheme.
- 2.9 In the Minister's Press Release announcing the result of the competition,
 'The Fan' a 21m high, red painted steel structure with moveable blades
 was described in no uncertain terms as 'a stunning design,' 'a strong statement,' 'a dramatic piece':

² Senator Amanda Vanstone, 'Public artwork to celebrate the centenary of women's suffrage,' Media Release, 12 June 2002.

The elevated semi-circular kinetic sculpture will rest in an open fan position until engaged by wind. The individual blades will then move fluidly in a mesmerising rhythm driven by nature. This collaborative performance between art and nature activates the monumental symmetry of Canberra's Land Axis.

The shape of the Fan in its open radial position echoes the shape of the site, which the artists have treated with great sensitivity. The slightest breeze will keep the blades rotating gently, constantly changing the shape of the sculpture.³

- 2.10 As a project within the Parliamentary Zone, and therefore subject to the *Parliament Act 1974*, PJSCNCET was briefed on 'The Fan' in February 2003, and in March the proposal was approved by both Houses of Parliament.
- 2.11 Six months later, a storm of protest about the siting, scale, colour and visual prominence of the scheme erupted in Canberra, led by Senator Bill Heffernan and former Deputy Prime Minister Doug Anthony AC, at that time Chairman of the Old Parliament House Governing Council.⁴
- 2.12 In due course, the competition winning scheme by Jennifer Turpin and Michaelie Crawford was abandoned along with the site on Federation Mall, and the NCA proceeded with an in-house design for the Centenary of Women's Suffrage Memorial as a minor garden feature in an out-ofsight, out-of-mind location next to Old Parliament House.
- 2.13 At no time in this whole saga was there any mention of the CNMC.
- 2.14 The CNMC was not mentioned in the Minister's press releases, in the NCA brief for the Design Competition, in the Parliamentary speeches in the House and the Senate when the scheme was approved, in press coverage at the time or in the subsequent analysis of events in the report of the

³ Senator Amanda Vanstone, 'Spectacular "Fan" design selected as Centenary of Women's Suffrage artwork,' Media Release, 3 December 2002.

⁴ Alan Ramsay, 'Expletive likely to be deleted,' *Sydney Morning Herald*, 13 September 2003.

2004 PJSCNET Inquiry into the Role of the NCA, *A National Capital, A Place to Live*.⁵

2.15 It would appear the CNMC was not involved in approving the purpose of the memorial, the Federation Mall site or 'The Fan' design – or if it was involved, it was briefed in such a way that its considerations were no more than perfunctory, failing to anticipate the reaction to a provocative work on a highly visible, highly symbolic site.

The Immigration Bridge Australia Proposal, West Basin, Lake Burley Griffin, 2002–2010

- 2.16 The Immigration Bridge Australia proposal was the subject of a full PJSCNET Inquiry in 2009.⁶
- 2.17 The report of the PJSCNCET Inquiry outlines the process by which an idea from a community group in Cooma progressed with NCA support to a proposal for a \$30 million high-span bridge, 400m long over Lake Burley Griffin requiring amendments to the National Capital Plan, the transfer of land from the ACT Government, and a national advertising campaign on SBS Television to raise funds by selling the right to have family names inscribed on a National Memorial.
- 2.18 In March 2010, the Immigration Bridge proposal was abandoned by its promoters.⁷
- 2.19 At no time prior to the PJSCNCET Inquiry was the Immigration Bridge Australia proposal referred to the CNMC.

⁵ NCA, *A Public Work of Art Commissioned in Celebration of the Centenary of Women's Suffrage in Australia – Brief*, The Authority, Canberra, August 2002; House of Representatives *Hansard*, 6 March 2003, pp.12410–11; Senate *Hansard*, 11 March 2003, p.9352; PJSCNCET, *A National Capital, A Place to Live: Inquiry into the Role of the National Capital Authority*, Canberra, July 2004, pp.101–102.

⁶ PJSCNCET, *Inquiry into the Immigration Bridge Proposal*, Canberra, May 2009.

⁷ Megan Doherty, 'Money-back guarantee as Immigration Bridge abandoned,' *Canberra Times*, 30 March 2010.

- 2.20 At no point in the NCA submission to the Immigration Bridge Australia inquiry is there any mention of the CNMC.
- 2.21 In the final report of the PJSCNET Inquiry there is no mention of the role of the CNMC in the approvals process to which the NCA and the Committee determined that the Immigration Bridge proposal would be subject.⁸
- 2.22 It would appear that the CNMC was treated as an irrelevancy by all principal players in the Immigration Bridge saga.

The Proposed World Wars I & II Memorials, Rond Terraces, 2005 to date

- 2.23 In 2001, the NCA adopted a policy document entitled *Guidelines for Commemorative Works in the National Capital.*
- 2.24 The NCA explained the need for these guidelines as follows:

The guidelines establish a cultural, spatial and design framework to inform the siting, quality, and character of commemorative projects, including memorials and public art works, in the central national area. Mindful of the responsibilities associated with its role as custodian of this nation's capital city, the National Capital Authority recognises the need for a set of guidelines to encourage the nomination of subjects, and to determine placement of anticipated commemorative works, especially memorials.⁹

- 2.25 The guidelines established 'Assessment Criteria for Commemorative Subjects' in two categories:
 - Mandatory Criteria that determine if the subject can be considered for commemoration in the National Capital; and

⁸ PJSCNCET, Inquiry into the Immigration Bridge Proposal, pp.33–54.

⁹ NCA, *Annual Report, 2001–2002*, p.30.

- Evaluation Criteria that determine if the subject has 'national significance' and should be commemorated in the National Capital.¹⁰
- 2.26 The guidelines were endorsed by the CNMC in June 2002.11
- 2.27 A proposal to erect National Memorials to World Wars I & II in Canberra was submitted to the NCA by a limited guarantee public company, Memorials Development Committee Ltd, in 2005.
- 2.28 According to its own Mandatory Criteria for commemorative works, the NCA should have rejected the proposal out of hand, as it clearly violates Mandatory Criterion (iv): 'a commemorative proposal must not duplicate the themes or subject matter of an existing commemorative site.'
- 2.29 World Wars I & II are commemorated in the Australian War Memorial in the most profound and meaningful ways imaginable in a place of deep, abiding significance to the Australian people.
- 2.30 The proposal to duplicate the commemorative role of the Australian War Memorial in the Central National Area of Canberra should have been seen by the NCA to be misguided in the extreme and insupportable.
- 2.31 Instead, the NCA endorsed the proposal and suggested the Rond Terrace site to the proponents.
- 2.32 In doing so, the NCA again violated its own commemorative guidelines that state 'sites adjacent to the Rond Terraces serve as a transition from Anzac Parade and should be reserved for commemoration of non-military sacrifice, service and achievement in Australia, in times of peace.'¹²
- 2.33 The NCA referred the site of the proposed World Wars I & II Memorials to the CNMC on the 1 March 2007, and the 'design intent' of the memorials to the CNMC on the 16 August 2007.

¹⁰ NCA, *Guidelines for Commemorative Works in the National Capital*, The Authority, Canberra, August 2002, p.7.

¹¹ NCA, *Annual Report, 2001–2002*, p.30.

¹² NCA, *Guidelines for Commemorative Works in the National Capital*, p.13.

- 2.33 At this point, the CNMC should have held the NCA to the letter of the Mandatory Criteria and siting classifications of the *Guidelines for Commemorative Works in the National Capital*, which it had endorsed in 2002, and rejected the proposal outright.
- 2.34 The fact that the CNMC did not do so indicates that the Committee, which met for 30 minutes with four items on the agenda on the first occasion and for 17 minutes with two items on the agenda on the second occasion¹³ had no independent capacity to question the NCA submissions, and was being treated by the few members present as no more than a rubber stamp.

The NCA, CNMC and the National Memorials Procurement Process

- 2.35 In the above case studies, which involve a litany of mistakes and years of wasted effort, there is one constant the flawed decision-making of the NCA, which has the power to initiate and approve its own projects, and has done so with no checks and balances.
- 2.36 In this context, it is important to point out that including the current PJSCNCET inquiry, there have been five (5) Parliamentary inquiries and a Ministerial Review into the role of the NCA since 2004.¹⁴
- 2.37 It is clearly time to get the checks and balances right.

¹³ Information from CNMC meeting records, released under Fol.

¹⁴ Current Inquiry, plus: PJSCNCET, *A National Capital, A Place to Live: Inquiry into the Role of the National Capital Authority*, Canberra, July 2004; PJSCNCET, *Review of the Griffin Legacy Amendments*, Canberra, March 2007; PJSCNCET, *The Way Forward: Inquiry into the Role of the National Capital Authority*, Canberra, July 2008; PJSCNCET, *Inquiry into the Immigration Bridge Proposal*, Canberra, May 2009 – plus the Hawke Review into the role of the NCA announced by the Rt Hon Simon Crean, Minister for Regional Australia, Regional Development & Local Government in March 2011, see: 'Allan Hawke to lead review of the National Capital Authority,' Media Release, 2 March 2011.

- 2.38 As far as the procurement of National Memorials is concerned, the checks and balances on the powers of the NCA should involve (1) the role of the Canberra National Memorials Committee; (2) the role of the Parliamentary Standing Committee on the National Capital & External Territories; and (3) the role of the public through effective means of consultation.
- 2.39 The way these various roles should interact can be seen if we consider the key steps in the National Memorials procurement process.
- 2.40 Recommendation 1: The National Memorials procurement process should consist of the following ten (10) steps: (1) Project Initiation; (2) Determination of National Memorial Status and Commemorative Intent with respect to the Mandatory Criteria and Evaluation Criteria of the policy document, *Guidelines for Commemorative Works in the National Capital*; (3) Nomination of Alternative Sites; (4) Site Selection; (5) Approval of Budget and Business Plan for Construction, Maintenance and associated Infrastructure costs; (6) Selection of a Memorial Design through an open competitive process; (7) Validation of the selected Memorial Design against Commemorative Intent, Budget, Business Plan and Infrastructure costs; (8) Approval of the Memorial Design in accordance with the National Capital Plan; (9) Certification of Construction Documentation; (10) Monitoring of the Commemorative Role and Maintenance of the Memorial against the Commemorative Intent.
- 2.41 Recommendation 2: The NCA should carry out and/or oversee steps (1)
 Project Initiation; (3) Nomination of Alternative Sites; (6) Selection of a Memorial Design through an open competitive process; and (9)
 Certification of Construction Documentation.
- 2.42 Comment: The NCA should provide technical advice to the proponent and the two oversight committees (the CNMC and the PJSCNCET) in strict accordance with the *Guidelines for Commemorative Works in the National Capital* and a Memorandum of Understanding with the proponent, posted as a public document. In doing so, the NCA should nominate at least three alternative sites; identify all negative externalities and infrastructure costs; oversee the running of a Design Competition; and

when CNMC and PJSCNCET approvals have been granted, certify compliance of the construction documentation with codes and standards.

- 2.43 Recommendation 3: The CNMC should carry out and/or oversee steps (2) Determination of National Memorial Status and Commemorative Intent with respect to the Mandatory Criteria and Evaluation Criteria of the policy document, *Guidelines for Commemorative Works in the National Capital*, (4) Site Selection from a range of alternatives; (5) Approval of Budget and Business Plan for Construction, Maintenance and associated Infrastructure costs; (7) Validation of the selected Memorial Design against Commemorative Intent, Budget, Business Plan and Infrastructure costs; and (10) Monitoring of the Commemorative Role and Maintenance of the Memorial against the Commemorative Intent.
- 2.44 Comment: The CNMC should determine the Commemorative Intent and national significance of the proposed works subject to public consultation; ensure that the Proponent's Budget and Business Plan are realistic and achievable, and that estimates of associated Infrastructure Costs are provided by the NCA and fully budgeted; select the site from alternatives nominated by the NCA subject to public consultation; validate the selected design in relation to the Commemorative Intent, Budget and Business Plan subject to public consultation; and maintain a continuing role in ensuring that the National Memorial fulfills its commemorative intent and is appropriately maintained. The reforms necessary to perform these roles are discussed in Section 3, The Role and Operation of the CNMC (below).
- 2.44 Recommendation 4: The PJSCNCET should carry out step (8), recommending to both Houses of Parliament, and through Parliament to the Minister responsible for the Australian Capital Territory approval of the National Memorial Design in accordance with the National Capital Plan.
- 2.46 Comment: The PJSCNCET should have the principal role in recommending approval of the proposed National Memorial by undertaking evaluation of all aspects of the proposal in relation to the National Capital Plan. This evaluation should take place in the setting of a full public inquiry or roundtable.

- 2.47 Recommendation 5: The public should be involved in steps (2) Determination of National Memorial Status and Commemorative Intent with respect to the Mandatory Criteria and Evaluation Criteria of the policy document, *Guidelines for Commemorative Works in the National Capital*; (4) Site Selection from a range of alternatives; (7) Validation of the selected Memorial Design against Commemorative Intent, Budget, Business Plan and Infrastructure costs; and (8) Approval of the Memorial Design in accordance with the National Capital Plan.
- 2.48 Comment: Timely and effective public consultation should inform the determination of National Memorial Status, the Commemorative Intent of the proposed works, Site Selection, validation of the selected Memorial Design against Commemorative Intent, Budget, Business Plan and Infrastructure costs, and development consent in accordance with the National Capital Plan.

3.0 The Role & Operation of the Canberra National Memorials Committee

- 3.1. To fulfil the key role in the National Memorials procurement process outlined in Recommendation 3 (above), the CNMC should be reformed, revitalised and appropriately supported.
- 3.2 The reforms considered necessary by the WBGS, in addition to the recommendations contained in the submission by the Canberra Chapter (Appendix 1) are set out in accordance with the Terms of Reference of the Inquiry.

Membership of the CNMC

- 3.3 Membership of the CNMC was established in the first year of Canberra becoming the Seat of Government under the *National Memorials Ordinance 1928* of the *Seat of Government (Administration) Act 1910* with a unique combination of bipartisan elected members of the House of Representatives and the Senate together with authorities in Australian history, chaired by the Prime Minister.
- 3.4 In relation to the bipartisan political representation of the CNMC, the WBGS acknowledges the historical significance and *gravitas* of a committee chaired by the Prime Minister and including the Leader of the Opposition in the House of Representatives, the Government Leader in the Senate, the Opposition Leader in the Senate and the Minister responsible for the Australian Capital Territory.
- 3.5 There is no question that at times, the Prime Minister supported by this Committee has played a decisive role in determining the character and identity of the National Capital – for example, Prime Minister Bruce in the 1920s and Prime Minister Whitlam in the 1970s.
- 3.6 In more recent times, the personal commitment of the Prime Minister has been decisive in the creation of National Memorials of deep significance, such as Prime Minister Keating's support for the installation of the Tomb of the Unknown Soldier in the Hall of Memory in the Australian War

Memorial, and Prime Minister Howard's support for the understated yet highly effective National Emergency Services Memorial in King's Park.

- 3.7 However, if the Prime Minister, the Leader of the Opposition and so on are too busy to attend meetings of the CNMC and are represented by bureaucrats or political staffers or not represented at all and the quorum sinks to a bare minimum the Committee loses *gravitas* and becomes a meaningless entity, maintaining some semblance of form but no substance. This has clearly happened in recent years.
- 3.8 Recommendation 6: Ideally the CNMC should retain its political membership as established in 1928, with the Prime Minister, the Leader of the Opposition and others on both sides of Parliament coming together on a regular basis to make decisions on National Memorials in the national interest.

However, as a return to these 1928 political arrangements appears to be unrealistic, the WBGS supports the recommendation of the Canberra Chapter that the CNMC should be chaired by the Minister responsible for the Australian Capital Territory, with political membership comprising three members of the House of Representatives and three members of the Senate, with the aim of forming a Committee whose political members have an interest in Canberra, and time to devote to the task.

- 3.9 The 1928 Committee also included non-political members two authorities in Australian history (the original appointees were Professor Ernest Scott, Professor of History at The University of Melbourne; and G.V.F. Mann, recently retired as Director of the Art Gallery of NSW, representing the Australian Pioneers Club and the Historical Society of NSW).¹⁵
- 3.10 In 1953, this provision of the *National Memorials Ordinance 1928* was amended, replacing the two authorities in Australian history with two residents of the ACT.

¹⁵ Lionel Wigmore, *The Long View, Australia's National Capital*, Cheshire, Melbourne, 1963, p.194.

- 3.11 A June 2010 Issues Paper by the Territories Division of the Attorney-General's Department on the *National Memorials Ordinance 1928* states that the Department 'understands that ACT members have never been appointed since the provision was enacted. It is therefore possible that the Committee has not been legally constituted since 1953.'¹⁶
- 3.12 This may not be entirely correct, as there is evidence that Professor Douglas Pike, foundation General Editor of the *Australian Dictionary of Biography* and Professor of History in the Research School of Social Sciences, ANU was a member of the CNMC in the early years of the Whitlam Government.¹⁷
- 3.13 The CNMC has certainly had no ACT members in recent years, and therefore has not been legally constituted.
- 3.14 Recommendation 7: To provide balance and expertise to the CNMC from both a Canberra and national perspective, the non-political positions on the Committee should be filled in accordance with the recommendation of the Canberra Chapter WBGS comprising one or two residents of the ACT and one or two recognised authorities in Australian history from outside the ACT.

The Process for Decision-making by the CNMC

3.15 The submission by the Canberra Chapter of the WBGS, based on a thorough review of Fol documents, outlines the failings in elementary principles of public administration and administrative law in the processes and proceedings of the CNMC in recent years. This assessment is supported by the June 2010 Issues Paper by the Territories Division, Attorney–General's Department on the *National Memorials Ordinance 1928*, which includes findings such as 'proper procedure in relation to decisions on national memorials has not always been followed

¹⁶ Territories Division, Attorney-General's Department, 'Possible Amendments to the *National Memorials Ordinance 1928*,' Report to the Minister for Home Affairs, Section 7.1, Issues Paper presented to CNMC Meeting, 22 June 2010, Agenda Item 7 (released under Fol).

¹⁷ David Headon, *The Symbolic Role of the National Capital*, National Capital Authority, Canberra, 2003, p.143.

in terms of meeting Ordinance requirements relating to the convening of meetings. As a consequence, it would be desirable if all previous national memorial decisions were confirmed by a duly constituted Committee.'18

3.16 Recommendation 8: The decisions of the CNMC on National Memorials that are found to be invalid by not being made by a duly constituted Committee or in accordance with administrative law should not be remade by executive fiat but be re-examined from first principles, in strict accordance with the Mandatory Criteria and Evaluation Criteria of the *Guidelines for Commemorative Works in the National Capital*, 2002.

Mechanisms for the CNMC to seek independent, expert advice

- 3.17 The reformed and revitalised role for the CNMC outlined in Recommendation 3 (above) is centred on clear, consistent evaluation of National Memorial proposals against the *Guidelines for Commemorative Works in the National Capital*, 2002.
- 3.18 A properly constituted committee comprising Federal politicians from a wide variety of backgrounds, one or two residents of the ACT, one or two eminent historians from outside the ACT, and benefiting from an effective program of public consultation through all stages of assessment, should have sufficient expertise to determine (1) the National Memorial status of a proposal; (2) the Commemorative Intent of proposals that meet the National Memorial threshold; (3) an appropriate site for the memorial selected from a range of alternatives; (4) whether or not a design selected through a competitive process meets the Commemorative Intent; and (5) the extent to which a memorial continues to meet its Commemorative Intent over time, and is maintained accordingly.
- 3.19 The Committee may need independent, expert advice on the feasibility of a proponent's Budget and Business Plan – a consideration that appears to have been ignored by the NCA in the support given to community groups seeking to build a \$30 million high span bridge over Lake Burley Griffin,

¹⁸ Territories Division, Attorney-General's Department, 'Possible Amendments to the *National Memorials Ordinance 1928*,' Sections 15.1–15.4.

or twin war memorials on the Rond Terraces estimated to cost \$21 million – given that community groups have struggled to raise sums around \$1 – \$2 million in the past.

- 3.20 Similarly, the Committee may need independent, expert advice to verify the NCA's estimate of associated Infrastructure costs.
- 3.21 Recommendation 9; The CNMC should be resourced to seek independent, expert advice in the carrying out of its responsibilities, particularly in relation to project costings, and the proponent's Budget and Business Plan.
- 3.22 Recommendation 10: In assessing the accuracy and adequacy of the proponent's Budget and Business Plan, the CNMC should consider the source of funds in relation to the significance of National Memorials in general, and the Commemorative Intent of individual proposals under review, in particular. It is inappropriate for citizens to buy the right to have names inscribed on a National Memorial, not earn the right as was the case with the 'History Handrail' national promotion of Immigration Bridge Australia. It is inappropriate in the case of War Memorials for funding to come from the weapons industry.
- 3.23 It is important for the CNMC and the general public to recognise that the NCA provides expert advice in the National Memorials procurement process, but not *independent* expert advice.
- 3.24 The NCA fulfils a key role in the initiation of a memorial project, providing advice to a proponent in relation to the NCA's responsibilities for National Land, its planning powers, and its overall vision for the National Capital.
- 3.25 However, on the evidence provided by the Immigration Bridge Australia and the World Wars I & II Memorial ventures, it is important for the CNMC and the general public to maintain a 'critical distance' from the advice furnished by the NCA. The Authority has a demonstrated tendency to fall in love with its own ideas, and lead rather hapless community groups into commitments that they have no hope of fulfilling, causing much grief along the way, and absorbing considerable resources of the

Commonwealth in sorting out the mess through Parliamentary Inquiries etc.

- 3.26 Recommendation 11: The role of the NCA in the National Memorials procurement process should be made clear from the outset, with formal Memoranda of Understanding with Proponents made public documents from the time of their initial endorsement by the NCA Board.
- 3.27 Recommendation 12: To ensure that NCA advice to the CNMC is recognised as expert advice, but not independent expert advice, the Secretariat functions of the CNMC should be placed with the Department of the Minister responsible for the Australian Capital Territory, not with the NCA – and the NCA should not have formal representation on the CNMC.
- The appropriate level of parliamentary oversight for proposed National Memorials
- 3.28 The WBGS considers the CNMC a vital body in defining and maintaining 'the propriety, dignity and standard necessary for a National Capital', and acknowledges the historical significance of the Committee in the planning and design of Canberra since 1927–1928.
- 3.29 However, the role of the CNMC is necessarily limited to evaluating National Memorials in relation to their level of significance and Commemorative Intent.
- 3.30 Evaluating National Memorials in relation to the overall planning of National Land within the Australian Capital Territory is a much wider, more comprehensive responsibility.
- 3.31 In the view of the WBGS, this responsibility should be undertaken by the Parliamentary Joint Standing Committee on the National Capital & External Territories.
- 3.32 The role of the NCA in the approvals process is compromised by the involvement of the Authority in proponents' plans from the outset. It has been commonplace for the Authority to (1) give 'in principle' support to a

memorial proposal long before its submission to the CNMC; and (2) sign a Memorandum of Understanding with the proponent making major commitments to 'manage and coordinate' the project, such as recommending consultants, overseeing design development, seeking statutory approvals, letting contracts, managing funds etc.¹⁹

- 3.33 This process has typically extended over many years for example, with Immigration Bridge Australia the NCA has been involved with the initial steering committee and its successor organisation for almost 10 years; with Memorials Development Committee Ltd, more than 6 years have passed since the NCA Board gave support to the World Wars I & II Memorials proposal in July 2005.
- 3.34 Under these circumstances, it is inconceivable that the NCA would turn around and refuse development consent ('Works Approval') under the *Australian Capital Territory (Planning & Land Management) Act 1988.* In effect, the NCA has approved the project from the moment the NCA Board has given 'in principle' support to the proponent long before the CNMC has confirmed its National memorial status, agreed to its Commemorative Intent, agreed to its site, and agreed to its design and long before the public has become aware of the project.
- 3.35 Recommendation 13: In the procurement phases leading to formal development consent, the NCA must be recognised as a co-sponsor and advocate of the project. The NCA should not be in the position of approving a project it has initiated, managed and coordinated for years.
- 3.36 Instead, the approvals power should pass to the Parliamentary Standing Committee on the National Capital & External Territories.
- 3.37 Recommendation 14: As stated in Recommendation 4 (above), PJSCNCET should determine whether or not development consent should be granted to a National Memorial proposal in the form of advice to Parliament, and through both Houses of Parliament to the Minister responsible for the

¹⁹ See for example: National Capital Authority & Memorial(s) Development Committee Ltd, 'Memorials to World War I and World War II – Memorandum of Understanding,' 29 October 2007 (released under Fol).

Australian Capital Territory, to grant approval under the *Australian Capital Territory (Planning & Land Management) Act 1988*, in accordance with the National Capital Plan.

- 3.38 Recommendation 15: In making this determination in accordance with the National Capital Plan, PJSCNCET should conduct a full public inquiry, or a roundtable, consulting widely on all matters relating to the planning, design and management of the memorial in the National Capital on the basis of a joint submission from the proponent and the NCA, and submissions from the public.
- 3.39 In the final phase of tender documentation, responsibility for certification should reside with the NCA to ensure compliance with codes and standards.

The level of public participation in the development of proposed National Memorials

- 3.40 In all Parliamentary Inquiries into the role of the NCA in recent years, the Authority's failure to consult with the public in a timely, effective manner has been a constant finding.
- 3.40 In response to a Ministerial direction following the 2008 PJSCNCET Inquiry (*The Way Forward*), the NCA has made some effort to improve its public consultation protocols and practices.
- 3.41 However, in relation to the procurement of National Memorials, the level of public participation in the decision-making process has been minimal.
- 3.42 Despite deep public concern about the Immigration Bridge proposal, evidenced in many submissions and statements to the 2009 PJSCNCET Inquiry into Immigration Bridge Australia, decisions made over a two year period 2010–2011 to support the proponent's switch to another site; to formally approve the proponent's Commemorative Intent for an Immigration Memorial; and to allocate a new site in the Parliamentary

Triangle, proceeded with no public consultation by the NCA or the CNMC.²⁰

- 3.43 Similarly, the 2010 decision to allocate a site in King's Park for the proposed National Workers Memorial was made with no public consultation by the NCA or the CNMC.²¹
- 3.44 This is a woeful record and is totally unacceptable.
- 3.45 The June 2010 Issues Paper by the Territories Division, Attorney-General's Department on the *National Memorials Ordinance 1928* pointed out that 'the public is not notified of, and cannot object to, determinations of the location and character of national memorials.' In recommending that the Ordinance be amended to permit public comment, the Issues Paper quite rightly observed that providing for public consultation 'will increase both the transparency and administrative rigor of Committee decision–making.'²²
- 3.46 Recommendation 16: As stated in Recommendation 5 (above) the public should be involved in the following key steps in the National Memorials procurement process:
 - determination of National Memorial Status and Commemorative Intent with respect to the Mandatory Criteria and Evaluation Criteria of the policy document, *Guidelines for Commemorative Works in the National Capital* (CNMC);
 - site selection from a range of alternatives (CNMC);
 - validation of the selected Memorial Design against Commemorative Intent, Budget, Business Plan and Infrastructure costs (CNMC); and
 - development consent of the proposal Memorial in accordance with the National Capital Plan (PJSCNET).

²⁰ CNMC Meeting, 22 June 2010, Minutes, Item 5; Clarissa Thorpe, 'Immigration landmark secures a Parliamentary site,' *ABC News*, Canberra, 17 June 2011.

²¹ CNMC Meeting, 22 June 2010, Minutes, Item 4.

²² Territories Division, Attorney-General's Department, 'Possible Amendments to the *National Memorials Ordinance 1928*,' Sections 16.1–16.2.

- 3.47 Recommendation 17: The process of public consultation adopted by the CNMC and PJSCNET at each of the key steps in the National Memorial procurement process listed above should follow the definition of 'consultation' in the NCA's *Consultation Protocol*, 2007 i.e. a commitment of these bodies to:
 - inform the community and stakeholders;
 - listen to the community and stakeholders;
 - acknowledge submissions;
 - consider submissions; and
 - provide feedback on how submissions were addressed.²³
- 3.48 Recommendation 18: To facilitate this level of consultation and feedback, the CNMC should be made accessible, transparent and accountable by the introduction of a CNMC website similar to the PJSCNET website, which provides up-to-date notices of inquiries; meeting agendas, minutes and supporting documents; submission requirements and deadlines; on-line copies of submissions received; and on-line copies of Committee reports.

Transition provisions for current proposals for memorials not yet constructed

- 3.49 The inclusion of this Term of Reference in the current Inquiry clearly relates to failings in elementary principles of public administration and administrative law in the processes and proceedings of the CNMC in recent years, as revealed in the Fol documents.
- 3.50 The implications of these failings are discussed in the June 2010 Issues Paper by the Territories Division, Attorney-General's Department on the *National Memorials Ordinance 1928* in which two options to 'validate previous decisions made by the Committee convened outside Ordinance requirements' are considered, one based on executive fiat and one based on re-visiting the decisions by a duly constituted Committee.²⁴

 ²³ NCA, *Consultation Protocol*, The Authority, Canberra, July 2007, p.5.
 ²⁴ Territories Division, Attorney-General's Department, 'Possible Amendments to the *National Memorials Ordinance 1928*,' Sections 15.1–15.4.

- 3.51 In the view of the WBGS, the latter should be adopted given the significance of the issues at stake in the orderly planning, design and management of the National Capital, and the high degree of public concern that invalid decision-making by the CNMC has generated.
- 3.52 Recommendation 19: To validate decisions made by the CNMC convened outside the requirements of the *National Memorials Ordinance 1928*, the decisions should be re-visited by a duly constituted Committee in strict accordance with the Mandatory Criteria and Evaluation Criteria of the *Guidelines for Commemorative Works in the National Capital* 2002.
- 3.51 The most important CNMC decisions, which appear to be invalid, are the ones concerning the Site Selection, National Significance and Commemorative Intent of the proposed World Wars I & II Memorials, made at CNMC meetings on 1 March 2007 and 16 August 2007.
- 3.52 Recommendation 20: The Site Selection, National Significance and Commemorative Intent of the World Wars I & II Memorials proposed for the northern lakeshore of Lake Burley Griffin at the Rond Terraces do not conform to the Mandatory Criteria and Evaluation Criteria of the *Guidelines for Commemorative Works in the National Capital* 2002. The CNMC decisions concerning these memorials made on 1 March 2007 and 16 August 2007 should be re-visited by a duly constituted Canberra National Memorials Committee and rescinded.

4.0 Conclusions

- 4.1 The Canberra National Memorials Committee has a vital responsibility to ensure that the memorial function and nomenclature of the National Capital is 'the subject of scrutiny at a high level in order to maintain the propriety, dignity and standard necessary for a National Capital.'²⁵
- 4.2 In recent years, the CNMC has been managed, manipulated and marginalised in a way that has prevented it from fulfilling this responsibility.
- 4.3 The current inquiry provides a timely opportunity to reform and revitalise the role and operations of the CNMC.
- 4.4 The fundamental problem afflicting the memorial function of the National Capital has been the power of the National Capital Authority to initiate and approve its own proposals, and the feckless way this power has been exercised, particularly in the period 2001–2008.
- 4.5 The result has been a series of politically embarrassing, time wasting and totally inappropriate decisions that have deflected attention and scarce resources from the main task at hand: the planning, design and management of the National Capital.
- 4.6 This failure of process has been demonstrated in a series of memorial ventures promoted by the NCA from the Centenary of Women's Suffrage Memorial, Federation Mall, 2002–2003 ('The Fan') and the Immigration Bridge proposal, West Basin, Lake Burley Griffin, 2002–2010 to the proposed World Wars I & II Memorials, Rond Terraces, 2005 to date.
- 4.7 These ventures got out of hand for the simple reason that there have been no checks and balances on the power of the NCA.

²⁵ C.S. Daley, 'Canberra nomenclature,' in P.A. Selth (ed.) *Canberra Collection*, Lowden, Kilmore, 1976, p.3.

- 4.8 This inquiry provides the opportunity to introduce effective checks and balances on the National Memorials procurement process by (1) strengthening the power of the CNMC to determine the level of significance, Commemorative Intent and site of a proposed memorial; (2) by transferring the power to grant development consent for a proposed memorial from the NCA to the Parliamentary Joint Standing Committee on the National Capital & External Territories; (3) by limiting the role of the NCA to that of an advocate for the proposed memorial along with the proponent and technical advisor to the two Parliamentary committees; and (4) by facilitating timely and effective public consultation throughout the procurement process.
- 4.9 Together, the Management Committee and the Canberra Chapter of the Walter Burley Griffin Society have made a series of twenty eight (28) recommendations to the current inquiry to effect these reforms.
- 4.10 The Society urges the adoption of these recommendations to ensure that the process of proposing and approving National Memorials in the National Capital enhances the symbolic landscape of Canberra with works of deep and abiding significance to the Australian people.

Appendix 1: WBGS Canberra Chapter Recommendations

Recommendation 1 is that the CNMC membership comprises:

- The Minister responsible for the Australian Capital Territory
- Three Members of the House of Representatives
- Three Senators
- One or two residents of the ACT
- One or two recognised authorities in Australian history from outside the ACT.

Recommendation 2 is that CNMC meetings should accord with commonsense principles of timing, availability and manageable agendas. They should accord with administrative law requiring deliberations and decisions to be based on adequate documentation, analysis, assessment, alternatives and expert advice. Decision-making should not be 'on the papers, out of session.'

Recommendation 3_ is that the Secretariat of the CNMC should be placed with the Department of the Minister responsible for the ACT. The NCA has too many conflicts of interest and there are no checks and balances in the governmental structure to control these conflicts. The NCA should not be, as at present, initiator or partner of project proposals, objective assessor <u>and</u> eventual approval body. The NCA may now be allowing some public scrutiny but their present handling of the Immigration Place monument and the National Workers' Memorial perpetuates their disinclination to seriously involve the CNMC in design purpose and site selection.

Recommendation 4_ is that the NCA should develop for guidance of the CNMC policies and strategies regarding commemorative works guidelines, alternative forms of commemoration, site selection and land supply.

Recommendation 5 is that the need for independent expert advice supports Recommendation 1 above and provisions in **the new Ordinance** enabling the CNMC to obtain such advice as needed. An Office of Commonwealth Government Architect and a reformed NCA with enhanced planning, engineering and heritage expertise would also be desirable. **Recommendation 6** is that the new Ordinance should provide for:

- the existing Disallowance Sections 7(3) and 8 to be extended to memorials, and
- scrutiny by routine notification of proposals, periodic reporting and consultation with the Joint Standing Committee responsible for the National Capital.

Recommendation 7 is that the new Ordinance should provide for best practice standards of transparency, accountability and public participation. In addition, the standards should take account of the national constituency, which in many cases will warrant wide notification, longer time frames and facilitation of public discourse.

Recommendation 8 is that the CNMC approvals given the World Wars I and II memorials should be rescinded by the Minister, as he is empowered to do. The proponents are urged to review their project in the light of the principles and views tendered to this Inquiry and already on the public record. Discourse and discussion is also recommended in order to develop an outcome much better and more publicly acceptable than MDC has hitherto envisaged.

Appendix 2: The Walter Burley Griffin Society Incorporated

Established in 1988 in Sydney, the Society – now in its twenty third year – commemorates the lives and works of Walter Burley Griffin and Marion Mahony Griffin and promotes the ideals, vision and community life they fostered in Australia. The Society is especially concerned with the conservation of landscape designs, urban plans, buildings and other works designed by or having an association with the Griffins. In relation to urban development in contemporary Canberra, the Society seeks to promote an understanding of the principles that underpin the Griffin Plan for the Canberra, the continuing value of these principles to the nation, and the need to conserve the places, institutions and processes founded on these principles.

The Society has several hundred members from various parts of Australia and USA. The Canberra Chapter of the Society was established in 2004. The Society is affiliated with the Walter Burley Griffin Society of America (established in 1998).

Committee Members 2011–2012

Patron: Emeritus Professor Carrick Chambers AM President: Professor James Weirick Vice president: Akky Van Ogtrop Treasurer: John Kabos Secretary: Kerry McKillop Management Committee: Colleen Fry; Adrienne Kabos; Martin O'Donoghue; James Smallhorn; Michael Thomson; David Turner; Anne Watson; Brett Odgers (Canberra Chapter Committee) *ex officio*; Peter Burley Griffin (President, Walter Burley Griffin Society of America), *ex officio*.

Canberra Chapter Committee

Secretary: Dr Bruce Kent Treasurer: Luke Wensing Committee Members: Ric Butt, Peter Freeman, Dr Ann Kent, Brett Odgers, Rosemarie Willett.

Website

<u>http://www.griffinsociety.org/</u> (Archived by the National Library of Australia since 2006, <u>http://protocat.nla.gov.au/Record/3821935</u>)