

TRIM: 134531

**PUBLIC SUBMISSION**

**JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL AND EXTERNAL TERRITORIES**

Inquiry into the allocation of land to diplomatic missions in the Australian Capital Territory

**The role of the National Capital Authority**

1. The National Capital Authority (NCA) administers diplomatic Crown Leases on National Land on behalf of the Commonwealth, in consultation with the Department of Foreign Affairs and Trade (DFAT) and relevant security agencies. This involves lease negotiations, organising valuations of diplomatic sites by the Australian Valuation Office (AVO), liaison with diplomatic missions, registration of leases with the ACT Land Titles Office, invoicing and collection of land rent, debt recovery, conducting land rent reviews, lease compliance activities, surrender of leases and compensation arrangements for improvements when leased land is surrendered.
2. The NCA is also responsible for the strategic planning for the selection and provision of National Land for lease, the sub-division and servicing of diplomatic sites, issuing works approval for development applications and the management of unleased diplomatic sites on National Land.
3. The NCA consults with the DFAT, through the Protocol Office, on foreign policy considerations related to the management of leases, including the identification of land for offer, lease offers, lease surrender and termination and issues of non-compliance.
4. Diplomatic leases are granted under the terms of the *Leases (Special Purposes) Ordinance 1925* (the Ordinance). The Minister for Regional Australia, Regional Development and Local Government has the authority to determine the covenants and conditions as to the Diplomatic land rent according to Clause 5(b) of the Ordinance. This authority is delegated to the Chief Executive and senior staff of the National Capital Authority.
5. Special Purposes leases are for a period of 99 years. Diplomatic missions are unable to sell their leases on the open market, but must surrender the land back to the Commonwealth. There is provision in the Crown lease for compensation to take into account lessee owned improvements (eg. cost of buildings).
6. There are presently three options available for the leasing of National Land in Canberra for diplomatic purposes:

- a. Land exchange - is negotiated between the DFAT and the relevant country. No monetary payments are involved. Four diplomatic land swaps have been completed to date;
  - b. Land rent – Rent for diplomatic sites is based on 5% per annum (2% prior to 1972) of the Unimproved Capital Value (UCV) of the land and is reappraised every 20 years. Currently, 43 diplomatic missions pay land rent - 20 pay 2% and 23 pay 5% of the UCV; and
  - c. Up front premium payment – A premium is paid once at the commencement of the lease and based on the UCV of the land. To date 27 diplomatic missions have paid upfront premiums for their blocks. No annual rent is payable under this arrangement.
7. The UCV for diplomatic land is typically below that for land zoned for residential or commercial construction. The lower UCV recognises that diplomatic missions are unable to develop the land commercially, capture capital gains or on-sell the land and recoup their investment as other landholders in the ACT are able to do. The valuation methodology used by the AVO was upheld by the Administrative Appeals Tribunal of Australia in April 2012 (decision [2012] AATA 238).

#### **Australian Government Policy**

8. There is no extant statement of Government policy to guide the NCA in relation to the leasing of diplomatic land. Administrative arrangements have evolved over time since diplomatic land was first leased in Canberra in the 1940's.
9. A Commonwealth Departmental Steering Committee undertook a diplomatic leasing review in 1994. The review was never completed and the committee's work was not considered by the Government. The draft recommendations and conclusions, however, supported the location of chancelleries on National Land in Yarralumla, Deakin and O'Malley. A copy of the Steering Committee's draft recommendations are at Attachment A.
10. A formal review of diplomatic leasing has been underway since 2008. The review deals with the financial arrangements in place for Diplomatic leases. In September 2012, the NCA, the Department of Finance and Deregulation (DoFD) and the DFAT made recommendations to Government for a future Australian Government policy on diplomatic leasing. Until such time as a Government policy has been established, the NCA is only able to release sites to diplomatic missions on an exception basis, agreed by the Prime Minister, the Minister for Finance and Deregulation and the Minister for Foreign Affairs and approved by the Minister for Regional Australia, Regional Development and Local Government. All such lease transactions are administered under the current arrangements.

11. The proposed diplomatic leasing policy retains all three leasing options and, dealing solely with financial aspects of lease administration, does not make any recommendations on matters covered by the Terms of Reference of the present JSCNCET Inquiry.

### **Statutory Obligations**

12. The Australian Government has an international obligation, under Article 21 of the *Vienna Convention on Diplomatic Relations 1961* (the Convention), to facilitate the acquisition of premises for a sending government to use for their diplomatic mission.
13. In accordance with Article 22 of the Convention also notes the Government's 'special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity'.
14. These obligations in the Convention have been implemented in Australia by the *Diplomatic Privileges and Immunities Act 1967* and the *Consular Privileges and Immunities Act 1972*, and augmented by the *Public Order (Protection of Persons and Property) Act 1971* and the *Crimes (Internationally Protected Persons) Act 1976*.

### **Commonwealth Control**

15. Diplomatic issues are a component of foreign affairs and thus a Commonwealth, rather than a Territory function. This means that, ideally, all diplomatic missions would be located on National Land sites, identified for Diplomatic Use, within a Designated Area defined by the National Capital Plan.
16. Missions currently charged an annual land rent paid a total of \$1,495,422 in the 2011-2012 financial year. All revenue associated with diplomatic leases is paid directly to the Australian Government's consolidated revenue fund. The cost of NCA administration of Diplomatic leases is funded from within the agency's regular Departmental appropriation.
17. There are significant foreign policy advantages if land allocation and planning is controlled by the Commonwealth.
18. Negotiation of land swaps provide the Australian Government with opportunities to save on the cost of acquiring land overseas. The ability to offer reciprocal arrangements also puts the Australian Government in a strong position to negotiate for its diplomatic land requirements overseas.

**Demand and supply of diplomatic land**

19. The current supply of National Land in Canberra set aside for diplomatic missions is 84.6Ha (Figure 1 – Diplomatic Estate).
20. Sixty countries currently hold 69 Crown Leases over 72 blocks within the three Diplomatic Estates on National Land in Yarralumla (Figure 2), Deakin (Figure 3) and O’Malley (Figure 4). (Note: some countries hold two separate leases and some countries have more than one block).
21. The DFAT Protocol Branch has advised that they expect one to two new missions to establish within the diplomatic estate annually over the next twenty years.
22. This advice accords with the queries received by the NCA and the number of countries that have registered their interest in acquiring a site for diplomatic use.
23. Fifteen sites are likely to be needed in the short term for those countries that have formally expressed interest in obtaining a site or have leased or reserved a site now known to be affected by environmental constraints. The NCA is currently negotiating with two countries for alternative sites due to environmental constraints. Investigations are currently underway on a number of other sites which may also be affected. These investigations may result in a further three missions requiring alternatives to their reserved sites.
24. Levels of demand can fluctuate due to geopolitical and financial influences or countries undergoing internal restructuring or budget pressures.
25. The current demand for blocks outstrips supply of viable sites.
26. Due to the lengthy timeframes involved in making additional diplomatic land available for lease, it is important that estates are established in advance of requirement.

**Suitability of property types**

27. Diplomatic missions usually choose to be in areas that give them:
  - a. ease of access to Parliament House, government departments – particularly central agencies, DFAT and Defence – and other decision makers in key sectors;
  - b. proximity to other diplomatic missions;
  - c. visibility in centrally located areas for symbolic and public diplomacy reasons;
  - d. the capacity to provide representational activities; and
  - e. ease of access for their nationals in order to provide consular representation among other services.

28. The NCA takes into account the following when assessing the suitability of sites for diplomatic use:
- a. centrally located to satisfy the business requirements and preferences of missions;
  - b. ability to provide appropriate levels of security and emergency service response times;
  - c. capacity to meet the need for a diversity of block sizes;
  - d. ease of access;
  - e. minimising environmental, heritage and servicing constraints; and
  - f. co-locating diplomatic missions in estates to minimise disruption to neighbouring properties from national days, receptions, and security requirements.
29. The desirability of larger blocks can reflect:
- a. the status of a government recognised by the Australian Government;
  - b. the status a foreign government applies to its relationship with the Australian Government;
  - c. political role of a government in the Asia/Pacific region;
  - d. need to accommodate more staff to support increasing consular and trade activities;
  - e. matters related to the management and/or security of the facility; and/or
  - f. individual preferences of each diplomatic mission.
30. Over time, block sizes have reduced, although a significant proportion of diplomatic missions now seek to acquire two or more blocks, in order to construct not just a chancery, but also a co-located head of mission residence, staff accommodation and diplomatic ancillary buildings, such as cultural centres, etc.

### **Current Land Options Available to Diplomatic Missions**

31. Under the National Capital Plan, there are National Land areas within the suburbs of Yarralumla, Deakin and O'Malley that are designated for diplomatic use. Chanceries can only be built and operated on such land.
32. Yarralumla has the largest blocks, with sizes ranging from 4,826 m<sup>2</sup> to 37,599 m<sup>2</sup>. Most of the larger blocks were created and leased prior to the 1980s; many in the 1950s when the estate was first established. The Yarralumla diplomatic estate is the oldest estate and is almost fully developed. It is usually the first choice of diplomatic missions seeking to acquire sites.

33. The sites in O'Malley and Deakin tend to be smaller, with sizes ranging from 3,017 m<sup>2</sup> to 8,227 m<sup>2</sup>. Development of the Deakin estate is subject to some environmental constraints. Twelve blocks in O'Malley have also not yet been developed due to physical and environmental site constraints.
34. Within O'Malley, there is a separate area controlled by the ACT Government where, subject to approval, residential property may be utilised for chancery purposes by diplomatic missions. This overflow area was primarily intended to allow diplomatic missions to set up in temporary premises while they negotiate a permanent lease within the Commonwealth diplomatic estate and build their chancery and residence. Approval for location in the overflow area is given for up to three years. However, many missions have had to retain these locations longer via application for extension to the ACT Government due to the lack of available options within the diplomatic estates on National Land.
35. Chanceries may also operate from commercial premises or land zoned for commercial use, but may not operate from other residential areas in the ACT. This restriction does not apply to Head of Mission or staff residences.

## **Other options to meet the needs of different diplomatic missions**

### **Maximising the Current Supply of Diplomatic Land**

#### **Sub-division of leased blocks**

36. A number of diplomatic missions have not fully developed their blocks. A sub-divided portion of these blocks is likely to produce viable sites for other diplomatic missions seeking to acquire land.
37. The Commonwealth could provide an incentive to diplomatic missions to release land by negotiating a pro-rata 'buy back' arrangement. The pro-rata amount could be based on the time the mission has occupied the site, the premium or rent paid and the size of the block. The financial costs incurred for the 'buy-back' and sub-division would be recovered from the diplomatic mission acquiring the new block, thereby resulting in nil impost on the Commonwealth. This incentive scheme would require approval through the new policy and budget processes.
38. Such mutually agreed lease variations could yield up to 12 additional small to medium sized blocks in Yarralumla. The most likely candidates for subdivision would be those missions with undeveloped areas of at least 4,000 m<sup>2</sup> and an appropriate alternate street frontage on their existing leases.
39. Future policy considerations:
  - a. Lease variation would require mutual consent;

- b. The NCA must determine viability of potential sub-divided block (size, shape, amenity, etc); and
  - c. Negotiation would be undertaken on a case by case basis, instigated by NCA, with DFAT involvement.
40. The NCA has obtained advice confirming there is a legal mechanism which could be employed to affect a policy of sub-division by mutual consent including payment of an upfront financial incentive.

Release of undeveloped sites

41. A number of diplomatic missions have not developed their sites. The Ordinance requires diplomatic missions to commence development within 18 months of commencement of their lease and complete development within 36 months. The NCA rigorously monitors the obligations of diplomatic missions under the Ordinance. Foreign policy and bilateral relationship issues significantly influence pursuit of site surrender or termination of leases due to non-compliance with lease conditions. The NCA consults with the DFAT prior to commencing action seeking release of sites. The NCA may grant extensions to the time to construct. In some cases these extensions have been considerable.
42. The NCA has recently terminated a lease over two blocks in O'Malley with the support of the DFAT. This termination has released two blocks for use by other diplomatic missions.
43. It may be possible to provide a financial incentive to missions to surrender their Crown Lease. This may remove some of the foreign policy impediments to pursuing release of undeveloped blocks.
44. Future policy considerations:
- a. Lease termination could be achieved by consent – possibly using a financial incentive;
  - b. Possible unilateral determination of lease if not developed or surrendered following reminders and/or extensions (constrained by foreign policy considerations); and
  - c. Unilateral action may compromise security and/or foreign policy ambitions in other areas.
45. The NCA has been considering policy options in consultation with the DFAT. Flexibility and fairness will be required with clear protocols to ensure that foreign policy objectives are upheld (avoiding any perception of inequality in treatment) while enabling efficient development of existing diplomatic land.

Development of Section 4 blocks in O'Malley

46. There are 12 steep and rocky blocks in O'Malley which have been difficult to lease to diplomatic missions due to the physical and environmental constraints. Diplomatic

missions could be offered an incentive to lease and develop these sites, such as aggregating sites to improve suitability for development.



47. Future policy considerations:

- a. It might be possible to create greater incentive to take a site in this area, but could produce perverse outcomes if development periods not enforced. A mission could hold the lease, but not develop within timeframes, due to expense associated with overcoming physical and environmental constraints;
- b. It may be more beneficial to the Commonwealth to sell off the entire block for private development and reinvest the proceeds in acquiring another site; and
- c. There remains a risk that some blocks are leased and developed, but many remain undeveloped. This could compromise ability to dispose of residual land for private development.

High and medium density development

48. Canberra, like most cities around the world, is presently undergoing urban renewal and adopting new forms of development. The majority of renewal and new development is focused on more efficient land use, including medium and high density development. It is appropriate to consider whether such styles of urban development should also be adopted for Diplomatic development in the National Capital.
49. The NCA is investigating options for the development of medium and higher density diplomatic accommodation in the Deakin and O'Malley estates.
50. A number of smaller diplomatic missions may be interested in leasing part of a designated diplomatic 'office' building, with the possibility of shared services and spaces ie. receptionist, function spaces, meeting rooms, etc. This would:
  - a. allow efficient use of the limited number of diplomatic sites available (and potentially allow use of the sites compromised by environmental constraints or topography);
  - b. reduce costs for countries wishing to establish diplomatic representation in Australia in a prestigious site; and
  - c. facilitate the effective provision of security services
51. It might also be possible to develop new medium density diplomatic estates – increasing the efficient use of vacant land and providing greater choice for diplomatic missions.
52. Where environmental issues affect the suitability of diplomatic land for traditional low density diplomatic developments (chanceries and residences), commercial office style developments may provide an appropriate development alternative.
53. The NCA has sought advice on the development potential of several sites in these areas.
54. Future policy considerations:

- a. Diplomatic missions may have a view about who they share services with;
- b. Facilities management function requires consideration (who would do it and how much would it cost?);
- c. There are likely to be some difficulties liaising with multiple missions with potentially differing views and priorities;
- d. May require development of a new pricing regime for these new property types;
- e. Security implications of shared facilities would need to be addressed with the Australian Federal Police and Attorney General's Department;
- f. Possible private sector involvement? Maintenance of Australian Government control?; and
- g. Would require consideration through the new policy and budget process.

## **Options for locations of future diplomatic estates**

### **Acquisition of alternative land**

55. Acquisition of Territory or privately owned land for diplomatic development would be at commercial market rates or through negotiation with, and payment of compensation to, the ACT Government. These blocks may require servicing (roads, power, sewerage) before being offered for lease to diplomatic missions. The process would require substantial lead times for negotiation and servicing and adequate budgetary provision.

### **Geographic Options**

- 56. In September 2007, GHD Pty Ltd was commissioned by the NCA to identify potential sites for future diplomatic land supply (refer Attachment B).
- 57. Taking account of the factors noted in paragraphs 27-29, GHD initially assessed 30 potential locations in Barton, Campbell, Curtin, Deakin, Hughes, Kingston, O'Malley, Parkes, Yarralumla and Yarramundi. These sites were refined to a list of 12 potential sites in three distinct areas, Curtin, O'Malley and Yarralumla.
- 58. The final report from GHD identified Block 5, Section 121, Curtin (the Curtin horse paddocks) as the most capable site in terms of accommodating sufficient blocks for projected diplomatic needs. The DFAT advised that they had no in-principle objection to the recommendations of the GHD report.
- 59. In 2008, the DFAT provided an indication of the need to accommodate up to 25 additional diplomatic sites over the next 20-30 years. They suggested that this would be best achieved through the development of a new diplomatic estate, in tandem with

‘diplomatic use’ being added to the lease clause for as many sites as possible in established diplomatic areas.

60. NCA consideration of the GHD report coincided with the ACT Government’s initial investigation into development in and around Yarralumla Brickworks and an approach to the NCA from the Federal Golf Club regarding the potential use of part of the golf club land for diplomatic purposes.
61. The NCA determined that these matters were not known at the time of the GHD investigation. The NCA subsequently commissioned an initial assessment of the development potential of these sites (refer Attachment C). This work included further investigation of parts of Stirling Ridge that had been identified as having little or no natural heritage value. This investigation and associated public consultation was undertaken during the second half of 2011 and early 2012.
62. The board of the NCA subsequently decided to discontinue any further consideration of land adjacent to the Federal Golf Club due to environmental constraints and to defer any further consideration of land near the Yarralumla Brickworks pending discussions with the ACT Government.
63. The NCA decided to continue assessment of land to the south-west of Stirling Ridge.

### **Stirling Ridge Proposal**

64. On 19 October 2012, the board of the NCA considered the outcome of the latest investigations of Stirling Ridge.
65. Investigations have now considered the potential suitability of the site for diplomatic use, the environmental value of adjacent land and the need to preserve a site for possible future official accommodation needs.
66. The second investigation recommended:
  - a. Proposing an amendment to allow *Diplomatic Mission* use on the previously identified National Land on the south-western side of Stirling Ridge. The proposal will NOT include conversion of land formally designated as *Open Space* or with high conservation value.
  - b. Proposing an amendment to rezone the land use for the majority of Stirling Ridge (including the vast majority of high conservations value areas), from *National Capital Use* to *Open Space*. This will enhance conservation protection for those high value areas.
  - c. Retaining *National Capital Use* on Attunga Point for possible future official accommodation use. This is an appropriate reservation for the future, noting that expansion of the current Lodge site into the adjacent Lodge Park is also possible under the existing land use and planning framework.
67. Consistent with the commitment to undertake further public consultation before any final decision is made, and following board acceptance of the above recommendations,

the NCA released a Draft Amendment to the National Capital Plan (DA78 - proposing Diplomatic Use on land to the south-west of Stirling Ridge) for public consultation.

68. Consultation on DA78 concluded on 14 December 2012. A copy of the consultation report is at Attachment D.
69. The NCA is not currently progressing DA78, pending this Inquiry.