

Joint Standing Committee on the  
National Capital and External Territories

Submission No: ..... 69.1 .....

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CHIEF MINISTER'S DEPARTMENT  
Chief Executive



Secretary: .....

The Secretary  
Joint Standing Committee on the  
National Capital and External Territories  
Parliament House  
Canberra ACT 2600

Dear Secretary

I am writing to you regarding the Inquiry into the role of the National Capital Authority by the Joint Standing Committee on the National Capital and External Territories.

As you would be aware, the ACT Government appeared at a hearing of the Inquiry into the role of the National Capital Authority on 22 May 2008. There were a number of questions taken on notice as well as a request for the ACT Government to consider the possible governance arrangements for an integrated planning document for the ACT.

I thank the Committee for the opportunity to clarify in more detail the ACT Government position. Please find attached the ACT Government response to the questions posed.

Yours sincerely

Andrew Cappie-Wood  
Chief Executive

1<sup>st</sup> May 2008

**The Chair of the Committee asked the ACT Government and the National Capital Authority to clarify and consider issues with regard to conceptual and governance arrangements for ‘integrated planning’.**

**ACT Government response:**

In response to the conceptual framework for planning harmonisation proposed by the Chair, the Inquiry’s attention should be drawn to the diagram at **Attachment A**.

The ACT Government considers that the conceptual framework is achievable and in this regard the diagram at **Attachment A** shows the immediate relationships. The main elements of the ACT position are:

- “Matters of National Significance” be agreed by both the Commonwealth and ACT and be clearly identified both in definition and scope. Such matters should be associated with an identifiable action (e.g. – preserve, enhance, construct). It is expected that where “Matters of National Significance” apply to land administered by the ACT Government that the Commonwealth Government fund appropriately to achieve the desired National Significant outcome.
- The de-designated areas of the National Capital Plan would be appropriately zoned under the Territory Plan to reflect their current use.
- “Matters of National Significance” would be reflected in both the reworked National Capital Plan and Territory Plan.
- All Development Applications of an appropriate scale (ie – not footpaths etc.) in areas of National Significance in Territory administered land would be referred to the NCA for comment.
- An ‘integrated plan’ can be achieved quickly by having the “Matters of National Significance” represented in each respective governments plan. This assumes that the resolution of the designated areas is achieved so that the principle espoused earlier of – planning responsibility going with the administration of the land- is applied.
- Thus a ‘single plan’ can be produced representing the respective Commonwealth and ACT Government parts. Such a plan would not be a statutory plan but rather an information document.
- Further harmonisation can take place in due course that deals with common language and definitions, 3D application etc.
- It is possible that eventually a single statutory document could be developed however it is recognised that there is considerable work needed to achieve this. It should be noted that this step is not one that has been considered by the ACT Government.
- The clarification of “Matters of National Significance” together with de-designation would enable harmonisation of the planning relationships and obviate the need for a separate Metropolitan Structure Plan.

The statement below made by the Chief Executive of the National Capital Authority, Ms Annabelle Pegrum at the hearing of the NCA on 21 April 2008 is relevant in the discussion of harmonisation of planning documents.

*"..... I refer to the need for an integrated planning document for Canberra. The National Capital Authority view is that the National Capital Plan and Territory Plan are still both relevant and should be retained as complementary plans. However, there is significant scope for both plans to be better presented and for the planning hierarchy to be set out and made unambiguous. With that objective in mind, the authority supports a fully integrated planning document with a common language and common definitions. For good communication of this type, we need to think beyond two-dimensional planning documentation and take the lead by augmenting that traditional documentation with a three-dimensional fully digital plan. This virtual plan could also be layered with visitor information and would be used to model national and local development applications—a 21st century approach to articulating the planned vision for the capital."*

The ACT Government view is that there should be clearly demarcated areas with responsibility flowing to either of the two planning authorities. Responsibility should be administered through adherence to principles covering "Matters of National Significance" clearly set out in the National Capital Plan and referred to in the PALM Act. These principles would also be outlined within Territory planning documents and would take precedence in the making of planning decisions.

The principles and details covering "Matters of National Significance" should replace the need for a Metropolitan Structure Plan and allow the ACT Government to plan those parts of the city it has responsibility for.

It should be noted that the submission by the Federal Attorney-General's Department stated that:

*It is desirable to ensure that the planning regime ensures appropriate focus by the Commonwealth and by the ACT upon their respective interests in Canberra, and provides clarity as to the nature and requirements of these interests and the roles in respect of them.*

*The Department suggests that the ACT Government could be given a larger role in urban/metropolitan planning and development in the ACT, while continuing to be subject to Australian Government requirements and being accountable to the Australian Government for its decisions.*

Attorney Generals Department Submission Paragraphs 3.10 and 3.11

This reflects the ACT Government proposal to have a larger role in the urban planning and development of the Territory.

It is expected that amendments to the PALM Act will be necessary to clarify elements which are currently ambiguous or which can be subject to different interpretations, and to state clearly that the NCP will be a plan for national land and "Matters of National Significance".

Section 10 of the PALM Act should be amended to clearly state the parameters for the NCA and National Capital Plan. There is currently a level of ambiguity with regard to this section and the scope of the NCA in planning for the Territory, as opposed to planning for areas of National Significance.

It is the ACT Government position that if clarity is achieved through section 10 and through agreed matters of national significance, then section 11 of the Act will work effectively.

Section 29(4) of the PALM Act should also be amended to reflect its original purpose to oversee the broad leasehold system in the ACT, as opposed to current interpretation which

can lead to the NCA being involved in variations of lease (including development applications). This doubt should be removed.

As mentioned earlier with regard to any interest the Commonwealth may have in developments on Territory land considered to be 'nationally significant' it is proposed that the NCA be a "referral entity".

The *Planning and Development Act 2007* (the PD Act) includes a substantial legislative framework governing the referral of development applications for advice. Under the PD Act, specified development applications must be referred by the Planning and Land Authority to a second agency for advice. For example, development applications that may affect "protected trees" must be referred to the ACT Conservator of Flora and Fauna for advice as to whether the proposal is acceptable under the *Tree Protection Act 2005*.

In keeping with the overall aims of the Government's Planning System Reform Project and public submissions, the referral provisions of the PD Act were fashioned so as to put in place a process that is as transparent and efficient as possible. To this end, for example, the provisions explicitly identify all required referrals (in the regulation through reference to the Territory Plan) and include multiple procedural requirements such as the need for agencies to provide advice within 15 working days and for that advice to be final, conclusive. The provisions also spell out the obligations and powers of the Planning and Land Authority on receipt of the advice.

The referral process and legislation should, it is suggested, apply equally to all relevant agencies if the process is to be as consistent, effective and clear as possible. This principle should apply to the National Capital Authority (NCA) as one of the key referral agencies in the ACT. In those areas in the ACT where the Territory has responsibility for assessment and granting of development approvals, the NCA should be a referral agency on the same basis that other Territory government agencies are referral agencies. One possible difficulty with this, is section 27 of the *Australian Capital Territory (Self Government) Act 1988* (Cwlth) which provides that Territory legislation cannot bind the Commonwealth (unless specifically allowed to do so under the regulation). On the assumption that the National Capital Authority is part of the Crown in right of the Commonwealth, then the Planning and Development Act cannot apply to the NCA.

This difficulty could be addressed by the Commonwealth adding the Planning and Development Act (or at least its referral provisions) to the existing list of Territory legislation that is able to bind the Commonwealth. This would require an addition to the list in the schedule to the *Australian Capital Territory (Self-Government) Regulations 1989*. Alternatively, (but perhaps less simply) Commonwealth legislation (eg Self-Government Act and/or PALM Act) could be amended to explicitly apply the referral provisions of the Planning and Development Act to the NCA or to mirror those provisions. In the absence of a legislative solution, perhaps the best that could be achieved would be a set of administrative arrangements under which the NCA undertakes to operate as though it were a referral agency. However, such an administrative solution may be open to legal challenge or policy change.

## Further responses to Questions taken on Notice

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1. **The ACT Government Submission refers to the removal of the Metropolitan Structure Plan. The question asks what the cost savings would be if the MSP was removed (specifically regarding infrastructure costs).**

**ACT Government response:**

If, as proposed, the MSP was removed the cost impacts of past decisions can not be reversed. However, future decisions on sustainability, liveability and urban functioning would be those of the ACT (within the overall parameters of "Matters of National Significance"). Hence questions of what type of urban form would better support public transport or balancing sustainability of the urban environment and natural environment become questions for the ACT. The immediate cost savings are not tangible as it is a cumulative impact of sound decision making over a period of time.

2. **Can the economic cost of airport infrastructure roads to the ACT Government be quantified? If so - what is the cost?**

*Senator HOGG—Is there an economic cost to the ACT government as such and, again, can that be quantified?*

**ACT Government response:**

The package of road works identified to address the current traffic congestion on roads in the vicinity of the airport will be progressed through a shared funding arrangement between the Federal and ACT Governments. The ACT Government will fund \$25million of these works and have already allocated funds of \$15 mi as part of the 2007/8 Capital works program with another \$10.0m under consideration for the 2008/9 Capital Works program- Canberra Airport Group will also make a financial contribution of more than \$5.0m. The Federal Government funding of \$30m is likely to be identified in the 2009/10 Federal Roads programs.

The road system serving the airport not only addresses the airport traffic (passengers, goods and services, office and other workers, pick-up/put downs, and construction) but also a substantial amount of traffic generated by Queanbeyan.

3. **If the Chief Minister or delegate is on the NCA board - what are the accountability mechanisms if there are unresolvable conflicts etc? What would the arrangements be?**

**ACT Government response:**

The ACT Government proposes that the National Capital Authority Board have the following role:

- develop and agree the common understanding of "Matters of National Significance" for inclusion into the National Capital Plan and Territory Plan;
- assess the interpretation of the "Matters of National Significance" in the application of the Plans and advise on any changes;
- specify timing and consultation mechanisms for reviewing "Matters of National Significance"; and
- other aspects of their statutory role.

The ACT Government proposes that the Board include:

- Chair (Commonwealth appointed);
- 6 members (3 Commonwealth appointed, 3 ACT appointed); and
- 2 ex-officio (1 NCA, 1 ACTPLA).

Having ACT representation on the NCA Board should not result in a conflict of interest as the NCA will make decision on Commonwealth administered land. ACT representation on the Board will facilitate harmonisation of planning arrangements and be a voice for the citizens of Canberra.

**4. Is the ACT Government effectively compensated for functions as a result of Canberra being the National Capital? (is the ACT Government being short changed?)**

*Senator HUMPHRIES—.....give a comment to the committee on whether you feel the ACT is being appropriately compensated for those national capital functions.*

*Senator HUMPHRIES—....This is about the existing costs implications for the ACT by virtue of living cheek by jowl with the Commonwealth government.*

**ACT Government response:**

It has been recognised that planning decisions taken by the Commonwealth in terms of the shape/form, density, provision for open space, buffers and landscapes have resulted in a “dispersed nature of urban development in the ACT in its open space setting” (Attorney-General’s Department Submission).

The significant cost impost on the ACT of this sprawling low density, high level of open space and buffers and hence high car dependency city form has been partially recognised by the Commonwealth Government. Based on earlier advice from the Grants Commission, the Commonwealth directly provides some relief for municipal services that have higher costs due to the MSP designs. As the Attorney-Generals Department noted this amounts to \$33.6million in 07/08 for a variety of factors relating to the dispersed layout of Canberra, including water and sewerage. This figure also covers compensatory funding for rating disability because of the large number of Commonwealth Government institutions.

The Grants Commission in the 2004 Review considered other cost imposts of the urban form of Canberra. Relative inefficiencies of ACTION public transport due to low density development as well as additional parks and land management costs and extensive road networks to service low density suburbs were all considered. The Grants Commission were of the opinion that these measures should be funded directly from the Commonwealth rather than part of the GST pool distribution. These costs are yet to be recognised by the Commonwealth Government.

In terms of the de-designated areas proposed to become the administrative planning responsibility of the ACT Government, most of the areas are currently maintained by the ACT Department of Territory and Municipal Services.

Evidence has already been given regarding the costs that might be borne by ACTPLA in the planning administration of these areas.

