
The Parliament of the Commonwealth of Australia

Striking the Right Balance: Draft Amendment 39, National Capital Plan

Joint Standing Committee on the National Capital and External Territories

October 2002
Canberra

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Foreword

Draft Amendment 39, National Capital Plan was first brought to the Committee's attention in February 2001. In April 2002 version three of the draft amendment was provided to the Committee. The Committee considered this revised version and in May 2002 decided to conduct an inquiry. The Committee was especially concerned as to why the original provision of Draft Amendment 39, to remove the Designated Area status from the Deakin/Forrest residential precinct, was not included in version three of the draft amendment.

The Committee was well aware of the competing interests in this matter and the need to strike the right balance between them. The ACT Government seeks to provide a consistent and equitable set of planning and development processes throughout the Territory. Many residents/lessees wish to protect the residential character of the area; others, especially those with properties fronting State Circle, want to improve the area and enhance the value of their properties. The Commonwealth, as represented by the National Capital Authority, wishes to safeguard the national capital significance of the area and encourage development outcomes appropriate to the setting of the area.

The Committee, therefore, sought to ensure that every opportunity was given to all sides to express their views. A full day was allocated for a public hearing on 21 June 2002. A second public hearing was held on 26 August 2002 to hear evidence from Sir Lenox Hewitt, who has two family properties fronting State Circle.

In its deliberations, the Committee focused on three principal issues. The first was to determine who should have planning control over the area in question. The majority of the Committee shares the concern of the National Capital Authority that current and proposed changes to Territory residential policies have created some planning uncertainty. In this climate, the majority of the Committee believes the Commonwealth should retain planning jurisdiction over the area. The majority of the Committee also believes that National Circuit should be the appropriate outer boundary for the area. Although this report has the support of all Members of the Committee on the issue of planning control and the appropriate outer boundary, some Members have drawn a conclusion different from that contained

in recommendation one. An alternative view of this particular issue is, therefore, articulated in the minority report.

The second issue confronting the Committee was deciding on the type of development to be allowed in the area. The area is a well-established residential precinct, for the most part exhibiting the best of Canberra as the Garden City. The Committee as a whole, therefore, believes the land use policy should continue to be residential. The Committee believes non-residential development should be prohibited. The Committee shares the concerns of some residents/lessees that many of the properties fronting State Circle have fallen into a state of disrepair and detract from the national significance of the area. Both the National Capital Authority and Mr Richard Drummond of State Circle Developments presented the Committee with different residential development scenarios for State Circle. The Committee, however, chose not to judge which type of residential development proposal was most suitable for State Circle. The Committee's primary concern is to ensure that any redevelopment of the State Circle sites must be consistent with the residential character of the area and the design and landscaping of a standard in keeping with the national significance of the area.

The third issue considered by the Committee is the consultation processes used by the National Capital Authority. The Committee believes that in relation to the redevelopment of No. 15 State Circle, the Authority failed in its duty to the residents/lessees of the area and ignored the Committee. The Authority admitted its mistake and has sought to rectify its procedures. However, in light of the Committee's recommendation that the Commonwealth retain planning control over the area, the Committee believes changes need to be made to the Act to ensure greater public consultation by and access to the Authority with respect to works approval in the area.

The Committee is grateful to all those who participated in the inquiry.

Senator Ross Lightfoot
Chairman



Membership of the Committee

Chair Senator Ross Lightfoot

Deputy Chair Senator Trish Crossin

Members	The Hon Ian Causley MP	Senator Richard Colbeck (discharged on 27/06/2002)
	Ms Annette Ellis MP	Senator Brian Greig
	Mr Michael Johnson MP	Senator John Hogg (Appointed on 19/08/02)
	Mr Paul Neville MP	Senator Kate Lundy
	The Hon Warren Snowdon MP	Senator Nigel Scullion (Appointed on 27/06/02)
	Mr Cameron Thompson MP	Senator Sue West (to 19/08/02)

Committee Secretariat

Secretary Mrs Margaret Sweiringa

Inquiry Secretary Mr Quinton Clements

Research Officer Mrs Sonya Fladun

Administrative Officers Ms Tiana Gray

Mr Daniel Miletic



Terms of reference

On 15 April 2002, the Minister for Regional Services, Territories and Local Government, the Hon Wilson Tuckey, MP, referred a revised Draft Amendment 39 to the Joint Committee on the National Capital and External Territories for consideration, seeking the Committee's views and asking if it wished to inquire into the matter. On 15 May 2002, the Committee resolved to hold a one day hearing into the Revised Draft Amendment in order to clarify issues surrounding the changes embodied in the amendment.



List of recommendations

2 The Question of Planning Control

Recommendation 1

That Designated Area Status applying to the Deakin/Forrest residential area between State Circle and National Circuit be retained.

3 The Type of Development

Recommendation 2

That the established use of the land in the Deakin/Forrest area for residential purposes continue and non-residential development be prohibited.

Recommendation 3

That development along State Circle between Hobart and Adelaide Avenues continue to be residential and 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.

4 The Consultation Process

Recommendation 4

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



Introduction

The Legislative Framework

National Capital Plan

- 1.1 The *Australian Capital Territory (Planning and Land Management) Act 1988* (the Act) provides for the preparation and administration of the National Capital Plan.
- 1.2 The Plan was prepared by the National Capital Planning Authority and took effect on 21 December 1990, following extensive public consultation, agreement by the ACT Government, support by the then Joint Parliamentary Committee on the Australian Capital Territory and approval by the then Minister for the Arts, Tourism and Territories, and with the support of both Houses of Parliament.
- 1.3 Section 9 of the Act provides:

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.¹
- 1.4 The Act requires that the Commonwealth, a Commonwealth authority, the Territory or a Territory authority shall not perform any act inconsistent with the National Capital Plan.²
- 1.5 The Plan defines planning principles and policies and sets standards to maintain and enhance the National Capital. It sets general policies for

¹ *Australian Capital Territory (Planning and Land Management) Act 1988*, Section 9.

² *Australian Capital Territory (Planning and Land Management) Act 1988*, Section 11.

land use and planning national and arterial road systems throughout the Australian Capital Territory.

Amendments to the National Capital Plan

- 1.6 The Act requires the National Capital Authority (NCA) to keep the Plan under review and to propose amendments. The procedure involves preparing draft amendments, inviting comments from the public and stakeholders and consultation with the Territory planning authority. Section 20A of the Act provides the means for the Minister to resolve a possible deadlock between the NCA and the Territory planning authority concerning draft amendments to the Plan.
- 1.7 Amendments to the Plan are subject to the Minister's approval.³ When the Minister approves a draft amendment, a notice of the approval is published in the Commonwealth Gazette. The amendment becomes effective at the date of publication. The amendment must then be laid before each House of Parliament within six sitting days of Gazettal.⁴ The amendment can be disallowed by resolution of either House within six further sitting days.

National Capital Authority

- 1.8 When self-government was introduced in the Australian Capital Territory in 1989, the Federal Government established the National Capital Planning Authority to manage its continuing interest in Canberra as Australia's national capital.⁵ The Authority was given responsibility on 1 July 1992 for managing National Land and associated assets, required for the special purposes of the Capital.
- 1.9 The National Capital Authority (NCA) was established by, and operates under, the Act. The Act is administered by the Minister for Regional Services, Territories and Local Government, presently the Hon. Wilson Tuckey MP. The NCA is accountable to Parliament.
- 1.10 The NCA is responsible for ensuring that the full range of functions to maintain, enhance and promote the national capital qualities of Canberra are met for the Commonwealth on behalf of the Australian people. The functions of the Authority are set out at section 6 of the Act:
- a) to prepare and administer the National Capital Plan;

3 *Australian Capital Territory (Planning and Land Management) Act 1988*, Section 18.

4 *Australian Capital Territory (Planning and Land Management) Act 1988*, Sections 22 & 23.

5 Since 7 July 1997 called the National Capital Authority.

- b) to keep the Plan under constant review and to propose amendments to it when necessary;
- c) on behalf of the Commonwealth, to commission works to be carried out in Designated Areas in accordance with the Plan where neither a Department of State of the Commonwealth nor any Commonwealth authority has the responsibility to commission those works;
- d) to recommend to the Minister the carrying out of works that it considers desirable to maintain or enhance the character of the National Capital;
- e) to foster an awareness of Canberra as the National Capital;
- f) with the approval of the Minister, to perform planning services for any person or body, whether within Australia or overseas; and
- g) with the Minister's approval, on behalf of the Commonwealth, to manage National Land designated in writing by the Minister as land required for the special purposes of Canberra as the National Capital.⁶

1.11 Section 8 of the Act provides the NCA with “power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions”.⁷

Designated Areas

1.12 Section 10 (1) of the Act states that “the Plan may specify areas of land that have the special characteristics of the National Capital to be designated Areas”.⁸ Section 10 (2) provides that the Plan:

may set out the detailed conditions of planning, design and development in Designated Areas and the priorities in carrying out such planning, design and development.⁹

1.13 The Plan specifies as Designated Areas the following:

- Lake Burley Griffin and its foreshores;
- the Parliamentary Zone;
- the balance of a Central National Area adjoining the lake and the Zone, and extending from the foot of Black Mountain to the airport;
- the Inner Hills which form the setting of the Central National Area; and

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

7 *Australian Capital Territory (Planning and Land Management) Act 1988*, Section 8.

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

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

- the Main Avenues and Approach Roads between the ACT border and the Central National Area.¹⁰
- 1.14 Works in Designated Areas require written approval from the National Capital Authority and must meet any detailed conditions of planning, design and development set out in the Plan.
- 1.15 Designated Areas include both Territory Land, which is managed by the ACT Government on behalf of the Commonwealth, and National Land, which is land intended for use by or on behalf of the Commonwealth. National Land is managed by Commonwealth agencies including the Department of Defence, the Department of Finance and Administration and the National Capital Authority. The area under examination, the Deakin/Forrest residential area between State Circle and National Circuit, is unique in that it is the only Territory Land used for residential purposes designated under the National Capital Plan.

The Territory Plan

- 1.16 Part IV of the Act provides for the ACT Legislative Assembly to set up a Territory planning authority responsible for preparing and administering the Territory Plan. The responsibilities of the Territory planning authority are carried out by the Planning and Land Management Group within the ACT Department of Urban Services, as well as other ACT Government agencies.
- 1.17 The Territory Plan is there to ensure, in a manner not inconsistent with the National Capital Plan, the planning and development of the Territory to give the people of the Territory an attractive, safe and efficient environment in which to live and work and have their recreation. The Territory Plan came into effect in September 1993 following wide public consultation and extensive discussions with the National Capital Authority.
- 1.18 The ACT has a dual system of planning. There are two plans – the National Capital Plan and the Territory Plan - and two planning authorities – the National Capital Authority (NCA) and ACT Planning and Land Management (PALM).
- 1.19 The dual planning arrangements appear to have worked fairly well. The NCA notes that it does have a “very good working relationship” with PALM.¹¹ There is a capacity for both authorities to work jointly on some planning tasks.

10 National Capital Authority, *Consolidated National Capital Plan*, 2001, p. 11

11 Ms Annabelle Pegrum, Transcript, p. 41.

- 1.20 However, from time to time, calls are made for all planning and land management in the ACT to be under the authority of one government agency.

The Deakin/Forrest Residential Area

- 1.21 The land between Hobart Avenue, Adelaide Avenue, National Circuit and State Circle – the subject area - is residential, having been established in the 1950s. There are 86 residential dwellings in this precinct.¹² Approximately 80 percent of these are owner-occupied.¹³
- 1.22 This precinct has been included in the Central National Area as set out in Part One of the National Capital Plan. This area of Deakin/Forrest is specified as a Designated Area under the provisions of Section 10 (1) of the Act, and came into effect with the National Capital Plan in 1990. It is the only standard density residential land included within a Designated Area.
- 1.23 Although it has Designated Area Status, the land is Territory Land. Therefore the ACT has:
- responsibility for administering the land and the leasehold, but ... the detailed planning policy arrangements are the responsibility of the National Capital Authority. Any works approvals, importantly, are the responsibility of the National Capital Authority.¹⁴
- 1.24 This has meant that the residential properties in this area are subject to different terminology, development conditions and planning processes from other residences in the surrounding suburb or elsewhere in the ACT.

12 Mr Garrick Calnan, Transcript, P. 3.

13 Mr David Wright, Transcript, p. 42.

14 Mr Garrick Calnan, Transcript, pp. 2-3.

Figure 1 Overview of Deakin/Forrest residential area



Source *National Capital Authority*

Draft Amendment 39

- 1.25 Since 1993 the NCA has been canvassed by some lessees of properties on State Circle to have the land use changed. Most of these approaches were from lessees who were not residents in the area and were experiencing difficulty leasing their properties “because of the loss of amenity arising from the increasing traffic on State Circle” since the construction of Parliament House.¹⁵ It was argued by several lessees that there is a case for treating that part of the precinct fronting State Circle differently from the rest of the precinct. This would include different design parameters and land use options for the State Circle section.¹⁶
- 1.26 The NCA carried out a planning study of the area fronting State Circle between Adelaide and Hobart Avenues in 1998. In 1999 the Parliamentary Zone Review Advisory Panel considered the land use of this area. The Panel found “no sound planning reasons or evidence” to support a change in land use from the existing residential use.¹⁷ The Review Panel noted that “the demand for change is not widespread among the lessees of the ninety or so residential properties in the area”.¹⁸ At the time of the release of the Review Panel’s report in March 2000, the NCA was not proposing to alter the land use arrangements for the area.

Version One (November 2000)

- 1.27 However in March 2000 PALM approached the NCA seeking an amendment to the National Capital Plan to uplift the Designated Area Status of the land. In doing so, PALM wanted to bring the area under the same development controls as other non-designated residential areas in the ACT. The NCA agreed to explore whether the development controls for the area could be brought into line with the Territory Plan whilst remaining consistent with the special status of the area.
- 1.28 In November 2000 the NCA released Draft Amendment 39 which proposed to remove the Designated Area status from the precinct and introduce specific principles and guidelines to ensure that the residential

15 National Capital Authority, March 2000, *Parliamentary Zone Review Background Paper: State Circle Residential Areas Planning Review*, p. 3.

16 National Capital Authority, March 2000, *Parliamentary Zone Review Background Paper: State Circle Residential Areas Planning Review*, p. 8.

17 National Capital Authority, March 2000, *Parliamentary Zone Review Background Paper: State Circle Residential Areas Planning Review*, p. 12.

18 National Capital Authority, March 2000, *Parliamentary Zone Review Background Paper: State Circle Residential Areas Planning Review*, p. 12.

character was retained. Jurisdiction for detailed planning and development control on the land would pass from the Commonwealth and the National Capital Plan to the ACT and the Territory Plan. Development in the Deakin/Forrest area would thus become subject to the same planning controls as other residential areas in the ACT.

- 1.29 The national significance of the area would be protected through the inclusion of area specific policies and aesthetic principles in the National Capital Plan. “All forms of commercial activity ... not normally permitted as home occupations or home businesses” were prohibited. A general outline of the architectural treatment to be used for buildings fronting State Circle and in the vicinity of the Lodge was provided, and it recommended that developments not be more than two storeys in height.¹⁹

Version Two (June 2001)

- 1.30 Following the release of Draft Amendment 39 in November 2000 the NCA undertook a process of public consultations. All residents in the area were notified by mail and PALM was notified in accordance with the requirements of the Act. The diplomatic residences in the area, the Official Establishments Trust and the Joint Standing Committee on the National Capital and External Territories were also informed.
- 1.31 In response, the NCA received 11 written submissions, the majority from residents and lessees. In December 2000 the NCA notified the Office of Regulation Review and was advised that a Regulation Impact Statement was not required. The NCA briefed the Joint Standing Committee on two occasions in 2001 - 28 February and 4 April.
- 1.32 The Joint Standing Committee expressed reservations at the proposal to reduce the responsibilities of the Commonwealth for planning in the area and the impact redevelopment may have on the Prime Minister’s Lodge and the area generally.
- 1.33 In order to address concerns raised during the consultation process the NCA issued a revised Draft Amendment 39 in June 2001 and invited comment. The revised Draft Amendment also sought to remove the Designated Area status, but was more prescriptive in relation to the land use provisions. “Serviced apartments, guest houses, boarding houses and the like” were prohibited.²⁰ The height of developments was restricted to two storeys and no more than eight metres above ground, and greater

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

20 National Capital Authority, June 2001, *National Capital Plan: Draft Amendment 39 (Deakin/Forrest Residential Area between State Circle and National Circuit)*.

architectural treatment and landscaping detail for the sites fronting State Circle would be required.

Version Three (April 2002)

- 1.34 In August 2001, after considering the issues raised in both rounds of consultations, the NCA decided to revise further the Draft Amendment. This third version of Draft Amendment 39 initially included the same planning and land use provisions as version two. However, in December 2001 the NCA resolved not to remove the Designated Area Status. The NCA states that this decision is primarily due to the uncertainty caused by recent changes in the ACT Government's residential policies.²¹

ACT Government Residential Policy Changes

- 1.35 The NCA notes that prior to the election of a new ACT Government in October 2001, the residential land use policies of the National Capital Plan and the Territory Plan were similar.²² Both allowed for dual occupancy and two storey residential developments.
- 1.36 However on 6 December 2001 the new ACT Government introduced *Draft Territory Plan Variation No. 192 (Residential Land Use Policies for Dual and Triple Occupancy Housing)* – (DTPV192). DTPV192 had immediate effect and would apply for 12 months, after which it would be withdrawn and a more comprehensive framework for residential development prepared. A limit of 5% per section on dual and triple occupancies was imposed, effectively placing a moratorium on such developments.
- 1.37 On 30 May 2002 the results of the ACT Government's residential review were released as *Draft Territory Plan Variation No. 200 (Residential Land Use Policies, Modification to Residential Codes and Master Plan Procedures)* – (DTPV200), which has interim effect. DTPV200 is designed to direct redevelopment pressures away from 'Suburban Areas' by imposing restrictions on plot ratios, single storey limits for a second dwelling, and prohibiting block amalgamation or unit titling.
- 1.38 The NCA understands that the Deakin/Forrest Designated Area would fall within the definition of a 'Suburban Area' under DTPV200.²³ Therefore, if the ACT had planning control of the area, multi-unit redevelopment would be prohibited and dual occupancy limited. The NCA argues that the "positive urban design outcomes underpinning the

21 National Capital Authority, Submissions, p. 121.

22 National Capital Authority, Submissions, p. 120.

23 National Capital Authority, Submissions, p. 121.

provisions of Draft Amendment 39 for this nationally significant area would thereby be compromised”.²⁴

The Provisions of Version Three - Draft Amendment 39 (April 2002)

1.39 As it currently stands, Draft Amendment 39:

proposes to allow for residential redevelopment of the Deakin/Forrest residential area, whilst ensuring the national significance of the area, and the residential character and land use, is maintained.²⁵

1.40 Commercial accommodation such as serviced apartments would be prohibited. A height restriction of two storeys and eight metres would apply. Detailed architectural and landscaping requirements for sites fronting State Circle would be introduced.

1.41 In addition, version three proposes replacing the existing *Appendix N – The Conduct of Business on Residential Land* of the National Capital Plan with a revised Appendix N. The revised Appendix N introduces the term ‘Home Business’ which means: “the use of residential land for carrying out a profession, trade, occupation or calling on the land”.²⁶ The NCA points out that the modifications to the criteria allowing home businesses and home occupations bring these into line with those of the Territory Plan.²⁷ The Committee observes that this additional inclusion in version three seeks to introduce matters the NCA were trying to achieve through uplift of the Designated Area by a different method.

The Issues

1.42 In examining the evidence presented to it, the Committee has been conscious of the need to strike the right balance in terms of redevelopment and planning control between the interests of the residents/lessees in the precinct and maintaining and enhancing the significance of the area for the national capital. The Committee identified three principal issues.

1.43 The first is that of determining who should have planning control over the area. The principal change between version one of Draft Amendment 39 and the current version under examination is that the Designated Area

24 National Capital Authority, Submissions, p. 121.

25 National Capital Authority, Submissions, p. 114.

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

27 National Capital Authority, Submissions, p. 122.

status will not be removed from the area and therefore planning control will not pass to the ACT.

- 1.44 The second issue is to decide on the type of development that should be permitted in the area. With the exception of the two diplomatic missions, the area is residential. However, the residences fronting State Circle are an anomaly within the overall context of State Circle and the parliamentary precinct. The question arises as to whether any redevelopment of the sites fronting State Circle must be consistent with the general residential character of the area? If so, what type of residential development is appropriate for such a significant site? Some lessees canvassed the possibility of differential treatment for the State Circle sites including a change in land use policy to allow non-residential development.²⁸
- 1.45 The third issue to emerge is that of the consultative processes of the agency responsible for planning and development control in the area, the National Capital Authority. It is clear to the Committee that the NCA has erred in its obligation to the residents/lessees of the Section 6 when it approved the redevelopment of No. 15 State Circle. There are two aspects to this issue of consultation. Firstly, there is the observation of the error and the need to fix it. The NCA has given assurances that the matter has been rectified and that changes have been made to NCA procedures to ensure it does not occur again. Secondly, however, the NCA's consultation process remains inconsistent with the process used by the Territory authorities throughout the rest of Canberra.

The Role of the Committee

- 1.46 Section 1 (c) of the Committee's Resolution of Appointment authorises the Committee to inquire into and report on:
- Such amendments to the National Capital Plan as are referred to it by a Minister responsible for administering the Australian National Territory (Planning and Land Management) Act 1988.²⁹
- 1.47 The Committee has an advisory role in reporting to Parliament, but it is not the approving authority. However, sections 22 and 23 of the Act require amendments to the Plan be approved by both Houses of Parliament.³⁰

28 Sir Lenox Hewitt, Transcript, p. 73.

29 Joint Standing Committee on the National Capital and External Territories, February 2002, *Resolution of Appointment*.

30 *Australian Capital Territory (Planning and Land Management) Act 1988*, Sections 22-23.

- 1.48 The Committee first considered Draft Amendment 39 in February 2001. On 28 February 2001 the Committee was briefed by the NCA. In March 2001 the Committee sought further advice from the NCA on heritage and community consultation issues. The Committee was briefed again by the NCA on 4 April 2001. At this point the Committee expressed reservations with some aspects of the Draft Amendment.
- 1.49 In June 2001 the Committee was advised by the NCA that, in response to the concerns of the Committee, the Draft Amendment had been revised. The NCA also advised that further consultations with PALM and the members of the public who had earlier made representations would take place before submitting the revised draft amendment to the Minister.
- 1.50 In August 2001 the Committee wrote to individuals who had expressed views to the Committee on Draft Amendment 39, advising that it would reserve a decision on whether to take evidence on the matter until the Minister had forwarded the revised draft amendment to the Committee. The Committee did not receive anything from the Minister on a revised Draft Amendment 39 before the dissolution of the House in October 2001. In December 2001 the NCA decided to change the basis of the original intent of Draft Amendment 39, to uplift the Designated Area status of the precinct.

Conduct of the Inquiry

- 1.51 In April 2002 the Minister for Regional Services, Territories and Local Government, Hon. Wilson Tuckey MP, wrote to the Committee in relation to the revised Draft Amendment 39. This was the first time the Committee was made aware of what it sees as a fundamental change to Draft Amendment 39. At its meeting on 15 May 2002 the Committee resolved “that the Committee recommend to the Minister that the Committee conduct a one day hearing into Draft Amendment 39”.³¹ This resolution was made on the basis of the fundamental change to the draft amendment and concerns raised with the Committee by residents/lessees. Had the Committee not chosen to inquire into the revised draft amendment, it could be argued that the NCA would have been obligated to begin the whole consultation process again. In effect, by initiating an inquiry the Committee was assisting the NCA in its obligation to consult the public. On 16 May 2002 the Minister referred the revised Draft Amendment 39 to the Committee for inquiry.
- 1.52 The Committee was conscious of the need to balance the interests of both the national capital and the residents/lessees. The Committee

31 Resolution, 15 May 2002, Joint Standing Committee on the National Capital and External Territories.

endeavoured to ensure that every opportunity was given to the residents/lessees to express their views. It allocated a full day for a public hearing on 21 June 2002. The inquiry and hearing were advertised in the *Canberra Times* newspaper. The Committee wrote to all residents/lessees in the subject area, and to other interested parties including the ACT Government and the NCA inviting submissions.

- 1.53 Fifteen submissions were received. Eleven witnesses, representing the ACT Government, the National Capital Authority, the ACT Division of the Royal Australian Planning Institute, residents/lessees and a developer, gave evidence at the public hearing on 21 June 2002. A second public hearing was held on 26 August 2002 to hear evidence from Sir Lenox Hewitt, a leaseholder of a property fronting State Circle.

Structure of the Report

- 1.54 The report is divided into four chapters. Chapter One provides the background to the inquiry and reference to the Committee. Chapter Two examines the issue of whether planning control over the subject area should be retained by the Commonwealth through the NCA or handed to the Territory. Chapter Three looks at the type of development appropriate for the area. Chapter Four examines the consultation process undertaken by the NCA in relation to redevelopment in the area.

The Question of Planning Control

Background

The Dual Planning System

2.1 In his account of the design of Canberra the late Paul Reid argued that:

the Canberra of today is not Griffin's city, it is the creation of the NCDC. In 30 years the Commission changed Canberra from a large country town into a beautiful small city, fully integrated with its natural setting, well served by urban services and by a network of freely flowing highways. It is a model of the best urban development practice of the mid and late twentieth century.¹

The Advent of Self-Government

2.2 In 1989 the National Capital underwent a significant change in the way it was managed. The advent of self-government for the ACT saw responsibility for the National Capital separated from the administration of the Territory.

2.3 Although the responsibilities for city planning were transferred to the new Territory government, the Federal Government retained responsibility for Canberra's role as the National Capital. The National Capital Development Commission (NCDC) was abolished, replaced by the

¹ Paul Reid, 2002, *Canberra following Griffin: A Design History of Australia's National Capital*, National Archives of Australia. p. 322.

smaller National Capital Planning Authority, “charged with protecting the city’s national capital significance”.²

- 2.4 The *Australian Capital Territory (Planning and Land Management) Act 1988* introduced two separate plans, and two separate planning authorities, for Canberra.³ The potential for the two planning systems to clash is addressed by Section 26 of the Act which requires that the Territory Plan not be inconsistent with the National Capital Plan.⁴ Both planning authorities recognise the challenges of working together.
- 2.5 The framework for land use and development throughout the Territory is provided by the National Capital Plan. Within this framework, the National Capital Plan has designated specific areas as having “the special characteristics of the national capital”.⁵ The National Capital Authority has responsibility for “determining detailed conditions of planning, design and development, and for works approval” in the Designated Areas.⁶ These designated areas “determine the extent of the Federal Government’s influence over the future of the city”.⁷

The Question of Uplift

- 2.6 In March 2000 PALM proposed to the NCA an amendment of the National Capital Plan to remove the Designated Area status of the Deakin/Forrest area. The effect of this proposal would be to bring the area into line with other residential areas in the ACT in terms of planning control.
- 2.7 Although the initial response of the NCA was to reject PALM’s proposal, it undertook to:
- explore whether changes to development controls in the Plan would overcome the differences that existed for residential areas between the National Capital Plan and the Territory Plan (consistent with the national significance of the area).⁸

2 Paul Reid, 2002, *Canberra following Griffin: A Design History of Australia’s National Capital*, National Archives of Australia. p. 323.

3 *Australian Capital Territory (Planning and Land Management) Act 1988*, Part III – The National Capital Plan & Part IV – The Territory Plan.

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

5 National Capital Authority, *Consolidated National Capital Plan*, 2001, p. 10.

6 National Capital Authority, *Consolidated National Capital Plan*, 2001, p. 11.

7 Paul Reid, 2002, *Canberra following Griffin: A Design History of Australia’s National Capital*, National Archives of Australia. p. 327.

8 National Capital Authority, Submissions, p. 116.

- 2.8 The outcome of the NCA's deliberations was the first version of Draft Amendment 39 released in November 2000. The Designated Area status would be uplifted from all the residential blocks in the area. Jurisdiction for detailed planning and development control on the land would pass from the Commonwealth and National Capital Plan to the Territory and the Territory Plan.⁹ In order to protect the residential character of the area a set of aesthetic principles and guidelines would be incorporated into the National Capital Plan. PALM would assume responsibility for approving development in the area through the Territory Plan. Development could not, of course, be inconsistent with the provisions of the National Capital Plan. The Committee notes that the principal reason for this original version of Draft Amendment 39 was to uplift the Designated Area status.
- 2.9 Following a period of consultation, the NCA released a revised version in June 2001. Version two of Draft Amendment 39 also proposed to uplift the Designated Area status, but introduced a more prescriptive set of controls on land use and development. Following the announcement of proposed variations to the Territory Plan by the recently elected ACT Government, the NCA released version three of Draft Amendment 39 in April 2002. The principal change in version three is that the Designated Area status of the precinct would be retained.

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

Table 1 Provisions of Draft Amendment 39, National Capital Plan

	Version One (November 2000)	Version Two (June 2001)	Version Three (April 2002)
Designated Area Status	<i>Uplifted</i>	<i>Uplifted</i>	<i>Retained</i>
Land Use Policy	<i>Residential</i>	<i>Residential</i>	<i>Residential</i>
Commercial Accommodation		<i>Prohibited</i>	<i>Prohibited</i>
Development in proximity to the Lodge	<i>Building design to reflect dominant urban design of area</i>	<i>Building design to reflect dominant urban design of area</i>	<i>Building design to reflect dominant urban design of area</i>
Building Height	<i>Not more than two storeys</i>	<i>No more than two storeys & no point more than 8 metres above ground</i>	<i>No more than two storeys & no point more than 8 metres above ground/ mandatory two storeys on State Circle</i>
Architectural Treatment on State Circle	<i>Reflect residential character/ No unarticulated walls, repetitive use of design elements or use of materials/colours dominating streetscape</i>	<i>Reflect residential character/ No unarticulated walls, repetitive use of design elements or use of materials/colours dominating streetscape</i>	<i>Reflect residential character/ No unarticulated walls, repetitive use of design elements or use of materials/colours dominating streetscape</i>
Set back	<i>Generous distance/no structures erected in setback area</i>	<i>Landscape area at least 10 metres in depth across front/ no structures except courtyard walls permitted/ courtyard walls no higher than 1.8 metres & no closer than 6 metres from State Circle property boundary</i>	<i>Landscape area at least 10 metres in depth across front/ no structures except courtyard walls permitted/ courtyard walls no higher than 1.8 metres & no closer than 6 metres from State Circle property boundary</i>
Landscape	<i>Soft planting in front/ avoid large areas of exposed hard surfaces</i>	<i>Soft landscape setting in front/ avoid large areas of exposed hard surfaces</i>	<i>Soft landscape setting in front/ avoid large areas of exposed hard surfaces</i>
Plot Ratio		<i>Not to exceed 35%</i>	<i>0.4 for existing blocks/ up to 0.6 where sites are amalgamated</i>
Vehicular Access to/from State Circle	<i>Reduced</i>	<i>Reduced</i>	<i>Reduced</i>
Signage on State Circle	<i>Regulated to have low visual impact</i>		
Roof Mounted Infrastructure	<i>Located to have low visual impact</i>	<i>Located to have low visual impact</i>	<i>Located to have low visual impact</i>
Home Occupations/ Businesses			<i>Amend Appendix N of National Capital Plan</i>

Source Draft Amendment 39, National Capital Plan

The Territory's Position

- 2.10 The ACT Government point out that “various complexities emerge in the ACT where Territory Land is subject to designation under the National Capital Plan”.¹⁰ Most of the roughly 121,000 residential dwellings in the ACT are subject to the Residential Land Use Policies and the Design and Siting Codes laid out in the Territory Plan.¹¹ But the 86 dwellings in Deakin/Forrest precinct are subject to the Design and Siting Conditions in Appendix H of the National Capital Plan together with appendices M (Residential Land Use), N (The Conduct of Business on Residential Land), O (Aged Persons Accommodation) and P (Dual Occupancy of Detached House Blocks).¹²
- 2.11 In terms of lease applications and variations all residential dwellings in the ACT, including the 86 dwellings in the Deakin/Forrest precinct, are subject to the policies in the Territory Plan and the procedures outlined in the relevant Territory legislation.¹³ But with respect to any works in the precinct, approval must be sought from the NCA.¹⁴
- 2.12 An example of the complexity this requirement adds to the development process is provided by the recent case of No. 15 State Circle (block 6, section 6, Forrest). The requirements for and process of administering development applications on Territory Land is set out in Part 6 of the ACT *Land (Planning and Environment) Act 1991* (the Land Act) and the ACT *Land (Planning and Environment) Regulations* (the Regulations). As Mr Garrick Calnan of ACT Planning and Land Management points out, if No 15 State Circle was not located in a designated area under the National Capital Plan, the dual occupancy development would have been subject to the development application process set out in the Land Act.¹⁵ Under this process public notification requires 15 business days.
- 2.13 The Regulations, however, exempt development that is located in a designated area (other than lease variations) from the requirements of Part 6 of the Land Act. The reason for this exemption is that development in these areas is subject to works approval by the NCA under the Commonwealth *ACT (Planning and Land Management) Act 1988*. Mr Calnan

10 ACT Government, Submissions, p. 179.

11 Mr Garrick Calnan, Transcript, p. 3.

12 ACT Government, Submissions, p. 180.

13 Mr Garrick Calnan, Transcript, p. 3; The *Land (Planning and Environment) Act 1991* is the ACT's integrated legislation dealing with all aspects of planning, environmental management and land administration (except unit titles and compulsory land acquisition); To vary a lease means to add, remove or change one or more of its provisions.

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

15 Mr Garrick Calnan, Submissions, p. 187.

notes that if there was no exemption, development would have to be approved under both Territory and Commonwealth legislation.¹⁶

- 2.14 However, if a variation to the lease was required, then a development application would still need to be lodged under the Land Act as lease variations in designated areas are not exempted by the Regulations. Mr Calnan notes that it appears no lease variation was required for the dual occupancy proposal at No 15 State Circle and therefore no development application was required to be lodged with the Territory.¹⁷
- 2.15 The residents/lessees in the Deakin/Forrest precinct are thus “subject to different legislative and procedural requirements” from their counterparts elsewhere the ACT.¹⁸ This is despite the fact that “the land is Territory land and is privately leased by Territory citizens”.¹⁹ The ACT Government believes this arrangement is not appropriate, and that it
- raises issues of consistency and equity in terms of the varying options available for lease holders under the respective policies and the different approval processes applying to development under the relevant legislation.²⁰
- 2.16 The ACT Government, through PALM, acknowledge that given the national significance of the area, the Commonwealth has a role in determining appropriate planning outcomes.²¹ However, PALM believes that the Commonwealth’s interest in protecting the national significance of the area can be guaranteed without retaining the Designated Area status.
- 2.17 PALM propose incorporating into the National Capital Plan special planning and development requirements for the area similar to those, outlined in Part One of the Plan, applying to Main Avenues and Approach Routes.²² These requirements include:
- Development, except in relation to Northbourne Avenue, is to conform to Development Control Plans (agreed by the Authority) which seek to secure the integrity of the Main Avenues as approaches to the Parliamentary Zone and ensure that the setting, buildings and purposes of development enhance that function.
- Development Control Plans and (in relation to Northbourne Avenue) development shall:
-

16 Mr Garrick Calnan, Submissions, p. 187.

17 Mr Garrick Calnan, Submissions, p. 187.

18 Mr Garrick Calnan, Transcript, p. 3.

19 Mr Garrick Calnan, Transcript, p. 5.

20 ACT Government, Submissions, p. 180

21 Mr Garrick Calnan, Transcript, p. 3.

22 Mr Garrick Calnan, Transcript, p. 3.

(i) make provision for national uses, offices for national associations, tourist accommodation and residential development.

(ii) seek high standards of building design and finish. External materials should be predominantly light in tone and require little maintenance. Continuous glass facades should be avoided ...

(iii) incorporate the following where Main Avenues are the final approaches to the Parliamentary Zone:

⇒ building height controls to ensure that buildings are at least 3 storeys in height unless specifically shown otherwise in an agreed Development Control Plan. Plantrooms to be additional to these heights

⇒ building lines, to be 10 metres unless specifically shown otherwise in an agreed Development Control Plan. The area in front of the building line is to be landscaped, and exclusive of parking. Minor encroachment of basement parking into this area may be considered ...²³

2.18 State Circle is listed as a Main Avenue in the Plan, as well as being a designated area. However, for the purposes of special requirements, State Circle is not listed as it is a Designated Area. PALM note that if Designated Area status were removed from the Deakin/Forrest precinct, the special requirements for Main Avenues would apply to State Circle and could be extended to include the rest of the precinct.²⁴ These requirements would then be reflected in the Territory Plan as determined by the Act. This would entail “preparation of a draft variation to the Territory Plan for public release”.²⁵

2.19 The ACT Government remains concerned with the “additional complications” that Designated Area status introduces into the development approval process.²⁶ Therefore it continues to favour the uplifting of the Designated Area status from the precinct and does not “support the revised Draft Amendment”.²⁷

The NCA's Position

2.20 The first version of Draft Amendment 39 sought to “remove the Designated Area status” of the Deakin/Forrest precinct.²⁸ The NCA

23 National Capital Authority, Consolidated *National Capital Plan, 2001*, p. 75

24 Mr Garrick Calnan, Transcript, p. 4.

25 Mr Garrick Calnan, Transcript, p. 4.

26 Mr Garrick Calnan, Transcript, p. 5.

27 ACT Government, Submissions, p. 180.

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

appears to have been persuaded by the fact that the Deakin/Forrest precinct is the only residential land effectively under its control and the planning and development inconsistencies between the two jurisdictions. Following PALM's proposal in March 2000 to uplift designation, the NCA and PALM discussed opportunities for development in the area, ranging from commercial uses to the residential uses that currently exist and which the draft amendment proposes to retain. At the time, the NCA felt that with adequate controls in place, it would be appropriate to propose uplifting designation.²⁹

2.21 Whilst providing for more prescriptive planning and development controls for the precinct, the second version of Draft Amendment 39 released in June 2001 also proposed to remove the Designated Area status.

2.22 On 6 December 2001 the ACT Government introduced an interim measure restricting the number of dual occupancies in Canberra's suburbs - *Draft Territory Plan Variation No. 192 (Residential Land Use Policies for Dual and Triple Occupancy Housing)* - (DTPV192).³⁰ The ACT Government also announced that it would undertake a comprehensive examination of the Territory's residential development policies. By limiting to 5% the number of dual occupancies in each residential section, DTPV192 effectively placed a "moratorium on such developments".³¹ The NCA decided to:

wait and reconsider whether it was appropriate to uplift designation because we might be introducing layers of complexity that would in fact block the urban outcomes that we sought to achieve.³²

2.23 On 7 December 2001 the NCA "agreed to reconsider the merit of uplifting Designation".³³ Consequently the NCA prepared version three of Draft Amendment 39 in which Designated Area status for the precinct is retained. On 30 May 2002, following its review of existing Territory residential planning policies, the ACT Government released *Draft Territory Plan Variation No. 200 (Residential Land Use Policies, Modification to Residential Codes and Master Plan Procedures)* - (DTPV200). DTPV200 is planned as a forerunner to a more comprehensive review of the residential design and siting codes in the Territory Plan.³⁴ By imposing restrictions on plot ratios, single storey limits for a second dwelling, and prohibiting

29 National Capital Authority, Transcript, Senate Estimates Committee Hearings, 30 May 2002, p. 402.

30 National Capital Authority, Submissions, p. 120.

31 National Capital Authority, Submissions, p. 120.

32 Ms Annabelle Pegrum, Transcript, p. 23.

33 National Capital Authority, Submissions, p. 119.

34 *Draft Variation to the Territory Plan, No. 200: Residential Land Use Policies, Modification to Residential Codes and Master Plan Procedures.*

block amalgamation or unit titling, DTPV200 should have the effect of directing redevelopment pressures away from ‘Suburban Areas’.³⁵ The Committee, however, notes that this may not necessarily be the outcome given that the NCA would still be able to stipulate specific conditions for the area as a condition of uplift.

- 2.24 The NCA believes the Deakin/Forrest Designated Area would fall within the definition of a ‘Suburban Area’ under DTPV200.³⁶ Therefore, if uplift did go ahead and the Territory had planning control of the area, multi-unit redevelopment would be prohibited and dual occupancy limited. Therefore in the NCA’s view the design outcomes it wants to encourage for the area, in keeping with its national significance, would be threatened.³⁷

The Views of the Residents/Lessees

- 2.25 Of the 11 other individuals and organisations that provided submissions to the Committee, six oppose removing the Designated Area status from the precinct albeit for different reasons, three favour removing Designated Area status, and two did not express a view.
- 2.26 Sir Lenox Hewitt, a lessee in the area, believes that the NCA has not satisfactorily justified its proposed “radical alterations of April 2002” to the original “laudable’ intent of Draft Amendment 39, to remove the Designated Area status from the precinct.³⁸ Sir Lenox shares the view of PALM that the area, in particular that part fronting State Circle, should be treated in the same fashion as the other Main Avenues listed in the National Capital Plan.³⁹
- 2.27 Dr Boardman, another resident/lessee, however, believes the land, especially that fronting State Circle, is “too close to the National Parliament to warrant transfer of the responsibility to the Territory”.⁴⁰ In addition, he points out that the Commonwealth “should retain the right to know what will be the overall development there in 30 or 40 or 50 years”.⁴¹
- 2.28 Mr Malcolm Smith, former Chief Planner of the National Capital Planning Authority, “strongly” supports the retention of the Designated Area status.⁴² Mr Smith points, firstly, to the national significance of the area.

35 National Capital Authority, Submissions, p. 121.

36 National Capital Authority, Submissions, p. 121.

37 National Capital Authority, Submissions, p. 121.

38 Sir Lenox Hewitt, Submissions, p. 176.

39 Sir Lenox Hewitt, Submissions, p. 177.

40 Dr Keith Boardman, Submissions, p. 2.

41 Dr Keith Boardman, Transcript, p. 45.

42 Mr Malcolm Smith, Submissions, p. 37.

He notes that “the role and form of State Circle can be traced back to Griffin, and has been re-enforced by successive planning administrations since”.⁴³ Secondly, Mr Smith believes the Territory would be “unable to assure that the quality of new development in the area would be commensurate with its national capital significance”.⁴⁴ PALM is focused on achieving compliance with the Territory Plan and policies and, therefore, in his view:

most assessment officers (in PALM) would not have the necessary skill and experience to undertake assessment of development proposals in areas of national capital significance”.⁴⁵

2.29 Mr Smith also refutes the argument that only land fronting State Circle is of national significance and therefore should be the only part of the Deakin/Forrest area under the Commonwealth’s control.⁴⁶ He believes that the area is a homogeneous one and that this homogeneity should be protected through a consistent set of planning controls. According to Mr Smith, National Circuit, therefore, is the appropriate outer boundary for the Designated Area, “particularly as it represents the Designated Area boundary in the contiguous areas of Forrest and Barton”.⁴⁷

2.30 Mr Richard Drummond, a developer, points out that even if jurisdiction for detailed planning and development control for the land passed to the Territory, the NCA would continue to apply policies and aesthetic principles through the National Capital Plan to protect its national significance.⁴⁸ The effect of passing jurisdiction to the Territory will, therefore, simply be to “add another layer of consent authority”.⁴⁹ He suggests that:

whilst we may disagree in terms of the ultimate design outcome, it is simpler for us to negotiate with the National Capital Authority under a performance based set of controls rather than having to run through two authorities.⁵⁰

43 Mr Malcolm Smith, Submissions, p. 37.

44 Mr Malcolm Smith, Submissions, p. 38.

45 Mr Malcolm Smith, Submissions, p. 38.

46 Mr Malcolm Smith, Submissions, p. 39.

47 Mr Malcolm Smith, Submissions, p. 39.

48 Mr Richard Drummond, Transcript, p. 66.

49 Mr Richard Drummond, Transcript, p. 66.

50 Mr Richard Drummond, Transcript, p. 66.

The Committee's Views

- 2.31 Part of the planning challenge is to balance Canberra's role as the National Capital with the needs of the ACT Government to manage the city for its residents. Whilst sensitive to the latter, the Committee has a responsibility to safeguard the National Capital significance of Canberra for all Australians. The Committee is of the view that the Deakin/Forrest residential precinct is an area of national significance. The significance of State Circle for the National Capital can be traced back to the Griffins' original plan for Canberra. This significance has also been enhanced since the construction of Parliament House on Capital Hill.
- 2.32 The Committee is sympathetic to the concerns of the Territory and some residents/lessees, that by isolating one small residential precinct from the rest of Canberra, designation has complicated planning and development processes for residents/lessees of the area. The Committee also appreciates the desire of the Territory authorities to remove these complications in the interests of consistency and equity throughout the Territory.
- 2.33 The Committee notes that although the majority of the individuals and organisations who made submissions to the inquiry favour retaining Designated Area status there were a variety of reasons for this. The Committee acknowledges the concern of the NCA that current and proposed changes to Territory residential policies, such as those proposed in DTPV200, have created a degree of planning uncertainty. In the circumstances the Committee believes that the NCA's decision not to include uplift of the Designated Area status in version three of Draft Amendment 39 is appropriate.
- 2.34 The Committee also acknowledges the view held by Mr Malcolm Smith among others that the area fronting State Circle should not be separated from the rest of the precinct. The Committee agrees that National Circuit is the appropriate outer boundary for the precinct.

Recommendation 1

- 2.35 **That Designated Area Status applying to the Deakin/Forrest residential area between State Circle and National Circuit be retained.**

The Type of Development

The National Significance

- 3.1 All the submissions to the Inquiry noted that the Deakin/Forrest Designated Area is an area of national significance. The basis for this lies in its location within the Griffins' land axis, its proximity and relationship to Parliament House, and the role of State Circle as one of the premier Main Avenues identified in the National Capital Plan.¹ This is reflected in the inclusion of the area in the Central National Area of the National Capital Plan and its Designated Area status.

The Griffins' Vision – the Land Axis

- 3.2 In their design for Canberra, Marion and Walter Burley Griffin “drew one decisive line, the Land Axis, south-west to north-east from Mount Kurrajong to Mount Ainslie”.² By tying his design “into the three-mile axis between these two hills, Griffin locks the city to its site”.³ The Land Axis is intersected by a line drawn between Black Mountain and Queanbeyan, the Water Axis. Paul Reid argues that

this crossing of the Land Axis and Water Axis is the Griffins' most decisive geometric intervention ... From the great cross formed by these two axes the whole geometry of the city grows.⁴

1 Civitas Partnership Pty Ltd, Submissions, p. 99.

2 Paul Reid, 2002, *Canberra following Griffin: A Design History of Australia's National Capital*, National Archives of Australia, p. 62.

3 Paul Reid, 2002, *Canberra following Griffin: A Design History of Australia's National Capital*, National Archives of Australia, p. 62.

4 Paul Reid, 2002, *Canberra following Griffin: A Design History of Australia's National Capital*, National Archives of Australia, pp. 62-64.

- 3.3 In its submission Civitas Partnership argues that “the connectivity between these elements that make up the land axis needs to be maintained and strengthened”.⁵

Proximity to Parliament House

- 3.4 The NCA points out that the land immediately surrounding the Parliamentary Zone, between Capital and State Circles, forms the landscape setting for Parliament House.⁶ The relationship of Parliament House to the other National Capital buildings and sites nearby is determined by development fronting State Circle. The nature and quality of that development is, according to the NCA, “critical to the way both Australians and foreign visitors perceive and experience Parliament House and the National Capital”.⁷
- 3.5 The land fronting State Circle falls into five visibly recognisable precincts. The first four are the Yarralumla Diplomatic Area; the Parliamentary Zone between Kings and Commonwealth Avenues; the office complexes to the east of Kings Avenue, in the Forrest and Barton areas; and St. Andrew’s Cathedral. The final precinct is the Deakin/Forrest residential area on State Circle. The NCA notes that this precinct:
- is viewed, in the main, on the way out of the Parliamentary Zone or on the way to Woden or Fyshwick moving away from Parliament House. The visual links from Parliament House tend to be over the Zone and along the radiating Avenues rather than into this precinct. This is articulated in the entry of the *Parliament House Vista* in the *Register of the National Estate*.⁸
- 3.6 Residential development in the Designated Area first began in the 1950s. It is one of the first residential subdivisions in the inner south of Canberra, originally part of the suburb of ‘Blandfordia’, now Deakin, Griffith and Forrest.⁹ A residential suburb had been well and truly established before the completion of the new Parliament House on Capital Hill in 1988.
- 3.7 The effect of these two separate developments has been to place in close proximity to each other, a residential area and the home to the Commonwealth Parliament. As some submissions point out, the effect of Parliament House on the area, especially the properties fronting State

5 Civitas Partnership Pty Ltd, Submissions, p. 99.

6 National Capital Authority, Submissions, p. 113.

7 National Capital Authority, Submissions, p. 113.

8 National Capital Authority, Exhibits (Senate Estimates Committee Hearings, 19 February 2002, Answers to Questions on Notice, p. 6).

9 National Capital Authority, Submissions, p. 142.

Circle, has not been beneficial.¹⁰ There was also some disagreement among submissions whether the residential character of the Deakin/Forrest area, especially in relation to State Circle, complements Parliament House.

- 3.8 For its part the NCA sees the area as being at “the back door of Parliament”.¹¹ The nature of the area, “low scale residential development”, demonstrates all the “best hallmarks of the Garden City”.¹² The NCA concedes that although the current state of the area “may do little to contribute in a positive sense to the surrounds of Parliament House, the existing development does not intrude on the Parliament and its setting”.¹³ Instead, argues the NCA, the residential area “serves to emphasise, in a prominent and critical location, the dual role of Canberra as the National Capital and as a city for its residents”.¹⁴
- 3.9 The critical part of the Deakin/Forrest residential area, in relation to its national significance, are the properties fronting State Circle. Development along this section of State Circle lies at the heart of all the submissions and is the most delicate of the issues confronting the Committee. It is here that interests of the residents/lessees and those of the National Capital collide.

10 Davidson, Hewitt, O’Sullivan, Submissions.

11 National Capital Authority, Submissions, p. 114.

12 National Capital Authority, Submissions, p. 114.

13 National Capital Authority, Submissions, p. 114.

14 National Capital Authority, Submissions, p. 114.

Figure 2 Deakin/Forrest designated area

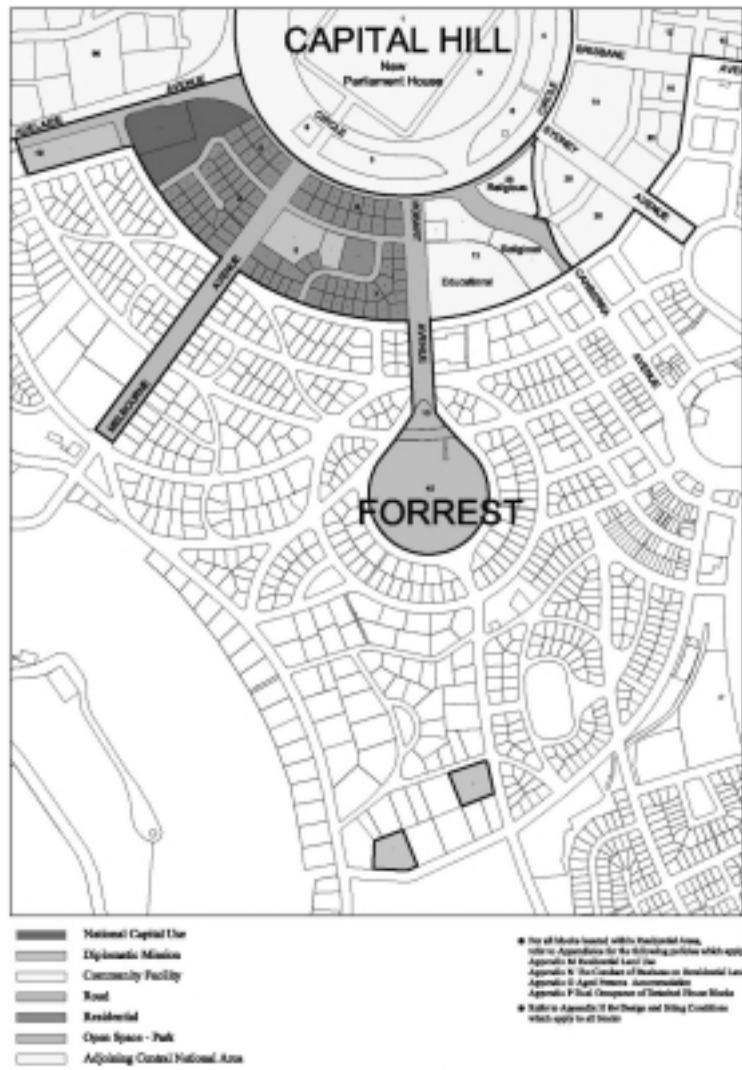


Figure 7
The Central National Area
(Deakin, Forrest & Red Hill)

Source National Capital Authority, Consolidated National Capital Plan, 2001

State Circle

- 3.10 The ACT Division of the Royal Australian Planning Institute (RAPI) points out that State Circle “was prominent on Griffin’s plans as part of a system of concentric roads circling Capital Hill”.¹⁵ Of these, “only Capital Circle and State Circle have been built in their entirety”.¹⁶ RAPI note that State Circle is “a corridor of immense national significance, as is the land fronting it”.¹⁷ It is classified as a Main Avenue under the National Capital Plan.¹⁸ As such, detailed planning, design and development conditions apply. Contained within State Circle is the parliamentary precinct. State Circle serves to connect the radiating National Avenues such as Commonwealth Avenue, Kings Avenue and Brisbane Avenue. Future development fronting State Circle, thus, needs to reflect its “significant symbolic and functional importance in the structure of the Central National Area”.¹⁹

The Residential Precinct

- 3.11 Although it is referred to as one single residential suburb, the Deakin/Forrest designated area is in fact divided into two principal areas. Sections 2, 5 and 7, between Somers Crescent and National Circuit, and Canterbury Crescent and Hobart Avenue, represent the larger area of the designated area. Sections 2 and 7 are well established residential areas. Section 5 is the site of two diplomatic missions, those of Switzerland and Austria.
- 3.12 Sections 3 and 6 are bordered by Somers Crescent and State Circle, and Adelaide and Hobart Avenues, and intersected by Melbourne Avenue. These sections are also well established residential areas. However, they are, in turn, divided between those properties fronting Canterbury and Somers Crescents, and those fronting State Circle.
- 3.13 The properties in Section 3, lots 5 to 9, and Section 6, lots 1 to 8, fronting State Circle, have been adversely affected as a result of the construction of the new Parliament House on Capital Hill. Sir Lenox Hewitt, the “only remaining original lease-holder of a residential block with a frontage to State Circle”, points out that increased traffic noise, adverse effects on privacy and security concerns has led to difficulties in securing “suitable tenants”, and therefore a high vacancy rate for the properties along State

15 Royal Australian Planning Institute – ACT Division, Submissions, p. 166.

16 Royal Australian Planning Institute – ACT Division, Submissions, p. 166.

17 Royal Australian Planning Institute – ACT Division, Submissions, p. 166.

18 National Capital Authority, *Consolidated National Capital Plan*, 2001, Part One, Section Two.

19 Royal Australian Planning Institute – ACT Division, Submissions, p. 166.

Circle.²⁰ As a consequence many of the properties have been allowed to deteriorate and require extensive renovation to bring them to contemporary standards.²¹ This indicates a different type of development may be necessary to alleviate these problems.

The Appropriate Land Use Policy

- 3.14 The National Capital Plan stipulates the existing land use policy for this area as residential.²² Over the past decade there has been some agitation by lessees of State Circle properties to have this policy changed.²³ As a result the NCA commissioned two separate reviews of the land use policy. In April 1998 a planning study by Morris Consultants presented a series of options for the State Circle section of the Designated Area. In 1999 the Parliamentary Zone Review Advisory Panel for the Parliamentary Zone Review examined the State Circle residential area. A background paper of the Parliamentary Zone Review, *State Circle Residential Area Planning Review*, and the *Outcomes Report* for the Review were made publicly available in March 2000.²⁴
- 3.15 The Parliamentary Zone Review Advisory Panel found that a change in land use policy was not warranted and is unlikely to be so for many years.²⁵ The Panel concluded that alternatives to residential land use such as diplomatic missions, offices and commercial accommodation would be inappropriate.²⁶ The Panel cited several reasons including:
- The demand for change is not widespread among the lessees of the ninety or so residential properties in the study area;
 - The argument for change is based on commercial benefit;
 - There is ample opportunity available elsewhere in Canberra to provide for the various uses proposed as alternative land uses;
 - Many of these areas are not fully utilised, especially in the small to medium office markets in Barton and Deakin;
 - The use of the area for Diplomatic Missions, as opposed to diplomatic residences, does not align with a long-standing policy of locating Diplomatic Uses in defined diplomatic areas;

20 Sir Lenox Hewitt, Submissions, pp. 181-2.

21 Mr Donald Davidson, Transcript, p. 55.

22 National Capital Authority, Submissions, p. 115.

23 National Capital Authority, Submissions, p. 115.

24 Available from the NCA website: www.nationalcapital.gov.au/publications/pzreview

25 National Capital Authority, Submissions, p. 140.

26 National Capital Authority, Submissions, p. 146.

- Commercial Accommodation uses are considered inappropriate so close to Parliament and because of the potential to adversely affect residential amenity;
- The location of the study area so close to Parliament is a vital consideration. Any change must be on the basis of a comprehensive approach. The current ownership pattern and the requirement for extensive co-operation between lessees to achieve an appropriate outcome suggest that such an outcome is unlikely without some form of Government intervention or participation. At this stage, however, neither Commonwealth nor Territory Government has shown any real interest, and such an approach has not been suggested by the Redevelopment Association.²⁷

3.16 The NCA concurs with the recommendation of the Parliamentary Zone Review Advisory Panel. As Ms Annabelle Pegrum, Chief Executive of the NCA, states, the Authority “remains completely convinced that it would be totally inappropriate to change from a residential land use in this area”.²⁸ In the NCA’s view, the demand for a change in land use policy does not have full local support, nor are there sound planning reasons to justify change.²⁹ The Committee notes, however, that full local support for any planning proposition is unlikely to ever occur.

The NCA Scenarios

- 3.17 In relation to the State Circle properties, the NCA, through the revised Draft Amendment 39, “proposes to allow for continuing residential development”.³⁰ Specific design and landscape requirements would be applied in order to protect the interface with Parliament House. These include height limits, setback and landscaping requirements, plot ratio of 0.6 for amalgamated sites, a reduction in the number of vehicle access points, and architectural treatment that “reflects the principal design character of the area”.³¹
- 3.18 As part of its evidence to the Committee, the NCA prepared three planning scenarios for the State Circle section of the Designated Area to match the provisions of each version of Draft Amendment 39.

27 National Capital Authority, Submissions, pp. 146-7.

28 Ms Annabelle Pegrum, Transcript, p. 22.

29 Ms Annabelle Pegrum, Transcript, p. 22.

30 National Capital Authority, Submissions, p. 122.

31 National Capital Authority, Submissions, pp. 122-3.

Scenario One – The Status Quo

- 3.19 Under the current provisions of the National Capital Plan residential land use would continue.³² However, redevelopment would be restricted to a mixture of low density detached housing and dual occupancy.³³ There would be little incentive for new residential redevelopment, especially as the plot ratio for dual occupancy, a maximum of 0.4, would prevent block amalgamation.

Scenario Two – The Territory Assumes Responsibility

- 3.20 Scenario Two is premised on removing the Designated Area status and passing planning jurisdiction to the Territory as proposed in the first two versions of Draft Amendment 39. Provisions would be introduced into the National Capital Plan to protect the residential character and use of the area through specific design controls, but the Territory's policies, such as DTPV192 and DTPV200, would apply.³⁴ Under DTPV200 the area would be defined as "suburban" and some types of residential development such as multi-unit complexes and triple occupancy would be prohibited.³⁵ Dual occupancy would be effectively limited through the 5% per section rule for such developments in DTPV192.³⁶ In the NCA's view, "the incentive for urban design enhancement and redevelopment of blocks fronting State Circle would be significantly lost".³⁷

Scenario Three – Version Three of DA39 Applies

- 3.21 Scenario three is premised on the current version of Draft Amendment 39 in which the NCA retains planning and development jurisdiction. Multi-unit redevelopment and block amalgamation would be permitted and special design conditions would apply to the State Circle section, including a mandatory height of two storeys and landscape controls for all new buildings.³⁸ Future redevelopment of the State Circle section would, therefore, likely include a mixture of dual and triple occupancy town houses, similar to those recently built at No. 15 State Circle, and apartments.

32 National Capital Authority, Submissions, p. 124.

33 National Capital Authority, Submissions, p. 124.

34 National Capital Authority, Submissions, p. 124.

35 National Capital Authority, Submissions, p. 125.

36 National Capital Authority, Submissions, p. 125.

37 National Capital Authority, Submissions, p. 125.

38 National Capital Authority, Submissions, p. 126.

A Developer's Proposal

- 3.22 State Circle Developments, a developer which holds an option agreement to acquire five residences on State Circle (Blocks 1 – 5, Forrest), argues that the current version of Draft Amendment 39 will “result in inferior planning and design outcomes which will diminish the significance of a very important precinct close to Parliament House”.³⁹ Mr Richard Drummond, a principal of the company, makes two points in relation to future development of the State Circle section of the precinct.
- 3.23 Firstly, whilst agreeing with the NCA that the land use policy for the area should remain residential, Mr Drummond believes that Draft Amendment 39 as currently proposed, will encourage dual occupancy development at the expense of medium density/multi-unit development.⁴⁰ Mr Drummond sees dual occupancies “as being the lowest form of development, and we think a more appropriate form of development is medium density”.⁴¹ His view is supported in several submissions.
- 3.24 The ACT Division of the Royal Australian Planning Institute (RAPI) agrees that low density detached housing or dual occupancy development is not “an appropriate form of development for such a significant site”.⁴² RAPI believes that the detailed provisions of the Draft Amendment are not an adequate urban design response. The Draft Amendment does not “capture the opportunity for a prominent and distinctive interface between Parliament House and its encircling development”.⁴³
- 3.25 The Royal Australian Institute of Architects (RAIA) points out that, as it stands, Draft Amendment 39 encourages dual occupancy development which is neither desirable nor appropriate for these State Circle sites.⁴⁴ RAIA also argues that the 13 residential blocks on State Circle:
- should have different planning parameters and development criteria than the rest of the designated area as these sites are located at the interface between the Parliamentary Zone and the residential area
- 3.26 Mr Malcolm Smith does not regard the detailed provisions of the current version of Draft Amendment 39 “an appropriate response to this very important land”.⁴⁵ It is, in his view, suited to “development that interfaces

39 State Circle Developments, Submissions, p. 75.

40 Mr Richard Drummond, Transcript, p. 61.

41 Mr Richard Drummond, Transcript, p. 61.

42 ACT Division, Royal Australian Planning Institute, Submissions, p. 167

43 ACT Division, Royal Australian Planning Institute, Submissions, p. 167

44 Royal Australian Institute of Architects, Submissions, p. 172.

45 Mr Malcolm Smith, Submissions, p. 39.

with a suburban shopping centre, rather than ... with the most important building and democratic institution in the nation”.⁴⁶ He suggests that Draft Amendment 39 be revised further to allow medium density/multi-unit developments of the type proposed by Mr Drummond.

3.27 To allow the type of residential development that complements the national significance of the area, Mr Drummond suggests planning guidelines that are “performance based rather than prescriptive”.⁴⁷ To achieve this he urges the Committee to recommend the establishment of new planning guidelines for the area and proposes three changes to the current version of Draft Amendment 39. These are:

- Amend the height restriction to either “generally eight metres” or removing this limit and applying performance-based assessment consistent with the NCA’s approach;
- Inserting the condition – “Generally development should not be more than two storeys in height”; and
- Replacing “plot ratio” with “site coverage” or removing the reference to plot ratio.⁴⁸

The Committee’s View

3.28 The Committee is cognisant of the fact that the outcome of its deliberations “will affect the built form that will be along State Circle for the next 30 to 40 years”.⁴⁹ In making its recommendations the Committee notes that there appears little demand, especially among the residents/lessees, for a change in the existing land use policy. Of the 13 individuals and organisations who made submissions to the inquiry, only three favour a change in the land use policy.⁵⁰ All three are lessees of State Circle properties. The Committee is entirely sympathetic to the concerns they have raised regarding the deterioration of the State Circle properties over the past decade, the difficulties in securing suitable tenants and the consequent effect on the value of their properties.

3.29 However, the Committee is aware of the possible adverse effects a change in land use policy may have on the area as a whole. Even if a change in land use policy were confined to the area fronting State Circle, it would undoubtedly impact upon those properties in Somers and Canterbury crescents. The Committee is convinced that the Deakin/Forrest residential

46 Mr Malcolm Smith, Submissions, p. 40.

47 Mr Richard Drummond, Transcript, p. 60.

48 State Circle Developments, Submissions, p. 54.

49 Mr Richard Drummond, Transcript, p. 60.

50 Davidson, O’Sullivan, Hewitt, Submissions.

area is a homogeneous precinct and in terms of planning and development decisions must be treated as such.

- 3.30 Furthermore, the Committee recognises that the area is well and truly established as residential. Much of the area reflects the best of Canberra as the 'Garden City'. The Committee is also concerned to ensure that development in the area does not diminish the setting of the Prime Minister's Lodge, a point raised by the Official Establishments Trust.⁵¹

Recommendation 2

- 3.31 **That the established use of the land in the Deakin/Forrest area for residential purposes continue and non-residential development be prohibited.**

Recommendation 3

- 3.32 **That development along State Circle between Hobart and Adelaide Avenues continue to be residential and 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.**

51 Official Establishments Trust, Submissions, p. 5.

The Consultation Process

The Legislative Requirements

- 4.1 Section 15 of the *Australian Capital Territory (Planning and Land Management) Act 1988* requires the National Capital Authority (NCA) to undertake a process of public consultation in relation to proposed amendments to the National Capital Plan. The NCA is required to submit a copy of each draft amendment to the Territory planning authority, and publish a notice in both the Commonwealth Gazette and the leading daily newspaper advising that the draft amendment is available for public consultation and inviting submissions.¹ The NCA must consider the views of both the Territory planning authority and the public and can alter the draft amendment accordingly.²
- 4.2 Following the consultation process, the NCA submits the draft amendment to the responsible Minister for approval.³ The NCA must also provide the Minister with a written report of the consultations it has undertaken.⁴

Consultation on Draft Amendment 39

- 4.3 The NCA placed notices in *The Canberra Times* on 18 November 2000 and in the *Commonwealth Gazette (GN 46)* on 22 November 2000 advising of the

1 *Australian Capital Territory (Planning and Land Management) Act 1988*, Section 15 (1).

2 *Australian Capital Territory (Planning and Land Management) Act 1988*, Section 15 (2).

3 *Australian Capital Territory (Planning and Land Management) Act 1988*, Section 18.

4 *Australian Capital Territory (Planning and Land Management) Act 1988*, Section 18.

release of Draft Amendment 39 and inviting public comment.⁵ In November 2000 the NCA wrote to all residents of Designated Area informing them of the proposed changes to the National Capital Plan. The NCA also notified ACT Planning and Land Management (PALM), the Official Establishments Trust (in relation to the Prime Minister's Lodge), the diplomatic missions and residences located in the area, and the Joint Standing Committee on the National Capital and External Territories.⁶

- 4.4 The Office of Regulation Review in the Productivity Commission was advised of Draft Amendment 39 in December 2000. The Office, in turn, advised the NCA that a Regulation Impact Statement was not required.⁷ The Joint Standing Committee was briefed in relation to the proposed amendment on two occasions – 28 February 2001 and 4 April 2001 – by the NCA.
- 4.5 The NCA received 11 submissions – seven from local residents/lessees, one from the Deakin Residents' Association, and the other three from PALM, the Malaysian High Commission and the Swiss Embassy.⁸ A further three submissions were later received from lessees of State Circle properties. Following media reports, further representations and inquiries were made to the NCA.⁹ As a result of media speculation in January 2002 about development on State Circle, the NCA wrote to all affected residents/lessees on 25 January 2002.
- 4.6 In their submissions both the residents/lessees and the residents' association addressed the removal of the Designated Area status, the type of future land use for the area, and the proposed development controls. PALM initially supported the removal of the Designated Area status but favoured mixed-use, including non-residential, redevelopment on the State Circle sites. Following further consultation with the NCA, PALM agreed to support version two of the draft amendment, including restricting use of the State Circle sites to residential development.¹⁰ The Swiss Embassy advised that it was not affected by the proposed changes. The Malaysian High Commission was concerned with the removal of the Designated Area status, but after further consultation with the NCA it was satisfied with the proposed changes.¹¹

5 National Capital Authority, Submissions, p. 156.

6 National Capital Authority, Submissions, p. 156.

7 National Capital Authority, Submissions, p. 156.

8 National Capital Authority, Submissions, p. 156.

9 Senate Estimates Committee Hearings, 19 February 2002, *Answers to Questions on Notice*, p. 2.

10 National Capital Authority, Submissions, p. 157.

11 National Capital Authority, Submissions, p. 157.

4.7 The NCA conducted two rounds of public consultation in relation to Draft Amendment 39 – the first between November 2000 and January 2001, the second between July and August 2001 following the release of the revised draft amendment. In relation to public consultation on Draft Amendment 39, the NCA has clearly acted in accordance with its statutory responsibilities. However, a number of residents/lessees in the area have drawn to the Committee’s attention the failure of the NCA to consult with them on another occasion. The resident/lessee of No. 21 State Circle, Mr Donald Davidson, notes the concern he has of the NCA:

not having in place proper control mechanism in administering the policies set out in the National Capital Plan in a fair and even handed manner when dealing with residential development matters.¹²

A Breakdown in the Consultative Process

The Legal Requirements

4.8 Section 12 of the Act requires that works proposals in designated areas must be submitted to the NCA, which has the authority for approval. Appendix P of the National Capital Plan sets out detailed conditions of planning, design and development that relate to dual occupancies in designated areas. Development applications are required to:

show what impact building or demolition proposals will have on adjacent properties. In particular, car access and parking areas and landscaping proposals will need to be related to adjacent development.¹³

4.9 The only public notification required is a particular form of neighbour consultation.¹⁴ Appendix P states that:

Prior to consideration of an application for dual occupancy, the National Capital Planning Authority will require an assurance from the applicant that neighbours have been informed of the proposal. Neighbours for this purpose are considered to be lessees having a mutual boundary with the subject block. Where comments are received from neighbours they will be used to assist

12 Mr Davidson, Submissions, p. 9.

13 National Capital Authority, *Consolidated National Capital Plan*, 2001, Appendix P, p. 183.

14 National Capital Authority, Transcript, Senate Estimates Committee Hearings, 30 May 2002, p. 401.

the National Capital Planning Authority delegates to determine whether or not the stated performance criteria are satisfied and to establish conditions of approval so that the intentions of the policy regarding residential amenity can be met.¹⁵

- 4.10 However, this consultation is limited to notifying neighbours and providing them with an opportunity to comment on the design and siting aspects of the proposal, but not on the proposal itself.¹⁶ The NCA is not itself required to consult with affected residents/lessees, only to ensure that the developer has informed them of the proposal.

No. 15 State Circle

- 4.11 In April 2001 No. 15 State Circle (Lot 6, Section 6 Forrest) was sold.¹⁷ Work to demolish the house and clear the site commenced in June 2001. The lessee of the adjacent block, No. 17 State Circle, Mr O'Sullivan, wrote to the NCA on 30 June 2001 concerning the redevelopment of No. 15. He received a reply from the NCA on 28 July 2001, "effectively 1 month later".¹⁸ The NCA informed Mr O'Sullivan that it had "considered a proposal for a two-storey dual occupancy residential development on the subject site", that the proposal complied with the relevant provisions of the National Capital Plan, and that "Works Approval was granted on 30 May 2001".¹⁹
- 4.12 In the case of the application to build dual occupancy residences at No. 15 State Circle, the NCA failed to seek an assurance from the developer that the neighbours had been informed of the proposal. In doing so, the NCA approved that development without the benefit of being informed of the views of the residents/lessees who, in fact, did have concerns.
- 4.13 When Mr O'Sullivan wrote to the NCA seeking advice on what consultation was required of residents and neighbours about that type of development, he was informed that "assessment for Works Approval in Designated Areas does not involve public consultation".²⁰ But, in fact, the NCA incorrectly advised Mr O'Sullivan.
- 4.14 Another neighbour, Dr Norman Boardman, states that he was first aware of the dual occupancy development at No. 15 State Circle "when the bulldozers came in and knocked down the house".²¹ He telephoned the

15 National Capital Authority, *Consolidated National Capital Plan*, 2001, Appendix P, p. 187.

16 National Capital Authority, *Consolidated National Capital Plan*, 2001, Appendix P, p. 187.

17 Mr O'Sullivan, Submissions, p. 92.

18 Mr O'Sullivan, Submissions, p. 92.

19 Mr O'Sullivan, Submissions, p. 94.

20 Mr O'Sullivan, Submissions, p. 92.

21 Dr Boardman, Transcript, p. 45.

NCA and was informed that “under the present plan they were not required to notify neighbours”.²² Only after taking the initiative to contact the NCA, did the developer inform Dr Boardman of the development. Dr Boardman points out that “there were no opportunities to see the plans”; the NCA “were not able to show us the plans, that was up to the architect”, who did not respond to Dr Boardman’s request.²³

- 4.15 The error was twofold. 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 NCA’s Response

- 4.16 In its defence the NCA attributes part of the problem to negotiations with the developer having occurred over a lengthy period and with sporadic contact between the two sides.²⁴ The error is also attributed to inexperience on the part of the NCA with this type of development - “this was only the fourth dual occupancy we have dealt with in several years”.²⁵ Mr David Wright (Director, National Capital Plan) of the NCA states:

The point at which the error occurred was at the final decision point. When everybody was satisfied that we had the best result we could hope for in that location, those final tick-offs were not made.²⁶

- 4.17 Once the error was detected, the NCA subsequently wrote to correct that advice.²⁷ The NCA points out that:

two of the three neighbours were in fact consulted and the proponent advised that he had tried to contact the third but had been unsuccessful at that time.²⁸

- 4.18 The problem has since been addressed by tightening up its administrative procedures, according to the NCA.²⁹ This includes the introduction of:

22 Dr Boardman, Transcript, p. 45.

23 Dr Boardman, Transcript, p. 46.

24 National Capital Authority, Transcript, Senate Estimates Committee Hearings, 30 May 2002, p. 401.

25 National Capital Authority, Transcript, Senate Estimates Committee Hearings, 30 May 2002, p. 402.

26 National Capital Authority, Transcript, Senate Estimates Committee Hearings, 30 May 2002, p. 401.

27 National Capital Authority, Transcript, Senate Estimates Committee Hearings, 30 May 2002, p. 401.

28 National Capital Authority, Transcript, Senate Estimates Committee Hearings, 30 May 2002, p. 401.

a special application form now in place which picks up these things and provides room for a map to be located on the form with the designated neighbours identified. With that in place that error should never occur again.³⁰

The Right of Appeal

- 4.19 In terms of amendments to the National Capital Plan, there appear to be sufficient avenues available for consultation and appeal by disaffected parties. Parliament itself has retained the right of final approval over amendments to the Plan through the disallowance process. However, what happens with respect to decisions made by the NCA to approve or disallow development proposals? In the case of development proposals made by Commonwealth agencies, the Commonwealth is bound, under the Act, by the Plan, so “appeals are not an appropriate mechanism”.³¹ But in the case of residents/lessees in designated areas who feel aggrieved by the actions of the NCA, such as with No. 15 State Circle, is there any course of redress available?
- 4.20 The Act does not make any provision for appeal against an NCA decision to approve or not approve works in designated areas. The National Capital Plan notes “the opportunity for recourse under the *Administrative Decisions (Judicial Review) Act 1977* to determine if a decision of the Authority is correctly made”.³² Disaffected residents/lessees also have recourse to normal common law approaches such as “seeking an injunction against the Authority, again generally to ensure its decisions are taken in accordance with the Act”.³³
- 4.21 Mr O’Sullivan was advised that his only opportunity for recourse was through the *Administrative Decisions (Judicial Review) Act 1977*.³⁴ Mr Davidson suggests that if he were not properly notified and consulted regarding a development on an adjacent property to his:

I would not be contacting the National Capital Authority ... I would see them in the Federal Court and the court would hear

29 National Capital Authority, Transcript, Senate Estimates Committee Hearings, 30 May 2002, p. 402.

30 National Capital Authority, Transcript, Senate Estimates Committee Hearings, 30 May 2002, p. 402.

31 National Capital Authority, *Consolidated National Capital Plan*, 2001, p. 143.

32 National Capital Authority, *Consolidated National Capital Plan*, 2001, p. 143.

33 National Capital Authority, *Consolidated National Capital Plan*, 2001, p. 143.

34 Mr O’Sullivan, Submissions, p. 92.

about why it was that they did not have proper control measures to make sure the applicant had contacted the neighbours.³⁵

- 4.22 The National Capital Plan states that “in normal circumstances, the Authority would wish to avoid situations where appropriate solutions could not be achieved through negotiation”.³⁶ However, it is acknowledged in the Plan that situations may arise where this is not possible. In such cases, legally the NCA’s “views on the merit of the proposal would stand”.³⁷
- 4.23 The National Capital Plan notes that when the rights of citizens are affected, recourse to an appeals process may be appropriate. However, the Plan points out that, because only a very small amount of leased land is located in designated areas, there is unlikely to be “large numbers of either development proposals or consequent appeals”.³⁸ Such small numbers would “certainly not justify the establishment of any special purpose appeals mechanism”.³⁹

The Committee’s View

- 4.24 In approving the redevelopment of No. 15 State Circle, the NCA not only failed to ensure that the residents/lessees of the adjacent blocks were properly notified, but the Committee was not made aware of this redevelopment in a Designated Area whose status was under consideration by the Committee. The Committee came to learn of this through sources other than the NCA. Although there is no requirement in the Act for the NCA to inform the Committee of works approvals in designated areas, the Committee believes that it should have been notified by the NCA, given that it was considering an amendment to the National Capital Plan affecting the area. Such action leads the Committee to conclude that the NCA was inclined, on this occasion, to have treated the Committee contemptuously.
- 4.25 In relation to the concerns of the residents/lessees, the Committee is strongly of the view that the issue is one of principle, and that an opportunity should be offered for redress to any residents/lessees in designated areas who may have been disaffected by NCA decisions. However, in the event that the numbers do not justify the establishment of

35 Mr Davidson, Transcript, p. 53.

36 National Capital Authority, *Consolidated National Capital Plan*, 2001, p. 143.

37 National Capital Authority, *Consolidated National Capital Plan*, 2001, p. 143.

38 National Capital Authority, *Consolidated National Capital Plan*, 2001, p. 143.

39 National Capital Authority, *Consolidated National Capital Plan*, 2001, p. 143.

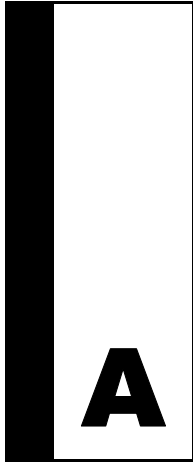
a special purpose appeals mechanism, the Committee believes the role of the NCA in consulting residents/lessees in designated areas on development proposals must be enhanced. It is clear that the existing public notification requirements for development proposals, as outlined in Appendix P of the National Capital Plan, are not sufficient. A greater consultative role on the part of the NCA may serve to prevent a repetition of the No. 15 State Circle case.

- 4.26 The Act makes no reference to public notification and consultation in respect of works proposals in designated areas, such as the dual occupancy development at No 15 State Circle. The public consultation provisions of the Act only relate to amendments to the National Capital Plan itself. In light of the concerns expressed by residents/lessees over consultation for development proposals in the designated area, the Committee believes the Act needs to be amended. The Act must specify the requirement for public consultation by the NCA in relation to works proposals in designated areas. In the case of the Deakin/Forrest residential precinct this is especially important if the Designated Area status is retained and the NCA continues to have works approval.

Recommendation 4

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

**Senator Ross Lightfoot
Chairman**



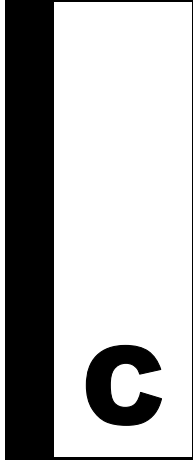
Appendix A - List of submissions

1. Dr N Keith Boardman
2. Mr Graham Anderson
3. Official Establishments Trust
4. Mr Donald C. Davidson
5. W.H. Johnston, Davidson & Co
6. Mr Malcolm Smith
7. State Circle Developments
8. Mr Laurence G. O'Sullivan
9. Civitas Partnership Pty Ltd
10. National Capital Authority
11. Royal Australian Planning Institute, ACT Division
12. Royal Australian Institute of Architects
13. Sir Lenox Hewitt
14. Mr Simon Corbell MLA, ACT Government
15. Sir Lenox Hewitt (Supplementary submission)
16. Mr Garrick Calnan - ACT Planning and Land Management



Appendix B – List of exhibits

- 1 Main Avenues and Approach Routes, National Capital Plan.
- 2 Draft Variation to the Territory Plan No. 200, ACT Planning and Land Management Group.
- 3 National Capital Authority, power point presentation notes.
- 4 Idonz Pty Limited v National Capital Development Commission, Federal Court of Australia.
- 5 Dr N Keith Boardman, correspondence 20 May 1999 to Air Marshall David Evans AC.
- 6 Appendix M, Residential Land Use, National Capital Plan.
- 7 Answers to questions on notice asked by Senator Lundy, Senate Estimates Committee Hearing, 19 February 2002.



Appendix C - Witnesses appearing at public hearings

**Canberra
Friday, 21 June 2002**

Individuals

Dr. Norman Keith Boardman

Mr Donald Davidson

Mr Laurence O'Sullivan

Mrs O'Sullivan

ACT Planning and Land Management

Mr Garrick Calnan, Manager, Territory Plan Coordination

National Capital Authority

Mr Stuart Mackenzie, Senior Town Planner – Urban Designer

Ms Annabelle Pegrum, Chief Executive

Mr Ted Schultheis, Principal Planner, National Capital Plan Unit

Mr David Wright, Director, National Capital Plan

Royal Australian Planning Institute

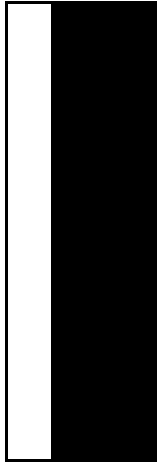
Mrs Hillary Middleton, President, ACT Division

State Circle Developments

Mr Richard Drummond, Director

Canberra
Monday, 26 August 2002

Sir Lenox Hewitt



Minority Report

Labor Members

- 1.1 Whilst supporting chapters one, the body of chapter two, three and four of the Majority Report, Labor members of the Committee differ significantly with respect to the conclusions drawn in Chapter 2 and the resulting recommendations. This Minority Report sets out our reasons for dissent and offers alternative recommendations.
- 1.2 Section 39 is the final remnant of residential land under the jurisdiction of the National Capital Authority. This is an anomaly that creates complexity for residents/lessees. The National Capital Authority (NCA) also has inferior consultation requirements.
- 1.3 Labor Committee members have sought to find a balance between the need for consistency, certainty and clarity in planning guidelines and consultation processes for Section 39 residents/lessees and the need to improve prospects for high standard re-development, in keeping with the national significance of State Circle, for the State Circle frontage precinct of Section 39.
- 1.4 Labor members of the Committee have the view that the principle of consistency in the treatment of residents/lessees in the ACT is overriding. One set of planning and consultation rules for all residents/lessees of the ACT should apply. This set of rules is determined by the democratically elected ACT Government, and expressed through the Territory Plan.
- 1.5 Therefore, the appropriate and principled position would be to uplift Section 39 from designated area status. Section 39 would then be subject to the Territory Plan, as varied from time to time by the ACT Government. This would remove the anomaly of Section 39 being the only remnant of residential land under the jurisdiction of the NCA.

- 1.6 Such an approach would be consistent with the broad intent of both Versions 1 and 2 of Draft Amendment 39. Labor members would like to record their considerable concern that it was only in the latter stages of the Committee's consideration of Draft Amendment 39 that the NCA removed the intention to uplift from Draft Amendment 39.
- 1.7 However, the proposal to uplift all of Section 39 introduces some complications for residents/lessees on the State Circle frontage precinct that Labor members believe must be addressed.
- 1.8 Given that State Circle is a road of National Significance under the National Capital Plan, the NCA will retain the power to impose specific conditions on development. Therefore, to uplift the State Circle frontage would ensure that residents/lessees always have to deal with both the NCA and the ACT planning authorities. This does not meet Labor members' aim of achieving 'certainty and clarity in planning guidelines'. Arguably this approach would also not adequately address the need for improved prospects for appropriate re-development on the State Circle frontage.
- 1.9 This leads to the view that there is some logic for differential treatment of State Circle. Primarily the issue is one of planning red tape. One planning authority is enough for any residential lessee or resident to deal with.
- 1.10 Therefore, in order to maintain the appropriate national status, and the highest level of planning certainty, Labor members believe that the Designated Area status should be retained only for the blocks fronting State Circle. For the remainder of Section 39, Designated Area status should be removed, ie: from Somers and Canterbury crescents to National Circuit, and between Canterbury Crescent and Hobart Avenue. Jurisdiction for detailed planning and development control of these areas would, therefore, pass to the Territory.
- 1.11 In this way, residents/lessees on State Circle frontage will only have to deal with the NCA, while the remaining residents/lessees in Section 39 will only have to deal with the ACT Planning Authority.
- 1.12 Labor members were also convinced that the best scenario to encourage appropriate development in keeping with the national significance of the State Circle frontage would require changes to the proposed restrictions on development in this precinct.
- 1.13 Labor members believe that the best planning outcomes will be achieved by the guidelines being less prescriptive with the only specifications being:
- residential only; and
 - height limit of 8 metres.

- 1.14 This is consistent with Version 1 of Draft Amendment 39, the Version upon which original consultations with local residents were based. In addition, Labor members are also of the view that the provisions of the revised Appendix N relating to the conduct of business on residential land contained in version three of the Draft Amendment, should also apply to the State Circle frontage precinct.
- 1.15 Finally, Labor members are of the view that the National Capital Authority has only ever articulated a subjective opinion as to why commercial development is unsuitable for the State Circle frontage precinct, but believe that at this point in time it would be inappropriate to allow commercial development without a genuine, comprehensive consultation process with local residents/lessees and the broader community.

Recommendations of the Minority Report

Recommendation 1

- 1.16 **With the exception of the blocks fronting State Circle, the Designated Area Status applying to the Deakin/Forrest residential area between State Circle and National Circuit be removed by way of uplift.**

Recommendation 2

- 1.17 **That Designated Area Status should be retained for the blocks fronting State Circle in the Deakin/Forrest residential area. Furthermore, that the provisions of Version One and the revised Appendix N relating to the conduct of business on residential land in Version Three of Draft Amendment 39 should apply to the State Circle section.**

**Senator Trish Crossin
Deputy Chair**

Senator John Hogg

Senator Kate Lundy

Ms Annette Ellis, MP

Hon Warren Snowdon, MP