

**18 August 2023**

To:

[EPBC.Referrals@dcceew.gov.au](mailto:EPBC.Referrals@dcceew.gov.au)

[Minister.Plibersek@dcceew.gov.au](mailto:Minister.Plibersek@dcceew.gov.au)

This letter comprises:

- A Third Party Report.
- A request for Australian commonwealth Minister Plibersek to ‘call in’ a self-referral under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).
- Action sought: determination of a development proposal as a Controlled Action, subject to the approval process under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

**From John Bridgland**

**A residential ratepayer in the City of Adelaide**

‘Adelaide Aquatic Centre Development’, Park 2, Adelaide park lands zone: see image in Appendix 1.

Re: Referral procedure under section 68 of the EPBC Act 1999.

Re: an Adelaide park lands zone site within the boundary of National Heritage Listed Adelaide Park Lands and City Layout (2008).

Dear Minister Plibersek,

This is a South Australian City of Adelaide matter.

A state government Development Application proposal (currently open to public examination to 31 August 2023) contemplates replacement of an old aquatic centre in the Adelaide park lands (a site subject to National Heritage listing) with a new and substantially larger built form on an adjacent park lands Park 2 site.

This project will impinge on and disregard certain values and principles of the National Heritage listing of the Adelaide Park Lands and City Layout.

I understand that, as a City of Adelaide ratepayer, I am unable under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) to make a self-referral about this Development Application proposal relating to this project because I am “not a person who is proposing to the action, or a commonwealth, state or territory government, or an agency that is aware of the proposed action, with administrative responsibilities relating to that action”.<sup>1</sup>

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<sup>1</sup> <https://www.dcceew.gov.au/environment/epbc/publications/factsheet-submitting-referral-under-epbc-act>

However, I believe that there is a valid case for you as Minister to call-in a self-referral by other lawfully entitled parties, which could include either the South Australian state government or the Corporation of the City of Adelaide. Each is enabled under the Act to make a self-referral. Despite the opportunity to act, it appears that neither has done so. I should acknowledge that Development Application advice commissioned by the state government by an expert has concluded that a self-referral may not be necessary and on that basis the government appears not to have acted. Public access to the DA closes at the end of this month, 31 August 2023, and I can find no evidence that a self-referral has been lodged.

I understand that, with respect to this proposed ‘Adelaide Aquatic Centre Development’, your commonwealth department has contacted the relevant South Australian government agency to remind them of their obligations and requirements under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Were I enabled under the legislation to make a self-referral, I would argue that, if the development is approved (Planning Consent and Development Consent) the result would have a significant impact on a site within the Adelaide Park Lands Plan under SA legislation (the *Adelaide Park Lands Act 2005*), which site is a National Heritage Place under the 2008 commonwealth listing.

Given this, I contend that the proposal should be self-referred by the state government (the proponent) or the Corporation of the City of Adelaide (the landlord of the site as registered proprietor and a beneficiary of state funding to create and operate the new development), and I ask that you, as commonwealth Minister responsible for the Act, determine that the matter be ‘called in’ to ensure self-referral.

#### Further background

In one of many assessments for the ‘Adelaide Aquatic Centre Development’ the state government engaged an expert contractor (South Australian DASH Architects) whose subsequent summary advised the South Australian government on 30 June 2023 that a referral in relation to the National Heritage **Values** may not be necessary.<sup>2</sup>

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<sup>2</sup> It would appear from a submission to the SA state government contained in the DA summary paper of 31 July 2023 (‘Adelaide Aquatic Centre Development’, DA 224337) that ‘self referral’ about this proposal may not be necessary. The 30 June 2023 summary was created by Adelaide’s DASH Architects (Jason Schultz), which firm is well versed and qualified in such matters. For this task, DASH completed a ‘National Heritage Impact Assessment’, but the full assessment does not appear in the DASH documentation. Selected extracts of a DASH summary include: “AACD (Adelaide Aquatic Centre Development) is consistent with the National Heritage **Values** of the Adelaide Park Lands and City Layout ... [and] will not result in any ‘significant impacts’ [to the values] and as a result a referral under section 68 of the EPBAct may not be necessary.” But DASH also noted that an option is open to the state government to pursue self-referral on the basis of ‘thoroughness, cautioness or risk management’. “The result [wrote DASH] is an exemplary building and project outcome that specifically recognises and respects the National Heritage **Values** of the Adelaide Park Lands.” However, it is the view of the author of this 18 August 2023 submission that this is contestable.

Given that the full contents of the DASH assessment are not publicly available, it is not possible to conclude that it satisfactorily addresses consistency with *all* of the National Heritage **Values** of the Adelaide Park Lands and City Layout. At least one of them, the EPBC Act's Adelaide Park Lands Criterion F: 'Creative or technical achievement' would be a relevant matter in a self-referral analysis, because the Development Application in question features a proposal to destroy 16 'regular' trees and seven 'significant' trees at the proposed site of the proposed Aquatic Centre. In short, the construction phase would denude the Park 2 construction site of many large mature eucalypt and other species trees that form a major contribution to the landscape character of the site, and have done so for many years.

An extract from the EBBC Act National Heritage Values of the Adelaide Park Lands and City Layout, as well as other notes, appears in **Appendix 2**.

It also appears that critical matters relating to the National Heritage **Principles** were not addressed by the contractor in his summary advice to the state government, but should have been, and that these particulars ought to comprise one aspect of a self-referral.

A case for self-referral and scrutiny under the EPBC Act 1999 can be established by reference to these two matters:

1. The values
2. The principles.

## DISCUSSION

### 1. The **values**

Please refer to footnote 2 on page 2 for background as to why the South Australian government may have chosen to not self-refer. The DASH contractor to the state government suggested that the Development Application appears to be "consistent with the National Heritage **Values** of the Adelaide Park Lands and City Layout". However, as noted above, and in Appendix 2, this is contested, with regard to at least one of the values.

### 2. The **principles**

There could not be found evidence in the DA that the contractor made an assessment or even a summary recommendation in relation to the **Principles**, beyond simply listing them. It would appear as at the date of the public release of the draft Development Application (31 July 2023) that no self-referral had been made by the development applicant, the SA state government, in relation to these Principles.

Two Heritage Guiding Principles (of six) appear to be (ambiguously) supported in the DA for the proposed Adelaide Aquatic Centre in Park 2 of the Adelaide park lands zone. They are USE and ACCESSIBILITY:

## USE

**Principle: The general use of the Adelaide Aquatic Centre Development should remain consistent with the existing facility, namely for public health, sport and recreational use.**

Bridgland 18 August 2023 letter (email) comment: This is obvious. However, amendments to the SA Planning and Design Code relating to this park lands zone site (via the *Planning, Development and Infrastructure Act 2016 (SA)*) make clear that commercial activities that will be ancillary to the 'general use' would introduce one or more new general use functions at the site, which could be interpreted as a new land-use contemplation. They include allowance for an expansion of commercial activity not currently applicable to the existing aquatic centre (new shops and offices) at the proposed new centre. It is acknowledged, however, that commonwealth legislation is not bound by the provisions of state legislation, or documentation at local government level arising from that legislation.<sup>3</sup>

And...

## ACCESSIBILITY

**Principle: The development should be accessible, consistent with the existing facility.**

Bridgland 18 August 2023 letter (email) comment: This appears to be obvious. However, it is noted that the DA drawings illustrate permanent fencing to be erected surrounding the external (open space) adjacent to swimming or paddling pools, which means that an open-space area outside the proposed Aquatic Centre building will not be accessible to the general public unless they pay a fee to enter that land and agree to certain terms and conditions applicable to site management that do not and will not apply to other park lands sites within the Adelaide Park Lands Plan under the *Adelaide Park Lands Act 2005*. Moreover, when the proposed new Aquatic Centre is closed (nights or for any other reason from time to time) the result will be that no access to that land will be possible by the general public, contrasting existing (August 2023) park lands access at the existing Park 2 old aquatic centre site. Green open space surrounding the existing old aquatic centre is currently accessible at all times. In this way, the proposed development would not be "consistent with the existing facility" and in this way this Accessibility principle would be disregarded.

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<sup>3</sup> For example, a major revision of the *Community Land Management Plan* for the Adelaide park lands zone (which includes the site subject to the DA), which is (correctly) deemed necessary and critical by the Corporation of the City of Adelaide and state government to occur before the state Development Application can hope to be approved by the State Commission Assessment Panel to enable Planning Consent and later, Development Consent.

## **Substantial variance regarding four other National Heritage Guiding Principles**

Four of the remaining Heritage Guiding Principles are obviously disregarded (indeed overwhelmed) by particulars revealed in the DA. The principles appear below in CAPITALS. The text below (capitals and bold text) was included in the DASH summary comments provided to the state government. However, the ‘Rationale’ text did not appear for reasons the DASH author did not explain in his advice to the state government, and has instead been added by the author of this 18 August 2023 submission. This text is formatted in this sans serif font.

### SITING

**Principle: The new (proposed) building should be sited to maintain the clear delineation of the encircling park lands.**

Rationale: This principle is disregarded by:

- the extent of the 2.5ha site identified for a construction licence, which is to be in a south-west corner of Park 2 of the park lands and delineated by a grossly inadequate buffer of only 70m from the park’s perimeter on the south side; and
- the proposal itself, being of a total floor area of 7439m<sup>2</sup>, and a height (in sections) to comprise at least two levels. (Dimensions are contained in drawings in the DA and would be confirmed if self-referral occurs).<sup>4</sup> The image and particulars can be seen in Appendix 1 of this submission.

The proposed siting of the built form’s southern edge is to be only 70 metres from a city residential zone and as such disregards the principle that, where a built form is proposed, the visual primacy of encircling park lands should be the dominating feature. In this example, however, a domination of the bulk and scale of the proposed built form would instead be established, and a minimal encircling of park lands on the southern edge (enabled by the insufficient 70m buffer zone) would frustrate comprehension of what ought to be a clear delineation. This would contrast the existing delineation with respect to the old existing aquatic centre, whose footprint is sited a significant distance from the edges of that residential zone and as such has for several decades enabled easy comprehension of a clear delineation.

### SET OUT

**Principle: Visual delineation of the inner and outer edges of the park lands, and creates a contrast between the city layout and the park lands.**

Rationale: Delineation matters are partly explored in discussion about the SITING principle (above). Moreover, the height, bulk and scale of the proposed building would block northern views of the park lands, otherwise currently enabled by persons south of the proposed footprint. The height, bulk and scale of the proposed development would frustrate and inhibit current (August 2023) day-to-day comprehension of the contrast between the city layout and the park lands. The encircling park lands define the boundary of

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<sup>4</sup> A Traffic and Parking report to the state government and included in the DA documentation (5 July 2023) reveals: “... the total floor area of the proposed development will be almost double that of the existing centre. (The report published Table 3.1, noting: ‘Future facilities’, total floor area change: Existing 3802m<sup>2</sup>; Proposed 7439m<sup>2</sup>; [therefore] Floor area change: 3637m<sup>2</sup>.)

the development of the city. An aspect of the city layout boundary is evidenced by a North Adelaide high-density residential zone that is immediately adjacent to the site of the proposed Aquatic Centre building. Because of the minimal buffer zone between the proposed new building and the residential zone, comprehension of the boundary is compromised.

#### VISUAL IMPACT

**Landscape, open flat character of Park 2 should be maintained. Any new building should ‘nestle’ into the park lands setting.**

Rationale: It is obvious that this principle is profoundly disregarded (indeed overwhelmed) by the height, bulk and scale of the proposed development. The site is flat, but that landscape character cannot be maintained and respected if this proposed building is constructed there. No amount of semantic posturing can justify the fact that this building would never ‘nestle’ into the flat park lands setting. It would be grossly alien to the setting. Moreover, the destruction of existing mature trees apparently necessary to enable the development project would further contribute to what is obviously the proponent’s regrettable disregard for the visual impact on the setting.

#### PHYSICAL IMPACT

**Principle: Any development should seek to minimise the physical impacts on the park lands.**

Rationale: The proposed ‘Adelaide Aquatic Centre Development’ would comprise a large built form in height, bulk and scale, whose total floor area is predicted in a contractor’s submission to the state government (and included in the DA) to be almost doubled, compared to the existing centre. It will comprise multi-storey form, a major contrast to the existing single-storey aquatic centre form nearby. It is unreasonable and illogical to argue that this proposed new form could ‘minimise the physical impact’ on this site in the park lands. It is the view of this submission that it will, in fact, maximise the physical impact, and on an identified 2.5ha site of this park that has been green, open space since the creation of Colonel William Light’s *Plan for the City of Adelaide* of 1837.

My concern is that the state Planning and Design Code amendment that has led to this DA will give rise to a DA that, if approved, would result in development that would detract from the current listing of the Adelaide Park Lands on the National Heritage Register.

Future listing matters

Moreover, and critically, construction of the ‘Adelaide Aquatic Centre Development’ would inevitably impact on two highly relevant South Australian matters:

- an Adelaide park lands State Heritage listing assessment proposal (*place or area* not yet determined; currently subject of significant, active policy deliberation by the SA state government and associated Heritage Council); and

- a subsequent Adelaide park lands World Heritage listing assessment (currently subject of significant, active research and policy deliberation by the Corporation of the City of Adelaide).

It is my view that this proposed state government development project would have a significant impact on the potential for these matters to be concluded, and when concluded, on the future potential for listing of the Adelaide park lands in both State listing and World Heritage listing terms. Put simply, as more large scale built form is constructed on the Adelaide park lands, the greater the probability that listing bids would fail.

I acknowledge that, under the Act a *self-assessment* is required, and by lawfully eligible persons or agencies. I believe that there is high potential for a significant impact on the Adelaide park lands, supporting my case that a referral to the Minister responsible for the Act is necessary before the Development Application is assessed. I respectfully request that you as Minister responsible for the Act:

- correspond with the SA state government and the Corporation of the City of Adelaide with a request for self-referral from each, and subsequent delivery of that referral; and
- determine whether the action could be a Controlled Action, subject to the approval process under the EPBC Act.

Yours sincerely,

John Bridgland



*Footnote: Although I am not a member of the Adelaide Park Lands Association, I support its passion and its principles, and will be encouraging the Association to independently submit its own Third-Party Report as well as a 'call-in' request to you on a basis similar to that which is reflected in this letter.*

APPENDICES 1 and 2 follow...

## APPENDIX 1

Drawing: proposed ‘Adelaide Aquatic Centre Development’

Site: Park 2 of the Adelaide park lands

Development Application Number: 230203757, SA state government. Closing date for public access to DA file: 31 August 2023.

Drawings: Planning Report URPS, 22ADL-0818 31 July 2023 (specific drawings Warren and Mahoney, 5/7/23 “DA Submission”).

Development costs: (as stated in the DA) \$105m.

Assessment for Planning Consent, tagged for post-August 2023, by the South Australian State Commission Assessment Panel.

Further particulars: [https://www.dit.sa.gov.au/infrastructure/adelaide\\_aquatic\\_centre](https://www.dit.sa.gov.au/infrastructure/adelaide_aquatic_centre)





## APPENDIX 2

### **“Criterion F: Creative or technical achievement”**

As noted on page 3 of this submission, the Development Application features a proposal to destroy 16 ‘regular’ trees and seven ‘significant’ trees at the site proposed for the ‘Adelaide Aquatic Centre Development’. In short, the construction phase will see the denuding of the Park 2 site of many large mature eucalypts and other tree species that form a major contribution to its landscape character, and have done so for many years. This action would disregard Criterion F of this **value** of the Adelaide Park Lands and City Layout. It would destroy the Park 2 park land design that is clearly legible in the contemporary landscape, as currently viewed from the air or from the Adelaide Hills.

Value

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### **“Criterion F: Creative or technical achievement**

“Adelaide Park Lands and City Layout is regarded throughout Australia and the world as a masterwork of urban design. Elements of the Adelaide Plan that contribute to the design excellence are the use of the encircling park lands to define the boundary of the development of the city and to provide for health, public access, sport, recreation and public institutional domains, thereby meeting both economic and social requirements. Designing the city layout to respond to the topography was highly innovative for its time with the northern sections of the city located and angled to take advantage of the rising ground while retaining the Torrens River as a feature within the Park Lands. The judicious siting and wide streets maximised views and vistas through the city and Park Lands and from some locations to the Adelaide Hills. The plan features a hierarchy of road widths with a wide dimension to principal routes and terraces and alternating narrow and wide streets in the east-west direction. [Colonel William] Light's planning innovation is supported by substantial historical documentation.

“The formal organisation, delineation and dedication of the Park Lands space was a pioneering technical achievement of William Light in the Adelaide Plan.

“The overall landscape planting design implemented by several successive landscape designers/managers incorporated designed vistas, formal avenues, plantations, gardens, use of specimen trees, botanically important living plant collections particularly at the Adelaide Botanic Garden and the strategic placement of buildings and statuary in their settings.

“The creativity of the city and parkland design is clearly legible in the contemporary landscape viewed from the air or from the Adelaide Hills. The civic design of Adelaide was used as a model for founding many other towns in Australia and New Zealand and it is cited in later seminal Garden City planning texts including Garden Cities of Tomorrow by Ebenezer Howard.”