

## Management Issues

- 6.1 The complexities of the dual-planning system have inevitably led to situations where the National Capital Authority's use of overriding powers has been subject to criticism. The majority of such cases can be attributed to the impact of NCA decisions on the ACT community. In its defence, the Authority points out that:

Planning considerations and decisions about the capital should be made at arms-length from party politics, individual interest-groups, and in the long-term interest of all Australians, having regard for the interests of the residents of Canberra.<sup>1</sup>

- 6.2 Despite this assertion, the NCA was heavily criticised for its part in the ongoing Gungahlin Drive Extension controversy and was subject to accusations that its planning considerations, in this instance, were politically motivated.<sup>2</sup> Despite the criticism levelled at the NCA, the Authority maintains that by intervening in the matter, it was acting in accordance with its statutory responsibilities.
- 6.3 One of the ongoing problems facing the ACT Government is that many of the Territory's significant assets fall within Designated

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1 National Capital Authority, Submissions, p 162.

2 See, for example, Dr Greg Tanner, Transcript, 15 August 2003, p 119, Mr Graham Horn, Transcript, 15 August 2003, p 141.

Areas. As a result, the ACT Government requires works approval from the NCA not only for major works, but also to undertake routine maintenance work on these assets.<sup>3</sup>

- 6.4 The Committee initially intended to examine only management issues relating to Designated Areas. However, there have been other concerns raised regarding management issues generally which the Committee has been compelled to address. These include claims of mismanagement of land and assets for which the NCA is responsible.

## **Draft Amendment 41: Gungahlin Drive Extension**

- 6.5 The Gungahlin Drive Extension (formerly the John Dedman Parkway) has been included in the National Capital Plan as a proposed arterial road as part of the metropolitan road network since the plan came into effect in 1990. The purpose of the GDE is to provide access to and from Gungahlin for people wishing to access South Canberra (including the Parliamentary Zone, Woden, Weston Creek or Tuggeranong) without passing through Central Canberra.<sup>4</sup> The alignment of the road has been a highly controversial issue for the ACT Community, and was intensified by the NCA's decision not to support the newly elected ACT Labor Government's proposed western alignment for the road.<sup>5</sup>

- 6.6 Section 10 of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) provides that the National Capital Plan:

...shall set out the general policies to be implemented throughout the Territory, being policies of:

- (i) land use (including the range and nature of permitted land use); and
- (ii) the planning of national and arterial road systems.<sup>6</sup>

The Authorities responsibilities concerning the GDE, therefore include:

- the planning policies for Gungahlin Drive Extension as an arterial road

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3 ACT Government, Submissions, p 248.

4 National Capital Authority, Gungahlin Drive Information Kit, December 2002. Available: [www.nationalcapital.gov.au/plan/gde/gde.pdf](http://www.nationalcapital.gov.au/plan/gde/gde.pdf)

5 Younes, L., & Downie, G., *NCA for eastern route*, *The Canberra Times*, 24 December 2002.

6 Section 10, *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth).

- the planning policies that affect national institutions (such as the AIS)
- maintaining the integrity of the National Capital Open Space System (NCOSS) such as Black Mountain Nature Reserve and in approving works in these areas.<sup>7</sup>

6.7 The GDE is, therefore, required to be planned in accordance with the National Capital Plan. The National Capital Authority is required to amend the plan to confirm the GDE alignment. The Authority is also responsible for works approval of the GDE where the road falls within the Designated Area of the plan.

## Background

6.8 In 2001, the ACT Government sought to build the road on what has come to be known as the eastern alignment whereby the GDE would be built to the east of the Australian Institute of Sport (AIS). The ACT Government requested an amendment to the National Capital Plan to reflect that decision and confirm the preferred alignment. The NCA prepared a Draft Amendment (DA 41) to the plan, which sought to confirm the eastern alignment and was consistent with proposals released by the ACT Government in Draft Variation No 138 to the Territory Plan:

This Variation implements changes which support the broader strategic framework for the planning and provision of transport links to Gungahlin established in the Gungahlin External Travel Study undertaken in the 1980s.<sup>8</sup>

6.9 However, the process to finalise DA 41 was not completed before the October 2001 ACT Legislative Assembly elections, which resulted in a change of government. Following the ACT elections, the NCA sought the views of the new ACT Labor Government which had indicated a preference for a western alignment adjacent to the AIS. The Authority also requested an assessment of the environmental impact of the western alignment, as well as assurances that any likely impact on the AIS had been identified and addressed to the reasonable satisfaction of the Institute.<sup>9</sup>

6.10 The AIS opposed the western alignment of the road due to “likely impacts on resident and visiting athletes, the operations of the AIS

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7 National Capital Authority, Gungahlin Drive Extension Information Kit, December 2002. Available: [www.nationalcapital.gov.au/plan/GDE/GDE.pdf](http://www.nationalcapital.gov.au/plan/GDE/GDE.pdf)

8 *Land (Planning and Environment) Act 1991* (ACT), Variation to the Territory Plan, No. 138.

9 McLennan, D., *NCA wants worries addressed*, *The Canberra Times*, 23 March 2002.

and the long term planning for the campus at Bruce".<sup>10</sup> The ACT Government undertook community consultation on the western alignment which included the Australian Sports Commission (ASC) and Aranda residents.

- 6.11 In October 2002, the ACT Government announced that it planned to proceed with the western alignment.<sup>11</sup> ACT Planning Minister Simon Corbell requested an Amendment to the National Capital Plan be initiated in tandem with the Territory Plan Variation.<sup>12</sup> However, the ASC advised the NCA that it remained strongly opposed to a western alignment as the issues raised by the Commission had not been satisfactorily resolved.<sup>13</sup>
- 6.12 On the advice of the ASC, the NCA did not support the ACT Government's proposal for the siting of the GDE. The Authority decided that a comparative assessment needed to be completed on the eastern and western alignments in order to determine the best planning and transport solution. In November 2002, the NCA informed the ACT Government that it was undertaking a comparative assessment of the impacts of the western and eastern alignments.<sup>14</sup> At the completion of the study the NCA concluded that the western alignment was not appropriate. The ACT Government therefore announced it had little option but to proceed with the eastern route, given that the NCA had effectively vetoed the western route.<sup>15</sup> A motion filed in the Senate by the Australian Greens to block the eastern alignment was unsuccessful.<sup>16</sup>

## Criticism of NCA Intervention

- 6.13 A number of witnesses commented on the issue of the Gungahlin Drive Extension. In particular, two community-based organisations, Save the Ridge Incorporated and the North Canberra Community

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10 National Capital Authority, Gungahlin Drive Extension Information Kit, December 2002. Available: [www.nationalcapital.gov.au/plan/GDE/GDE.pdf](http://www.nationalcapital.gov.au/plan/GDE/GDE.pdf)

11 Boogs, M., *Drive to follow western route*, *The Canberra Times*, 3 October 2002, p 1.

12 Boogs, M., *Drive to follow western route*, *The Canberra Times*, 3 October 2002, pp 4-5.

13 Boogs, M., and Lawson, K., *Commission holds fears for institute*, *The Canberra Times*, 3 October 2002. See also Transcript, Senate Environment, Communications, Information Technology and the Arts Legislation Committee, 29 May 2002, pp 402-435.

14 McLennan, D., *New study of Gungahlin Drive options*, *The Canberra Times*, 19 October 2002.

15 McLennan, D., *Corbell accepts eastern route*, *The Canberra Times*, 17 January 2003.

16 Macdonald, E., *Brown beaten on Gungahlin Drive*, *The Canberra Times*, 20 August 2003, p 8.

Council (NCCC), were highly critical of the NCA's involvement throughout the dispute.<sup>17</sup>

- 6.14 The North Canberra Community Council argued that the NCA's report on the GDE released in December 2002 was "demonstrably flawed and biased".<sup>18</sup> The Council felt that the report gave too much credence to minor issues and paid insignificant attention to important issues such as the preservation of natural bushland on O'Connor and Bruce Ridges. The Council also accused the NCA of "political expediency" by changing its policy on the GDE after the ACT election which saw a change to a Labor Government.<sup>19</sup> According to the Council, the GDE issue "demonstrates that the NCA acts without due regard to its nominated principles and statutory obligations" and the Council argued that the current structure should be replaced with "one that achieves what the current arrangement is failing to do".<sup>20</sup>
- 6.15 Save the Ridge accused the Authority of bias, inconsistency and a lack of transparency and accountability in reaching its decision concerning the GDE.<sup>21</sup> The group believes that the NCA ignored its legislative obligation by failing to maintain the integrity of the inner hills and ridges.<sup>22</sup>

## Supreme Court Injunction

- 6.16 On 23 March 2004, Save the Ridge Incorporated obtained a temporary injunction from the ACT Supreme Court restraining the ACT and Kenoss Contractors Pty Ltd from undertaking work within the Designated Area between the suburbs of O'Connor, Lyneham and Bruce (on the area known as O'Connor Ridge) intended to facilitate construction of the GDE. Lawyers for Save the Ridge argued that the ACT Planning and Land Authority was required to approve all development on the site and its failure to do so meant that the work was being carried out unlawfully.<sup>23</sup> Lawyers for the ACT argued that approval for works in Designated Areas was the sole responsibility of the NCA.

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17 Submissions, pp 49-50, 61-68.

18 North Canberra Community Council, Submissions, p 49.

19 North Canberra Community Council, Submissions, p 49.

20 North Canberra Community Council, Submissions, p 50.

21 Save the Ridge Inc., Submissions, p 61.

22 Save the Ridge Inc., Submissions, p 64.

23 Doherty, B. & Campbell, R., Drive plan in legal limbo, *The Canberra Times*, 25 March 2004, p 1.

## The Crispin Decision

6.17 On 31 March 2004, Justice Crispin of the ACT Supreme Court ruled that works on the GDE had not been lawfully approved and that the injunction should remain until either the ACT Planning and Land Authority or the ACT Minister for Planning had granted approval. In announcing his decision, Justice Crispin stated that:

...I am required only to determine whether the Commonwealth legislation has the effect of permitting works to be undertaken in designated areas with the approval of the National Capital Authority and without any further approval otherwise required under Territory legislation. In my opinion, it does not.<sup>24</sup>

6.18 ACT Planning Minister, Simon Corbell MLA, said that Justice Crispin's decision "appeared to fundamentally change the way in which planning laws had operated for 16 years in the ACT for projects on designated land".<sup>25</sup> The decision is also contrary to the stated positions of both the National Capital Authority and the ACT Government in submissions to the Committee's inquiry.

6.19 Section 12(1) of the Australian Capital Territory (Planning and Land Management) Act 1988 (Cth) provides that:

No works shall be performed in a Designated Area unless:  
(a) the proposal to perform the works has been submitted to the Authority together with such plans and specifications as are required by the Authority;  
(b) the Authority has approved the works in writing; and  
(c) the works are in accordance with the Plan.<sup>26</sup>

6.20 In its submission, the NCA clarified its interpretation of Section 12 of the Act:

Within Designated Areas, by statute the Authority is solely responsible for detailed conditions of planning, design and development, for approving any subdivisions of land, and for works approval (Section 12 of the Act).<sup>27</sup>

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24 *Save the Ridge Incorporated v Australian Capital Territory and Kenoss Contractors Pty Ltd* [2004] 204 ACTSC 13, 17.

25 Campbell, R., Doherty, B. and Beeby, R., Road on hold after court win, *The Canberra Times*, 1 April 2004, p 1.

26 Section 12 (1), *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth).

27 National Capital Authority, Submissions, p 178.

- 6.21 Similarly, the ACT Government stated that where land is Designated under the National Capital Plan, “the NCA is the sole planning agency and is responsible to granting Works Approval...the Territory has no planning role”.<sup>28</sup>
- 6.22 The ACT Government appealed the ruling, but also sought to address the issue immediately with new regulations under the *Land (Planning and Environment) Act 1991* (ACT) so as not to impose further delays on the project. The ACT Government introduced an amendment to the *Land (Planning and Environment) Regulations 1992* on 30 April 2004. The *Land (Planning and Environment) Amendment Regulations 2004 (No. 1)* Subordinate Law No. 12 came into effect on 1 May 2004. A disallowance motion was debated on 25 May 2004, but the motion failed.
- 6.23 According to ACT Planning Minister, Simon Corbell MLA, under the new regulations, the ACT Government has:
- made clear that there is generally no requirement for ACT Planning and Land Authority approval in designated areas;
  - clarified the intent of the exercise of the call-in power; and
  - clarified that development applications related to the Gungahlin Drive Extension are not subject to review processes initiated by objectors and third parties.<sup>29</sup>
- 6.24 The action taken by the Territory Government has therefore reinstated the view articulated in submissions from both the National Capital Authority and the ACT Government - that the Territory has no authority to approve works on designated land as this is the responsibility of the NCA.

## **Draft Amendment 39: Deakin/Forrest Residential Area**

- 6.25 The difficulties of achieving a balance between the interests of Canberra as a local community and the interests of Canberra as the national capital were plainly evident during the issue of Draft Amendment 39 of the National Capital Plan. Despite the Committee conducting an inquiry into the proposed amendment in 2002, changes to the amendment continued to cause concern amongst affected

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28 ACT Government, Submissions, p 235.

29 Simon Corbell MLA, Minister for Planning, ACT Government, Regulations lead to restart of work on GDE, Media Release, 30 April 2004.

residents. The Committee, therefore, resolved to conduct a further public hearing in March 2004 into the latest version of the amendment, and to consider the evidence as part of its inquiry into the role of the National Capital Authority.

## Background

6.26 In March 2000, ACT Planning and Land Management (PALM) approached the NCA seeking an amendment to the National Capital Plan. Version One of Draft Amendment 39 was released in November 2000 and proposed to pass planning control of the Deakin-Forrest residential area – which was defined in the National Capital Plan as a Designated Area due to the landscape setting it provides for Parliament House and its prominence in the Central National Area – to the Territory. The ACT Government supported this version on the basis that:

...it had the potential to assist in promoting unambiguous and transparent policies and provide a more effective interface between the respective planning instruments and their administration.<sup>30</sup>

6.27 Given that this area is the only standard density residential land included within a Designated Area, it is subject to different development conditions and planning processes to residences elsewhere in the ACT. While the NCA wished to safeguard the national capital significance of the area and encourage development outcomes appropriate to the setting of the area, PALM wanted to bring it under the same development controls as other non-designated residential areas in the ACT. Although the land is designated, it is also Territory Land, therefore although the Territory is responsible for administering the land and the leasehold, the planning policy arrangements and any works approvals are the responsibility of the NCA.

6.28 Following a process of public consultations, the NCA released a revised Draft Amendment, Version Two, in June 2001. The revised Amendment also sought to remove Designated Area status from the area in question, but was more prescriptive in relation to land use provisions.<sup>31</sup>

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30 ACT Government, Submissions, p 249.

31 Serviced apartments, guest houses, boarding houses and the like were prohibited. The height of developments was restricted to two storeys and no more than eight metres



- 6.29 After further consultations, the NCA released Version Three of Draft Amendment 39 in April 2002 which retained Designated Area status for the Deakin-Forrest residential area. This decision was primarily due to uncertainty arising from the newly elected ACT Government's proposed changes to residential policies.<sup>32</sup> The NCA attempted to address the differences in the land use policies of the Territory Plan and the National Capital Plan by including provisions for home business or "the use of residential land for carrying out a profession, trade, occupation or calling on the land".<sup>33</sup>
- 6.30 The Committee conducted an inquiry to consider Version Three of Draft Amendment 39 in 2002 and to determine why the uplifting of Designated Area status was not included in the revised version. After considering the evidence, the majority of the Committee supported the Commonwealth retaining planning jurisdiction over the area through the NCA. The Committee further recommended that non-residential development in the Deakin-Forrest area be prohibited and that development in the area fronting Parliament House be required to achieve a design and landscape outcome appropriate to the setting of Parliament and which reflects the Main Avenue role of State Circle.
- 6.31 The ACT Government remains unsatisfied with the provisions in Version Three of Draft Amendment 39, as stated in its submission:
- It is considered that the approach set out in the revised Draft Amendment will lead to greater complexities and further inconsistencies due to the separate process for reviewing the respective planning instruments.<sup>34</sup>

## Recent Developments: November 2003 Version

- 6.32 The NCA wrote to residents of the Deakin/Forrest area in November 2003, seeking comment on a revised version of Draft Amendment 39.

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above the ground, and greater architectural treatment and landscaping detail for the sites fronting State Circle would be required. See Joint Standing Committee on the National Capital and External Territories, 2002, *Striking the Right Balance: Draft Amendment 39 National Capital Plan*, Canprint, Canberra, pp 8-9.

32 Under the ACT Government's Draft Territory Plan Variation No. 200 (Residential Land Use Policies, Modification to Residential Codes and Master Plan Procedures), the NCA felt that multi-unit redevelopment would be prohibited and dual-occupancy limited in the Deakin-Forrest residential area.

33 National Capital Authority, November 2000, *National Capital Plan: Draft Amendment 39 (Deakin/Forrest Residential Area between State Circle and National Circuit)*.

34 ACT Government, Submissions, p 249.

The Committee was advised of this amended version by the Minister for Territories, Local Government and Roads in January 2004. The Committee resolved to hold a public hearing into this amended version on 23 March 2004 after receiving letters of complaint and submissions from a number of concerned residents in the area as well as a potential developer. The NCA advised the Committee that following consultation with residents in the area, further revisions were made to the draft amendment and that the February 2004 version was the most current.

- 6.33 The Committee was satisfied with the provisions of the February 2004 version except for the provision to increase building height for sites fronting State Circle from two to three stories. The Committee shared the concerns of the majority of residents/lessees of the area that the existing low to medium density residential character of the area was the most suitable and should be retained so that future development in the area reflects this character.<sup>35</sup> The Committee unanimously recommended that building height for sites fronting State Circle be restricted to no more than two storeys and no point more than 8 metres above the natural ground level immediately below.
- 6.34 As a consequence of these height restrictions, the Committee recommended that plot ratio provisions be reconsidered. That is, that redevelopment of existing blocks remain at 0.4, and in the case of amalgamated blocks, be up to a maximum of 0.8. The Committee, however, acknowledged that in light of the recommended height restriction of two storeys, the building envelopes and setbacks would need to be reconsidered by the NCA. The Committee, therefore, sought the advice of the Authority on the questions of plot ratio, building envelopes, setbacks and related conditions, given a height restriction of two storeys for the State Circle sites. The Chairman made a statement to the Senate reflecting these recommendations on 25 March 2004.

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### **Recommendation 10**

- 6.35 **That, for all sites fronting State Circle between Hobart and Adelaide Avenue (Blocks 1-8 Section 6 Forrest and Blocks 5-9 Section 3 Deakin:**
- **building height be no more than two storeys and no point more**

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35 See Residents of Canterbury and Somers Crescents, Submissions, pp 381-384.

**than 8 metres above the natural ground level immediately below (regardless of whether the blocks are amalgamated or not); and**

- **plot ratio for residential development of existing blocks should remain at 0.4, and in the case of amalgamated blocks be up to a maximum of 0.8.**

6.36 The Committee is frustrated that this matter, having first been brought to the Committee's attention in November 2000 and now in its fifth version, still has not been finalised. The Committee remains steadfast in its opinion that the building height on State Circle be no more than two storeys, and is awaiting the advice of the Authority on the most appropriate plot ratio provisions for sites with a two storey height restriction.

### Differential Development Controls

6.37 The Committee was concerned to learn that differential development controls were proposed for the two corner blocks fronting State Circle between Melbourne and Hobart Avenues. In Attachment B of the November 2003 version of Draft Amendment 39 to the National Capital Plan, it was stated that:

The Plot Ratio for residential redevelopment of existing blocks is 0.4; where sites are amalgamated the Plot Ratio of any residential redevelopment may be up to 0.8 where development complies with site development conditions that follow; an exception to this will be for blocks flanking Melbourne Avenue (Block 1 Section 6 Forrest and Block 9 Section 3 Deakin) which are permitted to develop to a plot ratio of 0.8 without amalgamation.<sup>36</sup>

6.38 At the hearing on 23 March 2004, the Committee sought clarification from the National Capital Authority as to why this exception did not also apply to the corresponding block flanking Hobart Avenue (Block 8 Section 6 Forrest) which is the same size as Block 1, Section 6 Forrest. The Authority assured the Committee that planning provisions:

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<sup>36</sup> Draft Amendment 39 Deakin/Forrest Residential Area, November 2003, Attachment B, Development Condition (ii).

are consistent now across all of the blocks fronting State Circle, including those that might be isolated by, say, an amalgamation and a development.<sup>37</sup>

Subsequent to this, the Authority advised the Committee that in the February 2004 version of the draft amendment, the text has been revised to more directly reflect comparable provisions for all blocks fronting State Circle.<sup>38</sup> The Committee notes the Authority's comments and is now awaiting the final version of Draft Amendment 39.

## Claims of Mismanagement

- 6.39 The Committee was concerned to learn of allegations of mismanagement against the National Capital Authority in relation to a variety of issues, primarily concerning the NCA's management of Lake Burley Griffin, the Canberra Carillon and its handling of the Gungahlin Drive Extension proposal. Evidence received by the Committee includes claims that the Authority has, at times, demonstrated a lack of professionalism, a lack of accountability, bias, inconsistency and a failure to adequately consult or communicate.<sup>39</sup>

### National Carillon

- 6.40 The Committee recently participated in a tour of the Carillon, which was refurbished in 2003. The Committee was impressed with the renovations, which included expansion of the clavier chamber and function room, and the addition of two new bells. It appeared that the management and maintenance of the Carillon – for which the Authority is responsible – was in very good hands.
- 6.41 However, Mr William Fraser, an assistant carillonist at the Canberra Carillon from 1979 to 2001, expressed an opposing view. Mr Fraser stated that when the NCA took up management of the carillon in July 2000:

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37 Ms Annabelle Pegrum, Transcript, 23 March 2004, p 33.

38 Correspondence from the National Capital Authority, 16 June 2004.

39 See, for example, Save the Ridge, Canberra Community Action on Acton Inc., Fraser, Bagnall, Submissions.

...this exacerbated management problems...necessitating continuing representation by carillonists to the National Capital Authority to seek redress for numerous grievances.<sup>40</sup>

- 6.42 Mr Fraser stated that the NCA generally ignored written communications and telephone calls were seldom acknowledged.<sup>41</sup> He also believes that the Authority failed to understand the carillonists' needs and "seemed totally disinterested" when attempts were made to explain requirements to them.<sup>42</sup>
- 6.43 In its submission, the NCA points out that for some assets, such as Lake Burley Griffin, as well as the various memorials and artworks, specialised expertise and management is required. The Authority stated that it has "become a source of such management expertise".<sup>43</sup>

### Lake Burley Griffin

- 6.44 A similar experience was reported by Dr David Bagnall, who took issue with the NCA's management of Lake Burley Griffin and the surrounding foreshores. Dr Bagnall argued that the Authority's refusal to allow a rowing club to build a boathouse on the shores of the lake "severely limited opportunities for the Canberra community".<sup>44</sup> He described the Authority's actions as "antagonistic" and stated that:

...the arbitrary nature of the NCA's decision to locate us away from these National Capital Development Commission serviced blocks is evident because subsequently the NCA has offered exactly the same sites to other rowing clubs and schools.<sup>45</sup>

- 6.45 Dr Bagnall claimed that there were communication problems within the Authority which needed to be addressed. He also highlighted the difficulties which can arise from the current lack of appeals processes against NCA decisions. Dr Bagnall noted that:

It is important for the NCA to have statutory obligations: firstly, to acknowledge receiving correspondence, which they did not do right through our process; secondly, to impose a

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40 Fraser, Submissions, p 289.

41 Fraser, Submissions, p 289.

42 Fraser, Submissions, p 289.

43 National Capital Authority, Submissions, p 170.

44 Bagnall, Submissions, p 33.

45 Dr David Bagnall, Transcript, 20 June 2003, p 16.

statutory limit of three months to select sites and approve works applications; and, thirdly, to set up an appeals procedure for applicants. I also feel that there are major problems with a lack of transparency and really poor communication. I would have thought that these problems needed to be addressed.<sup>46</sup>

## Sale of Commonwealth Land

6.46 While the issue of the Commonwealth's sale of undeveloped land is more an issue for the Federal Government through the Department of Finance and Administration, development conditions for these sites are set out in Development Control Plans (DCPs) prepared by the National Capital Authority. While the ACT Government is concerned that the sales have "impacted severely" on the Territory's Land Release Program, for many of these sites, the Territory also claims that the DCPs prepared by the Authority have "far from mitigated the effects".<sup>47</sup> Using the Benjamin Offices as an example, the Territory points out that the conditions set out in the DCP are "less stringent than those that would be evoked through the Territory's planning framework".<sup>48</sup> Some of the concerns identified include that:

- the proponent was not asked to prepare a preliminary assessment;
- there was inadequate provision for car parking;
- the heritage status of significant vegetation was not identified; and
- there was no consultation with adjacent landholders or businesses.<sup>49</sup>

6.47 Another example identified by the ACT Government was the Macquarie Hostel for which the National Capital Authority prepared a DCP that "greatly increases the gross floor area allowable under Territory planning provisions".<sup>50</sup> The ACT Government was careful to point out, however, that the issues affecting the Territory as a result of Commonwealth Land sales were not necessarily directly NCA responsibilities:

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46 Dr David Bagnall, Transcript, 20 June 2003, p 18.

47 ACT Government, Submissions, p 250.

48 ACT Government, Submissions, pp 250-251.

49 ACT Government, Submissions, p 251.

50 ACT Government, Submissions, p 251.

...these do not only relate to the National Capital Authority but they go to the issue of overlap and confusion, which brings both authorities into some disrepute. If the territory has a strategy and if the government has a strategy that relates to land release and to employment dispersal, and then there is a major sale of land, and those releases are much larger than were initially planned, of course the planning can go awry.<sup>51</sup>

## The Committee's Views

- 6.48 The Committee acknowledges the ongoing contribution of the National Capital Authority in upholding the Commonwealth's interest in the national capital. The Committee supports the view that the Authority has "played an invaluable role in the growth and development" of Canberra.<sup>52</sup> However, the Committee has chosen to highlight the examples discussed throughout this chapter to illustrate the concerns that some organisations and members of the Canberra community have apparently experienced in dealing with the NCA. The Committee appreciates that, by the very nature of its role, the Authority's decisions will not always be accepted universally – particularly where such decisions do not align with ACT Government policy. Nonetheless, the Committee trusts that the NCA will take this criticism on board and endeavour to rectify its procedures where deficient.
- 6.49 It has been suggested to the Committee that a number of the management issues raised in this chapter can be attributed to the lack of resources at the Authority's disposal.<sup>53</sup> It has also been suggested that there is a lack of staff within the organisation who possess the professional expertise to be able to deal with such matters.<sup>54</sup> While the Committee accepts that this may be a contributing factor, there is evidence which suggests there are occasions where the NCA fails to follow due process – whether it be responding to verbal enquiries or acknowledging receipt of correspondence. The Committee is certainly concerned by the allegations of incompetency, lack of accountability

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51 Mr George Tomlins, Transcript, 15 August 2003, p 93.

52 Murphy, Submissions, p 60.

53 See, for example, Ms Romilly Madew, Transcript, 16 October 2003, p 274, Mr Bruce Wright, Transcript, 20 June 2003, p 11.

54 Mr Tony Powell, Transcript, 19 September 2003, p 250.

and lack of professionalism, such as the view expressed by Mr Brett Odgers:

...the National Capital Authority continues to demonstrate lack of powers, underfunding, undemocratic methods, lapses in values and professional incompetence as planners and public servants.<sup>55</sup>

6.50 In his book, *The Impact of Systems of Governance on Federal Capitals*, Bruce Wright identified the need for the Authority to develop and maintain systems which satisfy community demands for accountability, transparency and participation.<sup>56</sup> Yet, the absence of provisions for appeal against NCA works approvals, and the absence of mechanisms for statutory consultation has ensured that the Authority's actions continue to frustrate members of the ACT community. The Committee trusts that the Authority will address the concerns discussed above, and continue to improve its capacity to perform at a higher level.

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55 Odgers, Submissions, p 327.

56 Wright, B., *The Impact of Systems of Governance on Federal Capitals*, p 20.