

JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL AND EXTERNAL TERRITORIES

INQUIRY INTO THE ROLE OF THE NATIONAL CAPITAL AUTHORITY

# *An Insider's View*

SUBMISSION by

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## Foreword

I write as a town planner and a former employee of the National Capital Authority. I came to Canberra in August 1973 to take up a town planning position with the (then) National Capital Development Commission and, with the advent of Self-Government, was invited to join the newly formed National Capital Planning Authority as its first Director (Statutory Planning). I served in various planning roles at Director level usually related to development planning and approvals before becoming Director of the National Capital Plan in 2002. I retired in 2006 following a brief spell as Planning Adviser to the National Capital Authority, having spent a total of almost 33 years in planning in Canberra.

In 1991, I served as Adviser to the Parliamentary Joint Committee on the Australian Capital Territory and prepared the Committee's Report on Amendment No. 1 to the National Capital Plan and so have a sound appreciation of the workings of the Committee.

I make this submission with some disquiet. I, like many others, think it unfortunate that:

- The Government announced severe cuts to the NCA's budget prior to announcing the review, necessitating the axing of more than 30 positions from a staff of less than 90;
- The Chairperson of the Committee has made prejudicial comments about the Authority and its planning role prior to her nomination as Chairperson of the Committee; and
- The Terms of Reference contain evocative and presumptive terms such as 'reduction of red tape and duplication of municipal and local planning functions' implying these are established 'facts', rather than issues to be carefully and properly investigated by the Committee before it makes its recommendations on setting the planning framework to carry the National Capital through the first half of the 21<sup>st</sup> Century.

Notwithstanding these points, it is not my purpose to criticise the Committee or any individual member but, rather, to stress to the Committee members the vital role they, through this inquiry, can play in defining the extent to which, and the manner in which, the Commonwealth participates in the future planning and development of our National Capital.

I hope to assist the Committee by providing *an insider's view* of the preparation and subsequent administration of the National Capital Plan; of the relationship between the Commonwealth and Territory planning authorities and the manner in which the planning systems they administer complement each other. In particular, I wish to demonstrate that, notwithstanding claims of duplication and unnecessary red tape, there is no duplication of planning approvals and that the Authority's enabling legislation already provides for appropriate consultation with the Territory planning authority and the engagement of the Canberra community in its planning decisions.

I have attempted to describe in simple terms how the Act has been interpreted; how the Plan was initially prepared and has subsequently been administered; how the relationship between the National Capital Authority and its Territory counterpart operates and how particular 'issues' such as special requirements, works approval and public consultation have been dealt with by the Authority.

**David T Wright**

April 2008

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## EXECUTIVE SUMMARY

The task of planning and developing the Nation's Capital is a Commonwealth responsibility which has not diminished since Self-Government.

The planning legislation introduced at the time of Self Government was inspired in its vision and has proved most effective in its application.

Similarly, the National Capital Plan has been effective in securing the Commonwealth's interest in the National Capital while respecting the devolution of Territory and municipal planning responsibilities.

Given good will on both sides, both the *Australian Capital territory (Planning and Land Management) Act 1988* and the *National Capital Plan* are sufficiently robust and enduring to serve both the National Capital and the City of Canberra for the next two decades.

Notwithstanding these observations, any legislation and certainly any plan that has been in operation for almost a generation warrants periodic review. It is necessary to review both the form and content of the Plan but not its jurisdiction or authority.

To this end I have reviewed the operation of both the legislation and the National Capital Plan since their inception and have offered ideas for consideration and possible reform.

These include the preparation of new strategic plan, an alternative construction of the Authority, a renewed focus on engaging all Australians rather than further developing its relationship with the Canberra community in the planning and development of the National Capital.

I have also suggested possible reforms to the definition of *Designated Areas*, to the definition of *Works* and to that of *National Land*.

I stress the importance of retaining the National Capital Authority as an independent statutory body and of the Commonwealth increasing its commitment to the National Capital by re-instating funding of the Griffin Legacy proposals.

I stress the importance of distinguishing the respective roles of the National Capital Plan and the Territory Plan, and of the two planning authorities and their elected governments.

I stress the threshold position of this Committee, particularly through this Inquiry. In the past, Parliamentary inquiries have often been pre-occupied with the everyday issues. Other Committee's such as the 1955 Senate Select Committee charged with conducting the *Inquiry into the Development of Canberra* is remembered almost reverentially for its far-sightedness and commitment to the ideal of the National Capital.

The question remains whether this Committee and the findings of the current inquiry will be hampered by a pre-occupation with the mundane or whether it can provide a new inspiration and a revitalised Commonwealth commitment to the future of the Nation's Capital.

I respectfully lodge this submission for the Committee's consideration.

## Recommendations

I have, throughout the submission made a number of recommendations at the end of each section. These are set out below:

### On the General Principles and Policies of the National Capital Plan

- The National Capital Authority be appropriately funded by the Commonwealth Government to prepare a new strategic plan for Canberra in consultation with the ACT Planning and Land Authority and relevant stakeholders.
- The new strategic plan be referred to the Joint Standing Committee for Inquiry.
- The new strategic plan should replace the *General Policy Plan* in the National Capital Plan through the established amendment process.
- The new strategic plan be the subject of a national public consultation programme.
- The National Capital Authority be required to report to the Committee on the implementation and performance of the new strategic plan at least every three years and that a comprehensive review be undertaken of that plan every 10 years, that is, by the mid-point of successive 20 year plan time-frames.

### On Designated Areas

- The concept of Designated Areas be retained;
- The basis on which Designated Areas were originally defined be acknowledged as appropriate;
- The current boundaries of Designated Areas be re-examined and refined to bring them up-to-date and to respond to changed circumstances and the experience of the last two decades;
- All land, including the roads, in the areas of Yarralumla, Deakin and O'Malley where diplomatic uses are permitted be declared National Land and included in a Designated Area.

### On Works Approval

- The definition of 'works' in the Act be modified to enable the Authority, at its discretion, to:
  - Waive the requirement for works of a minor or temporary nature;
  - Impose a time limit on an approval similar to that issued by the ACT planning authority; and
  - Issue a works approval subject to conditions.

### On Special Requirements

- The concept of Special Requirements in *the interest of the National Capital* as provided for in the *Australian Capital Territory (Planning and Land Management) 1988* be retained, particularly as they apply to National Land outside Designated Areas;
- The Authority be asked to consider uplifting the Special Requirements for Civic;
- The Authority be asked to review the use of Special Requirements for The Namadgi National Park, the Murrumbidgee and Molonglo River Corridors and the Lanyon Bowl with a view to removing them from the National Capital Plan and having appropriate

- policies included in the Territory Plan, including a procedure that requires the Territory to consult with the Authority if such policies are to be changed in the future; and
- The Committee support the Amendment of the National Capital Plan to designate both the Australian Institute of Sport and Tidbinbilla Space Tracking Station and declare the site of each to be National Land.

### **On Public Consultation**

- The consultation provisions of the *Australian Capital Territory (Planning and Land Management) Act 1988* be acknowledged as an appropriate legislative framework for consultation on the National Capital Plan, including consultation with the ACT planning authority.
- Recognition be given to the fact that the two plans and the two planning authorities serve different constituencies and different Governments and yet that these different roles are essentially complementary and should not be confused.
- Recognition be given to the commitment and resource implications necessary for successful public consultation programmes and the Authority be properly funded in future to carry out its public consultation responsibilities in a pro active and constructive way.
- The Authority be funded to undertake national consultation on a new strategic plan and subsequent amendments of the National Capital Plan through the various national and state planning, architecture, landscape and engineering institutes and other relevant state and national organisations.
- Members of the Committee promote Canberra as the Nation's Capital among their constituencies and encourage their Parliamentary colleagues to do the same.

### **On National and Territory Land**

- It be noted that there is currently no direct correlation between planning and land management responsibilities, and
- Territory Land within Designated Areas be progressively declared to be National Land once the Territory has received any revenue from land sales or any redevelopment potential available under the current lease and provisions of the National Capital Plan. (It should be noted that the current legislation may need to be amended to broaden the definition of National Land, if the definition of National Land at Clause 6(g) proves to be inadequate.

### **On Governance**

- The National Capital Authority be retained as a statutory authority, that its current functions be confirmed and that it be adequately and consistently resourced to carry out those functions.
- Consideration be given to revising the composition of the Authority to one based on geographic and professional representation rather than by Ministerial appointment.
- Consideration be given to establishing a requirement that the National Capital Authority and its Territory counterparts conduct an annual conference on matters of mutual interest and report to their respective governments on the outcome of such deliberations.

## Reflections

We ignore the lessons that history might teach us at our peril. If we are cavalier in setting aside long standing and consistently held values and sentiments we run the risk of building on untested foundations. We should not be unnecessarily constrained by history but it is sound practice to visit the past to understand the present and inform the future. I list a series of short quotations which encapsulate some of the sentiments and values expressed in the past about the importance of the National Capital; of the need to take the long view in the planning and development of the National capital; of the sentiments underpinning the decision to proceed with Self- Government; of the relationship between the Commonwealth under Self-Government of the importance and quality of the National Capital Plan and of the performance of the National Capital Authority.

It is important to stress from the outset the planning and development of Canberra as the National Capital is the responsibility of the Commonwealth. It s a creature of Federation which has its roots in the very Constitution of the country:

*The Seat of Government of the Commonwealth shall be determined by the Parliament and shall be within territory which shall have been granted or acquired by the Commonwealth, and shall be vested in and belong to the Commonwealth.*

*Commonwealth of Australia Constitution Act 1900*

Several commentators expressed lofty ideals for the new nation's capital. Perhaps the most succinct came from Charles Mann, MP who, in 1924 stated:

*The obligation is upon us, as representatives of the people of Australia, to visualise a city to come at Canberra and to build there, not for to-day, but for all time.*

Equally lofty sentiments were expresses by long standing local Member, Jim Fraser, MP when he stated:

*We are building here not for the next ten, fifty or even one hundred years; we are planning and building to-day for all the future that lies ahead for this country .We are building not merely place for people to live and work in, but a national capital which, I hope.....must become a symbol of the nation and an inspiration of its citizens.*

*Second Reading Speech, NCDC Bill, 1957*

These sentiments, to the extent that they are yet to be achieved should be as strong to-day as when they were originally made. I would hope that Members of the Committee acknowledge the value of these sentiments and the seminal role they can play, particularly through this inquiry, in keeping this vision and sentiment alive into the 21<sup>st</sup> Century.

The intention of the Commonwealth in introducing self Government to the Territory was clearly enunciated by Senator Graham Richardson at the introduction of self-Government when he stated:

*The Territory is home to the nation's capital – this fact cannot be ignored. The Commonwealth will continue to have the ultimate responsibility for ensuring the Territory's good government. Consequently, this..... includes a provision for the Governor-General to dissolve the Assembly....if the Assembly is incapable of performing its functions... Commonwealth law will prevail over Assembly law...Protections such as these are essential to the national capital. They are, of course, instruments of last resort and it is the Government's intention to resolve any potential with the ACT Legislative Assembly by consultation and legislation.*

Senator Richardson went on to observe that the legislation:

*is both comprehensive and well-conceived. It provides a fully responsible government for the people of the Territory, in its most democratic, practical and economic form....It safeguards the Commonwealth's interest in the national capital.*

*Senator Graham Richardson, Second Reading ACT Self-Government Bill 1988.*

John Langmore, MP chaired the Parliamentary Joint Standing Committee on the Australian Capital Territory at the time the National Capital Plan was prepared. In tabling the Committee's report of its *Inquiry into the National Capital Plan* in the House of Representatives he concluded:

*I would like to emphasise the importance of the National Capital Plan. If Canberra is going to continue to provide the nation with such a fine capital city there will have to be a planning and development control process which protects and enhances all the elements of the city which contribute to its character. The Committee has found that the National Capital Plan will do this. Anything less than what is proposed will not be good enough.*

*John Langmore: Tabling Speech 1990 – Joint Parliamentary Committee on the Australian Capital Territory on its Review of the National Capital Plan*

Perhaps the final word on the Authority and the exercise of its responsibilities should be left to Aldo Giurgola who, having heaped praise on the professionalism and performance of the Authority staff despite them having to operate with meagre resources, concluded that:

The NCA has been performing a highly significant task on key sectors of our city with relatively modest means, maintaining a heritage of planning that has characterised our city since its very beginning .... **If we did not have an NCA, we would have to re-invent a new one**(My emphasis).

Aldo Giurgola, Design Architect of Parliament House. *The Canberra Times 24 March 2008*



## Introduction

With the advent of self-government – a benefit foisted on an unwilling and ungrateful constituency in 1988/9 – responsibility for planning and development of Canberra and the Territory was divided between the Commonwealth and the new Territory Government. The enabling planning legislation, the *Australian Capital Territory (Planning and Land Management) Act 1988* (the Act) provided *inter alia* for the establishment of two planning authorities, separate Territory planning legislation and the preparation and separate administration of two separate but complimentary Plans – the National Capital Plan and the Territory Plan.

The legislation defined the *Object* of each plan and the procedures for preparing and administering the National Capital Plan. The Object of the National Capital Plan is ***to ensure that Canberra and the Territory are planned and developed in accordance with their national significance***. The Object of the Territory Plan is significantly different. It is ***to ensure, in a manner not inconsistent with the National Capital Plan, the planning and development of the Territory to provide the people of the Territory with an attractive, safe and efficient environment in which to live and work and enjoy their recreation***. The relationship between the two plans and the two planning authorities was established and deliberately set from the outset.

The legislation also sets out the principles of land administration to apply in the Territory, including references to the leasehold system and to the division of all land in the Australian Capital Territory into National Land, administered by the Commonwealth, and Territory Land administered by the ACT Administration. Uniquely in Australia, the legislation bound the Commonwealth and its agencies to the provisions of the National Capital Plan.

It is important to recognise that the preparation of the National Capital Plan had to be completed within 12 months and that the Authority had no reference, other than the provisions of the Act, to guide the preparation of the Plan. It was this initial interpretation of the Act that provided the foundations of the Plan; that set the planning framework and the relationship between the National Capital Plan and the subsequent Territory Plan; and the relationship between the Authority and its Territory counterparts.

John Bolton and I were charged with the task of preparing the First Draft of the National Capital Plan. We were acutely aware that the Plan would have a seminal influence on not only the future of Canberra as the National Capital, but also Canberra as the home to more than 300 000 people. Following this initial and formative exploration, John Bolton prepared subsequent drafts and should properly be acknowledged as the person most responsible, in my view, for bringing the National Capital Plan to fruition.

We wrestled with the potential conflicts in the *Objects* of the two plans, with the need to ensure that the intent of the Self-Government legislation was carried through and that the Plan properly reflected the intended devolution of planning responsibilities. While the potential for conflict was recognised, we sought to minimize this by avoiding, wherever possible, including residential leases within areas subject to the direct control of the Authority. In the event, the Designated Areas of the National Capital Plan included less than 100 of more than 100 000 standard residential leases in the ACT and these were located at the direct interface of Parliament House and the Prime Minister's official Canberra residence – *The Lodge*.

At the other, 'higher' end, we deliberately focussed on what were the quintessential qualities that established an area's significance to Canberra as the National Capital.

The National Capital Plan was well received by this Committee's predecessor and was approved by Parliament at the first attempt (following certification).

The Plan has, in my view, proved to be effective in securing the enduring interest of the Commonwealth and the Australian people in the planning and development of the National Capital for almost a whole generation since Self-Government. Given that the Plan has been in place for almost two decades, been the subject of about 60 Draft Amendments and been used in the assessment of 3-400 works approval applications a year throughout that period, the number of conflicts or controversies, especially involving substantial differences of view between the ACT Government and the Authority, has been remarkably small.

In short, the Plan has, in my view, proved to be robust and capable of accommodating significant political, economic, social and environmental challenges. However, the two fundamental questions remain:

- Should the Plan be retained in its present form or does it need to be changed?
- Does the *Australian Capital Territory (Planning and Land Management) Act 1988* need to be changed?

On the basis of my experience in trying to administer the Plan within the provisions of the Act for over 15 years, I believe that the legislation was visionary and continues to provide all the essential ingredients, processes and relationships necessary for a planning system that works or, given good will on both sides, can be made to work, for both the Commonwealth and the Territory. Similarly, I also believe that the Plan has worked. It has fulfilled its role in ensuring that Canberra and the Territory are *planned and developed in accordance with their national significance* while allowing the ACT Government to develop a Territory Plan and planning procedures appropriate for the Canberra community with a minimum of interference from the Commonwealth.

Having said that, I believe that any legislation and certainly any plan, at whatever scale, warrants re-examination after 20 years. I believe that the National Capital Plan can be improved by, *inter alia*:

- Eliminating those elements which have not proved to be necessary (i.e. much of the material in the Appendices);
- Standardising definitions so that they are common to both the Plan and the Territory Plan;
- Standardising the legend used in both Plans;
- Including a composite Land Use Plan for the whole of the Territory provided always that Designated Areas and areas subject to special requirements are clearly visible and their effect noted;
- Rewriting the Plan to make it more user friendly while, as far as possible, expressing the policies and standards in a way that resembles, as closely possible, that used in the Territory Plan.

**Submission:**

I have sought to address the Committee's Terms of Reference by firstly, discussing the main provisions of the legislation and the National Capital Plan:

- General Policies and Principles (Metropolitan Planning)
- Designated Areas
- Works Approval
- Special Requirements
- Public Consultation
- Governance of the Authority, including the relationship between National Capital Authority and the Territory.

I have then addressed the Committee's Terms of Reference directly in order to ensure my conclusions and recommendations are specific to the matters under consideration by the Committee.

I have intentionally avoided references to particular controversies that have occurred in the past. In particular, I have avoided the temptation to defend or re-assert the Authority's view of such matters or indeed of my own views, where these might differ from those of the Authority. I have found that for the most part these matters tend to be dealt with anecdotally and superficially and as such, whether intentionally or otherwise, this can lead to quite erroneous conclusions. This, in turn, can lead to inappropriate recommendations and actions. That is not to say that issues such as development at the airport, the Commonwealth Property Divestment Programme, the *Epicentre* development, the Authority's post bushfire response, including its position on the redevelopment of the Uriarra, Pierce's Creek and the Stromlo settlement, the ACT Spatial Plan and so on, are not relevant or properly the province of this Inquiry. However, where these are referred to or discussed by the Committee, it should be on the basis of an objective analysis. Such a treatment would be possible only with the provision of briefing material from the Authority and from other interested stakeholders. I am happy to provide my views on any of these matters to the Committee.

## **General Principles and Policies of the National Capital Plan**

At the most general level, the Plan had to *set out the general policies to be implemented throughout the Territory, being policies of land use (including the range of permitted use) and the planning of national and arterial road systems.* (10(b)(i) and(ii) P&LM Act 1988). It was clear to me that these provisions, taken together with the requirement that the Territory Plan (when prepared) must not be inconsistent with the Plan, that the responsibility for strategic planning was to be retained by the Commonwealth and that the Plan, in this sense, was the ‘superior plan’ that provided the framework within which the Territory Plan must operate.

Since the late 1960’s Canberra’s development had been guided *The General Plan Concept*, popularly referred to as the Y-Plan. This was based on a land use/transportation study typical of the 1960’s which were dominated by a pre-occupation with the massive increase in private car ownership and the threat that that posed to both the environment and functioning of major cities. *The General Plan Concept* had, as its primary objective, the development of an urban structure that could allow Canberra to grow almost indefinitely without traffic congestion, particularly in Central Canberra. The key features of the Y-Plan (a series of new towns, separated by topography, linked by a system of peripheral parkways and an inter-town public transport spine, each with its own town centre offering employment, retail, commercial and community facilities) provided an integrated urban structure capable of accommodating growth in a deliberate and considered manner. What most people do not realize is the Y-Plan was also accompanied by a detailed, almost prescriptive, implementation strategy which sought to co-ordinate the development of new settlement areas and the location and distribution of employment, thereby diffusing the journey-to-work and avoiding the traffic congestion that already plagued most Australian cities.

The Y-Plan had been in place for 20 years by the time the Authority sought to write the National Capital Plan. We had neither the resources nor the time to conduct a proper review of the Y-Plan. By balancing Central Area employment and that decentralised to new town centres in Woden, Belconnen and Tuggeranong, the Y-Plan had served to protect the Central National Area and the important national institutions it contained. In that respect, it had served the National Capital well and, it appeared to us, could do so for some time to come. On this basis the *General Policy Plan – Figure 1* of the *National Capital Plan* adopts the physical structure of the Y-Plan as the over-arching policy plan to guide the future development of Canberra. Importantly, however, the implementation strategy was not included in the Plan on the grounds that it was the ACT Government rather than the Commonwealth that would now have the responsibility for implementing the metropolitan strategy and it was unclear at that stage what view the ACT Government would take or what policy instruments might be available to it to give effect to the intentions of the Y-Plan.

The *ACT Spatial Plan* sought to depart from the *General Plan Concept* by proposing the development of the Molonglo Valley and effectively abandoning a number of the key principles regarding the hierarchy of centres, the location and distribution of employment and the recognition of the landscape setting of the National Capital. The National Capital Authority proposes to amend the Plan to accommodate the Territory’s wishes (see Draft Amendment No. 63).

While I do not necessarily support the proposed changes to *The General Policy Plan* I do believe that the strategic directions for the development of Canberra should be contained in the National Capital Plan as currently provided for by the ACT (P& LM) Act. I also believe that the Y-Plan is in need of a thorough and objective review - if only for the fact that it is 40 years old. No doubt changes will be needed as the implications of changed demographics, shifts in social trends and community values and the challenges of globalisation, sustainability and climate change are recognised and accommodated in a new strategic plan. However, such changes need to be made on the basis of a thorough understanding of the Y-Plan as it stands and an appreciation of what the Plan sought to achieve, the departures from the Plan that have occurred and the actual performance of the Plan. A criticism, for example, that the Plan has failed because it did not achieve its proposed self-containment levels fails to recognise that there is a difference between self-containment and sub-centralisation. They are different concepts, but they serve the same end of minimising traffic congestion and, importantly, protecting the Central National Area, including the Parliamentary Zone, from the blight of traffic congestion.

One of the weaknesses of strategic or metropolitan planning is that it has little immediacy. Its focus is always on the long-term – 20 years is a reasonable horizon for most strategic plans – and generates little but academic or professional interest. The inclusion of the *General Policy Plan* in the National Capital Plan, vitally, gives it statutory effect. Whatever its form following a comprehensive review, it should reside in the National Capital Plan where it needs to be regularly monitored and periodically reviewed.

To return specifically to the first Term of Reference as it might apply to strategic or metropolitan planning: Do I think there is red tape or duplication in the metropolitan planning process? The short answer to both questions is "No".

The statutory responsibility as set out in the *Australian Capital Territory (Planning and Land Management) Act 1988* for strategic or metropolitan planning is clearly vested in the National Capital Authority and the *General Policy Plan* provides that strategic framework. The National Capital Plan provides the over-arching planning framework. The Territory Plan must operate within the parameters set by the National Capital Plan. The National Capital Authority has not been funded, despite numerous submissions over the years, to comprehensively review the National Capital Plan, including the *General Policy Plan*. The ACT Spatial Plan for all its inadequacies was the first attempt to address some contemporary metropolitan planning issues. The National Capital Authority participated in the study, recognised the legitimate interest of the Territory Government in strategic planning and responded positively by proposing Draft Amendment 53 to the National Capital Plan. Should the Draft Amendment succeed it will give statutory effect to the key proposal contained in the ACT Government's *Spatial Plan*.

I would recommend to the Committee that:

- The National Capital Authority be appropriately funded by the Commonwealth Government to prepare a new strategic plan for Canberra in consultation with the ACT Planning and Land Authority and relevant stakeholders.
- The new strategic plan be referred to the Joint Standing Committee for Inquiry.
- The new strategic plan should replace the *General Policy Plan* in the National Capital Plan through the established amendment process.
- The new strategic plan be the subject of a national public consultation programme.

- The National Capital Authority be required to report to the Committee on the implementation and performance of the new strategic plan at least every three years and that a comprehensive review be undertaken of that plan every 10 years, that is, by the mid-point of successive 20 year plan time-frames.

## Designated Areas

The Act provided for the National Capital Plan to specify areas of land that have the special characteristics of the National Capital to be Designated Areas (s10(1) P&LM Act). The act of 'designation', taken in this context to mean the inclusion of an area in a Designated Area, made lessees and land management agencies in such areas subject to planning control by the Authority. The Act provides for the Authority to set detailed conditions of planning, design and development in such areas and for all works in Designated Areas to be the subject of works approval by the National Capital Authority. In preparing the first draft of the Plan, we were acutely aware that the definition of Designated Areas would result in lessees on one side of that boundary - in some instances merely across the road - being subject to different planning processes and different planning approvals. We were keen to minimize this problem, particularly where residential leases might be involved.

It is important to recognize that any given area in Canberra is either in a Designated Area or not. There are no half-measures. There should be no confusion in the mind of any lessee in the ACT - there is no duplication of planning jurisdiction or planning approvals.

Unfortunately, the Act offered no definition of what constituted the *special characteristics of the National Capital*. The Authority was left with the challenge of providing its own definition in the context of the bifurcation of planning responsibilities. Some areas, such as the Parliamentary Zone, obviously qualify. Some roads such as Anzac Parade would pass most objective tests. But what of the Y-Plan itself, the National Capital Open Space System or Northbourne Avenue? Or, indeed, the arterial road system in its entirety, given the requirement in the Act that *the Plan shall set out general policies to be implemented throughout the Territory, being policies of.....the planning of national and arterial road systems?* Another question to be resolved was whether, given the extensive physical presence of the Commonwealth in Canberra, all National Land should form, or be included in, a Designated Area.

The definition of Designated Areas was tackled from a National Capital perspective while acknowledging the roles and responsibilities, including those for planning and development, that had been passed to the new ACT Government under the self-Government arrangements.

Designation of the Parliamentary Triangle was obvious. Insofar as Lake Burley Griffin formed part of the Parliamentary Zone and an essential feature of the National Capital, it was also an obvious candidate for designation. Further guidance on what, historically, had been considered to be essential features or qualities of the National Capital was provided by the former National Capital Development Commission's definition of *Areas of Special National Concern* which were endorsed by Federal Cabinet in 1964. These comprised the central area, including the whole of Civic and Russell/Duntroon, the Yarralumla Diplomatic Area, Lake Burley Griffin and its Foreshores, including what is now the Jerrabomberra Wetlands, the hills and ridges separating the towns and the main avenues and approach routes. Also included were the Molonglo River corridor and some regional open spaces.

A further influence on the final definition of Designated Areas was the belief that some functions were properly the province of the Federal rather than the Territory Government. This applied most obviously in the case of diplomatic missions, but also to other institutions involving

Australia's international obligations. Examples include Mount Stromlo Observatory and Tidbinbilla Space Tracking Station. The original definition of the Designated Areas need, in my view, to be re-visited to ensure that all areas where leases permit diplomatic use are designated – they should also be declared National Land. In the diplomatic estates, including the Territory administered portion of O'Malley, the roads should be declared National Land to streamline the management of protests, for example, those of the East Timorese at the Indonesian Embassy and the Falun Gong at the Chinese Embassy.

The *Areas of Special National Concern* endorsed by Federal Cabinet provided an objective reference point in the attempt to come to terms with the concept of national significance and thus the statutory basis for defining Designated Areas. Some areas or features included in the *Areas of Special National Concern* were modified to reflect changes that had occurred in the development of Canberra Central in the intervening 25 years – for example, the exact definition of Main Avenues and Approach Routes. The most notable exclusion was almost all of Civic. This decision was taken on the basis that Civic was the commercial and community centre of Canberra and therefore an area of greater importance to the Territory Government than the Commonwealth and more relevant to the people of Canberra than the wider Australian community.

It is important to distinguish between the **effect** of Designation and the **extent** of Designated Areas. The concept is sound. It is clear and unequivocal. Lessees are left in no doubt as to which planning authority is responsible for setting planning policy and approving works on their lease.

For all sites outside Designated Areas (with the exception of those sites retained by the Commonwealth for its own purposes) the planning and approval responsibilities are vested in the Territory. In short, the National Capital Authority's works approval and the ACT Planning and Land Authority's Design and Siting approval are mutually exclusive - there is no duplication and no red tape.

I would recommend to the Committee that:

- The concept of Designated Areas be retained;
- The basis on which Designated Areas were originally defined be acknowledged as appropriate;
- The current boundaries of Designated Areas be re-examined and refined to bring them up-to-date and to respond to changed circumstances and the experience of the last two decades;
- All land, including the roads, in the areas of Yarralumla, Deakin and O'Malley where diplomatic uses are permitted be declared National Land and included in a Designated Area.



## Works Approval

The significance of Designated Areas is that they are subject to the exclusive planning control of the National Capital Authority. To this end the Authority sets out detailed conditions of planning design and development and approves works. Works are defined in the Act as including:

- (a) The construction, alteration, extension or demolition of buildings or structures;*
- (b) Landscaping*
- (c) Tree-felling; or*
- (d) Excavations;*

*but excludes anything done inside a building or structures.*

This definition is exhaustive. Indeed it is hard to think of any type of structure or visible works that do not fall within its scope. This has the advantage of being comprehensive and allows the Authority, at least in theory, to maintain close control over development in Designated Areas. Some deficiencies are also evident and the Committee may wish to address these:

- Firstly, works approval, once granted, continues to apply whether the development proceeds immediately or not. Circumstances may change with the passage of time and a different view of an application may be warranted. The Authority generally has no power to force the implementation of works that have been granted approval under the Act. Consideration should be given to making works approvals time limited – a feature typical of most development control systems.
- Secondly, works approvals cannot be granted subject to conditions. Consequently, the conditions need to be resolved or otherwise incorporated into the application for works approval. The delays this might involve can be avoided in the future by a simple revision to the legislation which allows approvals to be granted subject to conditions.
- Thirdly, the legislation does not distinguish between temporary works and permanent works. As such, temporary works such as those involved in the conduct of events, require a level of scrutiny beyond that which is warranted for most applications of this kind.
- Fourthly, and finally, the Act makes no distinction between works of great significance and those works required for the routine management and maintenance of land within Designated Areas. Conscious of this from the outset we sought ways to overcome this through the development of Management Plans. It was thought that by agreeing to a management for an area, the Authority would remove the need for works approval applications to be made for any management or maintenance action that fell within the definition of ‘works’ set out in the Act. The success of this arrangement was obviously dependent on the proponents, typically ACT agencies and other bodies responsible for managing large areas of land, preparing the Management Plans. However, this has not happened and as no serious consequences have arisen as a result, consideration could be given to routine management or maintenance works being identified as ‘exempt works’ for the purposes of the Act.

Designated Areas and the process of works approval are both essential elements of the current planning system. They are effective in securing the national interest in Canberra as the National Capital while allowing the Territory Government to plan, develop and manage the rest of

Canberra in pursuit of the *Object* of the Territory Plan. They serve to clearly define the areas of interest and responsibility. Works Approval process based as it has been on 'negotiated outcomes' and expeditious time frames – the 15 day turnaround of applications that have been submitted following a negotiation period has been met in 90-95% of cases over several years – has proved effective. The development industry has consistently supported the National Capital Authority development approval role, its processes and performance. That is not to say, the Authority is compliant. The wish of the Canberra International Airport to free itself from the Authority's control is ample evidence of that.

Between the introduction of the Plan and the operation of works approval function 2004 there had been something in the order of 4500 works approvals granted. While something in the order of one third may have involved temporary works associated with events, approximately 3000 'development applications' have been processed. Somewhere between 15 and 30 applications each year – between 5 and 10% of the 3000 - are valued at more than \$1 million. However, value is not a necessary determinant of either importance or environmental impact. The siting of telecommunications towers are a case in point. Given the number of works approvals and the number of years that function has been in operation, it is remarkable that so few works approval decisions have aroused controversy either at the time of the decision or after the completion of the development.

*I would recommend to the Committee that:*

- The definition of 'works' in the Act be modified to enable the Authority, at its discretion, to:
  - Waive the requirement for works of a minor or temporary nature;
  - Impose a time limit on an approval similar to that issued by the ACT planning authority; and
  - Issue a works approval subject to conditions

## Special Requirements

The *Australian Capital Territory (Planning and Land Management) Act 1988* provided for the National Capital Plan to set out special requirements for the development of any area (not being a Designated Area), being requirements that are desirable in the interest of the National Capital (s10(2)(d)). This was a useful 'backstop' provision which enabled the Authority to signal a 'national capital interest' in an area without having to assume full planning responsibility for the area. In short, special requirements provided a mechanism for dealing with those areas where planning outcomes are of mutual interest to the Commonwealth and the Territory but where designation cannot apply or was not considered warranted.

A key influence on the use of Special Requirements rather than Designation was the clear intention of the legislation and of the government of the day to maximise the Territory's planning jurisdiction, especially where residential leases were involved, while securing the interests of the National Capital. As noted above, less than one hundred of more than 100 000 standard residential leases in the ACT are included in Designated Areas.

The areas identified in the National Capital Plan to which special requirements apply are:

- Development flanking the Main Avenues and Approach Routes
- The Australian Institute of Sport
- Civic
- National Land
- The Lanyon Bowl
- The Murrumbidgee and Molonglo River Corridors
- Tidbinbilla Space Tracking Station

The formulation of special requirements has generally proceeded on an as needed basis rather than on the basis of a comprehensive series of planning studies. Special requirements have been developed essentially on a site specific basis. Typically, they are prepared by the Authority in the form of a Draft Development Control Plan and, once agreement has been reached with the Territory planners, the DCP is submitted to the Authority for approval. In practice, this takes the form of approval by the Chief Executive acting under delegation from the full Authority.

It is important to recognize that, notwithstanding the reference in the National Capital Plan for DCP's to be 'approved by the Authority', it is not an 'approval' in the same sense as the Authority's *works approval* or ACTPLA's *Design and Siting Approval*. A DCP is not an end in itself, but rather a means to an end. It is **technique** or **device** for giving clear expression to what is considered in particular circumstances to be *requirements that are desirable in the interest of the National Capital*. Once 'approved' by the Authority they are forwarded to the ACT Planning and Land Authority to administer as part of their normal development assessment process.

A DCP is a simple document usually comprising 3-5 pages of text and an A4 map. They closely resemble, and are often a substitute for the Territory's Lease and Development Conditions. Importantly, DCP's are not incorporated into the National Capital Plan and can therefore be changed simply and expeditiously should the need arise. That they take a similar if not identical form to that of the Territory's Lease and Development Conditions does not imply any duplication.

The preparation of a DCP is undertaken, by agreement, by either the NCA or ACTPLA, never both. This, in my experience, represents a genuine cooperative arrangement between the two planning agencies rather than any duplication of effort or jurisdiction.

The requirement for development to conform to a DCP approved by the Authority should not be seen as evidence of any lessee having to obtain two approvals – one from each Authority. This is simply not the case. The Authority's approval of the DCP is simply a means of formalising an agreement between the two planning authority's where there is a 'national capital interest'. A proponent is only required to obtain one development approval and that is issued by the ACT planning authority.

It should be noted that the DCP mechanism has been particularly useful for the Territory planning authority and to the ACT Government when dealing with development of National Land sites outside Designated Areas. The Plan states that:

*Given the significant presence of Commonwealth Departments and authorities in the Territory and the extent of their National Land holdings, it is appropriate that procedures be established to assess Commonwealth development proposals and that the provisions of both the National Capital and Territory Plans be observed. Accordingly the National Capital Plan .....contains Special Requirements for Development Control Plans to be prepared and agreed by the Authority in respect of the remaining National Land sites which are not included in a Designated Area. Amongst other requirements, **the Development Control Plans are to reflect the relevant provisions of the Territory Plan.** (My emphasis).*

This technique was used throughout the years the Commonwealth Property Divestment Programme was being undertaken and constituted an arrangement or power uniquely available to the ACT government. Conversely, there appear to be two anomalies in the original declaration of National Land. These apply to Tidbinbilla Deep Space Tracking Station a Commonwealth funded institution with international obligations and the Australian Institute of Sport, another Commonwealth funded institution. In my view – one shared by the Institutions themselves over the years – each site should, ideally, form or be included in a Designated Area and be declared National Land.

In short, Special Requirements are not an end in themselves. They do not constitute a duplication of either effort or of development approvals. They provide a useful mechanism for the two planning authorities to agree on matters where both national capital and territory interest are evident. It also provides a 'safety zone' obviating the need for more than a minimalist definition of Designated Areas and their direct planning control by the National Capital Authority.

*I would recommend to the Committee that:*

- The concept of Special Requirements in *the interest of the National Capital* as provided for in the *Australian Capital Territory (Planning and Land Management) 1988* be retained, particularly as they apply to National Land outside Designated Areas;
- The Authority be asked to consider uplifting the Special Requirements for Civic;
- The Authority be asked to review the use of Special Requirements for The Namadgi National Park, the Murrumbidgee and Molonglo River Corridors and the Lanyon Bowl with a view to removing them from the National Capital Plan and having appropriate

- policies included in the Territory Plan, including a procedure that requires the Territory to consult with the Authority if such policies are to be changed in the future; and
- The Committee support the Amendment of the National Capital Plan to designate both the Australian Institute of Sport and Tidbinbilla Space Tracking Station and declare the site of each to be National Land.

## Public Consultation

The *Australian Capital Territory (Planning and Land Management) Act 1988* sets out public consultation procedures for the preparation and subsequent amendment of the National Capital Plan. Importantly, the Act makes no statutory provision for public consultation on works approval applications with the exception of dual occupancy developments in residential areas. For the Authority to invoke a public consultation process on works approval applications in other than residential areas may be considered to be *ultra vires*.

The same legislation provides a prescription for the preparation and subsequent amendment of the Territory Plan. The statutory requirement was almost identical to that provided for the preparation of the National Capital Plan and subsequent amendment of the Plan. However, it also provided for the Territory to make its own planning laws which, *inter alia*, were required to include *a procedure for ascertaining and considering the views of the public (s23(4)(a) P&LM Act)*.

In reviewing the nature and extent of public consultation required of the Authority, it is important to recognise the value of clearly defining those requirements in an endeavour to establish 'the rules of engagement'. If this is done well from the outset, it serves to contain people's expectations within realistic bounds and provide a basis for constructive dialogue. All too often, the failure to address the rules of engagement leads to different expectations among different stakeholders with the result that they end up 'talking past each other' or, worse still, 'talking at each other'.

The success or otherwise of any public consultation programme depends on the attitudes different participants bring to the table. Sherry Arnstein, in her 1969 classic, *A Ladder of Citizen Participation*, identified 8 different forms of participation each step representing a different degree of citizen power and control over both the process and the outcome. The steps ranged from *Manipulation* through to *Citizen Control*. It is not difficult to see at these extremes that if a planning authority approaches consultation in a *manipulative* way and the participants believe they have been granted *citizen control* over the process and the outcome, then conflict and frustration will inevitably follow.

Over the last 30 years, both at the NCDC and the Authority, I have had extensive experience of public participation, as a programme designer and manager (Tharwa Bridge Study 1977), as an observer and analyst (Infill Programme 1977), and as a participant (Belconnen Soccer Club 1996, ACT School Closures 2007). Some of those programmes such as the Tharwa Bridge exercise in 1977 were very successful. Others such as the NCDC's Infill programme and most recently the ACT School Closures programme were little short of disastrous but for quite different reasons. In the case of Infill, there was inadequate preparation and engagement prior to announcement. The NCDC's approach was, in my view, almost naïve. The ACT Government's consultation on the School Closures programme was divisive, cynical and destructive. It is the only instance I can recall of a government and its agencies setting one community against another. It should be pointed out that these exercises were run by the ACT Departments of Education and (subsequently) Territory and Municipal Services, rather than the ACT Planning Authority.

The Authority, for its part, has been severely and, in my view, unjustly criticised for its consultation processes over State Circle and the Rural Villages. The State Circle case was one where redevelopment pressures emerged, eroding the amenity of those residents who were owner occupiers. The Authority was placed in a position of being a broker between lessees with conflicting interests. It was on a hiding to nothing. It was criticised for changing its mind several times during the process. This was symptomatic of the complexity of the issues and the divided interests. Rather than criticise the Authority for changing its mind, it should be congratulated for being open to exploring all options.

As for the Pierce's Creek and Uriarra fiasco – the blame lies squarely at the feet of the ACT Government. The Authority for its part responded to the tragedy positively and almost immediately announced that it would support the rebuilding of the settlements. The ACT Government took an opportunistic approach rather than the humanitarian one that the situation demanded. That the ACT sought to profit out of the tragedy in this way was little short of scandalous. That it chose to set itself against the policies of the National Capital Plan and delay its response to the needs of the displaced residents was, in my view, unforgivable.

In reviewing the consultation requirements provided for in the Act it is important to recognise and consider that:

- There are two levels of Government involved, with different agendas and priorities;
- Each has different constituencies – national and local;
- Each has different legislation, separate plans involving different processes;
- The Authority and the ACT planning authority are answerable to different 'masters' – the Feral Parliament and the ACT Legislative Assembly respectively.

It is impractical and naïve to attempt to force 'integration' beyond that clearly provided for in the current legislation. To do otherwise can only lead to greater confusion among the Canberra public and a blurring of responsibilities and accountability.

Successful public consultation cannot be guaranteed by legislation, no matter how inspired. It certainly requires clear legislative provisions but much more important is getting agreement on the scope and methods of a particular programme – no method suits all – identifying and building on shared values and establishing the boundaries of reasonable expectations. Understanding and accepting the extent to which power is being shared in the decision making process is vital. To focus on differences in views among participants inevitably sets a course for dispute, conflict and the thought that consultation is about winning and losing rather than informing decisions on matters of public policy. Clearly, **trust** and **belief in the process** are essential ingredients for successful public consultation.

My experience of conducting public consultation programmes under a number of planning regimes is that consultation is most effective when **policy rather than development** is under consideration. Once policy has been set through consultation, proponents of development should have a reasonable expectation that if they operate within these policy parameters they should be able to go about their business with a minimum of interference. For these reasons I believe that the current legislation sets the consultation requirements of the Authority at the right level. The role of the Minister and the Parliamentary Committee provide appropriate review mechanisms. It has been suggested that the relationship between the Minister and the Committee be changed to require the Minister to refer Draft

Amendments to the National Capital Plan to the Committee for possible inquiry. I have no difficulty with such an approach. Indeed it would remove some uncertainty from the amendment process timeline if the Committee regularly exercised such a power.

One area where I believe the consultation practices of the Authority could be significantly improved is that of engaging its **national constituency** in the planning and development of the National Capital. It did so through the professional institutes in the various states when the Plan was first drafted. Since that time, the focus has been on engaging the Australian community through its promotional and outreach programmes such as the award winning National Capital Education Tourism Project and various research projects such as that which led to the Authority's publication *National Views on Australia's Capital*.

The Terms of Reference (No.4) call for the Committee to investigate ways in which the Authority might better engage with the Canberra community. While not suggesting that improvements can't be made in this regard, I believe the focus needs to shift to recognise that the Authority's its constituency is a national rather than a local one and this is likely to be more so if the Plan is amended to remove most of the standard residential development from the Central National Area Designated Area.

National consultation programmes – like most successful consultation programmes – are expensive and time consuming. They require commitment of both time and resources. Importantly, the Authority has never been properly funded to take the Plan to its national constituency – a fact that I believe should be remedied. A recommendation by this Committee to that effect would go a considerable way to achieving this.

Australian's typically have negative attitude to Canberra largely fostered by politicians and the media. Who can forget Peter Harvey's sombre sign –off line and the depressing manner in which it was delivered? This brings into question the potential role of the Committee itself, its members and their Parliamentary colleagues in promoting in the Australian community a positive interest and sense of pride in their National Capital. Perhaps the members of the Committee should report to Parliament through the Committee Chair each year on what they have done to promote the National Capital in their constituencies and how they have encouraged their Parliamentary colleagues to do the same.

*I would recommend to the Committee that:*

- The consultation provisions of the *Australian Capital Territory (Planning and Land Management) Act 1988* be acknowledged as an appropriate legislative framework for consultation on the National Capital Plan, including consultation with the ACT planning authority.
- Recognition be given to the fact that the two plans and the two planning authorities serve different constituencies and different Governments and yet that these different roles are essentially complementary and should not be confused.
- Recognition be given to the commitment and resource implications necessary for successful public consultation programmes and the Authority be properly funded in future to carry out its public consultation responsibilities in a pro active and constructive way.
- The Authority be funded to undertake national consultation on a new strategic plan and subsequent amendments of the National Capital Plan through the various national and



state planning, architecture, landscape and engineering institutes and other relevant state and national organisations.

- Members of the Committee promote Canberra as the Nation's Capital among their constituencies and encourage their Parliamentary colleagues to do the same.

## **National Land and Territory Land**

No description of the current planning system in the ACT or of the relationship between the Commonwealth and the Territory would be complete without some explanation of the land management arrangements provided for by the *Australian Capital Territory (Planning and Land Management) Act 1988* . Some explanation is essential if only to correct the popular misconception that planning and land management responsibilities are one and the same thing.

The Act provided for all land in the Territory to be divided into National Land and Territory Land. National Land was defined as land (including water) within the Territory, declared by the responsible Minister, which *is, or is intended to be used by or on behalf of the Commonwealth (s27 P&LM Act 1988)*. National Land is managed by various Commonwealth agencies. Where that land has been declared because it is *land required by the Commonwealth for the special purposes of Canberra as the National Capital*, it is managed and administered by the National Capital Authority.

Land administered by the National Capital Authority includes the Parliamentary Triangle with the exception of the Parliamentary Precincts, Lake Burley Griffin and Foreshores and diplomatic sites.

Other Commonwealth agencies which manage significant areas of National Land include the Department of Finance, the Department of Defence and the Official Establishments Trust. Canberra International Airport is administered by the Department of Transport and Regional Services.

All land in the Territory that is not National Land at any time *is Territory Land* and is managed by the ACT Executive, not in its own right but, vitally, on behalf of the Commonwealth.

The division of planning responsibilities and those of land management are entirely separate matters. There is no necessary correlation between Designated Areas and National Land. National Land occurs in both Designated Areas and outside Designated Areas. The National Capital Authority's works approval is confined to Designated Areas and the Territory Plan policies and development approval powers cover the balance of the Territory with one exception – that of National Land outside Designated Areas.

The Commonwealth presence in Canberra is more extensive than it is in other major Australian Cities. As a general rule the Commonwealth does not subject itself to development approval by a lower level of government be they State, Territory or Municipal governments. Given the extensive presence of the Commonwealth in the ACT, significant areas of land outside the Designated Areas would have been free from any statutory planning control. In short, there would have been large vacuums or holes in the Territory Plan.

To overcome this difficulty, the National Capital Plan contains a Special Requirement that any development of National Land outside Designated Areas must conform to a Development Control Plan approved by the National Capital Authority. Importantly, that Development Control Plan ....*Amongst other requirements.....must reflect the relevant provisions of the Territory Plan.* This mechanism has proved very useful to the Territory in seduring its interests when trying to come to terms with the potential impacts of the Commonwealth's Property Divestment Programme.

The only other example of where planning and land administration were 'drawn together' is at Canberra International Airport. The site is National Land administered by the Department of Transport and Regional Services. The land was within a Designated Area and, as a consequence, development at the Airport was subject to works approval by the Authority in addition to various approvals required under the provisions of the *Airports Act 1996*. The control of development at Canberra Airport by the Authority was a unique arrangement in the period following privatization of Australia's major airports. The situation was 'normalised' when the Designated Area status was uplifted from the Airport and development control responsibilities now reside exclusively with the Commonwealth Department of Transport and Regional Services. Consequently, neither the Authority or the ACT planning authority have any control over development at Canberra Airport. Furthermore, DoTARS, unlike the Authority, have no statutory requirement to engage with the ACT Government.

Over the years there have been frequent calls to bring planning and land management responsibilities of the two governments into line – that is, there is a view that should be no Territory Land in Designated Areas. This argument fails to recognise that there is no necessary correlation between planning and land management responsibilities; that the areas involved, especially those involving residential development, are minimal and that forcing a better 'fit' between the two is not essential to the proper functioning of the planning system.

While it would be 'neater' if there was a better alignment between National Land and Designated Areas, the fact that a site lies within a Designated Area should not be seen as a reason for the removal of Designated Area status.

Two options appear to be available:

- Recognise the difference between planning and land management jurisdictions and maintain the *status quo*, or
- Modify the legislation to allow the declaration of National Land to include land simply by virtue of it being in a Designated Area (i.e. adopt a new position that if an area of land qualifies to be in a Designated Area that in itself should warrant its administration as National Land).

*I would recommend to the Committee that:*

- It be noted that there is currently no direct correlation between planning and land management responsibilities, and
- Territory Land within Designated Areas be progressively declared to be National Land once the Territory has received any revenue from land sales or any redevelopment

potential available under the current lease and provisions of the National Capital Plan. (It should be noted that the current legislation may need to be amended to broaden the definition of National Land, if the definition of National Land at Clause 6(g) proves to be inadequate.

## Governance

Having spent 33 years in planning in the ACT I have had the privilege, and in one or two fortunately isolated cases the misfortune, to serve under every Commissioner of the NCDC since Sir John Overall and every Chairman and Chief Executive of the National Capital Authority since its establishment. I am not one to hark back to ‘the good old days’ or view the activities and performance of either of these organisations as if they were perfect. None were! Similarly, while I may appear to be largely defending the *status quo* in this submission, I am more than willing to accept that there should always be room for improvement in any public enterprise given reasonable political support and the provision of appropriate resources to undertake the task they have been given by Governments. However, I am a believer in the adage that ***if it ain't broke don't fix it.***

I believe it essential that the future planning and development of the National Capital be placed in the hands of an appropriately resourced statutory authority. History shows that Canberra has prospered most when its planning and development was in the hands of strong single purpose statutory authorities backed by political commitment and assured of adequate and consistent funding. The Federal Capital Commission and, more particularly, the National Capital Development Commission provide ample evidence to support this view.

Notwithstanding, the absence of real political commitment and adequate funding – the Authority has received funding equal to less than 5% of that received by the NCDC 20 years ago, equivalent to less than 2% in real terms – the Authority has performed well. It has, as David Headon, the former cultural adviser to the Authority, remarked to me recently, *punched well above its weight particularly under the guidance of the current Chief Executive, Ms. Annabelle Pegrum, AM.*

To transfer the Authority's functions to a Government Department such as The Department of Transport and Regional Services or even that of Prime Minister and Cabinet would relegate the task to a mere administrative one rather than the vibrant and energetic task it should be. To transfer the task to the ACT Government would bury the future of Australia's National Capital in a morass of local municipal issues. As Also Giurgola remarked *A civic administration, as the ACT is instituted, is not equipped to plan at a national scale and scope. (The Canberra Times, 24 March 2008).*

I also believe the structure and composition of the Authority itself has been successful for the most part. However, I also believe it would be useful if appointments to the Board were made ‘from the ground up’ rather than selected by the Government of the day. The National Capital Planning Committee provides a useful model in seeking professional peer reviews of the actions of a planning authority. Enshrined in the NCDC's legislation was the requirement that the NCPC be comprised of representatives of various design professional institutions. Although not required by legislation, it was my observation that the NCPC representatives were drawn from the whole of Australia. I believe a similar model which might, say, comprise of 6 members drawn from each of the States and one from the Commonwealth could prove to be a better model than the existing one. People could be nominated by the various national and/or state branches of the professional institutes. If the size of the Authority is a concern each of three States or Territories could nominate new members

every other year to serve for a period of 2 years. Nominees would be eligible to be nominated for more than one albeit, in these circumstances, for non-consecutive terms.

If the ACT is to be represented, it should be on the basis that they are a Territory of Australia and should therefore be represented on an Authority because it is geographically based and not because the ACT is the site of the National Capital.

I envisage that the Commonwealth representative would be ever present although the tenure should be for a limited, possibly fixed, period. It may be for both equity and continuity reasons that the Commonwealth nominee, presumably a nominee of the responsible Minister (although there is no reason why the nominee should not be one selected by the Prime Minister), should be appointed as Chairman of the Authority.

As to the role of the Chief Executive: Under the present structure the Chief Executive is a member of the five person Authority but not the Chair. This has worked well, provided the Chair and the Chief Executive are both high performers. The current incumbents are each of the highest quality. Indeed, Ms. Pegrum is the best CEO I have had the privilege to work for. Her intellectual capacity, drive and absolute commitment to furthering the interests of Canberra as the National Capital are unequalled by her predecessors at the Authority. Similarly, Mr. Michael Ball, the current Authority Chairman, is among the best of the Authority Chairmen. He is in august company – his predecessors included Mr. Bob Lansdown and Air Marshall David Evans. I have no doubt, having worked with him while he was a Member of the Authority, that he will establish himself as one of equal stature.

If the ACT is to be represented, I see no necessity for a reciprocal arrangement. There is no need, in my view, for the NCA or the Minister to be represented on the ACT Planning and Land Council. I have attended Council meetings and examined their agendas and minutes. Very little time is taken up by the Council with matters on which the Authority would have a genuine interest. There is also the argument that such an arrangement could unnecessarily inhibit open consideration of Territory matters because of a Commonwealth presence.

I believe a more useful mechanism to ensure a constructive and effective dialogue between the Authority and the ACT planning authority (ToR4) is to build on the relationships already established at a professional level, by instituting an annual conference between the Authority Members and Chief Executive and their Territory counterparts – the ACT Planning and Land Council and the ACT Chief Planning Executive. Each could then report to their respective Governments on the outcomes of such a conference.

*I would recommend to the Committee that*

- The National Capital Authority be retained as a statutory authority, that its current functions be confirmed and that it be adequately and consistently resourced to carry out those functions.
- Consideration be given to revising the composition of the Authority to one based on geographic and professional representation rather than by Ministerial appointment.
- Consideration be given to establishing a requirement that the National Capital Authority and its Territory counterparts conduct an annual conference on matters of mutual interest and report to their respective governments on the outcome of such deliberations.

## Terms of Reference

The terms of reference for the inquiry are addressed specifically in the light of this analysis.

***ToR 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;***

I do not believe the administration of the National Capital Plan shows any evidence of red tape. The Plan amendment process is set out clearly in the legislation and is strictly followed. The works approval process is very streamlined and notwithstanding that it is based on a system of 'negotiated outcomes' which is intended to secure the optimum design solution, the process is efficient and effective.

The legislation makes it clear that the National Capital Plan takes precedence over the Territory Plan – a fact that successive ACT governments have failed to acknowledge. As such, ACT spatial policy has no relevance if it is inconsistent with the *General Policy Plan* set out in the National Capital Plan. However, the Authority has been very responsive to the Territory's wishes and has proposed that the National Capital Plan be amended to accommodate the Territory's wish to see the Molonglo Valley identified for urban development.

The relationship between the two planning systems was prescribed by the legislation. From the initial drafting of the National Capital Plan a genuine effort has been made and maintained over the last two decades to respect the different roles of the two authorities and the scope and jurisdiction of the two plans. The system has worked well at the administrative level in that senior officers of both planning agencies have worked cooperatively throughout that period. In my experience it has been politicians of all political persuasions and at both levels of government that tend to blur the boundaries and confuse the public. It is worth noting that governments at both Commonwealth and Territory levels are elected for three years – a fact of life, but one which does not encourage anyone to take a look beyond the everyday. Little encouragement is afforded those same politicians to look 10, 20, 50 or 100 years ahead – a time frame demanded by the interests of the National Capital and the National Capital Plan and, indeed *The Griffin Legacy*. The challenge to most politicians, including the Minister and the Committee is to rise above the mundane, the routine and the issues of the day, in the long term interests of the National Capital.

Rather than promote the 'integration' of the two planning system which, in my view, is both naïve and counterproductive, the emphasis should be on making clear that there are two separate but complementary plans which serve different objectives, different constituencies and are essentially mutually exclusive in their jurisdictions. The emphasis should always be on the co-ordination and cooperation that has characterised the system at officer level since the inception of self Government.

The Plan needs to be comprehensively reviewed to ensure it is more user friendly up to date. I believe the revisions needed are more of form than substance and that it is

imperative that the jurisdiction and authority of the Plan are not diminished through such a review process.

***ToR 2 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;***

I believe the Authority's enabling legislation was both visionary in its construction and has proved effective in its application. It has produced a National Capital Plan which has served the interests of the National Capital while providing the maximum scope for the ACT Government to plan for the Canberra community through the provisions of the Territory Plan.

The Governance arrangements, too, have proved effective. Whether or not the composition of the Authority should be modified so that the role and characteristics of members is prescribed is an appropriate consideration of this inquiry. My personal view based on working with the Authority for more than 15 years is that the present system has worked, although it has worked better at some times than others. In my experience the performance of the Authority has been largely determined by the quality of the Chief Executive, the Chairman and the individual members in that order.

I have suggested an alternative model for the composition of the Authority, building on that which characterised the former National Capital Planning Committee – that is, representation based on recommendations from the various design professional institutes, possibly combined with a formal geographical representation.

I see no benefit in cross representation between the ACT and National Capital Authority governing bodies. Rather, I have suggested an annual summit specifically designed to regularly address matters of genuinely mutual interest to the two Governments and their planning agencies.

The independence of the Authority's planning decisions has never been of much concern to me in administering the National Capital Plan or in managing or exercising the Authority's works approval function. The absence of a general appeal procedure against works approval decisions, again, has rarely proved to be problematic. Appeal provisions do exist in respect of administrative error. In my view, the focus of consultation on policy, that is amendments to the National Capital Plan, rather than on the minutiae of particular works approval applications is appropriate.

I support the suggestion that the legislation be changed to require the Minister to refer all draft Amendments to the Committee for possible inquiry with the presumption that the Committee will conduct a public inquiry in all but the most 'routine' of draft amendments.

Under the provisions of the Parliament Act 1974 and the attendant Parliamentary Precincts Act 1988 works undertaken in the Parliamentary Zone are referred to the Parliament, through the Committee for approval. This arrangement is long-standing, pre-dates self Government. I believe this is appropriate as development within the Parliamentary Zone is



crucial to the character of the National Capital and warrants Parliamentary scrutiny on behalf of both present and future generations of the people of Australia. I do not believe that this power should be extended beyond the Parliamentary Zone, nor do I believe it is necessary, given the very limited number of residential leases within the Designated Areas, to introduce a broader appeals mechanism or require works approvals to be subject to scrutiny by the Committee.

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

Good architectural and urban design outcomes are not delivered by statutory planning rules or by *detailed conditions of planning, design and development*. They are produced by imaginative briefs, inspired professionals and a willing and receptive client. The Authority has been fortunate throughout its history in having design staff of the highest order who have demanded the highest standards of urban design while recognising the cost constraints on many applicants, be they the ACT Government, Canberra International Airport, the ANU or private developers and lessees.

To encourage good urban design outcomes the Authority has established an internal Urban Design Review Panel to advise the works approval delegate on the design quality of major projects.

In order to encourage and promote good urban design outcomes through the works approval process, I introduced a post-construction review in which I invited outside professionals, including those from the ACT planning authority, to conduct a peer review of the planning, architectural and urban design merit of major projects approved by the Authority. The results of these reviews, and the lessons learnt from them, were reported to the Authority. The results of the most recent reviews have been published by the Authority.

In my view the quality of planning, urban design and architectural outcomes achieved by the Authority through both its own design initiatives and through the works approval process has been exceptional during the life of the Authority. I point to the Russell Defence Precinct, the development of Brindabella Park, the Duntroon Headquarters Redevelopment, the Finnish Embassy, the National Museum of Australia as but a few examples. Conversely, the number of developments which I felt and still feel leave something to be desired are remarkably few. These have usually resulted from undue political pressure from the ACT Government. The redevelopment of Civic Square and the habit of shoe-horning, first the Legislative Assembly and then the Civic Library into inappropriate spaces still irks.

By way of contrast, the manner in which difficult extensions to iconic buildings have been successfully completed is a source of considerable satisfaction. Two examples are notable – the extension to the Australian War Memorial (Anzac Hall) and the extension to the former Institute of Anatomy Building, now the National Film and Sound Archives. The first major extension to the Australian National Gallery was successful although the proposed revisions to the entrance to the Gallery have proved more problematic.

The Authority has succeeded with a paltry budget to solve – through Commonwealth and Reconciliation Place Projects - to unify the Parliamentary Zone – something the NDC did

not succeed in doing in its thirty year existence operating with a budget 20 times that available to the Authority.

Insofar as good design outcomes can be enhanced by reference to a wider audience, the Authority seeks the advice of its own members in addition to reference to the Committee and to Parliament for works proposed within the Parliamentary Zone.

No doubt each member of the Committee has his or her own list of Canberra successes and failures. On balance, I believe the quality of planning, urban design and architecture achieved under the stewardship of the National Capital Authority has been excellent. Any improvement in performance will only be achieved with the essential ingredients cited above. Improved outcomes can be encouraged, if not guaranteed, by increased resources for professional staff and for larger budgets for important capital works designed to enhance Canberra as the National Capital. Of one thing, I am certain, improved design outcomes will not be secured through legislative or statutory planning provisions, but through the 'negotiated outcomes' approach to development control and works approval.

***ToR 4 Opportunities to ensure cooperation with the ACT planning authority and increased engagement with the Canberra community;***

The relationship between the Authority and its Territory counterpart is essentially set out in the legislation. I believe that both organisations have approached their respective tasks professionally, cooperatively and with mutual respect. Rather than promote 'integration' I have suggested that the differences in the respective roles of the two authorities be promoted, if only to make their respective roles better understood by the public. Regular meetings already occur between the Chief Executives and senior planning officers of the two Authorities. This could be formalised by requiring an annual planning summit between the two agencies, the results of which should be reported to the two governments, the Federal Parliament and the ACT Legislative Assembly respectively.

I believe that residents occupying leases within Designated Areas should not be disadvantaged by that fact. However, I do not believe that the situation warrants instituting an appeal mechanism to apply more generally throughout Designated Areas.

Rather than engaging more broadly with the Canberra community, I believe the more immediate and important task is that of engaging the broader Australian community in an endeavour to fulfil the Authority's Mission statement of *Building the National capital in the Hearts of all Australians*. I have also suggested that Members of the Committee and their Parliamentary colleagues can play a seminal role in this respect.

***ToR 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.***

I have restricted my comments to planning. However, it is obvious that there is a role for the Authority in designing, conducting and managing events that promote and celebrate Canberra as the National Capital. It has done this successfully for a number of years. Australia Day, Anzac Day, various international days are all appropriately the province of the

Authority rather than the ACT Government. In addition to organising events of a 'national character', the Authority also manages Commonwealth assets such as the Parliamentary Triangle, including Commonwealth Park and Lake Burley Griffin where the ACT Government and local community groups wish to conduct events. The Authority therefore has a role as venue manager. Obvious examples include the *Floriade* event held annually in Commonwealth Park and the V8 car races that were held in the Parliamentary Zone. While the resource implications of conducting events are obvious those required for venue management and for assessing and approving the construction of event infrastructure should not be underestimated.

In my experience, the Authority has developed sound working relationships with the many ACT agencies involved in events. While on odd occasions the friendship has been stretched, the relationship is a sound and very professional one. Indeed a considerable expertise has been developed within the Authority which has delivered spectacular results. Where one draws the line between the proper role of the Authority and that of the Territory is a matter for judgement on a case by case basis. I believe the present arrangements work well and should continue.

As to the responsibility for infrastructure: In my view, if the project adds value to Canberra's role and identity as the Nation's Capital, it should be supported by Commonwealth funding through the Authority. It would be too easy to rely on the definition of National and Territory Land to apportion costs of infrastructure or major projects. It is more important to establish the principle of shared interest and investment and foster a spirit of cooperation between the two levels of government in such matters. Reinstating the funding of *The Griffin Legacy* would provide immediate evidence of the Commonwealth's commitment to such a principle and serve the interest of the National Capital well.

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