

The Question of Planning Control

Background

The Dual Planning System

2.1 In his account of the design of Canberra the late Paul Reid argued that:

the Canberra of today is not Griffin's city, it is the creation of the NCDC. In 30 years the Commission changed Canberra from a large country town into a beautiful small city, fully integrated with its natural setting, well served by urban services and by a network of freely flowing highways. It is a model of the best urban development practice of the mid and late twentieth century.¹

The Advent of Self-Government

2.2 In 1989 the National Capital underwent a significant change in the way it was managed. The advent of self-government for the ACT saw responsibility for the National Capital separated from the administration of the Territory.

2.3 Although the responsibilities for city planning were transferred to the new Territory government, the Federal Government retained responsibility for Canberra's role as the National Capital. The National Capital Development Commission (NCDC) was abolished, replaced by the

¹ Paul Reid, 2002, *Canberra following Griffin: A Design History of Australia's National Capital*, National Archives of Australia. p. 322.

smaller National Capital Planning Authority, “charged with protecting the city’s national capital significance”.²

- 2.4 The *Australian Capital Territory (Planning and Land Management) Act 1988* introduced two separate plans, and two separate planning authorities, for Canberra.³ The potential for the two planning systems to clash is addressed by Section 26 of the Act which requires that the Territory Plan not be inconsistent with the National Capital Plan.⁴ Both planning authorities recognise the challenges of working together.
- 2.5 The framework for land use and development throughout the Territory is provided by the National Capital Plan. Within this framework, the National Capital Plan has designated specific areas as having “the special characteristics of the national capital”.⁵ The National Capital Authority has responsibility for “determining detailed conditions of planning, design and development, and for works approval” in the Designated Areas.⁶ These designated areas “determine the extent of the Federal Government’s influence over the future of the city”.⁷

The Question of Uplift

- 2.6 In March 2000 PALM proposed to the NCA an amendment of the National Capital Plan to remove the Designated Area status of the Deakin/Forrest area. The effect of this proposal would be to bring the area into line with other residential areas in the ACT in terms of planning control.
- 2.7 Although the initial response of the NCA was to reject PALM’s proposal, it undertook to:
- explore whether changes to development controls in the Plan would overcome the differences that existed for residential areas between the National Capital Plan and the Territory Plan (consistent with the national significance of the area).⁸

2 Paul Reid, 2002, *Canberra following Griffin: A Design History of Australia’s National Capital*, National Archives of Australia. p. 323.

3 *Australian Capital Territory (Planning and Land Management) Act 1988*, Part III – The National Capital Plan & Part IV – The Territory Plan.

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

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

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

7 Paul Reid, 2002, *Canberra following Griffin: A Design History of Australia’s National Capital*, National Archives of Australia. p. 327.

8 National Capital Authority, *Submissions*, p. 116.

- 2.8 The outcome of the NCA's deliberations was the first version of Draft Amendment 39 released in November 2000. The Designated Area status would be uplifted from all the residential blocks in the area. Jurisdiction for detailed planning and development control on the land would pass from the Commonwealth and National Capital Plan to the Territory and the Territory Plan.⁹ In order to protect the residential character of the area a set of aesthetic principles and guidelines would be incorporated into the National Capital Plan. PALM would assume responsibility for approving development in the area through the Territory Plan. Development could not, of course, be inconsistent with the provisions of the National Capital Plan. The Committee notes that the principal reason for this original version of Draft Amendment 39 was to uplift the Designated Area status.
- 2.9 Following a period of consultation, the NCA released a revised version in June 2001. Version two of Draft Amendment 39 also proposed to uplift the Designated Area status, but introduced a more prescriptive set of controls on land use and development. Following the announcement of proposed variations to the Territory Plan by the recently elected ACT Government, the NCA released version three of Draft Amendment 39 in April 2002. The principal change in version three is that the Designated Area status of the precinct would be retained.

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

Table 1 Provisions of Draft Amendment 39, National Capital Plan

	Version One (November 2000)	Version Two (June 2001)	Version Three (April 2002)
Designated Area Status	<i>Uplifted</i>	<i>Uplifted</i>	<i>Retained</i>
Land Use Policy	<i>Residential</i>	<i>Residential</i>	<i>Residential</i>
Commercial Accommodation		<i>Prohibited</i>	<i>Prohibited</i>
Development in proximity to the Lodge	<i>Building design to reflect dominant urban design of area</i>	<i>Building design to reflect dominant urban design of area</i>	<i>Building design to reflect dominant urban design of area</i>
Building Height	<i>Not more than two storeys</i>	<i>No more than two storeys & no point more than 8 metres above ground</i>	<i>No more than two storeys & no point more than 8 metres above ground/ mandatory two storeys on State Circle</i>
Architectural Treatment on State Circle	<i>Reflect residential character/ No unarticulated walls, repetitive use of design elements or use of materials/colours dominating streetscape</i>	<i>Reflect residential character/ No unarticulated walls, repetitive use of design elements or use of materials/colours dominating streetscape</i>	<i>Reflect residential character/ No unarticulated walls, repetitive use of design elements or use of materials/colours dominating streetscape</i>
Set back	<i>Generous distance/no structures erected in setback area</i>	<i>Landscape area at least 10 metres in depth across front/ no structures except courtyard walls permitted/ courtyard walls no higher than 1.8 metres & no closer than 6 metres from State Circle property boundary</i>	<i>Landscape area at least 10 metres in depth across front/ no structures except courtyard walls permitted/ courtyard walls no higher than 1.8 metres & no closer than 6 metres from State Circle property boundary</i>
Landscape	<i>Soft planting in front/ avoid large areas of exposed hard surfaces</i>	<i>Soft landscape setting in front/ avoid large areas of exposed hard surfaces</i>	<i>Soft landscape setting in front/ avoid large areas of exposed hard surfaces</i>
Plot Ratio		<i>Not to exceed 35%</i>	<i>0.4 for existing blocks/ up to 0.6 where sites are amalgamated</i>
Vehicular Access to/from State Circle	<i>Reduced</i>	<i>Reduced</i>	<i>Reduced</i>
Signage on State Circle	<i>Regulated to have low visual impact</i>		
Roof Mounted Infrastructure	<i>Located to have low visual impact</i>	<i>Located to have low visual impact</i>	<i>Located to have low visual impact</i>
Home Occupations/ Businesses			<i>Amend Appendix N of National Capital Plan</i>

Source Draft Amendment 39, National Capital Plan

The Territory's Position

- 2.10 The ACT Government point out that “various complexities emerge in the ACT where Territory Land is subject to designation under the National Capital Plan”.¹⁰ Most of the roughly 121,000 residential dwellings in the ACT are subject to the Residential Land Use Policies and the Design and Siting Codes laid out in the Territory Plan.¹¹ But the 86 dwellings in Deakin/Forrest precinct are subject to the Design and Siting Conditions in Appendix H of the National Capital Plan together with appendices M (Residential Land Use), N (The Conduct of Business on Residential Land), O (Aged Persons Accommodation) and P (Dual Occupancy of Detached House Blocks).¹²
- 2.11 In terms of lease applications and variations all residential dwellings in the ACT, including the 86 dwellings in the Deakin/Forrest precinct, are subject to the policies in the Territory Plan and the procedures outlined in the relevant Territory legislation.¹³ But with respect to any works in the precinct, approval must be sought from the NCA.¹⁴
- 2.12 An example of the complexity this requirement adds to the development process is provided by the recent case of No. 15 State Circle (block 6, section 6, Forrest). The requirements for and process of administering development applications on Territory Land is set out in Part 6 of the ACT *Land (Planning and Environment) Act 1991* (the Land Act) and the ACT *Land (Planning and Environment) Regulations* (the Regulations). As Mr Garrick Calnan of ACT Planning and Land Management points out, if No 15 State Circle was not located in a designated area under the National Capital Plan, the dual occupancy development would have been subject to the development application process set out in the Land Act.¹⁵ Under this process public notification requires 15 business days.
- 2.13 The Regulations, however, exempt development that is located in a designated area (other than lease variations) from the requirements of Part 6 of the Land Act. The reason for this exemption is that development in these areas is subject to works approval by the NCA under the Commonwealth *ACT (Planning and Land Management) Act 1988*. Mr Calnan

10 ACT Government, Submissions, p. 179.

11 Mr Garrick Calnan, Transcript, p. 3.

12 ACT Government, Submissions, p. 180.

13 Mr Garrick Calnan, Transcript, p. 3; The *Land (Planning and Environment) Act 1991* is the ACT's integrated legislation dealing with all aspects of planning, environmental management and land administration (except unit titles and compulsory land acquisition); To vary a lease means to add, remove or change one or more of its provisions.

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

15 Mr Garrick Calnan, Submissions, p. 187.

notes that if there was no exemption, development would have to be approved under both Territory and Commonwealth legislation.¹⁶

- 2.14 However, if a variation to the lease was required, then a development application would still need to be lodged under the Land Act as lease variations in designated areas are not exempted by the Regulations. Mr Calnan notes that it appears no lease variation was required for the dual occupancy proposal at No 15 State Circle and therefore no development application was required to be lodged with the Territory.¹⁷
- 2.15 The residents/lessees in the Deakin/Forrest precinct are thus “subject to different legislative and procedural requirements” from their counterparts elsewhere the ACT.¹⁸ This is despite the fact that “the land is Territory land and is privately leased by Territory citizens”.¹⁹ The ACT Government believes this arrangement is not appropriate, and that it
- raises issues of consistency and equity in terms of the varying options available for lease holders under the respective policies and the different approval processes applying to development under the relevant legislation.²⁰
- 2.16 The ACT Government, through PALM, acknowledge that given the national significance of the area, the Commonwealth has a role in determining appropriate planning outcomes.²¹ However, PALM believes that the Commonwealth’s interest in protecting the national significance of the area can be guaranteed without retaining the Designated Area status.
- 2.17 PALM propose incorporating into the National Capital Plan special planning and development requirements for the area similar to those, outlined in Part One of the Plan, applying to Main Avenues and Approach Routes.²² These requirements include:
- Development, except in relation to Northbourne Avenue, is to conform to Development Control Plans (agreed by the Authority) which seek to secure the integrity of the Main Avenues as approaches to the Parliamentary Zone and ensure that the setting, buildings and purposes of development enhance that function.
- Development Control Plans and (in relation to Northbourne Avenue) development shall:
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16 Mr Garrick Calnan, Submissions, p. 187.

17 Mr Garrick Calnan, Submissions, p. 187.

18 Mr Garrick Calnan, Transcript, p. 3.

19 Mr Garrick Calnan, Transcript, p. 5.

20 ACT Government, Submissions, p. 180

21 Mr Garrick Calnan, Transcript, p. 3.

22 Mr Garrick Calnan, Transcript, p. 3.

(i) make provision for national uses, offices for national associations, tourist accommodation and residential development.

(ii) seek high standards of building design and finish. External materials should be predominantly light in tone and require little maintenance. Continuous glass facades should be avoided ...

(iii) incorporate the following where Main Avenues are the final approaches to the Parliamentary Zone:

⇒ building height controls to ensure that buildings are at least 3 storeys in height unless specifically shown otherwise in an agreed Development Control Plan. Plantrooms to be additional to these heights

⇒ building lines, to be 10 metres unless specifically shown otherwise in an agreed Development Control Plan. The area in front of the building line is to be landscaped, and exclusive of parking. Minor encroachment of basement parking into this area may be considered ...²³

2.18 State Circle is listed as a Main Avenue in the Plan, as well as being a designated area. However, for the purposes of special requirements, State Circle is not listed as it is a Designated Area. PALM note that if Designated Area status were removed from the Deakin/Forrest precinct, the special requirements for Main Avenues would apply to State Circle and could be extended to include the rest of the precinct.²⁴ These requirements would then be reflected in the Territory Plan as determined by the Act. This would entail “preparation of a draft variation to the Territory Plan for public release”.²⁵

2.19 The ACT Government remains concerned with the “additional complications” that Designated Area status introduces into the development approval process.²⁶ Therefore it continues to favour the uplifting of the Designated Area status from the precinct and does not “support the revised Draft Amendment”.²⁷

The NCA's Position

2.20 The first version of Draft Amendment 39 sought to “remove the Designated Area status” of the Deakin/Forrest precinct.²⁸ The NCA

23 National Capital Authority, Consolidated *National Capital Plan, 2001*, p. 75

24 Mr Garrick Calnan, Transcript, p. 4.

25 Mr Garrick Calnan, Transcript, p. 4.

26 Mr Garrick Calnan, Transcript, p. 5.

27 ACT Government, Submissions, p. 180.

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

appears to have been persuaded by the fact that the Deakin/Forrest precinct is the only residential land effectively under its control and the planning and development inconsistencies between the two jurisdictions. Following PALM's proposal in March 2000 to uplift designation, the NCA and PALM discussed opportunities for development in the area, ranging from commercial uses to the residential uses that currently exist and which the draft amendment proposes to retain. At the time, the NCA felt that with adequate controls in place, it would be appropriate to propose uplifting designation.²⁹

2.21 Whilst providing for more prescriptive planning and development controls for the precinct, the second version of Draft Amendment 39 released in June 2001 also proposed to remove the Designated Area status.

2.22 On 6 December 2001 the ACT Government introduced an interim measure restricting the number of dual occupancies in Canberra's suburbs - *Draft Territory Plan Variation No. 192 (Residential Land Use Policies for Dual and Triple Occupancy Housing)* - (DTPV192).³⁰ The ACT Government also announced that it would undertake a comprehensive examination of the Territory's residential development policies. By limiting to 5% the number of dual occupancies in each residential section, DTPV192 effectively placed a "moratorium on such developments".³¹ The NCA decided to:

wait and reconsider whether it was appropriate to uplift designation because we might be introducing layers of complexity that would in fact block the urban outcomes that we sought to achieve.³²

2.23 On 7 December 2001 the NCA "agreed to reconsider the merit of uplifting Designation".³³ Consequently the NCA prepared version three of Draft Amendment 39 in which Designated Area status for the precinct is retained. On 30 May 2002, following its review of existing Territory residential planning policies, the ACT Government released *Draft Territory Plan Variation No. 200 (Residential Land Use Policies, Modification to Residential Codes and Master Plan Procedures)* - (DTPV200). DTPV200 is planned as a forerunner to a more comprehensive review of the residential design and siting codes in the Territory Plan.³⁴ By imposing restrictions on plot ratios, single storey limits for a second dwelling, and prohibiting

29 National Capital Authority, Transcript, Senate Estimates Committee Hearings, 30 May 2002, p. 402.

30 National Capital Authority, Submissions, p. 120.

31 National Capital Authority, Submissions, p. 120.

32 Ms Annabelle Pegrum, Transcript, p. 23.

33 National Capital Authority, Submissions, p. 119.

34 *Draft Variation to the Territory Plan, No. 200: Residential Land Use Policies, Modification to Residential Codes and Master Plan Procedures*.

block amalgamation or unit titling, DTPV200 should have the effect of directing redevelopment pressures away from ‘Suburban Areas’.³⁵ The Committee, however, notes that this may not necessarily be the outcome given that the NCA would still be able to stipulate specific conditions for the area as a condition of uplift.

- 2.24 The NCA believes the Deakin/Forrest Designated Area would fall within the definition of a ‘Suburban Area’ under DTPV200.³⁶ Therefore, if uplift did go ahead and the Territory had planning control of the area, multi-unit redevelopment would be prohibited and dual occupancy limited. Therefore in the NCA’s view the design outcomes it wants to encourage for the area, in keeping with its national significance, would be threatened.³⁷

The Views of the Residents/Lessees

- 2.25 Of the 11 other individuals and organisations that provided submissions to the Committee, six oppose removing the Designated Area status from the precinct albeit for different reasons, three favour removing Designated Area status, and two did not express a view.
- 2.26 Sir Lenox Hewitt, a lessee in the area, believes that the NCA has not satisfactorily justified its proposed “radical alterations of April 2002” to the original “laudable’ intent of Draft Amendment 39, to remove the Designated Area status from the precinct.³⁸ Sir Lenox shares the view of PALM that the area, in particular that part fronting State Circle, should be treated in the same fashion as the other Main Avenues listed in the National Capital Plan.³⁹
- 2.27 Dr Boardman, another resident/lessee, however, believes the land, especially that fronting State Circle, is “too close to the National Parliament to warrant transfer of the responsibility to the Territory”.⁴⁰ In addition, he points out that the Commonwealth “should retain the right to know what will be the overall development there in 30 or 40 or 50 years”.⁴¹
- 2.28 Mr Malcolm Smith, former Chief Planner of the National Capital Planning Authority, “strongly” supports the retention of the Designated Area status.⁴² Mr Smith points, firstly, to the national significance of the area.

35 National Capital Authority, Submissions, p. 121.

36 National Capital Authority, Submissions, p. 121.

37 National Capital Authority, Submissions, p. 121.

38 Sir Lenox Hewitt, Submissions, p. 176.

39 Sir Lenox Hewitt, Submissions, p. 177.

40 Dr Keith Boardman, Submissions, p. 2.

41 Dr Keith Boardman, Transcript, p. 45.

42 Mr Malcolm Smith, Submissions, p. 37.

He notes that “the role and form of State Circle can be traced back to Griffin, and has been re-enforced by successive planning administrations since”.⁴³ Secondly, Mr Smith believes the Territory would be “unable to assure that the quality of new development in the area would be commensurate with its national capital significance”.⁴⁴ PALM is focused on achieving compliance with the Territory Plan and policies and, therefore, in his view:

most assessment officers (in PALM) would not have the necessary skill and experience to undertake assessment of development proposals in areas of national capital significance”.⁴⁵

2.29 Mr Smith also refutes the argument that only land fronting State Circle is of national significance and therefore should be the only part of the Deakin/Forrest area under the Commonwealth’s control.⁴⁶ He believes that the area is a homogeneous one and that this homogeneity should be protected through a consistent set of planning controls. According to Mr Smith, National Circuit, therefore, is the appropriate outer boundary for the Designated Area, “particularly as it represents the Designated Area boundary in the contiguous areas of Forrest and Barton”.⁴⁷

2.30 Mr Richard Drummond, a developer, points out that even if jurisdiction for detailed planning and development control for the land passed to the Territory, the NCA would continue to apply policies and aesthetic principles through the National Capital Plan to protect its national significance.⁴⁸ The effect of passing jurisdiction to the Territory will, therefore, simply be to “add another layer of consent authority”.⁴⁹ He suggests that:

whilst we may disagree in terms of the ultimate design outcome, it is simpler for us to negotiate with the National Capital Authority under a performance based set of controls rather than having to run through two authorities.⁵⁰

43 Mr Malcolm Smith, Submissions, p. 37.

44 Mr Malcolm Smith, Submissions, p. 38.

45 Mr Malcolm Smith, Submissions, p. 38.

46 Mr Malcolm Smith, Submissions, p. 39.

47 Mr Malcolm Smith, Submissions, p. 39.

48 Mr Richard Drummond, Transcript, p. 66.

49 Mr Richard Drummond, Transcript, p. 66.

50 Mr Richard Drummond, Transcript, p. 66.

The Committee's Views

- 2.31 Part of the planning challenge is to balance Canberra's role as the National Capital with the needs of the ACT Government to manage the city for its residents. Whilst sensitive to the latter, the Committee has a responsibility to safeguard the National Capital significance of Canberra for all Australians. The Committee is of the view that the Deakin/Forrest residential precinct is an area of national significance. The significance of State Circle for the National Capital can be traced back to the Griffins' original plan for Canberra. This significance has also been enhanced since the construction of Parliament House on Capital Hill.
- 2.32 The Committee is sympathetic to the concerns of the Territory and some residents/lessees, that by isolating one small residential precinct from the rest of Canberra, designation has complicated planning and development processes for residents/lessees of the area. The Committee also appreciates the desire of the Territory authorities to remove these complications in the interests of consistency and equity throughout the Territory.
- 2.33 The Committee notes that although the majority of the individuals and organisations who made submissions to the inquiry favour retaining Designated Area status there were a variety of reasons for this. The Committee acknowledges the concern of the NCA that current and proposed changes to Territory residential policies, such as those proposed in DTPV200, have created a degree of planning uncertainty. In the circumstances the Committee believes that the NCA's decision not to include uplift of the Designated Area status in version three of Draft Amendment 39 is appropriate.
- 2.34 The Committee also acknowledges the view held by Mr Malcolm Smith among others that the area fronting State Circle should not be separated from the rest of the precinct. The Committee agrees that National Circuit is the appropriate outer boundary for the precinct.

Recommendation 1

- 2.35 **That Designated Area Status applying to the Deakin/Forrest residential area between State Circle and National Circuit be retained.**

