

11 April 2008

The Secretary
National Capital Committee
PO Box 6021
Parliament House

Canberra ACT 6021

Dear Sir/ Madam

Inquiry into the role of the National Capital Authority

Thank you for the opportunity to provide a submission to the above Inquiry. The comments in the attached submission are based on my work experience, which included:

- assisting in the development of elements in the Territory Plan and planning legislation leading up to the commencement of Self Government in the ACT
- nearly 30 years work in managing government programs associated with ACT and National planning, land and leasehold management in the ACT, including 3 years in the then Planning and Land Management Authority, and
- 6 years as a planning adviser to the then ACT Minister for Planning.

Currently I am voluntary Planning Officer for the Woden Valley Community Council. The experience I have outlined has given me a very good understanding of the current planning systems in the ACT.

Thank you for considering my submission. I look forward to the outcomes of the Committee's inquiry.

Yours sincerely

Gina Pinkas

Inquiry into the Role of the National Capital Authority

Submission from Gina Pinkas

Summary

The unique dual role of planning and land management in the Australian Capital Territory (ACT) by two governments requires some overlap in those activities. The challenge is to streamline those processes and ensure a cooperative, consultative, accountable approach. As it is nearly 20 years since the establishment of this dual system of land administration and planning, it is very timely that the current practices be reviewed.

This submission considers examples where the system has failed and suggests strategies to prevent such failures in the future. The submission leads to the following recommendations:

1. A Commonwealth body (for ease of reference called the Authority) to plan and administer the National Capital area and to set the broad planning principles for the remainder of the Territory.
2. The designated land concept be retained in recognition of the need to provide a setting for the areas of national significance (national land) in the Territory and to ensure planning respects the status of the national capital.
3. The Authority to set the planning principles for designated land, but not plan individual blocks or approve works. With the exception of provisions made under recommendation 8, the Territory (Government) should plan and approve and undertake public works on designated land within the guidelines established by the Authority
4. Planning delays be minimised with changes to the National Capital Plan, when agreed by the Territory, automatically amending the Territory Plan at the same time as the National Capital Plan is amended.
5. The Authority be more consultative with the Territory and ACT residents when developing broad plans for Territory land and in specific planning in national areas where it directly impacts on the amenity of the Territory eg lake foreshores.
6. The Authority should also be made more accountable through an independent review mechanism for its planning and works decisions.
7. The Authority should have an expanded membership, which meets specified skills required in legislation. The ACT Planning Authority's Chief Executive should be a member of the Authority to provide greater integration of planning directions between the two levels of Government. The ACT to be encouraged to establish an advisory planning board and the Chief Executive of the (Commonwealth) Authority be a member of that body.

8. A Trust be established, with funding from both Governments, to undertake works of mutual interest on designated land, such as the works proposed for Constitution Avenue under the *Griffin Legacy*. This mechanism would overcome the inability for the Authority to fund works on designated Territory land where there was a national interest in achieving the works eg view points on Mt Ainslie. Works are to be funded jointly or individually and not limited by land ownership by the Territory.
9. Similarly, agreed promotional events (eg Australia Day) which it would be agreed promote the ACT and its role as the National Capital, could be jointly funded through the Trust. Donations to the Trust could also be made by private companies and individuals

Response to Terms of Reference

- (a) *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 intent and role of the two planning systems, as specified in legislation and determined under the National Capital Plan and the Territory Plan, were in principle an appropriate framework for administering and planning in the ACT, the implementation of those systems is less than satisfactory in many instances.

It is appropriate, given the Territory's role as the National Capital, that the National Capital Plan sets the broad planning framework for land in the Territory. The arrangement ensures that the Territory is planned appropriately for its role as the setting for the National Capital. The administrative and planning framework should ensure the interests of all Australians are considered and planning is not subject only to the more local desires of Territory Governments. This said, it is also important to ensure that the National Capital Plan is equally not subject to the whims of the Commonwealth Minister of the day and there are appropriate consultative and accountability mechanisms set in place to protect the National Capital from such whims.

While it is recognised that the Territory is an entity in which the whole of Australia has a stake, it is also true that the residents of the Territory have a stake in the planning framework and decisions of the Authority (NCA) which impact on the amenity of people living and working in the Territory. This is especially correct when relating to road planning and design.

I recommend that the Authority set the broad planning framework for the whole Territory and it also plan and manage the National area. It should not undertake detailed planning for Territory land which is designated land. I propose that the Commonwealth plans broad land use such as identifying residential and industrial areas and leaves the Territory to do the planning within those areas. In particular it

should not provide detailed planning or works approval within Civic. The current practice has resulted in long delays in planning and works approval and land release and the Territory is unable to respond in a timely manner to market fluctuations.

For all but the National Area, the Authority should be driven more by planning principles than specifics. There are instances where the National Capital Plan specifies provisions for Territory Land which are inappropriately detailed, such as signage maximum size. When the Territory wanted to have free bus shelters with advertising to pay for them, it was found that the signs proposed were slightly too large to be permitted under the existing National Capital Plan. The proposal was held up for some years while first the National Capital Plan and then the Territory Plan were amended to allow the size of signs required. The National Capital Plan should not specify actual sign size on Territory land, rather it should specify the planning principles for signs. This is an example of unnecessary red tape.

A provision should be in both ACT and Commonwealth legislation to ensure that an amendment to the National Capital Plan would automatically amend the Territory Plan where the Territory Government agrees. There should be no need for a Territory Plan amendment process to be followed in such instances.

Duplication is perceived to happen in respect to amendments to both Plans. This duplication does not relate to planning for National Land but related to Territory Land especially Designated Land (Territory Land for which the NCA has planning responsibility).

The debacle over the planning of the Gungahlin Drive extension (GDE) is an excellent example how the intent of the planning system can be abused through political mischief. The ACT Government proposed to run the GDE to the west of the Australian Institute of Sport and this was part of its election platform. There was documentation from the NCA and the AIS, not opposing this position prior to the ACT elections. However, as the issue became politicised, the then NCA Board and its Minister took the stance strongly supported by the then Head of the AIS that Gungahlin Drive should run to the East of the AIS. The construction of the GDE was delayed due to environmental and design concerns and the Territory was held to ransom with increased construction costs. The planning system should not be allowed to be influenced by such political manoeuvres. Ways to avoid this are to ensure that on Territory land the Territory's rights are dominant as long as they do not affect the hills ridges and buffers landscape policies and comply with the broad land use defined under the National Capital Plan. In a situation where there is a deadlock, such as the GDE planning, there should be a clear appeal mechanism independent of political processes (refer later Terms of Reference).

Planning for designated land is the most confusing, fraught and unworkable provision for planning in the ACT. Currently the NCA is responsible for planning and works approval on designated land but the Territory is responsible for the management of that land including funding any public works. Poor outcomes from such a dual system of land control result in duplication, delay, lack of accountability and poor planning. While appreciating the need to have some overall control of key elements of the Territory, such as the visual corridors and major arterial roads accessing the Territory and city, the planning system should ensure that the Commonwealth sets the broad

policy principles for Designated land and the Territory plans and approves work within that framework, This would avoid seemingly improper decisions, for example an instance where the land use was changed under the National Capital Plan for a specific block and not changed for adjoining blocks. The change did not provide an overall planning scheme for the area and the reason for the specific changes appear to be due to developer pressure rather than good planning principles. To allow changes to residential codes for specific land holdings and not adjacent ones is not an appropriate role for a National Capital Plan.

The NCA's role in detailed planning and works approval for specific projects on designated land should cease. These matters should be the responsibility of the Territory. An example of the unnecessary requirements of the current provisions is when the Territory had to consult the NCA on the colour when repainting the Civic Olympic pool. Furthermore there are real budget and cost issues in one level of government setting works and planning standards for work to be funded by another level of government.

Planning in designated land would work better if the National Capital Plan set the policy. Examples of such policies could be - land use community, open space with buildings ancillary to open space no higher than 2 storeys, or along major approaches to the city such as Constitution Ave – mixed commercial and residential land use Maximum height 10 storeys with set backs 30 metres from the kerb. Where appropriate policy standards for paving and plantings could be set by the Commonwealth but specific details set by the Territory.

The principle of the Territory Plan not being inconsistent with the National Capital plan should remain. It is not possible to operate with inconsistent plans. Ways to enable the Territory plan to be automatically amended when the National Capital plan is amended, if the Territory Government agrees, should be explored.

(b) 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 current governance arrangements do not provide sufficient balance between the independence of the Authority's decisions and accountability for its operations. The Authority is independent, however, this independence has at times apparently been abused as examples cited under TER (a). Review and appeal mechanisms need to be considered to ensure improved accountability for the Authority. The Authority currently can make decisions with respect to traffic planning on major roads, a matter which may affect amenity and Territory budgets and the Territory and its people are unable to challenge those decisions.

While the Authority is required to consult with the ACT Planning Authority, it is not required to act on that consultation. An example of the Authority's capacity to act unilaterally with little prior consultation and less accountability is the Proposed Amendment 53 to the National Capital Plan. The Territory, which manages the land and the Albert Hall, was presented with a Draft Amendment to allow a broad range of activities in the precinct, together with major road changes all severely impacting on the people and Government of the ACT.

In undertaking its work in National areas, the Authority should be far more open, consultative and accountable when developing plans for an area. A prime example of where the NCA got it wrong was in the proposal to move the poplars in front of the National Library. It eventually capitulated to public pressure from the ACT community. However, a preferable process would have been consultation in the first place.

While the Authority is supposedly independent, its recent actions have not demonstrated such independence. The following comments relate to the membership of the Authority appointed by the Governor General. The composition of the Authority is too small to allow for robust decision making and at times there appears to be a lack of certain skills in the Authority's composition. It would be preferable to expand the number of Authority members, specify certain skill set which the Authority is required to possess and ensure appropriate appeal and decision review mechanisms.

One way to achieve closer cooperation between the ACT and Commonwealth Planning Authorities is to have the Chief Planning Executive of the ACT Planning Authority as a member of the Authority. The former ACT Minister for Planning made this suggestion to the Commonwealth Minister, however, it was declined at the time. The ACT Government should also establish a planning advisory body which would also have a member of the Authority to provide stronger links.

Apart from the Minister, responsible for the Authority, there are no obvious avenues for stakeholders to influence or seek review of Authority decisions. There should be an independent mechanism for review and appeal on Authority decisions. The types of decisions open to review or appeal need to be determined.

(c) The appropriate level of oversight required to achieve the highest standard of design for areas of national significance.

It is recognised that the National Area cannot be planned in isolation. The surrounding Territorial land provides a backdrop as well as a conduit to National Land. Standards of design are important across the Territory. As outlined under TER (a), the Authority should plan and manage the national land areas and set planning and design standards for designated land, leaving specific site planning and works approval to the Territory to approve and where needed fund. The Authority should have broad responsibility for setting land use across the Territory in the National Capital Plan but leave detailed planning on non designated Territory Land to the Territory.

In keeping with the need for excellent design it is important to specify the skills required on the Authority and expand membership

(d) Opportunities to ensure cooperation with the ACT Planning Authority and increased engagement with the Canberra community.

Reciprocal membership on both ACT and National Authorities as outlined under TER (b) would ensure closer cooperation. The current legislative requirement that both planning bodies communicate directly not via ministers in the other government or via

other agencies should also be enforced. The legislation does not support direct consultation with ministers of the other Government but consultation between authorities. This is an important provision, which underpins the independence of both Authorities. Recently these provisions have been ignored. A consultation protocol should be adopted.

In developing Draft amendments to the National Capital Plan, where Territory government or residents are affected, a consultation protocol should be established. The protocol should emphasise early consultation in formulating draft amendments. The provision for the Territory to undertake its own specific planning and works approval on Designated land should eliminate much dissatisfaction with the Authority's consultation with the Canberra community and direct that focus back to the Territory Government.

(e) 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

Given the different management objectives of both bodies, it is difficult to ensure a common approach to these matters. For instance if the NCA may wish to upgrade the major vista points in the Territory, as the land is Territorial, the NCA could not fund any works. The works, while a national priority, may not be a Territory priority so they remain unfunded. I understand Territory Land has been transferred to the Commonwealth to enable the NCA to fund capital works on a site. This backfired in the case of Constitution Ave where I am advised, Territory land was transferred to enable the NCA to fund works identified in the Griffin Legacy. The new Federal Government has cut the NCA's funds for this work and we now have the situation where the land has been transferred and no funding is available for the works. Currently if the Territory saw those works as essential to allow it to develop land and offices etc along Constitution Avenue, it would need to get the Commonwealth's agreement to transfer the land back to the Territory to fund the work. Such land transfers, just to enable one or other agency to fund the works, are totally inappropriate at best and questionable from a governance position. Is it appropriate for the Territory to transfer Territory land (without agreement of the Assembly) to the Commonwealth each time they both want a works program funded?

The solution is to establish a jointly funded trust fund where both authorities can invest money for funding of such projects. The fund would enable the Commonwealth to undertake projects of national importance on Territory land. In the example of Constitution Ave, the NCA could contribute to the fund while the land remained designated Territory land and the Territory could also contribute with funds, for example, obtained from the land sales along the Avenue. The Commonwealth has promised funding for the Albert Hall restoration. Such funds could be jointly administered through a trust fund.

Similarly promotional activities could also be funded jointly from the trust where the events met the priorities of both Governments eg Australia Day. Other national events are more appropriately funded by one or the other government. Financial

arrangements for events must be established to allow joint funding irrespective of which agency owns the land. The trust could also receive money from individuals and the private sector to promote Canberra as the national capital. It could be managed by representatives of both authorities as well as others with the relevant skills.

The promotion of the national capital to all Australians and on behalf of all Australians is an important function of the Authority. The Authority's capacity to undertake this work should be increased not reduced as is currently planned in the Commonwealth Budget. Education is also a very important role in that promotion. Clear objectives for this side of the Authority's work should be agreed and performance monitored. Where agreed, projects could be jointly sponsored by both Governments.

Conclusion

The above discussion and recommendations have focussed on what I believe is "broke" with the current system. These views are based on watching and/ or working with the operation of both Planning Authorities and Governments over nearly 20 years since self government. I have also gained particular insight through my employment the last 6 years as a planning adviser. My submission is not directed at throwing out the current provisions but amending them to make them work more effectively to support development in a timely fashion while protecting the interests of the Territory and the Australian nation.