

# Block 3 Section 39 Campbell – Australian War Memorial – Extension of Basement Carpark Adjacent to Poppy’s Café: Heritage Guardians submission to National Capital Authority

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### Coverage of this submission; consultation process

1. Of the documents submitted with [the Works Approval application](#), this submission addresses the Planning Report, the Heritage Impact Statement, and the Ecology Report. We note that, while [the application was reported in the Canberra Times](#), there was no media release from the Authority announcing the consultation. This was surprising, given the amount of public interest in the Memorial project (and the relatively trivial subject matter of [other media releases from the Authority](#)). Heritage Guardians would welcome the opportunity to meet with the Authority to discuss this submission.

### Threshold questions

2. Before dealing with the application documents, however, we wish to state forcefully our view that the Authority has been put in the position of having to consider an ‘early works’ application for a multi-stage project where approval of the application inevitably has implications for the project as a whole. The term ‘salami slicing’ could apply. The threshold questions are:
  - Is the Authority able to assess this part of the project in isolation from the entire project?

- How can approval for this application be taken as other than acceptance of the project as a whole?
3. It will be important for the Authority to be diligent and rigorous in reviewing the application for this stage of the Memorial project – and be seen to be so. This is particularly because the Department of the Environment and Energy, carrying responsibility for heritage, seems to have been dealt out of this part of the game (see paras 12-15 below).
  4. Approval of this carpark helps make the whole project a *fait accompli*, in advance of other approvals (heritage, Public Works Committee, the Authority again). Thus, we disagree with this paragraph from the conclusion of the Planning Report (page 19):

The basement car park extension and temporary car parking has been treated as a standalone project in terms of statutory approvals, EPBC self-assessments and consultation, and is viewed as separate to the main redevelopment process. This WA application relates to these standalone works.

5. The tendency to treat the project *in all its parts* as a *fait accompli* has been evident for some time. Note, for example, the statement by the Director of the Memorial regarding the project that [‘the train has left the station’](#), [the Memorial’s contractors pitching a post-construction entertainment space to clients](#) (entry for 23 July 2019), and [the imminent opening in the Memorial grounds of a ‘project information gallery’](#) (page 100 of the Proof Hansard).
6. We have noted the emailed advice (25 October) from the Authority in response to our inquiry about the erection of a fence and related works at the carpark site. This work was approved without public consultation, in accordance with Authority practice, but the same arguments could apply to this work as to the work on the carpark itself – approval of ‘salami slices’ of the project helps make the overall project a *fait accompli*.
7. On the other hand, there is some comfort in this part of the Authority’s advice:

While the temporary works are associated with the proposed carpark extension, the Decision Notice issued by the NCA clearly states that the approval “does not prejudice the NCA’s consideration of any other Works Approval matters related to this site”.

## Other procedural aspects

8. The Memorial project exhibits other procedural aspects that are of concern. For example, there is [the apparent disconnect between the funding of the project and the development of the Detailed Business Case for it](#). Ultimately, the prime minister announced funding of \$498m fully seven weeks before the Detailed Business Case (with costs assurance at 80 per cent) was lodged with government.
9. In its [Annual Report 2018-19](#), the Memorial provided this opaque paragraph (page 21):

The Memorial Redevelopment Team presented the Detailed Business Case to government on **21 December 2019**. This document drew together the various briefings and submissions to government which formed the basis for the announcement of funding. [Emphasis added]
10. The above reference to the Detailed Business Case being presented to government on 21 December accords with [Interdepartmental Committee Minutes provided to Heritage Guardians under Freedom of Information](#). On the other hand, there was this statement from the Memorial Director to [Senate Estimates on 23 October](#): ‘We completed the detailed business case; the government considered that in **October** last year [page 99 of the Proof Hansard; emphasis added]’. The cumulative impression from this evidence is of carelessness – or deception – in relation to accountability.
11. The Memorial has not always been subject to a rigorous accountability regime, either [internally](#) or [through the Parliament](#) (submission No. 14, paras 31-33). It has benefited from a perception that it has sacred status. (Launching the Memorial project on 1 November 2018, [Prime Minister Morrison said](#), ‘It is sacred to us all’.) [The historian Peter Cochrane wrote in 2015](#): ‘Drape “Anzac” over an argument and, like a magic cloak, the argument is sacrosanct’. That works for buildings as well.

## Role of Department of Environment and Energy

12. The Department assesses heritage impact (under the Environment Protection and Biodiversity Conservation Act) when proponent departments and agencies do not self-assess. Following referrals from the War Memorial, the Department or its predecessor has [conducted at least two heritage assessments on relatively small projects](#) on the grounds of the Memorial: temporary display of bridge sections from HMAS *Brisbane* (2005);

construction of Bomber Command Memorial in the Sculpture Garden (2004). Both of these projects were smaller than the current carpark proposal.

13. On this occasion, the Department's Media Team advised Heritage Guardians as follows (email 16 October 2019):

The Department has had a number of pre-referral meetings to advise the AWM about their obligations and assessment processes under national environmental law, and to discuss more general heritage management matters.

The Australian War Memorial is included on the National Heritage List as well as the Commonwealth Heritage List. Under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), an action on Commonwealth land or by a Commonwealth agency that is likely to have a significant impact on the environment (which includes all heritage values), or an action that is likely to have a significant impact on the National Heritage Values of a National Heritage place, needs to be referred to the Minister for the Environment before it can be undertaken.

Not all actions will necessarily have a significant impact on heritage values. Proponents generally self-assess whether a project would have a significant impact on any matters protected under the EPBC Act and whether a referral under the EPBC Act is required.

The Department of the Environment and Energy is continuing to liaise with the AWM on the larger war memorial expansion project. A referral has not been received as yet. [[The War Memorial Director told Estimates](#) on 23 October that a referral would go to the Department 'next week' (page 100 of the Proof Hansard).]

Enquires [sic] about specific aspects of the redevelopment would be best directed to the Australian War Memorial.

14. In view of, first, the remarks above under the heading 'Threshold questions' and, secondly, the record of previous projects where the Memorial has *not* self-assessed and has instead made a referral to the Department, the Memorial's apparent decision on this occasion to self-assess heritage aspects should be a matter of concern to the Authority as it considers the application.

15. Indeed, whether a project at the Memorial is referred or self-assessed seems to be a function not of the features of the project but of management preference and its attitudes

to the accountability regime in the context of political attitudes to the project. Self-assessment by the Memorial *of any part* of the most fundamental redevelopment in the institution's history appears as nothing less than an attempt to avoid scrutiny of plans that have already received widespread criticism.

## Planning Report

16. There are two key paragraphs at page 12 of the report:

The Memorial has chosen to undertake a self-assessment of the proposal in order to determine the need for a formal referral to the DoEE. A Heritage Impact Statement and Ecological Impact Assessment has been prepared for the self-assessment and has been submitted with this Works Approval.

The heritage and environmental reports sought to understand the extent of perceived impact to heritage and environmental values from the proposal. Each report concluded that ongoing discussions [see above para 13 for email from the Department to Heritage Guardians; also text on page 14 of the report] with the DoEE were recommended, however an EPBC referral was not deemed necessary.

As noted above, we disagree with the conclusion that a formal heritage referral was unnecessary for the carpark.

17. The report at page 18 then mentions public consultation, without indicating how carefully the Memorial has managed this process. The Memorial has consistently tried to misrepresent and minimise the opposition to the project. Months of critical coverage in the *Canberra Times* included a poll (reported on 29 June) showing 80 per cent of respondents supported a call by former Memorial Director, Brendon Kelson, that the expansion project be dropped. The vast majority of letters on this subject to the *Canberra Times* have opposed the project.

18. Despite this evidence of widespread opposition to the project, the Memorial's letter-box drop advertising its consultative session only went to 400 houses in streets near the Memorial. The Memorial well knew that this was not a 'NIMBY' issue but one which deserved wide consultation across our city and the country. It chose not to undertake such consultation.

19. In [radio sessions with sympathetic ‘shock jocks’](#), and in [Senate Estimates last week](#) (page 101 of the Proof Hansard), the Memorial Director, when discussing consultation on the project, spoke of not being approached by a single opponent across Australia, rather than providing concrete evidence of support. [When Honest History pointed out that the Memorial’s consultations over eight weeks in 2018 had produced responses from just 134 individuals](#), the Memorial [removed the consultation report from its website](#). By contrast with the Memorial’s consultation, Heritage Guardians’ Change.org petition (to the then Leader of the Opposition) against the project drew 1236 responses in two weeks, nine times the response the Memorial had garnered in four times as long.

### [Heritage Impact Statement](#)

20. The statement refers to minor and moderate heritage impacts of the project but suggests they will not be ‘significant’ in terms of the Environment Protection and Biodiversity Conservation Act. The document goes on:

In this context, an EPBC Act referral under Part 7 of the Act would not seem warranted **unless certainty is required**. None the less, because of the complexities of proposal, the National Heritage value of the Memorial, and the forthcoming and related major redevelopment, the AWM should consider further consulting the Department of the Environment and Energy. [Emphasis added]

21. The statement goes on to refer to ‘adverse’ impacts under the Act and proposes some remedies relating to retention of mature trees, re-planting and temporary landscaping.

22. We strongly support a referral under the EPBC to address these issues about the carpark. The issue is not so much ‘certainty’ as probity. If nothing else, a referral would help dispel the impression that has become associated with this project that each stage of the project will be ‘waved through’ the accountability processes, because it involves the ‘sacred’ Memorial, because of the political commitments that have been made regarding it, or because of some feeling of obligation to the project’s strongest proponents.

### [Ecology Report](#)

23. The report concludes that ‘the proposed development is unlikely to significantly impact upon the “whole of environment”. As such, EPBC Act referral is unwarranted and is not recommended.’

24. We disagree. Given the number of trees affected by the project (63 to be removed) and the time taken for replacement trees to reach maturity – if they ever do, given their placement over a carpark – EPBC Act referral in relation to ecology aspects seems advisable. We come back to the point that trees are to be removed to cater to the temporary car parking needs of workers. Have other solutions been considered, for example, a shuttle bus from existing car parks in the Defence precinct?

### Conclusion

25. In considering this application, the Authority has an opportunity to make a firm statement supportive of accountability and probity and against the gaming of statutory processes by the ‘salami slicing’ of complex projects. It should do so. Such a statement would also remind departments and agencies that projects – regardless of who proposes them – will not be ‘waved through’.

### Heritage Guardians

1 November 2019

*Heritage Guardians is co-ordinating [a community campaign against the War Memorial extensions project](#). This submission was prepared by Dr David Stephens, Heritage Guardians and Editor, [Honest History website](#).*