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INQUIRY INTO THE ROLE OF THE NATIONAL CAPITAL AUTHORITY – FURTHER SUBMISSION BY PLANNING INSTITUTE OF AUSTRALIA

Preamble

Following presentation of its submissions on 23 April 2008, the Planning Institute of Australia (PIA) was asked by the Joint Committee to provide further comments on the proposals made by the National Capital Authority (NCA), in particular on how to guarantee development compliance with the key National Capital planning principles.

Main proposals by NCA

The NCA's main proposals for change from the current arrangements for planning in the ACT are as follows:

1. *The current Authority membership should be expanded to broaden its professional and national and local representation. An additional appointment of an Australian Government Architect is proposed to have a mandated position as a member of the Authority (Position Paper –*

GOVERNANCE).

2. There should be an amendment to the PALM Act to require a comprehensive review, jointly with the ACT Government, of the General Policy Plan – Metropolitan Canberra every five years. The NCA note that ideally this requirement should be cross-referenced in the ACT Planning and Development Act 2007, replacing the current requirement for the ACT to have its own “planning strategy” (Position Paper – PLAN page 29) .
3. The scope of Designated Areas should be reviewed and renamed Areas of Special National Importance. These should cover national capital functions, national public places, the geometry and layout of the city and the diplomatic areas (see map 4.4). These areas should remain or become National Land (Position Paper – PLAN p.31).
4. Remove from the National Capital Plan areas with Special Requirements (which require Development Control Plans approved by NCA) (Position Paper – PLAN p.34).
5. The Australian Parliament continue to give approval to all works in the Parliamentary Zone and to give approval to concept designs for major development [>\$15 million] in other Areas of Special National Importance, with NCA giving final approval to works (Position Paper – PLAN p.37).
6. A single fully integrated planning document should be prepared to incorporate the principles and policies of the National Capital Plan and the detailed requirements of the Territory Plan This can be achieved through amendments/variations as necessary to both Plans and using NCA's 3D digital format (Position Paper – PLAN p.39).

PIA's comments on NCA proposals

1. Broaden Authority membership.

PIA agrees with the proposal to broaden the representation on the NCA Board. While there may be value in the specific proposal to appoint an “Australian Government Architect”, PIA believes that it is much more important to ensure broad and appropriate mix of skills on the Board to effectively oversee its statutory functions. This must include at least one highly competent and experienced Planning professional. Ideally there should be a balance on the Board between the Commonwealth and the Territory's interests. This would ensure that the Board has the benefit of advice, experience and expertise on the strategic issues associated with setting the planning directions for the National Capital. PIA also proposes that representation from the surrounding NSW region would be highly desirable.

Models for broadened representation exist in other cities, and might be considered as better practice. The NCA's paper on the *Capital Cities Alliance*, attached to its submission, notes that Ottawa's National Capital Commission (NCC) has 15 members, including eight from Canada's regions, and Washington's National Capital Planning Commission has 12 members. In the latter case, the President appoints three members including the Chair and one each from Virginia and Maryland, the states adjoining the District of Columbia (DC). The Mayor of DC appoints two members, who must be residents of the city. All these members are required to have experience in city or regional planning. The remaining seven members are ex-officio, representing the Secretary of Defense (sic) and Interior, Administrator of General Services, Committees of the US Senate and House of Representatives responsible for DC affairs, Mayor of DC and Chairman of Council of DC.

The Western Australian Planning Commission (WAPC) [probably the most relevant current Australian model for the NCA] can have up to 15 members. These include an independent chairman, the directors general of seven government agencies and representatives from economic, social and environmental areas, local government, regional development and coastal management. The WAPC is serviced by a number of planning committees that have a range of expertise and local community knowledge (WAPC website – About us). Similarly, Ottawa's NCC has several advisory committees with experts from the professional, academic and business communities.

Note that none of the above governance models have a specific position of Government Architect on their Commissions. All recognise the pluralistic nature of planning and the need to access a wide range of expertise.

2. Primacy of National Capital Plan (Metropolitan Policy Plan) and comprehensive reviews, jointly with ACT Government, every five years.

PIA agrees with this proposal and that the Australian Parliament, through the NCA, *should continue to have ownership of the vision for the future development and character of the National Capital....and should not seek to abdicate its long term strategic planning responsibility for the National Capital* (NCA submission p. 29).

As was stated in PIA's presentation to the Committee, joint preparation and review of the National Capital planning direction is critical to better planning cooperation in the ACT and industry confidence. The NCA must take overall responsibility for this (and should be resourced to do it).

It would also be desirable for the Territory Plan to be comprehensively reviewed every five years following the review of the Metropolitan Policy Plan.

In a similar way WAPC is a statutory authority with functions including to prepare and keep under review a planning strategy for the State and State planning policies, as a basis for coordinating and promoting land use planning, transport planning and land development in a sustainable manner, and to prepare and keep under review region planning schemes (WAPC website – Functions).

Ottawa's NCC also has responsibilities to coordinate and facilitate planning in its immediate region.

3. Review the scope of and rename Designated Areas as Areas of Special National Importance.

PIA agrees with this proposal, subject to detailed discussion on the scope of these areas and the extent of National Land.

PIA notes however, that the removal of large areas (eg. the central hills and ridges as well as the main avenues and approach routes) from Designated Areas does not remove those areas from the strategic planning policies of the National Capital Plan (as renamed). The future direction and strategic policies of those areas should in future be developed jointly, and the detailed controls over those areas and the implementation of those would most appropriately reside in the Territory Plan consistent with the National Capital Plan component.

Regarding the issue of Call-in powers in those areas, see the paragraph later in this supplementary submission.

4. Remove from the National Capital Plan areas with Special Requirements

PIA agrees with this proposal, subject to the same caveat from point 3 about the National Capital Plan being able to have continuing strategic principles and policies applying to those areas.

5. Works approvals by NCA remain with the Australian Parliament in the Parliamentary Zone and for concept approval in Areas of Special National Importance.

The Australian Parliament should limit its role in the ACT to empowering the National Capital Authority to act on its behalf to determine jointly with the ACT Government, the strategic direction for the National Capital. It should not be involved directly in any individual development applications.

In Areas of National Importance, DA's may remain the responsibility of the NCA but should be administered in accordance with the processes set out in the Territory Plan. These are modelled on the Development Assessment Forum (DAF) leading practice framework which is strongly supported by PIA. The NCA should consult with the ACT government on DA categorisation and processes to ensure there is maximum consistency in processing between the two agencies.

New governance arrangements should also specify where the Territory is required to consult with the NCA in relation to development proposals, specifying particular Territory Land and/or classes of development. The NCA would become like other referral authorities required to be consulted under ACT legislation. This would enable the NCA to provide expert planning and urban design advice and views for significant development proposals across the Territory that might affect the character of the national capital. Where differences of view occur these could be referred for resolution to the Expert Panel proposed in section 6, below.

6. A single fully integrated planning document should be prepared to incorporate the principles and policies of the National Capital Plan and the detailed requirements of the Territory Plan.

PIA strongly supports this proposal. As indicated, the National Capital Plan should be a single Plan guiding both jurisdictions and presented in a consistent, highly accessible format. The Australian Parliament should retain ownership of the National Capital Plan and responsibility for its execution after being prepared and reviewed jointly through the NCA and the ACT Planning and Land Authority. The ACT Legislative Assembly should then determine and approve the remainder of the Territory Plan, and development assessment frameworks, again, following appropriate consultation with the NCA.

Relevant models for a 'single' statutory plan for the ACT

There is no directly comparable model for a single statutory plan covering different levels of government. Neither the international precedents (eg Washington) for the development of an integrated plan nor the WAPC provide a direct parallel with the proposed model for a single statutory plan for the ACT.

In most Australian State planning systems, detailed planning controls are set out in individual local government planning schemes, but these are designed to be consistent with and are always subject to State government approval after preparation by local authorities. State level strategic and regional plans are required in state jurisdictions be complementary.

The Victorian and SA Governments are working towards one functional system where the community is able to access strategic and development plans presented in consistent formats, via a single website. PIA strongly supports such a model for the ACT which provides for openness, clarity and transparency for all stakeholders.

PIA strongly supports the proposal for the National Capital Plan and the Territory Plan to be presented as a single plan. This will eliminate the risks of duplication, omissions and inconsistencies and minimise the potential for conflicting interpretation. This single 'National Capital Plan' should replace/incorporate the 'strategic' elements of the current Territory Plan. This single plan should be widely accessible, preferably electronically.

Consistent with the current requirement for the Territory to consult with the NCA in the preparation and variation of the Territory Plan, any variation to the planning documents governing the ACT needs to be undertaken consultatively and agreed between the two relevant agencies or referred to an Expert Panel to make a determination in the event of a difference of view.

How to guarantee development compliance with the key National Capital planning principles.

It is essential that there be a strongly shared vision for Canberra as the national capital, and as a city in its own right, between the Commonwealth and the Territory Government in the form of a single plan. It would not be appropriate for either the Australian Government or the ACT Government to seek independently to determine that vision, develop a strategic plan or implement a strategy for Canberra in its own right. Nor is it appropriate to continue to have two 'strategic plans' for Australia's national capital.

Currently, there is no mechanism for developing a truly shared plan or for resolving differing views that may be expressed by the Commonwealth and the Territory about strategic direction. Nor is there a mechanism for resolution of any conflicts in plan interpretation or decision making if a shared plan did exist.

Advice from the Australian Government Solicitor (AGS) in the NCA's second supplementary submission is that no legislative provisions exist to allow a decision by the Territory planning authority to be challenged on the basis that it is inconsistent with the National Capital Plan. However section 11(2) of the PALM ACT requires all government agencies (including those of the Territory) to act consistently with the National Capital Plan. According to the AGS, there is *potential for persons with legal standing to seek court orders to compel compliance with the obligations imposed by s 11(2) of the PALM Act. The Commonwealth Attorney-General would have standing to seek court orders to*

compel the Territory or a Territory authority to comply with the obligations imposed by s 11(2) of the PALM Act. Other Commonwealth Ministers and other elements of the Commonwealth might also have standing.

It would be highly unusual for the Commonwealth to take action against a state or territory government. Ministerial or government to government negotiation is more likely (and desirable) or conflict and poor outcomes where there is political conflict. It is highly desirable that any disputes between the NCA and Territory Planning authority be resolved independently, through open, transparent mechanisms, not through Ministerial or government intervention nor through the courts.

If the NCA board were more representative (as recommended earlier in this submission) of both the interests of the Territory and the Commonwealth, as well as including a higher level of planning expertise amongst its board members, there may be less opportunity for disputes to arise.

To complement reconstituting the NCA board, PIA also recommends the establishment of an 'Expert Panel' which could be constituted on an "as needs" basis, and called upon by either jurisdiction to arbitrate disputes. It would have at least the following five functions:

1. To arbitrate disputes in the development of a shared vision, strategic plan and principles for planning in the Australian Capital Territory (as proposed by the NCA);
2. To arbitrate any disputes arising in the conduct of the 5 yearly review of the plan and any specific purpose or other necessary reviews of the plan;
3. To determine changes to the plan after such reviews;
4. To recommend changes to the administrative mechanisms of each jurisdiction where flaws or deficiencies are identified; and
5. To make determinations on specific planning matters referred to it by either entity including:
 - a. Development proposals that are x-jurisdictional
 - b. Development proposals which were not envisaged by either entity in the development of the shared plan or their planning frameworks
 - c. Matters where which authority should take precedence is unclear or in dispute
 - d. Matters where the intention of the shared plan is unclear
 - e. Matters where there is an inconsistency in the plan which leads to dispute or needs clarification

- f. Any other matters both jurisdictions agree be referred to it for independent resolution

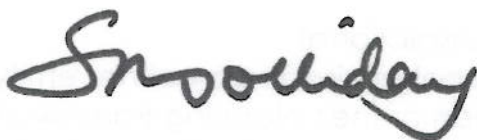
A number of the functions outlined in point 5, above, parallel those of a Development Assessment Panel as exists in the South Australian planning system which is considered by PIA to be leading practice in that it provides an open, independent mechanism for expert decision making.

The Expert Panel would need to be recognised in the statutes of both jurisdictions, but would be independent and empowered to make decisions which would be binding in both jurisdictions. It would be administered by the Commonwealth through the NCA and comprise seven members as follows:

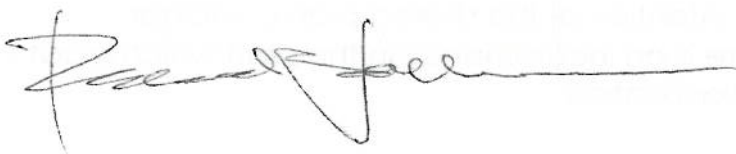
- An Independent Chair – Appointed by the Commonwealth Minister and not a member of the NCA or its board nor a representative of the ACT Government and with strong, high level urban planning experience and professional competencies
- Three Commonwealth Government appointees – with at least one being a planning professional and others having professional skills related to the built environment (eg architecture/landscape architecture/engineering/environment, etc) and/or planning law
- Three ACT Government appointees - with at least one being a planning professional and others having professional skills related to the built environment (eg architecture/landscape architecture/engineering/environment, etc) and/or planning law

The deliberations of this panel would be open, transparent and on the public record. The Panel would be empowered, at its discretion, to conduct public hearings, invite submissions and/or seek expert advice. It would be required to take evidence in all instances from both the NCA and the ACT Planning and Land Authority.

Yours sincerely



Sue Holliday, MPIA CPP, PIA National President



Richard Johnston FPIA CPP, President PIA ACT

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Concept Layout for Expert Review Panel

