

ACT Government Submission

to the

**Joint Standing Committee on the National Capital and External
Territories**

Inquiry into the role of the National Capital Authority



April 2008

Introduction

The ACT Government welcomes the Joint Committee's Inquiry into the role of the National Capital Authority (NCA). This inquiry is timely, particularly in the context that twenty years have passed since ACT self-government and the promulgation of the Commonwealth's *Australian Capital Territory (Planning and Land Management) Act 1988* (PALM Act) establishing the NCA and that the recommendations of the last inquiry in 2003-2004 were not agreed and not implemented by the previous Government.

The Commonwealth Government plays an important role in the nation's capital and needs to be engaged in this role. The ACT Government is supportive of the NCA and its vision to '*build the National Capital in the hearts of all Australians*'. To this end, the ACT Government considers that the NCA's functions to sponsor capital works, to manage lands set aside for the purpose of the National Capital and of fostering an awareness of the Capital should be augmented.

The ACT would like to reaffirm the view set out in its 2003 submission to the Inquiry of the Joint Committee on the National Capital and External Territories into the role of the National Capital Authority, that is, that the original objectives of the PALM Act establishing the NCA have not been met, and that a more streamlined, cost effective planning regime for Canberra needs to be developed. As a result of a continually changing environment, there is an even more compelling case for changes to be made, both legislative and non-legislative, to improve and simplify the planning and administration system in the ACT.

The ACT Government would like to confirm that the objectives of the Commonwealth in passing the PALM Act were two-fold:

- to give practical effect to the purpose of the *Australian Capital Territory (Self-Government) Act 1988* to confer upon the citizens of the ACT the same rights over the development of their community as enjoyed by every other State and Territory of the Commonwealth; and
- to create a clear 'unambiguous' separation between National and Territory planning responsibilities, with a strong emphasis on parliamentary scrutiny and public consultation and review to ensure openness.

A more streamlined regime - one that is genuinely a well integrated dual system, rather than an overlap of two largely independent systems - should be introduced to give effect to these original objectives, delivering to the people of the ACT greater control over planning for their city, while at the same time protecting Canberra's national capital role and its unique planning heritage.

The main benefits of enhanced planning administration to the ACT Government, which will have an economic value, will be reduced Commonwealth involvement in those planning matters that are of a local nature; greater participation in the strategic planning outcomes for the ACT that inherently impact on local and regional planning outcomes; single administration over land it has lease administration of; less confusion for the general public, including the development industry, over who is responsible for what; and enhanced spatial information capabilities.

In 2004 the Joint Standing Committee on the National Capital and External Territories reported on results of the Inquiry into the role of the NCA. The report *a national capital, a*

place to live Inquiry into the Role of the National Capital Authority made eleven recommendations that were not implemented or agreed by the previous Government.

The key issues considered by the Committee in 2004 included:

- the NCA's active role in promotions and the question of whether this is detracting from its important planning role;
- the relevance of the National Capital Plan (NCP) and the question of whether, in its current state, the plan fulfils its statutory objective to ensure Canberra and the Territory are planned in accordance with their national significance;
- the planning relationship between the Commonwealth and the Territory;
- the lack of clarity in the planning process resulting from 'grey areas' of jurisdiction between the Commonwealth and Territory planning authorities which have overlapping responsibilities under the PALM Act;
- the NCA's management of Designated Areas and the impact of NCA decisions on ACT Government policies;
- the NCA's management of land and assets, including its responsibilities regarding the National Carillon and Lake Burley Griffin;
- employment location policies in the NCP which have seen rapid commercial development at Canberra Airport and have been criticised for having a deleterious impact on Civic and the other town centres; and
- the NCA's approach to community consultation.

Since the Committee reported on the results of the Inquiry, further changes have taken place in Canberra that necessitate some changes to the ACT Government's position. These include:

- the enactment of contemporary planning legislation in the ACT that comprehensively introduces the Development Assessment Forum's (DAF) Leading practice Model for Development Assessment and which responds to COAG's National Reform Agenda;
- the adoption of the Canberra Spatial Plan by the ACT Government as its strategic planning policy for the development of Canberra over the next 25 years;
- agreement of a Regional Management Framework which has been entered into with the NSW Government, which includes the preparation of a Cross Border Settlement Strategy for Canberra and the sub-region; and
- the capacity of the ACT to resource planning agencies to conduct overlapping functions.

It is also the view of the ACT Government that whilst the principle of 'one plan for one city' remains an important one, a more compelling principle from the perspective of simplifying planning in the Territory is that planning jurisdiction should reside with whoever administers the land. In the case of Canberra airport, the ACT Government maintains the position it has

previously adopted, that non-aviation development should be the subject of independent, transparent and accountable planning assessment by the Commonwealth Government.

The ACT Government would also like to state from the outset that it believes there is a continuing need for a Commonwealth body responsible for administering planning for those areas that continue to be the subject of Commonwealth planning jurisdiction (given their national significance). A Commonwealth planning body would also be required for the purpose of administering, in partnership with the ACT, any principles of national capital interest that need to be considered elsewhere within the Territory.

Post Self-Government

After the enactment of the PALM Act – and the *Australian Capital Territory (Self-Government) Act 1988* that preceded it – there was a period of transition while the NCA prepared the NCP. A combined draft NCP was certified on 9 March 1990 and the NCP was gazetted and took effect on 21 December 1990. However, even before this gazettal, problems with the new arrangements resulted in the issue being raised in the Senate. Speaking on 6 December 1990, ACT Senator Margaret Reid expressed concerns that she said were held by both the newly constituted and elected ACT Government “and the people of Canberra”:

“The concerns are twofold really: the additional costs that the National Capital Plan may impose upon the Territory, particularly the way in which it restricts land use, and the confusion which seems to be in existence created by a dual planning system. Whether it is inevitable that there will be confusion because there are two, I do not know but the fact is that a lot of people find it confusing.” (Hansard, p. 5123)

Even at this early stage of the NCA’s history, the concerns highlighted by Senator Reid were drawing attention to the fact that the PALM Act had delivered to Canberra not the integrated *dual* planning system that was promised but two *overlapping* systems. Instead of a system that provided a clear delineation of responsibilities for areas of national significance, the PALM Act had instituted a system with unclear lines of authority and a confusing and costly duplication of planning arrangements, creating unforeseen barriers and disincentives to investment and economic activity in the ACT.

Twenty years on, the ACT Government believes the time is right to overcome these limitations through the creation of a genuine dual planning system – a planning regime in which the NCA has administrative and development control over areas of clear national significance, while the ACT Government, operating as necessary within broad planning principles identified to protect Canberra’s national and planning heritage, has the surety of planning control over all other areas within the ACT. The ACT Government believes that such a system will help *both* the NCA and the ACT Government to perform their respective roles more openly and effectively.

The key issue for the ACT Government is to achieve State level planning rights that reflect the accountabilities and responsibilities of the ACT Government, while maintaining an appropriate balance of genuine national interest in the nation’s capital.

The key consideration in creating a better system is determining the level of planning responsibility that should be exercised under the direction of the ACT Government. On this issue, the framers of the PALM Act were quite clear: within the unique constraints of Canberra’s national capital significance, it was appropriate for the newly self-governing Territory to have similar planning responsibilities to those exercised by Australia’s State and local governments. This can be no better reflected than in the fact that it is the ACT

Government that represents the Territory's interests in planning at the Local Government and Planning Ministers' Council and the senior officials group of State and Territory planning jurisdictions, the Planning Officials Group.

While the PALM Act established the NCA, the primary purpose of the Act was not so much to establish a federal planning authority for the ACT, as to *redefine* the responsibilities of federal planning in the national Capital. Immediately prior to the introduction of the Act, and for some decades before that, the Commonwealth had used its existing national planning authority, the National Capital Development Commission (NCDC), to execute national, state, and municipal planning controls throughout the ACT.

Indeed, latter sections of the PALM Act (cf. sections 62-85) deal with issues of continuity between the two organisations. The core purpose of the PALM Act was to *divest* the NCDC of the state and municipal levels of control and transfer them to the self-governing entity of the ACT, and its democratically elected Assembly, while retaining a level of oversight for those matters of national significance in the planning and development of Canberra, through the NCP.

This was made clear by the Minister for the Arts and Territories, Mr Clyde Holding in the Second Reading Speech for the PALM Bill on 19 October 1988 (Hansard p. 1928) when he declared the Bill to be: "...*further evidence of the Government's commitment to give the people of the Territory the same rights and responsibilities as their fellow Australians.*"

The new arrangements, Mr Holding said, would create an "*unambiguous separation*" of responsibility for NCP from Territory planning and development, that on the one hand would protect the national character of the ACT while on the other, "*allow the people of the Territory to control the day-to-day planning and development of their home.*" "*Fairness and equity*" Mr Holding declared "*requires that there now be an accompanying and unambiguous division between national and local responsibilities. ...The Commonwealth will accept administrative and financial responsibility to maintain and enhance the character of the Territory as the national Capital. The Australian Capital Territory will accept the normal State-type administrative and financial responsibility to plan and develop the Territory. The Government will abolish the NCDC and set up a new national planning body, the National Capital Planning Authority, directly responsible to the Commonwealth Minister. This new Authority will prepare a National Capital Plan which will define the policies, aesthetic principles and any development requirements required to maintain and enhance the character of the national capital. ... The Bill requires of both governments parliamentary scrutiny, public consultation and review processes to ensure openness.*"

A Contemporary Plan

Canberra is not, and cannot be, just a city of national monuments and institutions, valued as these are both nationally and by the people of the ACT. Canberra is home to over 340,000 Australians and as the self-governing Territory has continued to develop, it has, inevitably come under similar pressures to those experienced in other jurisdictions. Like the States and the Northern Territory, the ACT has had to look to its own resources and expenditure priorities to provide for public infrastructure and social support services. This has been particularly difficult given the limited diversity of the ACT's resources. In an increasingly knowledge-based world economy, the ACT government is confident that, with the right support, the people of the ACT can continue to deliver to the Territory a competitive advantage in intellectual capacity as well as being the national capital. However, given the ACT's lack of manufacturing and resources such as mining and agriculture revenues,

planning efficiency and land development are more economically significant in the ACT than in any other Australian jurisdiction.

While the NCA, like its predecessor organisations, has continued to play a positive role in developing Canberra as a place for many important national institutions (for example ANZAC Parade, Commonwealth Place, the restoration of Old Parliament House, the upgrading of Commonwealth Park and Regatta Point, and the National Museum of Australia) the generally prescriptive nature of the NCP has not allowed the Territory to respond flexibly to emerging challenges that will optimise planning outcomes.

Notwithstanding the legislative requirement for the NCA to review the NCP, no review has taken place. This has meant that the existing plan has not kept pace with changing realities and further that elements of the NCP have come to assume the status of being unalterable. Aspects of this approach to planning have severely limited the ability of the ACT to respond to significant urban development pressures, limiting the choice available in terms of residential settlement and employment location, and making it particularly difficult to introduce a more sustainable urban structure for Canberra. The actual as well as opportunity costs that accrue to the Territory as a result of retaining the 35-year-old General Metropolitan Structure Plan (MSP) run into many tens of millions of dollars. The ACT's Submission to the Commonwealth Grants Commission 2004 Review outlined the additional costs the ACT faces in trying to respond to contemporary urban planning issues.

The ACT Government is doing what it can do to address these challenges and in 2004 released the Canberra Plan, a framework for Canberra's economic, social and spatial development for the next 25-30 years. From 1 July 2003, ACT planning and land management was placed on a more independent legislative footing with the establishment of an ACT Planning and Land Authority, and in 2007 the Legislative Assembly passed the Planning and Development Act, which at this stage is the only piece of planning legislation in Australia that comprehensively responds to the Development Assessments Forum's (DAF) Leading practice Model for Development Assessment.

Yet for all the independent work that the Territory is undertaking, it is constrained in its ability to fully optimise the opportunities contained within this legislation and is powerless to effect strategic change unless the NCA decides that the Territory's plans meet its definition of what is acceptable in terms of the NCP. As a consequence of this, the future of the people of Canberra can be determined by the NCA. This situation does not appropriately reflect the reality of ACT self-government or the reasonable expectations of the people of the ACT to exercise control and manage their own future.

The Way Forward

The ACT Government would like to confirm the view set out in its 2003 submission that:

A review of the *Australian Capital Territory (Planning and Land Management) Act 1988*, and the NCP, be undertaken to:

- facilitate more effective and accountable strategic planning of the Territory by the ACT Government;
- ensure that the NCA is responsible to the Canberra community in its management of the NCP; and

- more clearly define areas of genuine National capital significance within the NCP and limit the levels of control exercised by the NCA over other parts of the ACT.

The key areas of interest for the ACT are:

- content and administration and format of the NCP;
- strategic planning and the role of the MSP;
- the application and administration of designated areas specifically the removal of designation;
- the application and administration of other special requirements;
- development assessment processes, including community engagement;
- spatial information mapping and modelling; and
- arterial roads.

Amendments to the PALM Act should enshrine the following principles:

- the national elements of the national capital should be clearly identified and protected;
- the citizens of the ACT should be able to exercise self-determination and be responsible for the economic and social implications of their decisions, including control of planning and residential and commercial development across all Territory land, subject to meeting any principles identified to protect the national interest; and
- beyond the establishment of broad planning guidelines, the overall planning system for the ACT should eliminate multiple planning and development control responsibilities in any one area and over any one piece of land. The Act should reflect the principle that planning responsibility flows from whoever administers the land.

In particular the Act should be amended to:

- repeal provisions that give rise to the NCA having the power to review a decision of the Australian Capital Territory Planning and Land Authority (ACTPLA);
- transfer responsibility for the planning of arterial roads to the ACT Government (including location and land uses adjoining them);
- repeal provisions that permit challenges to the validity of ACTPLA decisions on the basis of inconsistency with the NCP; and
- remove the need for ACTPLA to consult on all Variations to the Territory Plan, which does not account for the contemporary manner in which the planning system is to operate under the *Planning and Development Act 2007*.

In respect to revision of the NCP, the ACT Government considers that designation under the NCP should be removed from all Territory land outside of the National Triangle and diplomatic missions, and that all other special requirements under the NCP be removed from Territory land and development applications administered by ACTPLA.

The MSP should also be changed from a physical land use plan designating urban development policies for residential areas, commercial centres, roads, transport routes and open space corridors to a set of conditions or principles protecting the national interest. These would apply to both the Commonwealth and the ACT.

The ACT Government preferred position for the progression of amendments to the future role of the NCA is for a two-stage approach which includes immediate uplifting of designation and special requirements, the replacement of the MSP with principles within the NCP followed by targeted amendments to the PALM Act.

The Canberra Airport presents a significant issue for planning in the ACT. The ACT Government's *Economic White Paper* and *Spatial Plan* identify the Airport as a critical piece of infrastructure for the Canberra region as well as an important employment node within the Territory itself. The nature of future employment in the area surrounding the Airport is envisaged to be essentially industrial, broadacre and transport-related, reflecting the unsuitability of much of the area for residential use; the good access to transport connections; and the desirability of siting higher value employment in Civic and the town centres. Further to the last point, the *Spatial Plan* states that 'Civic and the town centres will be the primary focus for future employment growth within these [employment] corridors'.

However, under the current planning arrangements, the Airport is not constrained by the type of landuse zoning applying across most of the ACT under the Territory Plan or National Capital Plan. The range of permissible uses at the Airport is very wide and include commercial and residential accommodation; cultural facility; financial establishment; retail, wholesale, transport, defence, storage and warehouse facilities; aero services, agriculture and open space. Obviously, this list of permitted uses goes well beyond the essentially industrial, broadacre and transport-related uses envisaged in the *Spatial Plan*.

The ACT Government notes that current planning for the Airport suggests that up to 25,000 people will be directly employed at the precinct, representing over a three-fold expansion on current levels and putting the Airport on a par with Civic's current employment. Accordingly, there is a considerable concern that development at the Airport could challenge the role of Civic and the town centres in Canberra's commercial and retail hierarchy. With 25,000 workers, the Airport would be the second largest employment area in the ACT. The ACT Government considers this would seriously distort the pattern of spatial planning in the ACT.

The ACT Government has already approached the new Commonwealth Government to seek meaningful consideration of relevant state, territory and local planning provisions. However, if the Commonwealth Government does not support this approach, then it should provide clarification as to how, in relation to non-aviation development control, it will enforce conditions of development approval placed on airport lease companies and what role state and territory governments are expected to play in relation to these conditions.

First Term of Reference

The administration of the National Capital Plan with particular emphasis on the reduction of red tape and duplication of municipal and local planning functions, the jurisdiction of ACT spatial policy and harmonisation of planning systems;

While the Territory enjoys many benefits as a consequence of being a planned city and because it is the nation's capital, a key issue for the ACT Government and the community is that sustainable and effective management of land is severely compromised as planning and administrative responsibilities are divided between Commonwealth and ACT planning agencies. Likewise, the ACT Government needs to be able to determine financial priorities arising out of planning for Canberra, as opposed to having them in some cases imposed on it by another jurisdiction that is not accountable for those financial consequences.

Moreover, because the Territory does not have a legislative or administrative mandate for strategic spatial planning, the ACT Government cannot fully integrate its other functions, such as economic development, provision of health, education and transport with the spatial planning of the city, nor can it be responsive to changing demographics, social values or environmental sensitivities. This is brought into particularly sharp focus in regard to the ACT's regional and cross border relationships.

The PALM Act gives the NCA an overarching responsibility for the land use planning of the Territory. This overarching role does not require the NCA to consult with the ACT Community and can limit the Territory's effectiveness in executing its 'State' functions.

Five combinations of planning and land management currently occur in the ACT:

- designated land that is also National land, (eg the Parliamentary Zone);
- designated land that is Territory land (eg the ACT Legislative Assembly);
- national land where Special Requirements apply (eg Benjamin Offices);
- areas of Special Requirements that are Territory land (eg Canberra Avenue); and
- Territory land, administered by the Territory (Note: land use must still be consistent with the MSP in the NCP).

The dual administration of these planning and land management systems is confusing and resource consuming, which can also delay decision making.

Simplification is sought through the removal of designation and special requirements from all Territory land with appropriate transitional arrangements. Without designation and special requirements it is proposed that the key principle with regard to planning and land management in the ACT be: that planning responsibility flows from whoever administers the land, so that no site in the ACT should be subject to more than one planning administration (noting that there will be a small number of anomalies resulting from the application of this principle given that the ACT Government accepts that land inside the National Capital Triangle should be under the planning jurisdiction of the NCA). It is also considered that this principle is consistent with what was intended through the establishment of self-government.

The removal of designation from leased and unleased Territory land defines responsibility clearly and keeps national capital interests focused on the National Capital Triangle and other areas of clear national interest.

With the removal of designation, the majority of Commonwealth interests would be expressed by 'ownership' [land administration]. The Commonwealth can expand its interests by acquiring ACT land with compensation. Planning responsibility would be adjusted accordingly by changes to the NCP. Commonwealth interest in land can be divested by disposal action. It should be guaranteed that the ACT Government will have first right of refusal of purchase at market value. In these circumstances planning responsibility would change accordingly [via rezoning].

Notwithstanding this general principle, it is acknowledged that there are likely to be limited circumstances where genuine national interest issues will arise in relation to some Territory land. To address this, provision should be made for the NCP to establish policy requirements for Territory land. Such policy requirements would, however, be limited to circumstances where there is a clear national capital interest and should be required to be expressed in measurable or unambiguous terms so that they can be implemented through the Territory Plan.

There should also be only limited circumstances where the NCP can establish policy requirements for Territory land in the interests of the national Capital (for example, specified inner hills to remain as predominantly natural open spaces, City Hill in the context of the National Capital Triangle), where the Territory Plan would need to be consistent with those requirements, however, the Territory would exercise all implementation, development control and leasing responsibility for those areas.

Section 10 of the PALM Act, 'Matters to be covered in Plan', states that the NCP: *2(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;*

The General Metropolitan Structure Plan (MSP) entrenched in the NCP sets out the extent and location of land uses and the arterial road system. In the ACT's view, the MSP is based on an extended view of the above section of the PALM Act.

This Plan was essentially developed by the National Capital Development Commission (*Metropolitan Canberra, Policy Development Plan July 1984*) and confirms the concept of the "Y-Plan", originally conceived in 1970 (*Tomorrow's Canberra*). It is significant to note that the Y-Plan was influenced by the application of land use and transport theories espoused in the 1960's and while the plan has produced a robust structure for Canberra, the concern for the Territory is the degree to which the plan can respond to the contemporary needs and aspirations of a community in the 21st Century.

In 1996/97, at considerable cost to the Territory and the NCA, a Joint Task Force was formed to review the MSP. The work of this Task Force was never formally adopted by the NCA and so the structure plan has remained essentially unchanged since its initial development by the NCDC over twenty years ago.

Within this framework and its strict interpretation, the ACT Government must try to plan and be accountable to the ACT community in regard to emerging social, environmental and economic imperatives, changes in demographics and social values. The approach of routinely denying the ACT Government opportunities to consolidate urban development and instead giving precedence to the MSP – now over twenty years old and not tested against any sustainable development criteria – cannot continue.

It is worth noting that amendments to the NCP are required whenever there are administrative refinements or modifications that need to occur to the MSP as a consequence of more

rigorous, detailed local planning. By default, the Commonwealth Parliament will be asked to consider these local planning matters in the variation to the NCP and to either ratify or deny the changes. There is no reasonable justification for this level of Commonwealth involvement in local ACT planning matters.

Throughout Australia, strategic planning policy, administration and legislation is wholly a State responsibility and the Commonwealth is not involved in determining the final outcome. Allowing the Territory to administer all Territory land in accordance with prescribed principles of national significance, or national interest, would confer to the Territory these same rights. It would also resolve the confusion in the regulatory overlays existent in the current planning system and obviate the need for the NCA to consider and undertake minor NCP amendments.

Whilst there continues to be a MSP within the NCP there will be: duplication with two planning authorities overseeing land use policies for the whole of the city; uncertainty for industry; and confusion for the community.

The introduction of clear planning principles within the PALM Act would be beneficial in continuing to protect Canberra's national and planning heritage, which could in turn be reflected in the Territory Plan, thus allowing the ACT Government to plan for the ACT. If implemented these principles may reduce the need for the MSP altogether, a position supported by the ACT Government.

The Territory's planning and legislative framework should be used to plan and administer changes to the metropolitan structure of Canberra, this would also ensure that the community is consulted on these decisions, and provide a better framework for that consultation. The engagement of the ACT community in planning activities is of paramount significance to the ACT Government.

The two planning administrations should work together, in the future, to prepare advice to both Governments on a program for achieving greater alignment of the structure and format, including language and alignment of zones, between the DAF Leading Practice compliant restructured Territory Plan and the NCP, with a view to developing a single planning instrument that would be implemented by the two jurisdictions for their respective areas of interest.

Both planning administrations have also developed over time, important and significant software applications that operate as aids in planning practice and have the ability to be further harnessed to increase the capacity of both agencies to provide enhanced e-planning capabilities in the future. This is in the form of both geographic information systems and 3-D modelling technology. Work is underway to consolidate these systems and this should be encouraged to occur in a way that the combined technology outcome becomes mutually available to both enhance both organisation's capabilities into the future, as well as introduce new ways of undertaking planning practice.

With the NCA's recent budget cuts and the changes to planning administration proposed by this submission, the ACT Government through ACTPLA, would inherit additional responsibilities. These should be appropriately recompensed, having regard to any efficiency dividends that emerge through the process.

The ACT Government preferred position for the progression of amendments to the future role of the NCA is for a two-stage approach which includes immediate uplifting of designation and special requirements, the replacement of the General Metropolitan Structure Plan with principles within the NCP followed by targeted amendments to the PALM Act.

Second Term of Reference

Whether the governance arrangements for the NCA provide a sufficient balance between the independence of the Authority's planning decisions and its accountability for its operations;

The NCA consists of a Chairperson and four other members, including the full-time Chief Executive. Each member is appointed by the Governor-General. The Chief Executive manages the affairs of the Authority under the general directions of the Authority. Staff are employed under the *Public Service Act 1999* (Cwlth).

The NCA is responsible for ensuring that Canberra and the Territory are planned and developed in accordance with their national significance and that the full range of functions to maintain, enhance and promote the national qualities of the national capital are met for the Commonwealth on behalf of the Australian people. The functions of the Authority, as set out in section 6 of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth) are:

- a) to prepare and administer the 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.

The statutory functions of the NCA set out the accountability to the Commonwealth Government, however, those functions do not set out any responsibility or accountability to the Canberra community. The board of the NCA is appointed by the Governor-General; there is no representation of the ACT Government, nor the community on the board of the NCA.

The ACT Government seeks representation on the NCA Board. This representation will allow the ACT Government to work more collaboratively with the NCA in areas of mutual interest, and in introducing policy content to the NCP that has the potential to impact on the planning administration of ACT land and help supervise planning administration that the ACT Government believes can be streamlined as already outlined in this submission. It should be noted that a safeguard would remain through the requirement under the PALM Act for the NCA to consult with the ACT Government's planning department (ACTPLA) on any changes to the NCP, which includes a process of resolution where the two planning agencies disagree.

The ACT Government proposes regular formalised discussions with the NCA on matters of concern. These meetings, at senior official level, would include discussion on mechanisms to assist the optimisation of any modified systems. It would also be appropriate for both planning agencies to include an item in their Annual Reports on collaborative work. ACT representation on the Board of the NCA is considered appropriate.

In addition to ACT Government representation on the Board of the NCA, the Act Government would like to raise the option for one of the members of the Board, or through the addition of a further place on the Board, should be a representative of the ACT community, with a skill set that will contribute in an apolitical way to furthering the planning and development of Canberra in a way that recognises the national interest.

Third Term of Reference

The appropriate level of oversight required to achieve the highest standards in design for areas of national significance;

In the first instance it is the interpretation of the ACT Government that this term of reference is directly relevant to the NCA and should be addressed as such – by the NCA - having regard to its specific reference to areas of national significance, which in the ACT Government’s submission, would generally remain under the planning administration of the NCA. Nonetheless, consistent with the approach that planning in the nation’s capital should reflect status; the ACT Government supports the highest standards of design in areas of national significance.

This principle reflects the importance of developing the significant institutional buildings for the nation, as well as the public spaces that are developed and maintained for the general enjoyment of those who reside in and visit the nation’s capital. It is the view of the ACT Government that this is an activity that has generally been discharged well by the NCA.

This will continue to require the appropriate level of funding to ensure that these standards are a key consideration in the planning and development of the nation’s capital.

By relieving the NCA of its more ‘local’ planning functions (through, for example, the removal of designated areas) the Authority would be better placed to focus on the national aspects of its role. The NCA inevitably works in an environment that is subject to intense scrutiny, where many of the aesthetic judgements made in respect to design standards are subjective. The on-going practice of developing design guidelines, and where appropriate design competitions for developments of national significance, is supported.

The ACT Government would continue to plan and design those areas outside the areas of national significance to a standard that is appropriate to a city that is both the national capital and home to its 340,000 residents. In doing so the ACT would have regard to the principles of national significance for development occurring in other parts of the City to achieve a standard of design that is practical to the location, the function of the building or space and is pragmatic in terms of the investment necessary to achieve these outcomes.

In terms of appropriate levels of oversight, the NCA is ultimately accountable to a Minister and the Australian community, including a range of interest groups that maintain a vigil over the planning and development of Canberra. The measures proposed by the ACT Government would ensure that where appropriate, the ACT community would also have a greater level of involvement in the work of the NCA, but not in a way that would unreasonably place local interests over those of national significance.

Fourth Term of Reference

Opportunities to ensure cooperation with the ACT planning authority and increased engagement with the Canberra community;

Contrary to what would appear to be popular belief, the ACT works collaboratively with the NCA at officer level on a range of planning issues – whether as a requirement of statutory processes such as variations to the Territory Plan, day-to-day planning matters where ACT and Commonwealth responsibilities overlap, or on broader strategic planning.

Inevitably, however, as ACTPLA and the NCA are responsible to different legislative provisions, statutory processes and Government interests, their approaches to an issue will differ from time to time, which is why overlapping jurisdiction should be removed wherever possible.

Clearer delineation of responsibilities and reduction in overlap between the two planning jurisdictions will go a long way to facilitating greater cooperation between the two planning authorities. Other mechanisms such as staff exchanges and formal as well as informal meeting arrangements should also be explored.

Noting the earlier proposal for both an ACT Government and a community representative being appointed to the Board, it is envisaged that this measure would ensure that as well as the skills and experience required to represent the broader national ‘community’, the Board would have exposure to local interests.

The ACT Planning and Land Authority engage with the community on a wide range of issues and at different levels – involving both statutory and non-statutory consultation. This includes legislated roles and functions (in the *Planning and Development Act 2007*) to ensure community consultation and participation in planning decisions and to promote public education and understanding of the planning process, including by providing easily accessible public information and documentation on planning and land use.

Ideally the processes for engaging with the Canberra community on planning matters, whether in respect to areas of national significance or otherwise, should be consistent and to avoid uncertainty and the potential for confusion, should reflect a seamless approach.

In this regard, the ACT and Commonwealth Governments should be able to work towards processes that deliver consistent and transparent approaches to community engagement.

Finally, consultation with the ACT Government should not just be seen as being confined to the ACT Planning and Land Authority. Whilst it is recognised that there is a statutory responsibility to consult on certain town planning issues with the Territory Government’s planning agency, broader strategic planning involves a number of interests within the ACT Government. It is appropriate that the ACT Government move to clarify these arrangements with the NCA to assist its communications with the Territory’s administration.

Fifth Term of Reference

The effective national promotion of the National Capital, and the roles of the NCA and the ACT Government in advocacy for new infrastructure projects including responsibility for events and developing the distinctive character of the National Capital.

In making any changes to planning practices in the ACT it will be important to retain the function of the NCA to foster awareness of Canberra as the National Capital. The mission statement of the NCA is to 'build the national capital in the hearts of all Australians'. It is not proposed that there be any reduction in funding for the events/promotions aspects of the NCA – more that enhanced cooperation between the NCA and ACT Government on these events/promotions be highlighted as an appropriate way forward. It should be noted that the NCA has not had significant funding to achieve this goal and that this lack of resources can limit the NCA's ability to promote its message outside of Canberra.

The NCA has never had the capacity to deliver any meaningful national outreach programs, its board meetings have always occurred in Canberra and, ironically, through the creation in 2001 of the *Capitals Alliance* group (Canberra, Washington, Brasilia and Ottawa), it could be argued the NCA has built stronger connections and relationships internationally than within Australia.

In a promotional sense, the NCA budget has had to focus almost totally on spreading the message about Canberra within Canberra itself.

This is done in a number of ways through:

- the National Capital Exhibition Centre at Regatta Point;
- the NCA volunteers program which runs guided tours within Canberra (eg Anzac Parade); and
- operation of the National Carillon and Blundells' Cottage.

At present the NCA's total national outreach consists of its website and two modest travelling packs that are sent to interstate destinations by request, unaccompanied by support staff due to budgetary constraints.

Consideration should be given to providing the NCA with far greater capacity to reach out to the nation about the historical, political and symbolic role of the capital. It has been suggested wrongly that it is the role of the ACT Government, through Australian Capital Tourism, to promote the national capital. Tourism's role is solely to market Canberra as a holiday destination. In contrast, the NCA's emphasis in a promotional sense, is to highlight the relevance of Canberra, as a capital for all Australians to take pride in (whether they visit or not).

In addition, in response to the *Parliamentary Zone Review* (2000), which highlighted the need to bring alive 'empty' and 'sterile' places in the Parliamentary Zone, a new emphasis was created to deliver a suite of events on the large open spaces around Lake Burley Griffin. This started with a major Christmas Concert in front of parliament which was later morphed to become the national Australian of the Year Awards ceremony and concert.

Between 2001 and 2007 the NCA's events program evolved to include a summer and winter events program, the Tropfest short film festival and a local Australia Day program in Commonwealth Park. The NCA also actively promoted its spaces for events which has

resulted in bringing international performers to Canberra (eg Elton John) and high-profile watersport events on Lake Burley Griffin.

The delivery of events such as *Celebrate Australia Day Live* appealed to a large number of Australians; its telecast on the national television acted as a positive force in building national pride, awareness and recognition of national achievements. The event also placed the National Capital in the hearts and minds of a large national audience.

Events and other initiatives implemented by NCA created an opportunity for the creation of partnerships with the ACT Government. The staging of events with national profile aligns and compliments the destination marketing efforts of Australian Capital Tourism. In general, NCA facilitated events do not necessarily drive significant direct economic returns for the tourism sector, but add to the depth of visitor experiences on offer, once people are in the Capital.

One major partnership activities between Australian Capital Tourism and NCA is Floriade through the usage of the Commonwealth Park. Floriade is a nationally recognised event which generates a significant economic impact; it helps shape national perceptions of the ACT (in line with the previous NCA mandate); partnership opportunities have greatly impacted NCA budget cuts and flow on impacts to Floriade as an event.

It is of concern that as a direct result of the staff and budget cuts announced since November 2007, the NCA has indicated that it will no longer be in a position to support any of its previous high-profile program of popular events. Without these free outdoor activities, Canberra's Central National Area risks again becoming a dull and lifeless place - adding to the perception that Canberra is a boring city to live in and visit.

As the 2013 centenary approaches, the NCA appears to be a logical agency for the ACT Government to partner with in the development of a program of a events and activities. Any changes to the functions and resourcing of the NCA with regard to promotions will dramatically impact on its ability to make a meaningful contribution to the Centenary.

Recommendations

It is recommended by the ACT Government that:

- (i) the general principle that whomever administers the land has planning jurisdiction, be applied to all land in the ACT;
- (ii) designation under the National Capital Plan (NCP) be removed from all Territory land outside of the National Capital Triangle with any appropriate transitional provisions;
- (iii) a new governance arrangement be established with the National Capital Authority (NCA) agreed by the Commonwealth and the ACT Government that would involve:
 - a. the introduction of clear planning principles within the NCP to continue to protect Canberra's national and planning heritage; and
 - b. a review of the need for the General Metropolitan Structure Plan (MSP) as a result of introduction of clear planning principles within the NCP;
- (iv) all other special requirements under the NCP be removed from Territory land and development applications administered by ACT Planning and Land Authority (ACTPLA) with any appropriate transitional provisions;
- (v) the ACT Government be represented on the NCA Board and that either through the creation of an additional position or the replacement of an existing member, the ACT community also have an appropriately skilled representative on the Board;
- (vi) that the ACT Government and the NCA work towards the removal of the need for separate Amendments to the NCP when a variation to the Territory Plan is required for matters of local significance and the harmonisation of development assessment processes, language, format, zoning structures, etc;
- (vii) where Commonwealth interest in land in the ACT changes resulting in disposal action, that the ACT Government be given first right of refusal and planning responsibilities change accordingly;
- (viii) the *Australian Capital Territory (Planning and Land Management) Act 1988 (Cwlth)* be amended to:
 - a. repeal provisions that give rise to the NCA having the power to review a decision of the ACTPLA;
 - b. transfer responsibility for the planning of arterial roads to the ACT Government;
 - c. repeal provisions that permit challenges to the validity of ACTPLA decisions on the basis of inconsistency with the NCP;
 - d. remove the need for ACTPLA to consult on all Variations to the Territory Plan, which does not account for the contemporary manner in which the

planning system is to operate under the *Planning and Development Act 2007*;
and

- e. consider whether the need for planning principles to be included in the NCP or the principles themselves should be included in the PALM Act.
- (ix) the ACT Government be given access to the NCA's 3D modelling software to enable its consolidation by ACTPLA with its GIS and make the consolidated system mutually available under an agreed administrative arrangement;
- (x) where there are direct administrative costs associated with any of the NCA's planning responsibilities being transferred to the ACT Government the Commonwealth should transfer commensurate funding;
- (xi) the processes for engaging with the Canberra community on planning matters, whether in respect to areas of national significance or otherwise, should be consistent to avoid uncertainty and the potential for confusion. The ACT and Commonwealth Governments should work towards processes that deliver consistent and transparent approaches to community engagement;
- (xii) the NCA be adequately resourced to maintain and grow events of national significance on national land and coordinate these activities with tourism stakeholders including Australian Capital Tourism;
- (xiii) the NCA be encouraged to develop a clear strategic tourism plan for all the national and cultural icons that it controls. This would require the NCA to contribute financially and in kind to cooperative tourism marketing and development activities; and
- (xiv) the NCA should continue to be funded to undertake: national perceptions research and the volunteers program at Regatta Point, Blundells Cottage and the Carillon.