

**Submission to the Parliamentary Joint Standing Committee
on the
National Capital and External Territories**

Inquiry into the role of the National Capital Authority

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PREAMBLE

“I have planned a city not like any other city in the world. I have planned it not in a way that I expected any government authorities in the world would accept. I have planed an ideal city – a city that meets my ideals of the city of the future” (Griffin 1912).

“Although Griffin’s plan was far from flawless, ...the Canberra that he designed, now modest in size compared to the greater city and altered in many respects from his vision, remains an extraordinary achievement. It deserves protection from all but the most sensitive and carefully considered changes as one of the treasures not only of Australia but of the entire urban world” (Reps 1997:267).

At the beginning of a new century an Act of the British Parliament, *The Commonwealth of Australia Constitution Act 1900* (UK) created the Commonwealth of Australia after decades of colonial debate, ten referendums and enabling acts passed by the colonies. Section 9 of the UK Act sets out the Australian Constitution, which included an obligation on the Parliament of the Commonwealth of Australia to select a seat of government, within New South Wales (NSW) and not closer than 100 miles from Sydney, “which shall have been granted to, or acquired by the Commonwealth and shall be invested in and belong to the Commonwealth” (Section 125).

Canberra is the city that Federation created and is Australia’s only fully planned city. It is one of a few of the world’s capital cities that were designated as such before they were created. The Commonwealth is its owner and the national capital interest in Canberra is all-pervasive.

¹ The views expressed in this submission are personal and do not reflect the views of our respective employers. Between the three of us we have over 80 years of urban and regional planning experience.

The planning of the national capital, the planning system and governance arrangements for the National capital are of national importance and should remain a primary Commonwealth responsibility. Suggestions that might result in the delegation of any further planning and development powers and functions to the Territory Government are likely to have a less than beneficial result on Canberra as the national capital.

Furthermore, the Commonwealth's interest in and responsibility for the ACT should be strengthened, not further diluted. Strengthening the Territory planning role would be, if past experience is to go by, tantamount to handing over the control of the city's future to interests driven by short term expediency rather than the long term benefit of the national capital. Now is the time for the Commonwealth to rescue Canberra from further planning embarrassment.

In order to assist the Committee in understanding why we are advancing these views, we provide a very brief overview of Canberra's planning history, its planning legacies, and how the current planning and development system operates. These views are expanded in a much longer paper, a copy of which is attached to this submission (**Attachment A**).

CANBERRA'S PLANNING HISTORY

Canberra has suffered from waxing and waning interest from the Commonwealth since its creation in the Constitution in 1901. Despite the fact that the Commonwealth supported Canberra's development at crucial times in the past, the Commonwealth has rarely applied continuous and consistent support to Canberra as the national capital. Until recently it has always been conservative Federal Governments that have shown the greatest level of commitment to the national elements of Canberra's planning and development. Former Prime Minister Howard's contempt for living in Canberra also extended to his Government's lack of commitment to defending the city's role as the nation's capital city.

Although Canberra's planning has been fraught with conflict and division, six significant plans have been produced over the past 100 years. These have generally coincided with periods when the Commonwealth was having a resurgent interest in Canberra.

Griffin's plan – 1912

The first plan for Canberra owes its unique design to the international competition for the design of the Federal Capital and the selection of Walter Burley Griffin's plan from over 135 entries.

Griffin's amended plan – 1918

Walter Burley Griffin was Federal Capital Director of Design and Construction for seven years from 1913 to 1920. During this time, Griffin drew together the detailed design of the previous six years and encapsulated his more intimate knowledge of the site.

The Future Canberra – The Canberra Outline Plan – 1965

The National Capital Development Commission's (NCDC) first Chief Planner, Peter Harrison and his team of professional staff and consultants, developed the first metropolitan strategy for Canberra to accommodate a population of 250,000 people.

Tomorrow's Canberra – The Y Plan – 1970

Further studies were undertaken and several options for the city's growth were evaluated. The studies concluded that a linear pattern would achieve a more efficient transport system. The resultant plan became known as the *Y Plan* because of its shape.

The Metropolitan Policy Plan / Development Plan – 1984

This Plan confirmed the basic structure of the *Y Plan* and retained the basic planning principles established in the 1970 Plan as a valid basis for guiding Canberra's metropolitan growth for a population of 400,000 people.

The Griffin Legacy – 2004

The Griffin Legacy revisits Walter Burley Griffin's aim and purpose in planning a city 'not like any other city in the world' and discovered the political, cultural and communal foundations that Griffin had envisaged nearly a century ago. The primary proposition of the *Griffin Legacy* is to retrieve, as far as is possible, Griffin's intentions for a denser urban environment, at least in the central areas and particularly along Constitution Avenue.

While the significance of the Griffin Legacy awaits the judgement of future generations, it is nevertheless a timely reminder to all Australians that Canberra is not just any other land planning and development exercise, as local government rhetoric might lead one to believe. Established by the Constitution, Canberra is the nation's capital and as such its primary purpose, as well as providing all the ancillary urban services, infrastructure and an attractive physical environment for its population, is to house the national government and national institutions in a physical arrangement that represents Australia to the world and the international community. The Canberra that the Griffins intended is meant to be an inspiration and goal to be prized and appreciated as a model for all democratic communities. "From the outset, Canberra was intended to be the showplace of the nation" (NCA 2004:2). The nation and the Commonwealth need to be reminded of this goal.

Planners, architects and landscape architects from around the World come to Canberra to study how a new nation planned its national capital. In presenting evidence to a Parliamentary Inquiry into Canberra's National Capital Open Spaces, Professor Ken Taylor (1992) stated that Canberra is "...the most renowned urban landscape laboratory in the world". Recently, Professor John Reps (1997) stated that Canberra is "one of the world's most distinctive urban environments" and "ranks amongst the most beautiful national capitals". Sonne claims that Canberra is evidence of the "unification of (a) nation and the expression of its grandeur played an important role" (Sonne 1998). Even more recently, Professor Robert Freestone (2007) finds that Canberra is an exceptional capital city established for political rather than imperial or mercantile purposes, that beauty was an important factor in selecting its site and that it was conceived as a city in a landscape. Canberra reflected the nationalistic ideals of a young Commonwealth and applied early 20th century enthusiasm for the fledgling art of town planning. He goes on to explain how Canberra is unique for having attracted the best international and national planners; for the powers given to public agencies through the leasehold system; and the high degree of awareness of planning measures exercised by both planning agencies and the residents.

Freestone (2007) notes that Griffin's winning plan for Canberra conveyed the desired look of a monumental city, dominated by grand axes and vistas, terminating in landmarks as well as responding sensitively to natural landscape features, integrating topography into the design.

It is these ideals that need to be acknowledged and applied to any changes that might occur to Canberra's planning system. If Canberra is to continue to promote the high planning standards reflected in its planning history, any change affecting the planning of the national capital must be based on the best technical, philosophical and professional planning standards.

CANBERRA'S PLANNING LEGACIES

The various planning layers and the stages of Parliamentary paternal zeal over the past 100 years have left three distinct legacies.

The first is the O'Malley/Griffin legacy. The primary Griffin legacy is perhaps best demonstrated by the land and water axes, parts of Lake Burley Griffin, and some of the road patterns in the inner areas including ANZAC Parade, Commonwealth and Kings Avenues, and Constitution Avenue. The other significant legacy that Griffin leaves is the way landscape defines and articulates the city. "Underlying the city's spatial structure is the fundamental premise of Canberra as a city in the landscape. Its spatial structure has been progressively and incrementally planned from the beginning to maintain continuity with existing design elements, in particular the hills, ridges and valleys" (Taylor 2005:1).

The second legacy is the bureaucratic Federal Capital Advisory Committee, Federal Capital Commission and the National Capital Planning and Development Committee influence. This was another period of intense Commonwealth interest in its capital city, best expressed in the suburban areas of inner Canberra with their treed streetscapes, as well as some individual elements such as Old Parliament House, East and West Blocks, the Administration Building, the Australian War Memorial, the Sydney and Melbourne Buildings, School of Anatomy (now the Film and Sound Archive), Hotel Acton and Beauchamp House.

The third and most distinct legacy is that left by the Menzies/Holford/National Capital Development Commission (NCDC) era, particularly the dispersed town centres of Woden-Weston Creek, Belconnen and Tuggeranong (and Gungahlin conceptually in the NCDC's metropolitan plans as its construction did not commence until after the NCDC was abolished), the network of open spaces between the towns known as the National Capital Open Space System, the peripheral road hierarchy network, and the major government, cultural and administrative facilities in the Parliamentary Zone, not the least of which is Parliament House itself. Given the many decades of delay that Canberra had already experienced, Menzies recognised the need to ensure that the NCDC reported to the Parliament and operated within the shadow of his own authority (Troy 1993:8). At his farewell press conference in January 1966, Sir Robert Menzies is reported as saying that "Canberra is my pride and joy ...it will continue beyond question" (The Canberra Times 1989).

The nature of the Australian Federation and the terms of the Constitution have meant that the Commonwealth has no jurisdiction or direct involvement in urban planning and development in any of the other jurisdictions. But the Commonwealth does have a very clear Constitutional mandate for the planning and development of its capital city. It is time for a renewed Commonwealth interest in Canberra as the Nation's capital.

PLANNING AND LAND USE CONTROLS IN THE AUSTRALIAN CAPITAL TERRITORY

Having started with a canvas of over 900 square miles to design and construct Australia's capital city, the Commonwealth has ended up having direct ownership, management and control over only a fraction of the Australian Capital Territory (ACT).

With the advent of self government in 1988, planning and land management in the ACT was divided into two separate planning and land management systems.

The legislative context for planning is the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) (ACT(PALM) Act 1988). The ACT (PALM) Act 1988 requires the National Capital Authority to prepare and manage a *National Capital Plan*. The ACT (PALM) Act 1988 also requires the preparation of a *Territory Plan* to be consistent with the *National Capital Plan*.

In effect, Canberra is divided in management responsibilities between the Commonwealth and the local Australian Capital Territory jurisdictions. It can best be described as a dual planning and land administration system. Different parts of the city are planned and administered by different governments. The differences are based on National Land, and Territory Land (Wensing 1992:62).

- National Land is defined in the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) as land that 'is intended to be used by or on behalf of the Commonwealth'. The major agencies with National Land management responsibilities include the National Capital Authority (NCA) which has responsibility for the Parliamentary Zone and land for Diplomatic Missions, the Department of Defence which has responsibility for land at Russell and Duntroon, the Department of Finance and Administration which has responsibility for some buildings within the Parliamentary Zone and land at Barton, and the Department of Infrastructure, Transport, Regional Development and Local Government which has responsibility for the Canberra Airport. Planning for these assets is controlled by the *National Capital Plan* administered and kept under review by the National Capital Authority.
- Territory Land is defined in the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) as 'any land that is not National Land'.

Specifically, under Section 10(1) and 10(2)(c) and (d) of the Act, the *National Capital Plan* may specify:

- areas of land that have the special characteristics of the National Capital as ‘Designated Areas’ (and this includes National Land or Territory land), and
- ‘special requirements’ for the development of any area, being requirements that are desirable in the interests of the National capital (this does not have to be a ‘designated area’).

Designated Areas are excluded from the provisions of the Territory Plan and are controlled by the provisions of the *National Capital Plan* (s.25(1)(b)(i) and s.25(6) the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth). (NCPA 1990:4; Wensing 1992:64).

The balance of the ACT outside Designated Areas and not identified as being subject to Special Requirements, are subject to the general policies and principles (General Requirements) of the *National Capital Plan* (NCPA 1990:73). So there are in effect three layers of Commonwealth planning control in the ACT.

- in Designated Areas, the Commonwealth through the NCA has complete control.
- in areas subject to ‘Special Requirements’, the Commonwealth through the NCA has partial but over-riding control.
- in all other areas, the Commonwealth NCA has limited control by virtue of the ‘general requirements’ of the *National Capital Plan*.

In the Introduction to the *National Capital Plan* the whole of the ACT as well as the urban areas of Canberra are recognised as being of national interest. Matters of national interest identified in the *National Capital Plan* include:

- the pre-eminence of the role of Canberra and the Territory as the national capital;
- the preservation and enhancement of Canberra’s landscape features,;
- respect for Walter Burley Griffin’s formally adopted plan for Canberra;
- sites for national capital uses; and
- the development of a city respecting environmental values which are reflected in sustainable urban areas.

The *National Capital Plan* at its most general level provides a framework determined by the Commonwealth Parliament for land use and development throughout the Territory. At its most detailed level, it becomes the means for guiding the planning, design and development of the Designated Areas – those having the special characteristics of the National Capital (see Figure 1, below) (NCPA 1990:3). These are the inner hills and inner open space system, the importance of which is attributed to Griffin, but according to Reid (2002:254) is an interpretation of the Griffin plan by the former FCC, Holford and the former NCDC.

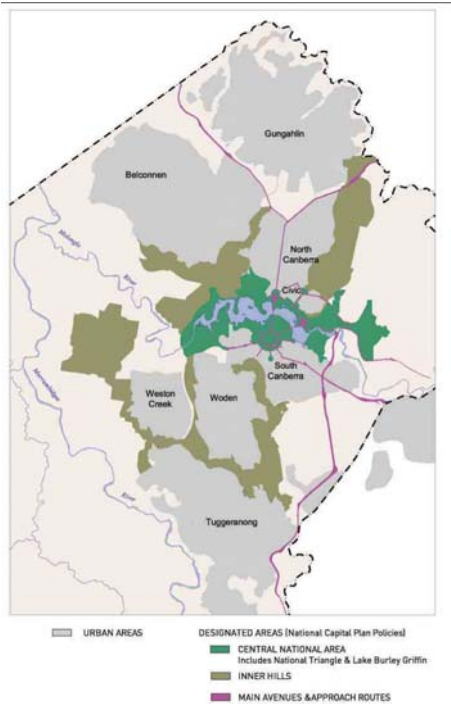


Figure 1. Designated Areas

Source: Collection: National Capital Authority Library & Information Service

http://www.nationalcapital.gov.au/corporate/publications/right_to_protest/structures.asp

As explained above, Designated Areas are excluded from the provisions of the Territory Plan and are controlled by the provisions of the *National Capital Plan* (s.25(1)(b)(i) and s.25(6) the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) (NCPA 1990:4; Wensing 1992:64). A remedy for most of the conflict between the two planning agencies would be to revert all land identified as being in a ‘Designated Area’ to National Land, thereby removing the dual controls and bringing these areas into Commonwealth control, for the simple reason that these areas are of critical importance to Canberra as Australia’s capital and not to be influenced by local short term interests. The former Chief Planner of the NCA, Mr Malcolm Smith, also presented this view to the Committee’s previous inquiry into the NCA in 2003.

Where the *National Capital Plan* and *Territory Plan* overlap, Development Control Plans are the instrument for specifying and applying the Special Requirements of the National Capital Plan (NCPA 1990:73,74). In other areas of Territory Land subject to Special Requirements, the requirements are set out in the *National Capital Plan* and in some instances the Special Requirements also require a Development Control Plan. Such plans are prepared jointly between the Commonwealth and the Territory and are subsequently administered by the Territory (NCPA 1990:13). Development Control Plans may consist of maps, drawings, photographs, specifications and written statements (Wensing 1992:65). However, the process for preparing Development Control Plans is not very clear and this is discussed further below.

SHORTCOMINGS OF THE PRESENT PLANNING ARRANGEMENTS

The purpose of planning for a National capital goes beyond that of planning for another metropolis. As well as providing for the efficient distribution of uses and efficient functioning of lifestyle activities in an environmentally sustainable way, Canberra at the same time must present itself to the whole world as a national capital. To do this it is in competition with other capitals. Canberra is more than just a place to live for the local population. It is first and foremost the nation's Capital. For this reason it requires special planning attention and to do this properly the Commonwealth must take its rightful role in its total planning and development.

For example, the Commonwealth is much better placed to provide the lead in the overall planning of Canberra in order to ensure that Canberra and the Territory are planned and developed in accordance with its National capital significance.

We also question whether the planning arrangements put in place when the Territory Government was created are still appropriate. We believe a more comprehensive review of the planning system in Canberra is urgently required rather than the limited terms of reference for this Inquiry.

While the intent was for the Commonwealth to have a major say under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth), it has not done this with any real conviction. If the Commonwealth is to play its proper part, then it must assume a State-like role and delegate to the Territory the role of a local government authority. This requires the Commonwealth to strengthen whatever instruments or tools it requires for it to protect its interests, whether it be the NCA or some other Commonwealth planning agency. The Commonwealth planning agency would then develop planning policies for the whole of Canberra and it could delegate the administration and implementation of those policies to the Territory in a two tier arrangement similar to the way that States provide the guiding role for local governments through State Planning Policies.

In terms of the current legislative regime governing planning in the National capital, we draw the Committee's attention to the following deficiencies and anomalies:

Consultation by the NCA - Non-existent

The *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) requires the NCA to consult with the community and stakeholders on draft amendments to the *National Capital Plan*. The Act does not require the NCA to consult on Development Control Plans. However, as part of the process of preparing a Development Control Plan, the NCA forwards a copy of the draft to the ACT Planning and Land Authority. Consultation for applications for works approval (development applications) is only required in limited circumstances under the Act.

Partly in response to the Joint Standing Committee's 2004 Report, the NCA released a draft Consultation Protocol in 2006, which was finalised in July 2007. The Protocol goes part of the way to resolving these anomalies. However, it is still not clear whether the wider

community will be properly consulted in the preparation of Development Control Plans. Consultation measures can be improved by amending the legislation and its regulations.

Complexities between the NCA and Territory planning systems

Various complexities arise when Territory Land is also designated land under the National Capital Plan. Leasing matters on Territory Land are the responsibility of the Territory Government under the ACT Government's *Land (Planning and Environment) Act 1991* (ACT). However, works approval must be obtained from the NCA for developments on Territory land that is deemed under the *National Capital Plan* to be in a Designated Area. Works considered by the NCA in Designated Areas, regardless of whether they are on National Land or Territory Land, are not generally subject to statutory public consultation. As suggested above, a remedy for most of the conflict between the two planning agencies would be to revert all land identified as being in a 'Designated Area' to National Land, thereby removing the dual controls and bringing these areas into Commonwealth control.

No Planning Appeals in Designated Areas

There is no provision in *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) for planning appeals relating to the merits or otherwise of works approvals granted or refused by the NCA. Although it is possible to seek recourse under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) to determine whether a decision has been made correctly, there has never been such a challenge to a decision of the NCA. This situation has been criticised by many practitioners, including the Planning Institute of Australia.

A simple appeals process needs to be introduced. Any appeal process needs to be at arms length from the NCA and independent. A simple appeals process existed during the life of the former National Capital Development Commission (NCDC) whereby applicants were allowed to appeal against any NCDC decision to refuse a Design and Siting Application or to impose conditions on an approval. An independent expert panel heard the appeals. The panel focussed its attention on the technical issues and legal representation was not required. The appeals process was accessible and equitable because it was only open to first parties. A similar model could be considered for a review of NCA decisions, but properly expanded to include third party appeals.

Who controls leasing on National Land?

Leasing matters on National Land are the responsibility of the NCA. While the Territory Government has created its own planning and land administration legislation, the former Commonwealth legislation governing the leasehold system in the ACT was not entirely repealed following self-government. In fact, it is not exactly clear which pieces of legislation are still in effect and are used by the NCA to govern leasing arrangements on National Land. A range of questions arise. For example:

- Are the *Leases Ordinance 1918*, the *City Area Leases Ordinance 1936*, the *Leases (Special Purposes) Ordinance 1925* still current, or have they been repealed?
- What head of power or legislation does the NCA use to issue leases for National Land in the ACT?

- Does the NCA enter into an arrangement with the ACT Government whereby the ACT Government's legislation, the *Planning and Development Act 2007* (ACT), is used to issue leases on National Land?
- Who is responsible for administering leases on National Land? Is it the NCA or is it the Territory Government under delegation from the NCA?

The role of the superior jurisdiction

The Australian Constitution created a federation and the city of Canberra. Under Section 125 of the Constitution, the Australian Capital Territory shall forever belong to the Commonwealth. The Commonwealth can never divest itself of its responsibility for the ACT unless the States seek to dissolve the Constitution (which is highly unlikely) With the advent of self government for the Territory in 1989, we now have a two-tiered planning system in Canberra.

A two tiered planning system operates very successfully in most other jurisdictions in Australia. However, one key difference between those systems and the system in the ACT, is that the State always has a superior role and retains the right to 'call in' a matter, thereby enabling it to exercise its authority. The *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) needs to be amended to restore the power of the superior jurisdiction to exercise its authority over a subordinate level of government. The Commonwealth's planning agency must always be able to call-in any planning and development matter which threatens to destroy or detract from the special characteristics that pervade the National Capital and indeed the ACT.

OUR RESPONSE TO THE COMMITTEE'S TERMS OF REFERENCE

1 The administration of the National Capital Plan with particular emphasis on the reduction of red tape and duplication of municipal and local planning functions, the jurisdiction of ACT spatial policy and harmonisation of planning systems.

Duplication is inevitable when a single metropolitan city is divided between two distinct planning agencies with separate responsibilities and critically different planning agendas. The Commonwealth by vacating much of the planning field to a local government, fed these differences and encouraged the Territory Government to play a more than local government role. Disputes and duplication inevitably followed as the Territory attempted to take on a metropolitan rather than local government role. The most effective way to reduce red tape is to bring the whole of the ACT under a planning regime where there is one superior planning agency. Perpetuating two planning systems will not resolve the difficulties that are facing either jurisdiction, and the Territory must acknowledge that Canberra exists primarily because of Commonwealth Constitutional obligations.

A preferred model for the National capital would be for an independent planning authority for the whole of Canberra, preferably as a Commonwealth agency, with the Territory Government taking on a second tier role for the administration and implementation of the local government components. The aim should be to avoid duplication and to create a Canberra for which Australia can be justly proud.

Recommendations:

- A.** That the Commonwealth reasserts its role, interest and responsibility for the planning, development and functioning of Canberra as the National Capital.

- B.** That an independent planning authority be created for the whole of Canberra as a new Commonwealth agency replacing the NCA, and that the new agency have the ability to delegate to the Territory the more local government type functions of local area planning and development control. The new agency should have the ability to call-in any planning or development matter that threatens to erode, destroy or detract from the special characteristics of the National Capital.

2 Whether the governance arrangements for the NCA provide a sufficient balance between the independence of the Authority's planning decisions and its accountability for its operations.

The NCA's accountability is bound up in the legislation with which it must comply. Its accountability currently rests with Parliament, surely the ultimate condition of any consultation process. Complaints about consultation and other related community interest matters must be sheeted home to Parliament rather than the messenger. Parliament has the power to change the way any Commonwealth agency consults the community on its proposed actions. However, it should be made clear that consultation does not guarantee all interested parties will necessarily be satisfied with any decision. There will always be some level of dissatisfaction, whatever consultation process is followed. There is always a natural resistance to planning decisions because planning involves change. Change can be acceptable to a significant part of the community, provided it recognises the values, characteristics and features that a community wants to keep. This conservative community backbone can be provided through a system that recognises the important role provided by heritage conservation and protection when dealing with change.

The NCA is already required to undertake community consultation with respect to changes to the National Capital Plan. Parliament also has scrutiny of major projects in the ACT proposed by the NCA or requiring the NCA's approval. The existing legislation could be significantly improved by the inclusion of provisions requiring the NCA to consult the wider Australian and Canberra communities on its policies, plans and development controls. Consultation can be designed and regulated to consider any proposed action or decision. But it will not and cannot be designed to ensure that all interested parties will be satisfied with the resultant decision. For example, a cynic might suggest that this Inquiry may not have occurred with its current terms of reference if the Territory government had not been dissatisfied by Commonwealth planning decisions.

The need for an independent Commonwealth planning body is evident from the way planning decisions are portrayed in the media as among the most controversial issues confronting both jurisdictions. Trivial issues are raised to an intensity that create misunderstandings. For example, much has been said recently about concerns for the

protection of the Albert Hall and the NCA's plans for the Albert Hall Precinct (Amendment 53). Careful analysis of the proposals show that the structure and fabric of the Albert Hall was never threatened. It would continue to be protected and conserved for its heritage significance in accordance with the requirements of the National Capital Plan (Chapter 10). However, the planning proposals would permit a change of use, including for commercial uses, which was already permitted by the Territory Government. This could have an adverse effect on the heritage values of the place unless carefully managed. What was missed in the commotion was the Territory Government's inaction and lack of maintenance of the facility. This may not have happened if the place had been under the control and management of the Commonwealth rather than the Territory and if the media had not been allowed to misconstrue the issues. This is a case in point where Territory Land in Designated Areas should be reverted to National Land to remove the current planning and land management anomaly.

Recommendations:

- C. That as a minimum, provisions for consultation on the development of new Development Control Plans be inserted into the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth).
- D. That all Territory Land in Designated Areas be reverted to National Land to reinstate the Commonwealth's superior planning and land management functions as the owner of the ACT.

3 The appropriate level of oversight required to achieve the highest standards in design for areas of national significance.

To achieve the highest standards in design, an appropriate level of oversight is required, including expert resources of high standard. One way to achieve the application of high design standards is through competition. The National Capital Development Commission used the design competition model most successfully during its period of administrative responsibility as a statutory authority. For example, it is not by chance that two of the four places in Canberra included in the National Heritage List were the product of design competitions, and another the product of the Commonwealth's design and construction agency. The fact that we have a number of commercial buildings in Civic competing with each other for ugliness is a poor recommendation for the current model to continue, where the Commonwealth leaves the provision of its office accommodation to the private sector.

Territory Government examples of urban design also leave much to be desired. For example, the redevelopment of Civic Square ignores the axial composition and the vista along Ainslie Avenue. This lack of design quality results partly from the Commonwealth devolving its commercial office responsibility and an acceptance of standards based on cost, rather than seeking to design and build government accommodation to enhance the physical qualities of Canberra's wonderful natural setting.

The appropriate level of over sighting to achieve the highest standards in design is unlikely to be met where there are two planning agencies: one seeking to develop Canberra as a

regional centre and the other Commonwealth agency with little or no willingness to control design over the major commercial centres. A more effective system would be to have the Commonwealth agency being responsible for setting, administering and implementing design standards for all major structures. Particularly for the accommodation of Commonwealth functions locating them where they are best able to ensure the efficient functioning of the National capital, as well as for areas of national significance.

In particular, the role of the NCA in complying with its responsibilities under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) should be commended. In conformity with the Act and its Regulations, the NCA has prepared a Heritage Strategy, has a Heritage Register on its website and has prepared plans and has plans in the course of preparation for Commonwealth Heritage places that it owns or controls. It is also investigating whether other places not included in any heritage register or list have heritage values, as well as considering whether Canberra or any significant part of Canberra is worthy of nomination to the National Heritage List.

Recommendation:

- E. That a simple appeal process be included in the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth), which would enable first and third party appeals of NCA development assessment decisions but not at the expense of adversely restricting significant national capital policies determined through a statutory planning processes.

4 Opportunities to ensure cooperation with the ACT planning authority and increased engagement with the Canberra community.

Increased engagement with the Canberra community can be achieved by reviewing the provisions in the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth). Indeed, the current Act says very little about consulting the community on planning policies and development controls. Legislation passed by Parliament in more recent times such as the *Environment Protection and Biodiversity Conservation Act 1999*, show how public consultation can be built into development assessment and approval processes. The Commonwealth has been lax in not engaging with the Territory and the Australian community on how to change the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth).

Consistent with our view about the need for a single planning authority for the ACT, the ACT Government's role is best kept to local matters, such as residential development and local area planning.

Recommendation:

- F. That the existing Federal legislation governing planning in the ACT be amended as suggested elsewhere in this submission to provide for improved consultation and engagement with the Canberra community.

5 The effective national promotion of the National Capital, and the roles of the NCA and the ACT Government in advocacy for new infrastructure projects including responsibility for events and developing the distinctive character of the National Capital.

Both the Commonwealth and the Territory have been remiss in providing for new infrastructure to cater for Canberra's continues growth as the National capital. The Commonwealth, because of its primary responsibility to plan and develop Canberra as the National capital and as the home of national institutions has been particularly lax.

When the Commonwealth relinquished most of its responsibility for the city to the new ACT Government in 1989, there was already a significant deficit in critical infrastructure. For example, an inadequate long term water supply and an ineffective public transport system were part of this bequest. This condition has been exacerbated by limited investment in infrastructure by both jurisdictions for two decades. We agree with the observation of the Planning Institute of Australia that the ACT Government, as a small jurisdiction with state-like functions has very limited resources and is unable to fund the required infrastructure deficits. Its reliance on the sale of leases risks a perception that planning decisions may be skewed. The Commonwealth should recognise its particular responsibilities for the National capital, and play its proper role as the jurisdiction with the responsibility for planning as well as for providing assistance with infrastructure investment.

Canberra is the Commonwealth's only direct opportunity to lead the way in shaping the urban environment to meet the challenges of climate change and sustainability generally. As such, the Commonwealth should continue to invest in Canberra as Australia's *demonstration* urban environment for the 21st century.

Recommendations:

- G.** That the Commonwealth recognise its responsibilities for sustainable development and adapting to the effects of climate change, and use its planning and land management powers in the ACT to improve the city's sustainability, especially in connection with its own activities. This includes the development of office accommodation for its own purposes, whether provided through private or public ownership.

CONCLUSION

It is time that the Commonwealth reasserted its role, interest and responsibility for the planning, development and functioning of Canberra as the National capital rather than further devolving its responsibilities to the Territory Government one of whose principal means of raising funds is the sale of leases for development and redevelopment purposes. This financial burden places the Territory Government, and it seems sometimes Commonwealth agencies, at the behest of expedient and short term private development interests that do not always coincide with the interests of Canberra as the National Capital of Australia.

As Canberra comes to be seen more and more as a real capital metropolis, rather than a large regional city, so it will become a much greater tourist destination. The distinctive character of the National capital can only be achieved by a strong interest and investment in Canberra by the Commonwealth and by promoting cultural tourism through its most exciting feature, its twentieth century planning and design heritage.

Ed Wensing
Grahame Crocket
Paul Howorth

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ATTACHMENT A
To the submission from Wensing, Crocket, Howorth

CANBERRA'S NATIONAL PLANNING HERITAGE

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1. INTRODUCTION

"I have planned a city not like any other city in the world. I have planned it not in a way that I expected any government authorities in the world would accept. I have planed an ideal city – a city that meets my ideals of the city of the future" (Griffin 1912).

Canberra is the city that Federation created and Australia's only fully planned city. It is one of a few of the world's capital cities that were designated as such before they were created. Walter Burley Griffin's plan for the national capital was chosen from a worldwide design competition and has since grown to accommodate more than 300,000 people.

In 2004 the Australian Government created a new National Heritage List for places with 'outstanding value to the nation'. Canberra is one of Australia's foremost assets (NCA 2004), but to what extent have the ideals that Griffin foresaw in his visionary plan been achieved? Can Canberra's planning be ascribed significant values to pass the threshold of 'outstanding value to the nation' for entry in the National Heritage List?

This paper explores Canberra's planning history, including Federal Government commitments to building the city and the various planning layers that have been created over the past 100 years. As the public ownership of land was also a major contributor to the place's successful planning and development, its contribution to heritage values is also discussed. Over the period, six major plans have influenced Canberra's planning and development and their contribution is examined, including the extent to which some of Griffin's visionary ideals have been achieved. The paper concludes with a broad ranging discussion of planning's contribution to Canberra's national heritage values, and its importance in the way planning may contribute to the heritage significance of Canberra, its extent and whether it is worthy of entry into the National Heritage List.

The competition for the design of Australia's national capital occurred in the formative years of town planning (Reps 1997:9), which in the modern sense was not developed in Australia until after World War II (1939-45). There were no town planning ministries in any of the States until after this time and when they were created they ranked very low in the political hierarchy with no authority or capacity to co-ordinate the provision of infrastructure or services for urban development (Troy 1993:3). The Royal Australian Planning Institute was formed as a national institute at its first Congress in the Albert Hall in Canberra in August 1951 (Norman 1993:5). It is against this background that we should evaluate Canberra's national planning heritage.

2. GOVERNMENT COMMITMENT AND PLANNING LAYERS

At the beginning of a new millennium an Act of the British Parliament, *The Commonwealth of Australia Constitution Act 1900* (UK) created the Commonwealth of Australia after decades of colonial debate, ten referendums and enabling acts passed by the colonies. Section 9 of the UK

Act sets out the Australian Constitution, which included an obligation on the Parliament of the Commonwealth of Australia to select a seat of government, within New South Wales (NSW) and not closer than 100 miles from Sydney, “which shall have been granted to, or acquired by the Commonwealth and shall be invested in and belong to the Commonwealth” (Section 125). Until such time as the seat of government was established, the Commonwealth Parliament would sit in Melbourne.

The history of Canberra is a story of fits and starts. Some periods of inactivity are easily understandable, such as the two world wars and the great depression. Setting the scene in the new parliament for the first stage of the saga was the continuing rivalry between the former colonies of NSW and Victoria (Pegrum 1983:11). In this context, the selection of the site within NSW took an inordinately long time, and the fact that Parliament would meet in Melbourne until a new capital was available did not imbue Victorian members with any sense of urgency to deal with the matter.

The glint of an idea

In 1901, when raised by King O’Malley (Labour, Tasmania) in a private member’s bill, he gained no support for prompt action to select a site (Pegrum 1983:69). Optimistically, Parliament thought that a new city could be made ready to meet in, within three or four years (Quick and Garran 1901:899). Political argument about the location of the nation’s future capital, or ‘taxation factory’ as once described, continued into 1903 and popular interest might have been described as apathetic at best (Correspondence, *Argus*, 12 October 1903, cited in Pegrum 1983:101).

Some action at last

Pressured eventually by the NSW Premier (Wade) in 1907, probably reflecting NSW disquiet at Melbourne’s continuing role as the nation’s interim capital, the Federal Parliament in 1908 finally selected Yass-Canberra as the site for Australia’s future capital. Prophetically, the *Melbourne Age* thought that progress towards the new capital would be slow.

A period of some interest and activity followed at the end of the decade when Charles Scrivener, a NSW surveyor working for the Federal Government, selected an area in south eastern New South Wales just in excess of 900 square miles based on the Cotter, Gudgenby and Naas River catchments, together with land at Jervis Bay and the right to use Snowy Mountains waters for hydro-electricity generation. Scrivener’s influence on the design of Canberra cannot be ignored. When the *Seat of Government (Administration) Act 1910* became law (with confirmation of a leasehold system for land tenure) and O’Malley was appointed Minister for Home Affairs, the idea of a competition for the design of the new city took hold, and was approved in 1911. Given the history of development of all other major cities and towns in Australia, the decision to hold a design competition was unusual (Troy 1993).

Although the competition did not receive support from the Australian or British Institutes of Architects, it attracted entries from Australasia, Europe (except Germany), North America, Africa and the sub-continent (Reps 1997:105). In 1912, O’Malley, in accordance with the majority view of the judges, selected the design of Walter Burley Griffin as the winning submission. Almost immediately problems began when the bureaucracy dismissed the Griffin plan and began to promote their own hybrid design. O’Malley’s commitment to Griffin’s plan waned when he approved the hybrid plan in January 1913. In the meantime, the government had constructed Canberra’s power station.

All quiet on the Canberra front

A new Government was sworn in on 24 June 1913. While the Prime Minister, Joseph Cook was also the Minister for Home Affairs, his Assistant Minister, William H Kelly (a Griffin supporter), was responsible for the Federal Territory. On 18 October 1913, Kelly appointed Griffin as Federal Capital Director of Design and Construction, a position Griffin held for seven

years until December 1920. Kelly called Griffin to review his plan, which he did in 1913. According to Reid (2002:103-109), the results were disappointing. In December 1913 Kelly approved Griffin's revised plan. The arguments between Griffin and the bureaucrats were to continue for seven years, even though Griffin's fortunes were rekindled when, with a change of government, O'Malley was re-appointed as Minister for Home Affairs in October 1915 (Reid 2002:113-117).

Notwithstanding an attempt to hold a competition for a permanent parliament house, the period between 1913 and 1920 with Griffin as the Federal Capital Director was one of slow progress for Canberra, quite understandably given the momentous events that focussed the young nation's attention twelve thousand miles away. Although some essential infrastructure was put in place such as the brickworks, some sewerage works and the Cotter Dam, none was directly attributable to Griffin. Griffin's most significant contribution during this time was his final overarching master plan in 1918 that drew on his now intimate knowledge of the site (NCA 2004:18).

Provisional Canberra: a burst of activity

In 1921 the Government dispensed with Griffin's services and established the Federal Capital Advisory Committee (FCAC) to advise the Minister for Works and Railways on the construction of Canberra and to review the Griffin plan (Reid 2002:149). The FCAC generally adopted Griffin's 1918 road layout but changed the nature of the city's built form, to be more in line with the Chairman's (John Sulman) 'Garden Town' planning philosophies (Reid 2002:152-3). There was no political patron to support this stage of the development of Canberra and government was happy to leave the responsibility for constructing Australia's capital largely in the hands of the bureaucrats, with the Department of Works and Railways providing housing at Reid, Ainslie and Eastlake, retail accommodation at Kingston, Manuka and Civic and the Forestry School at Yarralumla. At the same time Charles Weston was undertaking his massive tree planting program on the bare Limestone plains. Between 1921 and 1926 over one million trees were planted under his direction (Gray 1999). The FCAC also favoured the construction of a provisional Parliament House in front of Camp Hill and proposed the construction of provisional government offices east and west of Camp Hill, thereby surrounding and, according to Reid (2002 172-5), snuffing all opportunity for a permanent Parliament House on Griffin's preferred Camp Hill site. This of course, is open to debate because one of the sites considered by Parliament during the late 1970's for its permanent location included Camp Hill. In any case, in 1923 Parliament approved the provisional Parliament House option in front of Camp Hill. This was completed in 1927.

The successor to the FCAC, the Federal Capital Commission (FCC) a construction agency pursued the FCAC deflowering of the Griffin plan in favour of the 'garden city' approach, but now with political support and funding. The skeleton of Griffin's street layout without any land use indication was gazetted in 1925 as part of the *Seat of Government (Administration) Act 1924*. Construction of facilities and accommodation under the FCC continued apace with the construction of the provisional Parliament House, East and West Blocks, Hotel Canberra, the Albert Hall, Hotel Kurrajong, Hotel Wellington, Hotel Acton, Ainslie Hotel, Beauchamp House, the Institute of Anatomy, shopping centres at Kingston and Manuka, Manuka Swimming Pool, Telopea Park School and the Government Printing Office at Kingston. The opening of Federal Parliament in 1927 signalled the end of the Federal Parliament's sojourn in Melbourne.

Economic decline, another war and peaceful inactivity

Apart from the Australian War Memorial approved in 1928 and finished in 1941, construction work for major public buildings slowed to a snail's pace with the onset of the effect of the Great Depression in 1929 followed by the Second World War. Some defence activity at RAAF Base Fairbairn and the Royal Military College kept construction activity moving during the war years.

In 1930 the FCC was abolished and the Garden City town remained primarily in the hands of bureaucratic interests. In 1938, as a result of some questioning in Parliament about the lack of any plan or direction for Canberra, John McEwen the then Minister for the Interior, established the National Capital Planning and Development Committee (NCPDC). The NCPDC continued to operate through the Second World War and in 1946 prepared plans for the suburb of Campbell, Civic Centre and the Parliamentary Triangle. Projects completed included the Australian-American War Memorial on the Kings Avenue axis, and further changes were made to the Gazetted Plan. Following criticism by the Public Works Committee in 1954-55 and a slow transfer of Commonwealth public servants from Melbourne, as much because of Canberra's status as a 'hardship post' as it was to a lack of commitment or patron, it became obvious to Parliament that some administrative change was necessary (Reid 2002:208).

Post war boom

Although a conservative, the then Prime Minister Robert Menzies, firmly believed that the planning and development of the nation's capital properly fell into the realm of public responsibility (Troy 1993). In 1954 he established a Senate Select Committee to inquire into the matter. The 1955 report of the Senate Select Committee on the Development of Canberra was a milestone and, according to Reid (2002:223-4), is still the most comprehensive investigation into Canberra's planning and development. The 1955 Senate Select Committee's report identified the lack of serious commitment, poor quality control and Parliamentary vigilance that had dogged Canberra for over two decades (The Senate 1955). Enter (Sir) William Holford, eminent British architect and town planner, invited by Prime Minister Robert Menzies to consider the future development of Canberra. Holford's report was tabled in Parliament in May 1958. His report radically revised Griffin's lake profile, located Parliament House on the lake frontage and introduced traffic management as the major planning principle to influence the development of Canberra for the next forty or more years (Holford 1957). "There was no public or professional outcry at his discrediting of Griffin's design, nor to his disregard to so much of the Senate Committee's report" (Reid 2002:247). In the meantime the government had completed the construction of the Administration Building, first planned in the 1920s to accommodate public servants but delayed because of the depression and the war.

As Reid (2002:247) points out, "after 25 years of inaction the Federal Government was finally prepared to make a substantial commitment to Canberra". Menzies understood that many in the Parliament were still not committed to the idea of a national capital and that he had to appeal to the Parliament's sense of national vision. He also knew that he had to eliminate the opportunities for internecine wrangling within the federal bureaucracy and that the opportunity to build a national capital existed only once and could no longer be left to idealistic notions of co-operation and co-ordination (Troy 1993). Menzies took and retained a personal interest, and in 1957 his government established the National Capital Development Commission (NCDC). Menzies' instructions were that the new Commission "must be powerful, responsible and competent...and as far as possible autonomous within its budget" (Harrison 1980:10; Overall 1995:35).

The NCDC was headed in 1958 by (Sir) John Overall and was aided significantly by Peter Harrison, the NCDC's first Chief Planner. Peter Harrison had developed a personal and professional interest in Walter Burley Griffin and had become a specialist on Walter Burley Griffin's winning design for Canberra. As an advocate of Griffin's design, Harrison supported Griffin's ideals and planning principles when giving evidence to the Senate Select Committee's Inquiry in 1954-55 as a representative of the Royal Australian Planning Institute (Reid 2002:355 and Freestone in Harrison 1995:ix). Harrison argued, as he did for the rest of his life, for the importance of adhering to Griffin's planning principles and stressed that the public ownership of land provided unique opportunities for the city (Wensing 1993).

Shortly after joining the NCDC, Harrison set about persuading the Commission to plan for growth to a population of at least 250,000 or half a million people. "I didn't care when it

reached that target, the point was to see that when it did grow you knew what you were doing, that planning was well ahead of growth” (Harrison cited in Wensing 1993).

Peter Harrison pointed out the choices for expanding Canberra: extension of the urban fringe areas in the traditional growth concentric ring pattern of Australian cities, or preserving the open character of the City by forming new towns. According to Harrison, only the latter course was capable of preserving the integrity of the Griffin Plan, with the topography the dominant element in the city structure. Harrison also advocated the adoption of the neighbourhood concept as the fundamental building brick in the design of residential areas within the new towns (Wensing 1993). With public servants being moved to Canberra in ever increasing numbers, the NCDC took up the challenge of providing for the rapidly expanding population in a series of new towns expanding into the surrounding valleys and farmlands. “Fitting the city sensitively into the landscape was something the NCDC believed it had inherited from Griffin” (Reid 2002:254).

In addition to the construction of Commonwealth Avenue and Kings Avenue bridges and Lake Burley Griffin in 1964, Canberra’s suburban expansion and dispersed town centres with government employment in Woden and Belconnen as well as Civic continued apace. Major national cultural institutions were located within the Parliamentary Zone. These included the National Library of Australia, the National Gallery of Australia, the High Court of Australia and the Carillon and may be considered to be in architectural terms, Canberra’s golden age. At the same time, considerable attention was paid to the park and open space system, with carefully defined landscape features promoted by Sylvia Crowe. In particular, the landscape setting for the central area of Canberra was set in the early 1960s with the construction of Lake Burley Griffin where Richard Clough planted future foreshores and peninsulas with exotic and native species in his own unique style.

Encouraged by the Canberra model and evidence of improved development efficiencies, in the mid 1970’s the Federal Government embarked on an ambitious but controversial program of growth centre decentralisation in the states (Harrison 1980:12; Lloyd and Troy 1981).

In the 1980s, NCDC interest focussed more and more on the Parliamentary Triangle and in 1988, after considerable debate, Parliament located its permanent home on the Capitol (Kurrajong), rather than on the lake frontage as proposed by Holford and the NCDC in 1957.

The pragmatists again

With its attention on the central area, NCDC saw itself more and more as a planning facilitator for the remainder of Canberra, encouraging private development and intent on pragmatism deflecting the development initiative to the private sector. At the same time, Parliament wanted to withdraw from what it perceived as a local government function. At the end of the 1980’s, influenced by ‘Thatcherism’, the Federal Government began a major program of divesting its property assets, including many office buildings in Canberra’s town centres.

The advent of self-government for the Territory in 1989 saw the demise of the NCDC and the creation of separate Territory and Commonwealth planning agencies. The legislation establishing the separate planning regimes required a new Commonwealth statutory authority, the National Capital Planning Authority, to prepare a ‘*National Capital Plan*’ with the object of ‘ensuring that Canberra and the Territory are planned and developed in accordance with their national significance’ (s.9 *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth)), and required the new ACT Legislative Assembly to make laws providing for the preparation of a Territory Plan, not inconsistent with the *National Capital Plan*, ‘to provide the people of the Territory with an attractive, safe and efficient environment in which to live and work and have their recreation’ (s.25 *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth)).

The change in planning arrangements for the National Capital signalled a significant reduction in Commonwealth interest in Canberra (Wensing 1992a). Without a public patron, Canberra is now primarily subject to private development pressures, notwithstanding the founding fathers' measures to retain land ownership to the Commonwealth Government through a leasehold system of land tenure.

Legacies

The various planning layers and the stages of Parliamentary paternal zeal have left three distinct legacies. The first is the O'Malley/Griffin legacy. The primary Griffin legacy is perhaps best demonstrated by the land and water axes, parts of Lake Burley Griffin, and some of the road patterns in the inner areas including ANZAC Parade, Commonwealth and Kings Avenues, and Constitution Avenue. The other significant legacy that Griffin leaves is the way landscape defines and articulates the city (Taylor 2005:1). "Underlying the city's spatial structure is the fundamental premise of Canberra as a city in the landscape. Its spatial structure has been progressively and incrementally planned from the beginning to maintain continuity with existing design elements, in particular the hills, ridges and valleys" (Taylor 2005:1).

The second legacy is the bureaucratic FCAC, FCC and NCPDC influence. Best expressed in the suburban areas of inner Canberra with their treed streetscapes, as well as some individual elements such as Old Parliament House, East and West Blocks, the Administration Building, the Australian War Memorial, the Sydney and Melbourne Buildings, School of Anatomy, Hotel Acton and Beauchamp House.

The third and most distinct legacy is that left by the Menzies/Holford/NCDC era, particularly the dispersed town centres of Woden-Weston Creek, Belconnen and Tuggeranong (and Gungahlin conceptually in the NCDC's metropolitan plans as its construction did not commence until after the NCDC was abolished), the network of open spaces between the towns known as the National Capital Open Space System, the peripheral road hierarchy network, and the major government, cultural and administrative facilities in the Parliamentary Zone, not the least of which is Parliament House itself. Given the many decades of delay that Canberra had already experienced, Menzies recognised the need to ensure that the NCDC reported to the Parliament and operated within the shadow of his own authority (Troy 1993:8). At his farewell press conference in January 1966, Sir Robert Menzies is reported as saying that "Canberra is my pride and joy ...it will continue beyond question" (The Canberra Times 1989).

The nature of the Australian Federation and the terms of the Constitution have meant that the Federal Government has no jurisdiction or direct involvement in urban planning and development in any of the other jurisdictions. Despite the fact that the Federal Government provided the money for Canberra's development, most of the decisions about Canberra have rarely been a central concern of the Federal Government. Nevertheless, it has always been, until recently, conservative Federal Governments that have shown the greatest level of commitment to the national elements of Canberra's planning and development.

3. PUBLIC OWNERSHIP OF LAND

The public ownership of land in Canberra has allowed successive governments to coordinate the planning and development of the city with the provision of services and facilities. The decision to build a new city on a rural site "was a bold venture for a newly formed nation" (Neutze 1988:3). In 90 years, a capital has been built and "a city of 300,000 people has taken form in a unique setting of mountains, bush, forests and lakes. It did not happen by chance, it did not happen overnight" (Bourassa *et al* 1994:1).

A child of history

Canberra's leasehold system is a natural child of the history of Australian land settlement. Its emergence owed little to socialistic or biblical injunctions, but rather to the history of early land

settlement in the two most populous Australian colonies. These experiences include lack of foresight, faulty legislation, poor administration, political corruption, dishonest practices, moral cowardice and human greed. Land laws and land disposal were lively political issues during the 19th and early 20th Centuries. The lack of rigour in the disposal of land in the latter half of the 19th Century inspired strong public opinion in favour of land reform (Brennan 1971:1).

Prevention of speculation in land

The location of and planning for a national capital were significant issues in the lead up to the formation of the Federation in 1901. Constitutional Convention Debates and the early Parliamentary debates in the first decade of the 20th century show clearly that prevention of speculation was a principal objective when it was decided that land for the national capital should be acquired and leased rather than sold for private occupation and use (Brennan 1971:16 and Neutze 1988: 3).

As mentioned earlier, the *Commonwealth of Australia Constitution Act 1900*, a statute of the United Kingdom Parliament, unites the six separate colonies of Australia into one indissoluble Federal Commonwealth and provides Australia with its Constitution. Section 125 of the Constitution provides that the seat of government of the Commonwealth "...shall be within territory which shall have been granted to or acquired by the Commonwealth, and shall be vested in and belong to the Commonwealth...". The wording inspired a popular belief that no land in the territory could ever be owned by a private person or corporation without a constitutional amendment, despite the existence of a legal opinion stating that the Commonwealth was only acquiring territorial rights under this provision, not proprietary rights (Brennan 1971:18).

Land in the Federal Capital will be retained by the Commonwealth

While planning in Canberra had much the same objectives as planning in other cities, the environment was much more favourable to planning, largely due to the public ownership of land (Neutze 1987:149).

Following the proclamation of the Constitution in 1901, the appointed government of the day under the leadership of Edmund Barton busied itself with the preparations for the first federal election, choosing 29 and 30 March 1901 as polling dates. In opening the campaign and speaking of the territory to be chosen for the seat of government, Edmund Barton said: "...so far as the law of the land allows land within the federal area will not be sold. Its ownership will be retained in the Commonwealth. The land will be let for considerable terms but with periodic re-appraisal so that the revenues thus obtained will assist the cost of creating the Commonwealth Capital. ...we shall see that we do not pay unfair and speculative values for land and that the people get the benefit of the prices we pay for it, and nevertheless there shall be a considerable profit that will help to take the load of the cost of the creation of the Commonwealth off the backs of the people of Australia" (Brennan 1971:19).

Section 125 of the Australian Constitution, the *Seat of Government Act 1908* and the *Seat of Government (Acceptance) Act 1909* provide for the selection and establishment of the Australian Capital Territory as the site for the seat of government. Section 9 of the *Seat of Government (Administration) Act 1910* and Section 29 of the *Australian Capital Territory (Planning and Land Management) Act 1988* provide the statutory basis for Canberra's leasehold system of land tenure.

The essential characteristics of leasehold

The primary reasons underlying the adoption of a public leasehold system include:

- There should be no opportunity for speculation or personal gain from the development of the new Capital.
- The unearned increments in land value, created by the expenditure of public money, should belong to the people.

- The Commonwealth as the owner of the land would pay all the costs of development.
- There would be orderly planning via lease purpose clauses (Stein 1995:26).

The essential characteristics of the leasehold system, which distinguish it from freehold, include:

- The Commonwealth would own all the land in perpetuity.
- A lease would be subject to the payment of a premium or rent which would be subject to periodic re-appraisal. The revenue thus obtained being used to further develop the new Capital.
- A lease includes a specified purpose or purposes for which the land may be used.
- A lease would be issued for a specified term (no longer than 99 years).
- A lease includes covenants and conditions binding the lessee. For example, lessees must promptly put the land to the use(s) for which it was intended and strict building regulations would safeguard public health and architectural beauty.
- Lessees would own all the buildings and improvements undertaken by them, and would have the use and enjoyment of the land on the terms and conditions of the lease contract. (Wensing 1986:2)

Planning paradise

As a consequence of the public ownership of land and the broad planning role of the Commonwealth through the former Federal Capital Commission and the former National Capital Development Commission, the environment for planning in Canberra appeared to be a 'planning paradise', because as Neutze (1987:149) observes, what the planners decided actually happened. Neutze attributes the overall success of planning in Canberra to four key factors:

- Control over the use of land. This was done through contracts between the Commonwealth as the ground landlord and lessees. The planners set conditions of the lease before they were issued. The purpose clauses in the lease were not readily subject to manipulation and they did not impact on the supply of land for development.
- As land was not privately owned, no owners stood to profit from the relaxation of controls. Furthermore, as all non-urban land was in public ownership, no-one stood to gain from the speculative withholding of land to artificially inflate its price. The government as the owner of all land controlled the supply.
- Since all land was publicly owned and the provision of all services and facilities was the responsibility of the government, government investment was possible without encountering problems of coordination.
- For almost 90 of the past 100 years since Federation, the ACT did not have any form of local government. Its planning and development was solely the responsibility of the national government through its agencies. Control of planning was not in the hands of politicians whose interests are generally limited to a small area or to the near future.

Importantly, these conditions prevailed over the most intense periods of Canberra's development during the 20th Century and largely contributed to its orderly growth in line with various plans, and avoided the scattered development and land speculation that have driven the growth and development of other Australian cities over the same periods.

Private developers would not have been willing to take the risks associated with developing a new city. To establish the city, the government needed to own the site and to control its development. "Without public ownership of all the land, values would have soared and the land required for public purposes, for defence, research, education, open space would have been costly to acquire.Without public ownership, it is inconceivable that the natural topography would have been conserved to provide the landscape setting for the city and the National Capital Open Space System." (Neutze 1988:3-4).

Attempts to replicate the Canberra model but at a smaller scale were made by the former NSW State Planning Authority when implementing the Sydney Region Outline Plan (1968) in conjunction with other public agencies such as the NSW Housing Commission, and local councils and applying a system of betterment where the use of privately owned land changed. These were successful to some extent with town centres such as Mount Druitt in western Sydney, that were developed in public ownership.

Maladministration

The public ownership of land and the system of lease administration is unique to the Australian Capital Territory. In the last thirty years of the 20th Century, the leasehold system has been the subject of many inquiries. The criticisms of the system range from the supporters of public leasehold who believe it was slowly being destroyed or undermined, to many members of the business community, especially those involved in land development, who believe it has outlived its usefulness and deters development, instead supporting a system of perpetual leases or freehold.

While many attempts to change the system to one closer to freehold tenure have so far been unsuccessful, a judicial inquiry conducted by the fledgling ACT Government in 1994, five years after self-government was granted to the Territory, found that the leasehold system had failed to be properly administered by successive governments over the preceding 25 to 30 years (Stein 1995). In particular, the Inquiry found that there was widespread failure of compliance and enforcement with lease covenants and conditions and frequent changes to betterment rules (the difference in land values arising from changes in land use).

Still a valuable tool

The leasehold system was an invaluable tool that enabled the early planners to ensure the city developed in a structured way that respected the natural topography, providing for well sequenced development and social infrastructure. Its fundamental objectives continue to be as relevant today as they were a century ago. As Neutze (1988:32) rightly observed, successive Federal Ministers responsible for Canberra's land tenure system and their advisers treated Canberra as the property of the lessees rather than as publicly owned land. "They have not seen it as they should: as national heritage to be safeguarded and used for the benefit of the nation and its capital".

4. CANBERRA'S PLANNING HISTORY

Canberra's planning is recognised internationally as unique. Planners, architects and landscape architects from around the World come to Canberra to study how a new nation planned its national capital. In presenting evidence to a Parliamentary Inquiry into Canberra's National Capital Open Spaces, Professor Ken Taylor (1992) stated that Canberra is "...the most renowned urban landscape laboratory in the world". More recently, Professor John Reps (1997) stated that Canberra is "one of the world's most distinctive urban environments" and "ranks amongst the most beautiful national capitals". Sonne claims that Canberra is evidence of the "unification of (a) nation and the expression of its grandeur played an important role" (Sonne 1998).

Canberra's planning over the past 100 years has produced six significant plans.

Although Canberra's planning has been fraught with conflict and division over the past 100 years, there are six significant plans.

Griffin's plan – 1912 (Figure 1)

The first plan for Canberra owes its unique design to the international competition for the design of the Federal Capital. The competition occurred in the early formative years of town planning. In 1911, the Minister for Home Affairs, King O'Malley, announced a competition to design the Federal Capital. Walter Burley Griffin's plan was selected from over 135 entries.

Walter Burley Griffin was interested not only in the appearance of the city but also in the principles underlying the design (Reid 2002:49). Griffin's design had four main elements:

- The use of topography as an integral feature and as a setting;
- A symbolic hierarchy of land uses designed to reflect the order and functions of democratic government.
- A geometric plan with the central triangle formed by grand avenues terminating at Capital Hill, the symbolic centre of the nation.
- A system of urban centres (National Capital Planning Authority 1990:11).

Griffin's winning design is well known. His 'City and Environs' drawing shows how he was sensitive to the surrounding topography and landscape. Griffin's vision was for the city to always be seen within its landscape setting and was presented in a most impressive set of drawings, rendered in sepia tones on fine tontine fabric mounted on stretchers. "To see the drawings at full size is to appreciate the marriage of architecture and landscape that characterises the design" (Reid 2002:58). "It is the conscious use of space as a design element which has given Canberra a most distinctive character unlike, as Griffin said, any other city in the world" (Harrison 1995:30).



Figure 1. Griffin's plan – 1912

Source: Collection: National Capital Authority Library & Information Service

Griffin's amended plan – 1918 (Figure 2)

Walter Burley Griffin was Federal Capital Director of Design and Construction for seven years from 1913 to 1920. During this time, Griffin's plan underwent a period of design development, culminating in the '1918 Canberra – Plan of City and Environs'. This plan drew together the detailed design development of the previous six years and encapsulated Griffin's more intimate knowledge of the site. It is the last general plan of Canberra officially signed by Griffin as the Federal Capital Director of Design and Construction (NCA 2004:18). According to the NCA (2004:18), the significance of the *1918 Plan* has been underestimated. While the *1912 Competition Plan* captures the imagination of the designer, the *1918 Plan* retains the key features of the original Plan – the land and water axes, the ensembles of Federal buildings, the stage-like settings for the conduct of national life, and the enclosed amphitheatre of hills. Griffin's original vision was eroded by those who followed him (Harrison 1995:68; NCA 2004:18). The plan that was finally approved by the Federal Government in 1925 was a 'watered-down' version of the plans that had preceded it (NCA 2004:18).

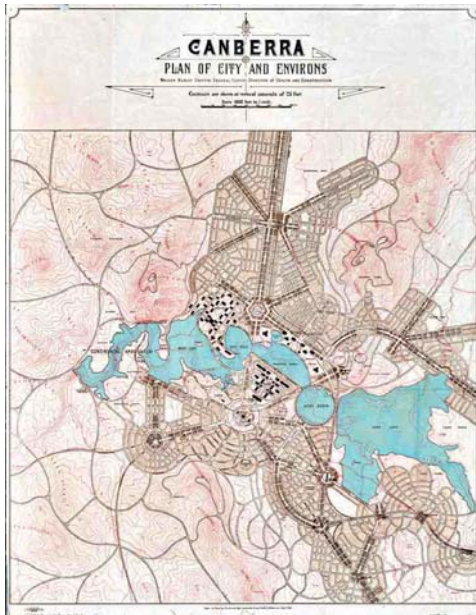


Figure 2. Griffin's amended plan – 1918
Source: Collection: National Capital Authority Library & Information Service

The Future Canberra – The Canberra Outline Plan – 1965 (Figure 3)

When the NCDC was charged with the responsibility for planning and developing the city, Harrison and his team of professional staff and consultants set about developing a metropolitan strategy. In 1965, the NCDC published a blueprint to accommodate a population of 250,000 people by about 1980. The Canberra Outline Plan published in the *Future Canberra* established a number of important principles, which have been reflected in subsequent metropolitan plans for Canberra. The principles embodied the following:

- Placing particular emphasis on the central zones of the city including the Parliamentary Triangle and Civic.
- Preserving the open character of the city by limiting the extent of the existing districts and forming new settlements in the valleys between the main hills.
- Establishing new towns, with populations of between 60,000 to 100,000 people, and having many of the attributes of independent cities with substantial employment centres, shopping and service industries.
- Each new town would comprise of ten or more neighbourhoods each with a population of between 4,000 and 5,000 people, sufficient to support a primary school and local shops.
- A system of arterial roads located on the periphery of the towns in the parkland reservations surrounding the residential areas to allow for easy inter-district movement.

The fundamental intentions were to preserve the essential characteristics of the central areas of Canberra, disperse the employment, residential and shopping facilities in new towns to lessen traffic congestion and journeys to work, to preserve the hills and open spaces around the city and avoid the adverse consequences of urban sprawl (NCDC 1965).

“...Within the plan is the conception of a new category of land defined as special areas and which include the important central areas, the hills and ridges and the system of parklands extending into the western mountains. It is believed that such a plan will provide a distinguished and efficient centre for the legislature and other national institutions, that it will cater efficiently for the city’s commercial and service needs and that it will retain the human qualities within its residential areas and provide the people with ready access to the surrounding countryside.” (NCDC 1965:35)

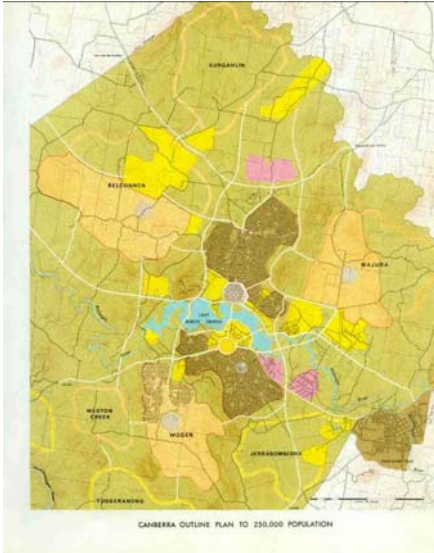


Figure 3. The Canberra Outline Plan - 1965
 Source: Collection: National Capital Authority Library & Information Service

Tomorrow's Canberra – The Y Plan – 1970 (Figure 4)

Studies conducted by the NCDC after the publication of the *Future Canberra* showed that the plan was incapable of accommodating growth beyond a population of 250,000 people. Once this population threshold was exceeded, the plan would break down and the city would be overwhelmed with travel pressures and traffic congestion. In 1966, the NCDC commissioned Alan M Vorhees and Associates, a firm of land use and transport consultants, to examine a range of development and transport options. The Vorhees study evaluated six options consisting of different arrangements of towns each with a population of 50,000 to 150,000 people. The conclusions of the study provided the basis for the development of a linear pattern to achieve a more efficient transport system. The strategic plan published in *Tomorrow's Canberra* in 1970 became known as the *Y Plan* because of its shape.



Figure 4. The Y Plan - 1970
 Source: Collection: National Capital Authority Library & Information Service

The *Y Plan* embodies several important principles for the planning of Canberra's future development:

- Major national uses would be located in the Central National Area;

- The new transport system would channel private vehicles to parkways on the periphery of urban districts and concentrate public transport travel between the districts onto a central spine linking the town centres;
- The hills and ridges within Canberra would be retained in their natural state to act as a backdrop and setting for the City and also as a means of separating and defining the towns (this was later to become known as the National Capital Open Space System); and
- The National Capital would be one in which environmental standards would be high. (NCDC 1970).

The NCDC's research showed that the *Y Plan* would be as valid as any alternative urban structure until the population reached 400,000 to 450,000 people and had certain distinct advantages over other urban forms, especially on environmental grounds (Joint Committee on the ACT 1987:26).

The Metropolitan Policy Plan / Development Plan – 1984 (Figure 5)

By the late 1970's several community and business groups in Canberra were increasingly raising questions about the continued viability of the *Y Plan*. The most often expressed view was that for a city of 250,000 people, the distances are much greater than for comparable cities elsewhere, that the densities are too low and should be increased, and that there should be a single, large commercial centre. To address these concerns, the NCDC published a Discussion Paper in 1980 canvassing issues and options for Canberra's future urban structure. The two options canvassed for evaluation to establish the preferred future metropolitan plan were a concentrated plan and a dispersed plan. In the concentrated plan option, a significant level of employment and retail floor space would be concentrated in the central area and in the then established town centres of Woden and Belconnen. In the dispersed plan option, continued dispersal of employment and retail opportunities along the lines envisaged in the *Y Plan*.

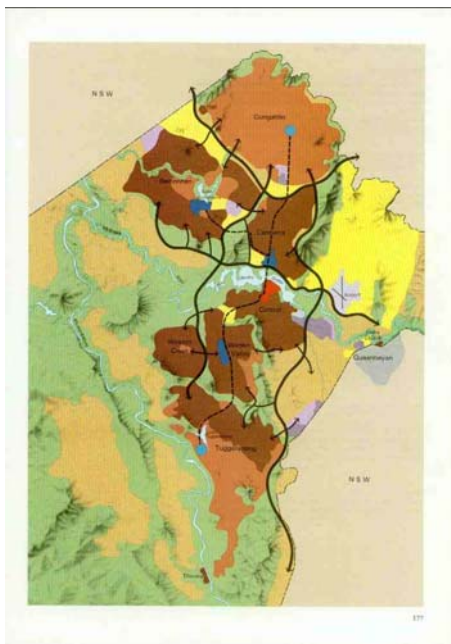


Figure 5. The Metropolitan Policy Plan/ Development Plan - 1984

Source: Collection: National Capital Authority Library & Information Service

In 1984 the NCDC published its Metropolitan Canberra Policy Plan/Development Plan. The NCDC's preferred metropolitan strategy was one which retains the basic principles and structure of the *Y Plan*. The 1984 Metropolitan Plan confirmed the basic structure of the *Y Plan* as a continuing and valid basis for guiding Canberra's metropolitan growth up to the year 2000 and to a population level of roughly 400,000 people (NCDC 1984:iv). One of the significant principles of urban structure discussed and embodied in the preferred plan, is the National Capital Open Space System. The 1984 Metropolitan Policy Plan states that selected areas of open space will be deemed to be of national capital or regional significance and designated as

part of the National Capital Open Space System. “To this end, the hills and ridges within and around the urban areas of Canberra are to be kept free of urban development, both to act as a backdrop and setting for the City and also to provide a means of separating and defining the towns” (NCDC 1984:173). This functional role of determining the urban form and structure of self-contained towns is the most important value of the National Capital Open Space System. “Can you imagine Canberra without them, or with only the very peaks preserved from development? Canberra’s urban structure would be very different indeed. It must be remembered that in the early years of the NCDC a very conscious decision was made to confine urban development to the valleys and to preserve the hills. With the benefit of hindsight and almost thirty years later, we can now see the fruits of that foresight” (Wensing 1992b:48).

The Griffin Legacy – 2004 (Figure 6)

In December 2004 the National Capital Authority (NCA), after over two years work on the Griffin Project, released *The Griffin Legacy* (NCA 2004). Inspired perhaps by Reid’s criticism of the lost opportunities, the NCA looked to history to guide the future. *The Griffin Legacy* revisits Griffin’s aim and purpose in planning a city ‘not like any other city in the world’ and discovers the political, cultural and communal foundations that the Griffins had envisaged nearly a century ago.



Figure 6. The Griffin Legacy - 2004
Source: Collection: National Capital Authority
Library & Information Service

The primary proposition of the *Griffin Legacy* (NCA 2004) is to retrieve, as far as is possible, the Griffins’ intentions for a denser urban environment, at least in the central areas and particularly along Constitution Avenue.

The Griffin Legacy is a timely reminder to all Australians that Canberra is not just any other land planning and development exercise, as local government rhetoric might lead one to believe. Established by the Constitution, Canberra is the nation’s capital and as such its primary purpose, as well as providing all the ancillary urban services, infrastructure and an attractive physical environment for its population, is to house the national government and national institutions in a physical arrangement that represents Australia to the world and the international community. The Canberra that the Griffins intended is meant to be an inspiration and goal to be prized and appreciated as a model for all democratic communities. “From the outset, Canberra was intended to be the showplace of the nation” (NCA 2004:2).

The aim of the Griffin Project was, among other things, to:

- appraise the Griffin Plan and its relevance to the planning and development of Canberra, the nation’s capital, in the 21st century;

- extend the Griffin Legacy through a series of Strategic Initiatives which restore, where possible, the spirit and intent of the Griffin Plan; and
- protect the integrity of the Griffin Plan, recognising its stature as a work of both national and international significance.

The Griffin Legacy finds that Canberra has still not yet realised its full potential and that there are significant opportunities, particularly with respect to achieving a more cosmopolitan lifestyle to enliven and enhance the central areas.

The Griffin Legacy identifies and presents eight propositions each supported by a range of objectives and strategic initiatives (NCA 2004:149). The propositions aim to protect what remains of the Griffin Plan, and where possible to build on that plan in the form intended by Griffin. The emphasis of *The Griffin Legacy* is on the Central National Area and the possibilities available to revitalise the central business area with higher density residential development and linking these to the lake and the centrally located national cultural attractions. Two of the key elements of *The Griffin Legacy* are the development of Constitution Avenue, and the extension of the Civic area to a new waterfront esplanade at the West Basin of Lake Burley Griffin.

“Although Griffin’s plan was far from flawless, ...the Canberra that he designed, now modest in size compared to the greater city and altered in many respects from his vision, remains an extraordinary achievement. It deserves protection from all but the most sensitive and carefully considered changes as one of the treasures not only of Australia but of the entire urban world” (Reps 1997:267).

The significance of the Griffin Legacy awaits the judgement of future generations.

5. THE NATIONAL HERITAGE LIST

The Australian Government commenced a new national heritage system in January 2004. Its main features include: a new *National Heritage List* of places of outstanding heritage value to the nation; a new *Commonwealth Heritage List* of places owned or managed by the Australian Government that have significant heritage value; the creation of the *Australian Heritage Council* as an independent expert body to advise the Minister for the Environment and Heritage on heritage matters; and the retention of the Register of the National Estate. These changes were introduced through amendments to the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Regulations to the Act contain criteria for determining National Heritage values, prescribe matters to be addressed in management plans and general management principles that must be adhered to. The National Heritage List is compiled and maintained by the Department of the Environment and Heritage on an electronic database. Details of places that have been entered on the list are made available through the Department’s website.

Entering places on the National Heritage List

For a place to be entered on the National Heritage list, it must meet one (or more) of the criteria prescribed in the Regulations to the EPBC Act. A National Heritage List place may contain more than one type of National Heritage value (historic, natural, Indigenous or other). The process for entering places on the National Heritage list is open and consultative. To be included in the National Heritage list, a place may be nominated by a member of the public, the Australian Heritage Council, or the Minister for the Environment and Heritage. Nominations must set out the values of the place that make it significant to the nation and must meet one or more of the National Heritage criteria set out in the Regulations to the EPBC Act. The Minister may also call for nominations against selected themes announced by the Minister. Once nominated, the Australian Heritage Council assesses whether or not a nominated place has heritage values that meet the any of the criteria and then makes a recommendation to the

Minister for the Environment and Heritage. The Council, in making its assessment, must only consider whether the place has heritage value(s) against the National Heritage criteria (Appendix A). The Minister makes the final decision on listing.

In conducting its assessments, the Australian Heritage Council must consult with the owner or occupier of a place as well as the Indigenous people with rights or interests in the place, where appropriate. The Minister also consults with all relevant Ministers prior to a decision to list. Members of the public may also have the opportunity to provide comments where the Minister decides to publish a notice of his/her intention to list a place.

Articles associated with a place

The definition of a place includes equipment, furniture, fittings and articles associated with a building or structure or group of buildings or structures. Whether this definition would apply to articles such as plans or designs associated with buildings in a precinct or the precinct itself may need to await judicial consideration or at least legal advice.

Management plans and the National Heritage management principles

To ensure the ongoing protection of a National Heritage place, the EPBC Act provides for the preparation of management plans that set out how the significance of the place will be protected and conserved. Plans must be consistent with the *National Heritage management principles* (Appendix B).

These principles provide a guiding framework for excellence in managing heritage properties. They set the standard and the scope of the way places should be managed in order to best protect its heritage values for the generations ahead. The principles are used when preparing and implementing management plans and programs. In the absence of a management plan, they are used to guide the management of a place. The National Heritage Management principles cover matters relating to the objectives for managing the place, the skills required, working with other tiers of government, presenting and conserving values, community involvement, Indigenous consultation, and monitoring, reviewing and reporting on the conservation of the place's National Heritage values.

Under the EPBC Act, a management plan must address a range of matters, including the objectives for managing the place, a management framework, a comprehensive description of the place, a description of the values, a description of the condition of the place, a description of the method used to assess the National Heritage values, a description of the management requirements, goals, possible changes and pressures, policies to manage the values, an implementation plan, how the implementation will be monitored, and how the plan will be reviewed (Appendix C). The extent of the Commonwealth's powers varies according to its jurisdictional and constitutional powers, as discussed below.

Managing National Heritage places in Commonwealth areas

A Commonwealth Area is land owned by the Commonwealth or a Commonwealth agency and airspace over the land, an area held under lease by the Commonwealth or a Commonwealth agency (s.525 of the EPBC Act).

For each National Heritage listed place owned by the Australian Government, the Minister must prepare a management plan to protect and manage the National Heritage values (s.324S). A management plan must address the matters prescribed in the regulations (Regulations – Schedule 5A), and not be inconsistent with the National Heritage management principles (Regulations – Schedule 5B and s.324S). Australian Government agencies must not contravene that plan or authorise another person to do, or to omit to do, anything that would contravene such a plan (s.324U).

A management plan must be reviewed at least once in every five years. The review must invite public comments on whether the plan is consistent with National Heritage management

principles and the effectiveness of the plan in protecting and conserving the National Heritage values of the place. (s.324W)

Managing National Heritage places in States or self-governing Territories

For National Heritage places not entirely within a Commonwealth area and that is in a State or self-governing Territory or in coastal waters, the Commonwealth must use its best endeavours to ensure a management plan is prepared and implemented in co-operation with the State or Territory. The management plan must not be inconsistent with the National Heritage principles. The Commonwealth must take all reasonable steps to ensure it exercises its powers and performs its functions in a way that is not inconsistent with the National Heritage management principles, or the plan for managing the place (if one has been prepared) (s.324X).

States and Territories may also seek to have a management plan accredited by the Minister for the Environment as part of a bilateral agreement with the Commonwealth (s.51A). The Minister may accredit a management plan if the Minister is satisfied the plan will promote the management of a National Heritage place in accordance with the National Heritage Management principles (s.51A and s.46).

Managing National Heritage places on privately owned land

For National Heritage places on the National Heritage List individuals or private corporations own protection is provided to the extent of the powers available to the Commonwealth under the Constitution. For example, the corporations power, the race power, the external trade and interstate trade powers, and international relations power (i.e. Article 8 of the Biodiversity Convention, the Ramsar Convention).

Two measures are available to the Minister under the EPBC Act to enact a management regime for places entered on the National Heritage List and are located on privately owned land. The Minister may enter into a conservation agreement with any person to protect and conserve the National Heritage values of a National Heritage place (s.305). The Australian Government may also provide technical and/or financial assistance toward protecting or conserving places on the National Heritage List (including preparing management plans). Financial or other assistance may be given to promote, identify and present places on the National Heritage List (s.324ZB).

The Minister can decide to accredit relevant State/Territory laws if satisfied that they are adequate to ensure the protection of a place on the National Heritage List (s.46).

Under *The Constitution*, the Commonwealth has a number of legislative powers given to it by the States at Federation. Most of these powers are concurrent powers that the Commonwealth shares with the States. That is, the States can also make their own laws on these matters. However, where there is any inconsistency, *The Constitution* provides that the Commonwealth law prevails (s.109).

Protection of National Heritage values

The EPBC Act operates to protect National Heritage places and their associated National Heritage values by recognising them as one of a number of matters of *national environmental significance*. The EPBC Act assessment and approval requirements are applicable to any action that has, will have, or is likely to have a significant impact on the National Heritage values of a place included in the National Heritage list. It is the responsibility of the person taking the action to refer it to the Minister for the Environment and Heritage. The Act provides penalties, including criminal penalties, if an action is not referred and is later found to contravene the Act.

If the place is on State or privately owned land, it can be protected by the Commonwealth where the Commonwealth has the appropriate Constitutional power to do so. In the case of Indigenous heritage places (or places that include Indigenous Heritage values) on the National Heritage list, the Commonwealth has the power to protect them irrespective of land tenure. By virtue of

changes to Section 51(xxvi) of *The Constitution* in 1967, the Commonwealth is able to make laws “for the people of any race, for whom it is deemed necessary to make special laws”.

In other cases, places may be protected under State legislation (through a bilateral agreement and accredited management plan) or by private owners under a conservation agreement with the Commonwealth.

Penalties

Severe penalties face people and organisations that take an action which is likely to have a significant impact on any of the matters of National Environmental Significance without the prior approval of the Minister (s.15B and s.15C). For an individual the penalty is 5,000 penalty points. For a body corporate the penalty is 50,000 penalty points. Currently a penalty point is \$110.00.

If a person engages in an act or omission that constitutes an offence or other contravention of the EPBC Act or Regulations, the Minister or an interested person may apply to the Federal Court for an injunction (s.475). Injunctions may be prohibitory or mandatory. In other words, they may restrain a person from doing something in contravention of the Act or they may require a person to comply with a requirement under the Act. Injunctions may also be sought for contraventions of conservation agreements.

The Minister may also order repairs be undertaken for damage to the environment, or cause steps to be taken to prevent or mitigate any damage to the environment. The ‘environment’ is defined in the EPBC Act as including ‘the heritage values of places’ (s.528).

6. CANBERRA’S PLANNING AND NATIONAL HERITAGE VALUES

“[Canberra] is all exceedingly grand, dignified, elegant, yet ... reposeful; It will soon rank with Washington as one of the World’s great monumental capitals, an eloquent testimony to the wisdom of making haste slowly... Canberra achieves the difficult feat of being one of the last cities beautiful. And also the World’s biggest Garden City” (Hall 2002:196).

Identification of national heritage values

The challenge confronting those who are interested in protecting Canberra’s unique land planning legacy is to identify the heritage values that exist within Canberra and to define a curtilage. The first step is to identify what heritage values a place like Canberra might contain. There are several individual places in the ACT already identified in existing heritage lists and some individual places, such as Parliament House, Old Parliament House (the Provisional Parliament House), have been nominated for the National Heritage List. The other major challenge is to deal with intangible values such as a town plan design.

With the advent of the new national heritage regime, the NCA together with Australian Capital Territory government agencies, is currently considering whether Canberra, or part thereof, is worthy of entry in the National Heritage List.

The National Capital Plan prepared by the National Capital Authority under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) is based on the principle that Canberra, or certain parts of it, are of such significance that there must be special provisions to ensure that the qualities including opportunities for national activities, functions and responsibilities are retained, preserved and protected. The national significance of Canberra is the basis for the Commonwealth’s continuing interest in Canberra as the nation’s capital.

The National Capital Authority is also currently reviewing what the national significance of Canberra is and means. Some assistance with this exercise has recently been provided by the

government's response to the Report of the Joint Standing Committee on the National Capital and External Territories (2004). The Committee generally recommended a reduction in the Commonwealth's interest in Canberra, by reducing Designated Areas and transferring greater planning responsibilities to the ACT Government. The government's response rejected this proposal but did not resolve the issue of the duplication of planning interests that the Committee identified as being an administrative and political concern.

National Heritage Criteria

Taylor (2005) claims that Canberra is worthy of inclusion in the World Heritage List. Before this can be achieved, Canberra must first qualify for inclusion in the new National Heritage List and the first issue that would arise in any assessment is the area that would be considered appropriate to consider worthy of listing.

As mentioned above, a place needs to meet one or more National Heritage criteria before the Minister for the Environment and Heritage can consider a place for inclusion in the National Heritage List. What then are the values that Canberra may have?

Canberra may have outstanding heritage value to the nation because of the following characteristics.

(a) The place's importance in the course, or pattern, of Australia's natural or cultural history.

In historical terms, Canberra is the unique physical expression of decades of political argument about whether the colonies could or should combine to form a nation. Having agreed to federate and agreeing that the only solution was to have a new capital, Canberra's creation was not left to chance. Following what seemed at the time to be interminable argument about its location, a competition was held to find a design worthy of the new nation. Canberra today is the result of over a century of debate. The ebbs and flows of political interest, interrupted by momentous world events have been embedded in the present planning structure. Particular historic values may be demonstrated through:

- The City that Federation created;
- Visionary planning for a new capital city – including Griffin's plan;
- Long-term town planning during the profession's embryonic years in Australia.

If the definition of a place includes plans, designs or articles associated with or linked to a part of Canberra or a precinct then the layering of the plans and designs for Canberra are part of its significance as an expression of the quality of the work and its implementation.

(b) The place's possession of uncommon, rare or endangered aspects of Australia's natural or cultural history.

To ensure that the Commonwealth government retained control of the development of Canberra and to avoid the excesses and uncertainties of land speculation that had surfaced in the latter half of the nineteenth century particularly in Victoria, the Constitution provides for the public ownership of land in the ACT. This factor is common to all the planning overlays from the Griffin plan, the FCC amendments, the Canberra Outline Plan, the *Y Plan*, the Metropolitan Policy/Development Plan and more lately, *The Griffin Legacy*. Particular values that may be considered rare or uncommon are demonstrated through:

- The form of public leasehold land tenure to specifically address the issue of land speculation in anticipation of a city's development.
- Significant elements of Griffin's plan are rare and uncommon. For example, the design of the city respecting the topography and natural landscape, the bold planning elements of the land and water axes, and the concept of the parliamentary triangle formed by three grand avenues.

- The layers of planning history and their physical evidence.
- The application of contemporary town planning policies and principles.

(c) *The place's potential to yield information that will contribute to an understanding of Australia's natural or cultural history.*

Canberra has been a place for applying contemporary town planning policies and principles and these aspects could be considered to have made a contribution towards an understanding of Australia's cultural history. Innovative planning examples applied in Canberra include the satellite new towns with decentralised town centres, the neighbourhood principles and structure, road hierarchy, location of power lines along rear boundaries to avoid unsightly streetscapes, roll kerb and gutters, street lighting for pedestrians only, no front fences, subdivisions that avoided corner residential blocks, and the 'Radburn' subdivision design principles applied in part in the neighbourhoods of Curtin and most of Charnwood (Reid 2002, Hall 1988, Freestone 1989, and Harrison 1980). Although not unique, the physical structure of Canberra with its decentralised town centres, sub-regional centres and neighbourhood centres is an example of the application of contemporary planning philosophies, while also recognising the pervasive influence of motor vehicle use for private transport. Meredith Walton states that some suburbs of Canberra 'have been formally assessed and found to be of significance to the ACT community' (Walton 2001,406). The opportunity for future research may be found in:

- Early town planning controls, especially for a new capital city, as well as for planning generally.
- Contemporary principles of urban design and elements of city design and urban structure.
- Cultural environments, including residential areas, especially those in the inner area, as well as those in some of the towns, i.e. those reflecting the application of the 'neighbourhood design principles' (All of the suburbs of Woden, Weston Creek and many in Belconnen).
- The history of land tenure systems and the opportunities leasehold tenure provided when planning and constructing urban areas.

(d) *The place's importance in demonstrating the principal characteristics of a class of Australia's natural or cultural environments.*

There is only one capital city of any nation state. While all capital cities can claim to be unique in a national sense, Canberra as an example of a twentieth century capital is one of a select few national capitals. Canberra is also unique in the sense that it is the centre of diplomatic activity, and national cultural, political and institutional headquarters are a feature of its landscape. As the political centre of the nation, Canberra is also a place of public demonstration and freedom of expression. The lawns in front of Old Parliament House have been the site of many protests, the most prominent example being the Aboriginal Tent Embassy. Representational values may be demonstrated by:

- Home to a number of national institutions, especially in the Central National Area.
- Diplomatic mission enclaves.

(e) *The place's importance in exhibiting particular aesthetic characteristics valued by a community or cultural group.*

Throughout Canberra's history all administrations have recognised the importance of the aesthetic environment. The role of the landscape setting of Canberra, the enormous investment in landscape design and measures to enhance the streetscapes with tree plantings have influenced and continue to influence its aesthetic value. Taylor (2005) maintains that the historic heart of Canberra contained within the major landscape elements of Black Mountain, Mt Ainslie, Mt Pleasant and Red Hill is a cultural landscape of World Heritage significance.

Not only these elements, but also the environment created by the land and water axes, the treed avenues, parklands, and the inner hills would also be worthy of consideration as part of Canberra's landscape setting. The community's recognition of these qualities continues to influence planning policies and decisions to the extent that as well as protecting the inner hills, controls now exist to protect significant trees. Aesthetic values may be demonstrated by:

- The environment created by the land and water axes.
- The environment created by the use of landscaping and open spaces, i.e. treed avenues, parklands, pocket parks, the inner hills and distant ranges.

(f) The place's importance in demonstrating a high degree of creative or technical achievement at a particular period;

Canberra's creative and technical achievement spans many periods. For example, the 1911 design competition, Griffin's modified plan of 1918, the NCDC's Canberra Outline Plan of 1965, the Y Plan of 1969 and the Metropolitan Policy/Development Plan of 1984. The technical achievements of a co-ordinated approach to city planning and development under the direction of the NCDC from 1957 to 1989, particularly during the period 1958-1975 are of considerable significance in planning history terms. Technical achievement in the planning for Canberra may be demonstrated by:

- The extant structure of the Griffin plan for the central area and the inner urban areas.
- The Y Plan structure and the decentralised town centres and sub-regional centres.
- The landscape setting and use of natural landscape elements to emphasise the dispersed town centres and linear urban structure.
- The hierarchical road system.

(g) The place's strong or special association with a particular community or cultural group for social, cultural or spiritual reasons.

The residents of Canberra recognise the exceptional nature of the city and its 'liveability'. It also has significance as a model for design and building professionals as the location for some of the most adventurous architectural design solutions in Australia. More detailed investigation is required of the special meaning that Canberra has to a number of the design professions and students in planning, architecture, landscape architecture and to the 'Garden City Movement'. As Peter Hall, an eminent planner from the United Kingdom notes, Canberra ranks as one of the World's great monumental capitals, and is "an eloquent testimony to the wisdom of making haste slowly... Canberra achieves the difficult feat of being one of the last cities beautiful. And also the World's biggest Garden City." (Hall 1988:196). As the political centre of the nation, it is also significant as a place of public demonstration. Its associational value may be demonstrated by:

- Special meaning to a number of the design professions – planners, architects, landscape architects, especially for students, and to the 'Garden City Movement'.
- Special association for political demonstrations.

The plans and articles associated with the respective agencies such as the Federal Capital Advisory Committee, the Federal Capital Commission and the National Capital Development Commission are exceptional examples of planning design that demonstrate the skills and expertise of the agencies.

(h) The place's special association with the life or works of a person, or group of persons, of importance in Australia's natural or cultural history.

Many of Australia's most influential persons have been associated with Canberra or have lived in Canberra when they were undertaking works of national importance in political, academic, scientific, literary, artistic and administrative fields. For example, all of Australia's Governors

General resided in Canberra and most Prime Ministers have resided in Canberra during their terms of office. Canberra is also home to the diplomatic community. Eminent persons and their associational values would be a very long list. The following list is not by any means exhaustive, either in terms of the individuals listed or the various fields of interest. The list could include:

- Walter Burley Griffin, John Sulman, Trevor Gibson, Sir William Holford, Peter Harrison – city planning.
- Sir John Butters, John Sulman, Charles S Daley, Sir John Overall – city administration.
- Charles Weston, Emeritus Professor Lindsay Pryor, Dame Sylvia Crowe, Richard Clough – landscaping.
- John Smith Murdoch, Sid Anchor, John Andrews, John Denton, Roy Grounds, Romaldo Giurgola, Colin Madigan, Harry Seidler, Daryl Jackson – architecture.
- Charles Scrivener, John Sulman – surveying.
- Alan Vorhees – engineering.
- Charles Bean, Professor Manning Clark, Professor John Mulvaney – historians.

The plans and articles prepared by the above individuals are outstanding examples of design and construction associated with and represented in Canberra's buildings, structures, and planned precincts.

(i) *The place's importance as part of indigenous tradition.*

An Aboriginal heritage place is a place which is of significance in Indigenous tradition. Indigenous tradition encompasses traditions, observances, customs or beliefs of the people who inhabited Australia before European colonisation (ACT Government 2005). Indigenous people are the only persons that can properly identify whether Canberra has any Indigenous heritage that may have National Heritage values. Prior to the selection of Canberra as the site of the national capital, the Limestone Plains region and the Molonglo Valley was inhabited by Aboriginal tribes. According to archaeological evidence, the original inhabitants of the Canberra area lived in the district for 21,000 years. They were the Ngun(n)awal and Walgalu people. They left traces of their lifestyle in various forms such as scarred trees (where the bark was taken and used for coolamons, canoes, and shields), rock art drawings, campsites, artefacts such as stone tools and quarry sites where stone tools were manufactured.

Designated Areas and Curtilage

Having started with a canvas of over 900 square miles to design and construct Australia's capital city, the Commonwealth has ended up having direct ownership, management and control over only a fraction of the Australian Capital Territory (ACT).

The advent of self government in 1988 divided the ACT into two separate planning and land management systems based on National Land and Territory Land (Wensing 1992a:62). The major agencies with National Land management responsibilities include the National Capital Authority (NCA) which has responsibility for the Parliamentary Zone and land for Diplomatic Missions, the Department of Defence which has responsibility for land at Russell and Duntroon, the Department of Finance and Administration which has responsibility for some buildings within the Parliamentary Zone and land at Barton, and the Department of Transport and Regional Services which has responsibility for Canberra Airport.

Planning for these assets is controlled by the *National Capital Plan* administered and kept under review by the National Capital Authority under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth). Specifically, under Section 10(1) and 10(2)(c) and (d) of the Act, the *National Capital Plan* may specify:

- areas of land that have the special characteristics of the National Capital as 'Designated Areas', and

- ‘special requirements’ for the development of any area, being requirements that are desirable in the interests of the National Capital.

The balance of the ACT outside Designated Areas and not identified as being subject to Special Requirements, are subject to the general policies and principles (General Requirements) of the *National Capital Plan* (NCPA 1990:73).

According to the *National Capital Plan*, the Plan ‘at its most general level provides a framework determined by the Commonwealth Parliament, for land use and development throughout the Territory. At its most detailed level, it becomes the means for guiding the planning, design and development of the Designated Areas – those having the special characteristics of the National Capital (NCPA 1990:3). These are the inner hills and inner open space system, the importance of which is attributed to Griffin, but according to Reid (2002:254) is an interpretation of the Griffin plan by the former FCC, Holford and the former NCDC.

Designated Areas are excluded from the provisions of the Territory Plan and are controlled by the provisions of the *National Capital Plan* (s.25(1)(b)(i) and s.25(6) the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) (NCPA 1990:4; Wensing 1992a:64).

Where the *National Capital Plan* and Territory Plan overlap, Development Control Plans are the instrument for specifying and applying the Special Requirements of the National Capital Plan (NCPA 1990:73,74). In other areas of Territory Land subject to Special Requirements, the requirements are set out in the *National Capital Plan* and in some instances the Special Requirements also require a Development Control Plan. Such plans are prepared jointly between the Commonwealth and the Territory and are subsequently administered by the Territory (NCPA 1990:13). Development Control Plans may consist of maps, drawings, photographs, specifications and written statements (Wensing 1992a:65).

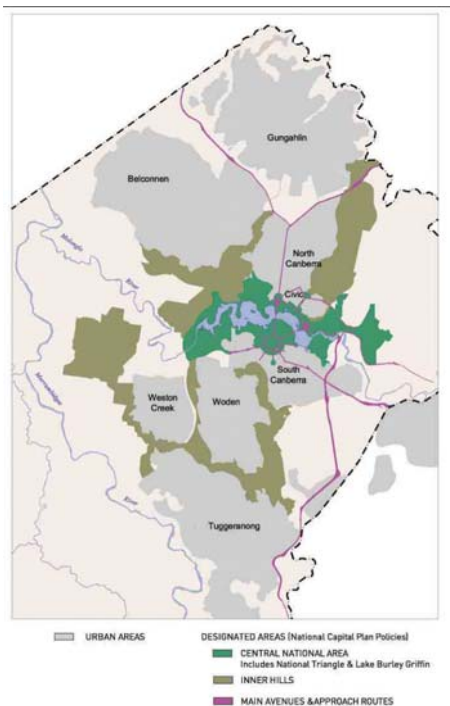


Figure 7. Designated Areas

Source: Collection: National Capital Authority Library & Information Service

The dual planning arrangements for Canberra sows the seeds for debate and disputes, and results in political point scoring to no real advantage for anyone. In its haste to divest itself of local planning responsibilities, the Parliament of the day created community distrust and would appear to have failed the nation by not retaining direct control over those elements which

contribute to the 'bush capital' characteristics of Canberra, of which the Australian people, although sometimes satirically critical, are rightly but quietly and unostentatiously proud.

Consideration of what has national significance and what has national heritage value for the nation would be remiss if it did not focus on the Designated Areas. Apart from the Designated Areas, major consideration must be given to the national significance of the natural and aesthetic values of the major mountain range backdrop, important indigenous values and the values of early pastoral activity in the ACT.

If Canberra, or part thereof, is found to be worthy of consideration for inclusion in the National Heritage List, the opportunity may exist for Parliament to correct the administrative error of having land subject to dual planning systems and declare Designated Areas as National Land to be managed by the Commonwealth for its national significance.

However, as identified above, difficulties exist in being able to delineate or describe a curtilage within which National Heritage values exist. When considering the case of the City of Adelaide Historic Layout for entry in the Register of the National Estate, the former Australian Heritage Commission listed four elements as the boundary. These were the green belt (Parklands) around the City, the layout of the Squares, the major road grid and the minor road grid. The entry excludes all buildings, structures and plantings (Macfarlane 2004 and Kemp 2004, www.deh.gov.au).

The issue for Canberra is how intangible values, such as planning philosophies underpinning Griffin's land and water axes, or the NCDC's *Y Plan*, can be delineated unless it is possible to represent the values in some physical form. As recognised in the City of Adelaide Historic Layout, it may be necessary to consider how the road hierarchy can represent the decentralised town structure and how the geometry of Griffin's plan can be represented in street patterns. This still does not deal with the town centres themselves, unless it is possible to describe a boundary around an area that represents a certain level of land use categories and intensity.

The acting Minister for the Environment and Heritage, when dealing with an emergency nomination of part of Canberra for the National Heritage List in April 2004, recognised that some of the inner hills were of national heritage significance (www.deh.gov.au).

Based on the limited assessment above of Canberra against the National Heritage criteria, it is likely that Canberra would have some claim to be of national heritage significance as the nation's capital and that its physical qualities can be suitably described, at least for most if not all of the Central National Area, the city's landscape setting, and the city's urban form and structure (the main avenues and approach routes, the new towns and neighbourhood structure). But how would Charles Scrivener's survey boundary be included unless the whole of the ACT was recognised as nationally significant?

These and other questions may require the emergence of another patron, as Sir Robert Menzies did so ably during his term as Prime Minister, able to carry the nation and the local community to the next period of Canberra's development, firmly based on a foundation of obvious physical characteristics and intangible national significance as one of the town planning gems of the twentieth century.

Management of National Heritage Places

Although heritage experts and those familiar with heritage processes understand the separation that exists between identifying, assessing and listing places for their heritage significance and the management of such places, most members of the wider community do not. Indeed the recent amendments to the Commonwealth heritage legislation have confused the issue by making the Minister for the Environment and Heritage responsible for both deciding which places are included in the National and Commonwealth Heritage lists and deciding whether

actions likely to have a significant impact on the environment (including heritage places) should proceed. This is a reversal of the regime it replaced where an independent expert agency decided whether places were worthy of listing, leaving the management of Commonwealth heritage places to elected representatives, and the management of non-Commonwealth places to other jurisdictions.

At the time of writing, the Commonwealth Department of the Environment and Heritage was commissioning consultants to undertake a thematic study into Urban and Town Planning in Australia. Taken in conjunction with the National Capital Authority's study into whether Canberra is worthy of nomination to the National Heritage List, suggests that the time is right to consider what form of management is appropriate for a city or part of a city of heritage significance.

As discussed above, Canberra is divided in management responsibilities between Commonwealth and the local Australian Capital Territory jurisdictions. The legislative context for planning is the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) (ACT(PALM) Act 1988).

The ACT (PALM) Act 1988 requires the National Capital Authority to prepare and manage a *National Capital Plan*. The ACT (PALM) Act 1988 also requires the preparation of a *Territory Plan* to be consistent with the *National Capital Plan*. Chapter 10 of the *National Capital Plan* obliges the National Capital Authority, when dealing with works applications, to consider the heritage significance of places found to be significant by Commonwealth and/or Territory heritage regimes. Being prepared in 1988-89, the *National Capital Plan* reflects the Commonwealth's former heritage legislation, and it is understood that the National Capital Authority is considering amending the *National Capital Plan* to bring the heritage management provisions in the *National Capital Plan* into line with the current Commonwealth system.

In the Introduction to the *National Capital Plan*, the whole of the ACT as well as the urban areas of Australia's capital are recognised as being of national interest. Matters of national interest identified in the *National Capital Plan* include the pre-eminence of the role of Canberra and the Territory as the National Capital, the preservation and enhancement of Canberra's landscape features, respect for Walter Burley Griffin's formally adopted plan for Canberra, sites for National Capital uses, and the development of a city respecting environmental values which are reflected in sustainable urban areas.

Places included in the National Heritage List must have management plans prepared. If Canberra has National Heritage potential, as suggested above, it would be useful to consider what form its management should take. Management plans must comply with statutory requirements and can be 'approved' by the Minister so that proposed actions consistent with the management plan do not need to be referred for consideration of whether the proposed action should be controlled in some way. The possibility exists for the *National Capital Plan* to be used, either by itself or adapted for use as a management plan, to protect and conserve the heritage values of the place while permitting development sympathetic with the role of Canberra as Australia's national capital.

The *National Capital Plan* provides for:

- Principles and policies that set a framework for land use;
- Further urban development;
- Office employment in Civic and the Town Centres;
- Broad acre use east of the city;
- Non-urban land use that gives the city its setting;
- National and arterial roads;
- Designates areas that have 'special characteristics of the National Capital';

- Special Requirements to be administered by the Territory.

Part One of the *National Capital Plan* identifies the principles, policies and standards, deals with Designated Areas and Special Requirements. Part Two deals with Administration and Implementation of the *National Capital Plan*. Part Three provides background notes in the form of population projections, employment characteristics, office space predictions and Canberra's regional context. There are 24 Appendices dealing with specific matters including Lake Burley Griffin, Residential Land Use, Master Plans for specific areas, Dual Occupancy and Aged Persons Accommodation.

In practice, the *National Capital Plan* is a management tool that manages development and change in Canberra. The National Capital Plan is required to be 'kept under constant review' and hence has the capability to be either amended and/or adapted to include the management of National Heritage values.

Among other things, the principal intent of a management plan for a National Heritage Place is to:

- establish objectives for the identification, protection, conservation, presentation and transmission of the National Heritage values;
- provide a management framework including reference to any statutory mechanisms;
- describe the current management requirements and goals, including proposals for change;
- have policies to manage the National Heritage values of the place.

An amendment to the *National Capital Plan* as contemplated by the National Capital Authority can take a number of forms. It can be an integral component of Part One, so that all applications for works approval are assessed against National Heritage management principles. An alternative would be to include an Appendix to the *National Capital Plan* in the form required by the EPBC Act Regulations. An Appendix could be structured so that it included the official heritage record with the statement of significance and the identified heritage values as approved by the Minister, with the addition of sections on opportunities and constraints and conservation policies. The heritage Appendix would be triggered when the National Capital Authority deals with works approval applications.

One aspect that needs particular consideration is the National Capital Authority's limitation to consider only the external fabric of buildings and landscape when dealing with works applications. If elements within Canberra have internal significance and if objects, collections or items associated with the place are affected by a proposed action then the *National Capital Plan* or the amendment may need to permit the National Capital Authority to become responsible for internal alterations and additions as well as external matters.

The principal difference between these two approaches is that an amendment to Chapter 10 within the *National Capital Plan* is a reasonably easy administrative action to take and calls up and relies on external information such as the National Heritage listing in the Department of the Environment and Heritage database. In contrast, the preparation of a management plan as an Appendix to the *National Capital Plan* in the form required under Schedule 5A of the EPBC Regulations for a National Heritage place must go into more detail. Of course, it would be possible to consider a combination of these two measures where a heritage policy calls into effect a Heritage Appendix in management plan form.

A further alternative could be to include an amendment in the heritage policies and principles in the *National Capital Plan* and undertake an investigation of the whole *National Capital Plan* to ascertain how or whether other amendments to the policies and principles may need to change to satisfy the requirements of the EPBC Act Regulations. This latter approach may be the most intellectually challenging, but it has the distinct advantage of eventually making the whole

National Capital Plan the tool for managing any National Heritage values of Canberra as revealed by the studies currently underway, rather than treating heritage as an addition.

The important aspect to understand in preparing any heritage management system for a metropolitan area is that Canberra, as Australia's national capital and like any other urban concentration of human activity, will continue to alter and add to its urban structure and fabric. Any management plan for Canberra's unique heritage values needs to recognise this essential town planning feature.

In making a decision to enter Canberra or parts thereof in the National Heritage List, we would urge the inclusion of at least five of the six documents cited above. Five of the six plans are already held by the National Archives of Australia. The only document that is not held by the Archives is the Griffin Legacy Plan. We suggest that the inclusion of the Griffin Legacy Plan at this stage should await an assessment after its implementation.

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CANBERRA

**ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION
REGULATIONS 2000 - REG 10.01A**

National Heritage criteria (Act s.324D)

(1) For section 324D of the Act, sub-regulation (2) prescribes the National Heritage criteria for the following:

- (a) natural heritage values of places;
- (b) indigenous heritage values of places;
- (c) historic heritage values of places.

(2) The National Heritage criteria for a place are any or all of the following:

- (a) the place has outstanding heritage value to the nation because of the place's importance in the course, or pattern, of Australia's natural or cultural history;
- (b) the place has outstanding heritage value to the nation because of the place's possession of uncommon, rare or endangered aspects of Australia's natural or cultural history;
- (c) the place has outstanding heritage value to the nation because of the place's potential to yield information that will contribute to an understanding of Australia's natural or cultural history;
- (d) the place has outstanding heritage value to the nation because of the place's importance in demonstrating the principal characteristics of:
 - (i) a class of Australia's natural or cultural places; or
 - (ii) a class of Australia's natural or cultural environments;
- (e) the place has outstanding heritage value to the nation because of the place's importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;
- (f) the place has outstanding heritage value to the nation because of the place's importance in demonstrating a high degree of creative or technical achievement at a particular period;
- (g) the place has outstanding heritage value to the nation because of the place's strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;
- (h) the place has outstanding heritage value to the nation because of the place's special association with the life or works of a person, or group of persons, of importance in Australia's natural or cultural history;
- (i) the place has outstanding heritage value to the nation because of the place's importance as part of indigenous tradition.

(3) For sub-regulation (2), the *cultural* aspect of a criterion means the indigenous cultural aspect, the non-indigenous cultural aspect, or both.

***ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION
REGULATIONS 2000 - REG 10.01E***

Schedule 5B National Heritage management principles (Act s.324Y)

1. The objective in managing National Heritage places is to identify, protect, conserve, present and transmit, to all generations, the National Heritage values.
2. The management of National Heritage places should use the best available knowledge, skills and standards for those places, and include technical and community input to decisions and actions that may have a significant impact on their National Heritage values.
3. The management of National Heritage places should respect all heritage values of the place and seek to integrate, where appropriate, any Commonwealth, State, Territory and local government responsibilities for those places.
4. The management of National Heritage places should ensure that their use and presentation is consistent with the conservation of their National Heritage values.
5. The management of National Heritage places should make timely and appropriate provision for community involvement, especially by people who:
 - (a) have a particular interest in, or association with, the place; and
 - (b) may be affected by the management of the place.
6. Indigenous people are the primary source of information on the value of their heritage and that the active participation of Indigenous people in the identification, assessment and management is integral to the effective protection of Indigenous heritage values.
7. The management of National Heritage places should provide for regular monitoring, review and reporting on the conservation of National Heritage values.

***ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION
REGULATIONS 2000 - REG 10.01C***

Schedule 5A Management Plans for National Heritage places (Act ss.324S and 324X)

A management plan must:

- (a) establish objectives for the identification, protection, conservation, presentation and transmission of the National Heritage values of the place;
- (b) provide a management framework including reference to any statutory requirements and agency mechanisms for the protection of the National Heritage values of the place;
- (c) provide a comprehensive description of the place, including information about its location, physical features, condition, historical context and current uses;
- (d) provide a description of the National Heritage values and any other heritage values of the place;
- (e) describe the condition of the National Heritage values of the place;
- (f) describe the method used to assess the National Heritage values of the place;
- (g) describe the current management requirements and goals, including proposals for change and any potential pressures on the National Heritage values of the place;
- (h) have policies to manage the National Heritage values of a place, and include, in those policies, guidance in relation to the following:
 - (i) the management and conservation processes to be used;
 - (ii) the access and security arrangements, including access to the area for Indigenous people to maintain cultural traditions;
 - (iii) the stakeholder and community consultations and liaison arrangements;
 - (iv) the policies and protocols to ensure that Indigenous people participate in the management process;
 - (v) protocols for the management of sensitive information;
 - (vi) planning and management of works, development, adaptive reuse and property divestment proposals;
 - (vii) how unforeseen discoveries or disturbance of heritage are to be managed;
 - (viii) how, and under what circumstances, heritage advice is to be obtained;
 - (ix) how the condition of National Heritage values is to be monitored and reported;
 - (x) how records of intervention and maintenance of a heritage places register are kept;
 - (xi) research, training and resources needed to improve management;
 - (xii) how heritage values are to be interpreted and promoted;
- (i) include an implementation plan;
- (j) show how the implementation of policies will be monitored;
- (k) show how the management plan will be reviewed.

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Grahame Crocket is an architect and town planner with extensive experience at senior levels in State and Commonwealth planning and construction agencies.

Ed Wensing is a planner with extensive experience in Canberra's leasehold administration, planning and development. As a successful private litigant (with the late Peter Harrison), Ed is well qualified to comment on Canberra's planning and its national heritage values.

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DISCLAIMER

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