



Introduction

The Legislative Framework

National Capital Plan

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

The object of the National Capital Plan is to ensure that Canberra and the Territory are planned and developed in accordance with their national significance.¹
- 1.4 The Act requires that the Commonwealth, a Commonwealth authority, the Territory or a Territory authority shall not perform any act inconsistent with the National Capital Plan.²
- 1.5 The Plan defines planning principles and policies and sets standards to maintain and enhance the National Capital. It sets general policies for

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

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

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

Amendments to the National Capital Plan

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

National Capital Authority

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

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

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

5 Since 7 July 1997 called the National Capital Authority.

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

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

Designated Areas

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

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

1.13 The Plan specifies as Designated Areas the following:

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

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

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

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

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

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

The Territory Plan

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

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

11 Ms Annabelle Pegrum, Transcript, p. 41.

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

The Deakin/Forrest Residential Area

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

12 Mr Garrick Calnan, Transcript, P. 3.

13 Mr David Wright, Transcript, p. 42.

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

Figure 1 Overview of Deakin/Forrest residential area



Source *National Capital Authority*

Draft Amendment 39

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

Version One (November 2000)

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

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

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

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

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

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

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

Version Two (June 2001)

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

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

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

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

Version Three (April 2002)

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

ACT Government Residential Policy Changes

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

21 National Capital Authority, Submissions, p. 121.

22 National Capital Authority, Submissions, p. 120.

23 National Capital Authority, Submissions, p. 121.

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

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

1.39 As it currently stands, Draft Amendment 39:

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

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

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

The Issues

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

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

24 National Capital Authority, Submissions, p. 121.

25 National Capital Authority, Submissions, p. 114.

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

27 National Capital Authority, Submissions, p. 122.

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

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

The Role of the Committee

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

28 Sir Lenox Hewitt, Transcript, p. 73.

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

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

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

Conduct of the Inquiry

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

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

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

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

Structure of the Report

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