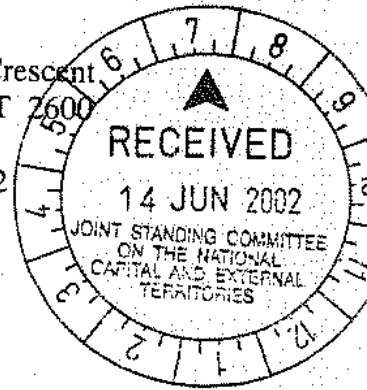


11 Gawler Crescent
Deakin ACT 2600

14 June 2002



Joint Standing Committee on the National Capital
and External Territories

The Secretary

I refer to the revised Draft Amendment 39 to the National Capital Plan and hereby submit certain issues for the consideration of the Committee. Please note that certain of the attached papers refer to earlier Draft Amendment 39 proposals.

My wife and I are lessees of Block 5 Section 6, Forrest (No 17 State Circle) and the family has a long association with that property.

I submit for the Committee's consideration:

- (1) "Comments" made on 1 August 2001 on the earlier Draft Amendment 39.
- (2) Copies of memoranda from the National Capital Authority in July 2001 and 31 January 2002.

"Comments Document"

The present revised Draft Amendment recommends the opposite of the previous Draft, i.e. for the National Capital Authority to retain its powers for planning and development of the Residential leases in State Circle instead of passing this control to the Territory authorities.

However, my summary of the history and facts of this matter remain unchanged. I submit that the "Comments" apply equally to the revised Draft Amendment. Basically, with some possible imperfections, I submit the same facts to the Committee to determine the revised N.C.A. proposal.

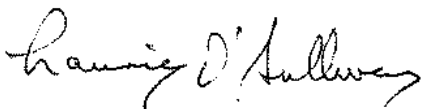
Please note the following points:

- The introduction gives the history of these leases as purely residential before Parliament House became a real possibility. It shows that this created an anomaly once the House was complete and State Circle became the major road it now is.
- The introduction concludes that the problem is to "decide the professionally appropriate land use for this special location".
- Section 1 sets out the nature of "residential amenity" and compares the facts about the houses Numbers 11 to 25 in State Circle.
 - As to the word "amenity", please note the "Definition" on the last page of the April 2002 revised Draft Amendment.
 - I add, as a fact, in reference to our block No. 17 State Circle there were only 10 months of tenancy between April 2000 and April 2002.
- Section 2 deals with the Market Values of the area and is a fair statement as to the present position except as to the Dual Occupancies on No 15 State Circle. As to

- the AAT appeal (A799/41), I suggest that that principle still applies to the properties in question.
- Section 3 summarised the "Traffic Factors" and I submit that they are unchanged at the present time.
 - The next section summarises, as it says, "Recent Policy Decisions" regarding issues of Dual Occupancy.
 - Firstly, this sets out that the NCA published in March 2000 a document specifying that it "would be inappropriate" to amend the National Capital Plan on the land fronting State Circle.
 - Secondly, it refers to the proposed Draft Amendment of the Plan on the very issue of the same land published in November 2000.
 - Thirdly, it summarises the matter of the dual occupancy approved on No. 15 State Circle. It sets out the speed with which the development was approved, commenced and implemented without any knowledge or advice to us until after I wrote to NCA on 30 June 2001. The NCA reply, dated 24 July 2001 set out, effectively, that neighbours had no rights except Administrative Decisions (Judicial Review) Act. By that date this matter was a "fait accompli". I attach a copy of that letter I received on 5 February 2002 from the NCA (dated 31 January 2002). This corrects the letter of 24 July 2001. This confirmed a phone call I received on 21 January 2002, from the "Canberra Times", saying that the NCA admitted it had made a mistake in the advice given to me in 2001.
 - Please note that the No. 15 buildings were only recently completed and that no sale has occurred.

So far as the present (revised) Draft Amendment 39 of the National Capital Plan is concerned, I make the following submissions:

1. The present residential leases facing State Circle in Forrest and Deakin should no longer be restricted to the purely residential "purpose" clauses inherited from the period before the building of Parliament House.
2. Whether the National or the Territory Authority is made responsible for the future development of this area, the objective should be the same.
3. The objective should be to decide the professionally appropriate land use for this special location.
4. There should be no detailed limitations set on proposed developments, such as the earlier "purposes" clauses or limitations set on "purely residential" areas elsewhere in either the Territory or National Capital Plan, or those in the present Draft Amendment.
5. The objective should be to invite the market to submit proposals which will be appropriate uses for the special location of this land.
6. If the National Capital Authority continues to control "purely residential" purpose clause leases, it should be required to comply with "public notification" procedures. This would be similar to Territory Plan procedures which are also common elsewhere in Australia.



Laurence G. O'Sullivan

11 Gawler Crescent
DEAKIN ACT 2600

Telephone 6273 2084

1 August 2001

The Secretary

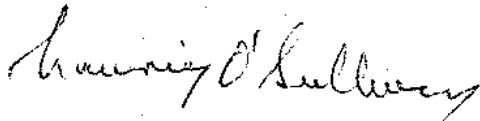
I attach Comments on the Draft Amendment 39 to the National Capital Plan for submission to the Joint Standing Committee on the National Capital and External Territories.

My apologies for the delay in lodging this submission, but there have been some new facts, which required me to change my original comments.

I had indicated to NCA that I should appreciate an opportunity to speak directly to the Joint Standing Committee.

Could I request that you pass to the Committee that it may be of advantage if some experienced persons be allowed to address it and possibly answer questions?

Sincerely

A handwritten signature in cursive script, appearing to read "L G O'Sullivan".

L G O'Sullivan

NATIONAL CAPITAL PLAN

Draft Amendment 39

Comments on the Residential Leases in State Circle

The proposals effectively pass jurisdiction for planning and development of the land from the Commonwealth and the National Capital Plan to the Territory and the Territory Plan.

This is wholly admirable and long overdue. It will remove the double levels of control that may have prejudiced proposals for development. There is still a problem of what is an appropriate use for the properties facing the Parliamentary area.

The NCA came to control purely residential areas in addition to its major national responsibilities from events before there was a decision to site Parliament House on the Hill. The new Parliament House was opened in 1988.

Our block, 17 State Circle, was first leased in 1958, at which time Capital Hill Hostel was the only building on the other side of the road. The rest was bushland. The traffic was moderate. These leases were on the edge of a prestige suburb.

So far as State Circle is concerned, the small group of private residences is an anomaly. They have no relation with the other side of the road. They are different from the rest of the Forrest residential area:

- as to residential amenity, they are not safe for families;
- as to market valuation, they are lower than even the houses in the streets behind; ie Somers and Canterbury Crescents; and
- as to traffic, it passes close to the houses.

If the jurisdiction for planning and development passes to the Territory Plan and PALM, it should be with full authority to decide the professionally appropriate land use for this special location.

1. Amenity

Residential amenity is affected by physical factors such as surrounding trees, ease of ingress onto the block, ease of preserving privacy and relation with neighbouring properties. Social factors are also essential, though hard to identify, and these help to allow family and friends to enjoy the ambience of a home and garden.

The test of this quality of housing blocks is the greater or lesser desirability in the eyes of prospective purchasers or tenants.

Between Hobart and Melbourne Avenues, one has only to stroll along the State Circle and then Somers Crescent, being the street at the back of these houses. The trees, layouts of gardens and the quiet suburban roadway present a tangible difference of family neighbourhood as against a busy main road.

Compare the uses of State Circle houses in this same sector:

- Nos 15, 17 and 19 have a long history of being unable to attract and keep suitable tenants. Nos 15 and 17 have had to tolerate "groups" for years with a corresponding reduction in the condition of the buildings.
- Nos 21 and 23 have business or professional activities with a couple of adults normally.
- No 11 differs in being 4 units or flats without any noticeable neighbourhood activity. No 13 in the Fijian diplomatic residence with the same limitation.

We lost our "group tenants" in April 2000 and our agent found that we had to rectify the misuse of the property, costing us over \$20,000. Since then we have had one 6 month tenancy by a family, which terminated on 19 July 2001. The property was not considered suitable for a family with 3 small children.

2. Market Values

The market values of the houses facing State Circle are all lower than those in the streets behind, and in the rest of Forrest/Deakin designated area. With the exception of one sale in recent months (referred to below), the sales over several years were in the vicinity of \$400,000 to \$450,000. One of these blocks was valued by 3 independent valuers (1999) at \$420,000 plus or minus 5%. The house (No 56 Fergusson Crescent) next door to our own home in Deakin sold in the same range, and it is a much smaller house on a much smaller block than any of the blocks mentioned above.

In an AAT appeal on rates and land tax (AT99/41 dated 14 December 1999) regarding No 11 State Circle, there was a careful appraisal of comparable Forrest properties with a substantial reduction in favour of the appellant. The Tribunal referred to certain sales: "... their location in a quiet area with attractive outlooks suggests that they are not really comparable to the subject block which has a road frontage to a busy 4 lane traffic route. This was acknowledged in certain evidence before the Tribunal".

3. Traffic Factors

Over the years, I have submitted several times that a professional traffic survey should be undertaken for use by professional planners to assess the changes since "residential purposes" were first specified. This would provide a firm foundation on which to decide an appropriate "purpose" for re-development.

On one occasion, I was informed that the members of a NCA Committee drove around the relevant area and saw no serious problem of traffic. I understand that no professional survey has been undertaken.

The speed limit in State Circle is 70 km per hour. It is noteworthy that both Melbourne and Hobart Avenues have the new signs (at their junctions with State Circle) showing the end of the 50 km per hour area.

Whoever decided to erect those signs clearly did not consider State Circle to be a 50 km residential area.

The most important point, as mentioned to me by several sub-tenants over the years, is the other streets feeding into State Circle have carriageways separated by large grassed and tree-lined nature strips, eg Melbourne, Hobart and Canberra Avenues. Living on State Circle means being close to the actual 4 lanes of traffic going at speed. We "double-glazed" the bedrooms in No 17 many years ago because of that sound problem.

In simple summary, these blocks are different in the substantial impact of the traffic on their residential ambience. This factor should be professionally analysed before committing future planners to continuing the 1958 "purpose clauses".

RECENT POLICY DECISIONS

In March 2000, the NCA published "Parliamentary Zone Review" with Background Papers, one of which dealt with "State Circle Residential Areas". This stated (page 3): "The residential blocks, the site of St Andrew's Cathedral and State Circle itself are all Territory Land administered by the ACT Government. The rest of the land fronting State Circle is National Land ...". It emphasised that change "can be achieved through existing policies of Dual Occupancy ... and for the conduct of Business on Residential Land" (page 12).

The conclusion was: "... that to propose an amendment of the National Capital Plan would be inappropriate" (page 12).

In the event a draft of this Draft Amendment 39 was issued dated November 2000

I also understand that No 15 State Circle was sold in April 2001 for \$650,000. If so, this is a considerable change from all previous sales of these houses.

Without any warning to other adjacent lessees, or ourselves (No 17), work commenced in June to dismantle the house and clear the vegetation from No 15 to a bare block.

I wrote to the NCA on 30 June on this matter. I received a reply dated 24 July, on 28 July, effectively 1 month later. I was informed that Works Approval was granted on 30 May 2001 to "two-storey dual occupancy residential development". The letter stated that "assessment for Works Approval in Designated Areas does not involve public consultation", and also that there is no provision for appeals under the Act. The letter referred to "recourse under the *Administrative Decisions (Judicial Review) Act, 1977* as to whether the NCA's decision was correctly made."

I have some acquaintance with that Act and consider that it would allow a Court to distinguish a decision regarding a private home building from the major decisions made by the NCA in implementing the National Plan regarding roads and parks and public buildings. However, the matter was a "fait accompli" before we could look to our rights.

Territory Land, under the Territory Plan, requires "Public Notification", and for dual occupancies (or unit titles), there is a 10 day time period in which adjacent landowners can submit written comments or objections to proposals for development.

It was known to some members of the NCA that I intended to raise the Draft Amendment 39 at a "Parliamentary open enquiry" (letter of 8 January 2001).

This dual occupancy immediately alongside our own property must affect its value and must also affect the sort of development that can be made on our block.

In previous correspondence with the NCA, I stated, regarding dual occupancy, that it was not an appropriate redevelopment: "The block would be no more desirable than it is at present. The traffic and the loss of residential amenities will make it unsuitable for such investment." (letter of 30 October 1998).

In view of the information I have provided in this submission, it may well be that that opinion will be found correct.

However, the Standing Committee is concerned with the future.

My Comments are designed to assist in future developments by emphasising some facts which, for whatever reason, have not been recognised. Others have also repeatedly made such submissions over many years without receiving any substantial official response.

I should emphasise that I have reason to praise some NCA officers for their openness and competence. However, this has not been reflected in policy responses on most occasions regarding this special problem.

However, this Draft Amendment 39 is an excellent response except insofar as it repeats the long-running policy of purely residential "purpose" clauses for an area to which it is no longer suited.

SUMMARY

The amendment to pass jurisdiction to the Territory and the Territory Plan is supported.

However, the Territory planners should be left professionally responsible for their decisions. There should be no implication that their hands are tied by detailed limitations on the power they will be given.

The Territory planners have shown their professional excellence in the surrounding Forrest/Deakin areas which are not Designated.

Future development of this special area should show the same quality.

L G O'Sullivan
L G O'Sullivan

1 August 2001



NATIONAL CAPITAL AUTHORITY

File 01/149
Job No.: 10003

Mr Laurie O'Sullivan
11 Gawler Crescent
Deakin
ACT 2600

Dear Mr O'Sullivan

RESIDENTIAL REDEVELOPMENT OF FORREST SECTION 6 BLOCK 6

I refer to your letter dated 30 June 2001 regarding the proposed redevelopment on Forrest Section 6 Block 6. I understand that you and your wife are the joint owners of the adjoining block.

The subject site is within a Designated Area of the National Capital Plan (the Plan). The Plan sets out the land use policy for the site and the detailed conditions of planning, design and development. The National Capital Authority is responsible for assessing development applications in Designated Areas for Works Approval pursuant to Section 12(1)(b) of the *Australian Capital Territory (Planning and Land Management) Act 1988* (the Act).

Assessment for Works Approval in Designated Areas does not involve public consultation. The Authority, in assessing development proposals, is only obliged to consider the relevant provisions of the National Capital Plan to ensure that the proposal is consistent with the relevant provisions of the Plan.

In May 2001, the Authority considered a proposal for a two-storey dual occupancy residential development on the subject site. The proposal was found to comply with the relevant provisions of the National Capital Plan and therefore Works Approval was granted on 30 May 2001.

With regards to planning appeals, I would like to advise that the Act does not make any provision for appeal against a decision of the Authority to approve or not approve works in the Designated Areas. There is however, the opportunity for recourse under the *Administrative Decisions (Judicial Review) Act 1977* to determine if a decision of the Authority has been correctly made.

Should you wish to view the approved drawings on the development proposal, you may contact the project architect Mr Peter Byfield on 6295 0070.

I hope this advice is of assistance. Should you have any query or need further advice on the matter please do not hesitate to contact Douglas Barnes on 6271 2864.

Yours sincerely,

SHAMSUL HUDA
Acting Director
National Capital Plan (Development)

24 July 2001



...of the National Capital in the hearts of all Australians

Mr. Laurie O'Sullivan
11 Gawler Crescent
DEAKIN ACT 2600

Dear Mr O'Sullivan

BLOCK 6 SECTION 6 FORREST – DUAL OCCUPANCY

I am writing to confirm the advice I gave to you by telephone on Friday regarding the Dual Occupancy on the above block. I also refer to the correspondence we had on the matter last year.

On 24 July 2001, in response to your letter of 30 June 2001, the Authority set out the general consultation arrangements applying to works within Designated Areas. We also responded specifically to your question about appeal rights.

The Policies on Dual Occupancies of Detached Housing Blocks has a particular provision that requires the Authority to obtain an assurance from the applicant that defined neighbours have been informed of the proposal. As a result of a procedural oversight, verification was not sighted. As advised, the Authority has amended its procedures to avoid such a problem occurring in the future.

Under the policies defined neighbours can comment on the Design and Siting aspects of the proposal but not on the dual occupancy proposal itself. I am advised that the applicant did contact the other two defined neighbours and also attempted to contact you. The applicant has advised the Authority that he contacted the tenants in your house at 17 State Circle but they did not know how to contact you. At that point the applicant left for a 6 week overseas trip and asked his architect, Mr. Peter Byfield, to contact you.

I understand that you spoke to Mr. Byfield by telephone and that you spoke with the applicant himself on his return from overseas. I note, however, your advice that you have not actually sighted the plans to date. The lessee has offered to show you the plans at the Authority. If you could advise me of a time and date that is convenient to you, early next week, I will make the necessary arrangements.

I can be contacted on 6271 2840 or by email at david.wright@natcap.gov.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read "David T. Wright".

DAVID T. WRIGHT
Director
National Capital Plan
31 January 2002