

ACT SUSTAINABLE RURAL LANDS GROUP INC

FAX 6 287 4207 PHONE 6 288 5555

Mr Quinton Clements
Inquiry Secretary
Inquiry into Role of the National Capital Authority
Joint Standing Committee on the National Capital and External Territories
Parliament House
Canberra ACT 2600



Dear Mr Clements,

Thank you for the invitation to appear before the Committee at 7 pm during the public hearing on 17 September 2003.

Firstly, we apologise for the lateness of our submission. As I explained to Mr Justin Baker of the secretariat my family and the other members of the ACT Sustainable Rural Lands Group Inc are all victims of the January 2003 Bushfires. Three of us also suffered significant losses in the previous season Christmas (2001) ACT Bushfires. Hence, while aware of and interested in contributing to the inquiry, by necessity our primary focus has been on immediate post-fire matters.

The National Capital Authority's (NCA) role is, fundamentally, to protect the investment of generations of ordinary Australians into their Seat of Government and to ensure that the Capital of Australia is suitable for not only their elected representatives but also for its status as within and external to Australia. The National Capital Plan notes specifically "...to ensure that Canberra and the Territory are planned and developed in accordance with their national significance". The Territory self government role is to deal with the day to day lives of Canberra citizens.

The city was established through the Australian Constitution and its importance in following the precepts of the Constitution was re-emphasised in the Self Government ACT. The Background notes of the NCP expand on the principles underlying the management of the National Capital. As a "Symbol of Australian Life" the NCP envisages that "The function of the National Capital as a symbol of Australian national life and the values of our people is one of the most important but also most intangible roles that the city will be called on to play."

The NCA faces pressure from the short-sighted local desires of the ACT bureaucracy which behave in a day to day manner at odds with both the spirit and literal intent of the Constitution. We ask that the Committee recognise that the whole of the ACT is the seat of Government of Australia and while a restricted level of self-determination has been granted to the residents of the ACT that the limitations are designed to protect interests of all Australians. It would undermine the fabric of our society including in this country's ability to represent itself in international forums if the principles of equity and just treatment are not followed in an exemplary fashion in the national capital. The Nation is on show in Canberra to visitors and legations and little passes unnoticed.

The virtues of the ACT exist because the Constitution of Australia and the progress through history of the leasehold title system in the Territory.

There are problems in the ACT in managing land tenure. These largely arise from the poor administration of the ACT bureaucracy rather than the delineation of planning powers or leasehold title. Leasehold title is the most common title within Australia - in order of 65%. Despite this, the ACT bureaucracy often claims leasehold is in some way unique pointing to freehold title in NSW (Freehold title applies to around 10% of the land in Australia). In reality, some ACT leasehold titles offer a better package than NSW freehold as allowable land uses are prescribed and lessee entitlements defined, but they do suffer from talking down by the ACT bureaucracy.

The position statements within the May 2003 submission to the Committee by the NCA are supported.

However, in our view there is a need to go further in four areas

- Individual landholders should be able to feel safe and have security of title, consistent with the just terms provisions of the Constitution, not undermined by Territory planning processes, irrespective of how the land is zoned. At least one previous Prime Minister has stated this as a principle. But it has been breached by local ACT administration.
- That the Australian Community through the Australian Government be provided with a balanced return when land is transferred from the National Estate to Territory land,
- That where land use changes are approved by the Parliament of Australia that provide windfall gains to developers the benefit should be shared between the Territory and the Australian Government, and
- That amendments to Australian Government Legislation provide the NCA and/or Parliament with a better mechanism to guard against mal-administration by the ACT bureaucracy.

In its very foundation the ACT is an entity and community for the Australian People. That is not to say the residents and investors should face lower standards, indeed the constitutional guarantee of 'Just Terms' is repeated into the ACT self-government legislation.

However, in its foundation the Parliament did intend that the Territory pay its own way as a normal community, and provided commitments to the Australian people about the land forming the Territory. These intentions are found in the Australian Constitution and statements to Parliament. Section 125 of the Constitution refers, and an important legal opinion of its meaning quoted by Quick & Garran, in the Annotated Constitution of the Commonwealth of Australia (page 982) - "... *The Commonwealth acquires under this territorial rights only, and not proprietary rights ... landowners or Crown Lessee within the territory chosen for the seat of Government will not be dispossessed unless the Federal Parliament chooses to dispossess them*" (Page 18 of Canberra In Crisis by Frank Brennan, Dalton Press). Further, the intention of Parliament was that these leases be renewable.

In the South Australian, the House of Assembly, on 27 August 1897 that the Constitution Convention be requested to establish leasehold which "*would in give to posterity the advantage of the increased land values which would necessarily result from enormous Government expenditure in the territory*" (Page 18 of Canberra In Crisis by Frank Brennan, Dalton Press).

We note that in effect when land was originally ceded to the Commonwealth for the ACT there was a limitation on any future self-determination of the people residing in the territory. Section 111 of the Constitution specifically says that such land forming the territory "*shall become subject to the exclusive jurisdiction of the Commonwealth.*" This limitation amounts to largely 'municipal style' governance in the ACT. In many ways this is just like a local council in a State there are times when planning must defer to the state powers. This models the relationship between the NCA and ACT bureaucracy.

A further important chapter in land administration in the ACT was the 13 May 1970 Cabinet decision (Decision 348) to abolish land rent in the ACT. In this decision, delineation was made between lease sales revenue and the cash flow needed for municipal accounts, but leasehold system was retained "to ensure orderly development and maintain control of land use". Cash flow for municipal accounts was to come from Rates at "a reasonable level compared with rate levels in other Australian Capitals". At the time, land use was based upon prescribed lease purposes which continued until all interests in the lessee's estate in the land was extinguished but a process existed for the lessee to seek broader purposes.

The next major milestone was ACT Self-Government with it necessary limitations. Interestingly, the concept of Territory Land and National Land was established and significant benefits granted to the ACT over land declaration Territory Land at this time. However, more recently, when transferring National Land to the Territory's estate the Australian Government has been seeking a market rate transfer. This appears to be a similar situation to what was established in the 13 May 1970 Cabinet decision lease sales from the Crown.

The ACT bureaucracy has adopted the concept of betterment changes where a lessee seeks enhanced land uses over an existing lease. An interesting question must be who should benefit if land use is changed at the national planning level, eg River Corridor use to Urban Residential use. There is no doubt the ACT bureaucracy seeks to keep this gain for the ACT. This is a key reason for the NCA as they have no financial interest in changes of land use as their charter to keep the land use decisions in the realms of what is best for the Australian Government. We believe this independent control is essential to the character of the ACT and the role as Australia's Capital city. We do not propose that the windfall gains flow directly to the Australian Government, rather any gain to the Territory should be accounted for in the Australian Governments normal State and Territory Grants processes, this way the NCA independence is preserved. The ACT bureaucracy should not be the puppets of land speculators private or elected.

With regard to the ACT Government's submission and it proposed strategic outcomes we offer the following comments:

- *"One plan for one city" is what we should have now, as under as the National Capital Plan the ACT's Territory Plan is required to be consistent. Hence, if the ACT Government were to tow the line, rather than trying to force the planning debate we would have one plan for one city and the non-urban ACT.*
- *The ACT planning bureaucracy needs to be more accountable now and simply cannot be allowed further powers. Its history lacks professionalism, in 1995 the Stein report was critical of the lack of professional qualified staff in the ACT lease administration and planning areas. We doubt much has changed given some of the more recent planning fiascos such as the Gungahlin Drive extension, and repeated rural lease policy failures 1993 to current.*
- *The NCA cannot serve two masters, it can only be accountable to the Australian people via Parliament. The ACT has representation into that process and if the issues have merit they will of course get a hearing.*
- *As stated previously the Commonwealth Parliament is limited in its capacity to dispose of ACT lands including it capacity to ensure usage is consistent with national objectives.*

Thank you for receiving this submission on behalf of the Committee. We look forward to expanding on the above at the hearing on 17 September 2003 with the Committee.

Yours Sincerely

David Coonan
Vice President ACT SRLG Inc
8 September 2003-09-07
M) 042 1150 791