

The Bondi Surf Pavilion was refused entry into the **National Heritage List (NHL)**, which had been formally signed by the Minister for Environment and Heritage, Senator Ian Gordon Campbell on **September 14th 2005**.

Evidence now supports that the Minister for Environment and Heritage, Senator Ian Campbell has shown irresponsibility with the handling of endangered heritage listed structures.

What also needs to be answered is:

1. Why didn't Waverley Council do a follow-up with the Minister in relation to its initial recommendation of placing the Bondi Surf Pavilion onto the **NHL**, and if Waverley Council had, then why hasn't the refusal been tabled before Council for an immediate appeal against the error of judgment by the Minister.
2. As the final decision of the Minister had been placed onto the internet ten days after the application to list the Bondi Surf Pavilion was unsuccessful, why hadn't Waverley Council, if not informed of the result by the Minister responsible search the internet for the **STATEMENT OF REASONS FOR DECISION** to see whether or not further action would need to be undertaken to reverse the decision made by the Minister not to enter the Bondi Surf Pavilion onto the **NHL**.
3. The Bondi Surf Pavilion is currently listed on the **Register of the National Estate**; this was originally verified by **S.A. Smits** for the **Statement of Environmental Effects** as part of conditions with the **Olympic Co-ordination Authority** in **July 1999**. It is also mentioned by Waverley Council's own heritage consultants, **Clive Lucas, Stapleton & Associates** in a report that the Pavilion is listed on the **Register of the National Estate**, even the **Register of the National Estate** originally displayed on its website that the Pavilion had been registered into its database on **September 28th 1982**. On Waverley Council's current website it says "*Bondi Pavilion was **classified by the National Trust in 1977 as a structure of significant historic character one of the best known features of Sydney's beach improvement schemes***". (current information after Council updated the site on September 30th 2005)
4. Waverley Council placed onto their website recently under the heading – "**BONDI PAVILION NOMINATED FOR NEW NATIONAL HERITAGE LIST**" in the first paragraph it stated: "*Bondi Pavilion is one of 68 sites that has (sic) been nominated for a new National Heritage List*"

Unfortunately the Minister for the Environment and Heritage, Senator Ian Campbell formerly refused the submission. Waverley Council should make a formal appeal against the Minister's decision for not allowing the Pavilion to be entered into the **NHL**.

A media release dated **Tuesday, July 13th 2004** from the Mayor's Office, confirms the Bondi Surf Pavilions' entry into the **Register of the National Estate** shown in paragraph two of the following text, and that the Bondi Surf Pavilion had been earmarked as a contender for the **National Heritage List**.

The Mayor of Waverley, Peter Moscott, today welcomed the nomination of Bondi Pavilion for the new National Heritage List.

The Pavilion is one of 68 sites selected by the Federal Government from more than 13,000 on the Register of the National Estate.

The site will now be protected from works that will have, or are likely to have a significant impact on the site's national heritage value.

The Council put the Pavilion forward for nomination because of its iconic status as a Bondi Beach landmark and historical significance," said Cr Moscott.

The pavilion is synonymous with Australian beach culture, surfing and the surf life saving movement.

The Council made a strong case for the nomination of the Pavilion, which should be protected for future residents and visitors to enjoy," added Cr Moscott.

Bondi Pavilion was built in 1928 in the Inter-War-Mediterranean style, at a time when surf swimming became a mass leisure pursuit. It originally contained a gym, bathroom, dining rooms and an auditorium. The prize winning design was compiled by Robertson & Marks.

Today the Pavilion contains a community centre and art gallery, dressing rooms, theatres and shops."

5. Councillor Peter Moscott said ***"The Council made a strong case for the nomination of the Pavilion, which should be protected for future residents and visitors to enjoy."***

Waverley Council should be acting upon these words if the enjoyment of future generations is a priority?

Waverley Council has a duty of care to protect the Pavilion and should not be constantly shirking its responsibility to do so.

In **July 2000 S.A. Smits & Associates** were engaged to create a major document titled the **Statement of Environmental Effects for the Olympic Beach Volleyball Temporary Facilities Bondi Beach (July 1999)**.

This document was used as the blueprint for the usage of the **Bondi Surf Pavilion**, Bondi Beach and other venues commandeered for the period of the **Sydney Olympics 2000**.

It was in this document on **page viii**, second paragraph and under the title **Site Context** that the firm of **S.A. Smits & Associates** stated:

*Within Bondi Park is the **famous Bondi Pavilion** completed in 1930 and the Bondi Surf Bathers' Life saving Club established in 1906. Bondi Pavilion currently includes a 250 seat theatre, exhibition gallery, souvenir shop, amphitheatre, basketball court, pottery, arts and crafts workshops and studios, meeting rooms and music room, two small gymnasiums, police office, beach inspector's office, take-away food shops and restaurant, change rooms and toilets. The Pavilion hosts an extensive cultural program; Bondi Pavilion, Bondi Surf Bathers' Life Saving Club and Bondi Park have historical, aesthetic and social significance.*

Apart from the wrong year of the Pavilions' opening, 1930 instead of 1928 and the fact that Waverley Council relegated most of the original tenants soon after the end of the Olympics, **S.A. Smits and Associates** stated that the Bondi Pavilion had "**historical, aesthetic and social significance**".

Although Bondi Beach is internationally recognised throughout many countries, the Bondi Surf Pavilion has become a recognised part of that tourism culture and still is to this day, the reason why it is recognised as a place of "**historical, aesthetic and social significance**".

On **page 8** of the **Statement of Environmental Effects**, second paragraph it says, and I quote, "*Within Bondi Park (the park) is the famous Bondi Pavilion*" unquote. The word "**famous**" is a key word to a national or even an international recognition, not something that is merely connected to a local icon.

At the bottom of **pages 8 and 9** of the **Statement of Environmental Effects**, number **2.6** under the heading **Heritage Context** it says in full:

The Bondi Park and Pavilion Plan of Management was completed by Waverley Council and the then Department of Conservation and Land Management in 1995. Both the park and Pavilion are culturally significant within the Bondi area and within Sydney. Bondi Pavilion and Bondi Beach Public School are listed as heritage buildings in Schedule 5 Part A of Waverley Local Environment Plan 1996, while Bondi Park, Bondi Beach and the school and grounds are listed as heritage landscape items (Part C). Bondi Pavilion is also listed in the Australian Heritage Commission's Register of the National Estate and by the Royal Australian Institute of Architects on the List of Twentieth Century Buildings. Both the Pavilion and the park are classified in the Register of the National Trust of Australia (NSW).

Bondi Pavilion, Bondi Surf Bathers' Life Saving Club and Bondi Park has historical, aesthetic and social significance. The Statement of Cultural Significance documented in the Conservation Plan states that Bondi Pavilion has primary significance, which is of outstanding cultural significance:

The highlighted text indicates the recognition of importance the Bondi Surf Pavilion has, and is a main historic character with the community and an easily recognised building of significance within the State.

As it is registered with the *Royal Australian Institute of Architects on the List of Twentieth Century Buildings* it is further proof that the design itself is of great significance to the nation.

The **Statement of Environmental Effects** says further:

- *It is representative of a 1920s Mediterranean/Georgian Revival architectural style and town planning which in a beachfront setting on the scale of Bondi is now unique in Sydney. It was the largest and most resolved example of a beach pavilion in Sydney when it was constructed, and continues to be to this day.*
- *The conversion of use of the Pavilion to a community centre in 1974-1978 may be considered a revolutionary one for a local government to endorse at the time. Waverley Council has since actively sought to develop the pavilion as a cultural centre ...*

The unique aspects of the Bondi Surf Pavilion is many, the first paragraph above recognises state significance.

In the second last and last lines of the second paragraph above it mentions Waverley Council had “*since actively sought to develop the pavilion as a cultural centre*”, this project would have been more welcome than the development and privatisation currently occurring that is undermining the true heritage value of the Bondi Surf Pavilion and any attempt from Waverley Council to merely classify the façade can only refer to one thought “is the Bondi Pavilion soon to be fully privatised?”.

An example is the many historic buildings in and around NSW that have been gutted for commercial use and only the façade is intact, these are not historical buildings, just a skeleton of what was, the Bondi Pavilion is “what is”.

Also from the extract of the **Statement of Environmental Effects** is one main sentence that should be remembered as it is one of the main issues in question “*Bondi Pavilion is also listed in the Australian Heritage Commission’s Register of the National Estate*”. – It was listed in the **Australian Heritage Commission’s Register of the National Estate**, the laws that the RNE uses to protect the items registered in its database are very strict with no room for compromise, and as the Bondi Pavilion is still listed on the **Register of the National Estate** the wanton destruction at the northern end, regardless of the reasons behind the approved development applications are in breach of the rules that are meant to protect it.

Where fairness lies, Waverley Council should take most of the blame as the final decision for any redevelopment at the heritage listed Bondi Pavilion rests at the foot of Waverley Council.

On **page 46** of the **Statement of Environmental Effects** number **5.3** under the heading **Heritage Impact** it displays the rules the **Olympic Co-ordination Authority** had to comply with in order to secure their proposal to occupy the Pavilion.

These rules were written by **Clive Lucas, Stapleton & Associates**, and highly recommended Heritage Consultants to Waverley Council.

Some of the more stringent rules were strictly applied, such as:

The report addresses temporary structures in the courtyard of the Pavilion, advising that *any single storey and removable structures would be consistent with the conservation guidelines*.

With respect to the location of the proposed stadium, the report states that *adaptation of the original fabric is consistent with the conservation guidelines*.

Similarly the report examines all the proposed alterations to and creation of openings that form part of the proposal. It concludes that all are acceptable provided they are *reinstated once the temporary use is complete*.

The rules applied to the former **Olympic Co-ordination Authority** made it clear that the Pavilion must not be damaged or altered in such a way that it would detract from its **historical, aesthetic and social significance**.

On **page 62** of the **Statement of Environmental Effects**, number **6.2.6.**, titled **Protection of Significant Cultural Environments** we should emphasise and take serious note to this sentence “*In particular, Bondi Pavilion is a significant cultural and historic building*”.

When the former owner **Mr. De Luca** proprietor of the **Gelato Bar** (now known as **Bar Gelato** under new management) applied to open his business at the southern end of the Pavilion, he was issued with a very strict guideline to operating a business in the historic **Bondi Surf Pavilion**, a guideline significant to a building of national heritage status.

Mr De Luca’s proposals were:

1. Removal or partial removal of a dividing wall
2. Removal of infill from archway A and installation of new servery counter
3. Breaking through of south and east walls at the front and installation of timber window/door assemblies (supplied by Council) at locations B & C.
4. Preservation of existing internal finishes, but re-sheeting recent floor framing is solid strip flooring, polished finish
5. Installation of servery counters and associated electrical and hydraulic
6. Installation of furniture, repainting, etc.
7. Infilling of sunken area in front of the Pavilion location D to form a raised terrace, including breaking through existing balustrade at front and side to east end of Pavilion
8. Creating area for tables in front of Pavilion

The guideline assessment conducted so as to implement specific rules to safeguard the originality of the building stated that:

Each of the above will be discussed in terms of its heritage impact on the property by reference to the conservation plan (CMP) entitled Bondi Pavilion Surf Club and Surrounds, Conservation Analysis and Conservation Guidelines, May 1997.

Wall Removal

The conservation plan (CMP) ranks these interiors highly (code 1). This allows “discrete openings (e.g. window/doorway) as long as original space is maintained and public access is assured”. Consequently, a door is appropriate, but not the removal of a whole wall.

Counter at Location A

This archway originally allowed bathers to circulate from the pavilion to the beachside groynes. Removal of the infill is considered appropriate in the CMP as it was introduced after 1945 (Policy 8.2.2.3 and 8.2.2.4). The proposed new infill counter and roller shutter etc. should be of a sympathetic design.

Two new window/door assemblies at locations B & C

This proposal reflects both the exterior and the interior of the buildings. The salient policy for exteriors is 8.2.6.2 which says “allow minor alterations, for instance alterations to windows and doorways and installation of new fittings”.

The interior policy is 8.2.6.3 “allow discrete openings (e.g. window/doorway) as long as original space is maintained and public access is assured.”

Another salient policy is 8.2.2.5 “conserve the fabric ... except where alteration or removal is essential for continuing historical use connected with beachside amenities and community services”.

Considering these policies it is our opinion that these proposed openings are just acceptable in terms of the conservation management plan.

Internal Finishes

Although the proposal is yet not developed, there appear to be no changes proposed to the ceiling and wall finishes. The existing timber floor is constructed over the original floor and the proposal is merely to re-sheet this floor and is therefore consistent with the CMP.

Installation of Counters, etc.

The proposal to install equipment and services falls under policy 8.2.6.7 of the CMP which allows the installation of new equipment and services on conditions that are capable of being met. Whether these conditions are met will depend on the further documentation and implementation of the proposal.

Redecoration, New Furniture

The salient policy is again 8.2.6.3 which is mute on this point; however analysis of the CMP as a whole suggests these minor reversible changes are acceptable.

The other salient clause is 8.2.4.4 New Uses, which allows “the introduction of compatible uses (see 8.1 for definition) provided the majority of the place is used as for 8.2.4.1 and 8.2.4.2”. The proposal complies with this clause.

Formation of Terrace in sunken area Location D

*This area is ranked code 1 in Fig 8.1 of the CMP as an interior and ranked code 1 in the same figure as an exterior. Neither clause 8.6.2 or 8.6.3 could be read to allow the fulfilling of this space and alteration of the balustrades and the justification for it would have to be clause 8.2.2.5, that the work is “**essential** for the continuing use connected with beachside amenities and community services”. As this has occurred at the eastern end of the pavilion it should be considered **just** allowable.*

Exterior Tables at Location F

*Provided this area uses only removable tables, barriers, chairs and umbrellas, it qualifies for the clause 8.2.7.6 which allows outdoor seating etc. etc. provided it provides “minimal visual intrusion”. **No fixed awnings or enclosures to the exterior of the building of any kind should be allowed.***

Conclusion

Considering the above analysis, it is our view that the proposal is in principle acceptable in terms of heritage impact provided the following:

- 1. the work should be designed and directed by personnel skilled in conservation architecture and engineering (Policy 8.2.8.4) and constructed by builders skilled in conditional building (Policy 8.2.8.5)*
- 2. Council, **as owner** of the property should insist on approving the design **and** the working drawings/specifications including those for the electric and hydraulic services and the proposed furnishings.*

We would be pleased to comment further on the proposal when the design is developed to some further degree of detail.

Yours faithfully,

*Ian Stapleton
Clive Lucas, Stapleton & Partners Pty. Ltd
Architects and Heritage Consultants*

The above conditions should have applied to the entire Pavilion, if De Luca was positioned at the northern end he would still have been issued with the same document outlining the conditions concerning the historic building’s infrastructure.

Although The Bondi Surf Pavilion is currently not listed with the **NSW State Heritage Register** the following information shows that information from the **Waverley LEP 1996** and a **Waverley Heritage Study** was submitted that helped with the historical information listed on the **NSW Heritage Office** website.

Listings

Heritage Listing	Listing Title	Listing Number	Gazette Date	Gazette Number	Gazette Page
<i>Local Environmental Plan</i>			06 Dec 96		

Study Details

Title	Year	Number	Author	Inspected by	Guidelines Used
Waverley Heritage Study	1990	3/1 - 0240	Perumal Murphy Pty Limited		No

The **Statement of Significance** from the **NSW Heritage Office** explains briefly why the **Bondi Surf Pavilion** is an historic building of **heritage and cultural significance**.

*“Outstanding early twentieth century building. Its construction marked the establishment of the Australian beach and leisure culture. Prize winning example of the work of Robertson and Marks, architects. A fine example of the Inter-War Mediterranean style. Introduced to Australia by Leslie Wilkinson. **Famous landmark**. Attractively sited in the landscape, serving to undertake its large scale. State significance.”*

There are two important words that stand out in this paragraph “**Famous landmark**” and “**State significance**”.

The **NSW Heritage Office** stated that the **Assessment of Significance** with the **Bondi Surf Pavilion** was:

SHR Criteria a)

[Historical Significance] This item is of historical and cultural significance.

SHR Criteria c)

[Aesthetic Significance] This item is of social significance.

SHR Criteria f)

[Rarity] This item is of rarity value significance.

Three small extracts that verify the **Bondi Surf Pavilion**’s importance to NSW and the nation as an **irreplaceable heritage structure**, these are: “**that has historical and cultural significance**”, “**social significance**” and most importantly “**rarity value significance**”

Regardless of the facts stated and that the Bondi Pavilion is already listed with the **Register of the National Estate**, the Minister for the Environment and Heritage refused to include the Bondi Pavilion on the **NHL** shortlist, even though it had the credentials to be listed.

His decision is stated in full:

**STATEMENT OF REASONS FOR DECISION UNDER SECTION 324J OF
THE ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION
ACT 1999**

Bondi Surf Pavilion

I, Ian Gordon Campbell, Minister for the Environment and Heritage, provide the following statement of reasons for my decision under section 324J of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), not to include the Bondi Surf Pavilion in the National Heritage List.

LEGISLATION

1. Subsection 324C(2) of the EPBC Act provides that:
 - (2) A place may be included in the National Heritage List only if the Minister is satisfied that the place has one or more National Heritage values. A place that is included in the National Heritage List is called a ***National Heritage place***.
2. Section 324D provides:
 - (1) A place has a ***National Heritage value*** if and only if the place meets one of the criteria (the ***National Heritage criteria***) prescribed by the regulations for the purposes of this section. The ***National Heritage value*** of the place is the place's heritage value that causes the place to meet the criterion.
 - (2) The ***National Heritage values*** of a National Heritage place are the National Heritage values of the place included in the National Heritage List for the place.
 - (3) The regulations must prescribe criteria for the following:
 - (a) natural heritage values of places;
 - (b) indigenous heritage values of places;
 - (c) historic heritage values of places.The regulations may prescribe criteria for other heritage values of places.
 - (4) To avoid doubt, a criterion prescribed by the regulations may relate to one or more of the following:
 - (a) natural heritage values of places;
 - (b) indigenous heritage values of places;
 - (c) historic heritage values of places;

(d) other heritage values of places.

3. The Environment Protection and Biodiversity Regulations 2000 relevantly state as follows:

(1) For section 324D of the Act, sub regulation (2) prescribes the National Heritage criteria for the following:

- (a) natural heritage values of places;
- (b) indigenous heritage values of places;
- (c) historic heritage values of places.

(2) The National Heritage criteria for a place are any or all of the following:

(a) the place has outstanding heritage value to the nation because of the place's importance in the course, or pattern, of Australia's natural or cultural history;

(b) the place has outstanding heritage value to the nation because of the place's possession of uncommon, rare or endangered aspects of Australia's natural or cultural history;

(c) the place has outstanding heritage value to the nation because of the place's potential to yield information that will contribute to an understanding of Australia's natural or cultural history;

(d) the place has outstanding heritage value to the nation because of the place's importance in demonstrating the principal characteristics of:

(i) a class of Australia's natural or cultural places; or

(ii) a class of Australia's natural or cultural environments;

(e) the place has outstanding heritage value to the nation because of the place's importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;

(f) the place has outstanding heritage value to the nation because of the place's importance in demonstrating a high degree of creative or technical achievement at a particular period;

(g) the place has outstanding heritage value to the nation because of the place's strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;

(h) the place has outstanding heritage value to the nation because of the place's special association with the life or works of a person, or group of persons, of importance in Australia's natural or cultural history;

(i) the place has outstanding heritage value to the nation because of the place's importance as part of indigenous tradition.

(3) For sub regulation (2), the *cultural* aspect of a criterion means the indigenous cultural aspect, the non-indigenous cultural aspect, or both.

4. Section 324E of the EPBC Act relevantly provides that:
- (1) A person may, in accordance with the regulations (if any), nominate to the Minister a place for inclusion in the National Heritage List.
 - (2) The Minister must give the Chair of the Australian Heritage Council a written request for the Council to assess under section 324G whether the place meets any of the National Heritage criteria, unless the Minister rejects the nomination under this section.
 - (3) If the Minister must give the Chair a request, he or she must give the request within 10 business days after receiving the nomination, unless:
 - (a) the place is wholly or partly outside the Australian jurisdiction; or
 - (b) the Minister includes the place in the National Heritage List under section 324F (emergency listing) within that period.
 - (3A) Within 10 business days after giving the request to the Chair of the Australian Heritage Council, the Minister must publish on the Internet a brief description of the nomination.

[Subsections 324E (4) to (9) omitted.]

5. Subsection 324G of the EPBC Act relevantly provides that:
- (1) The Minister may give the Chair of the Australian Heritage Council a written request for the Council to assess whether a place meets any of the National Heritage criteria, whether or not the place is the subject of a nomination.
 - (2) The Australian Heritage Council must give the Minister a written assessment whether a place meets any of the National Heritage criteria:
 - (a) within 12 months after the Minister gives the Chair of the Council (under this section or section 324E) the request for the assessment; or
 - (b) if the place is included in the National Heritage List under section 324F (emergency listing)—within 40 business days after the Minister gives the Chair of the Council (under that section) the request for the assessment.

[Subsections 324G (2A) to (3) omitted.]

- (3A) Before giving the Minister an assessment under this section whether a place meets any of the National Heritage criteria, the Australian Heritage Council:
 - (a) must publish, in accordance with the regulations (if any), a notice:
 - (i) stating that the Council is assessing whether the place meets any of the National Heritage criteria; and
 - (ii) inviting comments in writing, within a specified period that is reasonable having regard to the time by which the Council must give the assessment to the Minister, on whether the place meets

any of the National Heritage criteria and whether the place should be included in the National Heritage List; and

- (b) must consider, subject to subsection (5), the comments (if any) the Council receives within the period.

The Council must give the Minister a copy of the comments with the assessment.

[Subsection 324G (4) omitted.]

- (5) In assessing whether a place meets any of the National Heritage criteria, the Australian Heritage Council must not consider any matter that does not relate to the question whether the place meets the National Heritage criteria.

[Subsection 324G (6) omitted.]

6. Section 324J of the EPBC Act relevantly provides that:

- (1) After receiving from the Australian Heritage Council an assessment under section 324G whether a place, except one that is or includes a place included in the National Heritage List under section 324F (whether before, on or after receipt of the assessment), meets any of the National Heritage criteria, the Minister must:
 - (a) by instrument published in the *Gazette*, include in the National Heritage List the place and its National Heritage values specified in the instrument; or
 - (b) decide not to include the place in the National Heritage List.
- (2) The Minister must comply with subsection (1):
 - (a) within 20 business days after the day on which the Minister receives the assessment; or
 - (b) if section 324H applies in relation to the place—within 60 business days after the end of the period mentioned in paragraph 324H(3)(a) for the place.

However, this subsection does not apply if the place is wholly or partly outside the Australian jurisdiction.

[Subsections 324J (2A) to (3) omitted.]

- (4) If the Minister decides not to include in the National Heritage List a place (whether the decision is made after publishing a notice under section 324H or not), the Minister must:
 - (a) give written reasons for the decision to anyone who asks for them; and
 - (b) if the place was nominated by a person—advise the person within 10 business days of the decision and give the person written reasons for the decision; and
 - (c) within 10 business days publish the decision and the reasons for the decision on the Internet.

[Subsections 324J (5) to (7) omitted.]

- (8) Before acting under subsection (1) or (5), the Minister must consider:
- (a) the Australian Heritage Council's assessment whether the place meets any of the National Heritage criteria; and
 - (b) the comments (if any), a copy of which was given to the Minister by the Council under section 324G with the assessment; and
 - (c) the comments (if any) received in accordance with the notice (if any) published under section 324H in relation to the place; and
 - (d) the assessment (if any) requested under subsection 324H(4) of the merits of the comments received in accordance with the notice published under section 324H in relation to the place.

[Subsection 324J (9) omitted.]

BACKGROUND

7. The Bondi Surf Pavilion was nominated, on 17 June 2004, for inclusion in the National Heritage List (NHL). In accordance with subsection 324E(2) of the EPBC Act, on 15 July 2004 my delegate requested the Australian Heritage Council ("Council") to assess whether the place meets any of the National Heritage criteria.
8. The Council duly completed its assessment in accordance with statutory requirements and provided it to me by letter dated 28 June 2005, in accordance with subsection 324G(2) of the EPBC Act. In accordance with subsection 324G (3A), the Council also noted that the Waverley Council provided a copy of the Conservation Analysis and Conservation Guidelines following the Council's invitation to comment in accordance with subsection 324G (3A). This was the only information received in response to the invitation to comment. I noted that, as Council did not determine that the place might have one or more National Heritage values it was not necessary to consult with owners, occupiers or indigenous persons in accordance with subsection 324G(4).
9. Following consideration of the Council's assessment, I decided, in accordance with section 324J of the Act, not to include the Bondi Surf Pavilion in the NHL.

EVIDENCE AND MATERIAL BEFORE ME

10. The evidence and material on which I based my decision not to include the Bondi Surf Pavilion in the NHL is listed below:
 - The nomination and attachments;
 - *The information provided by Waverley Council;*
 - The report prepared for the Australian Heritage Council by staff of the Department of the Environment and Heritage on the place;
 - The assessment report of the Australian Heritage Council;

FINDINGS ON MATERIAL QUESTIONS OF FACT

11. I began by considering all the evidence provided to me about the heritage values in the nominated place. In order for me to form a belief that a place has or may have one or more National Heritage values, I needed to consider whether that place met one or more of the National Heritage criteria prescribed by the regulations. In doing so, I noted that each criterion indicates that the place must have “outstanding heritage value to the nation”. This reflects the intention of the Act as explained in the Explanatory Memorandum for the Environment and Heritage Legislation Amendment Bill (No. 1) 2002 to distinguish between places that would properly be regarded as places of State or local significance compared with those that are of national significance. The Explanatory Memorandum goes on to quote the *Consultation Paper on the Reform of Commonwealth Environment Legislation* issued by the then Minister in 1998, which stated the need for “the preparation of a national list of heritage places of exceptional value and importance to the nation as a whole”.
12. In contrast, the registration criterion for the Register of the National Estate required in the *Australian Heritage Council Act 2003* is that the place has a “significant heritage value,” a much lower threshold. Accordingly, the Register of the National Estate includes more than 13,000 places of national, State and local significance.
13. I concluded from this that the intent of the legislation was that a high threshold of heritage significance was required for a place to meet a National Heritage criterion and that the requirement for the place to have outstanding heritage value to the nation implied a threshold higher than that which might be sufficient for a place to be of State, Territory or local significance.
14. Whilst the Council has advised me that the site has heritage values at the local level and may have heritage values at the State level, I was not satisfied that the Bondi Surf Pavilion was of National Heritage value, because of its assessment against the National Heritage criteria as follows:
 - *Criterion (a): The place has outstanding heritage value to the nation because of the place’s importance in the course, or pattern, of Australia’s natural or cultural history*
15. The Council found that the Bondi Surf Pavilion was built in the late 1920s, in a period when beach recreation was becoming increasingly popular. Its construction signalled a departure from earlier decades of legislative restrictions on sea bathing. The Surf Pavilion provided bathing facilities such as changing rooms and swimwear hire, and also contained entertainment venues such as a ballroom. It was the largest surf pavilion to be built in Sydney. The Council found that the Bondi Surf Pavilion is part of the Bondi Beach precinct, and it is the beach as a whole that has played such a big part in the development of Australia’s beach culture. There is a lack of evidence to support a finding that the Bondi Surf Pavilion is of national significance. I

concluded that the heritage value of the Bondi Surf Pavilion is of local or regional significance.

- *Criterion (d): The place has outstanding heritage value to the nation because of the place's importance in demonstrating the principal characteristics of: a class of Australia's natural or cultural places, or a class of Australia's natural or cultural environments*
16. The Council found that the Bondi Surf Pavilion has certain characteristics of a beach pavilion and it also reflects aspects of Inter-War Mediterranean and Georgian Revival styles. However, many of the characteristics of the place's early period of use as a key surf pavilion, such as the dressing sheds, locker rooms, bathing suit hire and laundry have now gone, and its change of use from a surf pavilion to a community centre and community arts centre has further diminished the building's ability to demonstrate its qualities as a beach pavilion. I concluded that the heritage value is of local or regional significance.
- *Criterion (f): The place has outstanding heritage value to the nation because of the place's importance in demonstrating a high degree of creative or technical achievement at a particular period.*
17. The Council found that the place has certain stylistic features of a surf pavilion and reflects aspects of Inter-War Mediterranean and Georgian Revival styles. However many of the characteristics of the place's early period of use as a key surf pavilion have now gone. The change of use toward a community centre and community arts centre further mitigates against the place being of national value. I concluded that the heritage value is of local or regional significance.
- *Criterion (g): The place has outstanding heritage value to the nation because of the place's strong or special association with a particular community or cultural group for social, cultural or spiritual reasons*
18. The Council found that the Bondi Surf Pavilion is likely to have social meaning for residents of Sydney, but that the place is not outstanding in this regard. I concluded that the heritage value is of local or regional significance.
19. The Council concluded that the criteria (b), (c), (e), (h) and (i) were not relevant and I agreed with the findings of the Council.
20. The Council found that there was not evidence to suggest that the Bondi Surf Pavilion satisfied criteria (a), (d), (f), and (g). I agreed with the findings of the Council.

Reasons for decision

21. In the light of my findings above, I was not satisfied that the Bondi Surf Pavilion has National Heritage values and consequently I decided, pursuant to section 324J of the EPBC Act, not to include the place in the National Heritage List.

[signed]

MINISTER FOR THE ENVIRONMENT AND HERITAGE

14 September 2005

The Minister erred in his judgement with a decision that is contradictory to the Bondi Pavilions' historical record to the state and the nation, and that his decision is contrary to the public's interest.

Referring back to excerpts of his decision *"In contrast, the registration criterion for the Register of the National Estate required in the Australian Heritage Council Act 2003 is that the place has a "significant heritage value," a much lower threshold. Accordingly, the Register of the National Estate includes more than 13,000 places of national, State and local significance.*

I concluded from this that the intent of the legislation was that a high threshold of heritage significance was required for a place to meet a National Heritage criterion and that the requirement for the place to have outstanding heritage value to the nation implied a threshold higher than that which might be sufficient for a place to be of State, Territory or local significance.

We will have to refer to the word **"famous"**, **S.A. Smits & Associates** did not use the word **"local"** or **"State"** but used **"famous"** as a universal word, this can be interpreted as a reference to the Bondi Pavilion as being of **"international importance"**, though Bondi Beach was the main purpose of the **Olympic Beach Volleyball**, the Bondi Pavilion was singled out as **"famous"** when they said **"Within Bondi Park (the park) is the famous Bondi Pavilion"**.

The NSW Heritage Office noted that it is an **"Outstanding early twentieth century building. Its construction marked the establishment of the Australian beach and leisure culture. Prize winning example of the work of Robertson and Marks, architects. A fine example of the Inter-War Mediterranean style. Introduced to Australia by Leslie Wilkinson. Famous landmark. Attractively sited in the landscape, serving to undertake its large scale. State significance."**

On the first page of the Minister's decision not to include the Bondi Surf Pavilion into the **National Heritage List** under **"LEGISLATION"** number **2 "Section 324D provides"** (for a place to have **National Heritage Value**) sub-clause **(3)** and **(4)** it says that Bondi Pavilion should fall into these categories:

The regulations must prescribe criteria for the following:

- (a) natural heritage values of places;*
- (b) indigenous heritage values of places;*
- (c) historic heritage values of places.*

The regulations may prescribe criteria for other heritage values of places.

Recognition and entry into the **Register of the National Estate** and the **Register of the National Trust of Australia (NSW)** confirms to the contrary.

Another extract from the Minister's decision not to include the Bondi Pavilion in the NHL and the reason why the Minister's decision should be appealed.

- (4) *To avoid doubt, a criterion prescribed by the regulations may relate to one or more of the following:*
- (a) *natural heritage values of places;*
 - (b) *indigenous heritage values of places;*
 - (c) *historic heritage values of places;*
 - (d) *other heritage values of places.*

What the Minister did not put into account:

Natural heritage values of places; It is of historical, cultural and social significance and is of rarity value significance. It is documented in the Conservation Plan that the Bondi Pavilion has primary significance, which is of outstanding cultural significance.

The Bondi Surf Pavilion is a famous national landmark that is also listed with the **Royal Australian Institute of Architects on the List of Twentieth Century Buildings** and is listed on the **Register of the National Estate** and the **Register of the National Trust of Australia (NSW)**.

Indigenous heritage values of places; Land belongs to the traditional owners, the Darug people.

Other historic heritage values of places; The **Bondi Surf Pavilion** is of “**outstanding heritage value to the nation**” and not merely regarded as a place of State or local significance, and in the Pavilions' full status as a heritage building of national significance, it does fulfil the criterion of being “**of exceptional value and importance to the nation as a whole**”. This response also applies to the paragraph below from the Minister's decision for exclusion.

I began by considering all the evidence provided to me about the heritage values in the nominated place. In order for me to form a belief that a place has or may have one or more National Heritage values, I needed to consider whether that place met one or more of the National Heritage criteria prescribed by the regulations. In doing so, I noted that each criterion indicates that the place must have “outstanding heritage value to the nation”. This reflects the intention of the Act as explained in the Explanatory Memorandum for the Environment and Heritage Legislation Amendment Bill (No. 1) 2002 to distinguish between places that would properly be regarded as places of State or local significance compared with those that are of national significance. The Explanatory Memorandum goes on to quote the Consultation Paper on the Reform of Commonwealth Environment Legislation issued by the then Minister in 1998, which stated the need for “the preparation of a national list of heritage places of exceptional value and importance to the nation as a whole”.

In contrast, the registration criterion for the Register of the National Estate required in the Australian Heritage Council Act 2003 is that the place has a “significant heritage value,” a much lower threshold. Accordingly, the Register of the National Estate includes more than 13,000 places of national, State and local significance.

The fact that the Pavilion was part of the selection to be used by the **OCA** during the **Sydney 2000 Olympics** and the fact that it is also used by multicultural acts from all over the world, and that it is visited by international visitors gives it a very high national value threshold indeed.

The Bondi Surf Pavilion, like its famous counterpart, Bondi Beach is also displayed on tourist postcards that are sent all over the world, and it is a common sight photographing the Bondi Pavilion, as well as photographs of them standing in front of it.

The Minister said:

I concluded from this that the intent of the legislation was that a high threshold of heritage significance was required for a place to meet a National Heritage criterion and that the requirement for the place to have outstanding heritage value to the nation implied a threshold higher than that which might be sufficient for a place to be of State, Territory or local significance.

Again, the Minister erred in his judgment; the information supplied is verification that the Bondi Surf Pavilion should be entered into the **NHL**.

The Minister said:

Whilst the Council has advised me that the site has heritage values at the local level and may have heritage values at the State level, I was not satisfied that the Bondi Surf Pavilion was of National Heritage value, because of its assessment against the National Heritage criteria as follows:

Although the Minister admits that the Bondi Surf Pavilion has heritage values at the local level and may have heritage values at the State level via advise from the Heritage Council, it must be understood that on **September 28th 1982** the **Bondi Surf Pavilion** passed all the criterion expected of a heritage building to be admitted into the **Register of the National Estate**, and with its contribution of service and a hub for entertainment to local, state, national and international visitors since **1928** (serving the public for 77 years) deserves its place within the register of the **NHL**.



The Honourable Senator Ian Gordon Campbell was elected to the Senate representing Western Australia in 1993 and 1998 and is a member of the Liberal Party of Australia.

Senator the Hon. Ian Campbell was **appointed Minister for the Environment and Heritage on 18th July 2004**.

Qualifications before entering politics were: Commercial and industrial property consultant and Company Director, (he does not list whether he has qualifications as a heritage consultant or has had former heritage experience).

An extract from the Australian Greens website shows the extent of inexperience, contradictions and errors of judgment concerning places of high national value made

by Senator Ian Campbell. His decision not to include Bradman's birthplace has since been successfully appealed and placed onto the register.

Minister Campbell's media release contradicts official statement on Bradman birthplace listing

Senator Milne, 16th August 2005

The media release by Environment and Heritage Minister Ian Campbell about advice from the Australian Heritage Council contradicts his official determination about the request to list Sir Don Bradman's birthplace on the National Heritage list.

"The minister's release issued late today states that the advice from the council was dated 5 October 2004, that he received it on 8 October and he made a determination on 16 October," Australian Greens Senator for Tasmania Christine Milne said.

"But the minister's statement of reasons for his decision, listed on the Department of the Environment and Heritage website, states that the letter of advice was dated 5 September 2004."

The relevant section appears below.

STATEMENT OF REASONS FOR DECISION UNDER SECTION 324J OF THE ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

BRADMAN'S BIRTHPLACE I, Ian Gordon Campbell, Minister for the Environment and Heritage, provide the following statement of reasons for my decision of 16 October 2004, under section 324J of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), not to include Bradman's Birthplace, Cootamundra, New South Wales (NSW) in the National Heritage List.

BACKGROUND Bradman's Birthplace was nominated, on 19 April 2004, for inclusion in the National Heritage List (NHL). In accordance with subsection 324E (2) of the EPBC Act, on 5 May 2004 I requested the Australian Heritage Council to assess the place.

The Council duly completed its assessment in accordance with statutory requirements and provided it to me by letter dated 5 September 2004, in accordance with subsection 324G (2) of the EPBC Act.

Following consideration of the Council's assessment and public comments, I decided, in accordance with section 324J of the Act, not to include Bradman's Birthplace in the NHL.

And the document that caused the uproar:

**STATEMENT OF REASONS FOR DECISION UNDER SECTION 324J OF
THE ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION
ACT 1999**

BRADMAN'S BIRTHPLACE

I, Ian Gordon Campbell, Minister for the Environment and Heritage, provide the following statement of reasons for my decision of 16 October 2004, under section 324J of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), not to include Bradman's Birthplace, Cootamundra, New South Wales (NSW) in the National Heritage List.

BACKGROUND

Bradman's Birthplace was nominated, on 19 April 2004, for inclusion in the National Heritage List (NHL). In accordance with subsection 324E (2) of the EPBC Act, on 5 May 2004 I requested the Australian Heritage Council to assess the place.

The Council duly completed its assessment in accordance with statutory requirements and provided it to me by letter dated 5 October 2004*, in accordance with subsection 324G (2) of the EPBC Act. [*Please note that a typographical error in the date has been corrected.]

Following consideration of the Council's assessment and public comments, I decided, in accordance with section 324J of the Act, not to include Bradman's Birthplace in the NHL.

EVIDENCE AND MATERIAL BEFORE ME

The evidence and material on which I based my decision not to include Bradman's Birthplace in the NHL is listed below:

The nomination and attachments;

The report prepared for the Australian Heritage Council by staff of the Department of the Environment and Heritage on the place;

The assessment report of the Australian Heritage Council;

Public submissions provided under subsection 324G (3A) of the EPBC Act;

Aplin, Graeme, *et al*, eds, *Australians: A Historical Dictionary*, 1987;

Bradman, Donald, *Farewell to Cricket*, 1950;

Davison, Graeme, *et al*, eds, *The Oxford Companion to Australian History*, 1998;

Page, M., *Bradman: The Illustrated Biography*, 1983;

Rosenwater, Irving, *Sir Donald Bradman: A Biography*, 1978;

Williams, Charles, *Bradman: An Australian Hero*, 1996;

FINDINGS ON MATERIAL QUESTIONS OF FACT

I was not satisfied that Bradman's Birthplace was of National Heritage value, because of its assessment against the National Heritage criteria as follows:

- Criterion A: The place has outstanding heritage value to the nation because of the place's importance in the course, or pattern, of Australia's natural or cultural history.

While the event of the birth of Sir Donald Bradman is of significance for Cootamundra, it cannot be classified as being of outstanding significance to the nation. It was Bradman's cricketing career which is of high significance to the nation.

- Criterion B: The place has outstanding heritage value to the nation because of the place's possession of uncommon, rare or endangered aspects of Australia's natural or cultural history.

There are insufficient grounds for regarding the place as outstanding to the nation under this criterion.

- Criterion D: The place has outstanding heritage value to the nation because of the place's importance in demonstrating the principal characteristics of: a class of Australia's natural or cultural places, or a class of Australia's natural or cultural environments.

There are insufficient grounds for regarding the place as outstanding to the nation under this criterion.

- Criterion E: The place has outstanding heritage value to the nation because of the place's importance in exhibiting particular aesthetic characteristics valued by a community or cultural group.

There are insufficient grounds for regarding the place as outstanding to the nation under this criterion.

- Criterion G: The place has outstanding heritage value to the nation because of the place's strong or special association with a particular community or cultural group for social, cultural or spiritual reasons.

The place evidently has high social significance for the Cootamundra community and for sections of the wider community (as evidenced by visitation to the museum, and the results of public consultation), but there are insufficient grounds for regarding the place as being outstanding to the nation under this criterion.

- Criterion H: The place has outstanding heritage value to the nation because of the place's special association with the life or works of a person, or group of persons, of importance in Australia's natural or cultural history.

That Sir Donald Bradman was born at this place is not sufficient to satisfy the criterion for outstanding value to the nation. It is the man's birth, and that alone, which is associated with the place. The Bradman family was not living in Cootamundra at the time of the birth, and it moved to Bowral three years after the birth. In terms of the man's life and more essentially his contribution to Australian cricket, this place plays only a slight part. All people who have made a major contribution to Australian life were born somewhere, and this simple fact does not alone make those birthplaces worthy of entry on the NHL.

REASONS FOR DECISION

In the light of my findings above, I do not believe that Bradman's Birthplace has National Heritage values and consequently I decided, pursuant to subsection 324J(4) of the EPBC Act, not to include the place in the National Heritage List.

(Signed by the Minister)

.....
MINISTER FOR THE ENVIRONMENT AND HERITAGE

16/10/2004

Another example of inexperience and erroneous judgment occurred recently when the Minister for Environment and Heritage signed a death warrant for Victoria's Alpine National Park by giving permission for cattle to graze within the National Park:

FED GOVT BACKS GRAZING DESPITE LISTING

Friday Oct 14 22:28 AEST

Cattle grazing could still be allowed in Victoria's Alpine National Park under a plan by the federal government, despite the lifting of an emergency heritage listing on the park.

Environment Minister Ian Campbell, who made the emergency listing in June in an attempt to protect summer mustering, said the listing of the national park would now be considered alongside the Alps in NSW and the ACT.

He said the Australian Heritage Council supported his view that a broad listing of the Australian Alps National Parks was preferable to a listing of the individual parks.

The emergency listing followed moves by the Victorian government to end cattle grazing in the park in order to protect the environment.

"I have therefore decided to request the Australian Heritage Council to provide me with advice on the national heritage values of the Australian Alps in their entirety," he said.

"As a consequence, I have decided not to confirm the emergency listing of the park made on 9 June this year, and to remove it from the National Heritage List."

Senator Campbell said the decision was in line with the \$15 million, three-year plan he had offered to the Victorian government this week in a bid to allow a reduced level of cattle grazing to remain on the table.

"It is a commonsense, practical proposal that would guarantee the protection of the alpine environment and retain the living, 170-year-old cultural heritage of cattle grazing," he said.

"It is a win/win (situation) and the Victorian government should at least consider it." But the Victorian government - which put an end to grazing in the park earlier this year by revoking graziers' licences - remains committed to preserving the environment over the tradition.

Victorian Environment Minister John Thwaites welcomed Senator Campbell's decision to drop the emergency listing for alpine grazing on the National Heritage List.

"It's clear that there was a bit of politics in what Senator Campbell's been doing," he told reporters.

"He was offering things he knew he couldn't deliver."

Mr Thwaites said a previous assessment from the Australian Heritage Council had found cattle grazing shouldn't be allowed in the Alpine National Park.

"I would have thought that the minister would have followed that advice."

Mr Thwaites dismissed concerns some cattlemen may defy the ban on grazing in the national park either deliberately or accidentally.

"We are working with cattlemen now to ensure that we have improved management of the national park but we also continue the grazing in the high country areas of the state forest."

The Minister said the "*Australian Heritage Council supported his view that a broad listing of the Australian Alps National Parks was preferable to a listing of the individual parks*". (The emergency listing followed moves by the Victorian government to end cattle grazing in the park in order to protect the environment.)

.....

A previous assessment from the Australian Heritage Council had found cattle grazing shouldn't be allowed in the Alpine National Park.

The Nominator's Statement of Significance for the Alpine National Park at Mansfield in Victoria stated: *The proposed boundary encompasses a unique area, because alpine and subalpine environments occupy only a fraction of the Australian continent. It is important as a national water catchment as well as having*

conservation and recreation significance. The large area embraces a wide variety of communities including forest, heathland, herbfields, sedgeland and mosslands. Land forms range from strongly dissected mountainous terrain to plateaux and tablelands. A botanically rich area, there are over 300 significant plant species, with many rare, restricted endemic and undescribed. Rare mammals (eg mountain pigmy possum, smoky mouse), insects (eg stonefly, alpine silver xenica), reptiles (eg she oak skink, alpine water skink), fish (eg trout-cod, congolli) and the rare amphibian LITORIA MACULATA are present.

Legal Status on the **Register of the National Estate: Indicative Place.**

.....

National Heritage List

Indicative place

Data provided to or obtained by the Heritage Division has been entered into the database. However, a formal nomination has not been made and the Council has not received the data for assessment.

The data in the place does not necessarily represent the views of the Council or the Minister.

Emergency listing

The Minister has been satisfied that the place has one or more National Heritage values and that any one or more of those values is under threat. The Minister has, by instrument published in the Gazette, included the place in the National Heritage List. Such places are subsequently referred to the Council for assessment.

(Relating to the Alpine National Park, the Minister removed this status from the **Register of the National Estate**).

I believe that this report answers the important question “*Why is this item important?*”

Robert Farquharson
Historian for Heritage

NOTES

1. Assessing heritage significance – NSW Heritage Office
2. Australia’s heritage lists – which list is which?
3. Australian Government – Department of the Environment and Heritage - Types of ‘Legal Status’ for each Heritage List
4. Australian Greens – Minister Campbell’s media release contradicts official statement on Bradman birthplace listing
5. Australian Heritage Database – Bondi Surf Pavilion, Queen Elizabeth Dr, Bondi Beach, NSW – stating the Bondi Surf Pavilion not being included with the **NHL**
6. Australian Natural Heritage Charter: Standards and principles for the conservation of places of natural heritage significance, 1996
7. NSW Heritage Office - Through its Recognition Of The Statement Of Significance states the relevance of the Bondi Surf Pavilion’s heritage status
8. Environment Protection and Biodiversity Conservation Act (EPBC) 1999 (full documentation)
9. Environmental Defender’s Office NSW (Ltd) – Topic 6 – Heritage
10. Heritage Information Series – A Guide to the Heritage System
11. Heritage Information Series – Heritage and Development: A Lawyer’s Perspective – NSW Heritage Office
12. NSW Legislative Council Hansard – Bondi Pavilion Management Plan (March 24th 1992)
13. NSW Legislative Council Hansard – Heritage Amendment Bill (November 11th 1998)
14. Place Details – Bondi Surf Pavilion, Queen Elizabeth Dr, Bondi Pavilion, NSW
15. Professional Historians Association (NSW) Inc. - Register of Historic Places and Objects (ROHPO) Criteria and Guidelines
16. Protecting local heritage Places – Royal Australian Planning Institute
17. Register of the National Estate – Bondi Surf Pavilion stated as registered

18. Section 324j of “The Environment Protection and Biodiversity Conservation Act 1999”
19. Statement of Environmental Effects for Olympic Beach Volleyball Temporary Facilities Bondi Beach (July 1999) by S.A. Smits & Associates (pages vii; 5; 7; 8; 11; 23; 46; 62)
20. Statement of Environmental Effects for Olympic Beach Volleyball Temporary Facilities Bondi Beach (July 1999) Appendix D Heritage Impact Statement Clive Lucas, Stapleton & Partners: Bondi Pavilion – Olympic Overlay Design Heritage Consideration (based on the Clive Lucas, Stapleton and Partners ‘Bondi Pavilion Surf Club and Surrounds: Conservation Analysis and Conservation Guidelines’, Prepared for Waverley Council May 1997
21. Statement of Reasons for Decision under Section 324j of the Environment Protection and Biodiversity Conservation Act 1999 – Bondi Surf Pavilion (Senator Ian Gordon Campbell, Minister for the Environment and Heritage excluding the Bondi Surf Pavilion although it was already on the register – dated September 14th 2005)
22. The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance, 1999, Australia ICOMOS (International Council on Monuments and Sites)
23. The Role of the Heritage Council – The Heritage Council of NSW