

Mr Quinton Clements  
Secretary  
Joint Standing Committee in the  
National Capital and External Territories  
Parliament House  
CANBERRA ACT 2600



Dear Mr Clements

## NATIONAL CAPITAL AUTHORITY INQUIRY

I welcome the Committee's decision to conduct an inquiry on the role of the National Capital Authority. It is now some 14 years since the Authority was established and it is timely to review its performance during that period.

My interest in the role and functions of NCA stems not only from my position as a Director of a Canberra based planning consultancy which has regular dealings with the Authority, but also as a committed advocate for, and observer of, Canberra's continued development, both as a great, modern, national capital, and a sustainable and attractive metropolitan city, although it is perhaps pertinent for the Committee to question whether these dual goals are still being achieved.

I was appointed first Chief Planner of the Authority, a position I held from its inception in 1989 to my departure in 1993. I also acted as Chief Executive for the first six months of the Authority's life, and had a critical role in helping to manage the transitional and establishment phases. For instance I had a role in recommending a suitable operational structure, and selecting staff, albeit limited to 35 positions by Cabinet decision.

The approach at the time was to achieve an appropriate blend of professional disciplines (planners, architects, landscape architects, engineers, environmental planners etc) supported by skilled technical and administrative staff.

Most staff were recruited from the former National Capital Development Commission (NCDC), and chosen because of proven experience and skills, understanding of corporate history, and empathy with the national capital aspects of Canberra's development.

There was a strong emphasis in the early days on planning and design functions, not only because of the need to urgently prepare the first National Capital Plan, but also so that attention could properly be focused on planning and design reviews of areas of particular national capital significance, including the Central National

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Area. It was not appropriate in my view for a new organisation, marking the start of a new era in the planning and development of Canberra, to merely rely on, without question, plans and programmes produced by its predecessor.

I have observed over the last 10 years or so that the Authority's emphasis seems to have shifted away from planning and design, and more towards maintenance, promotion and construction activities, although by necessity it has had to retain a statutory planning service. It is understandable that the Authority's priorities have changed over time, and I have little argument with the emphasis having been placed on these activities, provided it is not to the detriment of its important planning role.

My observation is that the expanded marketing and promotion role has for some time been at the expense of long term, visionary, planning and urban design. For instance it is surprising that after 14 years the Authority has still not produced and published a comprehensive and cohesive long term plan for the Central National Area as a whole, particularly to give some direction as to how growth and change should be managed and encouraged over the next 10, 20, 30 years. Consequently when issues such as the redevelopment of the residential frontage to State Circle arise, they invariably have to be dealt with in an ad hoc and isolated manner because of the absence of a long term planning framework and vision.

Nevertheless I am encouraged by the Authority's recruitment, over recent times, of experienced and skilled physical planners, urban designers and architects, and hopefully some attention can now be refocused on long term planning and design. I also firmly believe the NCA is the only agency that can be entrusted with the very important role of protecting the Commonwealth's (and hence the people of Australia's) interest in Canberra as the National Capital, manifested (at least in part) by the preparation and implementation of suitable plans for areas of national capital significance.

Territory agencies including Planning and Land Management (PALM), naturally have a focus on normal city building and municipal scale activities, and whilst in the early days of self government, Territory planners with an NCDC background had some understanding of the importance of Canberra's national capital role, with the passage of time this corporate history has dissipated to the point that the culture of the various Territory organisations is alien to national capital planning. I would personally not be comfortable with any suggestion that there should be a return to a single planning agency in Canberra, particularly because of the risk that the importance and value that needs to be given to the city's national significance would neither be properly understood or given sufficient weight.

On the basis that two planning agencies are retained, there would seem to be a need to minimise the friction that has occurred to date, preferably by establishing co-operative and effective liaison mechanisms at all levels (political, management and operational).

It is against this background that I wish to put before the Committee the following points, ideas and suggestions for consideration:

### **General Points and Suggestions**

1. The NCA's basic role of protecting the Commonwealth interest in Canberra as the National Capital has generally been discharged successfully by the Authority, and there is no substantial evidence or major reason I am aware of to withdraw this role. However it is timely to introduce changes aimed at enhancing the planning function, and improving relationships with the Territory.
2. The concept of 2 planning agencies in Canberra is basically sound, although some refinement and modification of particular Authority functions, in the light of experience over the past 14 years, may assist in improving the dual planning system, provided the Territory also agrees to make necessary adjustments. (The Committee may wish to note that a two tier planning system operates fairly successfully everywhere else in Australia eg State/Local Councils).
3. Whilst the main focus of NCA interest must continue to be the Designated Areas, the National Capital interest in Canberra should be recognised as being all pervasive, and it continues to be valid for the National Capital Plan to contain a General (Land Use) Policy Plan, and "general policies to be implemented throughout the Territory". For instance the "Y Plan", although a strategic, long term, metropolitan growth strategy was, in part, developed to protect the dignity, and special qualities of the Central National Area. Although the Y Plan may have lost some of its physical form, the principles which underpin it are still relevant today. It is also important for the NCA to continue to have a "watchdog" power over metropolitan development to safeguard the National Capital significance of the city. For instance if NCA had not had this power, a previous ACT Government may have been successful in implementing its proposals for the infamous "pink bits" on the Draft Territory Plan ie infill development on sensitive sites including many of national capital significance.
4. As a corollary of the points in 3 above it is important in my view for the Authority to maintain a strategic planning role particularly given the requirement in the Act for the National Capital Plan to

set out general land use and transport policies to be implemented throughout the Territory. This role is reinforced at 4.2 of the Plan (Urban Areas) which confirms that the Authority is required to set out in the National Capital Plan general policies of land use throughout the Territory. It foreshadows the Authority examining, in depth, the potential for and desirability of defining additional areas of land for urban use. This in turn leads to questions about the Authority's role in current strategic planning studies, such as the Spatial Plan, as discussed at 6 below. It certainly means that the Authority's interest cannot be ignored by the Territory when they are considering the future of areas such as Stromlo Forest.

5. The Committee may be aware of the local debate and controversy relating to the Authority's intervention on the issue of the route of the Gungahlin Drive Extension (GDE). The ACT Government rightly claimed it had a mandate from the Canberra community to implement the western option, whilst the Authority on the basis of its own specialist advice set out to demonstrate the national capital and strategic benefits of the eastern route. The Commonwealth Act and the National Capital Plan has given the Authority the power and responsibility to have the final say on route selection, and I have no doubt the Authority properly exercised its responsibility on this matter. Whilst I support the Authority having a strategic planning role, which includes land use/transport issues, I question the need for it to be the sole decision maker on the location of arterial roads, particularly where roads such as the GDE basically have only a Territory (local) function, ie allowing travel from Gungahlin to other parts of the city. The Authority certainly needs to maintain its prime interest in the national road network, and have a major say on any road construction that affects Designated Areas such as the Inner Hills, but there may be a need to amend the Act to remove its prime responsibility for planning of the arterial road system.

#### **Specific Points and Suggestions on National Capital Plan issues**

6. There may be merit in Commonwealth (NCA) and Territory agreeing to the establishment of a single, over arching, long term strategic plan for metropolitan Canberra, which, inter alia, recognises its national capital significance, and the Authority's role in strategic planning as noted in 3 and 4 above. It follows, ipso facto, that any long term strategic plan should be jointly prepared, administered, monitored and reviewed (on a regular, systematic basis). The Spatial Plan study currently being managed by the Territory, which intends to deliver a long term planning strategy, should therefore be being prepared jointly (at least co-operatively). It is not acceptable in my view for the Territory to prepare the Spatial Plan, on an internally focused, minimum

Commonwealth and Regional input, basis. There should ideally be an integrated Territory/Commonwealth/Regional Working Group preparing the Spatial Plan. A jointly prepared and agreed Spatial Plan would then form an appropriate, robust and dynamic framework for the two Statutory Plans ie National Capital Plan and Territory Plan, to be administered, monitored, reviewed, and where necessary, amended.

7. Not only is the Authority 14 years old, but the National Capital Plan is of similar age, and it would be timely to subject it to a rigorous and comprehensive review. Matters which should be addressed in such a review could include:
  - (a) **Designated Areas.** In my opinion a rigorous review of Designated Areas may lead to the conclusion that they should be increased not reduced. Whilst there are compelling arguments to retain the designation of the Central National Area, Avenues and Approach Roads, and Inner Hills, there are also good reasons why land adjacent to some of Avenues should be Designated (rather than rely on Special Requirements).
  - (b) **National Land** currently not in Designated Areas should also be included in Designated Areas, mainly to overcome the planning and development control vacuum and uncertainties that relate to such land.
  - (c) **Territory Land/Designated Area Nexus.** Because defined Designated Areas in many cases do not correspond with National Land declarations, there are administrative complexities in dealing with proposals for development which on one hand are in a Designated Area, but on the other are on Territory Land. Whilst the planning responsibilities in such cases clearly belong to the authority, PALM because of the Territory Land status, may also require planning submissions, for instance a Preliminary Environmental Assessment, which, inter alia, may include a need for traffic studies, urban design proposals, land use evaluation etc, which realistically should only be the concern of the Authority. This leads to confusion about responsibility, delays in processing proposals, and significant duplication of effort and additional costs by the proponent (project examples can be given to the Committee if required). A system is urgently required which requires a proponent or other interested person to only deal with one government/agency even where there is a mismatch between planning and land management responsibilities. These situations require the Authority and PALM to urgently agree on new solutions procedures designed to eliminate this current inefficiency duplication and waste, and to incorporate required

changes into the National Capital Plans and/or relevant legislation.

**(d) Special Requirements.** Whilst "Special Requirements" overlays in the Territory Plan are a useful tool in allowing Development Control Plans to be prepared as a basis for ensuring national capital interests are addressed, their extent and effectiveness needs to be reviewed in line with the Designated Area review above. For instance the use of Special Requirements for land adjoining Northbourne Avenue, which in turn are cross referenced to the Territory Plan, has not prevented the approval of a number of mediocre developments, which in my view fail to achieve the design quality which the Australia and local community would expect on the major national approach road into Canberra.

**(e) General Principles and Policies.** This part of the Plan will need to be reviewed, inter alia, in the context of a jointly prepared and agreed metropolitan strategic plan eg the Spatial Plan. Some of the existing policies are seriously out of date and therefore of little continuing validity. For instance the Employment Location Policies were formulated at the time the Commonwealth had an active role in office construction and therefore had a major influence on employment location and distribution. The Commonwealth is no longer involved in office construction rendering existing National Capital Plan Employment Location policies largely obsolete.

### **Specific Points and Suggestions on Statutory Planning Services**

8. Currently Works Approval is required for any development in a Designated Area, no matter how minor. Although this requirement is a statutory requirement arising from the Act, the works approval process operated by the Authority is fairly simple and informal. For instance there are no statutory time limits placed on the assessment of applications, no public notification or other community comment processes, nor any first or third party rights to seek a review of an Authority decision (ie no planning appeal process). As such the Authority is probably unique in Australia.

Nevertheless the Authority has been generally effective and successful in achieving high quality developments, which is one important measure of a statutory planning system. Developments at Canberra Airport (eg Brindabella Business Park) for instance are an excellent demonstration of high quality, sustainable design. This has been achieved not through the rigid imposition of prescriptive development criteria, but more as a result of the Authority establishing a broad planning and design framework,

and working constructively and co-operatively with the property owners and their professional consultants to achieve mutually acceptable outcomes. In negotiations such as these the Authority is able to bring in its own skilled urban designers to add value to the process.

It would be unfortunate if these successful processes became bogged down by the type of laborious, lengthy, and bureaucratic pre-application and assessment processes conducted by the Territory, which in my view are yet to demonstrate improved design outcomes. Nevertheless it is also my view that it is untenable and inequitable for the Authority not to be subject to time limited assessment, public notification and review processes, when dealing with Works Applications. I believe therefore that there is a need to harness the current successful negotiated outcome processes, with publicly accountable statutory procedures.

The important question is what are the type of new procedures which should be introduced. I can offer some suggestions, ie:

- A statutory limit be placed on the time the Authority is allowed to determine a Works Application. 2 to 3 months is fairly standard in most planning jurisdictions, although this period should be allowed to be extended with the consent of both parties. Stop clocks should also be allowed where an applicant is required to furnish additional information. Any application not determined in the statutory time frame, or agreed extended time, can be deemed to be refused, giving the applicant access to appeal processes.
- Only major or significant applications should be publicly notified. The threshold may be a dollar value on the cost of the development and/or some measure of its likely impact on neighbours. Notification processes are fairly well established elsewhere, and normally involve a notice on site, an ad in the local paper, and a letter of notification to immediate neighbours. 21 days is generally specified as the period within which objections or comments can be lodged, and the Authority would be required to consider any submissions before reaching its decision. Any objector with standing aggrieved by the decision (the third party) should be able to seek a review, as should the first party.
- The appeal (review) process needs to be accessible and conciliatory. I would not advocate using the AAT, which is in my experience adversarial, intimidating and expensive (invariably involving lawyers). Nevertheless any appeal needs to be at arms length from the Authority and independent. A

similar system existed under the Design and Siting Ordinance, whereby an Applicant was allowed to appeal against any NCDC decision to refuse a Design and Siting Application or impose conditions on an approval, ie it was a first party appeal system only, there were no formal third party involvement. Nevertheless, if expanded to remove these limitations, it represents an effective model for an NCA. Appeals were heard by an independent Design and Siting Review Committee, which comprised distinguished people with local knowledge, experience and expertise, eg senior planning consultants, academics, technical experts etc. The Committee focused its attention on planning and technical issues, and generally avoided legal argument, thereby discouraging legal representation. The system was therefore accessible and equitable, yet effective, and I would commend the Committee to consider recommending a similar system of review of NCA decisions, but properly expanded to include third party appeal.

### **NCA/Territory Relationships**

9. The tension that sometimes exists between the NCA and Territory Ministers and agencies is not necessarily unhealthy, in that it should force the respective interests to properly justify their proposals (although in practice it may not always happen). There is evidence that at the operational level that liaison between PALM and NCA has been generally constructive and effective. For instance NCA will not normally approve a Development Control Plan (DCP), as required under the Special Requirements of the National Capital Plan, unless that DCP has firstly been agreed by PALM. This arrangement encourages an effective dialogue between the agencies in working towards a mutually agreed outcome. There are also instances where NCA and PALM agree to work together to simultaneously prepare and release a Draft National Capital Plan Amendment and Territory Plan Variation. I also believe there are other areas where effective liaison occurs, eg cross referral of Development Applications/Works Applications.

I also understand that the NCA Chief Executive and PALM Executive Director meet on a regular basis to discuss matters of mutual concern, although I have no knowledge to whether outcomes from these discussions are based on a shared vision on the future growth and development of the city.

Nevertheless the positive and constructive liaison that currently occurs between NCA and PALM, at least on the matters described above, should be encouraged to continue, and where feasible and appropriate, improved.



10. Despite the positives described above, there are numerous examples of friction and animosity between respective Commonwealth and Territory governments and agencies which is not conducive to the delivery of efficient and appropriate planning and development for Canberra. An environment within which both Commonwealth and Territory planning agencies subscribe to a shared strategic plan for Canberra, have an agreed and integrated programmes and projects, and improved liaison procedures, would in my opinion be in the best interests of both governments and the Australian and local communities they represent.

Some additional processes which might help achieve an improved consultative environment could include:

- The Chief Planner of the new ACT Planning and Land Authority becomes a Member of the NCA Board, and the NCA Chief Executive becomes a Member of the ACT Planning and Land Council. Although both memberships may only be *ex-officio*, it should lead to the chief officer of each organisation obtaining a better understanding of the projects, plans and programmes of the other.
- NCA Chief Executive and ACT Chief Planner continue to meet on a regular, but more formal basis, together with other senior officers if required, to discuss and hopefully agree on common issues and programme priorities, and a mutually acceptable approach to major planning projects and programmes.

There may be some additional value added to these processes if the Commonwealth Minister for Territories and the ACT Planning Minister could agree to meet formally to discuss ACT planning issues, say annually or biannually.

## Summary

The ideas and suggestions contained in this letter are a series of personal points based on my own experiences, thoughts and observations, they are not necessarily the views of my fellow Directors. They are put to the Committee not as a prescription for guaranteed improvement but as a list of possible initiatives for the Committee to consider. My main points in summary are:

- The Authority's role, as set out in the Act should be maintained, and where necessary reinforced and expanded.
- Greater emphasis needs to be placed on creating a vision or long term plan(s) for the Central National Area.

- The Authority should re-assert its strategic planning interest, particularly so that it can more effectively satisfy the requirements set out in Section 10 of the Act.
- The Authority should urgently attempt to gain a more effective and participatory role in the Territory's Spatial Plan study.
- The Authority should generally relinquish responsibility for planning Canberra's arterial road system.
- The National Capital Plan should be subject to a major review, particularly with regard to:
  - Designated Area definition. In my view there is a case for adding new Designated Areas adjacent to major avenues.
  - National Land. In my view all National Land should be included in a Designated Area.
  - Territory Land/Designated Area nexus. Simplify procedures for considering development proposals.
  - Special Requirements
  - General Principles and Policies
- The current successful process for dealing with Works Applications should be retained. However new statutory requirements should be introduced to include time limited assessment periods, public notification of major proposals, and first and third party appeal rights.
- Additional processes should be introduced aimed at improving NCA/Territory liaison, including cross representation on respective Boards, and more formal Chief Officer meetings. Ministerial liaison would also be welcomed.

### Postscript

In 1990, the first full year of Authority business, and following 30 years of stewardship of planning and development in Canberra by NDC, David Hall and internationally acclaimed urban planner<sup>1</sup> was asked to comment on the key issues to be addressed in future development of the city. His full report is available from NCA, but set out below are his opening and closing statements. These statements are fairly typical of the views held by international commentators

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<sup>1</sup> David Hall 1990, then Director of the Town and Country Planning Association of the UK, Member of Executive Board of United Nations Committee on Human Settlements.

around that time. It would be interesting to find out whether after 14 years of a new planning system the same observation would be held.

*"Canberra is a city of which all Australians should be immensely proud. By world standards it is outstanding in the quality of its built and natural environment, in the symbolism and grandeur that befits a capital city, and in the way in which the people of Canberra enjoy their own city. To any newcomer Canberra is a stunningly beautiful city; and to a town planner like myself, nurtured in the garden city tradition, it is, in addition, supreme proof of the worth of planning; proof that through sensitive planning a new, beautiful and civilised living environment can be created where previously there was virgin land; proof that "Man can indeed plan". The excellence of Canberra is a tribute to its people and all those who have been involved in planning and building it".*

*"Finally on an optimistic note, it has struck me very forcibly that the people of Canberra are exceptionally friendly and happy people. I have little doubt that this is because they live in such a beautiful and well planned city which imbues them with an all-pervading sense of wellbeing and pride. The essential challenge for the future is to ensure that its people now and in the years to come continue to display those characteristics".*

I would be available to attend any hearings of the Committee if required.

Yours sincerely



Malcolm Smith  
Director

28 May 2003