

April 28, 2008

Joint Standing Committee on the National Capital and External Territories
INQUIRY INTO THE ROLE OF THE NATIONAL CAPITAL AUTHORITY

SUBMISSION
from
TONY POWELL, AO

SUMMARY:

Reference One: *With regard to the reduction of 'red tape', the administration of development applications by the NCA is regarded by the ACT development industry as being prompt and effective whereas ACTPLA, on the other hand, has a poor reputation for incurring costly delays due to the time it takes to process development applications and to furnish explanations as to what the written provisions of the Territory actually mean from the point of view of developers, financial lenders and affected residents. The jurisdiction of spatial polices is unclear, due mainly to inherent weaknesses in the wording and format of the National Capital Plan. Since the inception of the current Act in 1989, there has been no real attempt by the Commonwealth or successive ACT governments to seek to harmonise or integrate or coordinate the two inter-dependent land use planning systems, National and Territory.*

Reference Two: *The present governance arrangements for the NCA, which make its Board accountable for the discharge of its statutory obligations to the Commonwealth Parliament and subject to directions from the responsible Federal Minister, are appropriate in view of the fact that it has the oversight of the planning of Canberra as the National Capital and Seat of Government by means of the National Capital Plan. The Territory's planning function is subordinate in the sense that the Territory Government acts as the Agent of the Commonwealth with regard to the management, planning and development of Territory land, as defined in the enabling legislation, and in a manner that is not inconsistent with the provisions of the National Capital Plan.*

Reference Three: *With regard to the question of design oversight by the NCA, there is much confusion and loose talk as to what the phrase 'areas of national capital significance' means. During the period of Commonwealth administration, up to and including the NCDC-era when most of Canberra and the ACT was constructed, it was deemed that the key national capital elements were the formally arranged parts of Central Canberra and Lake Burley Griffin, the hills and watercourses and rural areas that were later identified (circa 1978) as the National Capital Open Space System, the main arterial road network or parkway system being the main approaches to and within the urban area as defined by the 1970 Y-Plan and national institutions on large-acreage sites throughout the Territory, including the airport and defence lands. This concept of the essential elements of the national capital were derived from Walter Burley Griffin's original report that accompanied his prize-winning 1913 Plan and which were accepted as underlying principles by the first Federal Capital Advisory Committee under John Sulman, the Federal Capital Commission, the NCDC and the various Federal departments responsible for ACT administration until 1989. In relation to these*

fundamental aspects of the National Capital, as distinct from metropolitan Canberra, urban design and land use controls should be exercised by the Commonwealth through the NCA in the interests of all Australians.

Reference Four: *There are at the moment very few opportunities for ensuring cooperation with the ACT Planning Authority due to its generally poor level of professional competence, its chronically inadequate funding, the scattered division of planning and infrastructure responsibilities within the ACT administration, the highly inefficient statutory format of the Territory Plan, constant interference by the ACT Assembly in day-to-day planning administration and undue amounts of public consultation that are ultimately largely ignored by ACT ministers to the intense dissatisfaction and anger of residents and business.*

Reference Five: *The national promotion of the National Capital by the NCA should be more circumscribed and much more directed at improving knowledge and understanding of the National Capital Australia-wide and for Canberra visitors. The NCA should not be responsible for funding tourist events, these should be left to local business, the ACT Administration and specific Commonwealth departments and institutions having an interest in Canberra as a tourism and visitor venue. Achieving a distinctive character for the National Capital is as much a consequence of how people live here, do business here and how the Seat of Government functions are conducted, as it is a matter of urban planning and infrastructure development.*

Background Issues

(i) Canberra's dual system of government and public administration is not working efficiently or effectively and has become seriously out-of-date since the enabling legislation was passed by Parliament more than 28 years ago. In particular it is not fiscally sustainable because it is simply not possible for the ratepayers of the ACT and the limited amount of private enterprise activity to fund the ongoing development of the National Capital.

(ii) For example, the ACT highway network serves a city and regional population of in excess of 370,000 residents who use it on a daily basis for work, shopping and health and education trips. According to the 1970 Y-Plan, on which the National Capital Plan and the Territory Plan are both based, at this stage both the western and eastern parkway networks should have been completed and the Civic/Airport east-west link as well, which means that the main highways backlog is of the order of \$400 million. The ACT Government has no prospect of alleviating this situation within the foreseeable future and has no plans for doing so.

(iii) The Territory is heavily reliant on revenue from land sales, which is a finite and reducing resource. It has adopted the practice, in relation to commercial land sales in particular, not to set aside a sufficient proportion of such revenue in order to fund the provision of collateral infrastructure. The overflow of Civic-generated car parking onto the foreshores of Lake Burley Griffin is just one example of this unsatisfactory practice and there are many others that are seriously damaging the City's greatly prized 'garden city' character.

(iv) Frequent changes to the provisions of the Territory Plan have made it complicated and difficult for developers and residents to understand and use. The latest revisions that came into effect at the end of March, despite objections from industry and community groups, is

even more complex resulting in a code that is more than 700 pages in length and is too large for the Authority to publish and is difficult to use via the Net. The Authority is greatly hampered in its work by Ministerial interference and onerous requirements for public consultation. On the other hand, the right of appeal for adversely affected adjoining property owners has been greatly reduced by the latest Territory Plan changes.

(v) This Inquiry is being held in relation to what is arguably the most unwieldy and incompetent planning administration in Australia. The poor quality of much of the built environment of Gungahlin is testament to these pervasive inadequacies.

Reference 1.

1.1 The administration of the National Capital Plan in relation to development applications is expeditious and has a high approval level as far as the business community is concerned. The NCA has been less successful in terms of its handling of the public consultation aspect of its work with respect to both development applications and the adoption of land use policies in relation to the Griffin Legacy, the National Capital Open Space System (ie the rural parts of the ACT) and the Fyshwick industrial area. The NCA seems to be unsure of the provisions of its own planning scheme in relation, for example, to the inclusion of discount retail outlets in Fyshwick.

1.2 There has been misunderstanding - and some resentment - on the part of the ACT Government as to the role of the NCA in regulating the routes of the metropolitan parkway system, possibly with some justification. It is clear that the main highways accessing the National Capital and the Central National Area in particular, are of national capital significance and should be explicit aspects of the National Capital Plan, which they are. In this regard, Canberra has provisions similar to that adopted by the Canadian Government with respect to Ottawa where the equivalent parkway system and regional open space in the form of the Greenbelt and Gatineau Park, are administered and funded by the National Capital Commission. There is a case for the Commonwealth to accept financial - and at least joint planning - responsibility for the parkway network and the National Capital Open Space System.

1.3 There is a clear need for the provisions of both planning schemes to be reconciled in order to simplify where the development control power should reside, particularly where the NCA has over-arching powers in relation to Territory land and where Territory and National interests may be in conflict, such as in Civic.

1.4 In relation to 'administrative harmonisation', it seems logical to take the obvious step of giving the Territory representation on the NCA Board, not by way of an Assembly member but through the appointment of the CEO of the Chief Minister's Department, for example.

1.5 The National Capital Plan is seriously in need of revision after the passage of 28 years for what was introduced in the first instance as a 'stopgap' measure so as to enable the Territory to have a guideline for the production of the first Territory Plan. As I understand it, the Authority does not have the staff or financial resources to carry out such a review.

Reference 2.

2.1 It is important to recognise that the Commonwealth has a constitutional obligation to establish and maintain Canberra as the National Capital and Seat of Government. While it has delegated some of its responsibility to a Territory Government nonetheless the ultimate responsibility rests with the Commonwealth Government. It is appropriate, therefore, that the responsible federal minister has ultimate planning power which is exercised via the mechanism of a statutory authority, the National Capital Authority and that is subject to direction from its minister who in turn reports on the Authority's discharge of its functions to the Parliament. There has been a strong tendency on the part of successive Territory governments to deny the Territory's statutory role as the Agent of the Commonwealth and claim that it should have the same unfettered power in relation to planning and development that is the prerogative of State governments. Canberra is not like other Australian cities because it is first and foremost the national capital, which is the main object of its existence. Up until 1989, successive Commonwealth administrations made no distinction between Canberra's national capital and metropolitan roles and up to 1989 it was planned and developed accordingly. To suggest, therefore, that the national capital is now only the Central National Area or the Griffin's Triangle or the precincts of the Parliament and Old Parliament House, is misguided and wrong.

2.2 To enhance the performance and accountability of the NCA, it would be worthwhile to re-establish a National Capital Advisory Committee to act as a source of advice to the Authority and the Minister in the discharge of its statutory functions. The existence of such a body comprising expert members drawn from Australia generally has been a feature of Canberra's planning arrangements since the advent of the Federal Capital Advisory Committee in 1921, first chaired by Sir John Sulman with great distinction and effect, however, such advisory arrangements were finally extinguished in 1988 by the repeal of the NCDC Act.

2.3 Improved representation of the Territory's interests might be achieved by amending the Authority's Act to make provision for the appointment to the Board of the CEO of the ACT Chief Minister's Department. Consideration should also be given to making a statutory provision for the Minister and the ACT Chief Minister to engage in consultation on the operations of the Authority in relation to the planning of Canberra and the ACT where there are deemed to be matters that require the Minister's intervention on the Territory's behalf.

2.4 The ACT Government needs to be more honest about its role as the Agent of the Commonwealth and the fact that it does not have the powers or position of a state government. This would enable it to press the Commonwealth for a more equitable and realistic financial arrangement in relation to the Territory's obviously national capital elements, namely, the metropolitan parkway network and the National Capital Open Space System, which are beyond the latent financial capacity of the Territory to develop and maintain. It would also heighten the impression of a genuine 'partnership' between the two levels of government, which in practice is what it should be in order to reflect the interests of the Australian people as well as the residents of the ACT.

Reference 3.

3.1 The Authority does not have the skilled planning and urban design staff to appropriately influence the quality of design and the achievement of the highest possible standards. This is the sort of work that needs to be done in-house, supported by specialist consultants where required. The Authority does not have sufficient financial resources for such work nor does it have the right staff-mix either. In other words, it is not in a position to muster from within its own ranks the mix of planners, engineers, architects, surveyors, landscape planners, economists, programmers and development managers that the achievement of high standards of planning, design and construction of the National Capital is critically dependent upon. The Authority's organization and budget needs to be reviewed in order to achieve substantial improvements in this regard.

3.2 The Commonwealth needs to accept that, in addition to the Central National Area, the Commonwealth ought to fund the parkway network and the National Capital Open Space System because it is beyond the financial capacity of the Territory Government to do so. The NCA should accordingly have clear statutory powers to provide for the planning of such elements via the mechanism of the National Capital Plan, including the overall design standards to be achieved, leaving detailed planning and design to be dealt with by ACTPLA in accordance with the provisions of the Territory Plan.

3.3 The role of the NCA in relation to the control of design and siting will need to be enhanced if the Government decides to centralise the procurement of Commonwealth office buildings and other facilities in the ACT as part of a new national policy, particularly now that the Commonwealth no longer has access to the professional expertise of its own public works department.

Reference 4.

4.1 Formal arrangements should be put in place to ensure cooperation between the NCA and the Territory administration, including ACTPLA, however, this should not be at the expense of the NCA being able to deliver prompt and efficient responses to development applications in the way that it been able to manage until now.

4.2 Coordination problems have been worsening in recent years because of the fragmentation of planning responsibility within the ACT administration. For example, the Chief Minister's Department, the Land Development Agency and the Department of Urban Services, all have significant planning and development powers to such an extent that it is no longer possible for ACTPLA to function as an urban planning and development authority in any normally understood sense of the term.

4.3 The NCA needs to improve its public consultation procedures involving the local community and wider interest groups. To do this it must first revise the National Capital Plan so that its policies and development standards are clear and intelligible for community groups to read and understand. The NCA's engagement practices are poor and ought to be upgraded, as evidenced by the level of public anxiety recently over proposals for the long-term development of the Albert Hall precinct.

4.4 A particular difficulty in achieving improved cooperation between the NCA and ACTPLA is that the professional integrity of the latter is too readily compromised by interference from the Territory planning minister and the ACT Assembly. This means that well-balanced technical and related expert physical, social and economic considerations are regularly being put aside in the determination of land use and urban development projects by unwarranted political and even Treasury Department interferences. It is accordingly difficult for the NCA, which is free from such arbitrary constraints, to interact cooperatively in the face of such a system.

Reference 5.

5.1 The NCA was initially established as an urban planning and development authority. Later its Act was amended to include responsibility for promoting the National Capital and for the staging (and funding) of events. This in my view has been an unfortunate dichotomy that has made the Authority much less effective in carrying out its urban planning and design responsibilities. The engagement of staff to handle events management has meant that the Authority lacks the essential personnel to carry out a range of urban research and public consultation operations, the absence of which makes its planning operations insufficiently informed and less effective. In my view the events management operations of the Authority should be wound back, leaving it to the ACT Government and local business to accept responsibility for events management in relation to projects that, for the most part, entertain the Canberra community. The Authority's events management operations should be confined to educating and informing Australians at large and in targeted interest groups, such as school children, teachers, members of the federal parliament and their constituents, and so forth.

5.2 The Authority should be doing a lot more to help coordinate the promotional activities of the ACT's national institutions, most of whom are now fiscally very dependent on their ability to maintain healthy visitor numbers, including from Australia-wide.

5.3 The NCA has devoted insufficient attention to the transport of tourists throughout the National Central Area, including the National Museum site, by means of cheap and convenient public transport along lines similar to those used in Washington and Ottawa where the situations are akin to that of Canberra. The Parliament hasn't helped in this regard, being repeatedly unwilling to bring public parking in and around the National Central Area under NCA (or Federal) control in order to make due provision for the needs of visitors, as against serving the workday convenience of public servants. The shortage of public parking in the National Central Area, particularly south of the Lake, is a disincentive to the attraction of visitors from both local and outside sources.

Tony Powell, AO