

WALTER BURLEY GRIFFIN SOCIETY

CANBERRA CHAPTER

Parliamentary Joint Standing Committee on the National Capital and External Territories

**INQUIRY INTO THE ADMINISTRATION OF
THE NATIONAL MEMORIALS ORDINANCE 1928**

The Walter Burley Griffin Society (WBGs) appreciates the opportunity provided by the Joint Standing Committee on the National Capital and External Territories to participate in this Inquiry. This submission is from the Canberra Chapter of WBGs whilst the Society's President, Professor James Weirick, will also be making a submission and the Management Committee, based in Sydney, is informing the full membership about the Inquiry and contact details.

The WBGs aims to promote a better understanding of the lives and works of Walter Burley Griffin and Marion Mahony Griffin. 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. The Canberra Chapter maintains a close interest in the legacy of the Griffins' Plan for Canberra and hence in the development of Canberra as a great National Capital.

Basic Issues

We welcome this Inquiry. It indicates a fresh commitment by the Commonwealth Government to the planning and development of the National Capital. It affirms the role of the federal Parliament in the symbolic development of the National Capital. Compliments are due to Minister Simon Crean in particular for setting comprehensive terms of reference. The terms capture the state of neglect and dysfunction into which the Canberra National Memorials Committee (CNMC) has declined.

The CNMC was created by Parliament as an agency of the Parliament for the important task of fulfilling Canberra's symbolic role through nomenclature, monuments and memorials. This function was conceived as fundamentally important in 1928, initiated by Prime Minister Bruce, Home Affairs Minister Pearce and Commissioner Butters when the Parliament had just moved to Canberra and rapid development was underway in the National Capital.

In recent times, the CNMC has had a considerable and growing workload.

The Inquiry is imperative because accumulated policy issues, bad decisions and prospective projects are demanding attention whilst nothing is being done to rectify the problems with the CNMC. The disrespect shown and misuse of the CNMC over the past six years is not abating. No serious consideration seems to have been given to revising the out-of-date and defective Ordinance. Currently, the National Capital Authority continues in effect to marginalise the CNMC and to disregard its conflicts of interest with the CNMC and its own lack of heritage, historical, planning, design and legal expertise.

Administration of the National Memorials Ordinance 1928

Membership of the CNMC

The fundamental powers and functions of the CNMC raise at least two principles: firstly, the CNMC is an instrument of the representative federal Parliament. Secondly, the nature of its work requires democratic, institutional and professional checks and balances to ensure that its decisions are soundly based. The present provisions for, and administration of, the membership fall way short of meeting this second principle.

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.

The process for decision-making by the CNMC

Elementary principles and administrative law have been ignored, more or less, in the processes and proceedings of the CNMC. Careful study under FOI of documents released by the NCA and the Department of Regional Australia, Regional Development and Local Government reveal the story.

Firstly, the CNMC would be convened routinely at short notice and with little guarantee that members would be available to attend or have time to examine agenda papers. Agendas would be indiscriminate and overloaded yet the Chairs would transact business in very short time for substantive discussion. Most regrettably, parliamentary representatives were rarely present and outnumbered by bureaucrats, including at two meetings the Secretary of the Department of Veterans Affairs.

Secondly, at least in the case of the World Wars I and II memorials (which were before the CNMC at five meetings), the agenda papers contained descriptions but no substantive analysis, assessments, alternatives, impact studies, policy guidelines or land use and design framework. In the case of the War memorials, the NCA's agenda paper and the subsequent minutes of the relevant meetings contained just a one line, repetitive formulation: 'The proposals are consistent with the criteria contained within the Commemorative Guidelines.'

It is worth pointing out that in fact this formulation was, at best, misleading. It was compounded by NCA's subsequent public assertions that the *Guidelines for Commemorative Works in the National Capital* are 'not mandatory [the relevant guidelines are in fact classified "mandatory"] and non-binding.'

The NCA has no in house heritage or historical expertise. In the case of the World Wars I and II memorials they sought preliminary advice from the Department of Environment, Water and Heritage, which was watered down by advice from a private consultant and essentially omitted from the eventual design competition documents.

Even more remarkably, the NCA seems to have no policies or strategies regarding memorials, guidelines and land use planning for memorials. They are ambivalent about their *Guidelines for Commemorative Works* and they have adopted no strategy for monitoring and assessing the prospective demands for memorials, the diminishing land bank for memorials and the criteria for location and site selection of memorials and alternative forms of commemoration.

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 and 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.

Mechanisms for the CNMC to seek independent, expert advice

It is instructive to consider the institutional arrangements in Washington DC for the processing of monuments and memorials processes. The National Capital Development Commission has adopted a Master Plan (2001) and Framework Plan (2009) pertinent to **Recommendation 4** above.

The presence of history and symbolism is everywhere one turns in Washington DC, national and local history, and America’s place and role in the world. There are constant demands for new monuments and memorials, which are determined through **eight** successive rigorous, open and transparent stages:

1. National Capital Memorial Advisory Commission: application under the Commemorative Works Act. The Commission is chaired by the Park Service (NPS)(being the main management agency) and includes representatives of six federal agencies, including the National Capital Planning Commission, the US Commission of Fine Arts, the Architect of the Capitol and the Mayor of DC
2. The NCMAC advises Congress on each proposal (proponents need a Congressional sponsor, a Senator or a Representative, as legislation is required)
3. Legislation is enacted
4. Site selection with NCPD and other federal agencies
5. Site approval and design guidelines (concept>preliminary>final>) by NCPD
6. NCPD, NPS and Historic Preservation Office design approvals
7. Memorial sponsor raises all the funds necessary plus 10% towards maintenance

8. National Park Service and General Services Administration (being responsible for infrastructure maintenance and management) approval.

[Reference:- *Memorials and Museums Master Plan*, National Capital Planning Commission, 2001, Appendix A: Steps for establishing a memorial in the Nation's Capital; *Monumental Core Framework Plan*, NCPC and US Commission for Fine Arts, 2009]

Particularly significant is the institutional integration with the US Commission of Fine Arts, the Architect of the Capitol and various heritage and land management agencies with responsibilities in the central symbolic areas of Washington. They represent routine sources of expertise.

The Washington model also exemplifies the principles of Congressional approval and public participation – **the following two terms of reference of the Inquiry** – but also emphasises the benefits of exposing memorial proposals to thorough public debate and refinement. Public evaluation and discourse in Washington, through Congress representatives and Senators and sponsors, is often long running and a feature of the memorials process.

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.

The appropriate level of parliamentary oversight for proposed National memorials

A glaring deficiency in the Ordinance is that memorials, unlike nomenclature, were not accorded the process of parliamentary consideration and disallowance. A key factor in the Ordinance updating should logically be incorporation of the role of the Parliamentary Joint Standing Committee responsible for the National Capital. The wide and interested representation on this committee can secure the Parliament's primary role in the determination of national memorials and nomenclature.

Recommendation 6 is that the new Ordinance should provide for:

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

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

Principles of transparency, accountability and public participation must be incorporated in the new Ordinance. The national constituency should be embraced as appropriately, widely and effectively as possible. Given that the CNMC has the primary responsibility for considering proposals, proponents could be required to make formal application through the Minister or a Member or Senator. Proponents can be expected to have already engaged in consultations with interested parties and authorities, including the NCA.

Another basic principle is early notification at a stage when commitments about purpose, magnitude, site, funding or cost have yet to be made. Hence, the CNMC would determine an appropriate and managed framework for notification, public discourse and debate about all the elements of purpose, site, design parameters and alternatives.

Once again, the case of the World Wars I and II memorials demonstrates the importance of all of these principles.

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.

Transition provisions for current proposals for memorials which have not yet been constructed

The evidence is clear that the approvals given by the CNMC for the World Wars I and II memorials have breached every one of the above principles. They would very likely be judged invalid under administrative law. They have attracted unprecedented waves of public opposition. They are unsupported by any reports, assessments or documentation other than the website of the proponents Memorial(s) Development Committee, which has been static for nearly a year.

Notwithstanding the exposures of improper approvals processes and sustained public opposition, the proponents continue to push their project. They rely on the approvals obtained by concealed and questionable means and on their expectation that the remaining formal approvals – clearance by the Environment and Heritage Minister and NCA works approval – are a good chance, in the case of the former, and a given, in the case of the NCA.

The proponents have declined all overtures or incentives to contemplate alternatives to their project: alternatives regarding purpose, scale, site, and other forms of commemoration and expenditure of the funds they have been raising. Those of us associated with the Lake War Memorials Forum have been particularly impressed by the breadth and diversity of opposition and alternative ideas for commemoration of World Wars I and II that have been coming from the veterans and service communities and organisations.

In principle, bad decisions should be reconsidered if there are good reasons and time enough to do so. It is clearly the case with the World Wars I and II memorials.

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.

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