
The Parliament of the Commonwealth of Australia

a national capital, a place to live

Inquiry into the Role of the National Capital Authority

Joint Standing Committee on the National Capital and External Territories

July 2004
Canberra

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Foreword

The National Capital Authority was established in 1989 as part of the introduction of self-government in the ACT, with a view to securing the Federal Government's continuing interest in the planning and development of Canberra as Australia's national capital. There is no doubt that the dichotomous nature of Canberra – the purpose-built national capital on one hand, and an evolving city and community on the other – make it unique in Australia. This recognition lies at the heart of the evidence received.

The Authority is an important agency, and it fulfils an integral role in safeguarding and enhancing the significance of the national capital. The evidence received by the Committee supports the view that the NCA generally performs this role well – that it is a professional, well run agency with a genuine commitment and belief in the work that it does.

However, it is also clear from the evidence that there is some disquiet, and in some cases, serious concern, among residents and stakeholders such as the ACT Government and local community groups, about the role and operations of the National Capital Authority. It also became clear to the Committee during the inquiry that there is considerable confusion and frustration over who is responsible for what in terms of planning in the ACT.

The Committee cannot ignore these concerns. Thus, we have made a number of recommendations with a view to simplifying the planning regime for the ACT and ensuring that the Authority fosters a consistent, transparent and accountable decision-making process. The Committee believes it is important that the National Capital Authority and the Territory planning authority adopt a much more integrated approach to ACT planning matters.

The Committee wishes to make it clear that it is not arguing for the abolition of the National Capital Authority, nor does it wish to see the national significance of Canberra compromised through actions undertaken by the Territory Government.

There is a clear, ongoing need for the Authority to continue to uphold the Commonwealth's interests in the national capital.

The Committee is grateful to all those who participated in this very important inquiry.

Senator Ross Lightfoot
Chairman



Membership of the Committee

Chair Senator Ross Lightfoot

Deputy Chair Senator Trish Crossin

Members The Hon Ian Causley MP

Ms Annette Ellis MP

Mr Michael Johnson MP
(discharged on 19/02/04)

Mr Paul Neville MP

The Hon Warren Snowdon MP

Mr Cameron Thompson MP

Dr Mal Washer MP
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Senator John Hogg

Senator Kate Lundy

Senator Nigel Scullion

Senator Natasha Stott Despoja

Committee Secretariat

Secretary Mrs Margaret Swieringa

Inquiry Secretary Mr Quinton Clements

Senior Research Officer Mr Justin Baker

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Mr Daniel Miletic



Terms of reference

The Annual Report of the National Capital Authority for 2001-02 was tabled in the House of Representatives on 12 November 2002 and stands referred to the Committee for inquiry if the Committee so wishes. Accordingly, on 26 March 2003 the Committee resolved to conduct an inquiry and report on the role of the National Capital Authority. In particular the Committee will consider:

- the role of the National Capital Authority as outlined in the *Australian Capital Territory (Planning and Land Management) Act 1988*;
- the Authority's overall management of the National Capital Plan;
- management issues relating to designated land under the National Capital Plan; and
- the relationship between the Authority and Territory planning authorities.



List of abbreviations

ACT	Australian Capital Territory
ACTPLA	ACT Planning and Land Authority
AIS	Australian Institute of Sport
ASC	Australian Sports Commission
CCAA	Canberra Community Action on Acton (Inc.)
DA	Draft Amendment
DCP	Development Control Plan
DOFA	Department of Finance and Administration
GDE	Gungahlin Drive Extension
HIA	Housing Industry Association
ICOMOS	International Council on Monuments and Sites
NCA	National Capital Authority
NCCC	North Canberra Community Council
NCOSS	National Capital Open Space System
NCP	National Capital Plan
NCPA	National Capital Planning Authority
OECD	Organisation for Economic Coordination and Development

PALM ACT Planning and Land Management

PIAACT Planning Institute of Australia – ACT Division



List of recommendations

1 Introduction

Recommendation 1

That the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) be amended to include a requirement for all draft amendments to the National Capital Plan and proposed works in the Parliamentary Zone to be referred to this Committee for its consideration.

2 Territory Developments

Recommendation 2

That an integrated approach be adopted by the Territory and Commonwealth planning authorities for future planning projects affecting both Territory and Commonwealth planning policies.

3 The Role of the National Capital Authority

Recommendation 3

That Section 33 of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) be amended to provide for an increase in the number of members on the National Capital Authority to six (excluding the Chairperson and Chief Executive), and that:

- three of the six members be appointed from other states and territories on a rotational basis; and
- the full-time Chief Executive be appointed in an ex-officio role as a non-voting member of the Authority.

4 The Planning Framework

Recommendation 4

That the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) be amended to include the provision for an independent appeals process against National Capital Authority decisions regarding works approvals, in addition to the current option for review under the *Administrative Decisions (Judicial Review) Act 1977* (Cth).

Recommendation 5

That, in addition to Recommendation 5, the Federal Government negotiate with the ACT Government to initiate reciprocal representation on the respective boards of the National Capital Authority and the ACT Planning and Land Council, and that Section 33(1) of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) and the relevant Territory legislation be amended to facilitate this.

5 Reforming the Planning Regime

Recommendation 6

That, in collaboration with the Territory Government, the Federal Government initiate an independent and comprehensive review of the National Capital Plan on the basis of the implementation of the recommendations of this report and the need for a more integrated approach by both planning authorities.

Recommendation 7

That Section 10 (2b) of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) be amended to remove planning of arterial road systems from the National Capital Plan and that the responsibility for the planning of arterial roads be transferred to the Territory Government.

Recommendation 8

That the National Capital Plan be amended so that Designated Area status is uplifted from all Territory Land with the exception of the Deakin/Forrest residential area, the Inner Hills and the main avenues and approach routes; and that in assuming planning responsibility for the areas to be uplifted, the Territory Government uphold the principles articulated in the National Capital Plan.

Recommendation 9

That the National Capital Plan be amended to incorporate a set of agreed planning principles for areas of Territory Land subject to special requirements, and that:

- these principles be developed jointly by the Commonwealth and Territory planning authorities;
- the Territory assume planning responsibility for these areas; and
- the Territory act in accordance with these agreed principles.

6 Management Issues

Recommendation 10

That, for all sites fronting State Circle between Hobart and Adelaide Avenue (Blocks 1-8 Section 6 Forrest and Blocks 5-9 Section 3 Deakin:

- building height be no more than two storeys and no point more than 8 metres above the natural ground level immediately below (regardless of whether the blocks are amalgamated or not); and
- plot ratio for residential development of existing blocks should remain at 0.4, and in the case of amalgamated blocks be up to a maximum of 0.8.

8 The Issue of Consultation

Recommendation 11

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

Figure 1.1 Designated Areas, National Land and Territory Land

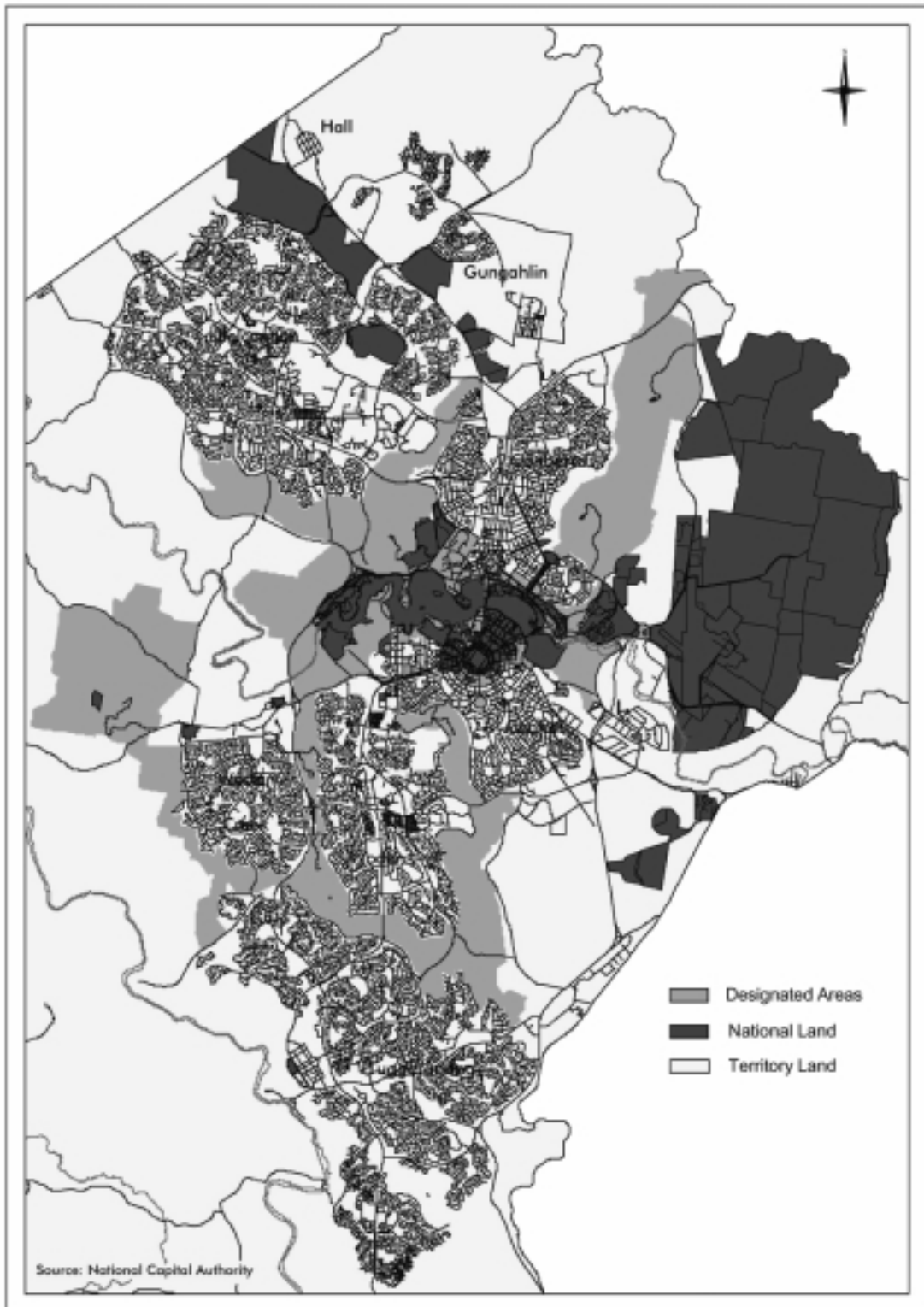
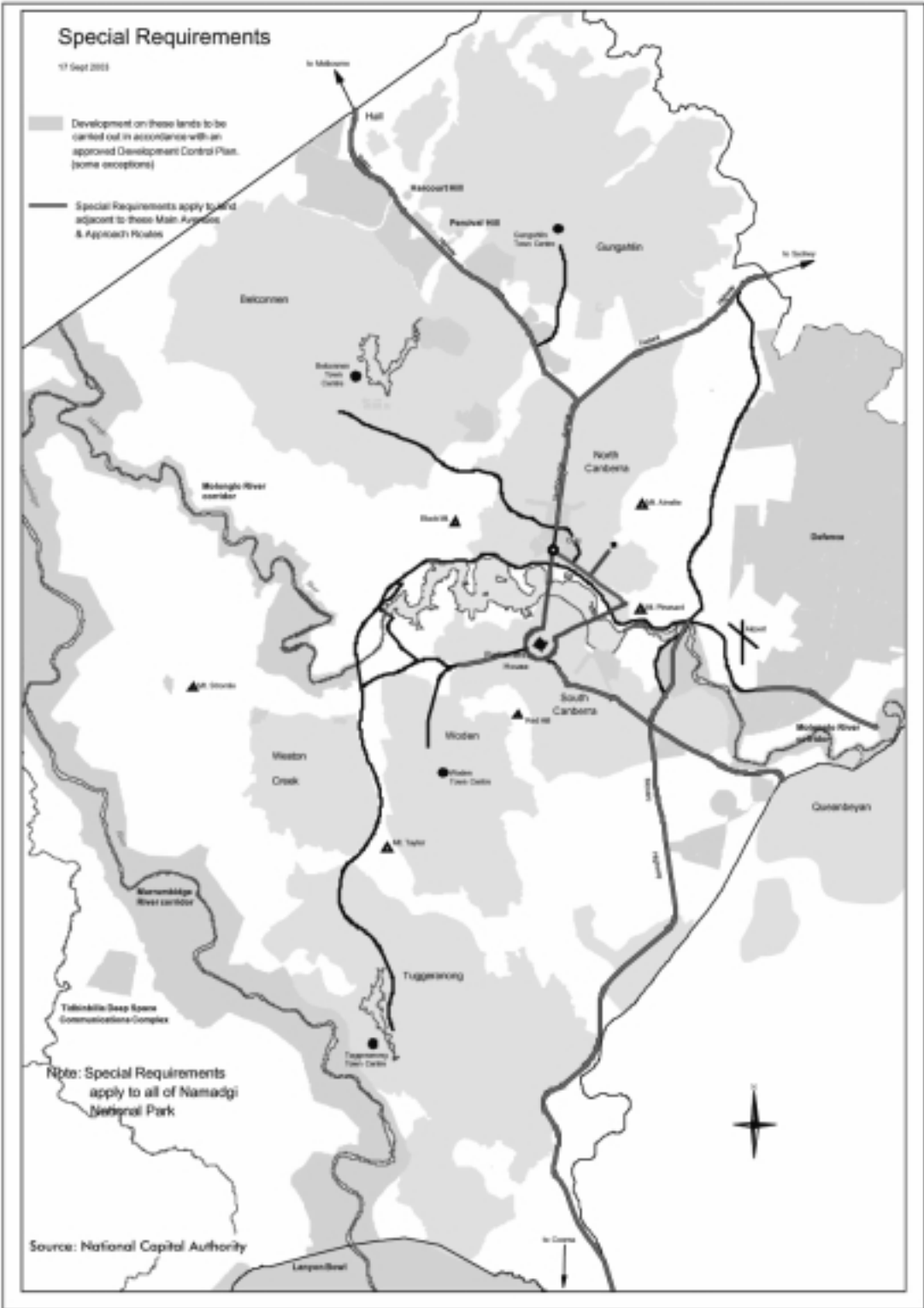


Figure 1.2 Areas Subject to Special Requirements



*The seat of Government of the Commonwealth shall be determined by the Parliament, and 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...*¹

Introduction

- 1.1 Annual reports of the National Capital Authority (NCA) stand referred to the Joint Standing Committee on the National Capital and External Territories for any inquiry the Committee may wish to make, in accordance with a schedule tabled in the House by the Speaker.² Accordingly, on 26 March 2003, the Committee resolved to use the Authority's Annual Report for 2001-02 as the basis for conducting an inquiry and reporting on the role of the National Capital Authority.³ On 31 March 2004, the Committee extended the inquiry to incorporate a review of the National Capital Authority's Annual Report for 2002-03.⁴
- 1.2 The annual reports of the National Capital Authority provide details of the operations of the organisation for the years ended 30 June 2002 and 30 June 2003 respectively. The structure of the Authority's annual

1 Section 125, *The Commonwealth of Australia Constitution Act 1900* (Cth).

2 Section 2, Committee's Resolution of Appointment, 2002.

3 The National Capital Authority Annual Report 2001-02 was tabled in the House on 12 November 2002.

4 The National Capital Authority Annual Report 2002-03 was tabled in the House on 4 November 2003.

reports addresses the following three outputs as well as other reporting requirements:

- Output 1: Review, amendment and administration of the National Capital Plan and national land.
- Output 2: Culture and awareness strategies and programs for the national capital.
- Output 3: Asset and land management, and capital enhancement services.⁵

- 1.3 The National Capital Authority's outputs contribute to the Transport and Regional Services portfolio outcome. The government's outcome for this portfolio is 'a better transport system for Australia and greater recognition and opportunities for local, regional and territory communities'.⁶

Background

- 1.4 Australia's national capital experienced a significant change in 1989 when self-government was introduced in the Australian Capital Territory. The Federal Government established the National Capital Authority to manage the Commonwealth's continuing interest in Canberra as Australia's national capital.⁷ The Authority was given responsibility for managing national land and associated assets required for the special purposes of the capital.
- 1.5 The National Capital Authority was established by, and operates under, the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth). The Act is administered by the Minister for Territories, Local Government and Roads, and the Authority is accountable to parliament.
- 1.6 The Committee's inquiry has been regarded as a timely one, due to what one submission described as "the deterioration of National Capital planning and development".⁸ Despite the introduction of self-

5 National Capital Authority, Annual Report 2001-02, p 9.

6 National Capital Authority, Annual Report 2001-02, p 2.

7 The National Capital Authority was previously known as the National Capital Planning Authority (see Table 1.1).

8 Odgers, Submissions, p 37. See also, for example, Wright, B., ACT's planning stuck in mid-1960s, *The Canberra Times*, 22 April 2003, p 11, who stated that a review of planning arrangements in Canberra was 'way past due', and Smith, Transcript, 19 September 2003, p 241.

government some fifteen years ago, there appears to remain a large degree of uncertainty, at least among ordinary citizens, about the areas for which the NCA has statutory planning responsibilities.⁹ The ambiguity arising from the dual-planning regime continues to create confusion and frustration for planners, developers and residents.¹⁰

- 1.7 The likelihood of confusion and conflict resulting from the dual-planning arrangement was foreseen shortly after the advent of self-government, when Senator Margaret Reid anticipated some of the very issues which formed the basis for the Committee's inquiry:

...the ACT Government and the people of Canberra have concerns arising out of the dual planning system...the concerns are two-fold really – the additional costs that the National Capital Plan may impose upon the Territory, particularly the way in which it restricts land use, and the confusion which seems to be in existence created by a dual planning system.

ACT business has to contend with the concepts of the National Land and the Territory Land, land in Designated Areas and land subject to special requirements. Maybe it is because it is so new that it is still causing this confusion and it will all become clear, but I believe there are some grey areas and there are some areas which the Commonwealth has attempted to retain which I believe is not justified.

Contending with planning authorities, I am sure all would realise, can be complicated in the best of circumstances, but where there are two bodies answerable to two different governments in a city the size of Canberra, I think it is confusing.¹¹

- 1.8 What appeared to be growing tensions between the National Capital Authority and the ACT Government,¹² together with mounting frustrations over the lack of clarity regarding the Territory and

9 See, for example, Darbyshire, Submissions, p 72, who stated that for some areas “we have had difficulty finding out the responsible jurisdiction”.

10 See, for example, Macdonald, E., Developers slate dual controls, *The Canberra Times*, 17_October 2003, p 2.

11 Senate *Hansard*, 6 December 1990, p 5123.

12 See, for example, Royal Australian Institute of Architects, Submissions, p 415, whose members were stated to have had personal experience of ‘the adversarial environment that sometimes exists between the NCA and PALM’. See also Planning Institute of Australia (ACT), Submissions, p 54, and Housing Industry Association, Submissions, p_102.

Commonwealth's planning responsibilities¹³, were driving factors behind the Committee's inquiry. The Authority's intervention in the Gungahlin Drive Extension issue - which resulted in the new ACT Labor Party being unable to fulfil its election promise¹⁴ - heightened tensions between the two and incited a series of public exchanges between the ACT Chief Minister and the then Minister for Regional Services, Territories and Local Government.¹⁵ However, the Committee has taken the opportunity to address a diverse range of issues relating to the overall functioning of the National Capital Authority, as evidenced by the broadness of the inquiry's Terms of Reference.

Table 1.1 History of the Commonwealth's Role in ACT Planning

Era	Planning Body	Function
1921-1924	Federal Capital Advisory Committee	To advise the Minister of Home Affairs on the construction of Canberra and to review the Griffin plan
1925-1930	Federal Capital Commission	To construct and administer Canberra
1938-1957	National Capital Planning and Development Committee	Advisory body to the Minister of the Interior to safeguard the Griffin plan and maintain high aesthetic and architectural standards worthy of a national capital
1958-1989	National Capital Development Commission	To plan, develop and construct Canberra as Australia's national capital
1989-Present Day	National Capital Planning Authority and National Capital Authority	To ensure that Canberra is planned in accordance with its national significance

Source National Capital Authority website: www.nationalcapital.gov.au/history.htm

13 See, Downie, G., Govt urged to challenge NCA, *The Canberra Times*, 4 January 2003.

14 See Downie, G., Promise built on shaky ground caves in, *The Canberra Times*, 4 January 2003.

15 See, for example, The Hon. W. Tuckey, MP, Stanhope 'undermines city's status', *The Canberra Times*, 17 March 2003, p 3, and McLennan, D, Stanhope tells Feds: keep out of our business, *The Canberra Times*, 10 August 2002,

The Griffin Legacy Project

1.9 On 14 November 2002, the National Capital Authority launched the *Griffin Legacy* project, a study to appraise the continuing relevance and vitality of Walter Burley Griffin's original plan to contemporary Canberra. According to the Authority, the study will involve determining what has survived, been modified or discarded in the period since the plan was gazetted in 1923, and what has continuing value and relevance.¹⁶ The Authority states that in order to ensure that the integrity of Griffin's intentions is sustained:

...it is necessary to return to the original design to establish Griffin's planning intentions, both physical and philosophical; to establish a validated benchmark of what constitutes the Griffin Plan. We need to be clear about what of Griffin's vision has been developed, what remains to be developed, what needs to be retained, what no longer has continuing relevance, what elements can change, what elements should be considered inviolate and to reignite the philosophy of innovation in Canberra's planning.¹⁷

1.10 According to the NCA, outcomes of the Griffin Legacy project will include:

- strategic planning and development initiatives, which may lead to future amendment to the National Capital Plan;
- Griffin Legacy Research Archive – a compendium of Walter Burley Griffin plans and documents which will be used for promoting the study of the National Capital's rich planning heritage; meeting international interest in the work of Burley Griffin and Marion Mahoney Griffin; and which will serve as a publicly accessible collection for research purposes; and
- publication promoting the planning and development of Canberra in accordance with its national significance.¹⁸

16 National Capital Authority, *The Griffin Legacy*, Available online at <http://www.nationalcapital.gov.au/projects/griffin/index.htm>. Accessed 12 September 2003.

17 National Capital Authority, *The Griffin Legacy*, Available online at <http://www.nationalcapital.gov.au/projects/griffin/index.htm>. Accessed 12 September 2003.

18 National Capital Authority, Annual Report 2002-03, p 25.

- 1.11 The NCA also states that the Griffin Legacy will have a direct influence on the National Capital Plan – the statutory document which provides a general policy framework for land use and planning in the Territory – in two ways:
- It is expected to form one of a series of documents that provide a context for the policy content of the National Capital Plan. Other such documents already being prepared will deal with the concept of National Significance and symbolism.
 - It is expected to directly influence amendments to the National Capital Plan, especially the policies on Urban Design, Main Avenues and Approach Routes, Heritage, Landscape and Environment.¹⁹
- 1.12 The Committee is looking forward to the findings of the Griffin Legacy study, and trusts that the strategic planning and development initiatives which arise from the project will be instrumental in reaffirming the NCA's focus toward the integral elements of the Griffin Plan and those areas which are undoubtedly significant to Canberra's interest as the national capital. In addition to providing the foundation for a review of the National Capital Plan, the Committee believes that the Griffin Legacy Project will help to clarify the importance of the Authority's responsibilities in upholding the city's national significance.

The Issues

- 1.13 The issues which the Committee has undertaken to consider regarding what role the National Capital Authority should perform in the ACT are similar to those raised by Mr Bruce Wright in his report *Impacts of Systems of Governance on Federal Capitals*, which asked:

How best to balance the conflicting interests? How to protect the interests of the nation without undue impact on residents and their local governments? How to ensure that the nation and the city each pay an appropriate share of the costs of the capital and the city? What powers and responsibilities should

19 National Capital Authority, *The Griffin Legacy*, Available online at <http://www.nationalcapital.gov.au/projects/griffin/index.htm>. Accessed 12 September 2003.

each level of government carry in the interests of democracy, efficiency and accountability?²⁰

1.14 The Committee received evidence addressing a wide range of issues relating to the role and operations of the NCA, particularly where the Authority's actions have impacted to the detriment of the ACT community. The Committee notes with some concern that these issues appear to have contributed to increasingly strained relations between the ACT and Commonwealth governments, culminating in a number of public disputes being played out in the local media. While the Committee accepts that the existence of two planning regimes with overlapping responsibilities inevitably results in buck passing and the politics of blame, the Committee has sought to recommend a series of measures which it hopes will lead to a more transparent and effective planning process and ensure that the NCA is accountable for its actions. Some of the key issues examined in the Committee's report include:

- the NCA's active role in promotions and the question of whether this is detracting from its important planning role;
- the relevance of the National Capital Plan and the question of whether, in its current state, the plan fulfils its statutory objective to ensure Canberra and the Territory are planned in accordance with their national significance;
- the planning relationship between the Commonwealth and the Territory.
- the lack of clarity in the planning process resulting from 'grey areas' of jurisdiction between the Commonwealth and Territory planning authorities which have overlapping responsibilities under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth);
- the NCA's management of Designated Areas and the impact of NCA decisions on ACT Government policies;
- the NCA's management of land and assets, including its responsibilities regarding the National Carillon and Lake Burley Griffin;
- employment location policies in the National Capital Plan which have seen rapid commercial development at Canberra Airport and

20 Wright, B., 1998, *The Impact of Systems of Governance on Federal Capitals*, p 6.

have been criticised for having a deleterious impact on Civic and the other town centres; and

- the NCA's approach to community consultation.

Role of the Committee

- 1.15 It is the function of the Federal Parliament to participate in developing law and policy, to scrutinise government action and public administration and to inquire into matters of public interest on behalf of all Australians. A system of Federal parliamentary committees facilitates the work of the Parliament. A Resolution of Appointment, passed by the House of Representatives on 14 February 2002 and by the Senate on 15 February 2002, is the source of authority for the establishment and operations of the Joint Standing Committee on the National Capital and External Territories.²¹ The Committee is appointed to inquire into and report to both Houses of Parliament, in an advisory role, on a range of matters.
- 1.16 While the Committee was established in 1993, a Joint Standing Committee on the Australian Capital Territory has been appointed in each Parliament since 1956. In 1992, the Joint Standing Committee on the Australian Capital Territory changed its name to the Joint Standing Committee on the National Capital, to emphasise the significant change in the focus of the Committee's work which occurred following the introduction of self-government in the ACT in 1989. At the beginning of the 37th Parliament in 1993, the Committee changed its name to reflect its additional focus on Australia's external territories – inquiries for which were previously dealt with by other Committees.
- 1.17 The Committee has produced eight reports in relation to the national capital so far:
- *City Hill: Review of the draft master plan*, August 1993;
 - *Report on the proposal for pay parking in the Parliamentary Zone*, June 1994;
 - *King George V Memorial*, May 1995;

21 By convention, where the Resolution of Appointment is silent, joint committees follow Senate committee procedures to the extent that such procedures differ from those of the House.

- *Draft Amendment no. 12 (Russell) of the National Capital Plan*, May 1995;
- *Draft Amendment no. 14 (Broadacre areas) to the National Capital Plan*, October 1995;
- *A right to protest*, May 1997;
- *Striking the right balance: Draft Amendment 39 National Capital Plan*, October 2002; and
- *Not a town centre: The proposal for pay parking in the Parliamentary Zone*, October 2003.

Referral of Works and Draft Amendments

1.18 The Committee believes that the current process, whereby draft amendments to the National Capital Plan and proposed works in the Parliamentary Zone are usually referred to the Committee for its consideration before being presented to Parliament, may be enhanced. While, at present, the Minister for Territories, Local Government and Roads generally refers draft amendments to the National Capital Plan and proposed works in the Parliamentary Zone to the Committee, there is no formal requirement for the Minister to do so under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth). The Committee believes it is appropriate that this process now be formalised.

Recommendation 1

1.19 **That the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) be amended to include a requirement for all draft amendments to the National Capital Plan and proposed works in the Parliamentary Zone to be referred to this Committee for its consideration.**

Conduct of the Inquiry

1.20 The Annual Report of the National Capital Authority for 2001-02 was tabled in the House of Representatives on 12 November 2002 and

stands referred to the Committee for inquiry if the Committee so wishes. Accordingly, on 26 March 2003 the Committee resolved to conduct an inquiry and report on the role of the National Capital Authority.

- 1.21 Under the Committee's Resolution of Appointment, the period during which an inquiry concerning an annual report may be commenced by the Committee shall end on the day on which the next annual report of that department or authority is presented to the House. Having noted this, on 31 March 2004, the Committee agreed to extend the inquiry to incorporate a review of the Annual Report of the National Capital Authority for 2002-03, which was tabled in the House of Representatives on 4 November 2003.
- 1.22 The inquiry was advertised in both *The Canberra Times* and *The Australian* and media releases were issued to relevant sections of the media for each of the Committee's public hearings. The inquiry also generated significant publicity in *The Canberra Times* shortly after its commencement and throughout the evidence gathering process.²²
- 1.23 55 submissions and 24 exhibits were received to the inquiry and these are listed at Appendix A and Appendix B respectively. 75 witnesses gave evidence during six public hearings conducted in Canberra between June 2003 and March 2004. A list of the witnesses and organisations represented at these hearings is at Appendix C.

Structure of the Report

- 1.24 The Committee's report is divided into nine chapters:
- Chapter Two examines recent changes to ACT planning legislation which have had significant implications for relationship between the Territory and Commonwealth planning Authorities. This Chapter also looks at the Canberra Plan – a new strategic plan developed by the Territory Government to guide development of the ACT over the coming generation – and the need for an integrated planning approach between the relevant ACT and Commonwealth Authorities.

22 At least 10 articles referring to the Committee's inquiry appeared in *The Canberra Times* between April and October 2003.

- Chapter Three looks at the role and functions of the National Capital Authority under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth). In particular, this chapter looks at the dual character of Canberra due to its status as the national capital as well as the NCA's increasing focus toward fostering an awareness of Canberra as the national capital.
- Chapter Four analyses the planning framework which guides development in the ACT. This chapter also looks at the planning relationship between the Commonwealth and Territory planning authorities, both at the statutory and non-statutory levels.
- Chapter Five examines the effectiveness of the dual-planning system and looks at a range of options to achieve a more integrated planning system.
- Chapter Six looks at specific matters which have been brought to the Committee's attention regarding the National Capital Authority's management of Designated Areas, land and assets.
- Chapter Seven canvasses the issue of employment location policies and the controversy arising from recent commercial developments at the Brindabella Business Park at Canberra Airport.
- Chapter Eight addresses the issue of consultation processes adopted by the NCA.

Territory Developments

A New Planning Structure for the Territory

- 2.1 On 20 December 2002, the ACT Government enacted the *Planning and Land Act 2002* (ACT) and made a number of legislative changes to the Territory planning system. The Act commenced on 1 July 2003 and saw a significant change in the ACT's planning and land management operations, with the establishment of three new bodies: the *ACT Planning and Land Authority* (ACTPLA), the *Planning and Land Council* and the *Land Development Agency* to replace ACT Planning and Land Management (PALM).

ACT Planning and Land Authority

- 2.2 The ACT Planning and Land Authority continues the previous role of PALM as well as assuming responsibility for the land release program and the land management role previously performed by the ACT Department of Urban Services. ACTPLA's functions are:
- administering and reviewing the Territory Plan
 - planning and land policy advice
 - regulating development and the building industry
 - maintaining the digital cadastral database, and providing land information

- granting and administering leases and licences
- deciding development applications
- land use compliance and enforcement
- providing administrative support to the Planning and Land Council
- ensuring community consultation and participation in planning decisions
- promoting public education and understanding the planning process¹

Planning and Land Council

- 2.3 The Planning and Land Council has no decision-making function – its role is to provide advice on matters arising under the *Planning and Land Act 2002* (ACT) to both the ACT Government Minister and ACTPLA upon request, or where ACTPLA is required by regulation to seek the advice of the Council.² Advice given by the Council is made publicly available in an effort to ensure transparency in the process is maintained.

Land Development Agency

- 2.4 The Land Development Agency is established to develop land, carry out works for the development and enhancement of land, and carry out strategic or complex urban development projects.³ The Agency assumes responsibilities previously performed by three separate bodies: the Land Group within the ACT Department of Urban Services; the Gungahlin Development Authority; and the Kingston Foreshore Development Authority. The Land Agency's activities are scrutinised by an independent board.⁴

The Canberra Plan

- 2.5 On 11 March 2004, the ACT Government launched *The Canberra Plan*, a strategic framework described by ACT Chief Minister Jon Stanhope

1 ACT Government, *Planning and Land Reforms in the ACT: ACT Planning and Land Authority – It's Role in the Planning & Land Management System*. Available online at: http://www.actpla.act.gov.au/aboutus/transition-pdf/ACTPLA_DL.pdf

2 Section 27, *Planning and Land Act 2002* (ACT).

3 Section 39, *Planning and Land Act 2002* (ACT).

4 ACT Government, *Submissions*, p 202.

as “the most ambitious and the most comprehensive strategic plan ever produced in the ACT”.⁵ The Canberra Plan comprises three primary components which together provide an integrated strategy to guide the future development of the Territory over the coming generation:

- *Building Our Community: The Canberra Social Plan;*
- *The Canberra Spatial Plan;* and
- *The Economic White Paper.*

2.6 The purpose of the Spatial Plan component of the Canberra Plan is to provide strategic directions for the development of Canberra over the next 30 years and beyond. It is the Territory’s key strategic planning document for directing and managing urban growth and change.

The Need for an Integrated Approach to Planning

2.7 The recent trend which has seen a number of overlapping planning studies being conducted in the ACT – in what has been described as a “scatter gun approach” by the Property Council of Australia (ACT) – has highlighted the need for an integrated approach to be adopted by the Commonwealth and Territory planning authorities.⁶ One of the major concerns which surfaced during the inquiry was that the various elements of the Canberra Plan, and in particular the Spatial Plan, were an ACT Government project. While the National Capital Authority was involved in consultation with the Spatial Plan working group, it has been argued that its contribution needed to extend further than that.⁷ Mr Tony Powell, for example, argued that the Spatial Plan should have been a National Capital Authority initiative, given that the NCA holds the over-arching responsibility for metropolitan planning under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth).⁸

2.8 The Housing Industry Association pointed out that although the NCA was an active participant in the consultation process, if the Authority did not support the end product of the project, the ACT could have wasted considerable time and resources.⁹ This is particularly true

5 Chief Minister Jon Stanhope MLA, Media Release, [Chief Minister Launches ‘The Canberra Plan’ with \\$60 million to kick-start implementation](#), 11 March 2004.

6 Property Council of Australia (ACT), Submissions, p 142.

7 Mr Malcolm Smith, Transcript, 19 September 2003, p 242.

8 Powell, Submissions, p 269.

9 Housing Industry Association, Transcript, 20 June 2003, p 42.

where achieving objectives outlined in the Spatial Plan would be dependent on the Authority making amendments to the National Capital Plan.¹⁰ As Mr Bruce Wright noted, “what is a non-statutory spatial plan when you have two statutory plans?”¹¹

- 2.9 Mr Malcolm Smith stated that he would like to see the Spatial Plan provide the groundwork for an overarching strategic plan which both the Territory and the Commonwealth could agree to, and under which the two statutory plans could operate.¹² This view is shared by the Planning Institute of Australia which believes that the Canberra Plan should provide the single planning reference for the ACT and that it should integrate areas deemed to be of national capital significance.¹³ The Housing Industry Association stated that it is essential that the two bodies work together to develop the key strategies outlined in the plan, adding that while the National Capital Plan is the eminent planning document for the Territory, it is the Territory which is ultimately responsible to its community for the direction and growth of the ACT.¹⁴

The Committee's Views

- 2.10 The processes which led to the development of the Spatial Plan have accentuated the need for an integrated approach from both the ACT and Commonwealth planning authorities. The Committee endorses the Property Council's view that an integrated approach to such planning projects is critical to their success. The Committee has therefore sought to address this matter by making recommendations throughout this report which facilitate closer liaison between the two planning authorities on future projects.¹⁵

10 Housing Industry Association, Transcript, 20 June 2003, p 42.
Any amendment to the National Capital Plan would also require approval by the Federal Minister for Territories, Local Government and Roads, as well as both Houses of Parliament.

11 Mr Bruce Wright, Transcript, 20 June 2003, p 14.

12 Mr Malcolm Smith, Transcript, 19 September 2003, p 241.

13 Planning Institute of Australia (ACT), Submissions, p 56.

14 Housing Industry Association, Submissions, p 105.

15 See, for example, Recommendation 7.

Recommendation 2

- 2.11 **That an integrated approach be adopted by the Territory and Commonwealth planning authorities for future planning projects affecting both Territory and Commonwealth planning policies.**

The Role of the National Capital Authority

Structure of the Authority

3.1 The National Capital Authority consists of a Chairperson and four other members, including the full-time Chief Executive. Each member is appointed by the Governor-General. The Chief Executive manages the affairs of the Authority under the general directions of the Authority. Staff are employed under the *Public Service Act 1999* (Cth).¹ The organisational structure of the Authority comprises five work units:

- National Capital Plan;
- Corporate Governance;
- National Capital Promotions;
- National Capital Estate; and
- National Capital Projects.²

1 Section 46, *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth).

2 National Capital Authority, *Annual Report 2001-02*, p 7.

The corporate governance structure includes an internal Management Committee, an Audit Committee, Tender Board and a number of internal coordination committees.³

Statutory Functions

3.2 The NCA is responsible for ensuring that Canberra and the Territory are planned and developed in accordance with their national significance and that the full range of functions to maintain, enhance and promote the national qualities of the national capital are met for the Commonwealth on behalf of the Australian people.⁴ The functions of the Authority, as set out in section 6 of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) are:

- a) to prepare and administer the National Capital Plan;
- b) to keep the plan under constant review and to propose amendments to it when necessary;
- c) on behalf of the Commonwealth, to commission works to be carried out in Designated Areas in accordance with the Plan where neither a Department of State of the Commonwealth nor any Commonwealth authority has the responsibility to commission those works;
- d) to recommend to the Minister the carrying out of works that it considers desirable to maintain or enhance the character of the national capital;
- e) to foster an awareness of Canberra as the national capital;
- f) with the approval of the Minister, to perform planning services for any person or body, whether within Australia or overseas; and
- g) with the Minister's approval, on behalf of the Commonwealth, to manage National Land designated in writing by the Minister as land required for the special purposes of Canberra as the national capital.⁵

3 National Capital Authority, *Business Plan 2003-04*, p 7.

4 Commonwealth Government Portfolio Budget Statement 2001-02.

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

- 3.3 The NCA maintains that its statutory functions continue to be relevant for the best interests of the future development of Canberra. The NCA stated that:

The legislated functions of the Authority are comprehensive. Collectively, they provide a robust framework to secure the planning and development of Canberra and the Territory as the national capital. The positive benefits for the capital are self-evident. The functions should not be disaggregated or diluted.⁶

Table 3.1 Planning and Development Services Provided by the National Capital Authority

Planning and Development Services Provided by the National Capital Authority
Reviewing the National Capital Plan and proposing amendments to the plan
Providing advice on planning, urban design and development approval in accordance with the National Capital Plan
Assessing works applications for buildings and structures, demolition, tree felling, landscaping or excavation in areas which are designated as having the special characteristics of the national capital
Co-ordinating Parliamentary approvals for works proposed within the Parliamentary Zone
Preparing lease and development conditions for sites in areas which are designated as having the special characteristics of the national capital
Preparing Development Control Plans (DCPs) for areas which have special requirements applying under the National Capital Plan

Source *National Capital Authority, November, 2002*

A National Capital and a Local Community

- 3.4 Generally, the evidence received supports an ongoing role for the NCA in ACT planning matters. This is largely due to the fact that although the Authority's decisions are significant for local Canberra

6 National Capital Authority, Submissions, p 172.

residents, “the larger decisions and the totality of the smaller ones are important to the nation”.⁷ The contentious issue, however, is that the Authority is thought by some to exercise its powers in such a way that the Territory’s efforts to develop Canberra are being unnecessarily constrained. The ACT Government stressed that decisions undertaken by the Authority must not inadvertently undermine the efforts of the Territory to develop Canberra as a city in its own right:

Canberra is not, and cannot be, just a city of National monuments and institutions, valued as these are both nationally and by the people of the ACT. Canberra is home to over 320,000 Australians, and as the self-governing Territory has continued to develop, it has, inevitably, come under similar pressures to those experienced in other jurisdictions.⁸

Former member for Canberra, Mrs Roslyn Kelly, MP, acknowledged this dual character of the city:

...the simple truth is that Canberra is populated by ordinary Australians who have the same aspirations as their counterparts in the states, who are concerned about their future and that of their country ... who want merely a 'fair go' - no more, no less - and who are angry when they find that they are being made ideological scapegoats ... we should not forget the dual nature of this city. It is both a place to live and a national capital.⁹

- 3.5 The fact that their city is deserving of special attention as the national capital is not something which is lost on the ACT community. Canberra’s residents appreciate the Commonwealth’s desire to maintain an interest in the way in which the city is planned and developed. This was evidenced by comments from former Senator for the ACT, the Hon. Bob McMullan (now the Member for Fraser), in the period leading up to self-government, when he said of the new planning legislation:

... (This) is one matter that is properly the business of the national Parliament, which will continue to have a significant responsibility to protect the national interest and the national capital aspects of the wonderful city of this Territory...in all the discussions that I have had with people in Canberra, the

7 Wright, B., *The Impact of Systems of Governance on Federal Capitals*, p 20.

8 ACT Government, Submissions, p 222.

9 House of Representatives *Hansard*, 26 February 1981.

most fervent advocates of local autonomy have recognised that unique responsibility.¹⁰

- 3.6 This recognition still exists today as Canberra's residents embrace the significance attached to their city's status as the national capital. The ACT Government also recognises that there is an important ongoing role for a body such as the NCA to protect and enhance Canberra's national significance.¹¹ However, the Territory Government contends that some areas for which the NCA has planning control are "not as necessary in the points of detail for the preservation of the national capital interests".¹² Clearly, it appears the tension between locally based interests and those with the view that Canberra should uphold national interests, will be an ongoing issue.¹³

Extent of NCA Planning Control

- 3.7 The Committee acknowledges that there have been few arguments against the merit of a Commonwealth planning agency to oversee the development of Australia's national capital and to ensure that its national significance continues to be upheld. The majority view from submissions to the inquiry supports the National Capital Authority as the appropriate body to achieve this. As the Planning Institute of Australia stressed to the Committee, "there needs to be a National Capital Authority to bring us back into focus from time to time".¹⁴
- 3.8 During debate on the *Australian Capital Territory (Planning and Land Management) Bill 1988* (Cth), Senator Robert Hill suggested that the Commonwealth's decision to maintain a significant level of control over the Territory was a conservative measure:

Some feel that a little too much power is retained in the Commonwealth function. Nevertheless...this is a cautious approach...looking at our primary responsibilities in relation to the national capital aspect of the ACT and our national responsibility in that regard.¹⁵

10 Senate *Hansard*, 23 November 1988, p 2602.

11 ACT Government, Submissions, p 224.

12 ACT Government, Transcript, 15 August 2003, p 86.

13 Binning, Submissions, p 127.

14 Mr Paul Cohen, Transcript, 20 June 2003, p 4.

15 Senate *Hansard*, 23 November 1988, p 2591.

- 3.9 However, as already discussed, there is a view that, on occasion, the National Capital Authority interferes with what are essentially local planning issues.¹⁶ The Planning Institute of Australia (ACT) acknowledged that there is a “popular view” which supports confining the NCA’s powers to areas of national significance that have a visual content.¹⁷ According to the Planning Institute, this would include the areas around Lake Burley Griffin which encompass the national institutions, as well as the inner hills and the mountains which provide the backdrop to the city.¹⁸
- 3.10 While the NCA maintains that it is merely fulfilling its statutory functions under the *ACT (Planning and Land Management) Act 1988* (Cth), the ACT Government contends that, through its cautious approach, the Commonwealth has retained control over some areas which today bear little relevance to the city’s national significance.¹⁹ Accordingly, the Territory believes that the NCA should refocus their resources on the fundamental aspects of the Griffin plan which are still relevant to the significance of Canberra as the national capital today.
- 3.11 In arguing its case, the ACT Government considered that the most appropriate arrangement would see the Territory assume planning control on Territory Land which is currently designated under the National Capital Plan while conforming to a set of broad principles incorporated into the plan after consultation with the NCA.²⁰ The basis for the Territory’s argument is articulated in its submission:
- The citizens of the ACT should be able to exercise self-determination and be responsible for the economic and social implications of their decisions, including control of planning and residential and commercial development across all Territory land, subject to meeting any principles identified to protect the national interest.²¹
- 3.12 However, a concern was expressed that if the NCA’s planning responsibilities were to be reduced, an unfettered Territory
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16 See, for example, Wright, Submissions, p 88, and Mr Malcolm Smith, Transcript, 19 September 2003, p 243.

17 Planning Institute of Australia (ACT), Submissions, p 53.

18 Planning Institute of Australia (ACT), Submissions, p 53.

19 Mr Robert Tonkin, Transcript, 15 August 2003, pp 86, 112, 116. This view is also supported by the Planning Institute of Australia (ACT). See Submissions, p 55.

20 Stanhope, J., ACT Government unable to steer its own course, *The Canberra Times*, 14 June 2003.

21 ACT Government, Submissions, p 224.

Government may prejudice Canberra's national significance in pursuit of economic growth and development.²² The ACT Sustainable Rural Lands Group stated that the reason ACT residents have been granted "a restricted level of self-determination" is recognition that the whole of the ACT is the seat of Government.²³ Mr Paul Cohen from the Planning Institute of Australia believes that the Territory needs to be guided by a higher authority to ensure that it complies with the standards expected of a national capital:

I do not believe that a territory government can properly exercise the responsibility of planning, developing and constructing Canberra as the national capital with the pressures that are placed on it, politically and by the community, unless there is some power above it which acts to keep it confined.²⁴

Safeguarding the National Interest

3.13 The National Capital Plan identifies matters of national significance in the planning and development of Canberra and the Territory to include:

- The pre-eminence of the role of Canberra and the Territory as the National Capital.
- Preservation and enhancement of the landscape features which give the National Capital its character and setting;
- Respect for the key elements of Walter Burley Griffin's formally adopted plan for Canberra.
- Creation, preservation and enhancement of fitting sites, approaches and backdrops for national institutions and ceremonies as well as National Capital Uses.
- The development of a city which both respects environmental values and reflects national concerns with the sustainability of Australia's urban areas.²⁵

3.14 The importance of the NCA's role in monitoring the development of Canberra was reinforced throughout the Committee's deliberations. Mr Ian Mickle, for example, described the Authority as "the manifest

22 See, for example, Conner, De Landelles, Stokes, Planning Institute of Australia, Submissions.

23 ACT Sustainable Rural Lands Group, Submissions, p 321.

24 Mr Paul Cohen, Transcript, 20 June 2003, p 9.

25 National Capital Authority, *Consolidated National Capital Plan*, updated February 2002.

presence of the Federal Government's obligation to ensure the highest possible standards of planning".²⁶ The Committee collected evidence which argued that any reduction in the NCA's responsibilities would threaten the character of the national capital and "lead to a deterioration of the nation's showplace city".²⁷ Former NCA member, Mr Wayne Stokes, stated that any move to reduce the powers of the Authority would pave the way for the ACT Government to undermine the integrity of the National Capital Plan by ignoring the significance of maintaining and enhancing Canberra as the national capital in its endeavours to address local issues.²⁸

- 3.15 Mr Malcolm Smith, a former Chief Planner at the NCA, is supportive of the Authority's role in protecting the Commonwealth interest in Canberra as the national capital and stated that this has "generally been discharged successfully by the Authority".²⁹ However, Mr Smith believes that the Committee's inquiry presents an opportune time to introduce reform which enhances both the NCA's important planning role, and also its relationship with the Territory.³⁰

National Land and Asset Management

- 3.16 The NCA maintains that its function of managing land and assets enhances the national capital's symbolic areas and protects Australia's investment for current and future generations.³¹ One of the NCA's statutory functions involves the management of National Land which has been designated by the Minister as land which is "required for the special purposes of Canberra as the national capital".³² Under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth), the land shall not be declared by the Minister unless it is intended for use by, or on behalf of, the Commonwealth.³³ The National Capital Plan requires that proposals to develop, subdivide or

26 Miekle, Submissions, p 25.

27 Miekle, Submissions, p 25. See also, for example, Conner, De Landelles, Canberra International Airport, Submissions.

28 Stokes, Submissions, p 17.

29 Smith, Submissions, p 116.

30 Smith, Submissions, p 116.

31 Ms Annabelle Pegrum, Transcript, 19 Sept 2003, p 209.

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

33 Section 27, *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth).

lease National Land shall be referred to the Authority to assess their consistency with the provisions outlined in the plan.³⁴

- 3.17 The Authority's management role also includes national assets such as "the Captain Cook Memorial Jet, the National Carillon, national monuments including memorials on Anzac Parade, public artworks and large areas of landscape structure and soft plantings".³⁵ The NCA's annual report for 2002-03 states that:

The Authority's statutory functions give it the capacity to ensure national assets continue to be created and maintained, are of an appropriate standard, meet expectations of users, support appreciation and understanding of the role of the Capital and our democracy, and enrich the experience of the Capital.³⁶

- 3.18 As the centrepiece of Griffin's plan for Canberra, Lake Burley Griffin is also deemed to be National Land. The Authority's management of the lake includes administering powerboats, moorings, major events, abstraction of water for irrigation, and various other matters associated with the lake.³⁷
- 3.19 The Authority maintains that the land use and diversity of the national assets reflects the symbolic role of Canberra as the national capital and the seat of government and provides an appropriate setting for activities and events that one expects in their national capital.³⁸

Fostering an Awareness of the National Capital

- 3.20 Section 6 of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) provides that one of the primary functions of the NCA is "to foster an awareness of Canberra as the national capital".³⁹ In recent times the Authority has pursued an increasingly active role in this area with the staging of a number of promotional events including 'Celebrate! Christmas in the Capital',

34 National Capital Authority, *Consolidated National Capital Plan*, June 2002, p 142.

35 National Capital Authority, Submissions, p 168.

36 National Capital Authority, Annual Report 2002-03, p 90.

37 National Capital Authority, Annual Report 2002-03, p 81.

38 National Capital Authority, Submissions, p 170.

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

'Sunday by the Lake', the *'Celebrate! Australia Day Live'* concert, as well as various commemorative events on Anzac Parade. The Authority stated that it has taken:

...a strategic approach to fostering awareness of the capital through research and national perception and expectation surveys, by encouraging participation, appreciation and celebration in the national capital, by information and education about the capital, and by promoting the attributes of Canberra that are of national significance.⁴⁰

- 3.21 However, there are conflicting views as to what extent the Authority should be involved in promoting Canberra as a tourist attraction, particularly given the existence of the Australian Capital Tourism Corporation (formerly the Canberra Tourism and Events Corporation), a statutory body which reports to the ACT Government and is charged with promoting the ACT as a tourist destination. Like the Authority, the Australian Capital Tourism Corporation also manages a number of major events in the ACT. There has also been a question raised as to whether the NCA is sufficiently resourced to contribute effectively in this area without its tourism role detracting from its vital planning and development role.⁴¹
- 3.22 Nevertheless, the Committee has also received evidence which supports the Authority's promotional role, particularly – as discussed above – given the success of a number of recent events staged by the Authority, and there have been calls for more resources to be concentrated in this area.⁴²
- 3.23 The Canberra Business Council stated that it has always supported an increased role for the NCA in the promotion and marketing of the national capital.⁴³ The Council noted that the Authority has carried this out in a “very strategic and successful manner”, particularly given constraints on resources.⁴⁴ Although the Property Council of Australia (ACT) supports the role of the Authority in marketing Canberra as the nation's capital, it emphasised that this activity should not overshadow the important role the Authority performs in

40 National Capital Authority, Submissions, p 165.

41 See, for example, Property Council of Australia (ACT), Submissions, p 140.

42 See, for example, Canberra Business Council, Murphy, National Australia Day Council, Submissions.

43 Canberra Business Council, Submissions, p 259.

44 Canberra Business Council, Submissions, p 259.

planning and development.⁴⁵ The Cultural Facilities Corporation also supports the NCA's promotion of cultural activities in the ACT, and suggested that the Authority's increasing role in events should facilitate close liaison with ACT cultural organisations.⁴⁶

- 3.24 In its submission, the ACT Government addressed the potential for conflict to arise as a result of two bodies pursuing what is essentially the same agenda. The Territory Government identified a number of difficulties arising from both the Authority and the Territory taking responsibility for promoting tourism in the ACT. While the ACT Government endorses the NCA's objective of helping to raise Canberra's profile, it feels that in reality, the NCA provides minimal resources to support this function:

The Commonwealth may own and operate the major attractions in the ACT, but it is the Territory that, by default, accepts the responsibility to inform the people of Australia, and international tourists, about the national capital experience⁴⁷

The Territory shoulders a significant part of that responsibility and the associated costs, yet often is able to exert little or no control in managing its tourism assets, or its potential in ways that could optimise results for the ACT.⁴⁸

- 3.25 The ACT Government also acknowledged that there have been a number of practical problems arising from having both the Authority and the ACT involved in promoting Canberra which it considers have been due to "the NCA's overly restrictive and legalistic approach to its management of the National Capital Plan with regard to tourism related activities".⁴⁹ In his submission to the inquiry, former NCDC Commissioner, Mr Tony Powell, asked the Committee to consider the deletion of the NCA's statutory responsibilities for tourism promotion. Mr Powell made his argument on the grounds that:

...the requisite skills and corporate attitudes (of the NCA) are fundamentally different to those demanded of a planning and urban development authority.⁵⁰

45 Property Council of Australia (ACT), Submissions, p 140.

46 Cultural Facilities Corporation, Submissions, p 108.

47 ACT Rejoinder Submission to the 2004 Commonwealth Grants Commission 2004 Review, February 2003, p 24.

48 ACT Government, Submissions, p 240.

49 ACT Government, Submissions, p 239.

50 Powell, Submissions, p 269.

- 3.26 This view is shared by community group Canberra Community Action on Acton Inc. which believes the Authority has been affected by changes in its functional priorities. The group proposed a reformed governance framework which included the suggestion that:

...the NCA focus on the important physical and symbolic design aspects of the expression of the national capital in the parliamentary triangle and its immediate environs, and not so much on events and promotional activities which impinge on the responsibilities of other departments and agencies.⁵¹

The Question of Resources

- 3.27 An issue which has emerged in light of the NCA's increasingly active promotional role is the question of whether the NCA is adequately resourced to perform its statutory functions. Concerns have been raised as to whether the Authority can maintain both a planning and promotional role without one having a detrimental impact on the other. The Australian Institute of Landscape Architects acknowledged that many landscape projects identified by the NCA have taken a long time to progress due to a seemingly inadequate financial resource base.⁵² Former NCDC Commissioner, Mr Tony Powell, believes that the Authority has not received sufficient funding to be able to perform its statutory functions:

The great difficulty that the National Capital Authority has in trying to exercise its statutory functions is that for the whole of its life it has had inadequate budgets. That has led in particular to an insufficient number and range of skilled professional planning resources.⁵³

This would appear to be at odds with the view of the Royal Australian Institute of Architects which stated that the Authority is "well resourced with professional staff".⁵⁴

- 3.28 Mr Malcolm Smith believes that the NCA's marketing and promotional activities have "for some time been at the expense of

51 Canberra Community Action on Acton Inc., Submissions, p 29.

52 Australian Institute of Landscape Architects, Submissions, p 69.

53 Mr Tony Powell, Transcript, 19 September 2003, p 250.

54 Royal Australian Institute of Architects, Submissions, p 414.

long term, visionary, planning and urban design”.⁵⁵ The Property Council (ACT) emphasised the need for the Authority to be able to undertake both a marketing and a planning role without one detracting from the other.⁵⁶ The National Trust of Australia (ACT) and the Housing Industry Association both believe that budgetary allocations to the National Capital Authority should be sufficient to allow the Authority to continue to discharge both its planning and its promotional functions.⁵⁷ The Canberra Business Council, however, urged that the Authority’s promotional function be given a higher priority and adequate funding to instil a greater sense of national pride in the national capital, in which all other jurisdictions are major stakeholders.⁵⁸

3.29 The Committee notes that the Authority has established an Events and Marketing Advisory Panel which illustrates the NCA’s increasing emphasis on promotional activities. However, some witnesses questioned the professional capacity within the Authority to balance the increasing focus on marketing and promotional with the Authority’s planning role. Mr Tony Powell, for example, stated that:

...the kinds of people, the kinds of skills and the kind of organisation that (the Authority) needs to promote tourism are quite different to the sorts of skills that you need amongst a mix of town planners, civil engineers, landscape designers et cetera. They are different sorts of human skills and they require different organisational environments to achieve their purposes.⁵⁹

The Committee’s Views

3.30 The Committee acknowledges that there is a legitimate ongoing role for the Commonwealth to play in Canberra’s planning to ensure the dual nature of the city continues to receive due recognition. While it is imperative that Canberra’s significance as the national capital is not neglected, it is equally important for the Commonwealth to recognise

55 Smith, Submissions, p 115.

56 Property Council of Australia (ACT), Submissions, p 140.

57 National Trust of Australia (ACT), Submissions, p 23.

58 Canberra Business Council, Submissions, p 259 and Housing Industry Association, Submissions, p 100.

59 Mr Tony Powell, Transcript, 19 September 2003, p 255.

the growth and progression of the ACT under self government. While the Committee believes that the National Capital Authority has played an invaluable role in safeguarding the characteristics and qualities Australians expect of their national capital, a number of concerns have been brought to the Committee's attention which relate to the role and operations of the Authority. The Committee has therefore sought to address some of these issues.

- 3.31 The Committee was encouraged by the positive comments regarding the quality of architecture and urban design for works in Designated Areas – some of which are recipients of design awards – which have been subject to NCA works approval. The Committee also notes that the Authority underlined its strong commitment to urban design excellence through the establishment of an Urban Design Team in November 2002.
- 3.32 With regard to the NCA's active approach in promoting the National Capital as a tourist destination, the Committee is satisfied that the Authority has acted in accordance with its statutory functions. While the Committee also notes the success of a number of recent events staged by the Authority, there should be an ongoing commitment from the NCA to maintain a collaborative relationship with the ACT Government as it adopts its own approach to tourism and promotion of the Territory.
- 3.33 In an effort to ensure that all Australians are afforded a voice in the future of their national capital, the Committee believes that extending representation on the National Capital Authority to include a wider cross-section of Australia's States and Territories would be a step in the right direction. This suggestion was raised in a submission from Canberra Community Action on Acton Inc., which noted that much of the evidence to the inquiry concerned the impact of inter-government relationships and community consultation on the role and functions of the NCA.⁶⁰ Such a move would require an amendment to the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth). The most effective way to ensure all the states and territories are able to contribute to matters affecting the national capital, would be for members to be appointed to the Authority on a rotational basis. The Committee further believes that the Chief Executive should continue to occupy a position on the Authority, but only in an ex-officio capacity as a non-voting member. This, too, would require an amendment to existing legislation.

60 Canberra Community Action on Acton Inc., Submissions, p 312.

Recommendation 3

3.34 That Section 33 of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) be amended to provide for an increase in the number of members on the National Capital Authority to six (excluding the Chairperson and Chief Executive), and that:

- three of the six members be appointed from other states and territories on a rotational basis; and
- the full-time Chief Executive be appointed in an ex-officio role as a non-voting member of the Authority.

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Anyone who isn't confused doesn't really understand the situation.¹

The Planning Framework

National Capital Plan

- 4.1 The *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) provides for the preparation and administration of the National Capital Plan. The object of the plan, as identified in the Act, is 'to ensure that Canberra and the Territory are planned and developed in accordance with their national significance'.² The National Capital Plan was prepared by the National Capital Planning Authority (NCPA) and took effect on 21 December 1990. This followed extensive public consultation, agreement by the ACT Government, support by the then Joint Parliamentary Committee on the Australian Capital Territory and approval by the then Minister for the Arts, Tourism and Territories and support of both Houses of Parliament.
- 4.2 The plan sets general policies for land use and the planning of national and arterial road systems throughout the ACT. Key objectives of the plan are to:

1 Ed Murrow 1908-65 (in Walter Bryan's *The Improbable Irish*, 1969).

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

1. Recognise the pre-eminence of the role of Canberra and the Territory as Australia's National Capital.
2. Further develop and enhance a Central National Area which includes the Parliamentary Zone and its setting and the main diplomatic sites and national institutions, as the heart of the National Capital.
3. Emphasise the national significance of the main approach routes and avenues.
4. Respect the geometry and intent of Walter Burley Griffin's formally adopted plan for Canberra.
5. Maintain and enhance the landscape character of Canberra and the Territory as the setting for the national capital.
6. Protect the undeveloped hill tops and the open spaces which divide and give form to Canberra's urban areas.
7. Provide a plan offering flexibility and choice to enable the Territory Government to properly fulfil its functions; and
8. Support and promote environmentally responsible urban development practices.³

Territory Plan

4.3 Section 25 of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) provides for the ACT Legislative Assembly to set up a Territory planning authority responsible for preparing and administering the Territory Plan.⁴ In response to the Commonwealth legislation, the ACT Government introduced the *Land (Planning and Environment) Act 1991* (ACT) which commenced on 2 April 1992. The responsibilities of the Territory planning authority are carried out by the ACT Planning and Land Authority (formerly ACT Planning and Land Management or PALM) within the ACT Department of Urban Services as well as other ACT Government agencies. The Act also provides that:

3 National Capital Authority, *Consolidated National Capital Plan*, June 2002, p 6.

4 Section 25, *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth).

The object of the Territory Plan is to ensure, in a manner not inconsistent with the National Capital Plan, the planning and development of the Territory to give the people of the Territory an attractive, safe and efficient environment in which to live and work and have their recreation.⁵

- 4.4 The current Territory Plan came into effect in October 1993 following extensive public consultation and discussions with the National Capital Authority. A substantial number of variations to the plan have been processed since that time. The National Capital Authority considers proposed variations to the Territory Plan to ensure their consistency with the National Capital Plan and its statutory object.

The Relationship Between the Two Plans

- 4.5 Section 11 (2) of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) states that ‘the Commonwealth, a Commonwealth authority, the Territory or a Territory Authority shall not do any act that is inconsistent with the (National Capital) Plan’.⁶ In addition, Section 26 of the Act states that the Territory Plan is not to be inconsistent with the National Capital Plan:

The Territory Plan has no effect to the extent that it is inconsistent with the National Capital Plan, but the Territory Plan shall be taken to be consistent with the National Capital Plan to the extent that it is capable of operating concurrently with the National Capital Plan.⁷

- 4.6 These sections of the Act are particularly important for the purpose of this inquiry, as they indicate that even on land where the Territory has responsibility for planning and development approval, there is a provision for Commonwealth intervention if the Territory fails to adhere to the principles and policies set out in the National Capital Plan. Accordingly, if Designated Area status were to be uplifted from any areas in the ACT where the Authority currently has planning control, development approvals would still be conditional on compliance with the principles articulated in the National Capital Plan. These arguments were echoed by Justice Crispin of the ACT

5 Section 25, *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth).

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

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

Supreme Court in his ruling on the matter of planning approval for work on the Gungahlin Drive Extension. In his judgment, Justice Crispin stated:

Since neither the Territory enactments nor the Territory Plan may be inconsistent with the National Capital Plan, the scope for Territory regulation of planning and development in designated areas will plainly be limited and, even in addressing issues not specifically covered by the National Capital Plan it would be bound to apply any relevant principles or policies set out in that plan. Furthermore, it would be open to the National Capital Authority to include in the National Capital Plan provisions which effectively covered the field in relation to all developments or developments of particular kinds on designated areas which effectively covered the field and simply left no scope for any Territory planning decisions save, perhaps, for a decision as to whether the development should be permitted at all.⁸

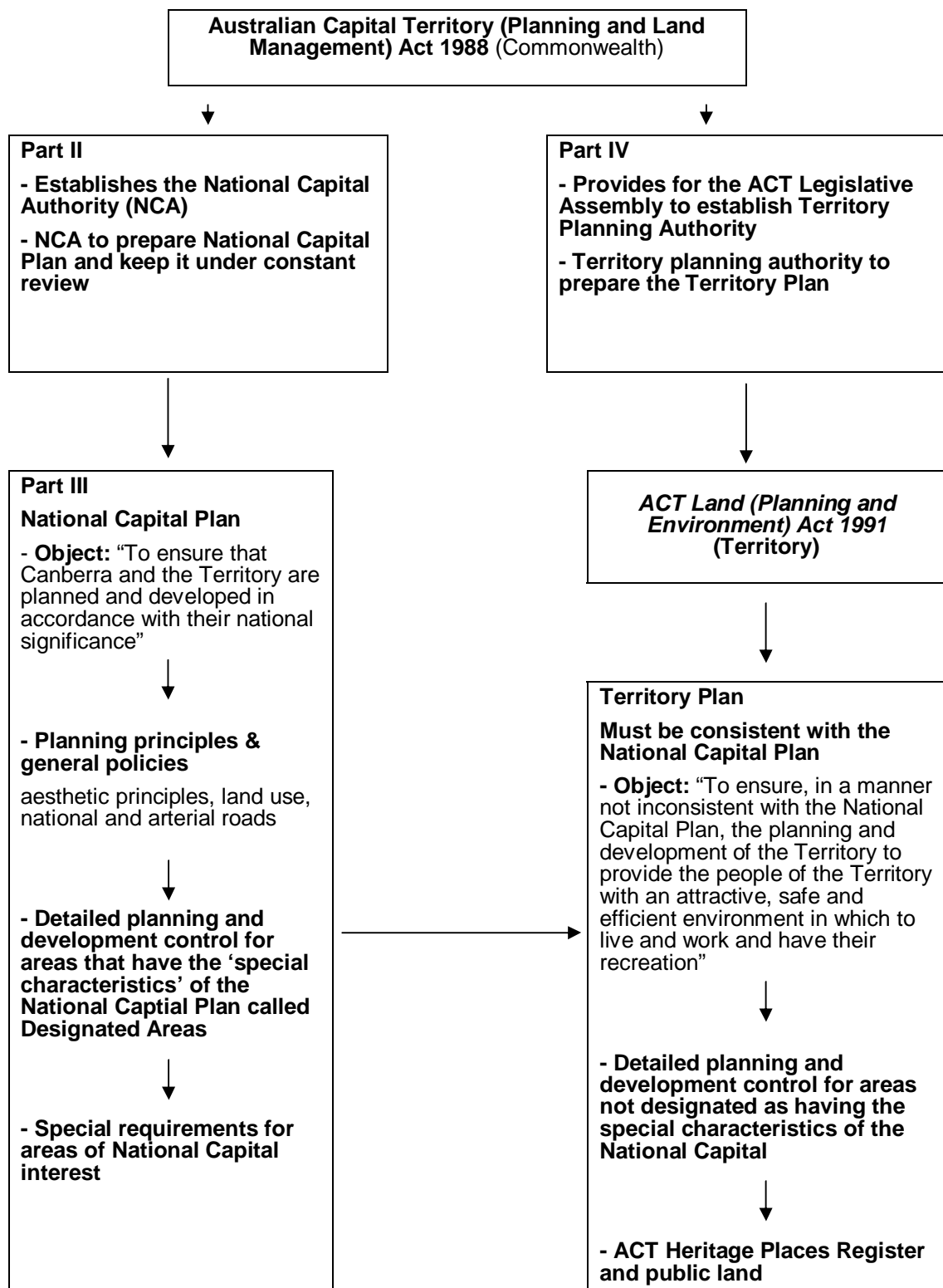
- 4.7 Mr Bruce Wright used the example of Canada's National Capital Commission to highlight the risks of confining federal planning powers to National Land. Mr Wright stated that "the Ottawa experience demonstrates that federal authorities would lose influence over significant vistas, view corridors and urban structure".⁹ However, the Committee believes that if the Commonwealth were to relinquish planning control of certain areas to the Territory, Section 11 of the Act would empower the NCA to constrain any development which threatened the national capital character of the Territory through guidelines and policies in the National Capital Plan. While such a move would necessitate a comprehensive review of the plan, it would then, according to Mr Wright, allow the system to achieve what it was originally intended to achieve:

Give the Commonwealth Government total control over the heart of the capital; in some other areas give it the capacity to constrain some development choices which would impact significantly and adversely on National Capital character; and let the local government have its way unconstrained elsewhere. That was the apparent intention of the current

8 *Save the Ridge Incorporated v Australian Capital Territory and Kenoss Contractors Pty Ltd* [2004] 204 ACTSC 13, 16-17.

9 Wright, Submissions, p 87.

Figure 4.1 Relationship Between the National Capital Plan and the Territory Plan



Source: National Capital Authority, November 2002

system: the failings have come from the lack of connection between planning decisions and costs, the consequently excessive National Capital Plan lacks *raison d'être*. With such definitions, the National Capital Authority could begin the task of identifying the scope of a revised National Capital Plan.¹⁰

Designated Areas

4.8 Section 10 of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) states that the National Capital Plan may specify areas of land that have the special characteristics of the national capital to be Designated Areas; and:

...set out the detailed conditions of planning, design and development in Designated Areas and the priorities in carrying out such planning design and development.¹¹

The National Capital Plan identifies three primary factors for determining those areas of land which have the 'special characteristics of the national capital' and the extent to which they are Designated Areas:

- Canberra hosts a wide range of national capital functions – activities which occur in Canberra because it is the national capital and which give Canberra a unique function within Australia.
- Griffin's strong symbolic design for Canberra Central has given the national capital a unique and memorable character.
- Canberra's landscape setting and layout within the Territory have given the Capital a garden city image of national and international significance.¹²

4.9 'National Capital functions' include parliamentary buildings, Commonwealth agencies, official residences of the Prime Minister and Governor General, embassies, national institutions and major national associations.¹³ As outlined in the plan, the Designated Areas comprise:

10 Wright, Submissions, pp 88-89.

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

12 National Capital Authority, *Consolidated National Capital Plan*, June 2002, p 10.

13 National Capital Authority, *Consolidated National Capital Plan*, June 2002, p 10.

- Lake Burley Griffin and its Foreshores
- the Parliamentary Zone
- the balance of a Central National Area adjoining the lake and the Zone, and extending from the foot of Black Mountain to the airport
- the Inner Hills which form the setting of the Central National Area
- the Main Avenues and Approach Routes between the ACT border and the Central National Area.¹⁴

4.10 The NCA explained that:

Designated areas cover some national land and some territory land but all this land, through the history of the capital, has been considered to have the special characteristics of the national capital. That is, it goes to national capital uses, it goes to Griffin's symbolic design for the city and it goes to the landscape setting and the metropolitan plan of the city.¹⁵

The fact that Designated Areas include both Territory Land and National Land continues to be the source of much confusion among both planners and the wider ACT community. The Committee believes that addressing this issue is critical to achieving greater transparency in the planning process. At present, much of the confusion can be attributed to three areas:

- designated land that is also Territory land;
- areas which are not designated, but are subject to special requirements; and
- the works approval process for works in Designated Areas.

Designated Land that is Territory Land

4.11 Various complexities emerge where Territory Land is also designated land under the National Capital Plan. Although leasing matters are the responsibility of the Territory, works approval for developments must be obtained from the NCA. This is a source of tension for the ACT Government which stated that, as a consequence:

14 National Capital Authority, *Consolidated National Capital Plan*, June 2002, p 11.

15 Ms Annabelle Pegrum, Transcript, 19 September 2003, p 206.

- the Territory does not determine design and development objectives;
- Territory Plan policies do not apply;
- there is no statutory community consultation on any development or Works approval decision; and
- neither the applicant, nor any third party, has any appeal rights.¹⁶

4.12 The ACT Government noted that there are issues for the Territory with regard to “equity, accountability, opportunity, cost and the effective realisation of the Territory’s urban planning strategies”.¹⁷ A recent example of the problems which can arise from this situation arose with Draft Amendment 39 to the National Capital Plan.¹⁸

Areas Subject to Special Requirements

4.13 Section 10 of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) provides that special requirements may apply to areas which are not designated, but which are “desirable in the interest of the national capital”.¹⁹ The difference between areas where special requirements apply and Designated Areas is explained in the National Capital Plan:

The difference between Designated Areas and areas where special requirements apply is that in Designated Areas the National Capital Authority has the planning responsibility, including works approval, whereas in areas where special requirements apply, any development proposal is administered through the Territory Plan by the Territory planning authority in compliance with the special requirements specified in the National Capital Plan.²⁰

4.14 In areas subject to special requirements, the NCA requires all development to be subject to a Development Control Plan (DCP) which sets out the special requirements for the site or area.²¹ As

16 ACT Government, Submissions, p 235.

17 ACT Government, Submissions, p 235.

18 See Chapter Six, this report.

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

20 National Capital Authority, *Consolidated National Capital Plan*, February 2002, p 12.

21 The National Capital Authority aims to complete the preparation and approval of Development Control Plans within 40 working days – see National Capital Authority,

outlined in the Authority's submission, such areas include the land fronting the main avenues and approach routes, the Australian Institute of Sport, the river corridors, some major institutions such as the Tidbinbilla Deep Space Tracking Station, the Namadgi National Park and certain areas of urban open space such as Haig Park and Telopea Park.²²

Works Approval Process for Works in Designated Areas

4.15 Because it is so defined in the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth), planning approval is referred to as "Works Approval" by the NCA.²³ "Works" include the construction, alteration, extension or demolition of buildings or structures, landscaping, tree-felling or excavations, but excludes anything done inside buildings or structures.²⁴ Works in Designated Areas require the prior written approval of the NCA and must meet any detailed conditions of planning, design and development set out in the National Capital Plan. The Authority's role is to negotiate with applicants to achieve quality outcomes in design which are appropriate and embody the special characteristics of the national capital.²⁵

Lack of Appeal Processes

4.16 Works considered by the Authority in Designated Areas are not generally subject to statutory public consultation. This has been the source of much frustration for some property owners as they are denied the opportunity to object to proposals on neighbouring sites.²⁶ The disparity between the appeals processes of the Territory and the National Capital Authority was raised on a number of occasions during the inquiry. It was also a major point of contention during the Committee's inquiry into Draft Amendment 39 to the National

Development Control Plans – in the Interests of the National Capital brochure, November 2002.

22 National Capital Authority, Submissions, p 181.

23 National Capital Authority, Submissions, p 181.

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

25 National Capital Authority, Submissions, p 180.

26 See sections on Draft Amendment 39 and Benjamin Offices developments in Chapter Six.

Capital Plan which affected residents in the Deakin/Forrest area.²⁷ There is currently no provision in the *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 Authority.²⁸ The National Capital Plan states that:

In normal circumstances, the Authority would wish to avoid situations where appropriate solutions could not be achieved through negotiation. However there may be circumstances where this is not possible, and, legally, in such circumstances the Authority's views on the merits of the proposal would stand.²⁹

- 4.17 The Authority pointed out that there is recourse under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (ADJR) to determine whether a decision has been made correctly but even the NCA itself acknowledged that this is “a fairly drastic step to have to take”.³⁰ Since the National Capital Plan came into effect, there have been no challenges to NCA decisions under ADJR.³¹ The Authority informed the Committee that it is looking at opportunities for a review process so that the decision maker is subject to a review, which may involve an internal review by the Authority.³² The Authority pointed out that:

What we are trying to do is look at mechanisms that might allow for some sort of mediation or response where people do have a concern. Under the current Act, we cannot introduce an appeals mechanism that is equivalent to the Territory's. I also think it is fair to say that if government considers an appeal mechanism, it needs to do so with a critique of how well or otherwise the one in the Territory performs because it has become quite litigious and difficult, particularly with respect to third-party appeal.³³

- 4.18 Mr Malcolm Smith described the current works approval process as “most unusual” given that there are no requirements for the

27 Joint Standing Committee on the National Capital and External Territories, 2002, *Striking the Right Balance: Draft Amendment 39 National Capital Plan*, Canprint, Canberra, pp 37-44.

28 National Capital Authority, *Consolidated National Capital Plan*, June 2002, p 143.

29 National Capital Authority, *Consolidated National Capital Plan*, June 2002, p 143.

30 Mr David Wright, Transcript, 19 September 2003, p 231.

31 National Capital Authority, Submissions, p 180.

32 Mr David Wright, Transcript, 19 September 2003, p 231.

33 Ms Annabelle Pegrum, Transcript, 19 September 2003, p 231.

Authority to publicly notify applications or to process them within a statutory time limit or for third or first parties to have appeal rights.³⁴ The Planning Institute also found the current arrangements to be unsatisfactory and believes that the NCA must be subject to formal processes for administering development applications and its decisions must be subject to administrative review (with only limited access for third party appeals).³⁵ The Planning Institute further believes that applicants for works approval should have the right to seek review with respect to NCA decisions or failure for a decision to be delivered within the prescribed period.³⁶

- 4.19 The National Capital Plan notes that when the rights of citizens are affected, recourse to an appeals process may be appropriate. However, the plan points out that, because only a very small amount of leased land is located in Designated Areas, the number of development proposals or consequent appeals would “certainly not justify the establishment of any special purpose appeals mechanism”.³⁷
- 4.20 There would appear, then, to be insufficient avenues for appeal by those who feel aggrieved by NCA decisions regarding works approvals in Designated Areas. The Committee concurs with the view expressed by the Planning Institute and Mr Smith - that the omission of the right for the Territory’s residents to appeal against decisions made by the National Capital Authority represents a denial of natural justice. The Committee therefore believes that the relevant section of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) should be amended so that there is provision for appeal against NCA decisions to approve or not approve works in Designated Areas.

Recommendation 4

- 4.21 **That the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) be amended to include the provision for an independent appeals process against National Capital Authority decisions regarding works approvals, in addition to the current option for review under the**

34 Mr Malcolm Smith, Transcript, 19 September 2003, p 244.

35 Planning Institute of Australia (ACT), Submissions, p 58.

36 Planning Institute of Australia (ACT), Submissions, p 58.

37 National Capital Authority, *Consolidated National Capital Plan*, June 2002, p 143.

Administrative Decisions (Judicial Review) Act 1977 (Cth).

Amendments to the National Capital Plan

4.22 Section 6 of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) requires the NCA to subject the National Capital Plan to constant review and to propose amendments to it when necessary. The Authority maintains that the current arrangements regarding amendments to the plan are appropriate:

The statutory process to amend the Plan provides for independent and expert planning consideration by the Authority, appropriate opportunity for Australians (including the local community) to comment on proposals, appropriate consultation with the Territory planning authority, approval by the responsible Commonwealth Government Minister, and scrutiny by the Australian Parliament. The Plan Amendment process is transparent and effective.³⁸

4.23 The Committee is very familiar with the amendment process, given that draft amendments to the National Capital Plan are referred to the Committee for consideration prior to being presented before both Houses of Parliament. As of May 2003, forty-six draft amendments had been proposed by the Authority, thirty-three of which had been approved in the last thirteen years. A further four were currently in progress, while nine had been withdrawn, deferred or replaced with updated proposals.³⁹

4.24 The Territory considers it unsatisfactory that amendments to the plan are required for administrative refinements or modifications to the General Metropolitan Structure Plan.⁴⁰ By statute, the Commonwealth Parliament is required to approve all amendments to the National Capital Plan and the Territory maintains that there is “no reasonable justification” for this level of Commonwealth involvement in what are essentially local ACT planning matters.⁴¹ The ACT Government points out that:

38 National Capital Authority, Submissions, p 185.

39 A full list of those amendments which have been approved is attached at Appendix D.

40 ACT Government, Submissions, p 232.

41 ACT Government, Submissions, p 232.

Using the Territory's planning and legislative framework to plan and administer changes to the metropolitan structure of Canberra would ensure the community is consulted on these decisions. The engagement of the ACT community in planning activities is of paramount significance to the ACT Government.⁴²

- 4.25 The Territory Government is also dissatisfied with the level of consideration afforded to its views on draft amendments to the National Capital Plan. The ACT claims that its comments on draft amendments are only given the same amount of consideration which is extended to the general public, even where a proposed amendment will have an effect on the Territory's planning and land management framework.⁴³

The Commonwealth/Territory Planning Relationship

- 4.26 Since the establishment of self-government in the ACT, the perceived difficulties of the dual planning system have, on occasion, created friction and animosity between the Commonwealth and the Territory. The inevitability of conflict arising from the new planning arrangements was recognised by Mr John Langmore, MP, during debate on the *Australian Capital Territory (Planning and Land Management) Amendment Bill 1990 (Cth)*. Mr Langmore stated that:

The matter will not always be free of conflict. Inevitably there will be conflict over issues. There was conflict over the division of land between National Land and local land. Inevitably there is conflict over the use of powers, the powers of designation, and over the use of special conditions which the National Capital Planning Authority can impose on the Territory.⁴⁴

- 4.27 The confusion and frustration emerging from the current planning environment has incited calls for the establishment of a single planning authority to oversee planning and land management in the ACT. The present arrangement whereby the Territory Government is required to seek works approval from the NCA where works occur on

42 ACT Government, Submissions, p 233.

43 ACT Government, Submissions, pp 232-233.

44 House of Representatives *Hansard*, 15 November 1990, p 4256.

Designated Areas of Territory land remains a contentious issue. The tension between the two was intensified by the recent conflict concerning the Gungahlin Drive Extension (GDE) which led ACT political parties to call for a reduced role for the Federal Government in ACT planning matters. The situation has deteriorated to the extent that the relationship between Commonwealth and Territory authorities has been described as “deplorable”.⁴⁵

The Statutory Planning Relationship

- 4.28 Statutory requirements ensure that the NCA and the ACT Government are involved in consultation for amendments to the National Capital Plan and the Territory Plan. This assists in avoiding potential inconsistencies and facilitates liaison between agencies on matters affecting both the national and local significance of Canberra and the Territory. The potential of the two planning systems to clash is addressed by Section 26 of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) which requires that the Territory Plan not be inconsistent with the National Capital Plan.⁴⁶
- 4.29 The NCA believes that frequent changes to the Territory planning system have led to difficulty in the Authority ascertaining which areas of the Territory Government have carriage of planning considerations as well as creating some instability in the non-statutory planning relationship between the two authorities.⁴⁷ Despite this, the Authority maintains that “in the vast majority of cases the division of development control responsibilities is absolutely clear”.⁴⁸ The Authority also anticipates that the new, independent ACT Planning and Land Authority will improve definition and lines of communication.⁴⁹
- 4.30 The NCA believes that the co-operation of the two planning authorities is evidenced by the fact that of the 46 draft amendments to the National Capital Plan proposed by the Authority to date, approximately half have been in response to a request from the ACT

45 Odgers, Submissions, p 37.

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

47 National Capital Authority, Submissions, p 192.

48 National Capital Authority, Submissions, p 191.

49 National Capital Authority, Submissions, p 193.

Government or one of its agencies, to deal with a problem at either a policy level or on a site specific basis.⁵⁰

- 4.31 The NCA views the current relationship as the norm and maintains that it is not dissimilar to dual planning regimes across Australia which involve both state and local planning authorities.⁵¹ The ACT Government, however, rejected this assessment, stating that “in no other comparable jurisdiction does the Commonwealth determine and enforce a metropolitan planning outcome”.⁵² The Territory argued that the NCA’s views fail to acknowledge the change in the ACT Government’s administrative responsibilities as a consequence of the introduction of self-government.
- 4.32 The source of greatest tension between the Commonwealth and Territory planning authorities is the statutory provision for the NCA to bear responsibility for approving works on Territory Land within Designated Areas. The NCA acknowledged that this requirement is one that the ACT Government “has never appeared to be comfortable with”.⁵³
- 4.33 While the Authority maintains that it has upheld the national capital interest in each case and ensured that quality design outcomes are achieved, the ACT argued that in many cases, the works administered by the Authority have had little, if anything, to do with maintaining national significance.⁵⁴

The Non-Statutory Planning Relationship

- 4.34 While there is no direct Territory Government representation on the Authority and no Commonwealth/NCA representation on the ACT Planning and Land Authority, the NCA claims to share a good working relationship with the Territory planning agency. The NCA describes the current relationship as “appropriate and effective”.⁵⁵ This view is shared by the ACT Government which perceives the working relationship between the agencies as “sound”.⁵⁶ Mr Malcolm

50 National Capital Authority, Submissions, p 190.

51 See Macdonald, E., *Canberra planners can face tough territory*, *The Canberra Times*, 12 April 2003.

52 ACT Government, Submissions, p 245.

53 National Capital Authority, Submissions, p 193.

54 ACT Government, Submissions, pp 230-231.

55 National Capital Authority, Submissions, p 188.

56 ACT Government, Submissions, p 239.

Smith also stated that there was evidence that, at the operational level, liaison between the two planning bodies “has been generally constructive and effective”.⁵⁷

- 4.35 The NCA insists that although the number of professionals with shared experience has declined, relations have continued to strengthen. Regular meetings are held between the two planning authorities at Chief Executive/Executive Director level. Regular liaison meetings are also held at senior officer level on matters such as the management of the National Capital Plan, Territory Plan and Spatial Plan. Day-to-day liaison occurs at project officer level on individual planning and development matters.⁵⁸
- 4.36 The Australian branch of the International Council on Monuments and Sites (Australia ICOMOS) stated that “conflicting decisions made at the Commonwealth and Territory Government levels potentially hinders and alienates community support”.⁵⁹ According to the Housing Industry Association, it is this relationship between the planning authorities which is the aspect of the Committee’s inquiry of greatest concern to its members.⁶⁰ The Royal Australian Institute of Architects added that “communication, consultation and liaison between the two are sometimes dysfunctional over key projects especially when pending decisions are politicised”.⁶¹ Mr Malcolm Smith suggested that the tension between the respective Ministers and planning agencies is “not necessarily unhealthy, in that it should force the respective interests to properly justify their proposals”, however he conceded this may not always happen.⁶²
- 4.37 The ACT Government stressed to the Committee that many of its concerns are more in line with Commonwealth Government policy rather than with the NCA itself:

It needs also to be said that to the extent there are difficulties in the professional relationship between the NCA and the ACT planners, much of this is beyond the control of the NCA. Commonwealth policies referred to above, over which the NCA’s control is limited, have been the source of some of the

57 Smith, Submissions, p 121.

58 National Capital Authority, Submissions, p 192.

59 Australia ICOMOS, Submissions, p 46.

60 Housing Industry Association, Submissions, p 102.

61 Royal Australian Institute of Architects, Submissions, p 415.

62 Smith, Submissions, p 121.

ACT's most critical concerns. Chief amongst these has been the Commonwealth Government's policy in relation to the development and sale of Commonwealth land.⁶³

The Fiscal Relationship

4.38 The Commonwealth's role in overseeing the planning and development of Canberra as the national capital imposes costs on the ACT Government. The Commonwealth provides some compensation to the ACT for costs incurred due to Canberra's unique role as the national capital. However, the ACT Government described assertions made by the NCA that the National Capital Plan does not impose additional costs on the ACT Government, or that they are no different to the costs incurred in other states, as "perplexing".⁶⁴

4.39 According to the ACT Government, the National Capital Authority's lack of responsibility for the economic consequences of its decisions sets it apart from the dual planning arrangements of the States, a view supported by Mr Bruce Wright, who believes the ACT relationship is "complicated by some unique and interlocking issues". In his submission, Mr Wright stated:

There is an absence of accountability in Commonwealth decision-making affecting the ACT. Decisions of the Commonwealth impose both benefits and costs on the ACT. But they are made without acknowledged regard for these consequences. The self-government legislation requires the Commonwealth's National Capital Authority to develop a plan which sets 'standards for the maintenance and enhancement of the character of the National Capital and ... general standards and aesthetic principles to be adhered to in the development of the National Capital', yet makes no provision for the costs of implementing those standards on land managed by the ACT administration.⁶⁵

4.40 The ACT Government claims that it has incurred considerable costs as a result of NCA requirements which the Territory believes it should not be required to bear:

63 ACT Government, Submissions, p 27.

64 ACT Rejoinder Submission to the Commonwealth Grants Commission 2004 Review, p 7.

65 Wright, Submissions, p 82.

The extra layers of administration in relation to having to meet NCA and other national capital aspects of the planning framework creates additional cost burdens on the ACT Government which is not the case for other states.⁶⁶

- 4.41 A recent example of costs imposed on the ACT as a result of NCA actions arose with the Gungahlin Drive Extension controversy. The ACT Government believes it incurred considerable costs because the NCA would not give an indication of its position on the alignment until extensive work had been done by the Territory and a formal proposition had been made.⁶⁷ The ACT Government estimated the direct cost to the ACT of delays caused by NCA processes on the Gungahlin Drive Extension at \$750,000.⁶⁸
- 4.42 The ACT Government advised the Commonwealth Grants Commission that it costs the Territory \$34.759m per annum to meet the requirements of the National Capital Plan and the NCA in relation to matters which it considers are 'State Government' activities.⁶⁹ In its 2004 report on state finances, the Commonwealth Grants Commission recognised that the ACT Government incurs above standard costs in a number of areas, due to requirements of the National Capital Authority and the National Capital Plan.⁷⁰

66 *National Capital Influences – 'All Pervasive in Service Delivery'* – ACT Workplace Discussions, 13 November 2002, p 95.

67 ACT Rejoinder Submission to the Commonwealth Grants Review on State Finances 2004.

68 ACT Government, Submissions, p 333.

69 ACT Government, Submissions, p 334.

70 Commonwealth Grants Commission, 2004, *Report on State Revenue Sharing Relatives 2004 Review*, pp 76-77. These are outlined in table 8.1.

Table 4.1 National Capital Allowances and Special Fiscal Needs

Category	Allowance assessed in 2003 Update using 1999 Review methods	2004 Review allowance
	\$m	\$m
National Capital Allowances		
Education	4.000	(a)
General public services	3.400	5.000
Administration of justice	0.200	(b)
Public safety and emergency services	0.615	1.900
Culture and recreation	1.385	4.870
National parks and wildlife services	0.000	0.100
Urban transit	1.500	1.500
Total national capital allowances	11.100	13.370
Special fiscal needs		
Roads	0.000	2.600
Police	10.900	7.400
Corporate affairs	4.100	4.200
Total special fiscal needs	15.000	14.200

(a) Allowance included in the normal assessment of student numbers and ESL costs.

(b) Discontinued because the ACT introduced new criminal compensation legislation.

Source Commonwealth Grants Commission, *Report on State Revenue Sharing Relatives – 2004 Review*.

Opportunity for Cross-Representation

4.43 Some witnesses identified the need to introduce additional processes to improve liaison between the ACT Government and the NCA.⁷¹ One obvious course of action – which has been recommended by a number of witnesses – is for cross representation on the respective planning authorities.⁷² The Planning Institute of Australia (ACT) described the current lack of reciprocal authority membership as “a fundamental flaw in the overall planning system in Canberra”.⁷³ Mr Malcolm

71 See, for example, Housing Industry Association, Submissions pp 102-104, Property Council of Australia (ACT), Submissions, p 142.

72 See, for example, Powell, Smith, Planning Institute of Australia (ACT), Property Council of Australia (ACT), Submissions.

73 Planning Institute of Australia (ACT), Submissions, p 55.

Smith also called for more formal Executive meetings and Ministerial liaison.⁷⁴

- 4.44 In late 2002, the ACT Government sought the views of the then Minister for Regional Services, Territories and Local Government about the prospect of cross-representation to enhance the working relationship between the two planning agencies. The proposal was refused on the basis that:
- it would present a conflict of interest for the individuals holding membership of both bodies – that is, it would not be appropriate for a Territory representative to participate in discussions on matters where draft amendments to the National Capital Plan are concerned;
 - in order to give effect to the proposal, an amendment to the *ACT (Planning and Land Management) Act 1988* (Cth) would be required which, according to the then Minister, “goes beyond the intended role of the Authority and its members”; and
 - additional appointments to the Authority board – given that the five positions have already been filled until mid 2004 – would also constitute a breach of the *ACT (Planning and Land Management) Act 1988* (Cth).⁷⁵
- 4.45 Mr Tony Powell believes that the new governance framework for planning in the Territory (that is, the formation of the ACT Planning and Land Council) has created an ideal opportunity for cross-representation. According to Mr Powell, this council has the potential to enhance the “largely ineffectual working relationship between the two existing planning systems”.⁷⁶
- 4.46 Despite the popular view throughout the evidence which supports cross-representation on the respective boards of the two planning authorities, Mr Bruce Wright argued that such a move would not provide a solution to the problems at hand:
- Requiring ‘local’ or ACT Government representation on the National Capital Authority would be an unsatisfactory and internally inconsistent resolution to the identified problems in planning of the capital...finding the right path between (the national and local interest) should be a public process based

74 Smith, Submissions, p 123.

75 ACT Government, Submissions, pp 337-338.

76 Powell, Submissions, p 270.

on clearly articulated principles, not dependent on how the numbers add up in a private meeting of the governing group of a statutory agency deliberately stacked with conflicting interests.⁷⁷

The Committee's Views

- 4.47 As former ACT MLA, Mr Trevor Kaine, stated back in 1995, “the question of planning has been a political hot potato ever since the Territory was established”.⁷⁸ Mr Kaine also forecasted that this situation would not change in the future. The recent trend which has seen public disputes between the ACT Chief Minister and the relevant Commonwealth Minister with responsibility for the Territory being aired in the local media have confirmed this view. Such publicity only adds to the perception that there is little cooperation between the Territory and Commonwealth planning authorities although both authorities have argued that the working relationship is, in fact, a healthy one. The Committee is well aware of a number of recent issues which have contributed to mounting tensions between the two governments, and believes that this only intensifies the need to facilitate more cohesion in the planning and development process.
- 4.48 The Committee supports the view that the relationship would be enhanced by having cross-representation on the respective boards of the two planning authorities. In the opinion of the Committee, this is a logical step which would improve the operations and understandings of both organisations and minimise the opportunity for conflict. The Committee recognises that in the past, the relative structures of the two authorities has not allowed for this to be practical, but agrees with Mr Tony Powell’s assertion that the new ACT Planning and Land Council provides an appropriate outlet for this to occur.⁷⁹ The Committee acknowledges that the ACT Planning and Land Council is an advisory board, and therefore concurs with the Planning Institute’s view that the most appropriate level of representation would be for the relevant officers to provide advice as ex-officio members.

77 Wright, Submissions, p 87.

78 ACT Legislative Assembly *Hansard*, 6 December 1995, p 2687.

79 Powell, Submissions, p 270.

- 4.49 While the Committee is aware of concerns about reciprocal board membership representing a conflict of interest, the Committee supports the views of the ACT Government that any such issues could be worked through within the respective bodies and that “in the longer term, the benefits of reciprocal representation would certainly outweigh any such issues”.⁸⁰

Recommendation 5

- 4.50 **That, in addition to Recommendation 3, the Federal Government negotiate with the ACT Government to initiate reciprocal representation on the respective boards of the National Capital Authority and the ACT Planning and Land Council, and that Section 33(1) of the *Australian Capital Territory (Planning and Land Management) Act 1988 (Cth)* and the relevant Territory legislation be amended to facilitate this.**

80 ACT Government, Submissions, p 341.

While the National perspective will remain pivotal, we should not presume that this perspective is incompatible with a more streamlined, consistent and publicly accountable approach. To this end, planning should align, not overlap, consultation should be mandatory, and notification and appeal on development and approvals should be consistent across all areas.¹

Reforming the Planning Regime

An Uncertain Planning Process

- 5.1 Disparities between the processes employed by the National Capital Authority and the ACT planning authorities have triggered calls for more certainty in the planning process and a more streamlined and cost-effective planning regime for the Territory. A number of witnesses referred to the need to clarify grey areas of jurisdiction between the ACT Planning and Land Authority and the NCA. The present situation reflects provisions in the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) which require that the two planning bodies have overlapping responsibilities. The ACT Government described the two-tiered system, which requires proponents to seek approval for leasing matters with one authority and then development works approval from another, as

1 ACT Government, Submissions, p 202.

“fundamentally flawed”.² This has been the source of much confusion and frustration, largely due to the lengthy delays in the planning and approval process.³

- 5.2 As a result, the ACT faces the threat of losing jobs and income, according to Mr Paul Cohen from the Planning Institute of Australia (ACT).⁴ Mr Cohen stated:

I have seen something like \$70 million of potential investment walk away with two developers who simply shook their heads at the layers of complicated planning.⁵

Mr Cohen’s evidence was supported by the Property Council of Australia (ACT) and the Housing Industry Association, adding weight to the view that the planning community is becoming increasingly disillusioned with the delays and uncertainty which appear to be commonplace under the present regime.⁶ The Housing Industry Association stated that this adversity in the planning process can have a negative effect on innovation and affordability and that:

...un-cooperative demarcations between the Commonwealth and Territory Governments only create uncertainty for people wishing to invest in the city’s future’.⁷

- 5.3 Executive Director of the Property Council’s ACT Division, Ms Romilly Madew, suggested that it was the situation where both authorities play a role in the approval process which is contributing to the frustration. Ms Madew cited an example:

We have a member who comes under that area. He had to go through the NCA and then through ACTPLA. The building has not even started yet, and it has probably been 2½ years now. He has expressed absolute frustration at both. He felt that he had to go to one and then to the other and that there might not have been good talking between the two. There has been a lot of confusion there. He has now had to go to the

2 Mr Lincoln Hawkins, Transcript, 15 August 2003, p 87.

3 The Housing Industry Association (HIA) added that its local members regularly experience frustration with the discrepancies between the jurisdictions. See Housing Industry Association, Submissions, p 102.

4 Ms Romilly Madew, Transcript, 16 October 2003, p 278.

5 Mr Paul Cohen, Transcript, 20 June 2003, p 7.

6 Ms Romilly Madew, Transcript, 16 October 2003, p 278, Housing Industry Association, Submissions, p 102.

7 Housing Industry Association, Submissions, p 102.

(Administrative Appeals Tribunal). Basically, it has been a very unhappy process, to the point where he will probably make a decision whether he will pull out or not. That means loss of jobs—it is a substantial development.⁸

- 5.4 As well as being confusing and costly, the Canberra Business Council stated that the current approval process “has the propensity to stifle activity that would add to the well-being of the people of Canberra and to the Territory as the national capital”.⁹
- 5.5 The ACT Government believes that simplifying administration by bringing about a coinciding of land responsibility with planning approvals would provide a rational and effective solution.¹⁰ The Property Council of Australia (ACT) also argued that one piece of land should fall under the jurisdiction of one planning authority.¹¹ The Council acknowledged that for this to be possible there would need to be amendments to the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth).¹²
- 5.6 The National Capital Authority accepts that the present arrangements can cause confusion. The Authority noted that:

Under current arrangements there can be confusion over the planning concept of Designated Areas (where the Authority has works approval) and land status or tenure. This occurs because Territory Land and National Land can fall within Designated Areas. The fact that the Authority is responsible for works approval on Territory Land (particularly when the ACT Government is the proponent of the works) is seen by some as inappropriate.¹³

The NCA further stated that from time to time, people confuse the legislative planning arrangement with land administration (National Land and Territory Land).¹⁴ According to the Authority, this has led to perceptions that the NCA has no legitimate planning rights on Territory Land.¹⁵

8 Ms Romilly Madew, Transcript, 16 October 2003, p 278.

9 Canberra Business Council, Submissions, pp 260-261.

10 Mr Lincoln Hawkins, Transcript, 15 August 2003, p 87.

11 Property Council of Australia (ACT), Submissions, p 139

12 Property Council of Australia (ACT), Submissions, p 141.

13 National Capital Authority, Submissions, p 180.

14 National Capital Authority, Submissions, p 189.

15 National Capital Authority, Submissions, p 189.

- 5.7 In order to address the uncertainty in the planning process, the Committee has examined the following issues:
- the need for a review of the National Capital Plan;
 - the NCA’s planning control over arterial roads;
 - the question of whether the dual-planning arrangement is the most appropriate or whether a more integrated approach should be adopted;
 - measures to remove overlap from the planning regime; and
 - policies for areas of Territory Land subject to special requirements.

The National Capital Plan – In Need of Review

- 5.8 The National Capital Plan has provided the framework for planning in the ACT since its inception in 1990. The plan has certainly served Canberra well in terms of meeting its objective of ensuring that Canberra and the Territory are planned and developed in accordance with their national significance, and the results are clearly evident. However, over time, the plan has become the source of much of the uncertainty in the planning process. In its present form, the plan has been described as “redundant” and “irrelevant” and it has been argued that in many areas, it has little to do with the administration of the national capital significance of Canberra.¹⁶
- 5.9 The National Capital Authority maintains that the object of the National Capital Plan “continues to be relevant, and safeguards the status of the Australian Capital Territory as the Seat of Government for all Australians”.¹⁷ However, on the basis of the evidence it has received, the Committee queries whether this is an accurate reflection. The Planning Institute of Australia (ACT), for example, stated that:

Much of what the plan purports to cover has no National Capital significance at all, and where significance does exist, outside of the Central National Area, that significance relates to qualities of those places as a visual backdrop to the Central National areas and not to its land use.¹⁸

16 Planning Institute of Australia (ACT), Submissions, p 55.

17 National Capital Authority, Submissions, p 185.

18 Planning Institute of Australia (ACT), Submissions, p 55.

- 5.10 The first major review of the National Capital Plan since its gazettal in 1990 commenced in 1998 and was effectively completed in 2001. The review was accepted by the Government in Portfolio Budget Statements from 1999-2000 to 2002-03.¹⁹ However, this review was conducted internally and once again, the weight of evidence would suggest that the Authority's review failed to get to the core of those issues which continue to hinder the planning and development of the Territory. It would appear to the Committee that the first step to streamlining the planning process is to expose the National Capital Plan to a comprehensive, independent review process in which all relevant stakeholders are afforded a say.
- 5.11 While the NCA recognises that effective planning instruments respond to changing opportunities and pressures, the Territory argued that the National Capital Plan has "failed to keep pace with changing realities".²⁰ The Territory suggested that the spatial planning task it recently embarked on was intended to account for the changes in demographics, people's values and lifestyles and should be used as the basis for a comprehensive review of the National Capital Plan.²¹
- 5.12 The ACT Government is particularly critical of the prescriptive nature of the plan which it claims inhibits opportunities for the Territory to respond flexibly to emerging challenges.²² Managing Director of the Capital Airport Group, Mr Stephen Byron, also criticised the prescriptive nature of the plan. Mr Byron believes that a review of the National Capital Plan would:
- ...open up the opportunity for (design control) to be done on performance benchmarks rather than prescriptive measures. The same is importantly true when it comes to land use...we need to move away from this prescriptiveness to facilitate developers to be creative, to broaden the land use and to have mixed use.²³
- 5.13 Mr Bruce Wright insisted that the blame for the current state of the National Capital Plan should not lie with the NCA, which, in his

19 National Capital Authority, Submissions, p 183.

20 Ms Annabelle Pegrum, Transcript, 19 September 2003, p 207.
ACT Government, Submissions, p 222.

21 ACT Rejoinder Submission to the 2004 Commonwealth Grants Commission Review, February 2003, p 10.

22 ACT Government, Submissions, p 222.

23 Mr Stephen Byron, Transcript, 16 October 2003, p 288.

view, has struggled against inadequate resources and a statutory regime which has made it difficult to incorporate substantial amendment.²⁴ However, Mr Wright does concur with the popular view that the current plan has lost much of its relevance:

It is clear that the National Capital Plan is out of date; that it fails to recognise the changes over many years in Canberra's governance, demographics, outlook, and economy and that it seeks to control aspects of development which are of limited, if any, national significance.²⁵

5.14 The Planning Institute holds the view that the inclusion of irrelevant material in the National Capital Plan is due to the NCA being bound by Section 10 of the *Australian Capital Territory (Planning and Management) Act 1988* (Cth) which specifies the contents of the plan. The Planning Institute therefore suggested that one of the primary objectives of a review of the plan should be to remove material which does not specifically relate to the national capital function.²⁶

5.15 While retention of the concept and role of the National Capital Plan is generally supported, a review of the plan is recognised as an essential step in establishing a more streamlined planning regime for the Territory and ensuring the plan is a more effective instrument.²⁷ One of the key recommendations from the ACT Government is that the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) be reviewed with the view to limiting the level of control the National Capital Authority exercises over the Territory:

The ACT Government has chosen to make planning and land management more transparent and accountable. To ensure the ACT government and its agencies can be effective and responsive to the ACT community, it must have the capacity and ability to plan for its future and implement strategic initiatives. This requires that the role, responsibilities and mandate of the ACT's Planning and Land Authority be clear and separated from any overlap with the NCA. It is therefore timely that a review of the *ACT (Planning and Land Management) Act 1988* be undertaken to achieve the strategic outcomes outlined above.²⁸

24 Mr Bruce Wright, Transcript, 20 June 2003, p 10.

25 Wright, Submissions, p 88.

26 Planning Institute of Australia (ACT), Submissions, p 56.

27 The Institution of Engineers Australia, Submissions, p 209.

28 ACT Government, Submissions, p 228.

5.16 In addition, the Territory believes that the current National Capital Plan “underscores the hierarchical nature of the planning system and the subservient role the ACT Government has in the strategic planning of the city”.²⁹ The Territory is concerned that the current spatial structure and form of the city can only be changed through an amendment to the National Capital Plan and that through this process, the Commonwealth essentially has the final say.³⁰ As a result, the Territory is faced with a degree of uncertainty. For example, in its submission to the Commonwealth Grants Commission Review, the ACT Government argued that:

...it is difficult for the ACT Legislative Assembly to plan and prepare forward works programs and land release if its decisions can be overturned.³¹

Clarification of Terms

5.17 One of the motivations behind calls for a review of the National Capital Plan is the lack of clarity regarding definitions for terms used in the plan such as ‘Designated Areas’, areas which are deemed to have ‘Special Characteristics’ of the national capital and areas of ‘national significance’. Despite such concerns, the National Capital Authority holds the view that:

Matters of national significance as described in the National Capital Plan are strategic, comprehensive and practical, and recognise the value of the unique purpose, setting, character and symbolism of Australia’s National Capital.³²

5.18 The National Capital Authority published *The Symbolic Role of the National Capital – from Colonial argument to 21st Century ideals* in September 2003 and recently published a brochure, *National Significance in the National Capital*, to further articulate the principles of national significance. However, it has been suggested that the definition of significant terms and concepts should be addressed as part of a comprehensive review of the National Capital Plan:

29 ACT Rejoinder Submission to the 2004 Commonwealth Grants Commission Review, February 2003, p 13.

30 ACT Rejoinder Submission to the 2004 Commonwealth Grants Commission Review, February 2003, p 13.

31 ACT Rejoinder Submission to the 2004 Commonwealth Grants Commission Review, February 2003, p 13.

32 National Capital Authority, Submissions, p 185.

The National Capital Authority should rigorously consider, investigate, articulate and expose to national and local consultation, definitions of both the *national significance* of the Capital and the features which determine whether an area has the *special characteristics* of the Capital.³³

- 5.19 In its proposal for a revised planning framework, the ACT Government identified the need for certain terms in the plan to be redefined, emphasising that otherwise their interpretation would be “inevitably prone to subjectivity”.³⁴ In particular, the Territory addressed the need to define the terms with regard to the:
- essential and symbolic contribution the area makes to the qualities of the Australian Capital;
 - spatial attributes and qualities that are to be conserved or enhanced; and
 - preferred or particular land uses.³⁵

Scope of the Review

- 5.20 While the Committee supports the concept of the National Capital Plan as the guiding document for the planning and development of Canberra, the Committee shares the view expressed in many submissions that the current plan is in need of a comprehensive review.³⁶ In recommending a review of the plan, the Committee notes Mr Wright’s concern that “a review by either government will fail to address legitimate concerns and aspirations of the other” and therefore emphasises the need for the review to be undertaken in partnership with the ACT Government.³⁷
- 5.21 The Committee believes that the findings from the Griffin Legacy Project should form the basis for such a review.³⁸ Furthermore, the Committee believes that the review should recognise and reflect the implementation of the other recommendations in this report. The review should involve an extensive consultation process with all relevant stakeholders - including the general public - at both a local and a national level.

33 Wright, Submissions, p 88. See also Malcolm Smith, Submissions, p 118.

34 ACT Government, Submissions, p 231.

35 ACT Government, Submissions, p 219.

36 See, for example, Wright, Submissions, p 88, Smith, Submissions, pp 117-118, Planning Institute of Australia (ACT), Submissions, p 56.

37 Wright, Submissions, p 88.

38 See p 6, this report.

Recommendation 6

- 5.22 **That, in collaboration with the Territory Government, the Federal Government initiate an independent and comprehensive review of the National Capital Plan on the basis of the implementation of the recommendations of this report and the need for a more integrated approach by both planning authorities.**

Planning Control of Canberra's Arterial Road Network

- 5.23 Another area which has been the source of much contention in recent times, owing to the debate over the Gungahlin Drive Extension, is the provision which enables the NCA, through the National Capital Plan, to establish the general planning policies for the Territory's arterial road systems.³⁹ For the purposes of the National Capital Plan, the arterial network in the Territory is deemed to comprise two elements:

...the arterial roads within Canberra's urban areas, which are major traffic collectors and distributors, and the network of peripheral parkways which serves to carry traffic between towns along routes lying largely at the periphery of the built-up areas.⁴⁰

- 5.24 The National Capital Plan also sets out general policies with respect to the planning of national roads. These consist of the roads within the National Triangle and the main avenues and approach routes which include the Federal, Barton, Kings and Monaro Highways from the Territory border to their eventual junction at State Circle in the vicinity of Parliament House.⁴¹
- 5.25 Mr Malcolm Smith acknowledged the Authority's strategic planning role involving land use and transport issues. However, he questioned the need for the NCA to decide the location of arterial roads, particularly those – as in the case of the Gungahlin Drive Extension – which primarily serve the domestic needs of Territory residents.⁴²

39 Section 10 (2b), *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth).

40 National Capital Authority, *Consolidated National Capital Plan*, June 2002, p 9.

41 National Capital Authority, *Consolidated National Capital Plan*, June 2002, p 9.

42 Smith, Submissions, p 117.

- 5.26 The Committee considers that the long-running debate over the Gungahlin Drive Extension has been regrettable, particularly for the residents of Gungahlin whose transport needs have yet to be addressed due to delays in construction of what, for them, is a vital piece of infrastructure. The Committee concurs with the notion put forward by Mr Smith, that deciding how traffic should be distributed from Gungahlin to other parts of Canberra should be a determination for the ACT Government. Nevertheless, the Committee acknowledges that the National Capital Authority has a planning responsibility for the policies that affect national institutions such as the Australian Institute of Sport, and the Committee believes it is important that agreed policies for such areas are incorporated into the National Capital Plan. The Committee also believes it is imperative that the NCA continues to maintain control over the planning of national roads in accordance with policies set out in the National Capital Plan.
- 5.27 Removing the Authority's prime responsibility for planning of the arterial road system would require an amendment to the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth). The Committee therefore recommends:

Recommendation 7

- 5.28 **That Section 10 (2b) of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) be amended to remove planning of arterial road systems from the National Capital Plan and that the responsibility for the planning of arterial roads be transferred to the Territory Government.**

Views on the Dual-Planning System

- 5.29 While there is a difference of opinion as to which planning framework is the most appropriate for the ACT, the majority view from the evidence received supports the retention of the current dual-planning arrangement. As the National Capital Authority pointed out, "there is no simple administrative structure to address what is a complex duality of interest".⁴³ The Authority believes that the current regime

43 National Capital Authority, Submissions, p 195.

in the ACT is not unlike that in place throughout Australia with the existence of State and local planning authorities.⁴⁴

- 5.30 This view is supported by the National Trust of Australia (ACT), which insists that “the days of a single authority are gone forever”.⁴⁵ However, even those who favour the dual-planning system per se, recognise that the current arrangement is failing to deliver desirable outcomes for the Territory.⁴⁶ Mr Bruce Wright, for example, argued that even under the current statutory regime, “an adequately resourced National Capital Authority could and should tread much more lightly on ACT planning”.⁴⁷
- 5.31 The National Trust urged that the NCA continue to embrace its responsibilities with regard to maintaining Canberra’s national significance and in particular, its protection of the National Capital Open Space System. However, at the same time, the Trust argued that development control and urban planning should remain a prerogative of the Territory:

The political reality is that Canberra has local self government through the Assembly and urban planning and particularly the control of development is one of the most keenly debated local issues, with strong community groups in virtually every part of Canberra ready to engage in and have a view about planning and development. It is vital that these sorts of responsibilities remain at the Territory level with the accompanying values of local responsiveness and accountability that a locally based system demand and produce.⁴⁸

- 5.32 While supporting the continuation of the dual planning system, the Housing Industry Association (HIA) added that there are issues regarding greater clarity of the respective roles and jurisdiction of the planning bodies which need to be addressed. The HIA warned that, at present, the opportunity for the ACT to deliver a planning system which is predictable, affordable and flexible is “at risk of being

44 Macdonald, E., Canberra planners can face tough territory, *The Canberra Times*, 12 April 2003, p 3.

45 National Trust of Australia (ACT), Submissions, p 20.

46 National Trust of Australia (ACT), Submissions, p 20.

47 Wright, Submissions, p 88.

48 National Trust of Australia (ACT), Submissions, p 20.

squandered by the turf battles for the control of Canberra's future planning".⁴⁹

Support for an Integrated Planning Framework

5.33 Currently, the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) gives the NCA overriding control over land use planning of the Territory, a responsibility which does not require the Authority to consult with the ACT community. The Territory Government argued that the current dual-planning arrangement fails to recognise the extent to which the ACT has developed since the introduction of self-government and does not reflect the "reasonable expectations" of the ACT community to make their own decisions for their future.⁵⁰ The Territory favours an integrated approach to planning rather than the existing dual planning arrangement.⁵¹ The ACT Government stated:

We believe there should be an integrated process rather than a two-tier process. The states are responsible for economic, transport and social planning issues across their states, and that impacts on the planning regimes undertaken by local government. In the ACT, the ACT administration does both state and local functions, so the ACT Government is accountable for economic, transport and social issues as well as for detailed urban planning issues.⁵²

5.34 This view led the Territory to suggest a revised planning framework in which there is one plan, administered predominantly by the Territory. While this one plan would involve the NCA defining areas exhibiting 'special characteristics' of the national capital and outlining planning policies and principles for these, all other land would be subject to planning policies prepared by the Territory.⁵³ Under the Territory's proposed regime, responsibility for planning administration of National Land would be retained by the Authority.

5.35 Former NCDC Commissioner, Mr Tony Powell suggested that the Committee give consideration to varying the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) to "enable the

49 Housing Industry Association, Submissions, p 94.

50 ACT Government, Submissions, p 222.

51 ACT Government, Submissions, p 218.

52 Mr Robert Tonkin, Transcript, 15 August 2003, p 86.

53 ACT Government, Submissions, p 229.

reconstitution of the National Capital Authority as a jointly administered and jointly funded National and Territory statutory planning authority”.⁵⁴ Mr Brett Odgers also supported an integration of the two planning bodies, however he suggested that the National Capital Plan and the Territory Plan need not be amalgamated.⁵⁵ According to Mr Odgers, at the very least, a memorandum of understanding should clarify the respective functions of the ACT and Commonwealth planning bodies and provide for their integration.⁵⁶

- 5.36 The proposal for an integrated plan gained support from some witnesses, most notably Mr Malcolm Smith and Mr Brian Binning. Mr Smith stated that he believes such an approach is the most likely to provide positive outcomes for both the Commonwealth and the Territory:

An environment within which both Commonwealth and Territory planning agencies subscribe to a shared strategic plan for Canberra, have an agreed and integrated programmes and projects, and improved liaison procedures, would in my opinion be in the best interests of both governments and the Australian and local communities they represent.⁵⁷

- 5.37 In his submission, Mr Binning proposed that the Committee design a set of principles which could be integrated to form a ‘Joint Metropolitan Plan’ for Canberra, which should then be endorsed by both the Commonwealth and Territory Governments.⁵⁸ The OECD’s review into the future of Canberra also subscribed to a joint approach to planning:

The ACT and NCA should support a single comprehensive strategic planning process and the development of a shared strategic vision for Canberra expressed in simple, non-technical terms to assure broad public understanding.⁵⁹

- 5.38 While some submissions canvassed the suggestion that a joint strategic plan should be administered by a single joint planning authority representative of both the Commonwealth and the

54 Powell, Submissions, p 268.

55 Odgers, Submissions, p 38.

56 Odgers, Submissions, p 38.

57 Smith, Submissions, p 122.

58 Binning, Submissions, p 137.

59 Organisation for Economic Co-operation and Development, 2002, *Urban Renaissance – Canberra: A Sustainable Future*, OECD, p 174.

Territory, the Committee concurs with Mr Binning's view that this arrangement would be unworkable.⁶⁰ In an address at the Planning Institute National Congress in 2001, former Director of the National Capital Plan, Mr John Bolton, made clear the Authority's view on the suggestion that planning in the ACT could be managed by a single planning authority:

The Authority considers that it would be organisationally impracticable and ideologically naïve to expect a single planning authority, however constructed, to satisfy the different planning objectives of the Commonwealth and Territory and to meet the sometimes conflicting needs of the two assemblies.⁶¹

Planning Control over Territory Land

5.39 This issue of overlapping jurisdictions is critical to resolving the complications of the current planning system. Residents, developers and members of the planning community have readily voiced their frustrations with the current planning system in the ACT.⁶² The ACT Government maintains that it should be afforded the opportunity to influence further development of the Territory without prejudicing its national capital characteristics. The Territory's reasoning that it should be entrusted to comply with guidelines established in collaboration with the National Capital Authority was supported by other witnesses.⁶³ The Institution of Engineers Australia, for example, commented that:

...the theme of the national capital needs to permeate throughout the ACT. That does not necessarily mean to say that the National Capital Authority or some equivalent has to have specific authority over every detail of the ACT but, in some way, the national presence needs to be reflected. If you translate that into various mechanisms, a possible mechanism would be that the ACT administer some of the approval

60 Binning, Submissions, p 135.

61 Mr John Bolton, Address to *RAPI National Congress*, 2001.

62 See, for example, Housing Industry Association, Submissions, p 102, Powell, Submissions, p 263, Odgers, Submissions, p 37.

63 See, for example, Submissions, pp 88-89, 117.

processes for planning and land development under guidelines and so on set by the NCA.⁶⁴

- 5.40 The Committee recognises the need to ensure that the two planning authorities co-exist in a way which ensures that the planning process is streamlined and transparent. In light of the evidence received, the Committee supports the Territory's call to simplify the current system.⁶⁵ Both planning authorities agreed that it would be desirable to eliminate multiple planning and development control responsibilities in any one area. It was acknowledged, in particular, that the current situation, whereby Territory Land can also be designated, poses a number of difficulties.⁶⁶ The NCA, for example, commented that:

Ideally, the land within the established Designated Areas should be National Land declared as required for the special purposes of Canberra as the National Capital. This would contribute to a greater clarity and certainty in the role and responsibilities of the Commonwealth in the detailed planning, design and development of the National Capital.⁶⁷

The ACT Government, on the other hand, stated that:

a realignment and coincidence of National land and National planning responsibilities is required to refocus on the key issues of strategic National importance.⁶⁸

- 5.41 The Territory argued that it should be granted planning control over all Territory land, including what are currently Designated Areas.⁶⁹ Furthermore, the Territory believes that it should be entrusted to exercise this control in a manner consistent with development policies which should be determined by a review of the National Capital Plan.⁷⁰
- 5.42 The Committee is well aware of concerns about the capacity and willingness of the Territory to manage and protect the national capital

64 Mr Michael Evans, Transcript, 15 August 2003, p 145.

65 Mr Robert Tonkin, Transcript, 15 August 2003, p 86.

66 See National Capital Authority, Submissions, p 186, ACT Government, Submissions, p 235.

67 National Capital Authority, Submissions, p 186.

68 ACT Government, Submissions, p 219.

69 ACT Government, Submissions, p 238.

70 ACT Government, Submissions, p 238.

aspects of Canberra.⁷¹ In 1995, during debate on a motion in the ACT Legislative Assembly to consider the creation of a single planning authority for the Territory, former MLA Mr Gary Humphries (now Senator for the ACT) acknowledged the need for some level of Commonwealth oversight:

If we have financial considerations which might tempt us to want to cut corners with respect to planning issues, we should rightly be bounced by someone who is acting in the national interest.⁷²

- 5.43 However, the Committee believes that this oversight is achieved by the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) which is quite clear in its directive that the Territory Plan cannot be inconsistent with the National Capital Plan.⁷³ Therefore, there is scope for the National Capital Plan to stipulate further planning and design conditions, so that any works approved by the Territory are required to comply with parameters outlined in the plan. This would, in effect, ensure that any future Territory government could not approve development which would undermine the city's national significance. This being the case, the question then arises as to why it would be necessary for the National Capital Authority to retain the extent of planning control it currently has.
- 5.44 On the basis that these additional protections were incorporated into the National Capital Plan, it would not be unreasonable for designation to be uplifted in areas where the NCA currently has planning responsibility on some Territory Land. The Committee believes this will enable the NCA to focus its efforts on maintaining and enhancing those areas which are undoubtedly significant to the national interest, such as the Central National Area, Lake Burley Griffin foreshores, diplomatic areas and National roads. Any threat to the national capital character of the city would continue to be addressed by Section 26 of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) which enables continued Commonwealth oversight through policies in the National Capital Plan.

71 See, for example, Stokes, Submissions, p 17, National Trust of Australia (ACT), Submissions, p 22, Mickle, Submissions, p 25.

72 ACT Legislative Assembly *Hansard*, 20 September 1995, p 1536.

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

Areas of Territory Land to remain Designated

- 5.45 While the Committee supports uplifting Designated Area status from specified sections of Territory Land, there are three areas of Territory Land whose Designated Area status should be retained. These are the Deakin/Forrest residential area, the 'Inner Hills' of the National Capital Open Space System (NCOSS) and the main avenues and approach routes.

Deakin/Forrest Residential Area

- 5.46 The Deakin/Forrest precinct is the only standard residential land included within a Designated Area. The fact that the Deakin/Forrest residential area is designated under the National Capital Plan means that the residential properties are subject to different terminology, development conditions and planning processes from other residential properties in the surrounding suburbs or elsewhere in the ACT. Given its setting in the immediate surrounds of Parliament House, the majority of the Committee supports the retention of Designated Area status for this precinct.⁷⁴ Despite the area in question occupying Territory Land, given its prominence in Griffin's plan and its location adjacent to the parliamentary precinct, the majority of the Committee believes it is essential that the NCA continues to oversee planning and development control in this area.
- 5.47 This recommendation is not supported by Labor members of the Committee, who maintain that Designated Area status should only be retained for those blocks in the Deakin/Forrest area which front State Circle. This view was put forward in a Minority Report to the Committee's inquiry into Draft Amendment 39 to the National Capital Plan, in October 2002.⁷⁵

The Inner Hills (of the National Capital Open Space System)

- 5.48 The Inner Hills form an integral component of the Central National Area and Walter Burley Griffin's plan for Canberra. The importance of the natural setting of the National Capital has been recognised by the inclusion of policies for the National Capital Open Space System

74 See Joint Standing Committee on the National Capital and External Territories, 2002, *Striking the Right Balance: Draft Amendment 39 National Capital Plan*, Canprint, Canberra.

75 See Minority Report, Labor Members, Joint Standing Committee on the National Capital and External Territories, 2002, *Striking the Right Balance: Draft Amendment 39 National Capital Plan*, Canprint, Canberra, p 51.

in the National Capital Plan. The NCOSS is incorporated in the plan under four separate land use categories:

- Lake Burley Griffin;
- Hills, Ridges and Buffer Spaces;
- River Corridors; and
- Mountains and Bushlands.⁷⁶

5.49 The Hills, Ridges and Buffer Spaces include the 'Inner Hills' which, despite comprising Territory Land, are specified as a Designated Area under the National Capital Plan.⁷⁷ The National Capital Plan addresses the importance of the Inner Hills in providing the scenic backdrop and natural setting for Canberra's urban areas.⁷⁸ The plan states:

It is therefore critical that the hill areas be preserved from urban development and their essential landscape/ environmental character retained and reinforced to provide the unified background and landscape setting for the National Capital.⁷⁹

The Committee concurs with the National Capital Authority's view that designation under the National Capital Plan is the most appropriate way of securing this.⁸⁰

Main Avenues and Approach Routes

5.50 The main avenues and approach routes have Designated Area status but coincide with Territory Land.⁸¹ Special Requirements apply to the land adjacent to main avenues.⁸²

76 National Capital Authority, *Consolidated National Capital Plan*, February 2002, p 109.

77 See Section 10(1), *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth). The Inner Hills Designated Area includes Black Mountain, Mount Ainslie, Mount Majura, Mount Pleasant, Russell Hill, Red Hill, Mount Mugga, O'Connor Ridge, Bruce Ridge, Mount Painter, The Pinnacle, Lyneham Ridge, Oakey Hill, Mount Taylor, Isaacs Ridge, Mount Stromlo, Mount Arawang, Neighbour Hill, Wanniasa Hill, and Narrabundah Hill

78 National Capital Authority, *Consolidated National Capital Plan*, February 2002, p 109.

79 National Capital Authority, *Consolidated National Capital Plan*, February 2002, p 109.

80 National Capital Authority, *Consolidated National Capital Plan*, February 2002, p 109.

81 Except for those parts of the main avenues and approach routes within the Central National Area that are on National Land.

82 See National Capital Authority, *Consolidated National Capital Plan*, February 2002, pp 74-75.

- 5.51 Although the roads themselves occupy Territory Land, the Committee recognises the considerable importance of these roads as the gateways to, and main thoroughfares of, the national capital.⁸³ The National Capital Plan states that:

Canberra's main avenues and approach routes have historically been subject to rigorous planning scrutiny and care has been taken to ensure that suitably high standards of development and landscaping have been observed.⁸⁴

It is therefore appropriate that the National Capital Authority continue to maintain responsibility for the main avenues and approach routes.

Recommendation 8

- 5.52 **That the National Capital Plan be amended so that Designated Area status is uplifted from all Territory Land with the exception of the Deakin/Forrest residential area, the Inner Hills and the main avenues and approach routes; and that in assuming planning responsibility for the areas to be uplifted, the Territory Government uphold the principles articulated in the National Capital Plan.**

Territory Land subject to 'Special Requirements'

- 5.53 The ACT Government argued that it is the issue of 'areas subject to special requirements' which has "perhaps caused the greatest confusion for the community".⁸⁵ As discussed in Chapter Four, these areas are not designated but are deemed to have special national capital interest. The Territory suggested that the concept of special requirements should be replaced with development guidelines incorporated into the National Capital Plan.⁸⁶
- 5.54 The NCA acknowledges that the application of special requirements can, at times, be "confusing and inefficient", particularly where they occur on Territory Land.⁸⁷ According to the Authority, this is because

83 For details of the main avenues and approach routes, see National Capital Authority, *Consolidated National Capital Plan*, February 2002, pp 73-75.

84 National Capital Authority, *Consolidated National Capital Plan*, February 2002.

85 ACT Government, Submissions, p 237.

86 ACT Government, Submissions, p 237.

87 National Capital Authority, Submissions, p 181.

both planning authorities are involved in the development process, albeit at different stages.⁸⁸ However, it appears that the real problem is that Development Control Plans for areas subject to special requirements are developed on an ad hoc basis.⁸⁹

- 5.55 The NCA agreed that it would be a better outcome for special requirements on Territory Land to be identified in the National Capital Plan as policy.⁹⁰ This would remove the requirement for the preparation of a DCP for Territory Land which is subject to special requirements, and enable the ACT planning authority “to administer such areas without reference to the Authority and would obviate any perception of duplication of process”.⁹¹
- 5.56 The Committee agrees with the ACT Government’s view that the confusion arising from areas of Territory Land which are subject to special requirements could be rectified by the inclusion of guidelines and policies in the National Capital Plan. This would negate the need for both planning authorities to be involved in the development process by allowing the Territory to assume planning responsibility, and at the same time, ensuring that areas deemed to be desirable in the interests of the national capital continue to be protected.

Recommendation 9

- 5.57 **That the National Capital Plan be amended to incorporate a set of agreed planning principles for areas of Territory Land subject to special requirements, and that:**
- **these principles be developed jointly by the Commonwealth and Territory planning authorities;**
 - **the Territory assume planning responsibility for these areas; and**
 - **the Territory act in accordance with these agreed principles.**

88 National Capital Authority, Submissions, p 181.

89 ACT Government, Submissions, p 237.

90 See Transcript, 19 September 2003, p 207, where Chief Executive of the National Capital Authority, Ms Annabelle Pegrum, stated, “ideally special requirements would be developed as policy under the plan...which would then free the Territory to administer those areas of the capital without any reference back to the Commonwealth”.

91 National Capital Authority, Submissions, p 186.

Management Issues

- 6.1 The complexities of the dual-planning system have inevitably led to situations where the National Capital Authority's use of overriding powers has been subject to criticism. The majority of such cases can be attributed to the impact of NCA decisions on the ACT community. In its defence, the Authority points out that:

Planning considerations and decisions about the capital should be made at arms-length from party politics, individual interest-groups, and in the long-term interest of all Australians, having regard for the interests of the residents of Canberra.¹

- 6.2 Despite this assertion, the NCA was heavily criticised for its part in the ongoing Gungahlin Drive Extension controversy and was subject to accusations that its planning considerations, in this instance, were politically motivated.² Despite the criticism levelled at the NCA, the Authority maintains that by intervening in the matter, it was acting in accordance with its statutory responsibilities.
- 6.3 One of the ongoing problems facing the ACT Government is that many of the Territory's significant assets fall within Designated

1 National Capital Authority, Submissions, p 162.

2 See, for example, Dr Greg Tanner, Transcript, 15 August 2003, p 119, Mr Graham Horn, Transcript, 15 August 2003, p 141.

Areas. As a result, the ACT Government requires works approval from the NCA not only for major works, but also to undertake routine maintenance work on these assets.³

- 6.4 The Committee initially intended to examine only management issues relating to Designated Areas. However, there have been other concerns raised regarding management issues generally which the Committee has been compelled to address. These include claims of mismanagement of land and assets for which the NCA is responsible.

Draft Amendment 41: Gungahlin Drive Extension

- 6.5 The Gungahlin Drive Extension (formerly the John Dedman Parkway) has been included in the National Capital Plan as a proposed arterial road as part of the metropolitan road network since the plan came into effect in 1990. The purpose of the GDE is to provide access to and from Gungahlin for people wishing to access South Canberra (including the Parliamentary Zone, Woden, Weston Creek or Tuggeranong) without passing through Central Canberra.⁴ The alignment of the road has been a highly controversial issue for the ACT Community, and was intensified by the NCA's decision not to support the newly elected ACT Labor Government's proposed western alignment for the road.⁵

- 6.6 Section 10 of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) provides that the National Capital Plan:

...shall set out the general policies to be implemented throughout the Territory, being policies of:

- (i) land use (including the range and nature of permitted land use); and
- (ii) the planning of national and arterial road systems.⁶

The Authorities responsibilities concerning the GDE, therefore include:

- the planning policies for Gungahlin Drive Extension as an arterial road

3 ACT Government, Submissions, p 248.

4 National Capital Authority, Gungahlin Drive Information Kit, December 2002. Available: www.nationalcapital.gov.au/plan/gde/gde.pdf

5 Younes, L., & Downie, G., *NCA for eastern route*, *The Canberra Times*, 24 December 2002.

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

- the planning policies that affect national institutions (such as the AIS)
- maintaining the integrity of the National Capital Open Space System (NCOSS) such as Black Mountain Nature Reserve and in approving works in these areas.⁷

6.7 The GDE is, therefore, required to be planned in accordance with the National Capital Plan. The National Capital Authority is required to amend the plan to confirm the GDE alignment. The Authority is also responsible for works approval of the GDE where the road falls within the Designated Area of the plan.

Background

6.8 In 2001, the ACT Government sought to build the road on what has come to be known as the eastern alignment whereby the GDE would be built to the east of the Australian Institute of Sport (AIS). The ACT Government requested an amendment to the National Capital Plan to reflect that decision and confirm the preferred alignment. The NCA prepared a Draft Amendment (DA 41) to the plan, which sought to confirm the eastern alignment and was consistent with proposals released by the ACT Government in Draft Variation No 138 to the Territory Plan:

This Variation implements changes which support the broader strategic framework for the planning and provision of transport links to Gungahlin established in the Gungahlin External Travel Study undertaken in the 1980s.⁸

6.9 However, the process to finalise DA 41 was not completed before the October 2001 ACT Legislative Assembly elections, which resulted in a change of government. Following the ACT elections, the NCA sought the views of the new ACT Labor Government which had indicated a preference for a western alignment adjacent to the AIS. The Authority also requested an assessment of the environmental impact of the western alignment, as well as assurances that any likely impact on the AIS had been identified and addressed to the reasonable satisfaction of the Institute.⁹

6.10 The AIS opposed the western alignment of the road due to “likely impacts on resident and visiting athletes, the operations of the AIS

7 National Capital Authority, Gungahlin Drive Extension Information Kit, December 2002. Available: www.nationalcapital.gov.au/plan/GDE/GDE.pdf

8 *Land (Planning and Environment) Act 1991* (ACT), Variation to the Territory Plan, No. 138.

9 McLennan, D., *NCA wants worries addressed*, *The Canberra Times*, 23 March 2002.

and the long term planning for the campus at Bruce".¹⁰ The ACT Government undertook community consultation on the western alignment which included the Australian Sports Commission (ASC) and Aranda residents.

- 6.11 In October 2002, the ACT Government announced that it planned to proceed with the western alignment.¹¹ ACT Planning Minister Simon Corbell requested an Amendment to the National Capital Plan be initiated in tandem with the Territory Plan Variation.¹² However, the ASC advised the NCA that it remained strongly opposed to a western alignment as the issues raised by the Commission had not been satisfactorily resolved.¹³
- 6.12 On the advice of the ASC, the NCA did not support the ACT Government's proposal for the siting of the GDE. The Authority decided that a comparative assessment needed to be completed on the eastern and western alignments in order to determine the best planning and transport solution. In November 2002, the NCA informed the ACT Government that it was undertaking a comparative assessment of the impacts of the western and eastern alignments.¹⁴ At the completion of the study the NCA concluded that the western alignment was not appropriate. The ACT Government therefore announced it had little option but to proceed with the eastern route, given that the NCA had effectively vetoed the western route.¹⁵ A motion filed in the Senate by the Australian Greens to block the eastern alignment was unsuccessful.¹⁶

Criticism of NCA Intervention

- 6.13 A number of witnesses commented on the issue of the Gungahlin Drive Extension. In particular, two community-based organisations, Save the Ridge Incorporated and the North Canberra Community

10 National Capital Authority, Gungahlin Drive Extension Information Kit, December 2002. Available: www.nationalcapital.gov.au/plan/GDE/GDE.pdf

11 Boogs, M., *Drive to follow western route*, *The Canberra Times*, 3 October 2002, p 1.

12 Boogs, M., *Drive to follow western route*, *The Canberra Times*, 3 October 2002, pp 4-5.

13 Boogs, M., and Lawson, K., *Commission holds fears for institute*, *The Canberra Times*, 3 October 2002. See also Transcript, Senate Environment, Communications, Information Technology and the Arts Legislation Committee, 29 May 2002, pp 402-435.

14 McLennan, D., *New study of Gungahlin Drive options*, *The Canberra Times*, 19 October 2002.

15 McLennan, D., *Corbell accepts eastern route*, *The Canberra Times*, 17 January 2003.

16 Macdonald, E., *Brown beaten on Gungahlin Drive*, *The Canberra Times*, 20 August 2003, p 8.

Council (NCCC), were highly critical of the NCA's involvement throughout the dispute.¹⁷

- 6.14 The North Canberra Community Council argued that the NCA's report on the GDE released in December 2002 was "demonstrably flawed and biased".¹⁸ The Council felt that the report gave too much credence to minor issues and paid insignificant attention to important issues such as the preservation of natural bushland on O'Connor and Bruce Ridges. The Council also accused the NCA of "political expediency" by changing its policy on the GDE after the ACT election which saw a change to a Labor Government.¹⁹ According to the Council, the GDE issue "demonstrates that the NCA acts without due regard to its nominated principles and statutory obligations" and the Council argued that the current structure should be replaced with "one that achieves what the current arrangement is failing to do".²⁰
- 6.15 Save the Ridge accused the Authority of bias, inconsistency and a lack of transparency and accountability in reaching its decision concerning the GDE.²¹ The group believes that the NCA ignored its legislative obligation by failing to maintain the integrity of the inner hills and ridges.²²

Supreme Court Injunction

- 6.16 On 23 March 2004, Save the Ridge Incorporated obtained a temporary injunction from the ACT Supreme Court restraining the ACT and Kenoss Contractors Pty Ltd from undertaking work within the Designated Area between the suburbs of O'Connor, Lyneham and Bruce (on the area known as O'Connor Ridge) intended to facilitate construction of the GDE. Lawyers for Save the Ridge argued that the ACT Planning and Land Authority was required to approve all development on the site and its failure to do so meant that the work was being carried out unlawfully.²³ Lawyers for the ACT argued that approval for works in Designated Areas was the sole responsibility of the NCA.

17 Submissions, pp 49-50, 61-68.

18 North Canberra Community Council, Submissions, p 49.

19 North Canberra Community Council, Submissions, p 49.

20 North Canberra Community Council, Submissions, p 50.

21 Save the Ridge Inc., Submissions, p 61.

22 Save the Ridge Inc., Submissions, p 64.

23 Doherty, B. & Campbell, R., Drive plan in legal limbo, *The Canberra Times*, 25 March 2004, p 1.

The Crispin Decision

6.17 On 31 March 2004, Justice Crispin of the ACT Supreme Court ruled that works on the GDE had not been lawfully approved and that the injunction should remain until either the ACT Planning and Land Authority or the ACT Minister for Planning had granted approval. In announcing his decision, Justice Crispin stated that:

...I am required only to determine whether the Commonwealth legislation has the effect of permitting works to be undertaken in designated areas with the approval of the National Capital Authority and without any further approval otherwise required under Territory legislation. In my opinion, it does not.²⁴

6.18 ACT Planning Minister, Simon Corbell MLA, said that Justice Crispin's decision "appeared to fundamentally change the way in which planning laws had operated for 16 years in the ACT for projects on designated land".²⁵ The decision is also contrary to the stated positions of both the National Capital Authority and the ACT Government in submissions to the Committee's inquiry.

6.19 Section 12(1) of the Australian Capital Territory (Planning and Land Management) Act 1988 (Cth) provides that:

No works shall be performed in a Designated Area unless:
(a) the proposal to perform the works has been submitted to the Authority together with such plans and specifications as are required by the Authority;
(b) the Authority has approved the works in writing; and
(c) the works are in accordance with the Plan.²⁶

6.20 In its submission, the NCA clarified its interpretation of Section 12 of the Act:

Within Designated Areas, by statute the Authority is solely responsible for detailed conditions of planning, design and development, for approving any subdivisions of land, and for works approval (Section 12 of the Act).²⁷

24 *Save the Ridge Incorporated v Australian Capital Territory and Kenoss Contractors Pty Ltd* [2004] 204 ACTSC 13, 17.

25 Campbell, R., Doherty, B. and Beeby, R., Road on hold after court win, *The Canberra Times*, 1 April 2004, p 1.

26 Section 12 (1), *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth).

27 National Capital Authority, Submissions, p 178.

- 6.21 Similarly, the ACT Government stated that where land is Designated under the National Capital Plan, “the NCA is the sole planning agency and is responsible to granting Works Approval...the Territory has no planning role”.²⁸
- 6.22 The ACT Government appealed the ruling, but also sought to address the issue immediately with new regulations under the *Land (Planning and Environment) Act 1991* (ACT) so as not to impose further delays on the project. The ACT Government introduced an amendment to the *Land (Planning and Environment) Regulations 1992* on 30 April 2004. The *Land (Planning and Environment) Amendment Regulations 2004 (No. 1)* Subordinate Law No. 12 came into effect on 1 May 2004. A disallowance motion was debated on 25 May 2004, but the motion failed.
- 6.23 According to ACT Planning Minister, Simon Corbell MLA, under the new regulations, the ACT Government has:
- made clear that there is generally no requirement for ACT Planning and Land Authority approval in designated areas;
 - clarified the intent of the exercise of the call-in power; and
 - clarified that development applications related to the Gungahlin Drive Extension are not subject to review processes initiated by objectors and third parties.²⁹
- 6.24 The action taken by the Territory Government has therefore reinstated the view articulated in submissions from both the National Capital Authority and the ACT Government - that the Territory has no authority to approve works on designated land as this is the responsibility of the NCA.

Draft Amendment 39: Deakin/Forrest Residential Area

- 6.25 The difficulties of achieving a balance between the interests of Canberra as a local community and the interests of Canberra as the national capital were plainly evident during the issue of Draft Amendment 39 of the National Capital Plan. Despite the Committee conducting an inquiry into the proposed amendment in 2002, changes to the amendment continued to cause concern amongst affected

28 ACT Government, Submissions, p 235.

29 Simon Corbell MLA, Minister for Planning, ACT Government, Regulations lead to restart of work on GDE, Media Release, 30 April 2004.

residents. The Committee, therefore, resolved to conduct a further public hearing in March 2004 into the latest version of the amendment, and to consider the evidence as part of its inquiry into the role of the National Capital Authority.

Background

6.26 In March 2000, ACT Planning and Land Management (PALM) approached the NCA seeking an amendment to the National Capital Plan. Version One of Draft Amendment 39 was released in November 2000 and proposed to pass planning control of the Deakin-Forrest residential area – which was defined in the National Capital Plan as a Designated Area due to the landscape setting it provides for Parliament House and its prominence in the Central National Area – to the Territory. The ACT Government supported this version on the basis that:

...it had the potential to assist in promoting unambiguous and transparent policies and provide a more effective interface between the respective planning instruments and their administration.³⁰

6.27 Given that this area is the only standard density residential land included within a Designated Area, it is subject to different development conditions and planning processes to residences elsewhere in the ACT. While the NCA wished to safeguard the national capital significance of the area and encourage development outcomes appropriate to the setting of the area, PALM wanted to bring it under the same development controls as other non-designated residential areas in the ACT. Although the land is designated, it is also Territory Land, therefore although the Territory is responsible for administering the land and the leasehold, the planning policy arrangements and any works approvals are the responsibility of the NCA.

6.28 Following a process of public consultations, the NCA released a revised Draft Amendment, Version Two, in June 2001. The revised Amendment also sought to remove Designated Area status from the area in question, but was more prescriptive in relation to land use provisions.³¹

30 ACT Government, Submissions, p 249.

31 Serviced apartments, guest houses, boarding houses and the like were prohibited. The height of developments was restricted to two storeys and no more than eight metres

- 6.29 After further consultations, the NCA released Version Three of Draft Amendment 39 in April 2002 which retained Designated Area status for the Deakin-Forrest residential area. This decision was primarily due to uncertainty arising from the newly elected ACT Government's proposed changes to residential policies.³² The NCA attempted to address the differences in the land use policies of the Territory Plan and the National Capital Plan by including provisions for home business or "the use of residential land for carrying out a profession, trade, occupation or calling on the land".³³
- 6.30 The Committee conducted an inquiry to consider Version Three of Draft Amendment 39 in 2002 and to determine why the uplifting of Designated Area status was not included in the revised version. After considering the evidence, the majority of the Committee supported the Commonwealth retaining planning jurisdiction over the area through the NCA. The Committee further recommended that non-residential development in the Deakin-Forrest area be prohibited and that development in the area fronting Parliament House be required to achieve a design and landscape outcome appropriate to the setting of Parliament and which reflects the Main Avenue role of State Circle.
- 6.31 The ACT Government remains unsatisfied with the provisions in Version Three of Draft Amendment 39, as stated in its submission:
- It is considered that the approach set out in the revised Draft Amendment will lead to greater complexities and further inconsistencies due to the separate process for reviewing the respective planning instruments.³⁴

Recent Developments: November 2003 Version

- 6.32 The NCA wrote to residents of the Deakin/Forrest area in November 2003, seeking comment on a revised version of Draft Amendment 39.

above the ground, and greater architectural treatment and landscaping detail for the sites fronting State Circle would be required. See Joint Standing Committee on the National Capital and External Territories, 2002, *Striking the Right Balance: Draft Amendment 39 National Capital Plan*, Canprint, Canberra, pp 8-9.

32 Under the ACT Government's Draft Territory Plan Variation No. 200 (Residential Land Use Policies, Modification to Residential Codes and Master Plan Procedures), the NCA felt that multi-unit redevelopment would be prohibited and dual-occupancy limited in the Deakin-Forrest residential area.

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

34 ACT Government, Submissions, p 249.

The Committee was advised of this amended version by the Minister for Territories, Local Government and Roads in January 2004. The Committee resolved to hold a public hearing into this amended version on 23 March 2004 after receiving letters of complaint and submissions from a number of concerned residents in the area as well as a potential developer. The NCA advised the Committee that following consultation with residents in the area, further revisions were made to the draft amendment and that the February 2004 version was the most current.

- 6.33 The Committee was satisfied with the provisions of the February 2004 version except for the provision to increase building height for sites fronting State Circle from two to three stories. The Committee shared the concerns of the majority of residents/lessees of the area that the existing low to medium density residential character of the area was the most suitable and should be retained so that future development in the area reflects this character.³⁵ The Committee unanimously recommended that building height for sites fronting State Circle be restricted to no more than two storeys and no point more than 8 metres above the natural ground level immediately below.
- 6.34 As a consequence of these height restrictions, the Committee recommended that plot ratio provisions be reconsidered. That is, that redevelopment of existing blocks remain at 0.4, and in the case of amalgamated blocks, be up to a maximum of 0.8. The Committee, however, acknowledged that in light of the recommended height restriction of two storeys, the building envelopes and setbacks would need to be reconsidered by the NCA. The Committee, therefore, sought the advice of the Authority on the questions of plot ratio, building envelopes, setbacks and related conditions, given a height restriction of two storeys for the State Circle sites. The Chairman made a statement to the Senate reflecting these recommendations on 25 March 2004.

Recommendation 10

- 6.35 **That, for all sites fronting State Circle between Hobart and Adelaide Avenue (Blocks 1-8 Section 6 Forrest and Blocks 5-9 Section 3 Deakin:**
- **building height be no more than two storeys and no point more**

35 See Residents of Canterbury and Somers Crescents, Submissions, pp 381-384.

than 8 metres above the natural ground level immediately below (regardless of whether the blocks are amalgamated or not); and

- **plot ratio for residential development of existing blocks should remain at 0.4, and in the case of amalgamated blocks be up to a maximum of 0.8.**

6.36 The Committee is frustrated that this matter, having first been brought to the Committee's attention in November 2000 and now in its fifth version, still has not been finalised. The Committee remains steadfast in its opinion that the building height on State Circle be no more than two storeys, and is awaiting the advice of the Authority on the most appropriate plot ratio provisions for sites with a two storey height restriction.

Differential Development Controls

6.37 The Committee was concerned to learn that differential development controls were proposed for the two corner blocks fronting State Circle between Melbourne and Hobart Avenues. In Attachment B of the November 2003 version of Draft Amendment 39 to the National Capital Plan, it was stated that:

The Plot Ratio for residential redevelopment of existing blocks is 0.4; where sites are amalgamated the Plot Ratio of any residential redevelopment may be up to 0.8 where development complies with site development conditions that follow; an exception to this will be for blocks flanking Melbourne Avenue (Block 1 Section 6 Forrest and Block 9 Section 3 Deakin) which are permitted to develop to a plot ratio of 0.8 without amalgamation.³⁶

6.38 At the hearing on 23 March 2004, the Committee sought clarification from the National Capital Authority as to why this exception did not also apply to the corresponding block flanking Hobart Avenue (Block 8 Section 6 Forrest) which is the same size as Block 1, Section 6 Forrest. The Authority assured the Committee that planning provisions:

³⁶ Draft Amendment 39 Deakin/Forrest Residential Area, November 2003, Attachment B, Development Condition (ii).

are consistent now across all of the blocks fronting State Circle, including those that might be isolated by, say, an amalgamation and a development.³⁷

Subsequent to this, the Authority advised the Committee that in the February 2004 version of the draft amendment, the text has been revised to more directly reflect comparable provisions for all blocks fronting State Circle.³⁸ The Committee notes the Authority's comments and is now awaiting the final version of Draft Amendment 39.

Claims of Mismanagement

- 6.39 The Committee was concerned to learn of allegations of mismanagement against the National Capital Authority in relation to a variety of issues, primarily concerning the NCA's management of Lake Burley Griffin, the Canberra Carillon and its handling of the Gungahlin Drive Extension proposal. Evidence received by the Committee includes claims that the Authority has, at times, demonstrated a lack of professionalism, a lack of accountability, bias, inconsistency and a failure to adequately consult or communicate.³⁹

National Carillon

- 6.40 The Committee recently participated in a tour of the Carillon, which was refurbished in 2003. The Committee was impressed with the renovations, which included expansion of the clavier chamber and function room, and the addition of two new bells. It appeared that the management and maintenance of the Carillon – for which the Authority is responsible – was in very good hands.
- 6.41 However, Mr William Fraser, an assistant carillonist at the Canberra Carillon from 1979 to 2001, expressed an opposing view. Mr Fraser stated that when the NCA took up management of the carillon in July 2000:

37 Ms Annabelle Pegrum, Transcript, 23 March 2004, p 33.

38 Correspondence from the National Capital Authority, 16 June 2004.

39 See, for example, Save the Ridge, Canberra Community Action on Acton Inc., Fraser, Bagnall, Submissions.

...this exacerbated management problems...necessitating continuing representation by carillonists to the National Capital Authority to seek redress for numerous grievances.⁴⁰

- 6.42 Mr Fraser stated that the NCA generally ignored written communications and telephone calls were seldom acknowledged.⁴¹ He also believes that the Authority failed to understand the carillonists' needs and "seemed totally disinterested" when attempts were made to explain requirements to them.⁴²
- 6.43 In its submission, the NCA points out that for some assets, such as Lake Burley Griffin, as well as the various memorials and artworks, specialised expertise and management is required. The Authority stated that it has "become a source of such management expertise".⁴³

Lake Burley Griffin

- 6.44 A similar experience was reported by Dr David Bagnall, who took issue with the NCA's management of Lake Burley Griffin and the surrounding foreshores. Dr Bagnall argued that the Authority's refusal to allow a rowing club to build a boathouse on the shores of the lake "severely limited opportunities for the Canberra community".⁴⁴ He described the Authority's actions as "antagonistic" and stated that:

...the arbitrary nature of the NCA's decision to locate us away from these National Capital Development Commission serviced blocks is evident because subsequently the NCA has offered exactly the same sites to other rowing clubs and schools.⁴⁵

- 6.45 Dr Bagnall claimed that there were communication problems within the Authority which needed to be addressed. He also highlighted the difficulties which can arise from the current lack of appeals processes against NCA decisions. Dr Bagnall noted that:

It is important for the NCA to have statutory obligations: firstly, to acknowledge receiving correspondence, which they did not do right through our process; secondly, to impose a

40 Fraser, Submissions, p 289.

41 Fraser, Submissions, p 289.

42 Fraser, Submissions, p 289.

43 National Capital Authority, Submissions, p 170.

44 Bagnall, Submissions, p 33.

45 Dr David Bagnall, Transcript, 20 June 2003, p 16.

statutory limit of three months to select sites and approve works applications; and, thirdly, to set up an appeals procedure for applicants. I also feel that there are major problems with a lack of transparency and really poor communication. I would have thought that these problems needed to be addressed.⁴⁶

Sale of Commonwealth Land

6.46 While the issue of the Commonwealth's sale of undeveloped land is more an issue for the Federal Government through the Department of Finance and Administration, development conditions for these sites are set out in Development Control Plans (DCPs) prepared by the National Capital Authority. While the ACT Government is concerned that the sales have "impacted severely" on the Territory's Land Release Program, for many of these sites, the Territory also claims that the DCPs prepared by the Authority have "far from mitigated the effects".⁴⁷ Using the Benjamin Offices as an example, the Territory points out that the conditions set out in the DCP are "less stringent than those that would be evoked through the Territory's planning framework".⁴⁸ Some of the concerns identified include that:

- the proponent was not asked to prepare a preliminary assessment;
- there was inadequate provision for car parking;
- the heritage status of significant vegetation was not identified; and
- there was no consultation with adjacent landholders or businesses.⁴⁹

6.47 Another example identified by the ACT Government was the Macquarie Hostel for which the National Capital Authority prepared a DCP that "greatly increases the gross floor area allowable under Territory planning provisions".⁵⁰ The ACT Government was careful to point out, however, that the issues affecting the Territory as a result of Commonwealth Land sales were not necessarily directly NCA responsibilities:

46 Dr David Bagnall, Transcript, 20 June 2003, p 18.

47 ACT Government, Submissions, p 250.

48 ACT Government, Submissions, pp 250-251.

49 ACT Government, Submissions, p 251.

50 ACT Government, Submissions, p 251.

...these do not only relate to the National Capital Authority but they go to the issue of overlap and confusion, which brings both authorities into some disrepute. If the territory has a strategy and if the government has a strategy that relates to land release and to employment dispersal, and then there is a major sale of land, and those releases are much larger than were initially planned, of course the planning can go awry.⁵¹

The Committee's Views

- 6.48 The Committee acknowledges the ongoing contribution of the National Capital Authority in upholding the Commonwealth's interest in the national capital. The Committee supports the view that the Authority has "played an invaluable role in the growth and development" of Canberra.⁵² However, the Committee has chosen to highlight the examples discussed throughout this chapter to illustrate the concerns that some organisations and members of the Canberra community have apparently experienced in dealing with the NCA. The Committee appreciates that, by the very nature of its role, the Authority's decisions will not always be accepted universally – particularly where such decisions do not align with ACT Government policy. Nonetheless, the Committee trusts that the NCA will take this criticism on board and endeavour to rectify its procedures where deficient.
- 6.49 It has been suggested to the Committee that a number of the management issues raised in this chapter can be attributed to the lack of resources at the Authority's disposal.⁵³ It has also been suggested that there is a lack of staff within the organisation who possess the professional expertise to be able to deal with such matters.⁵⁴ While the Committee accepts that this may be a contributing factor, there is evidence which suggests there are occasions where the NCA fails to follow due process – whether it be responding to verbal enquiries or acknowledging receipt of correspondence. The Committee is certainly concerned by the allegations of incompetency, lack of accountability

51 Mr George Tomlins, Transcript, 15 August 2003, p 93.

52 Murphy, Submissions, p 60.

53 See, for example, Ms Romilly Madew, Transcript, 16 October 2003, p 274, Mr Bruce Wright, Transcript, 20 June 2003, p 11.

54 Mr Tony Powell, Transcript, 19 September 2003, p 250.

and lack of professionalism, such as the view expressed by Mr Brett Odgers:

...the National Capital Authority continues to demonstrate lack of powers, underfunding, undemocratic methods, lapses in values and professional incompetence as planners and public servants.⁵⁵

6.50 In his book, *The Impact of Systems of Governance on Federal Capitals*, Bruce Wright identified the need for the Authority to develop and maintain systems which satisfy community demands for accountability, transparency and participation.⁵⁶ Yet, the absence of provisions for appeal against NCA works approvals, and the absence of mechanisms for statutory consultation has ensured that the Authority's actions continue to frustrate members of the ACT community. The Committee trusts that the Authority will address the concerns discussed above, and continue to improve its capacity to perform at a higher level.

55 Odgers, Submissions, p 327.

56 Wright, B., *The Impact of Systems of Governance on Federal Capitals*, p 20.

It is far too late to re-create Griffin's original design but the comparison with Griffin is the clue to the future of the national capital. His Land Axis and Water Axis, the triangle of avenues and the land within, held the heart of Griffin's city. Today the natural form of hills and valley have been made manifest by the framework of Griffin's geometry but the heart of the city is not there... This is the final crucial step for Australia's national capital.¹

Civic has always struggled to assert itself as a viable, dynamic centre of the city. Whilst Canberra's development has been reasonably rapid by comparison with other capitals, it has been inconsistent. Nowhere is this more evident than in Civic.²

Employment Policies and their impact on Civic

- 7.1 A combination of market forces and planning policies that have encouraged employment and commercial development away from Civic as the central business district have contributed to the decline of Canberra's city centre. Reaffirming Civic as the dynamic heart of the city has been identified as a high priority by both the National Capital Authority and the ACT Government. The Organisation for Economic Cooperation and Development (OECD), which undertook an *Urban Renaissance* review of Canberra in 2002, believes that Civic can be
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1 Reid, P., Canberra Following Griffin, National Archives of Australia, 2002, p 342.

2 ACT Department of Urban Services, November 1999, Creating our City – An Implementation Strategy, p 3.

developed into a vibrant robust town centre without weakening the existing town centres.³

- 7.2 The National Capital Plan states that the Territory's interest in Civic relates mainly to Civic's role as the prime commercial and retail centre and as a location for Territory administration, major private sector business, regional and metropolitan head offices, recreational and entertainment, tourist accommodation and important cultural community activities.⁴ The Commonwealth's interest, meanwhile, is derived from Civic's location at the apex of the National Triangle - the centrepiece of the Griffin Plan - and the functional and symbolic relationship between Civic and the Parliamentary Zone.⁵
- 7.3 As of July 2003, 29 per cent of the total office stock in Canberra was located in Civic.⁶ The office market vacancy rate in Civic was 4.7 per cent, the lowest recorded CBD vacancy in office space in Australia. It is claimed in the Canberra Spatial Plan that these vacancy rates support the view that "there is substantial unmet demand for additional office space in Civic".⁷ The Organisation for Economic Cooperation and Development stated that there is currently an over supply of commercial office space in the central business district.⁸ According to the OECD, this can be attributed to the age of buildings - with the accommodation offered not meeting current government and private sector standards - and decisions by the Commonwealth Government to relocate outside of Civic.⁹ While current office space is being refurbished, the Spatial Plan states that tenants often have little option but to go elsewhere, such as to Barton or to the Brindabella Business Park at Canberra International Airport.¹⁰
- 7.4 Since its privatisation in 1998, Canberra International Airport has undergone substantial changes which have seen it develop into a major employment centre as well as a regional air transport hub.¹¹ Mr

3 Organisation for Economic Cooperation and Development, 2002, *Urban Renaissance – Canberra: A Sustainable Future*, OECD, p 125.

4 National Capital Authority, *Consolidated National Capital Plan*, February 2002, p 89.

5 National Capital Authority, *Consolidated National Capital Plan*, February 2002, p 89.

6 *The Canberra Spatial Plan*, March 2004, p 9.

7 *The Canberra Spatial Plan*, March 2004, p 9.

8 Organisation for Economic Cooperation and Development, 2002, *Urban Renaissance – Canberra: A Sustainable Future*, OECD, p 127.

9 Organisation for Economic Cooperation and Development, 2002, *Urban Renaissance – Canberra: A Sustainable Future*, OECD, p 127.

10 *The Canberra Spatial Plan*, March 2004, p 9.

11 Powell, T. *2003 Planning, Economic Development and Canberra Airport*, Capital Airport Group, Canberra, p 1.

Tony Powell acknowledged that although there is no evidence that the Business Park has impacted adversely on Civic and the other town centres, “there has nonetheless been some disquiet”.¹² Canberra International Airport is unique in that it is the only capital city airport which is subject to a town planning regime, that being the regime set out in the National Capital Plan administered by the National Capital Authority.¹³

- 7.5 The Commonwealth’s sale of Canberra International Airport was described by the ACT Government as a “further factor impacting on Civic and other Town Centres at the Territory’s expense”.¹⁴ The National Capital Authority’s decision to encourage investors to take up vacant sites outside of Civic was also criticised by witnesses.¹⁵ Mr Brian Binning, for example, pointed out that by providing such encouragement, the Authority “would appear to be acting in contravention of the stated policies of the National Capital Plan”.¹⁶
- 7.6 The airport is located on National Land managed by the Commonwealth Department of Transport and Regional Services. The owners of the airport, the Capital Airport Group, are obliged to prepare master plans and, where developments exceed \$10 million, they are also required to prepare major development plans which require the approval of the Minister for Transport and Regional Services.¹⁷ The NCA pointed out to the Committee that both of these plans require public consultation.¹⁸ These master plans and major development plans cannot be inconsistent with the National Capital Plan. Mr Stephen Byron, Managing Director of the Capital Airport Group, explained the requirements for developments at the airport as set out in the National Capital Plan:

The airport is within the broadacre areas of the National Capital Plan and is specifically identified as the airport for Canberra. It is included in the designated areas as well. So, in effect, any developments not only have to conform to a master plan and a major development plan, they also require

12 Powell, T. 2003 *Planning, Economic Development and Canberra Airport*, Capital Airport Group, Canberra, p 42.

13 Mr Stephen Byron, Transcript, 16 October 2003, p 281.

14 ACT Government, *ACT Workplace Discussions 13-15 November 2002*, Commonwealth Grants Commission 2004 Review, p 104.

15 See Submissions, p 73, 132, 320.

16 Binning, Submissions, p 132.

17 Mr David Wright, Transcript, 19 September 2003, p 210.

18 Mr David Wright, Transcript, 19 September 2003, p 210.

the works approval of the authority. The effect of the National Capital Plan is to set the broad land use policies. The effect of designation, more directly, is that all the works are subject to the approval of the authority. That is unique in Australia.¹⁹

- 7.7 Local community group Canberra Community Action on Acton Inc. was highly critical of what it called “the fragmentation of the city”.²⁰ The group believes this is a result of the rapid development of commercial office space at the Airport which has reduced the attractiveness of Civic and other commercial centres. ACT residents Mr and Mrs Douglas and Ann Darbyshire shared the group’s concerns, stating that in the case of the Airport:

...no apparent consideration by the NCA has been given to how this relatively unfettered development may be starving other town centres such as Tuggeranong and Gungahlin of development needed and supported by the ACT Government.²¹

- 7.8 The ACT Government believes that the current National Capital Plan limits further growth of Commonwealth Office space in Civic and gives priority to the development of additional space in Town Centres.²² The ACT is also critical of the way in which the current Plan limits office accommodation in Parkes and Barton to Commonwealth departments and agencies requiring close working relationships with the Executive and Parliament.²³ Like the Darbyshires, the ACT Government is concerned that the development rights sold with the airport are seeing the emergence of a new employment centre which will place pressure on Civic and other existing town centres. In addition, the Territory believes that it will come under increasing pressure to provide services to the new employment centre, without any supporting population mass.²⁴
- 7.9 During a recent debate in the ACT Legislative Assembly, Minister for Planning, Mr Simon Corbell MLA, spoke of the need to strike the

19 Mr David Wright, National Capital Authority, Transcript, 15 August 2003, p 210.

20 Canberra Community Action on Action Inc., Submissions, p 28.

21 Darbyshire, Submissions, p 73.

22 ACT Government, Submissions, p 226.

23 *ACT Rejoinder Submission to the Commonwealth Grants Commission 2004 Review*, February 2003, p 15.

24 ACT Government, *ACT Workplace Discussions 13-15 November 2002*, Commonwealth Grants Commission 2004 Review, p 104.

right balance between developments at the Airport and developments in Civic and the other town centres:

It is not black and white: airport good, Civic bad—or Civic good, airport bad. It is about making sure we have a balance. The airport is a significant activity centre, and the spatial plan recognises it as a significant activity centre, as does draft amendment 44 to the National Capital Plan. The issue is: to what extent should that activity go? The territory's view is that the airport should not have the same status as a town centre or, indeed, as Civic, and we have put that view to the National Capital Authority.²⁵

Draft Amendment 44: Office Employment Location Policies

7.10 In November 2003, the National Capital Authority released Draft Amendment 44 of the National Capital Plan for public consultation. The amendment proposes changes to the Office Employment Location Policies set out in Chapter Three of the National Capital Plan as they relate to the Canberra International Airport. According to the NCA:

The policy changes proposed by Draft Amendment 44 aim to promote the primacy of Civic as the dominant metropolitan centre, reinforce the role of town centres as decentralised employment locations and identify other locations, such as Canberra International Airport, where office employment will encourage growth in Canberra while protecting the interests of Canberra as the National Capital.²⁶

In its submission, the ACT Government questioned the national significance of having any employment location policies in the National Capital Plan.²⁷

25 ACT Legislative Assembly *Hansard*, 9 March 2004, p 6.

26 National Capital Authority, Annual Report 2002-03, p 55.

27 ACT Government, Submissions, p 201.

The Committee's views

- 7.11 The Committee is well aware of growing concern among the Canberra business community and calls to put an end to further development of office blocks on and around Canberra Airport. The disquiet over Draft Amendment 44 is such that prominent business leaders from Canberra and the region have formed the Capital Region Proper Planning Group to formally oppose the sections of the amendment which relate to developments at the airport. However, the Minister has yet to refer the amendment to the Committee for comment or inquiry and therefore the Committee believes it would be inappropriate to comment at this time. The Committee will, however, continue to monitor any further developments in this matter as they come to light.

The Issue of Consultation

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

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

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

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

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

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

Benjamin Offices Development

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

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

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

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

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

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

5 Barton, Submissions, p 279.

6 Barton, Submissions, p 279.

7 Barton, Submissions, p 279.

8 Barton, Submissions, p 279.

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

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

Public Artwork to Celebrate the Centenary of Women's Suffrage

The 'Fan' Memorial

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

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

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

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

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

The Suffrage Fountain

- 8.9 The proposal for a fountain to commemorate the centenary of women's suffrage was supported by the Committee after a briefing on 10 March 2004. The project was subsequently approved by Parliament and is expected to be completed by December 2004.¹² In a letter to the Minister Assisting the Prime Minister for the Status of Women, the Committee stated that while it supported the proposed work, it did so only on the understanding that all relevant and interested stakeholders – including Australia ICOMOS – had been fully consulted. The Committee was disturbed to learn then, shortly after the work was approved by Parliament, that Australia ICOMOS felt it had not been afforded a reasonable opportunity to respond to the proposal.

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

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

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

Draft Amendment 39 – Deakin/Forrest Residential Area

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

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

The Proposal for Pay Parking in the Parliamentary Zone

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

The Committee's Views

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

13 National Capital Authority, Submissions, p 180.

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

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

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

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

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

Recommendation 11

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

Senator Ross Lightfoot
Chairman

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



Appendix A – List of Submissions

1. Ms Penelope Upward
2. Mr James R. Conner
3. Professor Mads Gaardboe
4. Mr Ian De Landelles
5. Mr Wayne Stokes
6. National Trust of Australia (ACT)
7. Mr Ian Miekle AM
8. Canberra Community Action on Acton Inc.
9. National Capital Planning Commission (Washington D C)
10. Dr David Bagnall
11. Mr Brett Odgers
12. Australia International Council on Monuments and Sites
13. National Australia Day Council
14. North Canberra Community Council
15. Planning Institute of Australia – ACT Division
16. Mr Jim Murphy AM

17. Save the Ridge Inc.
18. Australian Institute of Landscape Architects
19. Mr and Mrs Douglas & Ann Darbyshire
20. Mr Bruce Wright
21. Housing Industry Association
22. Cultural Facilities Corporation
23. ACT Heritage Council
24. Mr Malcolm Smith
25. Mr Brian Binning
26. Property Council of Australia (ACT Division)
27. National Capital Authority
28. Ms Kerrie Tucker MLA
29. The Institution of Engineers, Australia
30. Sir Lenox Hewitt OBE
31. ACT Government
32. Canberra Business Council
33. A.J. Powell AO
34. Australian National University
35. Dr David Bagnall (Supplementary)
36. Mr Doug Barton
37. Australian Sports Commission
38. National Capital Commission (Ottawa)
39. Mr William Fraser
40. Ms Margo Halsted
41. Mr Jeff Davis
42. Canberra International Airport
43. Canberra Community Action on Acton Inc. (Supplementary)
44. Magnet Mart Pty Ltd

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45. ACT Sustainable Rural Lands Group Inc.
 46. Canberra Property Owners Association Ltd
 47. Mr Brett Odgers (Supplementary)
 48. Cotter Road Landcare Group Inc.
 49. ACT Government (Supplementary)
 50. Planning the ACT Together
 51. State Circle Developments Pty Ltd
 52. Mr Robert Pastrello
 53. Residents of Canterbury and Somers Crescents (ROCS)
 54. National Capital Authority (Supplementary)
 55. Royal Australian Institute of Architects



Appendix B – List of Exhibits

1. Aerial photograph of Canberra. Provided by Canberra Community Action on Acton Inc.
2. Correspondence from the Australian Tax Office to Mr Lawrence O'Sullivan OAM, 2 May 2003, re Taxation Ombudsman Complaint.
3. Map of the ACT showing Declared National Land (incorporating amendments to 6 November 2002) and Designated Land. Provided by the ACT Government.
4. Colour map depicting the western and eastern alignments for the proposed Gungahlin Drive Extension and the impacts of each alignment on flora and fauna. Provided by Save the Ridge Inc.
5. Summary of studies on the Gungahlin Drive Extension. Printed from ACT Department of Urban Services website. Provided by Save the Ridge Inc.
6. Objectives of the North Canberra Community Council.
7. E-mail, Mr Graham Horn, North Canberra Community Council, to Mr Ted Quinlan MLA, ACT Government Treasurer, 29 January 2003, re proposal for upgraded and cheaper alignment for the Gungahlin Drive Extension.
8. Excerpt from Dandy, G.C. and Warner, R.F., 1989, *Planning and Design of Engineering Systems*, Unwin Hyman Ltd, London, UK. Provided by the North Canberra Community Council.

9. Young Consulting and Engineers Pty Ltd, *Gungahlin Drive Extension Assessment, Summary Report 221722*, 20 December 2002. Provided by North Canberra Community Council.
10. Copy of PowerPoint presentation made to Committee by the National Capital Authority on 19 September 2003.
11. Copy of Carillon Services Contract. Provided by National Capital Authority.
12. National Capital Authority employment register.
13. Information provided by the National Capital Authority relating to public consultation processes.
14. Documentation relating to the proposed public artwork to celebrate the Centenary of Australian Women's Suffrage. Provided by the National Capital Authority.
15. Organisation for Economic Cooperation and Development, 2002, *Urban Renaissance – Canberra: A Sustainable Future*, OECD Publications, France. Provided by Mr Brett Odgers.
16. ACT Government, March 2003, *People Place Prosperity: a policy for sustainability in the ACT*. Provided by Mr Brett Odgers.
17. Development Control Plan for Blocks 2-6 Section 26 – Canberra Avenue – Forrest, DCP No: 171/01/0001. Provided by State Circle Developments Pty Ltd.
18. Images of possible development options for sites fronting State Circle. Provided by State Circle Developments Pty Ltd.
19. State Circle Apartments reference images. Provided by State Circle Developments Pty Ltd.
20. Petition from residents/lessees of the Deakin/Forrest area opposed to Draft Amendment 39 to the National Capital Plan provisions to allow amalgamation of blocks on State Circle and the erection of three storey residential buildings and an increase in Plot Ratio to 0.8. Provided by Residents of Canterbury and Somers Crescents.
21. Copy of PowerPoint presentation made to the Committee by Residents of Canterbury and Somers Crescents on 23 March 2004.
22. Colour photograph of no. 15 State Circle. Provided by Residents of Canterbury and Somers Crescents.

23. Photographs depicting possible design options for sites fronting State Circle. Provided by the National Capital Authority.
24. Copy of PowerPoint presentation made to the Committee by the National Capital Authority on 23 March 2004.



Appendix C – Witnesses appearing at public hearings

**Canberra
Friday, 20 June 2003**

Individuals

Dr David Bagnall

Sir Lenox Hewitt

Mr Lawrence O’Sullivan

Mr Bruce Wright

Australian Institute of Landscape Architects

Mr Paul Costigan, Executive Director

Mr Neil Hobbs, Associate Member – ACT Group

Canberra Community Action on Acton Inc.

Dr Neil Davey, Committee Member

Mr Noel Haberecht, Secretary

Mr Jack Kershaw, President

Mrs Margaret Wace, Treasurer

Housing Industry Association

Mr Alfonso Del Rio, Chairman – Planning and Environment Committee

Mr Alan Morschel, Planning Adviser

Mr Michael Pyers, Executive Director – ACT/Southern NSW

National Trust of Australia (ACT)

Mr Colin Griffiths, Heritage Officer

Professor Ken Taylor, President

Planning Institute of Australia – ACT Division

Mr Paul Cohen, Policy Coordinator

**Canberra
Friday, 15 August 2003**

ACT Government

Dr Colin Adrian, Chief Planning Executive – ACT Planning and Land Authority

Mr Peter Gordon, Executive Director, Office of Business and Tourism – ACT Chief Minister's Department

Mr Lincoln Hawkins, Deputy Chief Executive – ACT Chief Minister's Department

Ms Tu Pham, Deputy Chief Executive, ACT Department of Treasury

Mr Alan Thomson, Chief Executive – ACT Department of Urban Services

Mr George Tomlins, Executive Director, Strategic Group – ACT Bushfire Recovery Taskforce

Mr Robert Tonkin, Chief Executive – ACT Chief Minister's Department

Save the Ridge Inc.

Mr Michael Hettinger, Executive

Ms Julie Murphy, Chair

Dr Greg Tanner, Convenor

North Canberra Community Council

Mr Graham Horn, Member

Mr James Frederick, Treasurer

The Institution of Engineers, Australia

Mr Anthony Connell, Member

Mr Michael Evans, President

Mr Malcolm Palmer, Fellow

Mr Stephen Pinter, Member

Australia International Council on Monuments and Sites

Ms Kristal Buckley, President

Mr Eric Martin, Member

Office of Kerrie Tucker, Member for Molonglo, ACT Greens

Mr Roland Manderson, Policy Adviser

Individuals

Mr Brian Binning

**Canberra
Wednesday, 17 September 2003**

Canberra Business Council

Mr John Miller, Executive Director

Mr Craig Sloan, Chairperson

Canberra Property Owners Association Ltd

Mr Peter Conway, Executive Director

ACT Sustainable Rural Land Group Inc.

Mr David Coonan, Vice-President

Mr John Lowe, President

Mr Evan Tully, Treasurer and Public Officer

Magnet Mart Pty Ltd

Mr Paul Donaghue, Chairman

**Canberra
Friday, 19 September 2003**

National Capital Authority

Mr Ross Addison, Director of Finance

Mr Andrew Baird, Director – National Capital Estate

Mr Peter Byron, Manager – Venue Management

Mr Lindsay Evans, Managing Director – Business

Ms Roz Laing, Manager – Events and Marketing

Mr Stuart Mackenzie, Principal Urban Designer

Ms Annabelle Pegrum, Chief Executive

Mr Ted Schultheis, Principal Town Planner

Mr Graham Scott-Bohanna, Managing Director – Design

Mr David Wright, Director – National Capital Plan

ACT Heritage Council

Adjunct Professor Peter Freeman, Chair

Dr Sandy Blair, Secretary

Individuals

Mr Malcolm Smith

Mr Brett Odgers

Mr Anthony Powell

Canberra Thursday, 16 October 2003

Property Council of Australia (ACT Division)

Ms Romilly Madew, Executive Director

Mr Noel McCann, President

Canberra International Airport

Mr Stephen Byron, Managing Director

Canberra Tuesday, 23 March 2004

State Circle Developments Pty Ltd

Mr Richard Drummond, Director

Mr Bernie Bryant, Director

Mr Terry Ring, Architect Advisor

Individuals

Mr Robert Pastrello

Residents of Canterbury and Somers Crescents

Mrs Anne Bain, Spokesperson

Mr Jim Bain, Member

Dr Keith Boardman, Member

Mr Bob Nattey, Member

Mr Keith Snell, Member

Mrs Helen Tan, Member

National Capital Authority

Ms Annabelle Pegrum, Chief Executive

Mr Stuart Mackenzie, Principal Architect

Mr Ted Schultheis, Principal Planner

Mr David Wright, Director – National Capital Plan



Appendix D – Amendments to the National Capital Plan (as at June 2004)

Amendment No. and Status	Reference	Purpose
46 (Gazetted 20 August 2003)	Gungahlin Drive Extension – Black Mountain Nature Reserve	Redefines the western boundary of the Black Mountain Nature Reserve to a minor extent. The new boundary is the eastern edge of the Gungahlin Drive Extension road reserve adjacent to the suburb of Aranda. This amendment provides for the Gungahlin Drive Extension to be within the Urban Area and to remain outside of the Black Mountain Nature Reserve.
45 (Gazetted 19 November 2003)	Block 11 and Part Block 14 Section 49 Symonston (Quamby)	Uplifts the Designated Area of the site, and includes it in a “Broadacre Areas” land use policy. This more effectively relates to the established use of a Community Facility as defined in the Plan.
43 (Gazetted 5 March 2003)	Campbell Park Offices	Broadens the land use policy to allow for the existing Campbell Park Offices site to be used for general offices up to a maximum of 55 000 m ² GFA. This provides flexibility for future use of the site while maintaining its current use by the Department of Defence. The Amendment also reduces the extent of Designated Areas to better reflect the actual use of the site.
41 (Gazetted 4 March 2003)	Gungahlin Drive Extension	Confirms the alignment of the Gungahlin Drive Extension to “Existing Arterial Road” and deletes the connection across O’Connor Ridge to Barry Drive.
37 (Gazetted 15 June 2000)	Rural Leases in the Districts of Tennent and Booth	Alters the Special Requirements in Appendix G of the Plan to enable existing rural leases in the Districts of Tennent and Booth to be renewed or extended. The availability of the currently leased areas for future water storage purposes will be safeguarded by the incorporation (by the ACT Government) of specific withdrawal clauses in the rural leases.

Amendment No. and Status	Reference	Purpose
36 (Gazetted 24 November 1999)	ACT Hospice	Allows the ACT Government to develop a new and permanent hospice facility on approximately 1 hectare of land near the junction of the East Basin of Lake Burley Griffin and Molonglo Reach (near Grevillea Park).
35 (Gazetted 11 April 2000)	Joint Staff College of Weston Creek	Enables the Department of Defence to develop additional parking space for new facilities at its Joint Staff College site in Weston Creek in the ACT.
33 (Gazetted 18 September 2001)	Parliamentary Zone Review	Introduces a master plan for the Parliamentary Zone to guide planning and development. It also makes a slight adjustment to the road layout in Figure 5 of the Plan in line with an Indicative Development Plan that forms part of the Master Plan.
32 (Gazetted 14 June 2001)	ANU Boundary Changes	Alters the National Capital Plan to reflect recent boundary adjustments to the Australian National University and to ensure that all land forming the campus at Acton are within Designated Areas.
31 (Gazetted 13 March 2000)	Land Use - Part Sections 29 & 30 Forrest	Amends the National Capital Plan by adding 'office' as a permitted land use for Blocks 3, 4 and 6 Section 29 and Blocks 2, 3, 9 and 11 Section 30 Forrest.
30 (Gazetted 29 September 2000)	Canberra Airport	Permits a broader range of land uses at the Airport, removes existing requirements which duplicate regulations now covered in other Commonwealth law and properly reflects the boundaries of the Crown lease of the Airport site.
29 (Gazetted 11 April 2000)	Kingston Foreshore	Enables Kingston Foreshore to be developed into a mixed-use waterfront precinct by: <ul style="list-style-type: none"> ▪ removing the 'Designated Area' and 'National Land' status from approximately 1.8 hectares of Lake Burley Griffin; ▪ withdrawing the Designated Area status currently applying to Wentworth Avenue but retaining a seven metre strip of publicly accessible land along the Lake edge; and ▪ introducing Special Requirements in the National Capital Plan to ensure that any future development accords with the National Significance of the Kingston Foreshore area.
28 (Gazetted 19 May 1999)	Blackall Place Barton	Results in a change in land use policy from "Road" to "Community Facility" for Blackall Place. Blackall Place is a public road which is surrounded by land proposed for consolidation to enable the construction of an Australian Centre for Christianity and Culture.

Amendment No. and Status	Reference	Purpose
27 (Gazetted 16 February 2000)	Open Space [Park] – Public Accessibility	Proposes to include provisions within the National Capital Plan to clarify that the Plan: allows for the temporary and short-term enclosure of limited areas within parklands around the shores of Lake Burley Griffin for the purpose of conducting time-limited events; and enables the charging of entry fees to these enclosed areas for the duration of these events.
26 (Gazetted 27 May 1999)	Acton House	Allows for "Residential" and "Hotel" as primary land use policies on the Acton House site. The Amendment also removes the three-storey restriction on building height subject to a requirement that development on the site must be in accordance with the recommendations of a Conservation Management Plan agreed by the Australian Heritage Commission.
25 (Gazetted 20 June 2000)	Signs Policy	Provides policies for the erection and display of signs on unleased land, including public places, within Designated Areas of the National Capital Plan. The Amendment also includes planning, design and development provisions for billboards and signs at Canberra Airport.
24 (Gazetted 5 July 1999)	Special Requirements for Northbourne Avenue	Changes the Special Requirements affecting Northbourne Avenue and removes the requirement for the preparation of a Development Control Plan for the Avenue. The key feature of the Amendment is to increase the maximum allowable building height from 25 to 32 metres within designated "landmark nodes" at the intersections of Mouat/Antill Streets and Wakefield/MacArthur Avenues. The Amendment also proposes to: <ul style="list-style-type: none"> <li data-bbox="815 1397 1401 1458">▪ provide for increased building lines at the two "landmark nodes" <li data-bbox="815 1487 1422 1547">▪ allow for a small measure of flexibility for minor building elements <li data-bbox="815 1576 1433 1659">▪ ensure Special Requirements for Northbourne Avenue are only presented in one section of the National Capital Plan"
23 (Gazetted 27 May 1999)	Canberra Centre Consolidation	Removes the Designated Area status from that part of Ainslie Avenue between Bunda Street and Ballumbir Street in Civic. This will allow detailed conditions set out in Draft Variation to the Territory Plan No 111 to be brought into effect and in turn facilitate the expansion of the Canberra Centre and its consolidation with the City Markets and Target car parking buildings.
22 (Gazetted 6 March 1998)	Ginninderra Drive	Removes the provision to extend Ginninderra Drive between Mouat Street and Northbourne Avenue in Lyneham. This amendment stems from inquiries made regarding the John Dedman arterial road proposals.

Amendment No. and Status	Reference	Purpose
21 (Gazetted 16 June 1999)	Telecommunications Policies	Comprises new policies for the development of telecommunications facilities in the Australian Capital Territory which are subject to the <i>Telecommunications Act 1997</i> . The policies apply generally within the Territory as well as specifically to facilities proposed in Designated Areas. The Amendment also includes specific policies for lands outside of Designated Areas but which are adjacent to nominated Main Avenues.
20 (Gazetted 5 December 1997)	Acton Peninsula	Prepared to facilitate development of the National Museum of Australia and the Australian Institute of Aboriginal and Torres Strait Islander Studies. The amendment also provided for a change to the National Capital Plan, which removed the exclusive reservation of the Yarramundi site for the National Museum of Australia. The amendment does not preclude the future use of the Yarramundi site for national institutions generally.
19 (Gazetted 18 June 1997)	Federal Highway	To facilitate duplication of the Federal Highway between the ACT-NSW border and Stirling Avenue, Watson in the ACT.
18 (withdrawn, Gazetted of withdrawal 2 December 1998 - replaced see DA 21)	Telecommunications Policies	Sought to provide policies and criteria to guide telecommunications carriers in network expansion, particularly in view of the requirement to protect hilltops from development.
17 (replaced by DA 25)	Signs Policy	Was originally proposed to change the signs policies in the National Capital Plan to address perceived signage problems. This amendment was drafted however; the draft was not finalised as the need to amend the signs policies was reviewed during the preparation of the draft amendment.

Amendment No. and Status	Reference	Purpose
16 (Gazetted 11 December 1996)	Australian National Botanic Gardens	<p>Includes a suite of changes relating to the Australian National Botanic Gardens. The amendment:</p> <ul style="list-style-type: none"> ▪ changes the general land use policy from "Hills, Ridges and Buffer Spaces" to "Urban Areas"; ▪ removes the "future arterial road" symbol between the eastern boundary of the Gardens, the CSIRO and Clunies Ross Street; ▪ includes the Gardens in the Central National Area and removes it from the Inner Hills Designated Area; ▪ allows for the possible long term expansion of the Gardens; ▪ identifies the Gardens as "National Capital Use", the reservoir site on Black Mountain Drive as "Public Utility", on Black Mountain Drive as "Road", and the remaining land as "Uncommitted Land"; ▪ introduces a master plan to guide the planning and development of the site in accordance with its national significance; ▪ inserts a definition for "Botanic Gardens"; ▪ includes the Australian National Botanic Gardens in the definition of "National Capital Use"; and ▪ amends the relevant Figures in the National Capital Plan.
15 (withdrawn by notice in Commonwealth Gazette of 2 December 1998)	Barton	Proposed to amend the land use policy for Blocks 12 and 13, Section 9, Barton, by deleting the "Commercial, Open Space and Car Parking" land use policies applying to the land and replacing them with an "Office and Car Park" land use policy. This amendment was to allow for the development of a combined Commonwealth office and structured car park complex on land owned by the Commonwealth.
14 Gazetted 11 December 1996)	General	Expands the range of uses permitted in the "Broadacre" area applicable to land in the vicinity of the Canberra Abattoir site near Queanbeyan to uses other than noxious industries.
13 (Gazetted 8 March 1995)	Symonston	Introduces a new urban area at Block 4 Section 1, Symonston to be used for high technology industrial research, development, and manufacturing.

Amendment No. and Status	Reference	Purpose
12 (Gazetted 19 June 1996)	Russell	Incorporates the Russell master plan which details Conditions of Planning, Design and Development, and includes a new statement of Land Use Policy for Russell. The amendment responds to proposals by the Department of Defence to redevelop parts of the Russell Office complex. These proposals provided an opportunity to reconsider the future planning of Russell in the context of its National Capital significance which derives from the key position it occupies at the incomplete corner of Walter Burley Griffin's national triangle.
11 (Gazetted 16 November 1994)	General	Incorporates a number of minor changes. Eight diplomatic sites in Yarralumla and Red Hill that have been used or reserved for use for diplomatic purposes are redefined as "Diplomatic Mission", and the boundary of the Embassy of the United State of America is expanded to incorporate a portion of the security Wall which was previously shown as "Road". The land use policy for Albert Hall is amended and the Lanyon Bowl Area is extended to make it consistent with the area described in the <i>Commonwealth Gazette</i> in 1986.
10 (withdrawn)	Service stations – Avenues and Approach Routes	Relates to the location of service stations along the Avenues and Approach Routes. This draft amendment did not proceed to the publication stage.
9 (Gazetted 7 December 1993)	Hotel Kurrajong	Changes the land use for Section 10, Barton from "Hotel, Open Space and Child Care Centre" to "Hotel and Educational Establishment" to allow the Hotel Kurrajong to be converted for use as an international hotel management school including hotel accommodation.
8 (Gazetted 26 October 1993)	General	Incorporates a number of minor amendments to resolve inconsistencies with the Territory Plan relating to existing pine forests as permitted non-urban land use categories, and makes minor boundary adjustments between land use categories. It also redefines "office" and clarifies the land use policy for Windsor Walk in York Park, Barton, as "National Capital Use".
7 (Gazetted 25 August 1993)	Kingston	Prepared in response to a proposal to redevelop Blocks 4, 5 and 6, Section 25, Kingston to allow a 15 storey residential tower and a three storey non-retail commercial building and associated car parking to be built. The Authority subsequently limited this three-storey component to two storeys and limited further development in the area to two storeys. The amendment also sought to prohibit further high-rise development in the area.
6 (Gazetted 10 December 1992)	West Belconnen	Redefined the "Broadacre" area of West Belconnen as "Investigation Area" and to extend the "Urban" area, in order to accommodate the ACT Government's proposal for urban development in the area.

Amendment No. and Status	Reference	Purpose
5 (withdrawn)	City Hill	Proposed incorporation of a master plan for City Hill as an appendix to the National Capital Plan. The principal features of the master plan relate to building heights, portal buildings, a series of pocket parks, and extension of Constitution and Edinburgh Avenues to meet Vernon Circle. The Joint Committee on the National Capital inquired into the proposed amendment. Following the 1993 federal election, the Joint Standing Committee on the National Capital and External Territories produced the report <i>City Hill: review of the draft master plan</i> , which recommended that the proposed draft amendment not be approved.
4 (Gazetted 9 November 1992)	Harcourt Hill	Extension of the urban area of Gungahlin adjacent to the Gold Creek Tourist Centre to accommodate an integrated golf course resort and residential sub-division.
3 (Gazetted 14 July 1993)	General	A series of amendments which incorporate policies for siting satellite dishes and other telecommunications equipment, new land use policies in certain parts of Barton, car parking standards for offices in Barton, and amendments to the Plan's employment location policies. The series also incorporates master plans into the Plan for: <ul style="list-style-type: none"> <li data-bbox="815 1182 1353 1211">▪ the Royal Military College, Duntroon; and <li data-bbox="815 1238 1450 1294">▪ York Park, Barton, adjacent to the Parliamentary Zone
2 (Gazetted 13 December 1991)	General	A series of 14 amendments principally to overcome deficiencies, rectify typographical errors, and to clarify some provisions. The series of amendments included: <ul style="list-style-type: none"> <li data-bbox="815 1449 1422 1538">▪ clarifying the need for the then National Capital Planning Authority to approve proposed works within the Parliamentary Zone; <li data-bbox="815 1565 1422 1655">▪ redefining the relationship between the National Capital Plan and the 1986 Parliamentary Zone Development Plan; <li data-bbox="815 1682 1422 1749">▪ clarifying the special requirements for Sections 18 and 19, Braddon; and <li data-bbox="815 1776 1450 1861">▪ introducing a plan identifying proposals to widen Morshead Drive and construct a new bridge over the Molonglo River.
1 (Gazetted 6 November 1991)	General	Amendments to the detailed conditions of planning, design and development to allow offices to the west of Allara Street in Section 10 City, and to delete "administrative uses" from the land-use policy applying to Section 37, an area east of Allara Street.