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# Law Society of the Australian Capital Territory

## Submission for the inquiry into the role of the National Capital Authority

11 April 2008

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# Submission for the inquiry into the role of the National Capital Authority

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# Executive summary

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## 1 Introduction

Canberra, as the nation's capital, is not just another Australian City. Every modern city faces the challenge of sustaining its community, meeting their demands, attracting investment and tourism, together with ensuring both long-term employment and population growth. The success in meeting such a challenge is largely dependent upon the way a city looks, feels and functions. Accordingly, it is a central role of a local planning authority to oversee the advancement of these attributes within its respective jurisdiction. Canberra, as Australia's capital city, bears the additional responsibility and honour of both physically and symbolically representing the identity, values and aspirations of the nation and its people. Accordingly, it is all Australians, and not merely the residents of Canberra, that have a significant interest in the planning, development, celebration and promotion of a world-class capital city of which we can all be proud.

It is within this context that the Society welcomes the present inquiry into the future role of the National Capital Authority (NCA) and the way in which the Commonwealth should protect and foster its interests in the National Capital. The Society considers that the core objective of this inquiry must be the shaping of a reform agenda designed to promote both excellence and efficiency in the planning and development of Canberra as the National Capital of Australia, together with its proper celebration and promotion.

The Society strongly supports the development and implementation of a clear, logical and simplified planning regime, provided that it is designed to ensure that Canberra and the Australian Capital Territory (ACT) are planned in accordance with their national significance. Effective planning for the nation's capital demands formal dialogue between potentially competing national and local interests. The expression of these divergent interests is both constructive and vital for achieving world-class planning and development. Care needs to be taken in any attempts to reduce the role of the NCA in an attempt to avoid such conflict as it may ultimately be harmful to the nation.

The complex issues relating to the planning of the National Capital will not be addressed or resolved by simply reducing the mandate and funding of the NCA, effectively handing the majority of planning responsibility within Canberra to the local planning authority, ACTPLA. Such a move would be inconsistent with the Commonwealth's role of protecting the interests of the Australian people in their National Capital. Reform must be introduced which will guide and promote, rather than compromise the NCA's legitimate central role in the planning and development of a national capital of excellence.

The Society believes that enduring and productive solutions are to be found in clarifying the roles of both ACTPLA and the NCA, in reforming the

corporate governance of the NCA and in improving the lines of communication and cooperation between these local and federal authorities. Such an approach will ensure that Canberra is planned, developed, celebrated and promoted in accordance with its national significance. In this way the interest of the Nation's people in their capital city will be respected and protected.

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## 2 Summary of Recommendations

The Society proposes the following recommendations:

- 1 the inquiry should appoint an expert committee to consider necessary reforms to the NCA;
- 2 NCA should be supported with a level of funding which properly allows the Authority to effectively carry out its core statutory functions;
- 3 in order to attract world-class planners to the national capital, the prestigious role of the NCA must be clarified and promoted by the Federal Government;
- 4 reforms adopted as a result of the inquiry should focus upon the removal of duplication in the planning process and yet at the same time not result in the silencing of the legitimate expression of Australia's interest in Canberra as the nation's capital;
- 5 a one door policy should be introduced in order to avoid duplication in the planning approvals process. Regarding compliance with Special Requirements, the NCA should be consulted as a referral entity under the P and D Act;
- 6 there remains justification for allowing the NCA to impose Special Requirements to ensure that development in Canberra occurs in accordance with the high standards of a national capital. Nevertheless, regular review of existing Special Requirements should be undertaken to ensure that these measures achieve their purpose whilst avoiding unnecessary delay or duplication;
- 7 the Territory Plan and the NCP should be harmonised, however, the creation of one plan for the ACT is a secondary issue to the creation of a structure which clearly provides for the roles of ACTPLA and the NCA respectively;
- 8 the Territory Plan should remain subordinate to the NCP and the NCA should retain control of the NCP;
- 9 the Territory Plan and NCP should be published together and should be made available from a single online source. These sources should be accompanied by a simple explanatory statement outlining how the two documents operate alongside each other;

- 10 confusing terms should be replaced to increase the accessibility of the NCP. For example, the ambiguous term “designated area” should be replaced with “area of national significance”;
- 11 there should be a single articulation of Canberra’s land use, spatial and critical infrastructure planning. The NCA and ACTPLA should work collaboratively to achieve the development of a harmonised Municipal Canberra Policy Plan and the Canberra Spatial Plan and preferably a single document;
- 12 consideration be given to a corporate governance model along the lines of the Washington-style model. Such a structure could reflect the truly national nature of the NCA and promote collaboration and understanding between ACTPLA and the NCA institutionally through board membership;
- 13 broadly speaking, the DAF model of development assessment should be followed by the NCA. However, due consideration must be given to circumstances where departure from such procedures will be required due to the unique role of the NCA;
- 14 statutory reform to provide for consultation and cooperation between ACT Government and the NCA;
- 15 consideration be given to a cabinet level Minister (and even the Prime Minister) being responsible for the NCA to increase public accountability and national significance;
- 16 introduction of periodic reviews of NCA activities including a new harmonised spatial plan (or equivalent document such as the Metropolitan Canberra Policy Plan), planning approvals and other NCA activities to ensure greater accountability and continual improvement;
- 17 the corporate governance recommendations outlined above should be adopted. Additionally, formal coordination and consultation between ACTPLA and the NCA should be provided for by statute;
- 18 public consultation and third party appeal rights should be introduced in relation to NCA decisions which are of a regular municipal planning nature, consistent with the DAF model. However, it will generally not be appropriate to make projects and activities of particular national significance amenable to third party review;
- 19 the NCA should have a role in advocating for new infrastructure projects which relate to Canberra’s standing as the National Capital; and
- 20 the Commonwealth and hence the NCA should be responsible for both organising events which celebrate Canberra as the National Capital as well as promoting National institutions.

# Recommendations

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## 1 Overview

The Society wishes to make the following broad recommendations:

- (a) The appointment of an expert committee to comprehensively review:
  - (i) the proper interest of the Commonwealth in the National Capital; and
  - (ii) the role of the NCA in the effective representation of this interest.
- (b) NCA should be supported with a level of funding that properly allows its statutory functions to be effectively carried out; and
- (c) That any further reduction in funding to the NCA will severely threaten the quality and calibre of planners that will be attracted to work in the planning and development of the National Capital. There is a fear that the National Capital has already lost excellent planners and a wealth of corporate knowledge and experience.

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## 2 Review by expert committee

An expert review of the role, jurisdiction and corporate governance structure of the NCA is important. To ensure that the vision of Canberra as the ‘model city’ is translated into reality, the NCA must adopt a robust and representative governance structure. This necessarily requires comprehensive expert review of the NCA taking into account comparative worldwide models of best practice as well as Australia’s own unique values, aspirations and opportunities. Such an approach will ensure that enduring solutions are found to ongoing issues of conflict and inefficiency.

***Recommendation: the inquiry should appoint an expert committee to consider necessary reforms to the NCA.***

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## 3 Provision of adequate funding

The Society is deeply concerned with the Federal Government’s recent withdrawal of significant funding to the NCA. The Society believes that it is premature for the Federal Government to significantly reduce the NCA’s budget and staffing resources prior to the completion of the present inquiry.

The removal of funding has jeopardised the ability of the NCA to perform its current statutory functions. Further it also undermined investment confidence in the ACT. More specifically, the \$70 million funding previously earmarked by the Federal Government for completion of the highly symbolic works to

Constitution Avenue was designed to leverage significant private sector investment and kickstart the national legacy of Walter Burley Griffin. The removal of Federal funding will result not only in the loss of many years of planning labour, but will also undermine the potential for investment in Canberra's infrastructure.

Furthermore, in competitive terms, a reduction in the NCA's current mandate and reductions in funding will operate to threaten the standing of Australia's capital city amongst other capital cities of the developed world.

***Recommendation: NCA should be supported with a level of funding which properly allows the Authority to effectively carry out its core statutory functions.***

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## **4 Calibre of planners**

A reduction of funding to the NCA threatens the quality and calibre of planners that will be attracted to work in the planning of the Nation Capital. The NCA had, as the Commonwealth's planning authority carried a certain prestige which attracted some of Australia's and the world's best urban planners.

***Recommendation: In order to attract world-class planners to the national capital, the prestigious role of the NCA must be clarified and promoted by the Federal Government.***

# Inquiry Terms of Reference

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## **1 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.**

### **1.1 Key recommendations:**

- (a) Reform must be directed at removing unnecessary duplication in the planning and approval process while retaining the legitimate expression of differing national and local interests;
- (b) The introduction of a 'one door' policy to overcome genuine issues of duplication in the approvals process;
- (c) A harmonisation of the Territory Plan and the National Capital Plan whereby the two plans are published together and made available online from the one internet source;
- (d) Inconsistencies between the Municipal Canberra Policy Plan (NCA) and the Canberra Spatial Plan (ACTPLA) must be resolved by the creation of a single articulation of Canberra's land use, spatial and critical infrastructure planning overseen by the NCA.

### **1.2 Removal of unnecessary duplication, not the legitimate expression of differing interests**

The Society supports a reform of the planning and approvals process in the ACT which is directed at removing unnecessary duplication in relation to the respective roles of the NCA and ACTPLA.

The Society emphasises however, that addressing such existing duplication within this process does not and should not entail a silencing of the legitimate expression of differing local and national interests in the planning and development of Canberra and the Territory.

The central role of the NCA is to create a national capital which symbolises Australia's heritage, values and aspirations, is internationally recognised and worthy of pride by Australians. In order to achieve this mandate, the NCA represents the Australian Government's interest in the planning and development of the nation's capital. In some respects the NCA is the gate keeper of the ordinary Australian's interest and pride in their National Capital. It is not surprising then that this long-term national interest at times can, and indeed should, differ from purely local interests.

The Society emphasises that the National interest in Canberra extends beyond the Parliamentary Triangle. It is proper for the Australian nation to have, for



example, an interest in the gateways into Canberra. Furthermore, the functioning of Canberra as the National Capital requires attention to transport and arterial roads.

***Recommendation: Reforms adopted as a result of the inquiry should focus upon the removal of duplication in the planning process and yet at the same time not result in the silencing of the legitimate expression of Australia's interest in Canberra as the nation's capital.***

### **1.3 One Door Policy - redressing duplication in planning approvals and thereby increasing certainty and efficiency**

The Society acknowledges that there is uncertainty regarding the jurisdiction of ACTPLA and the NCA in relation to the granting of some development approvals in the ACT, although this uncertainty has been reduced significantly in recent times. The main area where unnecessary duplication arises is in relation to Territory land that is the subject of Special Requirements (SR) under the NCP. Currently in these circumstances, a proponent will need to seek the approval of both the NCA and ACTPLA to a development proposal. This duplication places an unnecessary burden upon proponents and should be removed.

The Society supports the introduction of a 'one door' policy. Under this model a proponent will only be required to lodge a single application with one agency. In relation to the duplication caused by a SR overlay, a proponent should only be required to lodge a development application with ACTPLA. The NCA should be consulted as a referral entity under the *Planning and Development Act 2007 (P & D Act)* and must respond to ACTPLA with a determination of whether the application complies with the SR within the standard statutory timeframe. In this way the issue of duplication is addressed whilst ensuring certainty for the proponent.

The Society considers that there remains a legitimate role for the imposition of SRs to ensure development in Canberra occurs in accordance with its national significance. However, regular review of existing SRs is necessary in order to ensure their currency and utility. For example, if SRs are no more onerous than requirements under the Territory Plan they should be removed and the NCA need not be consulted. Any changes to the Territory Plan regarding areas affecting SR's should require NCA approval.

***Recommendation: A one door policy should be introduced in order to avoid duplication in the planning approvals process. Regarding compliance with SRs, the NCA should be consulted as a referral entity under the P and D Act.***

***Recommendation: There remains justifications for allowing the NCA to impose SRs to ensure that development in Canberra occurs in accordance with the high standards of a national capital. Nevertheless, regular review of existing SRs should be undertaken to ensure that these measures achieve their purpose whilst avoiding unnecessary delay or duplication.***

#### **1.4 Harmonisation of the National Capital Plan and the Territory Plan**

The Society supports the harmonisation of the Territory Plan and the NCP in principle. However, there are a number of practical difficulties associated with creating one planning document. In particular, it would be very difficult to maintain internal consistency when the two elements of the plan are varied by different agencies and governments. Additionally, there may be significant complications with creating appropriate procedures for varying a unified plan.

The Society believes that greater consistency between the two documents must to be achieved in relation to their accessibility. In particular the documents should be published together and made available from a single online source. Terminology should be standardised wherever possible and vague or confusing terminology should be reformed to increase the accessibility of both planning documents.

***Recommendation: the Territory Plan and the NCP should be harmonised, however, the creation of one plan for the ACT is a secondary issue to the creation of a structure which clearly provides for the roles of ACTPLA and the NCA respectively.***

***Recommendation: the Territory Plan should remain subordinate to the NCP and the NCA should retain control of the NCP.***

***Recommendation: the Territory Plan and NCP should be published together and should be made available from a single online source. These sources should be accompanied by a simple explanatory statement outlining how the two documents operate alongside each other.***

***Recommendation: confusing terms should be replaced to increase the accessibility of the NCP. For example, the ambiguous term “designated area” should be replaced with “area of national significance”.***

#### **1.5 Harmonisation of the Municipal Canberra Policy Plan and the Canberra Spatial Plan**

The Society considers that sound spatial planning in the ACT is critical to the viability and sustained growth of Canberra. As the national capital, the Federal government has a direct interest in ensuring that the long term vision for Canberra leads the nation with regard to land use planning, spatial planning, critical infrastructure planning, demographic planning, sustainability and transport. Consequently it is vital that the NCA is intimately involved, in collaboration with ACTPLA, in the formulation and articulation of Canberra’s land use, spatial and critical infrastructure planning. Such an approach requires the consolidation of the Municipal Canberra Policy Plan and the ACT Spatial Policy into a unified articulation contained in a single document or at least mutually consistent documents.

***Recommendation: There should be a single articulation of Canberra’s land use, spatial and critical infrastructure planning. The NCA and ACTPLA should work collaboratively to achieve the development of a harmonised Municipal Canberra Policy Plan and the Canberra Spatial Plan and preferably a single document.***

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

### **2.1 Key recommendations:**

- (a) Consideration be given to adopting a board composition having regard to the Washington Model;
- (b) Introduction of elements of the DAF model to ensure best practice and more transparent decision-making by the NCA bearing in mind an appropriate balance between the special need for a degree of NCA independence and accountability;
- (c) Elevation of NCA reporting to a cabinet level minister (and preferably the Prime Minister) to increase accountability; and
- (d) Statutory reform to provide for consultation and cooperation between ACT Government and the NCA.

### **2.2 Reform of corporate governance**

The Society supports reform of the corporate governance structure of the NCA to reflect the truly national character of the authority. The Society suggests that consideration be given to the adoption of a model which ensures that composition of board members of the NCA is representative of the States and Territories and the Commonwealth.

A useful comparative example is the Washington Model adopted by the United States. The National Capital Planning Commission (**NCPC**) is a statutory body with twelve designated members. The Commission has twelve members. The President appoints three citizens (including the Chair), at least one of whom must come from Virginia and one from Maryland, the states bordering the District. The Mayor of the District of Columbia appoints two citizens, who must be residents of the city. The five presidential and mayoral appointees are required to have experience in city or regional planning. The remaining seven members serve *ex-officio*, representing the Secretaries for Defense and Interior, the Administrator of General Services, the committees of the U.S. Senate and House of Representatives responsible for DC affairs, the Mayor of the District of Columbia, and the Chairman of the Council of the District of Columbia. NCPC is an executive branch agency, and the Chairman reports directly to the President.

As an example for consideration a corporate governance model for the NCA could include the following elements:

- (a) The NCA board has 12 designated members;
- (b) The responsible minister would appoint two members to the board including the Chair and the Chief Executive;
- (c) The ACT Chief Minister would appoint a citizen who is a resident of Canberra;

- (d) The three appointed members would have extensive experience in city or regional planning;
- (e) 8 members would serve *ex-officio* representing the Premiers and Chief Ministers from each state and territory (emphasising the interest of all members of the Commonwealth); and
- (f) 1 member would serve *ex-officio* representing ACTPLA's Chief Planning Executive (the Chief Planner could even be the member).
- (g) The NCA would remain a statutory authority and not become absorbed into a department;
- (h) The chair would report directly to the responsible senior Federal Minister (and preferably the Prime Minister) thereby increasing NCA accountability; and
- (i) The Chief Executive would serve on a full time basis and all other members would serve on a part time basis (for meetings etc).

***Recommendation: Consideration be given to a corporate governance model along the lines of a Washington-style model outlined above. Such a structure could reflect the truly national nature of the NCA and promote collaboration and understanding between ACTPLA and the NCA institutionally through board membership.***

### **2.3 Introduction of DAF model for NCA Development Approvals process**

The Society broadly supports the adoption of the Development Assessment Forum (DAF) model of development approval decision making by the NCA. This model represents a best practice standard which has been determined by key members of the industry in order to promote certainty, simplicity and efficiency in development assessment processes. An adoption of elements of the DAF model would be in line with the increasing expectations of the Australian citizens.

However, it is important to note that in certain important respects the unique role of the NCA may justify a level of departure from these procedures in relation to consultation and review.

***Recommendation: Broadly speaking, the DAF model of development assessment should be followed by the NCA. However, due consideration must be given to circumstances where departure from such procedures will be required due to the unique role of the NCA.***

### **2.4 Statutory reform to provide for consultation and cooperation between ACTPLA and the NCA.**

In addition to the institutional collaboration which would result from the abovementioned reforms to the NCA's corporate governance, the Society considers that consultation and cooperation should be provided for by statute. The Society is of the view that these two reforms provide the necessary framework for fostering understanding and effective collaboration between ACTPLA and the NCA.

*Recommendation: Statutory reform to provide for consultation and cooperation between ACT Government and the NCA.*

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### **3 The appropriate level of oversight required to achieve the highest standards in design for areas of national significance.**

#### **3.1 Key recommendations:**

- (a) Consideration be given to the elevation to Cabinet-level ministerial (preferably Prime Ministerial) responsibility for the NCA; and
- (b) The introduction of periodic reviews of NCA activities including the spatial plan (such as Metropolitan Canberra Policy Plan), planning approvals and other NCA activities.

#### **3.2 NCA reporting to a cabinet level Minister**

In order to increase public accountability of the NCA for its operations and planning decisions and to recognise the importance to the nation of fostering its National Capital, ultimate responsibility for the NCA could be elevated to cabinet level Ministry and even to the Prime Minister.

*Recommendation: Consideration be given to elevating a cabinet level Minister (and even the Prime Minister) being responsible for the NCA to increase public accountability and national significance.*

#### **3.3 Introduction of periodic NCA reviews**

The Society supports the introduction of periodic reviews of NCA activities including the spatial plan (such as Metropolitan Canberra Policy Plan), planning approvals and other NCA activities in order to ensure continual improvement of NCA operations and enhance accountability for NCA decision making.

*Recommendation: introduction of periodic reviews of NCA activities including a new harmonised spatial plan (or equivalent document such as the Metropolitan Canberra Policy Plan), planning approvals and other NCA activities to ensure greater accountability and continual improvement.*

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### **4 Opportunities to ensure cooperation with ACTPLA and increased engagement with the Canberra community.**

#### **4.1 Key Recommendation:**

Introducing an appropriate level of public consultation with the Canberra community in accordance with the DAF model, having regard to the desirability of ensuring NCA independence to represent the interests of all Australians in the nations capital.

## 4.2 Public Consultation and third party appeal rights

The Society broadly supports the introduction of an appropriate level of public consultation with the Canberra community in accordance with elements of the DAF model, having regard to the desirability of ensuring NCA independence to represent the interests of all Australians in the nation's capital.

More specifically, where the nature of the project closely resembles an ordinary development application (eg approval for building residential units) then there is no compelling reason for restricting public consultation and third party appeal rights in a manner consistent with the DAF model. However, many of the NCA's projects and activities are of particular national significance and consequently should not be amenable to the standard public consultation and third party review procedures.

*Recommendation: public consultation and third party appeal rights should be introduced in relation to NCA decisions which are of a regular municipal planning nature, consistent with the DAF model. However, it will generally not be appropriate to make projects and activities of particular national significance amenable to third party review.*

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

### 5.1 Key recommendations:

The promotion and celebration of Canberra as the National Capital is not an improper function of the Federal Government and hence the NCA. Such promotion and celebration encompasses:

- (a) Advocacy for new infrastructure projects; and
- (b) Responsibility for events and the promotion of institutions which promote Canberra as the National Capital.

### 5.2 Advocacy for new Infrastructure projects

The Commonwealth and hence the NCA has a key role in promoting the Griffin legacy which holds the key to the distinctive character of Canberra. Due to recent funding cuts, the Constitution Avenue Boulevard project to connect the city with the Russell defence offices - a realisation of an important element of the Griffin Legacy plan - has had to be abandoned. This outcome is to the detriment of the interest of all Australian's in their capital city.

*Recommendation: The NCA should have a role in advocating for new infrastructure projects which relate to Canberra's standing as the National Capital.*

### 5.3 Responsibility for events and promotion of institutions

The nation's interest in the capital city extends beyond its planning and development. A capital city should be celebrated and utilised as a place of national identity. Recent experiences involving the Nation's Capital, such as the national apology to the stolen generation and the move of the Prime Minister's primary place of residence to Canberra, serve only to strengthen the importance of this symbolic function. Accordingly, the proper responsibility for events which promote Canberra as the National Capital should fall with the Federal Government and so too its representative, the NCA.

In addition to events which promote Canberra as the National Capital, the NCA should be the responsible body for the promotion of institutions that are central to Canberra as the National Capital. As a result of recent funding cuts for example, plans to coordinate volunteers to guide tourists through memorials leading up to the War Memorial have had to be discontinued.

***Recommendation: The Commonwealth and hence the NCA should be responsible for both organising events which celebrate Canberra as the National Capital as well as promoting National institutions.***