

20 April 2010

Committee Secretary
Parliamentary Standing Committee on Public Works
Department of House of Representatives
Parliament House
CANBERRA ACT 2600

Submission No. 008

SL (NISHI Building)
Date: 21/04/2010

PROPOSED FIT-OUT OF NEW LEASED PREMISES
FOR THE DEPARTMENT OF CLIMATE CHANGE & ENERGY EFFICIENCY
AT THE NEW ACTON NISHI BUILDING, EDINBURGH AVENUE, CANBERRA CITY, ACT

Dear Sir,

I am forwarding for consideration by the Parliamentary Standing Committee on Public Works the submission from the Management Committee of the Walter Burley Griffin Society, Inc. on the above referral.

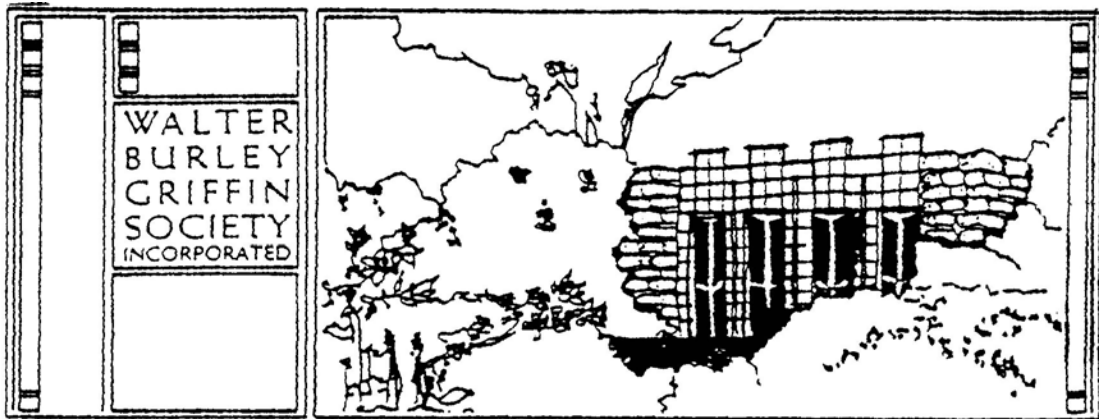
This submission is separate from and complements the submission from the Canberra Chapter of the Walter Burley Griffin Society, forwarded by Mr Brett Odgers of the Canberra Chapter Committee on 17 April 2010.

The Society would value the opportunity of giving evidence before the Committee at the public hearing on this matter.

Yours sincerely,

A handwritten signature in cursive script that reads 'James Weirick'.

Professor James Weirick
President



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**Submission to the
Parliamentary Standing Committee on Public Works**

20 April 2010

Professor James Weirick, President
Walter Burley Griffin Society Inc.

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This Submission was prepared by Professor James Weirick on behalf of the Management Committee of the Walter Burley Griffin Society Inc. and complements the separate submission by the Canberra Chapter of the Society, dated 17 April 2010.

1.0 Introduction

- 1.1 The Walter Burley Griffin Society, Inc. (WBGs) thanks the Parliamentary Standing Committee on Public Works for the opportunity to comment on the proposed fit-out of new leased premises for the Department of Climate Change & Energy Efficiency (DCCEE) at the NewActon Nishi building, Edinburgh Avenue, Canberra City, ACT.
- 1.2 This submission, prepared on behalf of the Sydney-based Management Committee of the WBGs, is separate from but complements the submission by the Canberra Chapter of the Society, dated 17 April 2010.
- 1.3 The Management Committee of the WBGs fully endorses the content and conclusions of the Canberra Chapter submission.
- 1.4 The following assessment of the proposed DCCEE NewActon Nishi Fit-out addresses Terms of Reference (a), (b), (c) and (e), as set out in Part III Section 17(3) of the *Public Works Committee Act 1969*, which require the Committee to have regard to –
 - (a) the stated purpose of the work and its suitability for that purpose;
 - (b) the necessity for, or the advisability of, carrying out the work;
 - (c) the most effective use that can be made, in the carrying out of the work, of the moneys to be expended on the work;
 - (e) the present and prospective public value of the work.
- 1.5 On the basis of the analysis presented in this submission, the Walter Burley Griffin Society, Inc. recommends that the Public Works Committee reject the proposal by the Department of Climate Change & Energy Efficiency to fit-out 12,250 square metres of offices space in the yet-to-be-built NewActon Nishi building at an estimated cost of \$20.5 million.

2.0 Suitability of the Proposed Work – DCCEE NewActon Nishi Fit-out

- 2.1 This submission is based on the description of the proposed work contained in the Statement of Evidence to the Parliamentary Standing Committee on Public Works prepared by the Department of Climate Change & Energy Efficiency, dated 11 March 2010.¹
- 2.2 The proposal involves the fit-out of 12,250 square metres of new office space, over seven floors, in the yet-to-be-constructed NewActon Nishi Building, Blocks 5 & 6, Section 24, Canberra City, ACT (corner of Edinburgh Avenue and Parkes Way).
- 2.3 The Department of Climate Change & Energy Efficiency was established as the Department of Climate Change on 3 December 2007 to lead 'the development and coordination of Australia's climate change policy' with responsibility for policy advice, policy implementation and program delivery in three areas:
- reducing Australia's greenhouse gas emissions;
 - adapting to climate change; and
 - helping to shape a global climate change solution.²
- 2.4 The Department had a staff of 246 on 30 June 2008, 408 on 30 June 2009, and 572 on 11 March 2010.³
- 2.5 In 2009, the Department initiated plans to increase the staff to 750,⁴ based on the anticipated introduction of a Carbon Pollution Reduction Scheme and the need to oversee establishment of an Australian Climate Change Regulatory Authority (ACCRA) to administer the scheme.⁵
- 2.6 The loss of bipartisan support for the Government's Carbon Pollution Reduction Scheme in November/December 2009 has meant that these responsibilities have not eventuated, and are not likely to eventuate in the new future.
- 2.7 On 26 February 2010, the Prime Minister announced revised administrative arrangements, which transferred portfolio responsibility for household energy efficiency and renewable energy programs from the Department of the Environment, Water, Heritage & the Arts

¹ DCCEE, *Proposed Fit-out of New Leased Premises for the Department of Climate Change & Energy Efficiency*, Statement of Evidence to the Parliamentary Standing Committee on Public Works, The Department, Canberra, 11 March 2010, <http://www.aph.gov.au/house/committee/pwc/nishi2010/subs/sub001.pdf> - accessed 14 April 2010 (hereafter DCCEE SoE).

² DCC, *Portfolio Budget Statements 2009-2010, Prime Minister & Cabinet Portfolio (Department of Climate Change)*, Budget Related Paper no.1.15B, The Department, Canberra, May 2010, p.3. (DCC, PB Statement 2009-2010).

³ DCC, *Annual Report, 2007-2008*, p.53; DCC, *Annual Report, 2008-2009*, p.76; DCC SoE, p.6, paragraph S15.

⁴ DCCEE SoE, p.6, paragraph S15.

⁵ DCC, PB Statement 2009-2010, 'Program 1.1.: key performance indicators,' p.21.

(DEWHA) to the Department of Climate Change, with the expanded Department renamed the Department of Climate Change & Energy Efficiency (DCCEE).⁶

- 2.8 The newly-expanded Department was not able to revise its 11 March 2010 submission to the Public Works Committee on the NewActon Nishi Fit-out referral to take into account the new administrative arrangements.⁷
- 2.9 Although the Department advised the PWC that the implications of the new administrative arrangements on the NewActon Nishi Fit-out could be provided by the end of March,⁸ the issues are reportedly complex, involving new forms of community outreach and program delivery for a hitherto policy-oriented Department, and the need for an additional 530 staff.⁹
- 2.10 The fit-out project before the PWC, with an estimated cost of \$20.5 million (exclusive of GST),¹⁰ was prepared on the basis of responsibilities that are unlikely to occur in the foreseeable future (the Carbon Pollution Reduction Scheme, establishment of ACCRA); and with no anticipation of the responsibilities now placed upon the Department (wind-up of the Household Insulation Program and implementation of the new Household Renewable Energy Bonus Scheme).
- 2.11 The suitability of the proposed work cannot be determined until the needs of the Department are determined.
- 2.12 Recommendation: Given the radical revision of DCCEE portfolio responsibilities since November/December 2009, the proposed fit-out of new office space should be withdrawn and re-considered with reference to the new mission, organisational structure, functions, outputs and staffing levels of the Department.**
- 2.13 DCCEE currently occupies a total of 11,557 square metres of office space in two Canberra City locations: 2 Constitution Avenue (9,891 square metres) and 20 Allara Street (1,666 square metres).¹¹
- 2.14 The Department received a one-off allocation of \$13.2 million in the 2009-2010 Budget for the upgrade of 2 Constitution Avenue, 'to meet Government security, occupational health and safety, and environmental standards (and) to achieve the maximum National Australian Built Environment Rating System rating of five stars.'¹²

⁶ Prime Minister of Australia, 'Ministerial changes,' Media Release, 26 February 2010, <http://www.pm.gov.au/node/6508> - accessed 14 April 2010.

⁷ DCCEE SoE, p.8, paragraph S26.

⁸ DCCEE SoE, p.8, paragraph S27.

⁹ Phillip Coorey, 'Fix it man Combet stuck on the lower rung,' *Sydney Morning Herald*, 5 April 2010.

¹⁰ DCCEE SoE, p.32, paragraph 3.

¹¹ DCCEE SoE, p.12, paragraph.1.5.1.

¹² Australia, 2009-2010 Budget Paper no.2, Part 3 Capital Measures, Climate Change, http://www.budget.gov.au/2009-10/content/bp2/html/bp2_capital-05.htm - accessed 14 April 2010; see also, DCC PB Statement 2009-2010, Table 1.2, which shows no further capital expenditure on fit-out, 2010-2013.

2.15 Exactly how a \$13.2 million upgrade of existing accommodation became a \$20.5 million bid for new accommodation in the proposed NewActon Nishi building is not detailed in the Department's submission to the PWC. However, this policy decision appears to be based on 'an open market process' undertaken by the Department in 2009 'to identify commercial premises that would most effectively meet its accommodation requirements.'¹³

2.16 Although a strong advocate of Evidence Based Policy,¹⁴ DCCEE does not present the evidence on which this decision was made.

2.17 Recommendation: DCCEE should provide the Public Works Committee with the comparative cost/benefit analysis undertaken to date, which led to the proposal for a \$20.5 million fit-out of new commercial premises in the proposed NewActon Nishi building, rather than the \$13.2 million upgrade of 2 Constitution Avenue funded in the 2009-2010 Budget.

2.18 Leases on the Department's current office accommodation expire in 2011/2012.¹⁵

2.19 In its previous form as the Department of Climate Change, DCCEE undertook an accommodation review; an 'open market' process to identify commercial premises that would meet the Department's needs at that time; and a request for proposals from property owners and developers in the ACT on an 'Expression of Interest' basis. The Department then issued an invitation for five (5) respondents to tender in October 2009.¹⁶

2.20 The commercial component of the proposed NewActon Nishi building, promoted by the Molonglo Group, was selected as the base building for the Department's fit-out as a result of this process, and the Department has entered into an Agreement of Lease for 12,250 square metres of Grade A office space in this building.¹⁷

2.21 Details of the process should be presented to the PWC; in particular, details of the other four tenders, and the selection criteria.

2.22 The selection criteria should have included the following:

- Is the base building completed?
- If not, does the proposed base building have planning approval?
- If not, does the proposed base building comply with the planning controls?
- does the proposed base building have heritage approval?

¹³ DCCEE SoE, p.6, paragraphs.S13-S14.

¹⁴ Blair Comley, Deputy Secretary, DCC, 'Evidence Based Policy,' Paper presented to the Centre for Policy Development Conference, *Evidence Based Policy 2009: laying the foundations for innovative and sustainable policy*, Canberra, 29 October 2009
<http://www.climatechange.gov.au/en/media/~media/publications/media/dcc-sp20091030.ashx>-
accessed 14 April 2010.

¹⁵ DCCEE, SoE, p.12, paragraph 1.5.2.

¹⁶ DCCEE, SoE, p.15, paragraphs 1.5.5-1.6.1.

¹⁷ Dr Martin Parkinson, Secretary, DCCEE, letter to PWC, 10 March 2010; DCCEE SoE, p.16, paragraph 1.7.1.

- If not, does the proposed base building comply with an endorsed Conservation Management Plan?

2.23 In the case of the NewActon Nishi building, the answer to all of the above was 'No' at the time the Department entered into an Agreement of Lease with the developer.

2.24 At the time of preparing this submission, the answer to all of the above is still 'No'.

2.25 As a matter of probity, and in the public interest, it is important to determine whether the unsuccessful tenderers offered base buildings at a similar stage of development. And if not, why a high-risk proposal, a long way from securing the requisite approvals, was selected over them.

2.26 Other selection criteria –and evaluations against the criteria – which should be examined by the PWC, include:

- cost effectiveness;
- Greenhouse Gas (GHG) impacts;
- likely heritage impacts of the base building.

2.27 These issues are further reviewed in the following sections of this submission:

3.0 Advisability of the Proposed Work

- planning approval;
- heritage approval.

4.00 Cost Effectiveness of the Proposed Work

- cost effectiveness.

5.0 Public Value of the Proposed Work;

- Greenhouse Gas (GHG) impacts;
- likely heritage impacts of the base building.

2.28 The proposal before the PWC is not supportable on the basis of its stated purpose, given the radical changes to the former Department of Climate Change that have occurred since the purpose of the work was determined in 2009.

2.29 Furthermore, the proposal is not suitable for its stated purpose as it involves a base building which has not obtained planning approval, does not comply with the planning controls of the National Capital Plan, does not have heritage approval, and does not comply with the endorsed Conservation Management Plan of the subject site.

3.0 Advisability of the Proposed Work – DCCEE NewActon Nishi Fit-out

3.1 The NewActon Nishi development, which comprises the base building of the DCCEE Fit-out referral to the PWC, is proposed for Blocks 5 & 6, Section 24, Canberra City at the intersection of Edinburgh Avenue and Parkes Way – a prominent site overlooking Lake Burley Griffin (Figure 1), within the principal ‘Designated Area’ of the National Capital.

3.2 ‘Designated Area’ means an area of land specified in the National Capital Plan under Section 10(1) of the *Australian Capital Territory (Planning & Land Management) Act 1988* (Cwth), i.e. an area of land that has ‘the special characteristics of the National Capital.’¹⁸

3.2 The national significance of the subject site is therefore proclaimed in the key planning instrument of the National Capital.



Figure 1. Site of the proposed NewActon Nishi building at the corner of Edinburgh Avenue and Parkes Way, Canberra City immediately to the west of the low, red-roofed Hotel Acton. The site currently contains a remnant stand of pre-settlement woodland. Both the Hotel Acton and the remnant woodland are heritage listed. (Source: The Molonglo Group website).

¹⁸ National Capital Authority, *Consolidated National Capital Plan*, September 2009, Appendix B, p.B-2; *Australian Capital Territory (Planning & Land Management) Act 1988*, Section 10(1).

3.3 The NewActon Nishi building is proposed for a site next to the heritage-listed Hotel Acton, which is included on the Register of the National Estate and the ACT Heritage Register. The Hotel Acton is flanked on the east by the NewActon East building, completed in 2008, and on the south by the NewActon South apartment tower, currently nearing completion (Figure 2).

3.4 The NewActon Nishi proposal has two components – a 17-storey residential wing (GFA 20,552 square metres) and an 11-storey commercial wing (GFA 21,106 square metres).¹⁹



Figure 2. Proposed NewActon Nishi building to the west of the Hotel Acton shown in relation to the NewActon East and NewActon South buildings on Section 24, Canberra City. The 11-storey commercial wing of the NewActon Nishi development – the base building of the DCCEE fit-out referral – is shown facing the Hotel Acton with the 17-storey residential wing at the rear across a central atrium (Source: The Molonglo Group website).

3.5 To date, the proposed NewActon Nishi building has not obtained planning approval from the National Capital Authority (NCA).

3.6 The Works Approval application (WA16749), which closed for public comment on 18 December 2009, remains under consideration by the NCA – four months later.²⁰

3.7 The proposal does not conform to the National Capital Plan.

3.8 The subject site is zoned 'West Basin Land Use A' – a mixed-use zoning with 'Residential' permitted as a primary use, and various 'other uses', including 'Office' also permitted. However, the 'Office' use is specifically designated, 'ancillary to primary use'.²¹

¹⁹ Fender Katsilidis Architects, *NewActon Nishi: works approval application*, Section 14, Submission to the NCA (WA16749), The Architects, Melbourne, 26 November 2009.

²⁰ 'Current Works Approval Applications,' NCA website, http://www.nationalcapital.gov.au/index.php?option=com_content&view=article&id=627&Itemid=276 – accessed 16 April 2010.

²¹ NCA, *Consolidated National Plan*, September 2009, Section 1.4.4.

- 3.9 The term ‘ancillary’ has a specific meaning in Australian planning law: ‘associated with and directly related to, but incidental and subordinate to the predominant use.’²²
- 3.10 The office component of the NewActon Nishi proposal is not ‘associated with and directly related to, but incidental to’ the residential use – it is clearly a separate and independent use. Indeed, the office use is not even subordinate to the residential use, comprising 20,992 square metres out of a total of 41,658 square metres GFA (50.4%).²³
- 3.11 The office component of the proposed NewActon Nishi building is a separate and independent use, which is not permitted under the ‘West Basin Land Use A’ zoning of the subject site.
- 3.12 Development on Lots 5 & 6, Section 24 Canberra City is further subject to heritage controls, in particular, the building envelope controls on height, bulk and setbacks contained in the *Hotel Acton Conservation Management Plan, 2004* and the *Hotel Acton Conservation Management Plan: Amendment no.1, 2005*, which were approved in January 2004 and July 2005 respectively by the Department of the Environment & Heritage, pursuant to the *Australian Heritage Council (Consequential & Transitional Provisions) Act 2003, s.2(1), Schedule 2*.²⁴
- 3.13 Under these controls, the height of new buildings to the east and west of the Hotel Acton is fixed by 45 degree angle planes ‘to control the dominance of any new flanking building over the Acton Hotel.’²⁵
- 3.14 The 8-storey NewActon East building, completed in 2008, conforms to this control. The 11-storey commercial wing of the proposed NewActon Nishi building, sited to the west of the Hotel Acton, breaks this control – by three (3) stories (Figure 3).
- 3.15 The base building of the proposed DCCEE fit-out does not conform to the heritage controls on the subject site.
- 3.16 The developer of the NewActon Nishi building has proposed a development that does not conform to the land use controls of the National Capital Plan and the height controls of the endorsed Conservation Management Plan for the subject site.
- 3.17 DCCEE has advised the PWC: ‘the developer’s submission states that the NCA has confirmed that the proposed Nishi office development is consistent with the National Capital Plan’s land use zoning that applies to the site.’²⁶

²² See for example, ACT Territory Plan, Part D: Definition of Terms, Schedule 1. The distinction between ‘ancillary’ and ‘independent’ use was determined in *Foodbarn Pty Ltd v Solicitor-General* (1975) 32 LGRA 157: 63.

²³ Fender Katsilidis Architects, *NewActon Nishi: works approval application*, Section 14

²⁴ Architectural Projects Pty Ltd, *Acton Hotel: Peer Review, Conservation Management Plan Amendment*, Report to the Molonglo Group, The Consultants, Darlington, 24 June 2009, Section 4.1.

²⁵ Architectural Projects, *Acton Hotel CMP Peer Review*, Section 4.1.

²⁶ DCCEE, SoE, p22, paragraph 2.3.1.

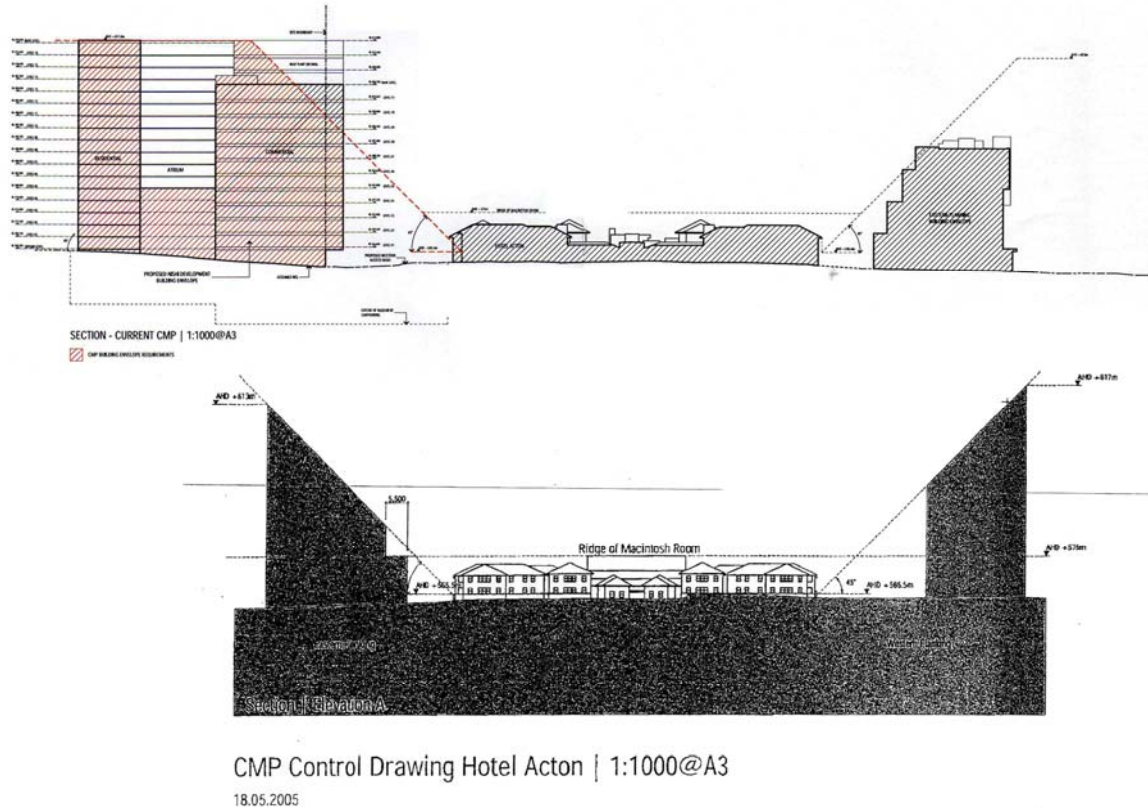


Figure 3. Heritage height control on sites to the east and west of the Hotel Acton. The bottom diagram – an E-W section – shows the 45 degree angle planes of the endorsed 2005 Conservation Management Plan for the Hotel Acton. The top diagram – a W-E section – shows the stepped profile of the 8-storey NewActon East building (completed in 2008), which conforms to the heritage height control; and the 11-storey commercial wing of the proposed NewActon Nishi building to the west of the Hotel Acton, which breaks the heritage height control – by three (3) stories (Source: Campbell Dion & Architectural Projects, 2009²⁷).

- 3.18 A \$20.5 million public work has been submitted to Parliament on the basis of an unsubstantiated claim by the developer of the base building. If true, this claim calls into question the capacity of the NCA to administer the National Capital Plan. If not true, the Department – and Parliament – have been misled.
- 3.19 It is clearly not advisable for a Department to seek PWC authorisation for a fit-out in a yet-to-be-constructed base building that does not have planning approval and heritage approval; a development, moreover, that has sought to ‘break the limits’ of the planning controls and heritage controls of the National Capital.

²⁷ Compiled from: Campbell Dion, *Hotel Acton Draft Conservation Management Plan Amendment no.2*, April 2009, Diagram after p.10, and Architectural Projects, *Acton Hotel CMP Peer Review*, Diagram by Fender Katsalidis Architects, after p.7.

4.0 Cost Effectiveness of the Proposed Work – DCCEE NewActon Nishi Fit-out

4.1 The cost of the DCCEE Office Fit-out has increased from \$13.2 million provided in the 2009-2010 Budget to an estimated \$20.5 million.

4.2 This 55% increase is neither documented nor explained in the Department’s Statement of Evidence to the PWC.

4.3 In 2009, the Rudd Government introduced the Commonwealth Property Management Framework, administered by the Department of Finance & Deregulation (DFD), to replace the policy and practice of the Howard Government, which devolved property management to individual agencies without over-arching principles or guidance.

4.4 The new Commonwealth Property Management Framework and associated guidelines ‘establish the Government’s property management policy under which each agency determines its own specific property management practices.’²⁸

4.5 The Framework sets principles aimed at assisting agencies achieve:

- value for money;
- property management planning;
- efficient and effective design;
- appropriate accountability; and
- cooperative Commonwealth property management.

4.6 In launching the framework, the Minister for Finance, the Hon. Lindsay Tanner declared that ‘the number one principle for the Government is value for money.’²⁹

4.7 The DCCEE states that it undertook an analysis of all possible accommodation options ‘to achieve maximum value for money for the Department’s lease commitments.’³⁰ However this is asserted, not proven.

4.8 The Commonwealth Property Management Framework makes clear the procedure necessary to achieve ‘value for money’:

Value for money is a key principle underpinning property management and all associated Australian Government procurement processes. This principle requires a comparative analysis of all relevant costs and benefits of each property proposal throughout the term of occupation, ownership, or related services (whole-of-life costing).³¹

²⁸ Department of Finance & Deregulation, Commonwealth Property Management Framework. <http://www.finance.gov.au/property/property/faq.html> - accessed 14 April 2010.

²⁹ Hon. Lindsay Tanner, ‘The role of the Commonwealth Government in Canberra as a property owner and tenant,’ Speech to the Property Council of Australia (ACT Division), 28 October 2009.

³⁰ DCCEE, SoE, p.15, paragraph 1.5.6.

³¹ Department of Finance & Deregulation, *Commonwealth Property Management Guidelines*, Financial Management Guidance no.16, The Department, Canberra, October 2009, p.4.

4.9 This procedure is further specified in the DFD Commonwealth Procurement Guidelines:

In order to be in the best position to determine value for money when conducting a procurement process, request documentation needs to specify logical, clearly articulated, comprehensive and relevant conditions for participation and evaluation criteria which will enable the proper identification, assessment and comparison of the costs and benefits of all submissions on a fair and common basis over the whole procurement cycle.³²

4.10 DCCEE should demonstrate to the PWC how a project that has already had a cost blow out of 55% in less than a year represents 'value for money'. In doing so, DCCEE should present a 'comparative analysis of all relevant costs and benefits of each property proposal throughout the term of occupation, ownership, or related services (whole-of-life costing)' to demonstrate how the NewActon Nishi option represents better 'value for money' than the other four options considered in the tender evaluation process.

4.11 DCCEE should also demonstrate how the principle of 'Cooperative Commonwealth Property Management' has been addressed in the Department's accommodation selection process to date. This principle states, *inter alia*:

Agencies attempting to locate property at the same time in the same market should have regard to the outcome to be achieved for the Commonwealth . . . Whenever cost effective and appropriate, agencies should consider vacant space being offered by other Commonwealth agencies for sub-lease or assignment.³³

4.12 In accordance with this principle, DCCEE should have considered vacant Commonwealth space in Central Canberra for its accommodation needs.

4.13 The most conspicuous example of vacant space in Central Canberra, which has been before the PWC on previous occasions, is the Anzac Park East office building, located on Constitution Avenue, Parkes.

4.14 Anzac Park East, which forms part of the DFD property portfolio, has stood vacant since 1999 absorbing ongoing maintenance costs of over \$400,000 per year.³⁴ Together with its twin 'portal building' Anzac Park West, this 1960s heritage building frames the ceremonial space of Anzac Parade, the centrepiece of the Parliament House Vista.

³² Department of Finance & Deregulation, *Commonwealth Procurement Guidelines*, Financial Management Guidance no.1, The Department, Canberra, December 2008, p.10.

³³ DFD, *Commonwealth Property Management Framework*, p.9.

³⁴ Department of Finance & Administration (DoFA), *Australian Federal Police: Proposed Refurbishment of Anzac Park East and Anzac Park West Buildings and Fit-out of Anzac Park West Building, Parkes, ACT*, Statement of Evidence to the Parliamentary Standing Committee on Public Works, The Department, Canberra, June 2004, pp.1, 2.

4.15 In 2005, Finance announced that refurbishment of Anzac Park East would commence when tenancy arrangements were confirmed.³⁵ To date, Finance has not been able to secure a tenant for this significant Commonwealth property asset.

4.15 The 2009 fit-out of Anzac Park West for the Department of Defence, demonstrates that its twin, Anzac Park East could be upgraded to provide up to 15,000 square metres of Grade A office accommodation in an environmentally sustainable base building.³⁶

4.16 The PWC inquiry into the Defence fit-out of Anzac Park West raised serious concerns about the long vacancy of Anzac Park West (APW) and Anzac Park East (APE):

In the course of this inquiry, the Committee raised the question as to why a private tenant could not be sourced. Finance told the Committee not only are APE and APW heritage listed, but they are also 'embedded' in the National Capital Plan (and are) designated as 'Commonwealth purposes', so only Commonwealth tenants can occupy these buildings.

While this does pose some difficulties for Finance in engaging appropriate tenants, the Committee remains concerned about the length of time these buildings have been vacant, particularly given the heavy concentration of Commonwealth departments in Canberra. The prolonged vacancy of APE and APW is an unacceptable state of affairs.

The Committee acknowledges that a devolved property management environment means that the Property and Construction Division of Finance may not always be aware of agency movements. However, it remains incumbent on Finance to be more proactive in pursuing tenants for Commonwealth buildings.³⁷

4.17 Since the PWC brought down this finding in September 2009, the Commonwealth Property Management Framework has been implemented, which under Principle 5, requires DCCEE to embrace 'Cooperative Commonwealth Property Management'.

4.18 DCCEE is a Commonwealth tenant, it requires a Central Canberra location for its central policy functions and the convenience of its staff,³⁸ Anzac Park East presents as a serious option, as further discussed in Section 5.0 (below).

³⁵ DoFA, *Annual Report, 2004-2005*, p.46.

³⁶ PWC, *Report 5/2009 – Referrals made May to June 2009: Fit-out & External Works, Anzac Park West, Parkes, ACT*, The Committee, Canberra, 10 September 2009, p.10.

³⁷ PWC, *Report 5/2009 – Anzac Park West*, pp.8-9.

³⁸ DCCEE, SoE, p.16, paragraph 1.6.3.

5.0 Public Value of the Proposed Work – DCCEE NewActon Nishi Fit-out

- 5.1 The public value of the proposed DCCEE Fit-out of the NewActon Nishi building is affected by (1) the Department’s objective to achieve best practice in sustainable design; and (2) the overall impact of the proposed base building on the heritage values of Central Canberra.

Sustainable Design/Greenhouse Gas (GHG) Impacts

- 5.2 DCCEE states that in accordance with its mission, the Department’s objective ‘is to achieve best practice in sustainable design’:

It is anticipated that the building and fit-out will represent a new benchmark in office accommodation energy and resource efficiency in Australia. The ultimate fit-out solution will employ cutting edge technology to drastically reduce the environmental footprint of the building and its associated functions. It is anticipated that . . . the building will become a point of reference for cost effective and environmentally efficient commercial buildings; appropriate for the Department mandated to deliver the Australian Government’s climate change framework.³⁹

- 5.3 This is a worthy objective – however, the environmental impact of the proposal to lease space in a yet-to-be-built 11-storey commercial office block will be substantial, given the embodied energy and associated Greenhouse Gas (GHG) impacts involved in the construction phase of the project.
- 5.4 The Department states that it has ‘very specific requirements and targets with respect to the energy and water performance of the building which it occupies. These requirements encompass all aspects of sustainability including energy, water, materials, management, indoor environmental quality, traffic efficiency, emissions and ecology.’⁴⁰
- 5.4 However, these targets must be understood in the context of the high embodied energy expenditure that will result from construction of the building, i.e. ‘the energy consumed by all processes associated with the production of the building, from the acquisition of natural resources to product delivery. This includes the mining of natural resources, manufacturing of materials’ and equipment, the transport of the materials and the administrative functions.’⁴¹
- 5.5 Operational energy is defined as ‘the energy consumed after the structure is completed, when the occupants begin to use the building.’⁴² Operational energy per year, and associated GHG emissions, constitute a very small fraction of Embodied Energy/GHG emissions.

³⁹ DCCEE, SoE, p.12. paragraph 1.2.4.

⁴⁰ DCCEE, SoE, p.11, paragraph 1.2.1.

⁴¹ As defined in Trevor Lee, ‘Embodied and Operational Energy and Water, and Greenhouse Gas Emissions, CUB Site Development, Sydney,’ Expert Evidence in *Drake-Brockman v Minister for Planning & CUB*, NSW Land & Environment Court Proceedings no.40186 of 2007, Energy Strategies Pty Ltd, Canberra, p.8.

⁴² Trevor Lee, ‘Embodied and Operational Energy and Water, and GHG Emissions,’ p.4.

5.6 In other words, occupation of a new building represents a far greater environmental impact than occupation of an existing building.

5.7 This is shown in the following conceptual model by Elgood & King (2007):

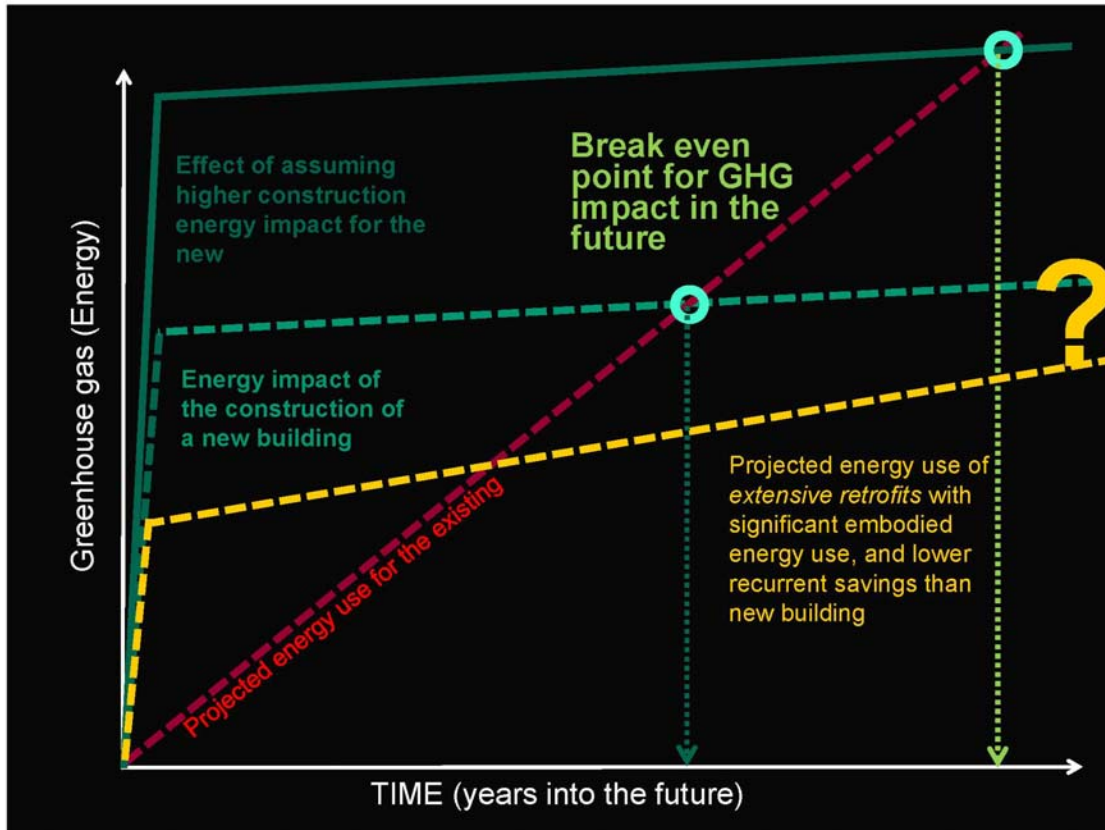


Figure 4. Comparison of Greenhouse Gas (GHG) Emissions over time from a new building versus an existing building (Source: Elgood & King, 2007⁴³).

5.8 In Figure 4, the new building has high embodied energy expenditure in a short initial period, followed by low operational energy expenditure, assuming an efficient design and/or energy production (photovoltaics etc). The existing building has no embodied energy expenditure and much higher operational energy expenditure – however, it will take years into the future for the new building to reach a ‘Greenhouse Gas (GHG) Impact’ breakeven point with the existing building.

5.9 There is high sensitivity to assumptions about embodied energy impact of new construction. Any increase in energy use during the complex construction phase of a new building will move the GHG Impact breakeven point further into the future.

⁴³ Conceptual model by Tim Elgood, Cundall Consulting Engineers with sensitivity overlay by Steve King, Senior Lecturer in Architecture, Faculty of the Built Environment, University of New South Wales, Expert Evidence in Lane Cove Council v Fites & Lowes, NSW Land & Environment Court Proceedings no.10881 of 2007.

- 5.10 Retrofit of an existing building will entail a measure of embodied energy expenditure, but not as much as a new building. The retrofit will achieve more efficient operational energy use (assumed to be not as efficient as the all-new building in the above model). The GHG Impact breakeven point recedes much further into the future.
- 5.11 The superficial appeal of an all-new ‘green’ building, featuring photovoltaics, green roofs etc – such as the proposed NewActon Nishi building – must be tempered by a sober analysis of the embodied energy expenditure involved in its construction.
- 5.12 Given the Department’s ‘best practice in sustainable design’ objective, comparative analysis of the tenders submitted to DCCEE for office space in Central Canberra should have included evaluation against GHG Impact criteria, including evaluation of the base buildings in relation to their stages of development and associated embodied energy expenditures.
- 5.13 As a matter of probity, and in the public interest, it is important to determine the stages of development of the base buildings offered by the unsuccessful tenderers. If recently-completed projects were offered ready for fit-out, or older projects ready for retrofit, it must be determined why the NewActon Nishi proposal – an unbuilt project entailing high embodied energy expenditure and associated GHG emissions – was selected over them.
- 5.14 The GHG advantages of an existing building over an unbuilt project apply with particular force to the long-vacant Commonwealth property, Anzac Park East. Adaptive re-use of this 1960’s heritage building would be a far more sustainable outcome than construction of an all-new 5 star NABERS building – even more so if Anzac Park East was retrofitted to the 4.5 star NABERS standard of Anzac Park West authorised by the PWC in September 2009.⁴⁴
- 5.15 From a whole of Commonwealth perspective, it makes no sense in ‘value for money’ or environmental terms for the Department of Climate Change & Energy Efficiency to occupy a new building on Parkes Way at Acton, while a Commonwealth building of similar size sits vacant on Parkes Way at Anzac Park East.

Heritage Impact of the Base Building

- 5.16 ‘Value for money’ considerations of the DCCEE proposal to fit-out 12,500 square metres of the unbuilt and as yet unapproved NewActon Nishi building involve more than cost.
- 5.17 The DFD Commonwealth Property Management Guidelines state:

In assessing value for money, factors other than cost should be considered where relevant, including:

- the suitability of property;
- the potential for flexibility in design, use and management;
- expected short, medium and long term outcomes of each option;
- the relative risks of the property proposal;
- the likely environmental and heritage impacts;

⁴⁴ PWC, *Report 5/2009 – Anzac Park West*, pp.7-16.

- the prevailing circumstances of the property market;
- the impact of any contract or lease options; and
- the options for disposal.⁴⁵

5.17 Of these, the 'likely heritage impacts' of the work have a significant bearing on the current referral before the PWC.

5.18 DCCEE has signed an 'Agreement of Lease' for 12,250 square metres of the 21,100 square metres GFA of the NewActon Nishi commercial wing for fifteen years commencing on 1 October 2012, with two five-year options – subject to authorisation from the PWC to proceed with the proposed fit-out (and presumably subject to the base building gaining Works Approval from the National Capital Authority and Heritage Approval from the Minister for the Environment, Heritage, Water & the Arts). In addition, the Department has negotiated 'first right of refusal' on additional commercial space 'should additional space be required.'⁴⁶

5.19 At present, DCCEE is the anchor tenant of the developer's proposal.

5.20 As detailed in Section 3.0 (above), the proposal does not conform to the National Capital Plan and the endorsed Conservation Management Plan of the Hotel Acton.

5.21 In the event that the developer manages to gain Works Approval and Heritage Approval for the base building, despite its non-conformity to the zoning of the subject site and the building height plane of the Hotel Acton CMP, the impact of the base building on the heritage values of Canberra will be such that the DCCEE contribution to the project, as anchor tenant, should be deemed unacceptable and insupportable by the PWC.

5.22 The NewActon Nishi proposal was referred to the Department of the Environment, Heritage & the Arts on 28 January 2010 under Sections 15B, 26 & 27A of the *Environment Protection & Biodiversity Conservation Act 1999*.⁴⁷ The proposal requires approval under the EPBC Act as (1) an action on and impacting on Commonwealth land; and (2) an action that will have a significant impact on matters of national environmental significance.

5.23 At the time of writing, DEWHA has not made a determination on this referral.

5.24 The NewActon Nishi proposal entails removal of heritage-listed trees on the subject site, excavation and construction of a substantial structure comprising a 17-storey residential wing, an 11-storey commercial wing, 4 levels of basement car parking and associated site works. The proposal conforms to the definition of an 'action' under the EPBC Act: it is a 'project, a development, an undertaking, an activity and a series of activities.'

⁴⁵ DFD, *Commonwealth Property Management Guidelines*, pp.3-4.

⁴⁶ Dr Martin Parkinson, Secretary, DCCEE, letter to PWC, 10 March 2010; DCCEE, SoE, p.16, paragraphs 1.7.1-1.7.3.

⁴⁷ DEWHA, EPBC Referral 2010/5336, http://www.environment.gov.au/cgi-bin/epbc/epbc_ap.pl?name=current_referral_detail&proposal_id=5336 – accessed 16 April 2010.

5.25 The project is located on Commonwealth land at Blocks 5 & 6, Section 24, Canberra City, ACT.⁴⁸ The subject site is also 'Designated Land', an area of Canberra with 'special characteristics of the National Capital'.

5.26 The base building of the DCCEE Fit-out, fused with a 17-storey residential wing, is a development proposal of maximum height and uncommon bulk located on a prominent, visually sensitive site in the symbolic centre of the National Capital (Figures 1 & 2).

5.27 Given its height, bulk, scale and visual prominence the proposed action - if approved - would have a significant impact on the heritage values of the following places:

- Canberra – Central National Area and Inner Hills, ACT & Canberra and Surrounding Areas, ACT – twin nominations to the National Heritage List, included on the 2009-2010 Priority Assessment List by the Australian Heritage Council with assessment completion scheduled for 30 June 2011⁴⁹;
- Parliament House Vista – inscribed on the Commonwealth Heritage List, and recommended by heritage consultants to the National Capital Authority for inclusion on the National Heritage List⁵⁰;
- Lake Burley Griffin and Adjacent Lands – recommended by heritage consultants to the National Capital Authority for inclusion on the National Heritage List;⁵¹
- Australian Academy of Science Building - included in the National Heritage List, 21 September 2005⁵²;
- Hotel Acton, entered on the Register of the National Estate, 26 October 1999, and the ACT Heritage Register on 24 April 1998,⁵³
- Stand of pre-settlement *Eucalyptus blakelyi* woodland on the subject site, entered on the ACT Heritage Register on 24 April 1998.⁵⁴

5.28 The proposed action would involve 'significant impact' on the heritage values of these places – i.e. an impact which would be 'important, notable and of consequence' having regard to the context and intensity of the development project.⁵⁵

⁴⁸ DEWHA EPBC 2009/5336: Paul Dion Cohen, *Referral of Proposed Action, New Acton Nishi Building, Edinburgh Avenue, Canberra City, ACT*, Prepared for The Molonglo Group, Campbell Dion Pty Ltd, Duffy, ACT, 23 January 2010. pp.1, 15.

⁴⁹ Australian Heritage Council, 'Finalised Priority Assessment List for the National Heritage List, 2009-2010,' <http://www.environment.gov.au/heritage/publications/pubs/priority-assessment-nhl-2009-10.pdf> - accessed 6 February 2010.

⁵⁰ Duncan Marshall, Craig Burton, Alistair Grinbergs, Chris Johnston & Jackie Donkin and with assistance from Robert Boden, Robert Freestone & Alison Rowell, *Exposure Draft: Parliament House Vista Area Heritage Management Plan*, Prepared for the National Capital Authority, The Consultants, Canberra, November 2008, vol.1, pp.168, 170-171.

⁵¹ Godden Mackay Logan, *Lake Burley Griffin and Adjacent Lands Heritage Management Plan – Draft Report*, Prepared for the National Capital Authority, The Consultants, Canberra, March 2009, vol.1, p.3.

⁵² Australian Heritage Database, Australian Academy of Science Building, National Heritage List, Place ID: 10571.

⁵³ Australian Heritage Database, Hotel Acton, Register of the National Estate, Place ID: 100943; ACT Heritage Council, Hotel Acton, City, Heritage Places Register, gazetted 24 April 1998.

⁵⁴ ACT Heritage Council, Hotel Acton, City, Heritage Places Register.

5.29 The ‘sensitivity, value and quality’ of the environment which would be subject to these impacts have been established by comprehensive heritage studies and heritage listings.

5.30 The action involves construction of a complex development comprising a commercial wing fused with a strata-titled residential tower high above Lake Burley Griffin – a structure that could be reasonably expected to have a life-span of 100 years or more. The ‘intensity, duration, magnitude and geographic extent’ of the impacts would be severe in the context of the symbolic centre of Canberra: the impacts would be effectively permanent and irreversible; they would be medium to large scale, and high intensity.

5.31 The bulk, scale, visibility and insistent prominence of the proposed action would involve:

- erection of a substantial development complex on, adjacent to, and within important sight lines of significant heritage places, inconsistent with the heritage values of those places;
- substantial diminution of the heritage value of these places for a community or group for which they are significant – the nation as a whole; and
- substantial alteration of the setting of the heritage places in a manner which is inconsistent with the heritage values of the places.

5.32 If approved, the heritage impacts of the base building of the proposed DCCEE Fit-out would be significant.

5.33 As a matter of probity, and in the public interest, it is important to determine the ‘likely heritage impacts’ of the base buildings offered by the unsuccessful tenderers in the DCCEE accommodation selection process. If base buildings with little or no heritage impacts were offered, it must be determined why the NewActon Nishi building, with its significant heritage impact, was selected over them.

5.34 Recommendation. In the event that the developer manages to gain Works Approval and Heritage Approval for the base building, despite its non-conformity with the zoning of the subject site and the building height plane of the Hotel Acton Conservation Management Plan, the impact of the base building on the heritage values of Canberra will be such that the DCCEE contribution to the project, as anchor tenant, should be deemed unacceptable and insupportable by the PWC.

5.35 Taking a ‘whole of Commonwealth’ approach to the heritage values of the National Capital, the DCCEE decision to lease office space in the proposed NewActon Nishi building cannot be supported with Anzac Park East standing vacant, as it has for the past eleven (11) years.

⁵⁵ The use of EPBC Act technical terms in this submissions is based on DEWHA, ‘EPBC Act Policy Statement 1.2, Significant Impact Guidelines: actions on, or impacting upon, Commonwealth land, and actions by Commonwealth agencies,’ The Department, Canberra, May 2006.

5.36 The heritage issues involved in the adaptive re-use of Anzac Park East were resolved in 2004.⁵⁶ This high-profile heritage-listed building of the 1960s can be retrofitted quite readily to provide up to 15,000 square metres of Grade A commercial space.

5.37 As stated in Paragraph 5.15 (above), it makes no sense for the Department of Climate Change & Energy Efficiency to occupy a new building on Parkes Way at Acton while a Commonwealth building of similar size sits vacant on Parkes Way at Anzac Park East.

5.38 In relation to heritage values and heritage impact in the symbolic centre of Canberra, the NewActon Nishi proposal is the wrong building in the wrong place; Anzac Park East is the right building in the right place.

5.39 The public value of the proposed DCCEE Fit-out of the NewActon Nishi building is negative in terms of:

- environmental impact (energy use/GHG emissions); and
- heritage impact.

5.40 The project is not supportable.

⁵⁶ DoFA, *Proposed Refurbishment of Anzac Park East and Anzac Park West Buildings*, Statement of Evidence to PWC, June 2004, p.11. DFD, *Anzac Park West Fit-out*, Statement of Evidence to PWC, May 2009, p.8.

6.0 Conclusions & Recommendations

- 1.6 The proposed fit-out of the NewActon Nishi building for the Department of Climate Change & Energy Efficiency (DCCEE) is not supportable in terms of the suitability of the work, the advisability of the work, the cost of the work and the public value of the work.
- 1.7 The project should not proceed.
- 1.8 On the basis of the above analysis of the DCCEE proposal, the Walter Burley Griffin Society, Inc. makes the following recommendations to the Parliamentary Standing Committee on Public Works:

Recommendation 1 (paragraph 2.11)

Given the radical revision of DCCEE portfolio responsibilities since November/December 2009, the proposed fit-out of new office space should be withdrawn and re-considered with reference to the new mission, organisational structure, functions, outputs and staffing levels of the Department.

Recommendation 2 (paragraph 2.17)

DCCEE should provide the Public Works Committee with the comparative cost/benefit analysis undertaken to date, which led to the proposal for a \$20.5 million fit-out of new commercial premises in the proposed NewActon Nishi building, rather than the \$13.2 million upgrade of 2 Constitution Avenue funded in the 2009-2010 Budget.

Recommendation 3 (paragraphs 2.25, 5.13 & 5.33)

As a matter of probity, and in the public interest, DCCEE should provide comparative data on the five (5) bids received in response to the Department's tender process for new accommodation, with respect to the following criteria:

- Is the base building completed?
- If not, does the proposed base building have planning approval?
- If not, does the proposed base building comply with the planning controls?
- does the proposed base building have heritage approval?
- If not, does the proposed base building comply with an endorsed Conservation Management Plan?
- cost effectiveness;
- environmental impacts – embodied energy/operational energy and associated Greenhouse Gas (GHG) impacts;
- likely heritage impacts of the base building.

and establish how the NewActon Nishi building, which ranks negatively on all of the above, was selected.

Recommendation 4 (paragraph 5.34)

In the event that the developer manages to gain Works Approval and Heritage Approval for the base building, despite its non-conformity with the zoning of the subject site and the building height plane of the Hotel Acton Conservation Management Plan, the impact of the base building on the heritage values of Canberra will be such that the DCCEE contribution to the project, as anchor tenant, should be deemed unacceptable and insupportable by the PWC.

Recommendation 5 (paragraphs 4.12-4.18, 5.35-5.38)

Instead of the NewActon Nishi project – the wrong building in the wrong place – the Department of Climate Change & Energy Efficiency should adopt a ‘whole of Commonwealth approach’ and consider Anzac Park East – the right building in the right place – for its accommodation needs.

- 1.9 The Walter Burley Griffin Society, Inc. recommends that the Public Works Committee reject the proposal by the Department of Climate Change & Energy Efficiency to fit-out 12,250 square metres of offices space in the yet-to-be-built NewActon Nishi building at an estimated cost of \$20.5 million.

Appendix 1: The Walter Burley Griffin Society Incorporated

Established in 1988 in Sydney, the Society – now in its twenty first year – commemorates the lives and works of Walter Burley Griffin and Marion Mahony Griffin and promotes the ideals, vision and community life they fostered in Australia. The Society aims to promote a better understanding of the lives and works of the Griffins, promoting especially the preservation and conservation of landscape designs, urban plans, buildings and other works designed by or having an association with the Griffins.

The Society has several hundred members from various parts of Australia and USA. The Canberra Chapter of the Society was established in 2004. The Society is affiliated with the Walter Burley Griffin Society of America (established in 1998).

Committee Members 2009-2010

Patron: Professor Carrick Chambers AM

President: Professor James Weirick

Vice president: Akky Von Ogtrop

Treasurer: John Kabos

Secretary: Kerry McKillop

Management Committee: Colleen Fry, Adrienne Kabos, Martin O'Donoghue, James Smallhorn, Michael Thomson, David Turner, Anne Watson, Peter Burley Griffin (President, Walter Burley Griffin Society of America), *ex officio*

Canberra Chapter Committee

Acting Chair: Rosemarie Willett

Secretary: Dr Bruce Kent

Treasurer: Luke Wensing

Committee members: Ric Butt, Peter Freeman, Marion Halligan, Dr Ann Kent, Brett Odgers

Website

<http://www.griffinsociety.org/> (Archived by the National Library of Australia since 2006, <http://protocat.nla.gov.au/Record/3821935>)

The submission has been prepared by the Society as a contribution to the public good. Neither the Society nor any individual committee member of the Society, directly or indirectly, stands to make any personal financial gain from this submission. The submission was prepared by unpaid volunteers and was funded by the Society from its own resources and was not influenced by any person or organisation external to the committees of the Society.

Professor James Weirick, President of the Society is the principal author of this submission, advised by Brett Odgers, member of the Canberra Chapter Committee, and members of the Management Committee – for biographical profile of Professor Weirick, see Appendix 2.

Appendix 2: Biographical Profile – Professor James Weirick

Professor James Weirick, President of the Walter Burley Griffin Society, Inc. is the principal author of this submission on behalf of the Management Committee of the Society.

James Weirick is Professor of Landscape Architecture and Director, Urban Development & Design Program, Faculty of the Built Environment, University of New South Wales. A graduate of Harvard University, Professor Weirick taught at the Boston Architectural Center, University of Massachusetts/Boston, University of Canberra and Royal Melbourne Institute of Technology, prior to his appointment to UNSW in 1991. In recent years, he has conducted international urban design studios in Beijing, Hangzhou, Tokyo and Nagoya with the Graduate School of Landscape Architecture, Peking University; the Department of Architecture, Zhejiang University; the Graduate School of Frontier Sciences, The University of Tokyo; Nagoya University, Nagoya Institute of Technology and Sugiyama University, Nagoya. His research interests include the history of architecture, landscape architecture and urbanism, with an emphasis on the ‘politics of design’, particularly the work of Walter Burley Griffin, the history of Canberra, and the urban landscape of Sydney. He is actively engaged in issues of contemporary urbanism throughout Australia as an educator, critic, and commentator.

Professor Weirick has served on the Environment Board of the Royal Australian Institute of Architects (NSW); the Parliamentary Zone Advisory Panel, National Capital Authority, Canberra; the Urban Design Advisory Committee, NSW Department of Urban Affairs & Planning; the Gateways Design Review Panel, City of Sydney; the Campus 2010 Design Review Panel, University of Sydney; and the Design Review Panel of the Sydney Olympic Park Authority. He currently serves on the Design Advisory Panel of the City of Sydney, the Design Excellence Review Panel of the Barangaroo Delivery Authority, and the University of New South Wales Campus Design Advisory Panel.

Professor Weirick has been a member of many design competition juries, most recently as a City of Sydney representative on the Design Excellence Competitions for redevelopment of the Carlton United Brewery site, Broadway; the Westfield Sydney Centrepoint Project; the Mid-City Centre, Sydney; the Goodsell Building Redevelopment, Chifley Square; and the UTS Faculty of Information Technology Building, Broadway. He received the President’s Award of the Australian Institute of Landscape Architects (NSW Group) in 1999; and was named a ‘Built Environment Exemplar’ in the Year of the Built Environment 2004.

Professor Weirick has been President of the Walter Burley Griffin Society, Inc. since 2004, and previously served as Vice President, 1993-2004.