

SUPPLEMENTARY SUBMISSION BY FRIENDS OF THE ALBERT HALL INC
TO THE JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL AND
EXTERNAL TERRITORIES INQUIRY INTO THE ROLE OF THE NATIONAL CAPITAL
AUTHORITY (NCA) IN THE PLANNING, DEVELOPMENT AND PROMOTION OF THE
NATIONAL CAPITAL

Executive Summary

We address requests by the Joint Committee for further information. We suggest additional issues of interest to the Committee and respond to specific assertions made by the NCA during their hearing on 21 April 2008.

Requests by the Joint Committee for further information

What appeal processes would The Friends like to see in relation to decisions of the NCA? (Senator Hogg and Mr Neville MP)

1. The fundamental issue for Friends of the Albert Hall Inc (The Friends) is that there should be greater accountability and transparency in NCA planning processes and that there should be a capacity for those who wish to do so to contest decisions of the NCA, as is possible with many Federal Departments and agencies.
2. One option is to bring the NCA under the current Administrative Appeals Tribunal legislation. This would broadly correspond with similar appeal mechanisms under ACT legislation. The legislative basis for appeals against an NCA decision should allow community and interest groups to demonstrate unacceptably negative impact of an NCA decision on heritage values and wider community interest.
3. Another option would be to mediate the decision of the NCA by means of a multi-party mediation involving all parties interested in the issues. The Minister could appoint a Special Advisory Committee consisting of representatives from the groups most interested in the decision of the NCA. The Minister could indicate that if the majority of the groups represented can reach agreement, he/she would go along with their recommendation. Failure to reach an agreement could result in
 - The Minister deciding the issue as he/she thinks fit
 - An appeal to the Federal Court of Australia; or by special leave of the High Court to the High Court
 - An arbitration of the issues under the Institute of Arbitrators and Mediators Arbitration Rules 2007 (incorporating the Fast Track Arbitration Rules)
4. A suggested mediation reference is as follows:

“Any dispute or difference whatsoever arising out of or in connection with a decision of the National Capital Authority shall be submitted to mediation in accordance with, and subject to, The Institute of Arbitrators and Mediators Australia Rules for the Mediation of Commercial Disputes”

"If the dispute or difference is not settled within 30 days of the Submission to mediation (unless the period is extended by agreement of the parties), it shall be and is hereby submitted to arbitration in accordance with and subject to The Institute of Arbitrators and Mediators Australia Rules for the Conduct of Commercial Arbitrations".

Would it be possible to have a synopsis of DA53? (Mr Adams MP)

5. An account of DA53 as seen by members of the community was attached to the original Submission by the Friends. A synopsis of DA53 from the perspective of the community is at Attachment "A".

6. We would again like to draw to the Committee's attention that following amendments on 2 April 2007 and 22 May 2007, DA53 has not been withdrawn and continues to include the following major elements: a 'signature' building by the lake to an undetermined height with as yet undetermined use with 'ancillary uses' of undetermined scope or scale; possible green space to the north of Albert Hall - but only if agreed by the ACT government; commercial development (probably including bedrooms) to a height of four storeys to the south and west of Albert Hall over the current heritage precinct and along the back access for Albert Hall; current land use for Albert Hall and in a restricted Albert Hall heritage precinct (not the extended heritage precinct proposed in the Albert Hall Conservation Management and Landscape Plan 2007); no National Heritage Listing of Albert Hall and its Precinct; removal of the Flynn Drive cloverleaf and extra traffic lights on Commonwealth Avenue.

What consultation opportunities were there on Amendment 33, particularly in relation to the impact on road arrangements and traffic arrangements in the Albert Hall precinct? (Chair)

7. According to "Parliamentary Zone Review, Outcomes" published by the NCA in March 2000, (page 86) there were significant national consultations on Amendment 33 involving youth, professional groups, a large number of national organisations and the ACT government. As far as The Friends are aware the only ACT community group consulted by the NCA was ACT for Trees which has a specific mandate relating to tree preservation. There would appear to have been no consultation with ACT resident groups (such as the Local Area Planning Advisory Committees (LAPACs) which then existed, including LAPACs for South Canberra, on aspects of Amendment 33 including road and traffic arrangements. Such groups would have quickly identified the potential traffic and other impacts for the Canberra community of removing Flynn Drive and the associated means of access to and from Commonwealth Bridge. We do not know of any consultation with the local ACT community specifically about the impact of Amendment 33, when in its draft stage, on road and traffic arrangements in the Albert Hall Precinct.

Additional information we wish to address

Status of Albert Hall Precinct

8. The Friends agree with the NCA's plans to relinquish the Albert Hall Precinct to planning by the ACT government. We completely disagree with the view from some parts of industry that planning of the Albert Hall Precinct should remain with the NCA as part of the Central National Area, and as a consequence, under proposed new arrangements for former "designated areas", become National Land.

9. The Friends has consistently taken the view, supported by 3364 signatories to the community petition, that DA53 should be withdrawn and that planning for this precinct should begin with the community and users of Albert Hall as the key stakeholders in the Precinct. We have argued, as Albert Hall is both a nationally significant building and a municipal facility on public land and managed by the ACT government, that planning in the Precinct delineated in DA53 should be by the ACT government. We would expect that, unlike the NCA, and as the manager of Albert Hall, the ACT government would treat the ACT community and Hall users as key stakeholders in the planning for the Albert Hall Precinct. We strongly support land ownership in the Albert Hall Precinct remaining with the ACT as Territory Land. The future of the Albert Hall and its Precinct as community assets for the Canberra community would be threatened should it become National Land and no longer under the control of the ACT community through their elected government. We consider a loss of ACT control over ownership and planning functions in this Precinct would not be acceptable to the ACT community.

Strategic principles

10. In the view of The Friends, any strategic planning principles for the national capital should include a heritage component and require National Heritage Listing of Albert Hall and its Precinct as identified in the Albert Hall Conservation Management and Landscape Plan 2007 prior to any ACT planning for the Albert Hall Precinct. We welcome the commitment by the Commonwealth to funding for the repair and restoration of Albert Hall and hope that it continues into the future, in recognition of the national heritage status of the building and its precinct.

Proposals for the Board and community representation on the Board

11. In our initial Submission we proposed guidelines for membership of a reformed NCA Board. Specifically, we propose the Board of a reformed NCA might consist of the following

- One member elected from the Board members to be the Chair
- One member with architectural expertise, who could be the Australian Government Architect
- One member who is an eminent landscape architect
- One member who is an eminent town planner
- One member experienced in corporate governance issues
- One member who is a senior public servant from the Minister's Department
- One member who is a representative of the ACT Planning Minister

- One member who represents the ACT community on an on-going basis
- One member to represent the broader Australian community, rotated and from outside the ACT

12. We propose that the remuneration of the non-executive members of the Council should be determined by reference to comparable organisations and corporations, having regard to their corporate responsibilities and the provisions of the Commonwealth Authorities and Companies Act 1994, the Corporations Law and the Financial Management and Accountability Act 1994. We also propose that members serve for three years and be capable of being reappointed and that the Board have regular meetings.

National consultation opportunities

13. We suggest that, to ensure greater transparency in NCA planning for the national capital and a better understanding of this in the wider community, all Federal MPs and Senators should be automatically advised of any planning proposals by the reformed NCA or replacement national planning authority – such as changes to the National Capital Plan and significant and material national capital infrastructure (including memorials, sculptures etc) and be invited to provide views. This would allow for MPs and Senators to consult constituencies about such developments should they wish, and to return views to NCA processes.

NCA assertions

14. In her appearance before the Joint Committee on 21 April 2008, Ms Annabel Pegrum, CEO, NCA made significant assertions relating to consultations on DA53 which The Friends wish to address.

15. Ms Pegrum said “one of the extreme difficulties we faced was that the ACT Heritage Council refused to release their draft heritage plan in tandem with our draft amendment, even though one of the consultants had said to us that they would prefer us to do so. Somewhat conveniently, that draft heritage plan was changed several times during the course of our consultation before it was finally released”. The ACT Heritage Council addressed the issue of the Conservation Management and Landscape Plan (CMLP) processes on 23 April in their hearing. We consider it improper for the NCA to suggest that the ACT government manipulated the result of the CMLP to suit any interested party. However, the fundamental issue was that, in its haste to publish DA53, the NCA failed to wait for the CMLP to be issued by the ACT government, as well as omitting to conduct relevant heritage studies before issuing DA53. Why was the NCA in such haste to issue DA53, without a prior heritage study of its whole precinct, and without waiting for the proper processes for release of the Albert Hall Conservation Plan?

16. Ms Pegrum said “To the best of our abilities we consulted with the stakeholders that we knew at the time. The Friends did not exist, I might add, prior to the proposal of (DA) 53”. Ms Pegrum also said “...we spoke to the hall manager at the time and tried to get the lists of stakeholders who used the hall. We were denied access to those lists for some time”. It is our understanding that the NCA made the request to the hall manager

for the stakeholder list a few days before DA53 was released. This last minute request does not indicate that the NCA intended to include key stakeholders in the formulation of DA53. The Friends did not exist before DA53 was released. However, as we indicated in our Submission, the Albert Hall is a public facility and there were many public events in Albert Hall by major users over the 18 months to 2 years the NCA was formulating DA53 and other obviously interested local heritage and resident groups, such as the Yarralumla Residents Association (Albert Hall is in Yarralumla). A simple appeal in the local newspaper would also have located user and community stakeholders. It is clear to the community that DA53 was formulated deliberately without consultation with user and community stakeholders. As a result the design utterly failed to take account of the interests of community and user stakeholders, and was instead based on commercial and business tourism interests, in particular those of the adjoining international hotel.

17. Ms Pegrum said "I heard the comments about that meeting and I accept the criticism that there was insufficient material available here, but I do not accept the criticism that our officers behaved improperly. In fact, I had to deal with officers who felt they were harassed and bullied at that public consultation meeting and with the facilitator that we had here, who found it almost impossible to even stand up and have his voice heard". Ms Pegrum was not at the NCA's meeting with the community on 5 March 2007 in Albert Hall, but a number of members of The Friends attended and this comment misrepresents the situation. This reply is for the record.

18. Attendees at the meeting included many Albert Hall users and community members who had considerable experience of planning and related issues, some being eminent practitioners in their field. They came expecting to receive adequate responses to questions about DA53, an important and controversial planning proposal, and related studies to back up the NCA's proposals. Instead there was a poorly organised meeting, with an inadequate sound system, insufficient copies of basic material, inaccurate visual representations of the plan, officials unable to answer basic questions and no relevant studies to support the proposals. A what appeared to be a self-appointed chair attempted to take control of the meeting, claiming to represent the NCA's CEO and seemed unprepared to listen to community opposition. Not surprisingly his "chairmanship" was not accepted by community attendees. It also quickly became clear that the community was last in line after years of consultation with bureaucratic and commercial stakeholders and would have little time to provide responses to a highly detailed proposal. The NCA badly misjudged the depth of opposition to DA53. It should also have had more senior NCA officials available given the controversial nature of the proposal. Members of the community questioned why Ms Pegrum herself had not attended. There was concern that no ACT officials were present (it was not clear whether they had been invited). It was a vigorous meeting (and was reported in detail in a *Canberra Times* article on 6 March 2007, "Changes to Albert Hall area attacked"). The level of community concern reflected poor and poorly prepared consultation by the NCA, a failure to understand the depth of community sentiment and an apparent intention by the NCA to railroad an unacceptable plan through a public consultation process without adequate explanation or documentation.

5 May 2008

Draft Amendment 53 to the National Capital Plan – a synopsis of events

Background

In 2005 the ACT Department of Environment commissioned a Conservation Management Plan for Albert Hall and on 3 December the Government issued an *Invitation for Expressions of Interest for the long term operation, management and revitalisation of Albert Hall (EOI AHE001RM)* with closing date of 19 January 2006. Two responses were received, one apparently from a Hotel and the other from a community organisation.

During 2006 there was considerable public opposition and concern at four Draft Amendments put forward by the NCA. These DAs covered the incorporation into the National Capital Plan of the NCA's 'Griffin Legacy' principles and policies (DA56); and the development of the City Hill Precinct (DA59); Constitution Avenue (DA60); and West Basin (DA61).

During these years the NCA was also developing proposals for development of an area it referred to as the Albert Hall precinct, on the western side of Commonwealth Avenue stretching from the Croquet Club to Lake Burley Griffin.

Release of DA53

On 22 February 2007 the NCA released Draft Amendment 53 for this area, with closing date for submissions 13 April 2007. The NCA placed a public notice inviting comment in the *Canberra Times* on 24 February and on 28 February 2007 the NCA issued a media release about DA53.

On 5 March 2007 the public consultation on DA53 was presented by NCA junior staff with David Marshall, prominent in the Canberra Business Council and also an occasional NCA consultant, in Albert Hall. About 60 people attended, all expressing the strongest opposition to elements of DA53 or to the entire proposal,. There was also strong criticism of the inadequacy of this meeting as the NCA's idea of public consultation – there were not enough chairs, not enough copies of handouts, and no sound system.

NCA staff obtained and distributed further copies of the 36-page booklet indicating the extent of the DA53 planning changes for the area, including closely massed commercial development across the entire site, including the Albert Hall Heritage Precinct, and buildings up to four storeys around and joined to the back of the Hall; an eight storey commercial building beside the lake; removal of open green space and ring road and addition of traffic lights on Commonwealth Ave to allow the development.

When NCA staff present were unable to respond to all the questions asked, nor the protests at the inadequacy of the meeting, David Marshall attempted to run the meeting, rather than the NCA officers. Members of the audience objected to his usurping their role and asked why there were no senior staff of the NCA present to answer questions, particularly NCA Chief Executive Annabelle Pegrum.

The NCA contracted Beacon Hill Consulting to manage public consultation on DA5 and on 10 March announced further consultation 22 & 24 March.

Friends of the Albert Hall group was initiated on 13 March 2007 and that week the Yarralumla Residents Association launched a petition for the withdrawal of DA53.

The NCA placed a public notice inviting comment on DA53 in the *Chronicle* on 20 March.

Thursday 22 March 2007

In the morning the Federal Parliamentary Joint Standing Committee on the National Capital and External Territories recommended that DAs 56,59,60 and 61 – the 'Griffin Legacy Amendments' – be disallowed to give the National Capital Authority the opportunity to refine them after considerable public opposition.

At 5pm the Minister announced the allowance of Amendments 56, 59, 60, 61.

From 5.30-7.30 pm the NCA held an additional 'public information session' on at Regatta Point, run by Beacon Hill Consulting, with senior NCA staff. An audience of 75 people was almost unanimous in expressing opposition to DA53; calling for more time for submissions, and also condemning the Minister's refusal that day to implement the recommendation of the Standing Committee on DAs 56, 59, 60 and 61.

The following day the NCA issued a media release extending time for submissions to 4 May 2007. On 24 March the NCA held an all-day information session at Regatta Point.

Beacon Hill Consulting reported to NCA on the public consultation on 2 April and the same day NCA Chairman Michael Ball announced the NCA's decision to abandon the proposed 8-storey building in the Albert Hall precinct; to reconsider building development of the area north of Albert Hall; and to hold 'a series of special community and professional workshops on heritage, traffic, and urban design' prior to finalisation of DA53. By the end of April Beacon Hill Consulting had begun to meet with some stakeholders to draw up a plan for 'partnered collaboration – a new method of consultation'.

On 21 April 2007 the ACT Government called for tenders for management of Albert Hall and the following week, on 27 April, the ACT Heritage Council endorsed the finalised *Albert Hall CM&LP 2007* which was then immediately issued by the ACT Government.

Calls for withdrawal of DA53

Public submissions on DA53 closed on 4 May. On 14 May 2007 the Petition asking for the withdrawal of DA53, with 3 364 signatures, was presented to ACT MHRs Annette Ellis and Bob McMullan and on 28 May it was tabled in House of Representatives.

On 22 May the NCA announced revision of DA53 so Albert Hall would retain civic and cultural uses; the various changes to DA53 caused confusion as none of the original maps and reports were re-issued to show the changes and the NCA website material was also unchanged.

On the morning of 24 May 2007 the ACT Chief Minister announced his Government would nominate Albert Hall to the National Heritage List; that afternoon tenders for private management of Albert Hall closed with apparently two tenderers.

That evening several hundred people attended the public meeting organised by Friends of Albert Hall and the ACT National Trust, with representatives of the ACT Government, Federal parliamentarians and senior NCA officers answering questions on DA53. Among the Resolutions passed was one for withdrawal of DA53, for establishment of a joint body responsible for Albert Hall, and for the NCA to commission a heritage study of the whole precinct covered by DA53 – on the basis this should have preceded any planning proposals.

On 11 July 2007 Minister Jim Lloyd responded to the resolutions from the public meeting sent to him, rejecting both the call for withdrawal of DA53 and the proposal for a joint Federal, ACT and community body responsible for Albert Hall.

Consultation workshops

The NCA announced on 20 July a consultant had been commissioned to undertake a heritage study of the DA53 precinct, that this would be completed at the end of August and in September the series of heritage, planning & traffic workshops proposed by Beacon Hill Consulting would be held. On 15 August the NCA announced registration for these workshops would close on 7 September 2007; this deadline was extended to the end of September. After that nothing more was heard by registrants until 15 February 2008, when the NCA advised the workshops were now postponed until the end of 2008.

When Friends of the Albert Hall's request to the NCA for a copy of the heritage study on 2 April 2008 was refused, an FOI application was made on 17 April.

On 5 October 2007 the ACT Government announced it would not proceed with tenders and the Government would resume management of Albert Hall; this took effect on 1 December 2007. The ACT Government also nominated Albert Hall to the National Heritage List that month.

