

## The works approval process

### Introduction

3.1 This chapter outlines the steps that Immigration Bridge Australia (IBA) would be required to follow in seeking consideration under the National Capital Authority (NCA) administered works approval process. Further discussion on whether the assessment of the bridge proposal may be required under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) (the EPBC Act) is included. Indicative timelines for these assessments are also discussed. Particular focus is given to the consultation that would be required to accompany the proposal under each process. Lastly, the maintenance of gifting assets is discussed.

### Background

3.2 Designated Areas categorised under the National Capital Plan (NCP) embody the special characteristics of the national capital and so are preserved and enhanced in accordance with their character.

3.3 Further, under the requirements of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth) (the PALM Act), any works in a Designated Area are subject to approval by the NCA.

3.4 As the suggested location for the proposed bridge lies within a Designated Area, it is subject to the NCA administered works approval process.

3.5 In addition, as the proposed bridge may have a significant impact on Commonwealth land, it may also be subject to an additional assessment

by the Department of the Environment, Water, Heritage and the Arts (DEWHA) under the EPBC Act.

- 3.6 Assessment of the IBA proposal through the works approval process involves passage through a number of steps in accordance with the NCP.<sup>1</sup>
- 3.7 Additional requirements include assessment of: the design quality of the bridge proposal, the environmental, heritage and visual impact of the bridge proposal and the Lake Burley Griffin (Lake) management issues including Lake user issues.<sup>2</sup>

## The role of the NCA

- 3.8 The NCA is a statutory authority<sup>3</sup> of the Commonwealth Government and is responsible for ensuring that 'Canberra and the Territory are planned and developed in accordance with their national significance.'<sup>4</sup>
- 3.9 In carrying out its responsibilities, the NCA aims to preserve the symbolic national character of Canberra by undertaking projects that enhance and maintain public places within 'nationally significant areas'. These include: 'public commemorative sites, objects [such as] sculptures, memorials, parks, gardens, tree plantings, fountains, paths, car parks, jetties, signage and lighting.'<sup>5</sup>
- 3.10 The NCA stipulated that its responsibilities in regard to commemorative works are to:
- provide advice to the Minister responsible for the National Memorials Ordinance 1928
  - provide guidance on the opportunities for commemorative works proposals. (In the past this has included project management services, management of design competitions, design development and management of construction.)
  - consider applications for Works Approval in Designated Areas as specified in the NCP in accordance with the PALM Act

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1 National Capital Authority, *Submission 60*, p. 8.

2 National Capital Authority, *Submission 60*, p. 8.

3 The NCA is established pursuant to section 5 of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth).

4 National Capital Authority, *Submission 60*, p. 3.

5 National Capital Authority, *Submission 60*, p. 3.

- provide asset management services for commemorative works (on land declared to be for the special purposes of Canberra as the national capital)
- liaise with other Commonwealth and Territory agencies, authorities and relevant stakeholders on matters of mutual concern.<sup>6</sup>

## Works in Designated Areas

3.11 The NCP defines a Designated Area 'as those areas of land that have the special characteristics of the National Capital'.<sup>7</sup> Further the NCP sets 'out the detailed conditions of planning, design and development in Designated Areas and the priorities in carrying out such planning, design and development.'<sup>8</sup>

3.12 In addition to having the special characteristics of the national capital, Designated Areas are those areas of land which tend to:

- 'cater for a wide range of National Capital functions – activities which occur in Canberra because it is the National Capital and which give Canberra a unique function within Australia (eg. Diplomatic estate)
- reflect Griffin's strong symbolic design for Canberra Central that has given the National Capital a unique and memorable character (the Central National Area)
- relate to the landscape setting and character of the Capital (eg. national capital open space system).<sup>9</sup>

3.13 The NCP provides that Designated Areas comprise:

- Lake Burley Griffin and its Foreshores
- the Parliamentary zone
- the balance of a Central National Area adjoining the Lake and the Zone, and extending from the foot of Black Mountain to the airport
- the Inner Hills which form the setting of the Central National Area
- the Main Avenues and Approach Routes between the ACT border and the Central National Area.<sup>10</sup>

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6 National Capital Authority, *Submission 60*, p. 3.

7 National Capital Authority, *Submission 60*, p. 8.

8 National Capital Authority, February 2008, *Consolidated National Capital Plan*, NCA, Canberra, p. 14.

9 National Capital Authority, *Submission 60*, p. 8.

3.14 A map showing the Designated Areas can be found at Appendix D.

## The approval process

### Requirements

3.15 Pursuant to section 12 of the PALM Act, where works are proposed in a Designated Area, they are subject to approval by the NCA. Approval may be granted when a proposed work is in accordance with the NCP. However, this does not constitute building approval.<sup>11</sup> The flow chart at Figure 3.1 illustrates the works approval process.

3.16 The NCA's *Service Charter for Planning and Development Approvals* provides that most works applications are processed within 15 working days. This timeframe may be extended for, 'major projects and those which require consultation or clearance from external agencies.'<sup>12</sup>

3.17 In regard to appeals to planning and development proposals the NCA provided:

With respect to the NCA's powers to approve or disallow certain planning and development proposals (the usual area where appeals against the decisions of planning authorities apply), there is no provision for any special appeals process relating to the merits or otherwise of those planning and development proposals. There is the opportunity for recourse under the *Administrative Decisions (Judicial Review) Act 1977* to determine if a decision of the Authority is correctly made, or to normal common law processes.<sup>13</sup>

3.18 The NCA's works approval process consists of:

- **Step 1 - pre-lodgement discussions** between the applicant and the NCA. Discussions are based on how the 'requirements of the NCP might affect a proposal'.

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10 National Capital Authority, February 2008, *Consolidated National Capital Plan*, NCA, Canberra, pp 15-16.

11 National Capital Authority, *Submission 60*, p. 8.

12 National Capital Authority, *Service Charter for Planning and Development Approvals*, viewed 8 April 2009, <[http://www.nationalcapital.gov.au/index.php?option=com\\_content&view=article&id=712&Itemid=386](http://www.nationalcapital.gov.au/index.php?option=com_content&view=article&id=712&Itemid=386)>

13 National Capital Authority, *Submission 60*, Attachment J.

- **Step 2** – the applicant submits for the NCA’s consideration and comment a **sketch design** which shows the development intention of an application. The applicant may then proceed with design development. In addition, ‘detailed design drawings, when developed, may also be submitted to the NCA for assessment and support in principle before construction documentation is prepared.’ This stage is intended to ‘help identify any major issues that require resolution prior to approval.’
- **Step 3** – the applicant to **lodge an application for works approval** to be assessed by the NCA. Formal approval of the application will be based on construction documentation. In addition, ‘three copies of the drawings and other supporting information<sup>14</sup> is required, together with a completed application form and schedule of fees paid.’ When the NCA ‘is satisfied that all relevant matters have been resolved and the proposal is in accordance with the NCP it will issue a formal works approval.’
- **Step 4 – assessment of the application for works approval** by the NCA. At this stage, the NCA considers the ‘formal application and final documentation as submitted. Once satisfied that all relevant matters are resolved’, the NCA ‘issues approval.’
- **Step 5** – the applicant to undertake **consultation** in accordance with the NCA’s *Consultation Protocol July 2007*. The NCP provides for public consultation of ‘dual occupancy residential development on detached house blocks and for telecommunications facilities which are likely to have a high visual impact on Designated Areas. Adjoining neighbours are also consulted on single dwelling residential development in Designated Areas.’ For development proposals on: Commonwealth land; Designated Areas; sites that may have endangered and protected flora and fauna, or some other environmental value (including heritage); or development that has a significant impact on the heritage values of a ‘place’ entered into the Commonwealth or National Heritage list, the applicant may be required to provide evidence of environmental clearance or approval from the Department of the Environment and Heritage before the Authority will give its approval to the proposal.’ ‘Where projects involve established buildings,

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14 Basic information such as a ‘locality plan and scaled drawings is always required’, however more ‘detailed information may be required depending on the complexity of the proposal. For larger or complex projects, there may be a need for detailed visual studies or models to be submitted in support of the application.’ A list of the required information can be found at Appendix E. National Capital Authority, *Works Approval Process*, viewed 7 April 2009, <[http://www.nationalcapital.gov.au/index.php?option=com\\_content&view=article&id=712&Itemid=386](http://www.nationalcapital.gov.au/index.php?option=com_content&view=article&id=712&Itemid=386)>.

artworks, or designed landscape areas, obligations under the *Copyright Amendment (Moral Rights) Act 2002* must be met by the owner of the property.’ In addition, a range of ACT Government agencies may need to be consulted.

- **Step 6 – parliamentary approval** (by both houses of Parliament) where a proposal is located within the Parliamentary Zone. Minor or temporary works or maintenance within the Parliamentary Zone do not ‘require parliamentary approval.’ The NCA coordinates the parliamentary approval process, but it ‘is separate from, and in addition to the NCA’s approval.’
- **Step 7 – the NCA grants Final assessment and approval** of an application once it is satisfied that all relevant matters have been resolved.<sup>15</sup>

## Consultation requirements of the works approval process

- 3.19 Step 5 of the works approval process is the consultation component. The consultation component of the works approval process is required to be conducted by the proponent of any proposed work with adherence to the NCA’s *2007 Consultation Protocol*. Consultation requires a number of steps, the outline of which follows.
- 3.20 The *2007 Consultation Protocol* requires the proponent to ‘notify its development application for consultation for 15 business days’ ... ‘starting the day after the notice (of intended work) is published in *The Canberra Times*.’
- 3.21 Once a notice has been published in *The Canberra Times*, signage is erected notifying of the intended work. Where applicable, lessees of adjoining land are notified.
- 3.22 All notices must state:
- ‘the address, and block and section details (including a map)
  - the name of the applicant
  - what is proposed
  - the places, time and period the application may be inspected and where information may be obtained

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15 National Capital Authority, *Works Approval Process*, viewed 7 April 2009, <[http://www.nationalcapital.gov.au/index.php?option=com\\_content&view=article&id=712&Itemid=386](http://www.nationalcapital.gov.au/index.php?option=com_content&view=article&id=712&Itemid=386)>.

- invite properly made submissions
- the period to make properly made submissions
- where properly made submissions may be forwarded to within the consultation period specified in the notice
- all submissions, including names and addresses, in relation to this development application will be made publicly available at the NCA office and on the NCA website, subject to full approval by the submitter.<sup>16</sup>

3.23 When consultation is complete, the proponent provides a report to the NCA which includes:

- a summary of the consultation process that was carried out, including dates
- a copy of the notice published in *The Canberra Times*
- a photograph of the notice placed on the site
- a copy of the notices that went to the lessees of all adjoining land including each address.<sup>17</sup>

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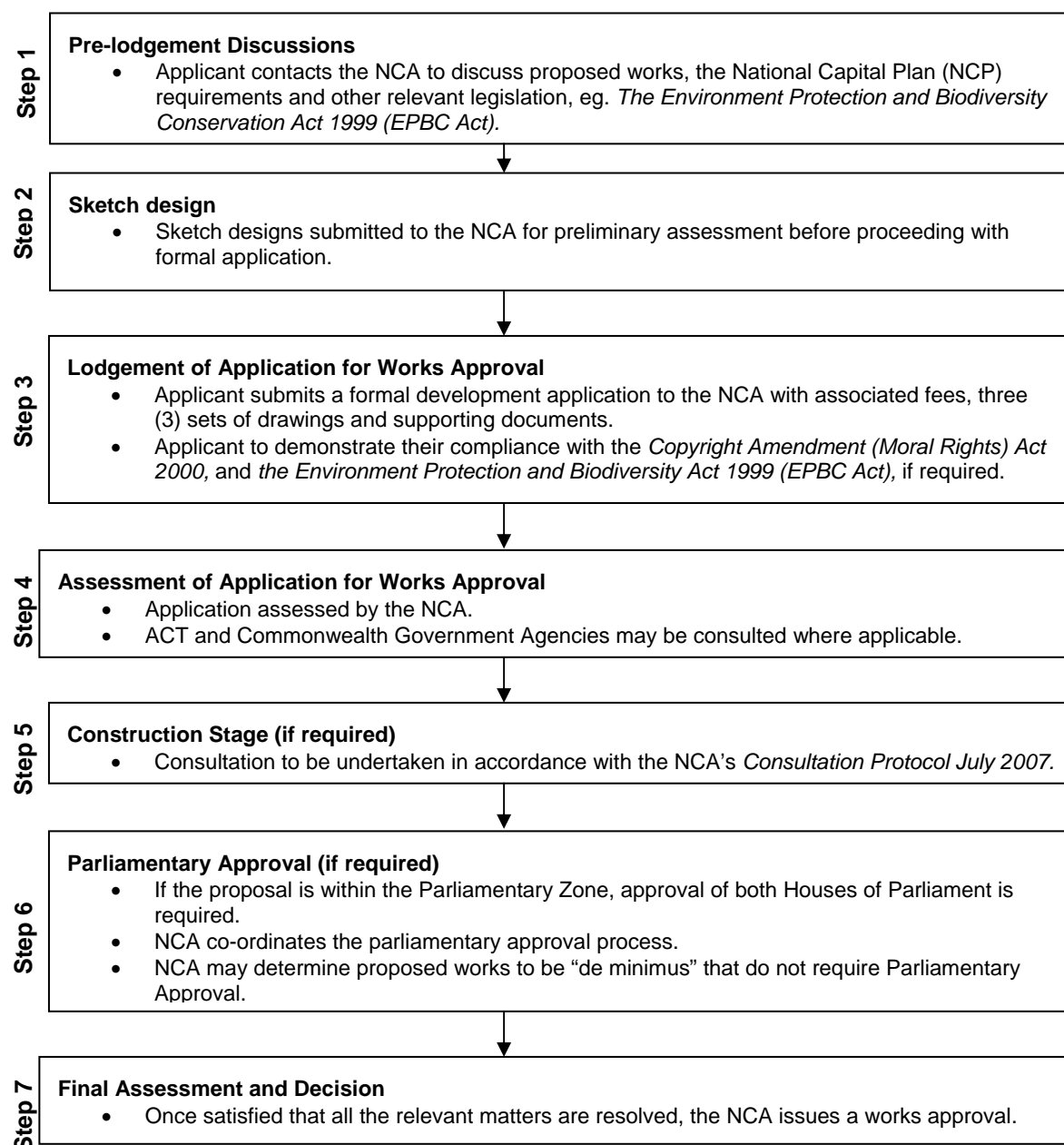
16 National Capital Authority, 2007, *Consultation Protocol*, Figure 4.1.1 Protocol for development applications which require consultation under the National Capital Plan (excluding applications for a telecommunications facility).

17 National Capital Authority, 2007, *Consultation Protocol*, Figure 4.1.1 Protocol for development applications which require consultation under the National Capital Plan (excluding applications for a telecommunications facility).

Figure 3.1 Works Approval: Process Flow Chart

**Australian Capital Territory (Planning and Land Management) Act 1988:**

Section 12 of the Act requires that no work shall be performed in a Designated Area unless the proposal to perform the works has been submitted to the National Capital Authority (NCA) together with such plans and specifications as are required by the NCA

**Planning Appeals**

The Act makes no provision for appeals against the decisions of the NCA. Parliament has instead provided that, in terms of the plan-making responsibilities of the NCA, the final say should rest with Parliament itself.

With respect to the NCA's powers to approve or disallow certain planning and development proposals (the usual area where appeals against the decisions of planning authorities apply), there is no provision for any special opportunity for recourse under the *Administrative Decisions (Judicial Review) Act 1977* to determine if a decision of the Authority is correctly made, or to normal common law processes.

Source: National Capital Authority, *Submission 60*, Attachment J.



## Works approval and the IBA proposal

### Requirements

- 3.24 The NCA indicated that if the IBA proposal proceeds and the Commonwealth Government agrees to accept the proposed bridge as an asset gifted to the nation, IBA will be required to:
- 'enter a written agreement covering such matters as the terms on which work may occur on National Land, various rights and responsibilities of the parties, handover preconditions and arrangements, insurance and risk management
  - lodge a formal application for Works Approval including such plans and specifications required by the Authority
  - obtain third party certification that the design and structure complies with all relevant standards and codes (including the Building Code of Australia).<sup>18</sup>
- 3.25 When seeking approval of the bridge proposal, IBA would have to satisfy steps 1 to 5 and step 7 as outlined in regard to the works approval process. As the proposed bridge is not intended to be located within the Parliamentary Zone, it will not be subject to approval by the Federal Parliament and so will not be required to satisfy step 6.
- 3.26 IBA has already had prelodgement discussion with the NCA in regard to its bridge proposal. In regard to discussion held, the NCA stated:
- It is in the area of providing guidance on the opportunities for commemorative works that the authority has to date been involved in the Immigration Bridge proposal. In that regard, the nature of our involvement is very similar to that which we have had in relation to other commemorative works. In the majority of instances, the proponent of the works is an external party, not the authority. The authority is normally consulted by proponents very early in the project concept to discuss the opportunities for commemorative works. It is not unusual for the authority to consider the concept, to grant in-principle support for the concept and for the project to be publicly launched and fundraising efforts commenced all prior to formal works approval being requested or granted. It is also not unusual for there to be a community debate

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18 National Capital Authority, *Submission 60*, p. 8.

about the merits of the proposal, with common concerns including the need for the commemorative work and whether it might already be appropriately recognised elsewhere, the impact on heritage vistas, the physical scale and the financial cost of the proposed works.<sup>19</sup>

- 3.27 IBA advised that it is continuing discussions with the NCA in regard to the production of its design brief.<sup>20</sup>
- 3.28 As part of its works application IBA would have to demonstrate how its bridge proposal complies with obligations under other relevant legislation including the EPBC Act and the *Copyright Amendment (Moral Rights) Act 2000* (Cwlth).<sup>21</sup>
- 3.29 Pursuant to section 26 of the EPBC Act, where the proposal 'is likely to have a significant impact on the environment of Commonwealth land', the bridge proposal would have to be referred to the Minister for the Environment, Heritage and the Arts (the Environment Minister) for consideration under the Act.<sup>22</sup> The definition of 'environment' under the EPBC Act includes 'heritage values of places'.<sup>23</sup>
- 3.30 On behalf of its Minister, DEWHA would then undertake a consultation process in regard to the proposal to decide whether the proposal required assessment under the EPBC Act.
- 3.31 Where heritage value considerations are concerned, in addition to the possible assessment by DEWHA under the EPBC Act, the NCA would also (once finalised) assess the proposal in regard to the provisions of the Lake Burley Griffin and Adjacent Lands Heritage Management Plan. The impact on heritage values on neighbouring sites already identified as heritage places would also be examined. These sites include Parliament House vista, Albert Hall and several buildings on the Acton Peninsula.<sup>24</sup>
- 3.32 In regard to the Copyright Amendment Act, the NCA would require evidence that IBA had identified and appropriately addressed any moral rights issues that may be held by the winner of the Stage 2 design competition for the National Museum of Australia.<sup>25</sup>

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19 National Capital Authority, Mr Gary Rake, *Transcript T1*, p. 17.

20 Immigration Bridge Australia, Mr Graham French, *Transcript T1*, p. 4.

21 National Capital Authority, *Submission 60*, Attachment J.

22 Department of the Environment, Water, Heritage and the Arts, *Submission 66*, p. 1.

23 National Capital Authority, *Submission 60.2*, p. 1.

24 National Capital Authority, Mr Gary Rake, *Transcript T1*, p. 19.

25 Immigration Bridge Australia, *Exhibit 16*, p. 1.

- 3.33 IBA is also required to undertake consultation under the works approval process, in accordance with the NCA's *July 2007 Consultation Protocol*.
- 3.34 Once the NCA is 'satisfied that all relevant matters [are] resolved and the proposal [is] in accordance with the National Capital Plan'<sup>26</sup> then a formal approval for works can be issued.

### Consultation undertaken to date by IBA

- 3.35 The NCA has stated that it encouraged IBA to undertake extensive consultation with 'the ACT Government; the National Museum of Australia; moral rights holders' (eg. the designers of the NMA); 'representatives of the Canberra yachting and rowing communities; and the Lake Users Group'.<sup>27</sup>
- 3.36 IBA advised that it had held meetings with a number of stakeholders including: the federal and ACT governments and their opposition counterparts; the NCA; the National Museum of Australia; ACT Planning and Land Authority; the Australian National University; LUG; Canberra Yacht Club (CYC); ActewAGL and Bendigo Bank.<sup>28</sup> IBA added:
- Others, including the architects Bligh Voller Nield, the engineers Arup Australia, Engineers Australia Canberra Division and numerous multicultural, ethnic and genealogical societies have been consulted and will continue to be consulted as we go forward.<sup>29</sup>
- 3.37 However, a number of organisations have indicated that they have either not had formal meetings or been consulted by IBA, or that IBA provided only an information session.
- 3.38 The YMCA Sailing Club of Canberra advised of its contact with IBA and stated that 'they have not approached us and we have not tried to approach them.'<sup>30</sup>
- 3.39 The ACT Rowing Association made the point that IBA offered an information session on its proposal rather than undertaking consultation. ACT Rowing stated:

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26 National Capital Authority, *Works Approval Process*, viewed 7 April 2009, <[http://www.nationalcapital.gov.au/index.php?option=com\\_content&view=article&id=712&Itemid=386](http://www.nationalcapital.gov.au/index.php?option=com_content&view=article&id=712&Itemid=386)>.

27 National Capital Authority, *Submission 60*, p. 6.

28 Immigration Bridge Australia, Lt. Gen. Lawrence O'Donnell (R'td), *Transcript T1*, p. 3.

29 Immigration Bridge Australia, Lt. Gen. Lawrence O'Donnell (R'td), *Transcript T1*, p. 3.

30 YMCA Sailing Club of Canberra, Mr Iain Balfour, *Transcript T1*, p. 37.

The IBA people came to, I think, the last meeting of the lake user group and gave a presentation on what was intended and aspects of the design, but it was approached, I think, fairly confidently by the IBA ... that the construction would go ahead. It was not a consultation process; it was more an information group process.<sup>31</sup>

3.40 The CYC indicated that 'we as a club are not aware of any consultation with us as primary lake users on the proposition for the bridge.'<sup>32</sup>

3.41 The Friends of the Albert Hall also stated that they were not consulted about the proposal as it related to the area surrounding Albert Hall and the possible impact on the area contained in Draft Amendment 53 to the NCP. The Friends of the Albert Hall stated:

DA53 came after the consultation on amendment 61, and the formation of the Friends was as a result of the public outrage over DA53. Essentially, what the NCA placed on the table was a proposal for public consultation which clearly included a number of elements. One of those elements, which appears to us now to have been largely concealed, was a fairly developed proposal on which they had already had extensive consultations with IBA about bridge footings in the DA53 precinct. The material that was produced by the NCA at the time of the public consultations on DA53 and statements that were made by senior staff and members of the authority at the time did not draw attention in the public domain to the fact that the IBA were major stakeholders in the development of DA53, which clearly they were because this footing would be in the precinct. They did not draw attention to any of the negotiations and they did not draw attention to the fact that there had been an agreement on the part of the ACT government to provide 2,000 square metres of land for the footing. Any of that information would have alerted members of the community and the public to the fact that there was a fairly advanced proposal abroad which would potentially have an impact on the heritage and the amenity of the precinct, but that information was not made available.<sup>33</sup>

3.42 In addition to the consultation undertaken by the proponent, the NCA has indicated that it will undertake its own community consultation in regard to the bridge proposal.

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31 ACT Rowing Association, Mr Simon Tulloh, *Transcript T1*, pp 39-40.

32 Canberra Yacht Club, Mr Graham Giles, *Transcript T1*, p. 45.

33 Friends of the Albert Hall Inc., Ms Diane Johnstone, *Transcript T2*, pp 19-20.

## NCA consultation

While there is no statutory obligation to do so, the NCA indicated that it would initiate an additional public consultation process for the immigration bridge proposal if an assessment were lodged by IBA, stating:

At the moment, under a statutory consultation, as described in the act and in the plan, we do not have an obligation to consult, but in the consultation protocol for major capital works – I think it is over \$6 million – we do have an obligation to consult. That extends mainly to the parliamentary zone but in this instance I think we would extend that to include this.<sup>34</sup>

Consultation would be undertaken in accordance with the NCA's *Consultation Protocol July 2007*.<sup>35</sup> The consultation protocol aims to:

...formalise, clarify and provide greater guidance for the community and stakeholders in the application of consultation requirements under the Australian Capital Territory (Planning and Land Management) Act and the National Capital Plan.<sup>36</sup>

The protocol sets out the minimum requirements which must be carried out: 'when the NCP is being made or amended, when a Development Control Plan (DCP) is being made or amended, on a development application; and, when the NCA informs community and stakeholders on an annual basis'.<sup>37</sup>

The NCA noted that its consultation process in regard to the IBA proposal would be expected to take between four to six weeks. The NCA explained its aim in undertaking consultation and stated:

... we would have the proposal on public display and would seek comments from members of the public as to the merits of the particular proposal. Upon receiving those comments, we would incorporate comments made in the assessment of the work...which include heritage impact, lake user impact and overall design quality.<sup>38</sup>

3.43 While provision for a bridge across West Basin is provided for through Amendment 61 to the NCP, the NCA is not the proponent. The role of the NCA is to assess the works application on its merits.

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34 National Capital Authority, Mr Andrew Smith, *Transcript T1*, p. 29.

35 National Capital Authority, *Submission 60*, Attachment J.

36 National Capital Authority, *Public consultation*, viewed 8 April 2009, <[http://www.nationalcapital.gov.au/index.php?option=com\\_content&view=category&id=78&Itemid=359](http://www.nationalcapital.gov.au/index.php?option=com_content&view=category&id=78&Itemid=359)>.

37 National Capital Authority, 2007, *Consultation Protocol*, NCA, Canberra, p. 6.

38 National Capital Authority, Mr Andrew Smith, *Transcript T1*, p. 29.

## Heritage and environmental considerations

### Commonwealth Heritage Listing of Lake Burley Griffin Conservation Area

- 3.44 DEWHA advised that it had identified the 'Lake Burley Griffin (the Lake) Conservation Area as a place that may contain heritage values'.<sup>39</sup> As such DEWHA nominated the Lake Conservation Area for inclusion on the Commonwealth Heritage List (CHL).<sup>40</sup>
- 3.45 DEWHA added that the Lake Conservation Area 'is yet to be formally assessed against the Commonwealth Heritage criteria.'<sup>41</sup>
- 3.46 Separate from DEWHA's nomination of the Lake Conservation Area on the CHL, the NCA, as part of its obligations under the EPBC Act, undertook an assessment of the Lake and Adjacent Lands 'to identify places that may have heritage values'.<sup>42</sup>
- 3.47 The NCA advised that its assessment identified that the Lake and Adjacent Lands 'had potential Commonwealth and National heritage values as defined by the EPBC Act.' The result of this finding was the commissioning and release for comment of the draft Heritage Management Plan (HMP) of Lake Burley Griffin and Adjacent Lands.<sup>43</sup>

### The Lake Burley Griffin Management Plan

- 3.48 The draft HMP of the Lake was released for public comment on 31 March 2009. The NCA held two public information sessions on the draft HMP on 21 and 28 April and has asked for comments by 29 May 2009. As the draft

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39 Department of the Environment, Water, Heritage and the Arts, *Submission 66*, p. 1.

40 The Commonwealth Heritage List is established under the EPBC Act and 'comprises natural, Indigenous and historic heritage places which are either entirely within a Commonwealth area, or outside the Australian jurisdiction and owned or leased by the Commonwealth or a Commonwealth Authority; and which the Minister is satisfied have one or more Commonwealth Heritage values. The list can include places connected to defence, communications, customs and other government activities.' Department of the Environment, Water, Heritage and the Arts, viewed 1 May 2009, <<http://www.environment.gov.au/heritage/about/commonwealth/index.html>>.

41 Department of the Environment, Water, Heritage and the Arts, *Submission 66*, p. 1.

42 Department of the Environment, Water, Heritage and the Arts, *Submission 66*, p. 1.

43 National Capital Authority, *Submission 60*, p. 7.

HMP was released early to inform the committee's inquiry, an additional two weeks was allowed for consultation.<sup>44</sup>

3.49 The NCA noted that 'the draft HMP includes heritage policies and actions to consider in relation to any proposal.'<sup>45</sup>

3.50 In relation to a high span pedestrian bridge across the West Basin of the Lake, the draft HMP provides:

- The design process for the proposed pedestrian bridge should be rigorously managed to ensure that it is sympathetic to the existing heritage values of the place. It should not obscure significant views or have a negative impact on the design qualities of Commonwealth Bridge and the surrounding foreshore areas. Guidelines for its materials, colour, scale, bulk and massing should be developed to ensure that it is sympathetic to the existing heritage values of the place.
- The proposed pedestrian bridge should not have an adverse impact on the use of West Basin and Westlake for sailing and other recreational, non-motorised water based activities.<sup>46</sup>

3.51 There are other heritage places close to the suggested site of the proposed bridge which are either on the Commonwealth Heritage List (CHL); ACT Heritage Register; or the Register of the National Estate. These include: the Parliament House Vista, Albert Hall, Acton Peninsula Limestone Outcrops, Isolation Ward (Building 1), H Block (Building 2), former Medical Superintendents Residence (Building 5) and the Acton Peninsula Trees Group.<sup>47</sup>

3.52 The NCA noted that 'an assessment of the impact on the heritage values of these places would [also] be sought as part of any future works approval assessment.'<sup>48</sup>

3.53 The NCA added that IBA would have to formally demonstrate how its proposal is consistent with the heritage values of the Lake area including action items under the HMP if at the time of submitting its works application, the HMP is finalised and has taken effect. The NCA stated:

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44 National Capital Authority, *Lake Burley Griffin and Adjacent Lands Draft Heritage Management Plan*, viewed 7 April 2009, <[http://www.nationalcapital.gov.au/index.php?option=com\\_content&view=article&id=720&Itemid=389](http://www.nationalcapital.gov.au/index.php?option=com_content&view=article&id=720&Itemid=389)>. National Capital Authority, Mr Gary Rake, *Transcript T2*, p. 2.

45 National Capital Authority, *Submission 60*, p. 7.

46 National Capital Authority, *Submission 60*, p. 7.

47 National Capital Authority, *Submission 60*, p. 7.

48 National Capital Authority, *Submission 60*, p. 7; National Capital Authority, Mr Gary Rake, *Transcript T1*, p. 19.

The obligation would be on the proponent at the time of the works approval application to demonstrate that they had an appropriately qualified professional person look at the heritage aspects for them and demonstrate how their proposal is consistent with the heritage values of the area, including, if this document has effect by then, the action items under the heritage management plan.<sup>49</sup>

## Assessment of the IBA proposal under the EPBC Act

- 3.54 Under the EPBC Act, where a proposed work 'is likely to have a significant impact on the environment of Commonwealth land' then it should be referred to the Environment Minister for a decision about whether it requires assessment under the EPBC Act.<sup>50</sup> The definition of 'the environment in the EPBC Act includes heritage places of value.'<sup>51</sup> The initial consideration of the proposal under the EPBC Act is the referral process. Further consideration under the EPBC Act is the assessment process. A decision about whether a proposed work should undergo assessment under the EPBC Act must be made within 20 business days.
- 3.55 This process is outlined in the flow chart at Attachment F.
- 3.56 The first ten days of the referral process requires DEWHA to place the proposed work on its website and invite public comment. Within the 20 day timeframe, the Environment Minister or delegate must make a decision about whether a proposed work is a 'controlled action' as defined by the EPBC Act. Where it is decided that a proposed work is a controlled action, then it would be subject to the assessment and approval process under the Act.
- 3.57 Where a decision is made to refer a proposed work for assessment, then it must be decided what type of assessment is required. Different types of assessment have different timeframes for decision attached to them. Each process includes some type of consultation.
- 3.58 Following assessment, the Environment Minister makes a decision to approve, approve with conditions or not approve the proposed work. If a decision to not approve a works proposal were made, the works could not be undertaken.
- 3.59 This process is outlined in the flow chart at Attachment G.
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49 National Capital Authority, Mr Gary Rake, *Transcript T2*, p. 9.

50 Department of the Environment, Water, Heritage and the Arts, *Submission 66*, p. 1.

51 National Capital Authority, *Submission 60.2*, p. 1.



- 3.60 DEWHA commented that the proposed bridge could potentially have an impact on the heritage values of the Lake and so be subject to assessment under the EPBC Act. DEWHA stated:

The design and construction of a pedestrian bridge in the location proposed by Immigration Bridge Australia would appear to have the potential to impact on possible heritage values of Lake Burley Griffin. Pursuant to section 26 of the EPBC Act, proponents of a proposal to construct a bridge in this location should therefore consider whether the design is likely to have a significant impact on the environment of Commonwealth land. A proposal that is likely to have a significant impact should be referred to the Minister for the Environment, Heritage and the Arts for consideration under the EPBC Act.<sup>52</sup>

- 3.61 In advice received from DEWHA, the NCA noted that in considering whether to refer a matter for assessment under the EPBC Act that the Environment Minister or delegate would take into account known heritage values at the time of referral. This would include heritage information contained in the draft Lake HMP. The NCA provided:

In considering such referrals the Minister (or delegate) may take into account all known heritage values available at the time of the referral. For example, NCA's draft management plan for Lake Burley Griffin and Adjacent Lands has been placed on public exhibition. Where it is relevant, information from a draft management plan that has followed a credible assessment process may be considered in any referral.<sup>53</sup>

- 3.62 As a result, there may be an initial consultation process undertaken which would inform the Minister's decision on whether the proposed bridge works would require assessment under the EPBC Act.

- 3.63 Regardless of whether the IBA proposal would require consideration under the EPBC Act, it may be referred to the Minister by either the proponent or the NCA. In advice received from DEWHA, the NCA stated:

The Minister may, under section 70 of the Act, if he believes that an action may be an action prohibited by any of the provisions of Part 3 of the Act, request that the action be referred under the Act. Non-compliance with a request is a criminal offence. Alternatively, it would be possible for a Commonwealth agency to refer the

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52 Department of the Environment, Water, Heritage and the Arts, *Submission 66*, p. 1.

53 National Capital Authority, *Submission 60.2*, p. 2.

action under section 71 of the Act. Under that section, a Commonwealth agency (eg the NCA) that is aware of a proposal by a person to take an action may refer the action if the agency has administrative responsibilities in relation to the action.<sup>54</sup>

- 3.64 Further, where a proposed work had been referred to the Environment Minister for consideration and was found to require assessment, it would be illegal for the proposed work to proceed until the assessment had been completed and the work had either been approved<sup>55</sup> or approved with conditions.

## Timeline for assessment of the IBA proposal

- 3.65 IBA estimated that to prepare a works application and see it through the NCA's works approval process would take approximately two years.<sup>56</sup>
- 3.66 Once a works application has been lodged, the NCA's *Service Charter for Planning and Development Approvals* provides that most works applications be processed within 15 working days. This is with the exception of major projects or those that require consultation or additional clearance from external agencies. In such cases, the timeframe for approval could be extended.<sup>57</sup>
- 3.67 The NCA indicated that the draft Lake HMP would need to be formally adopted,<sup>58</sup> the transfer of Territory land to the Commonwealth would need to be resolved,<sup>59</sup> and DEWHA may be required to undertake an environmental assessment if the proposal were seen to have a significant environmental impact.<sup>60</sup>
- 3.68 Further, as the bridge proposal may have a 'significant impact on the environment of Commonwealth land', then IBA may be required to refer the proposal to the Minister under section 26 of the EPBC Act for

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54 National Capital Authority, *Submission 60.2*, p. 2.

55 National Capital Authority, *Submission 60.2*, p. 2.

56 Immigration Bridge Australia, Mr Graham French, *Transcript T2*, p. 35.

57 National Capital Authority, *Service Charter for Planning and Development Approvals*, viewed 8 April 2009, <[http://www.nationalcapital.gov.au/index.php?option=com\\_content&view=article&id=712&Itemid=386](http://www.nationalcapital.gov.au/index.php?option=com_content&view=article&id=712&Itemid=386)>

58 National Capital Authority, Mr Andrew Smith, *Transcript T2*, p. 6.

59 National Capital Authority, Mr Gary Rake, *Transcript T2*, p. 12.

60 Department of the Environment, Water, Heritage and the Arts, *Submission 66*, p. 1.

consideration. This could trigger a separate assessment process of the proposed bridge under the EPBC Act.<sup>61</sup>

## Maintenance of the proposed bridge

3.69 IBA advised that the completed bridge is planned to coincide with the centenary of Canberra in 2013 and is intended to become a 'gift to the nation'.<sup>62</sup>

3.70 While the Commonwealth Government has not yet agreed to accept the proposed bridge as a gift, the NCA advised that 'if the Commonwealth accepted ownership it would have the ongoing maintenance responsibility.'<sup>63</sup> The NCA added:

If the Commonwealth agreed to accept it, there would need to be an agreement on the handover, the standards, the documentation and the ongoing cost of maintenance. In the case of other commemorative works in the national capital where they have been gifted to the Commonwealth in the past, the Commonwealth typically assumes the maintenance responsibility if it agrees to accept the gift.<sup>64</sup>

3.71 No analysis of potential maintenance costs has been conducted, however, IBA has indicated that it is in the process of preparing a detailed design brief which includes maintenance requirements.<sup>65</sup>

3.72 As part of the 2008 Inquiry into the role of the NCA, concerns were raised about the increasing cost of asset maintenance and the NCA's ability to adequately manage its assets. The Auditor-General, for example, in Performance Audit Report 33 2007-08, *The National Capital Authority's Management of National Assets* brought attention to previous concerns with the maintenance of Scrivener Dam. The committee noted that:

While the [Auditor-General's] report found that the NCA has generally appropriate asset management policies and a documented asset management framework, it did identify a number of shortcomings, particularly in relation to the NCA's

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61 Department of the Environment, Water, Heritage and the Arts, *Submission 66*, p. 1.

62 Immigration Bridge Australia, *Submission 29*, p. 3.

63 National Capital Authority, Mr Gary Rake, *Transcript T1*, p. 25.

64 National Capital Authority, Mr Gary Rake, *Transcript T2*, p. 8.

65 Immigration Bridge Australia, *Submission 29*, pp 3-4.

management of Scrivener Dam. Specifically, the report found that the NCA has not funded a number of major, non-routine maintenance tasks that the NCA's expert consultants had recommended be carried out.<sup>66</sup>

3.73 In addition, the committee noted that 'the recent Auditor-General's report on the NCA's management of assets showed that these are long standing issues that have no connection with the recent reduction in the NCA's funding.'<sup>67</sup>

3.74 At that time, the committee concluded that:

The NCA has not undertaken essential maintenance work on the assets for which it has responsibility. The NCA must ensure that maintenance of national assets is brought to the attention of the responsible Minister in a timely fashion. The committee notes that there has been inadequate effort by the NCA to resolve these issues in the past.<sup>68</sup>

## Cost and funding

3.75 In regard to assuming responsibility for and associated cost and funding of maintenance of the proposed bridge, the NCA stated that it would first be required to provide advice to the Government about whether it should accept the proposed bridge as a gift. The NCA stated:

In giving advice to government about whether or not we should accept the gifting of the asset, we would offer advice about the maintenance cost and seek to have that dealt with at the same time.<sup>69</sup>

3.76 In addition, the NCA provided that 'in theory' there is potential for a gifting organisation, to provide ongoing maintenance funding. The NCA stated:

In theory, there might be potential for the gifting organisation to provide an endowment or an ongoing set of funding for the

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66 Joint Standing Committee on the National Capital and External Territories, July 2008, *The Way Forward: Inquiry into the National Capital Authority*, Parliament of Australia, Canberra, p. 52.

67 Joint Standing Committee on the National Capital and External Territories, July 2008, *The Way Forward: Inquiry into the National Capital Authority*, Parliament of Australia, Canberra, p. 53.

68 Joint Standing Committee on National Capital and External Territories, *The Way Forward: Inquiry into the role of the National Capital Authority*, 2008, pp 53-54.

69 National Capital Authority, Mr Gary Rake, *Transcript T1*, p. 26.

maintenance, but in this situation I doubt that that is going to be the case.<sup>70</sup>

- 3.77 If the Government accepted ownership of the proposed bridge, the NCA: ...would need to make a submission to the usual budget process. If [the NCA] were not able to manage the cost of maintenance within [its] resources, [it] would make a submission for additional funding for the maintenance of that asset.<sup>71</sup>

## Conclusions

- 3.78 The committee appreciates that the NCA will undertake a consultation process if it receives a formal application for works approval from IBA, even though it has no statutory obligation to do so.
- 3.79 The committee also understands that the Lake Heritage Management Plan will provide for vista and heritage values as they relate to the Lake and its foreshores to be assessed as part of the works approval process. In addition, the IBA proposal may be assessed under the EPBC Act in a separate process administered by DEWHA.
- 3.80 The committee notes that IBA has estimated that to arrive at a final design brief and passage through the works approval process could take up to two years.
- 3.81 The committee notes that IBA intends to gift Immigration Bridge to the nation and, if accepted, maintenance of the asset would come under the responsibility of the NCA.
- 3.82 The committee understands that the NCA would require an assessment of the ongoing costs of maintenance as part of the handover agreement.
- 3.83 As part of the committee's inquiry into the role of the NCA, it became clear that the NCA is under increasing cost pressures regarding the maintenance of its assets. The NCA receives funding for the maintenance of the assets it manages as revenue from government.
- 3.84 In the case of the proposed IBA bridge being ceded to the Commonwealth, the government should ensure that agreement to receive the bridge is met by increased funding to the NCA to manage its ongoing maintenance. This approach should apply more generally to any significant additions to

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70 National Capital Authority, Mr Gary Rake, *Transcript T1*, p. 26.

71 National Capital Authority, Mr Gary Rake, *Transcript T1*, pp 25-26.

the NCA's asset base which it is required to maintain on behalf of the Commonwealth.

## **Recommendation 2**

- 3.85 **The committee recommends that if the proposed IBA bridge is ceded to the Commonwealth, then the government should ensure that agreement to receive the bridge is met by increased funding to the NCA to manage its ongoing maintenance.**