

# Save Stirling Park Group

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Joint Standing Committee on the National Capital  
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## **Parliamentary Inquiry into the Allocation of Land to Diplomatic Missions in the ACT**

This submission to the Parliamentary Inquiry is lodged on behalf of the Save Stirling Park Group.

A brief summary of key points in the submission follows below.

The Save Stirling Park Group is happy to have this submission published and would be pleased to provide any further information sought by the Joint Standing Committee or to appear before the Committee.

### **Summary of Key Points**

1. The NCA should not have sole responsibility for both planning and developing diplomatic blocks and estates. This conflict can be avoided if DFAT becomes the developer, and the development is funded from the DFAT budget.
2. Countries which, according to DFAT, are waiting to establish a mission in Australia may lease suitable office premises for the chancery and rent or buy houses or apartments for the head of Mission and staff. There would appear to be no genuine cause for delay.
3. DFAT is almost certainly overestimating future demand to establish new diplomatic missions in Australia.

4. The NCA's calculation of only four diplomatic blocks being currently available does not withstand analysis.
5. The submission lists a range of property types suitable for the location of chanceries while residences may be anywhere from CBD apartments to houses in the suburbs.
6. Because Commonwealth land is "free", the decision to locate diplomatic blocks will always be skewed to Commonwealth land. A decision on this basis will usually not produce the best overall outcome.
7. Accordingly, "free" land should be valued and the developing agency should be required to purchase the land. This would constitute an instrument of financial discipline.
8. The submission lists a number of potential locations for future diplomatic estates.

Alan Cowan  
Secretary

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# **Inquiry into the allocation of land to diplomatic missions in the Australian Capital Territory**

## **1. The roles of the National Capital Authority, the Department of Foreign Affairs and Trade, the Government of the ACT (where applicable) and other relevant agencies**

### **NCA**

NCA is not an independent agency when it comes to new diplomatic estates. It is the proponent of the development but it is also the planning authority that approves the development. There should be a separation of these two responsibilities as happens in other normal property development.

In our view diplomatic property management should be the responsibility of either DFAT, because of the diplomatic relations aspects, or the Department of Finance and Administration because of their property management expertise.

### **DFAT**

The role of DFAT in the allocation of land to diplomatic missions is unclear. They have developed a very broad protocol (referred to later) covering the location of diplomatic premises. However, the protocol does not acknowledge that some chanceries are located in residential areas other than O'Malley, with the approval of the ACT Government. In June 2011 the NCA proposed seeking DFAT's view on the future need for and nature of diplomatic sites. It is not known if this happened. The JSCNCET may like to explore this question with DFAT.

To at least partially overcome the underlying conflict of interest for the NCA, there would be considerable merit in DFAT becoming the 'developer' i.e. bearing the cost, and the NCA would remain the planning authority. It would also have a financial disciplinary effect on DFAT if each new diplomatic block it requested became a cost to the DFAT budget.

### **ACT Government**

There needs to be closer cooperation between ACT Government and the Australian Government/NCA to coordinate ACT urban development with the need for diplomatic accommodation. Major developments such as new diplomatic estates also impact on ACT government infrastructure such as roads and utilities as well as affecting the ACT community.

The ACT Government represents the community in Canberra and there may be occasions where a proposed Commonwealth development impacts unfavourably on that community to such an extent that the ACT Government should be able to step in and protect the community interest.

At present, the ACT Government is able to object to the draft National Capital Plan, or an amendment to the that plan, in which case the Commonwealth Minister must refer the amendment to the ACT executive, and the Commonwealth Minister may or may not act on the ACT's views (s19-20A of the Australian Capital Territory (Planning and Land Management) Act 1988). If the Minister chooses not to act on the ACT Government's views, the Minister must table an explanatory statement in Parliament.

There is no statement in the relevant Act about what matters the ACT Government may take into account. While this gives the ACT government a wide discretion, it does not establish what the role of the ACT government in relation to the National Capital plan should be.

That role should be more clearly stated through an amendment to the Act. The amendment should allow the ACT Government to take into account any matters including the impact of any proposed amendment on community amenity, the Canberra economy, Canberra's environment, cultural heritage and water and air quality.

## **2. Forecast levels of demand and supply**

### **Demand**

There are two components of demand:

- (i) demand from countries which do not have a mission in Australia but which seek to be physically represented here;
- (ii) demand from countries which have an established mission here, but which, for their own particular reasons, would like to move to another part of Canberra.

In the case of (i) above, DFAT has advised the NCA that there are a number of countries which have expressed the wish to locate an embassy in Australia. DFAT either does not know, or refuses to disclose, how many. However, it seems inexplicable that a number of countries are 'waiting offshore' for a suitable diplomatic block to be allocated or for a diplomatic precinct to be developed when there is an obvious solution.

These countries could quickly resolve this delay by taking space for their chancery in an appropriate commercial building (see next section on 'Supply'). The Head of Mission and staff may then rent or buy houses or apartments in the Canberra CBD or suburbs as is the practice of most countries.

Apparently, after the countries referred to above have been accommodated, there would be a demand for approximately one diplomatic block for a new embassy per annum. There is no published basis for this calculation although in recent years this has tended to be the rate at which new missions have arrived in Australia. Presumably that is the basis for estimating future demand.

This is almost certainly an overestimation for four reasons:

- There has been a transformation in the efficiency and reliability of global communications. The necessity for a physical presence is declining every year. For many countries, the full use of modern communications supplemented by periodic visits from officials will constitute an adequate relationship with Australia.

- This is an era of austere economic conditions and a desperate need to reduce unproductive government expenditure. For many countries the high cost of a physical presence by way of a fully staffed, purpose built chancery on an allocated diplomatic block will simply be too high relative to the benefit gained.
- There are already close to 100 countries with physical representation in Australia. Assuming the several countries apparently waiting to receive a diplomatic block proceed to build their chancery, there will be over 100 countries physically represented here. The UN recognises 194 countries. The point is surely being reached where the number of countries wishing to come here is declining, because there is no actual need, or because they do not have the resources, or because Australia would not wish to grant that country diplomatic status or for other reasons.
- The arguments above raise another certainty. Some countries which are represented here will decide they no longer need a physical presence in Australia - because in trying to rein in debt and shrink government outlays, they can no longer justify the cost relative to the benefit. It will have been observed that many countries are already reducing the staff numbers in their embassies.

With regard to countries which already have an allocated diplomatic block on which they have a chancery but which would like to move elsewhere in Canberra, there is not a great deal to say. We should be guided by how we would expect other countries to respond i.e. “we are disappointed and it is unfortunate that your present site is not entirely to your liking but that is all that is available”.

**To summarise: logical analysis indicates the claimed existing demand to build chanceries is exaggerated and future demand is overstated.**

## **Supply**

According to the NCA (Fig 1 Briefing to JSCNCET Oct 2012) there are 15 vacant blocks throughout Canberra in the existing diplomatic estates. The NCA claim that of that 12 of them are vacant blocks in O’Malley, but of those, 11 are unsuitable for development for environmental reasons (unspecified), or because construction will be difficult leaving only 4 vacant blocks. This is despite the fact that the NCA acknowledges that similar properties in O’Malley have been sold to private developers and it hopes to be able to sell off these “surplus “ properties to the private sector and use the proceeds to offset the cost of developing a new diplomatic estate. The fact remains, nevertheless, that O’Malley has a large designated diplomatic estate.

It seems highly likely that sites in O’Malley are being rejected by the diplomatic community purely because they happen not to be their first preference. There are also a further 9

blocks that are “reserved for development” and have been for many years. It is not clear what this term means. Does it mean they are available for development (in which case they are vacant) or are they under negotiation with a particular country? If the blocks are vacant they should be made available to countries looking for blocks. If they are under negotiation the negotiations should be finalised as a matter of urgency and leases signed with the countries concerned, or the blocks should be put back into a pool to be available to other countries. Charging an annual holding deposit while leases are negotiated would expedite a resolution.

There are also another 15 blocks that have been leased but not developed. Some of these have been undeveloped for many years despite a requirement that construction starts within 18 months and is completed within 3 years. The block leased to Pakistan for example which is capable of being sub-divided into 2-3 blocks was first leased in 1958. It is understood that China will vacate up to seven properties or blocks in O’Malley when the major extension to its embassy is completed and presumably the site occupied by Russia will also become vacant when they develop their new block in Yarralumla.

The NCA also recognises that some 12 to 16 blocks can be freed up by sub dividing some of the existing very large blocks particularly in Yarralumla. This process is not without its difficulties but many of these countries are experiencing difficult economic times and may be willing to enter into such an arrangement. It should be seriously explored.

There are also about 71 leases in O’Malley that are Territory owned residential land that can be used for chancery purposes. Only some 33 leases are currently used for this purpose leaving about 38 potentially available.

Even if there are only 4 blocks left (as claimed by the NCA in DA 78) it should be noted that chanceries may occupy commercial premises or be built on commercially zoned land. Countries may also seek permission to use residential premises for their chanceries. This requires relief from the purpose clauses of Crown leases requiring them to be used for residential purposes

The claim that there is a shortage of options for the accommodation of chanceries in Canberra verges on nonsense. Contrary to the position adopted by the NCA, serious analysis indicates that there is considerable land currently available for chanceries to meet the short and long term demand.

The Joint Standing Committee may wish to consider requiring an audit of the supply and demand figures provided by the NCA and DFAT.

**In summary: NCA’s statement that there are only 4 suitable blocks in Canberra is, at best, utterly unpersuasive.**

**And incidentally, another unanswered question is: given that, according to DFAT, countries are queuing up to achieve representation, why have not at least the first four in the queue been allocated the ‘four vacant blocks’ and been permitted to begin building? What is the explanation?**

### **3. The suitability of current property types and other options to meet the different needs of diplomatic missions**

Chanceries can be housed in:

- diplomatic estates owned, developed and controlled by the NCA,
- commercial offices,
- premises on land zoned for commercial use,
- a specific residential area of O'Malley controlled by the ACT Government,
- other residential areas of the ACT with special approval.

Mostly, however, foreign missions have been provided with large blocks of land, many within "diplomatic estates" but some in residential areas. These chanceries are in inner Canberra in Yarralumla, Deakin, O'Malley and Red Hill. The large blocks are suitable particularly for large buildings or when a chancery issues visas or passports and car parking for visitors is required. Sometimes residences have also been sited within the block, but many are in separate locations.

However, a number of new factors make it necessary to consider other options in the future. These factors include:

- Increasing population pressure in Canberra, especially inner Canberra.
- Cost factors primarily lease or rent cost, especially in the case of new missions from smaller countries with limited resources.
- The transformation in modern communications, which makes physical location in the inner city near the Parliamentary Triangle no longer relevant - and, in any case, transport around the city has always been relatively easy.
- The critically diminishing availability of open space within the inner city area which would be available and which would be large enough to take significant numbers of large blocks.

Among other options, the following appear to be practicable:

#### **1. Commercial**

It would seem desirable and preferable, and ultimately inevitable, that office premises, presumably mainly in the CBD, should become the normal practice for accommodating

chanceries. There is an abundance of quality office space and this makes obvious sense particularly to small countries seeking a lower cost location.

## **2. Subdivision of existing large diplomatic blocks**

Many existing chanceries currently occupy very large blocks which could readily be subdivided to house an additional chancery. It is understood that some countries are actively considering such subdivision to reduce their lease costs.

## **3. Residential**

In general, chanceries should not be sited in residential areas for reasons given in Term of Reference 4 below. However, missions may buy or lease in residential areas to provide residences and, as noted previously, many do.

## **4. Private sector subdivision**

Another useful model is for the private sector to acquire land and develop a diplomatic estate much like a business park. This would have all of the benefits of a diplomatic estate but with the added advantage of not costing the Australian Government money.

# **4. Options for locations of future diplomatic estates**

We do not object to diplomatic estates as such, but with the global economy fighting declining rates of growth and high rates of unemployment, showy chanceries on large blocks are not in keeping with the times. It also needs to be recognised that chanceries are essentially office premises and are subject to the sorts of constraints to which a commercial business park would be subject. In particular they should not be located in residential areas where they will impact on the amenity of local Canberra residents.

Much of what is driving NCA's choice of diplomatic estate location are the general principles that such estates should be "established in places which are prestigious, have good access to Parliament House and other designated diplomatic precincts, and meet security requirements". The SGS Report (June 2012) claims these criteria are specified by DFAT and reflected in the National Capital Plan (NCP) although we are unable to find any such specification by DFAT or any reference in the NCP. We have already observed in this submission that in a city where movement is relatively easy, and communications modern and efficient, proximity to Parliament House, Government departments and other diplomatic precincts, ceases to be of importance in the location of a diplomatic estate in Canberra in the 21<sup>st</sup> century.

## **Suggested guidelines**

Apart from the vague principles above, there is no agreed guide to where a future diplomatic estate might go. The following are suggested guidelines for the location of any new diplomatic estate:

### **Meets long term needs**

In its report to the NCA (Report for Diplomatic Land Feb 2008) GHD noted that it “is simply more efficient for the resources of the NCA to concentrate on developing one large site over that of a range of individual sites with varying degrees of complexity and site constraints”. In this context and in the light of the NCA’s Draft Amendment 78 it is worth noting that the same report noted that “it is apparent that Stirling Ridge [Park] could not contain a significant number of diplomatic missions”. With the current proposal reduced to between 5 and 7 missions at Stirling Ridge [Park] this is now truer than ever.

#### **Appropriate price signals should apply**

If the Australian Government wishes to acquire land for diplomatic purposes from the ACT Government it does so at the land’s UCV for diplomatic land (NCA briefing to JSCACTET at paragraph 15). This is less than the value of land zoned for residential or commercial construction, but is still a significant cost. If the Commonwealth uses national land, the land is free.

It is clear that the “free” cost of Commonwealth owned National Land is a major attraction for DFAT and the NCA and will always skew the decision in favour of Commonwealth owned land. There therefore needs to be a price mechanism introduced to avoid such distortions in decision making.

Therefore the NCA should be required to survey and value any land it has been asked to re-zone for diplomatic development, and any agency promoting that development should purchase the land from the NCA at that valuation.

In the case of land for new diplomatic estates, this would mean that potentially suitable diplomatic land managed by the ACT government and ‘free’ land managed by the Commonwealth would be on a level playing field and the most appropriate land would be used.

#### **Estate is consistent with ACT’s urban development**

Any new diplomatic estate should preferably be developed as part of the opening up of new land where the infrastructure (roads, utilities) costs will be marginal or on land zoned commercial.

#### **Community use not alienated**

Estates should not be built on land that is valued and used by the community for recreational, educational, ecological, sporting and other community purposes.

#### **Does not harm the environment**

Diplomatic estates should not be located on land that is, or acts as a buffer to, environmentally sensitive land.

There should be a full and clearly documented environmental approval under the terms of the relevant acts. Water quality in nearby lakes, wetlands and creeks should be protected from run off and surrounding bushland should be protected from the escape of weeds from estate gardens.

#### **Minimal impact on local residences**

Estates should not be located where they will impact on existing nearby residences and cause a loss of amenity. Local residents should not be affected by increased traffic, increased risks to pedestrians, children, the elderly or cyclists and the visual impact from security lighting or security fencing.

**Has local and broader community support**

The citizens of Canberra have a right to say what planning and development goes on in the ACT.

**Will not impact on local traffic**

Estates should be located where the access roads are capable of handling not only the extra traffic generated by staff and visitors to the missions but also security patrols, deliveries, tour buses and there is sufficient off street parking for national days

**Protected from Bushfire**

Estates should not be located in areas of high bushfire risk.

**Protects both Indigenous and European heritage**

Estates should not be located on land that puts Indigenous and European heritage at risk. There should be a full and clearly documented heritage approval under the terms of the relevant acts. In the case of open bush land, aboriginal connection with country and ceremonial sites should be fully assessed, carefully documented and signed off by the aboriginal people who have a history with the area.

**Ability to provide acceptable security**

The location of diplomatic estates should not be solely determined by security considerations. Incidents happen rarely and high risk countries have their own special arrangements. Diplomatic staff at home are just as vulnerable to attack as they are while at the chancery yet there has been no suggestion staff residences should all be co-located into estates for better protection.

It has been argued that a new estate has to be close to the AFP headquarters in Barton so that the AFP can react quickly in the event of a security incident. The Committee may like to explore with the AFP whether they have a dedicated SWAT team on 24 hour standby at Barton to respond to any incident and, if so, if there are designated response times. Without such a team on standby able to respond within the designated time, the distance of any new diplomatic estate from the AFP Headquarters is irrelevant.

**Suggested locations for future estates**

Locations that meet some or all of these guidelines include:

***Yarralumla Brickworks***

This site has recently been examined by the NCA as a potential site.

Very importantly, it has community support. It can fit up to 25 blocks and development costs (excluding purchase of the land from the ACT Government) are lower than Stirling Park. Also, it is in Yarralumla which apparently looms large in the thinking of diplomats.

### ***North Curtin Horse Paddocks***

This 30ha site capable of accommodating 39 blocks was recommended by the NCA consultants in Feb 2008 (Report for Diplomatic Land Supply) as the most capable of accommodating sufficient blocks for the projected diplomatic accommodation needs in the long term. This recommendation was accepted by DFAT and the NCA who described it in August 2010 as the most suitable site in inner Canberra. ***The consultants also recommended against the use of Stirling Ridge[Park] for a diplomatic estate.***

The site may also have the support of the ACT Government who have designed their brickworks development to facilitate integration with a possible diplomatic development in the North Curtin Horse Paddocks.

Following the Feb 2008 Report, the NCA commissioned a site capability assessment of the North Curtin Horse Paddocks site. We understand that this assessment was completed towards the end of 2011. It is not clear why work appears to have stopped on further exploration of the North Curtin Horse Paddocks for use as a diplomatic estate. However, there is evidence (FOI 47-47) that the ACT Government is considering it for residential housing. This is a matter which the Committee may wish to explore with the NCA.

### ***South side of Carruthers St (Block 58)***

This site is adjacent to the existing Deakin diplomatic estate with good road links.

### ***North of Lake Burley Griffin***

Much of the focus to date has been on locations south of Lake Burley Griffin but there is absolutely no reason why there are not suitable sites for chanceries north of the Lake. For example, the Airport, Bindubi Street, Aranda, Bruce or Belconnen may offer suitable locations.

### ***Molonglo Valley***

This is a greenfields site and one of the future stages, such as the new 'Denman Prospect' that has just been released and is 10 minutes from the CBD, could be suitable. This is ideally situated to be designed from the ground up specifically to cater for a new diplomatic estate that will not impinge on residential areas.

### ***Commercial zones***

The current DFAT protocol recognises chanceries are commercial offices and as such cannot be located in residential areas (with the exception of a designated residential area in O'Malley) because of the disruption caused to residents. They may be located on land zoned commercial. It is reasonable to expect that there is suitable commercial land available in the ACT for a diplomatic estate. NCA or whoever is ultimately responsible for managing diplomatic estates should explore this option with the ACT Government.