



Australian Government

Attorney-General's Department

**SUBMISSION TO THE
INQUIRY INTO THE ROLE OF THE NATIONAL CAPITAL AUTHORITY
JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL AND EXTERNAL
TERRITORIES**

**Territories and Native Title Division
Attorney-General's Department
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1.	Introduction.....	3
2.	Key aspects of the planning system	3
3.	Balancing National Capital and Territory Needs	5
4.	Monitoring ACT Decisions	6
5.	Developing the National Capital Plan.....	7
6.	Functions of the National Capital Authority.....	8
7.	Conclusion	9

1. INTRODUCTION

- 1.1. The Attorney-General's Department, through the Territories and Native Title Division, provides the Minister for Home Affairs with policy advice on matters relating to the Australian Capital Territory, including the ACT as the national capital and a self-governing Territory.
- 1.2. The Department is responsible for:
 - policy and legislation to maintain an effective system of self-government in the Territory;
 - advice on the effectiveness of Commonwealth policies to support the economic development of the Territory; and
 - policy and legislative advice on the Commonwealth's role in planning the national capital.
- 1.3. The Department administers the *Australian Capital Territory (Self Government) Act 1988* and provides policy and legislative support to the Minister for Home Affairs on the *Australian Capital Territory (Planning and Land Management) Act 1988* (the PALM Act) and other legislation.
- 1.4. The Department also administers programmes providing payments to the ACT to compensate it for being the site of the national capital.
- 1.5. The Water and Sewerage System payments (\$9.633 million in 2007-08) compensate the ACT Government for the higher maintenance and operational costs associated with the excess length of water and sewerage mains necessitated by the dispersed nature of urban development in the ACT in its open space setting.
- 1.6. The National Capital Influences payments (\$23.956 million in 2007-08) compensate the ACT for a number of factors such as rating disability because of the large number of national institutions in the ACT and the extra costs resulting from the design and layout of Canberra.

2. KEY ASPECTS OF THE PLANNING SYSTEM

- 2.1. Canberra is one of four planned capitals in the world and is home to Australia's national commemorative, political and cultural institutions. As the Seat of Government, a very significant proportion of the machinery of the administration of the Australian Government is located in Canberra.
- 2.2. The ACT is also a growing and vibrant community for 340,000 residents (ACT Treasury, September 2007) that has been self-governing since 1988.
- 2.3. The PALM Act establishes the National Capital Plan to ensure that 'Canberra and the Territory are planned in accordance with their national significance' (s. 9). The Territory Plan is established to provide 'the people of the Territory with an attractive, safe and efficient environment in which to live and work and have their recreation' (s.25).

- 2.4. Section 10 of the PALM Act establishes that the National Capital Plan:
- (a) shall define the planning principles and policies for giving effect to the object of the Plan and, in particular, shall set standards for the maintenance and enhancement of the character of the National Capital and set general standards and aesthetic principles to be adhered to in the development of the National Capital;
 - (b) shall set out the general policies to be implemented throughout the Territory, being policies of:
 - (i) land use (including the range and nature of permitted land use); and
 - (ii) the planning of national and arterial road systems; and
 - (c) may set out the detailed conditions of planning, design and development in Designated Areas and the priorities in carrying out such planning, design and development; and
 - (d) may set out special requirements for the development of any area (not being a Designated Area), being requirements that are desirable in the interests of the National Capital.
- 2.5. Designated Areas are areas specified by the National Capital Plan as having the special characteristics of the national capital (s.10 of the PALM Act). The PALM Act provides for National Land, Territory Land, Designated Areas and Special Requirements, establishing a complex and overlapping planning regime.
- 2.6. For example, the National Capital Authority determines Designated Areas and Special Conditions, but the ACT Government is responsible for applying the National Capital Authority's Special Requirements. Developments on National Land may require ACT planning approval, and developments on Territory Land may require approval from the National Capital Authority or other Australian government agencies.
- 2.7. The National Capital Authority is solely responsible for developing and reviewing the National Capital Plan, although any amendments to the Plan must be approved by the Australian Government Minister responsible for Territories and are disallowable by the Commonwealth Parliament.
- 2.8. In developing the National Capital Plan in 1990, the National Capital Authority identified the plan's objectives as being to:
- 1. recognise the pre-eminence of the role of Canberra and the Territory as Australia's National Capital;
 - 2. further develop and enhance a Central National Area which includes the Parliamentary Zone and its setting and the main diplomatic sites and national institutions, as the heart of the National Capital;
 - 3. emphasise the national significance of the main approach routes and avenues
 - 4. respect the geometry and intent of Walter Burley Griffin's formally adopted plan for Canberra;
 - 5. maintain and enhance the landscape character of Canberra and the Territory as the setting for the national capital;
 - 6. protect the undeveloped hill tops and the open spaces which divide and give form to Canberra's urban areas;
 - 7. provide a plan offering flexibility and choice to enable the Territory Government to properly fulfil its functions; and

8. support and promote environmentally responsible urban development practices.

3. BALANCING NATIONAL CAPITAL AND TERRITORY NEEDS

- 3.1. In the Department's experience, a critical issue for the management of ACT issues is balancing the national interest with the needs of the ACT community. The Department suggests that the review could consider a distinction between 'Commonwealth involvement' in the ACT and the 'national interest' in the ACT.
- 3.2. The Commonwealth is involved in the ACT as a land owner and developer. This function can occur to support the machinery of government (the Australian Public Service and the Australian Defence Force for example) and not the national interest as it is embodied in the national capital.
- 3.3. National Land being developed as a defence establishment in Russell accords with Griffin's plans and reflects the national interest in defence and administration but will not contribute to the development of the symbolic and central role of the National Capital (national significance). There are specific planning needs relating to defence establishments and their ability to perform their functions, but they do not necessarily require consideration as part of a planning regime focussed on preserving and advancing the particular nature of the national capital.
- 3.4. The 'national interest' in the capital is reflected throughout the Territory and is essential to the development of the ACT as the 'garden city and bush capital' and the symbolic centre of Australia. The Department suggests, however, that the national interest can be characterised in two ways.
- 3.5. The general term of national interest can be used to represent the overarching development of the ACT, for example the development of the hills and ridges system. The Department suggests that these aspects of the national interest can be protected through the legislation and National Capital Plan but does not require direct control by the Commonwealth.
- 3.6. For example, the Department suggests that while the fact and nature of urban expansion in Canberra's outer suburbs (including approach routes and arterial roads) has the potential to impact upon the areas of national significance. While this expansion should therefore be subject to Commonwealth requirements for the holistic development of the national capital, specific Commonwealth involvement in the ACT's decisions about those areas is not needed (as currently occurs through some special requirements).
- 3.7. More direct national interests reflect the important symbolism of the capital as a cultural, commemorative and democratic centre for all Australians. In this submission, the Department has suggested the term 'national significance' to represent the form of national interest that reflects the core symbolic aspects of the capital and which warrant direct and active control from the Commonwealth. National significance for example, would be represented in the development of Commonwealth Place and its foreshores, in the Parliamentary Triangle.

- 3.8. The Department questions whether, 20 years after self government, the PALM Act and National Capital Plan could be amended to make a clearer distinction between the Commonwealth's involvement / national interest in the Territory and the Commonwealth's active management of the nationally significant aspects of the ACT.
- 3.9. Specifically, does the National Capital Plan and/or its establishing legislation represent a sufficient mechanism to ensure that the ACT Government makes planning and development decisions that reflect, are consistent with and do not undermine the national interests in the ACT, without requiring direct oversight from the Commonwealth? Duplication adds unnecessary burdens to Government and the community and impairs transparency, without being necessary to protect and advance the respective national and Territory interests.
- 3.10. It is desirable to ensure that the planning regime ensures appropriate focus by the Commonwealth and by the ACT upon their respective interests in Canberra, and provides clarity as to the nature and requirements of these interests and the roles in respect of them.
- 3.11. The Department suggests that the ACT Government could be given a larger role in urban/metropolitan planning and development in the ACT, while continuing to be subject to Australian Government requirements and being accountable to the Australian Government for its decisions.¹

4. MONITORING ACT DECISIONS

- 4.1. The Department considers that aspects of the planning system can cause confusion and duplication, with increased costs and delays for all parties concerned. The Department questions whether a simplified planning system can use legislation and the National Capital Plan to redefine roles and responsibilities between both governments to concentrate Commonwealth involvement in areas of national significance, generally the Central National Area.²
- 4.2. As far as we are aware, there have been few instances where the ACT Government has made planning decisions that the National Capital Authority has considered to be contrary to the National Capital Plan.
- 4.3. A change to the planning system as proposed would not constitute a move away from the protection of the national interest in the ACT. The Commonwealth would actively continue to manage areas of national significance through its independent planning authority, such as the National Capital Authority, and would retain the ability to set or modify principles fundamental to the national interests through the PALM Act and the National Capital Plan.

¹ The PALM currently provides, at s11(2), that the Commonwealth, a Commonwealth authority, the Territory or a Territory authority shall not do any act that is inconsistent with the National Capital Plan.

² The Central National Area includes the Parliamentary Zone and its setting; Lake Burley Griffin and Foreshores; the Australian National University; the Australian Defence Force Academy; Duntroon; Campbell Park and Canberra Airport/RAAF Base Fairbairn. Also included are diplomatic lands at Yarralumla, O'Malley, West Deakin and Red Hill.

- 4.4. The primary function of the National Capital Authority could, however, be redefined to focus on developing and maintaining the National Capital Plan, promoting the areas of national significance, and if necessary ensuring ACT compliance with Commonwealth requirements for the protection of the national interest.
- 4.5. Amendments to the PALM Act could require the National Capital Authority to develop consultation and notification strategies to ensure that it is able to ensure, if required, that particular ACT Government decisions comply with the Commonwealth's requirements with respect to national interests.
- 4.6. It is important however that any such role be clearly defined and understood, so that the Authority can not be perceived to be an appeal body in respect of ACT Government planning decisions, which would itself be a source of overlap and duplication.
- 4.7. The Authority would be clearly identified as having responsibility for protecting the national interests under the PALM Act and the National Capital Plan, to the extent that was required.

5. DEVELOPING THE NATIONAL CAPITAL PLAN

- 5.1. The Department also questions whether the development and approval processes for the National Capital Plan should be amended to provide additional opportunities for the consideration of Territory issues.
- 5.2. The Minister for Home Affairs, at s.19 of the PALM Act, has the power to approve an amendment to the National Capital Plan or refer the proposed amendment to the National Capital Authority for reconsideration or further consultation. However, the Minister may only give the National Capital Authority general direction as to the performance of its functions (s. 7) and could not currently direct the National Capital Authority to consider an issue that was important to the Territory.
- 5.3. The Minister has a unique insight into the ACT as both a self governing Territory and the national capital. It may be appropriate for the Minister to have the statutory power to direct the Authority to consider particular issues for possible amendment of the National Capital Plan, rather than relying on the current PALM Act provisions which require the National Capital Authority to keep the plan under constant review (s.6(1)).
- 5.4. For example, the Minister might request the National Capital Authority to review the Metropolitan General Plan to determine whether it meets the needs of the ACT for urban expansion, in the absence of a decision by the National Capital Authority to conduct such a review itself.
- 5.5. In identifying this issue, the Department wishes to be clear that it is not proposing that the Minister be given any power to decide planning matters or to direct the National Capital Authority in its decision-making. Rather, the proposal is that the Minister be given the ability to require the NCA to consider a specific issue in an instance where the NCA does not propose to do so of its own motion or to do so as a priority.

6. FUNCTIONS OF THE NATIONAL CAPITAL AUTHORITY

- 6.1. The Department has played a liaison role in coordinating whole of government responses to national capital issues and has an understanding of the number of Australian Government and other stakeholders that are involved in those issues. The Department questions whether the National Capital Authority should be given a clearer function to ensure good coordination of national capital issues.
- 6.2. Achieving a coordinated and cooperative framework for the resolution of those issues is resource intensive, however, and the large number of functions and activities already undertaken by the Authority may already create a risk that the Authority's effectiveness is diluted by competing demands and limited resources.
- 6.3. The functions of the Authority, established by s.6 of the PALM Act, are:
 - (a) to prepare and administer a National Capital Plan;
 - (b) to keep the Plan under constant review and to propose amendments to it when necessary;
 - (c) on behalf of the Commonwealth, to commission works to be carried out in Designated Areas in accordance with the Plan where neither a Department of State of the Commonwealth nor any Commonwealth authority has the responsibility to commission those works;
 - (d) to recommend to the Minister the carrying out of works that it considers desirable to maintain or enhance the character of the National Capital;
 - (e) to foster an awareness of Canberra as the National Capital;
 - (f) with the approval of the Minister, to perform planning services for any person or body, whether within Australia or overseas; and
 - (g) with the Minister's approval, on behalf of the Commonwealth, to manage National Land designated in writing by the Minister as land required for the special purposes of Canberra as the National Capital.
- 6.4. For example the Authority is responsible for most of the diplomatic leasing in the ACT, including the sale and issue of Crown leases, rent collection, rent reappraisal, lease variations and lease compliance. The nature and location of diplomatic establishments has the potential to impact upon perceptions of the national capital.
- 6.5. The diplomatic management functions undertaken by the Authority reflect an objective of the National Capital Plan, but it may be appropriate to consider whether, by its nature, this function is best aligned with the NCA and with its proposed fundamental role of protecting and advancing the national significance of the national capital.
- 6.6. Similarly, the Department is aware of a number of Australian Government agencies with varying and potentially overlapping responsibilities for the management of national land and buildings in the Central National Area.
- 6.7. The Department suggests that the question of the best and clearest manner in which to avoid duplication and overlap with respect to these assorted national and Commonwealth interests may also warrant further consideration, noting that the NCA presently has particular land management responsibilities in this context under section 6(g) of the PALM Act.

- 6.8. Finally, the Department questions whether all of the National Capital Authority's functions should be reviewed to align to a revised National Capital Plan that focuses on the protection and development of nationally significant areas, with the NCA having a leadership and coordination function.
- 6.9. For example, the Authority's promotional activities could focus on the role that the national capital plays within Australian's constitutional and federal system. Promotion activities could be planned and coordinated with the cultural, heritage and commemorative institutions in the Central National Area to achieve a comprehensive approach to instilling a sense of national awareness, understanding and pride in the capital, avoiding the duplication of other activities focussing on tourism in the ACT.
- 6.10. Bringing clarity to roles with respect to the promotion of the national interests in the national capital would avoid duplication with the promotional roles and activities of both the ACT and the national institutions.

7. CONCLUSION

- 7.1. The Department suggests that a contemporary framework for balancing the national interest in the national capital with the needs of the Australian Capital Territory would see the National Capital Plan and PALM Act continuing to establish the core principles for the planning and development of the ACT.
- 7.2. These principles would protect all aspects of the national interest across the Territory, particularly the accepted elements of the Walter Burley-Griffin plan. However, a simplified system could achieve this protection within a framework of greater flexibility for the ACT Government.
- 7.3. The Authority could be given a more clearly stated core function of maintaining the National Capital Plan, developing and promoting areas of national significance and promoting the importance of the national capital as Australia's cultural, commemorative and democratic centre.
- 7.4. Ministerial Powers could be enhanced to allow the Minister to direct the Authority to consider specific matters, including those of importance to the region, without compromising the Authority's independence or its capacity to protect the Commonwealth's interests.
- 7.5. The Authority could be given clear (and possibly enhanced) powers to enforce ACT compliance with the Commonwealth's requirements if required, without acting as a review or appeal body for general ACT planning matters.