

## The Issue of Consultation

- 8.1 The Committee is concerned with the repeated complaints that the NCA has failed to engage in adequate consultation. This concern is exacerbated by the Committee's reliance on the fact that the Authority has undertaken adequate consultation with all relevant stakeholders in relation to a particular issue. The Authority itself admits that, in some cases, it has failed to adequately consult.<sup>1</sup>
- 8.2 The issue of consultation was addressed by the Australian International Council on Monuments and Sites (Australia ICOMOS). Australia ICOMOS is a national peak body of cultural heritage practitioners with an interest in best practice in relation to heritage conservation.<sup>2</sup> ICOMOS stressed the need for the NCA to adopt a clearer and more consistent approach to community consultation, largely in response to the controversy which emerged over the proposed 'Fan' structure which is elaborated on later in this chapter, but also with regard to all other works which may be seen to have an impact on heritage values.<sup>3</sup> In the view of ICOMOS, at present, the NCA tends to adopt a reactive rather than proactive approach in relation to heritage planning decisions.<sup>4</sup> This chapter examines a

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1 See, for example, Joint Standing Committee on the National Capital and External Territories, 2002, *Striking the Right Balance: Draft Amendment 39 National Capital Plan*, Canprint, Canberra, pp 41-42.

2 Ms Kristal Buckley, Transcript, 15 August 2003, p 149.

3 Ms Kristal Buckley, Transcript, 15 August 2003, p 149.

4 Ms Kristal Buckley, Transcript, 15 August 2003, pp 152-153.

number of recent examples which highlight shortcomings in the Authority's consultation processes.

## **Benjamin Offices Development**

8.3 One example which is typical of the complaints raised with the Committee regarding the NCA's lack of consultation was brought to the Committee's attention by Mr Doug Barton. Mr Barton is a shareholder in a company which owns the Belconnen Churches Centre. The adjoining property, the Benjamin Offices, which are occupied by the Commonwealth Department of Immigration, Multicultural and Indigenous Affairs (DIMIA), is currently undergoing development. According to Mr Barton, this development is taking place "without any apparent need to satisfy planning principles or requirements established by ACT planning authorities".<sup>5</sup>

8.4 Mr Barton is concerned because he was not consulted about the proposed activity, nor was he able to obtain details of the type of development which had been approved by the NCA.<sup>6</sup> The Benjamin Offices development involved the demolition of walkways which link buildings to the Belconnen town centre. Mr Barton added that:

the NCA was unwilling to provide any justification for a change in the design of city features that one would expect to lie outside its area of responsibility.<sup>7</sup>

This motivated Mr Barton to call for "an end to the current bullying approach adopted to property and business owners who are neighbours of Commonwealth occupied land".<sup>8</sup>

8.5 This issue was also addressed by the ACT Government, when Mr Robert Tonkin, Chief Executive, Chief Minister's Department, expressed concern with the planning process for the Benjamin Offices. Mr Tonkin also highlighted the difficulties which arose from the lack of appeals processes. Mr Tonkin noted that:

One of the concerns of the territory was that the planning was done by the Commonwealth, not necessarily in the total interests of the nation and the Canberra community but with

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5 Barton, Submissions, p 279.

6 Barton, Submissions, p 279.

7 Barton, Submissions, p 279.

8 Barton, Submissions, p 279.

some little interest in perhaps maximising the sale value, but without going through all the local processes of consultation. So an upper-level walkway that served a cafe was removed and the main traffic associated with thousands of workers was redirected away from that local cafe. Understandably, the cafe proprietor appealed to the ACT politicians because that person would have thought that issues associated with pedestrian traffic in Belconnen were a local matter.

The other issue related to that, of course, is the lack of appeal processes, whereas in the ACT there are considerable appeal processes. Attempting to explain to people, 'Yes, you can appeal against most planning decisions in the ACT, but unfortunately you are not able to exercise appeal processes against decisions relating to a cafe in Belconnen' causes problems and difficulties that do not help the reputation of either authority.<sup>9</sup>

## Public Artwork to Celebrate the Centenary of Women's Suffrage

### The 'Fan' Memorial

- 8.6 In 2002, the Commonwealth Government commissioned a major public artwork to celebrate 100 years since women were allowed the right to vote and stand for election in Australia. A competition was held, and the winning design – a 21 metre high 'fan' structure – was to be erected on the central axis at the northern end of Federation Mall where it would "appear to nestle on the roof of Old Parliament House".<sup>10</sup>
- 8.7 When it was briefed about the proposed artwork by the National Capital Authority, the Committee was led to believe that Old Parliament House had been comprehensively consulted and had endorsed the project. The Committee later learnt that this was not the case and that the Old Parliament House Governing Council was strongly opposed to the siting of the work. Equally disturbing was the Committee's discovery that the Authority, while not required to

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9 Mr George Tomlins, Transcript, 15 August 2003, p 89.

10 Stanley, J. Heritage horrified at planned memorial, *The Canberra Times*, 28 August 2003, p 3.

under its statutory obligations, failed to consult with peak heritage bodies such as the National Trust and ICOMOS who, evidently, were also strongly opposed to the work's siting. The NCA's reasoning that it had fulfilled its statutory obligations by consulting with the Australian Heritage Commission was not well received by the Committee, given that the implications of erecting such a comprehensive structure in the centre of the parliamentary vista was always likely to attract a significant level of national interest.

- 8.8 Furthermore, when the Authority released an artist's impression of the proposed work in August, the design appeared to be markedly different to that which had been presented to the Committee earlier in the year. The Committee later learnt that the original design had failed to withstand wind-tunnel testing. The Committee was amazed that, having sought the Committee's support for the original artwork and its siting, the Authority did not inform the Committee when the design underwent what appeared to be a dramatic change, nor did it seek to refer the work back to Parliament for approval. In September 2003, the designers of the 'Fan' memorial had their commission terminated due to the project running over budget. The 'Fan' has subsequently been replaced by a commemorative fountain to be located in the House of Representatives Gardens beside Old Parliament House.<sup>11</sup>

## The Suffrage Fountain

- 8.9 The proposal for a fountain to commemorate the centenary of women's suffrage was supported by the Committee after a briefing on 10 March 2004. The project was subsequently approved by Parliament and is expected to be completed by December 2004.<sup>12</sup> In a letter to the Minister Assisting the Prime Minister for the Status of Women, the Committee stated that while it supported the proposed work, it did so only on the understanding that all relevant and interested stakeholders – including Australia ICOMOS – had been fully consulted. The Committee was disturbed to learn then, shortly after the work was approved by Parliament, that Australia ICOMOS felt it had not been afforded a reasonable opportunity to respond to the proposal.

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11 Patterson, Senator the Hon. K., Fountain to Celebrate the Centenary of Women's Suffrage, Press Release, 23 November 2003.

12 Patterson, Senator the Hon. K., Suffrage fountain gets go ahead, Press Release, 1 April 2004.

- 8.10 According to ICOMOS, the NCA invited comment on the proposal in the second week of February, but ICOMOS felt there was insufficient information to be able to provide comment. ICOMOS immediately lodged a request for further documentation which was subsequently provided during the first week of March. On 10 March 2004, ICOMOS was informed that the proposal was being put to the Committee and no further comment was required. ICOMOS' primary concern is that throughout the whole process, the organisation was never given a deadline to provide comment.

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

- 8.11 Consultation was also an issue which emerged from the Committee's inquiry into Draft Amendment 39 (Deakin/Forrest residential area). The NCA's consultation process remains inconsistent with the process used by the Territory planning authority throughout the rest of Canberra. In the case of an application to build dual occupancy residences at No. 15 State Circle, the NCA failed to seek assurances from the developer that the neighbours had been informed of the proposal. Not only did the NCA not insist upon its own consultation guidelines being adhered to by the developer, it also advised the neighbours that there was no requirement to consult, which was technically incorrect. The Committee was also not made aware of this redevelopment, even though at the time the Committee was considering Draft Amendment 39 which affected the area. In its report, the Committee recommended that the role of the NCA in consulting residents/lessees in designated areas on development proposals needed to be enhanced through an amendment to the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth).
- 8.12 The NCA remains opposed to the introduction of statutory consultation as part of the works approval process in Designated Areas. The NCA stated that:
- In the view of the Authority there would be no additional benefit derived from statutory consultation regarding proposed works in Designated Areas unless it were undertaken on a national, not just a local, level (as for Amendments to the National Capital Plan). Given the current scrutiny of, and stakeholder involvement in, works in

Designated Areas, and the role and expertise of the Authority, statutory consultation would only delay the development and enhancement of the national capital and add to costs.<sup>13</sup>

## **The Proposal for Pay Parking in the Parliamentary Zone**

8.13 During the Committee's inquiry into an NCA proposal to introduce pay parking into the Parliamentary Zone, the Committee was led to believe that there had been extensive consultation with the various national cultural institutions in the Zone.<sup>14</sup> This was contradicted in a submission from the National Archives which stated that "the National Capital Authority did not involve the National Archives in consultation as part of the development of their proposal to introduce pay parking".<sup>15</sup> The Archives indicated that rather than being involved in the consideration and development of the proposal, the institutions were simply kept informed of what the NCA was planning to introduce by way of a new parking regime and then asked to support it.<sup>16</sup> While the National Archives' claims were refuted by the Authority, the Committee notes that such claims are not inconsistent with the experiences of other members of the community who have addressed their concerns through the Committee, suggesting that the Authority does not take consultation outside of its statutory requirements seriously.

## **The Committee's Views**

8.14 The issue of the consultation process employed by the NCA has been of concern to the Committee for some time. Despite the Committee relaying its concerns to the Authority, on the basis of complaints the

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13 National Capital Authority, Submissions, p 180.

14 See Joint Standing Committee on the National Capital and External Territories, *Not a Town Centre: The proposal for pay parking in the Parliamentary Zone*, 2003, Canprint, Canberra, pp 18-19.

15 National Archives of Australia, Submission to the Inquiry into pay parking in the Parliamentary Zone, 2003.

16 National Archives of Australia, Submission to the Inquiry into pay parking in the Parliamentary Zone, 2003.

Committee has received, the situation does not appear to have been rectified. The Committee examines proposed works on behalf of the Parliament on the understanding that the Authority has sought advice from all interested stakeholders. The Committee finds that it now has to be more sceptical when examining proposals from the NCA. The Committee is particularly concerned that the Authority appears to consider that simply informing stakeholders of its proposal, rather than actively engaging in a two-way process, is sufficient consultation.<sup>17</sup>

- 8.15 The *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) makes no reference to public notification and consultation in respect of work proposals in Designated Areas. The public consultation provisions of the Act only relate to amendments of the National Capital Plan. The Committee initially attempted to address this omission in the Act in its report on Draft Amendment 39. However, the Government did not accept the Committee's recommendation which would have required an amendment to the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth). In light of further evidence highlighting the problems arising from a lack of consultation, the Committee believes it is now critical that this recommendation be accepted by the Government and therefore restates Recommendation 4 from the Committee's 2002 report, *Striking the Right Balance: Draft Amendment 39 National Capital Plan*.

### Recommendation 11

- 8.16 **That the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) be amended to require public consultation by the National Capital Authority in relation to works proposals in Designated Areas.**

Senator Ross Lightfoot  
Chairman

<sup>17</sup> See, for example, National Archives of Australia, Submission to the Inquiry into pay parking in the Parliamentary Zone, 2003, and Ms Kristal Buckley, Transcript, 15 August 2003, pp 149-151.

