

SUBMISSION15.....



The Committee Secretary
 Joint Standing Committee on the
 National Capital and External Territories
 Department of House of Representatives
 Parliament House
 CANBERRA ACT 2600
 AUSTRALIA

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ATTENTION: Mr Quinton Clements

Dear Mr Clements



NATIONAL CAPITAL AUTHORITY INQUIRY

Introduction

1. The Planning Institute of Australia, ACT Division appreciates the opportunity to make this submission in relation to the Joint Standing Committee's Inquiry into the National Capital Authority ("the NCA").
2. The Planning Institute of Australia (formerly the Royal Australian Planning Institute) is the national organisation representing Australia's town planning and related professions. The ACT Division of the Institute (PIAACT) represents qualified professionals in town planning, architecture, and landscape architecture (the latter two usually having primary membership of another professional body) in the Commonwealth Public Service, ACT Public Service and in private practice in the Australian Capital Territory.

Background

3. The NCA was established by the *Australian Capital Territory (Planning and Land Management) Act 1988* ("the PALM Act"). Under s.7, the functions of the Authority were to:
 - (a) prepare and administer a National Capital Plan;
 - (b) keep the Plan under constant review and propose amendments to it where 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 of any Commonwealth authority has the responsibility to commission those works;
 - (d) recommend to the Minister the carrying out of works that it considers desirable to maintain or enhance the character of the National Capital;

- (e) foster the awareness of 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.

4. A key function of the NCA was to prepare a National Capital Plan intended to ensure that Canberra and the Territory were planned and developed in accordance with their national significance (s.9).

5. The Plan was required to specify designated areas, being areas having the special characteristics of the National Capital, to define the planning principles and policies for giving effect to the object of the Plan; and set out the general land use/transportation policies to be applied to the Territory at large (s.10).

6. With regard to designated areas, the NCA were required to approve building works as defined under s.4 of the Act, irrespective of whether the land was National land or Territory Land (s.12).

Relationship to Territory Land

7. In establishing the NCA the Commonwealth clearly intended to maintain a nexus between National Capital planning and Territory planning. The PALM Act required the Territory government to:

- establish a Territory planning authority;
- prepare and administer a Territory Plan not inconsistent with the National Capital Plan, and in accordance with criteria set down in the PALM Act (s.25);
- administer Territory land in accordance with the *Seat of Government (Administration) Act 1910*; and to
- establish a system of administrative review of decisions relating to decisions relating to the administration of estates in land (s.27).

8. The PALM Act required the NCA and the Territory planning authority to consult with each other regarding the making and amendment of their respective plans. Neither authority was bound by the comments of the other.

The role of the National Capital Authority as outlined in the *Australian Capital Territory (Planning and Land Management Act 1988*.

9. The long title of the Act is
"An Act to provide for the planning of the Australian Capital Territory and the management of land in that Territory, to repeal the National Capital Development Commission Act 1957 and for related purposes".

10. It is clear from the long title, and from the tenor and detail of the legislation that in 1988 the Commonwealth, while wishing to divorce itself from what it probably considered the minutiae of the day to day operations of metropolitan Canberra, intended to retain overall control of the Territory, through its planning powers under the PALM Act.

11. PIAACT is of the opinion that that intention was appropriate at the time but to a somewhat lesser extent remains valid today. Canberra was established for the sole purpose of providing the national Seat of Government. It essentially had no unique advantages in terms of communications, commerce, industry or natural resources and would not ordinarily have developed as a major centre of any consequence. While electronic data processing and communications technology overcome some of Canberra's locational disadvantages, such technology is universally available and is of no particular significance to the Territory.

12. It is pertinent in this regard to note that in 2001, the dominant industries in the Territory were government administration and defence (26%). The second largest industry was property and business services (14%). The non government sector largely provided support to government administration and defence, reinforcing the dominance and importance of the National Capital functions in justifying the future existence of the city.

13. It is clear that National Capital and Commonwealth government functions are likely to dominate development of Canberra into the foreseeable future and therefore, it remains proper and necessary for the Commonwealth to exercise some authority over the Territory as a whole.

14. Having said this, the question remains whether the present model is the correct one. There is a popular view that the NCA should confine itself to areas of National Capital significance that have a visual content. That is the areas around Lake Burley Griffin and the national institutions that those areas contain. There is also a view that the Commonwealth should retain control over the Inner Hills areas and the mountains beyond that create the landscape backdrop to the city. This control is seen by some as the only safeguard against the predatory efforts of local developers who look upon these areas as a potential goldmine awaiting exploitation.

15. Less well understood is NCA interests in hills, ridges and buffer areas further afield. These interests become apparent when issues relating to rural lands arise, as they do at the present time, when long term rural leases and future uses of fire affected and fire threatening lands are under consideration. We would argue that for example, neither fire attack mitigation or rural land uses are in themselves matters of National Capital significance but they are issues subject to control through policies under the NCP (Policy 8.5.3).

16. In the consideration of all of these areas, the NCA interest largely relates to the National Capital setting, its urban design, the visual amenity and

the recreational value of facilities and open spaces presented to visitors to the National Capital. On the other hand, the Territory's interests are more focussed on the use and economic value of land, and maintaining the amenity of its community, with a more limited focus on the National Capital status of the city.

Existing difficulties resulting from the NCA's current roles and responsibilities

17. The differences in emphasis between the interests of the NCA and the Territory create tensions between the parties. The Territory on the one hand is economically orientated. The NCA on the other hand has a longer term "urban design view that contributes nothing directly to the Territory's Gross State Product, although its work does have some indirect economic impact. The tensions created by different outlooks and objectives are not necessarily undesirable and often they force attention to be focussed on the intellectual aspects of issues and on proper justification of proposals where proper analysis might otherwise be foregone. Accordingly, the PIAACT believes that the present juxtaposition of the Territory and the Commonwealth does serve the interests of the Territory generally and should remain.

18. It is interesting to note that the tensions where they exist are described as existing between the Territory Government on one hand and the NCA on the other. This has come about because successive Territory governments have denied the Territory planning authority any discernible level of independence. The NCA would possibly stand in a different light if the Territory permitted its planning authority to exercise *its* functions with the level of independence envisaged by the PALM Act, particularly in ss15, 25 and 26. This matter is further addressed below.

Relationship between the Authority and Territory planning authorities

19. Under Part VI of the PALM Act, the Authority consists of a chairperson and 4 other members. *There is no Territory representation on the National Capital Authority.*

20. On 20 December 2002 the ACT Legislative Assembly enacted the *Planning and Land Act 2002*. The Act commences on 1 July 2003.

21. Under the Planning and Land Act the Territory has established the Planning and Land Authority, the Planning and Land Council, and the Land Development Agency.

22. The Planning and Land Council is required to provide advice to the Minister or the Authority on request or where the Authority is required by regulation to seek the advice of the Council.

23. The Land Development Agency is established to develop land; carry out works for the development and enhancement of land, and to carry out strategic or complex urban development projects.

There is no Commonwealth representation on any of the bodies created under the Planning and Land Act 2002.

24. In the view of the PIAACT the lack of cross representation of each Authority on the other body is a fundamental flaw in the overall planning system in Canberra.

25. PIAACT believes that the Chief Executive of the NCA should be a member of the ACT Planning and Land Council and the Chief Executive of the ACT Planning and Land Authority should be a member of the NCA constituted under Part VI of the PALM Act.

26. Ideally, both officers should be full members of the respective bodies. However, the Land and Planning Council is an advisory board with none of the functions of the Authority. Hence the most appropriate level of representation is as *ex-officio* members providing direct advice to the ordinary members of the relevant body.

Administration of the National Capital Plan

27. The PIAACT believes that much of the content of the National Capital Plan is redundant, irrelevant in either a strategic or operational sense, or unrelated to the administration of the National Capital significance of Canberra. For example, the Introduction to the NCP is largely devoted to explanatory information of no planning benefit or effect; Part 3 contains 37 pages of background notes, much of which is out of date, a number of appendices relate to matters of Territorial concern, transitional matters, or are of a specific development control nature not appropriate in such a Plan

28. The object of the Plan is to ensure that Canberra and the Territory are planned and developed in accordance with their national significance. (s.9)

29. Section 10(2) (b) of the PALM Act requires the Plan to set out the general policies to be implemented throughout the Territory
*".....being policies of land use (including the range and nature of permitted land uses); and;
 the planning of national and arterial road systems...."*

31. However, 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 Areas that significance relates to qualities of those places as a visual backdrop to the Central National areas and not to its land use.

32. The NCP also develops transport policies intended to define a National and arterial road system within the Territory. Transport policies are intended *inter alia* to secure connections between major centres and provide for a dedicated public transport service. As it stands, the Transport section of the Plan does little more than describe very broad principle and foreshadow future policies. However, other than those roads that have an inter-capital or national

road function; are of a symbolic or processional nature; or access National Capital facilities, the bulk of the transport system is a Territorial responsibility of little or no practical interest to the NCA.

31. PIAACT believes that under the present legislation the NCA is bound to include in the Plan non-relevant material and that the solution to the problem is to amend s.10 which specifies the contents of the NCP. PIAACT also recommends that the Plan be comprehensively reviewed to remove all commentary and all material specifically related to the National Capital function.

Planning integration

32. Currently the Territory is developing a suite of plans under the general title "*The Canberra Plan*". These plans comprise the '*Spatial Plan*', i.e. a land use/transportation plan, the '*Canberra Social Plan*' and the '*Economic White Paper*'.

33. The Spatial Plan is intended to cover;

- urban form;
- sustainable development patterns;
- impact of economic development on the physical lay out of the city;
- role of town centres;
- integration of land use planning with transport planning;
- maintenance of the 'bush capital character of the Territory; and
- population growth and the spatial organisation of the city.

34. The Spatial Plan will be separate from the Territory Plan and accordingly is not subject to either s.26 of the PALM Act (which prevents the Territory plan from being inconsistent with the National Capital Plan) and probably s.11 (which prevents an enactment being inconsistent with the National Capital Plan).

35. The PIAACT believes that the Canberra Plan and particularly the Spatial Plan emphasises the increasing irrelevancy of the National Capital Plan, and particularly the NC Plan as a stand-alone document. This will become more significant as the Territory Plan increasingly becomes a statutory document emphasising development control matters, and as such, more of a planning regulation than a plan.

36. The PIAACT believes that the Canberra Plan should provide the single planning reference for the Australian Capital Territory and that it should integrate areas of National Capital significance. The PIAACT proposes that the Commonwealth would have the power to require policies for the Central National Areas; Hills, Ridges and Buffer areas; and Main Avenues and approach

routes to be adopted into the Spatial Plan, subject to consultation¹. In this regard, the proposal that the NCA and the Planning and Land Council have cross representation would facilitate this approach.

Development Control

37. Generally development control over land under Commonwealth control is unsatisfactory.
38. Under section 11 of the PALM Act, no works can be performed in Designated Areas without the approval of the Authority. Works are defined as the construction, alteration, extension or demolition of buildings or structures, landscaping, tree felling or excavations.
39. The PIAACT is not aware of any other Australian jurisdiction that takes such a simplistic approach to development control.
40. No statutory provision is made in relation to the form of the application for approval, fees, criteria for assessment, periods within which decisions are required to be made, and provisions for administrative review.
41. In respect of Territory Land in designated areas, development may require NCA approval for works (and Environment Australia approval under the *Environment Protection and Biodiversity Conservation Act 1999*) as well as Territory approval and Preliminary Assessment under the *ACT Planning and Land Management Act 1991*.
42. In respect of National Land, *not* in Designated areas, there is no development control regulation at all so that developers of National Land have the dilemma of having no proof of legitimate development, particularly in the event of subsequent due diligence exercise, and neither the Territory or the Commonwealth can prevent or approve a proposed development.
43. Two options present themselves as remedies to the above problems. One, amend the PALM Act (or make a Development Control Regulation under s.53 of the Palm Act) to provide for development control and administrative review of decisions in relation to development control on Commonwealth and National Land and in designated areas. Two, delegate the administration of development control to the Territory under the ACT Land (Planning and Environment) Act. In the latter option the adoption of a single Plan for the Territory would greatly facilitate a consistent and equitable approach to the planning and the development control requirements of both the Commonwealth and the Territory.

¹ The NCA has previously adopted an area specific policy for the Northbourne Avenue Corridor made under the Territory Plan as the relevant Special Requirements made under the National Capital Plan

44. In the former option, the NCA would continue to exercise design control over development. PIAACT believes that the NCA displays a better facility than the Territory planning authority to guide the development of major commercial and industrial projects, and that the present system of design quality control should be maintained.

45. PIAACT believes that the NCA must be subject to formal processes for administering development applications and its decisions must be subject to administrative review. In this regard PIAACT proposes that applicants for development approval should have the right to seek review in respect to development decisions or failure to make a decision within the prescribed period.

46. While applicants should have automatic right to seek administrative review, PIAACT believes that there should be only limited access for third party appeals. There are circumstances where adjacent landholders may suffer significant loss of amenity or adverse financial impact or there are circumstances where a major environmental impact has not been identified under processes under the *Environment Protect and Biodiversity Conservation Act 1999*. Such circumstances ought to provide standing to seek review of a decision, but generally the nature of development subject to NCA approval indicates that it should not be fettered by *pro bono publico* appeals.

Conclusion

47. Present Commonwealth and Territory legislation create artificial and unnecessary constraints on the orderly and proper planning of Canberra as both the National Capital and as a large regional centre in its own right.

48. The existing enactments were pioneering legislation at the time, prepared in haste, and without a clear understanding of the dynamics of town planning in the burgeoning city. With the benefit of experience, the concept of a bicameral approach to planning providing a system of checks and balances does have value in the Canberra environment. However, there are differences between a bicameral system in government, and a bicameral system in planning.

49. In the present case we have indicated that a workable system can be devised to allow the Commonwealth to exercise its responsibilities in respect to Canberra as the National Capital within the context of Canberra as a city/state in a regional context. PIAACT commends its suggestions to the Committee.

Yours sincerely

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John McInerney

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per item

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