

Allan and Pamela O'Neil

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Committee Secretary
Joint Standing Committee on the National Capital and External Territories
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Secretary

We thank the Committee for the opportunity to make a submission to its *Inquiry into the allocation of land to diplomatic missions in the Australian Capital Territory*. Our comments are informed by 16 years exposure to land and planning policy and practice in the ACT as members of either the ACT Administrative Appeals Tribunal or the ACT Civil and Administrative Tribunal, and by our observations of the processes surrounding Draft Amendment 78 to the National Capital Plan.

We make three inter-related points. Firstly, pre-determined and publicly stated criteria for the identification of additional land for diplomatic missions are necessary. Secondly, the identification of land for diplomatic missions should occur in the context of broader land use planning in the ACT and be consistent with the land use objectives of both the National Capital Plan and the ACT government. Thirdly, the extra-territorial status of diplomatic land means that, in allocating land for diplomatic missions, regard needs to be had to other legislative requirements such as those relating to the protection of the environment. We now expand on those three points.

The need for agreed criteria

In September 2011, under the slogan *Have Your Say*, the National Capital Authority invited comments on “the most important things for the NCA to consider in assessing the suitability of” three sites for diplomatic use. The sites were in some respects quite different, yet no guidance was provided as to what criteria were to be used in determining which of the three was ultimately to be preferred.

Assessing the suitability of sites for diplomatic use should not be akin to a popularity contest. It ought to be done in accordance with established land planning principles and by those with appropriate expertise. There is a role for public consultation, but that is only useful if it is properly informed. Criteria need to be determined which will guide the identification over the longer term of land suitable for diplomatic missions and against which the validity of subsequent decisions can be assessed.

The need for long-term planning

The supply of Commonwealth land in Canberra suitable for development of this sort is now limited. Attempts to restrict consideration to Commonwealth land risks the future alienation of land in areas not intended to be developed under the current National Capital Plan, or land now recognised as having environment or heritage values. The land initially identified near Stirling Ridge in is an excellent example, as it included a proportion of open space land in an environmentally significant area. A preferable course would appear to be to identify land suitable for future diplomatic use from the broader palate of land in Canberra that has been assessed as being available for future development.

The need for compliance with other legislation

The identification of land for diplomatic use is made more complex by the realisation that the land, once alienated to another country, is no longer subject to the sorts of controls applying elsewhere. A ready example of the different standards applying can be seen in a number of allotments of diplomatic land in Yarralumla which have remained undeveloped for many years. This is a matter which needs to be taken into account in allocation of land for diplomatic missions.

It is of concern to us that compliance by a sovereign government with measures to protect the environment could become a matter of good-will. The objectives of legislation such as the Environment Protection and Biodiversity Conservation Act 1999 could be subverted by inadvertent actions such as the planting of unsuitable species in diplomatic gardens adjacent to environmentally sensitive areas. While it has been suggested that this risk could be overcome by agreement with the relevant government, such as agreement is unlikely to be enforceable in Australian courts. In those circumstances the very decision to locate diplomatic missions in locations outside of the controls of the Act, in itself, may be contrary to that Act.

Thank you for your consideration of this submission.

Pamela O'Neil

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