

Uniting the two Canberras

Reforming the National Capital Authority

Greater Canberra, September 2023



Uniting the two Canberras: reforming the National Capital Authority

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Executive summary

There are two visions of Canberra - Canberra the national capital, and Canberra the place to live. These are not distinct visions: Canberra cannot succeed as a national capital without succeeding as a city, and conversely it cannot succeed as a city without succeeding as a national capital.

The National Capital Authority has responsibility for the national capital aspects of Canberra's urban planning, particularly within the Central National Area, however their decisions impact the entire city. Recent NCA decisions show that there exists a significant disconnect between the NCA's stated goals of engagement with ACT stakeholders and the reality of the NCA's function as a veto point rather than an active facilitator of positive change.

The ACT Government is the only state or territory government in Australia whose planning powers are entirely subordinate to the Commonwealth. The NCA is not democratically accountable to the city that it regulates, and receives minimal attention in the federal political sphere. The current structure of the NCA entrenches the erroneous understanding of two Canberras, with unfortunate consequences for the planning and development of the heart of the city that is "the heart of the nation".

Reform is urgently needed to realign the NCA with the reality of the capital it is responsible for. To build the Canberra of the future, we must ensure that the NCA and the ACT Government have, at the highest levels of organisational leadership, a shared understanding of what it means to plan the national capital.

We recommend a simple reform: expanding the NCA Board to include additional representation from the ACT Government. This modest amendment to the *Australian Capital Territory (Planning and Land Management) Act 1989* could be implemented by the current Parliament with minimal fiscal and operational impact, and would significantly improve the alignment of the NCA's planning strategies with the planning and infrastructure priorities of the ACT Government.

Beyond this, we make a number of smaller recommendations regarding the NCA Board, and recommend that more substantial reforms should be pursued with the NCA and the ACT Government working in closer partnership after reforms to the board are implemented.

List of recommendations

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| 1 | The current merit-based selection process for NCA board members should continue permanently. Consideration should be given to legislating a requirement for a merit-based process, while still ensuring the Minister has appropriate freedom |
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	and ministerial accountability in relation to appointments. The ACT Government should be represented on all NCA board selection panels.
2	<p>The <i>Australian Capital Territory (Planning and Land Management) Act 1989</i> should be amended to enlarge the Authority to 7 members, consisting of 4 members appointed by the Governor-General on the advice of the Commonwealth Minister and 3 members appointed directly by the ACT Executive.</p> <p>The ACT Executive should be permitted to designate up to 2 of their 3 members as ex officio members who hold ACT statutory offices or public service positions. Such appointees should have an indefinite term, and should be removable by the ACT Executive for any reason, as well as by the Governor-General for misbehaviour or incapacity, and should not be paid.</p> <p>Non-public official ACT appointees should be ACT residents selected through a merit-based selection process supervised by the ACT Government, and otherwise be subject to the same requirements as Commonwealth appointees.</p> <p>ACT appointees, like Commonwealth appointees, should be subject to the provisions of the <i>Public Governance, Performance and Accountability Act 2013</i> and other legislation applicable to Commonwealth office holders, however ACT public officials should not be required to disclose a conflict of interest or exclude themselves from decision-making for a conflict of interest that arises purely by virtue of their ACT government employment.</p> <p>This recommendation should be enacted within the term of the 47th Parliament.</p>
3	The Commonwealth should consider appointing a senior APS leader to the NCA Board to represent the interests of APS employers.
4	The Joint Standing Committee on the National Capital and External Territories should initiate a comprehensive NCA structure and governance review to consider the broader issues around the Commonwealth's role in Canberra's urban planning. This inquiry should be held 3 years after board reforms are implemented.
5	A comprehensive review of the National Capital Plan should be initiated within a reasonable timeframe after board reforms are implemented.

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About Greater Canberra

Greater Canberra is a community organisation, established in 2021, that is working towards a more liveable, sustainable and affordable Canberra for everyone. We believe that forward-thinking urban planning is vital to ensuring that future Canberrans can enjoy social and economic equality and a high quality of life.

Our members come from all over Canberra, and from a variety of backgrounds - both renters and homeowners, from different stages of life, different levels of wealth, and different occupational and professional backgrounds.

We believe better planning policy can create a more liveable, sustainable and affordable city.

We believe every aspect of the city, from its parks, to its shops, to its public amenities, should make a positive impact on the lives of Canberrans. We value walkability, active and public transport, vibrant and engaging public spaces, and diverse housing that meets the evolving needs of Canberran families.

We believe we can house the next generation of Canberrans through better use of the space we have, rather than through endless sprawl that damages our natural environment. Embracing density will allow more Canberrans to live within the existing urban footprint, in close proximity to workplaces and amenities, allowing a lower-carbon and less car-dependent lifestyle.

We believe that by building more housing of all kinds - both social and market-rate - we can make Canberra affordable for all. For most Canberrans, the ability to afford a home is the difference between economic security and financial stress. Today, many Canberrans struggle to afford a home, unless they already own a property, or are helped by someone who does. This hurts our economy and damages the social fabric of our city. We believe that with the right policies, all Canberrans can afford to live with dignity.

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The myth of the two Canberras, and the role of the NCA in the 21st century

Canberra's role as a city purpose-built to serve as the nation's capital leads to both unique challenges and unique opportunities.

In the eyes of most of the nation, Canberra is the centre of government and politics - the so-called "Canberra bubble".

In the eyes of the 460,000 people who live within the borders of the ACT, Canberra is the thriving metropolis they call home. For hundreds of thousands more who live in the surrounding areas of south-eastern NSW, Canberra is a critical regional centre providing key services and driving economic opportunity.

There are two visions of Canberra - Canberra the national capital, and Canberra the place to live. Canberra the national capital is the responsibility of the Commonwealth, funded by federal tax dollars, carefully planned and regulated by the National Capital Authority as the heirs to the legacy of the former National Capital Development Commission. Canberra the place to live, at least post-1989, is the responsibility of the local inhabitants, through their elected representatives in their own Legislative Assembly, who pay for their state and local services in the same way as other Australians, and who plan their city through the democratically accountable processes of ACT planning policy.

However, there is only one Canberra. It is a common fallacy to view the two conceptions of the city as distinct. Each Canberra is inescapably dependent on the other.

Canberra the national capital - the Parliament, the countless departments and agencies of the Australian Public Service, and of course the national cultural institutions - is operated and maintained by Canberrans. Every morning, tens of thousands of Canberrans go to work - in their cars, on a bike or a bus, or, in more recent years, by light rail - to keep our federal government running, whether by developing policy or delivering services in an APS agency, or by greeting the throngs of Year 6 students arriving from interstate to learn about their nation at Parliament House or the National Museum.

Conversely, Canberra the place to live - the fast-growing population and its community organisations, businesses, educational institutions and amenities - would never have been built if not for the needs of the Commonwealth. While economic diversification has reduced the role of the APS from providing the majority of Canberra's jobs to merely providing a plurality, the Commonwealth remains at the heart of Canberran life.

Canberra cannot succeed as a national capital without succeeding as a city, and conversely it cannot succeed as a city without succeeding as a national capital. The interests of the national

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capital and the interests of its residents are not competing, and they do not need to be “balanced”.

This brings us to the question of the role of the NCA in the 2020s. The modern NCA bears little resemblance to its predecessor, the NCDC. It is far smaller, and with a narrower focus. This is appropriate: Canberra is no longer the NCDC's gigantic, master-planned greenfields project, but rather a mature, mostly self-governing city with a thriving economy and a diverse population. The present-day NCA is primarily focused on *regulating* and *maintaining* the somewhat nebulous “national capital” aspects of Canberra, primarily but not exclusively in central Canberra. This is in contrast to the NCDC's mandate to *build* and *develop* the capital.

The *Australian Capital Territory (Planning and Land Management) Act 1989* (Cth) (the PALM Act) provides for the NCA to prepare and administer a National Capital Plan (which the ACT's own planning instruments must conform to), to approve or reject proposed works in Designated Areas, to manage certain Commonwealth land (known as National Land), and to undertake certain construction works.

The NCA maintains a works approval process for Designated Areas that is entirely independent of the ACT's planning system. Additionally, the National Capital Plan specifies Special Requirements and Development Control Plans for parts of the city that fall outside the Designated Areas - most notably, the City Centre.

The PALM Act provides for responsibilities to be divided between the Commonwealth Minister for Regional Development, Local Government and Territories, the NCA Board (or Authority, as it is referred to in the Act) and the NCA Chief Executive. Amendments to the National Capital Plan must be approved by both the Board and the Minister. From a parliamentary perspective, the NCA is accountable to the Commonwealth Parliament's Joint Standing Committee on the National Capital and External Territories.

However, the NCA has no accountability to the ACT Government or the ACT Legislative Assembly, and it is under no obligation to align its vision for Canberra the national capital with the ACT Government's vision for Canberra the city. The ACT Government has assumed most of the NCDC's old responsibilities to develop the capital and build the facilities and infrastructure that both Canberrans and visitors expect. The NCA retains a vital but highly limited role in commissioning and maintaining infrastructure in the National Land under its control (such as Scrivener Dam, Lake Burley Griffin, the Commonwealth and Kings Avenue bridges, and tourist infrastructure in the Parliamentary Zone), while ACT Government infrastructure must service the entire city, including National Land.

The ACT Government is the only state or territory government in Australia whose planning powers are entirely subordinate to the Commonwealth, not merely for small parcels of federal land (such as federal airports that are subject to the *Airports Act 1996* rather than state planning controls) but for large areas of the city. The NCA is an urban planning authority which is not democratically accountable to the city that it regulates, but only to the Commonwealth

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Parliament (for whom the NCA is a small and generally unimportant agency that attracts minimal attention either from parliamentarians or the Press Gallery).

The current structure of the NCA entrenches the erroneous understanding of two Canberras, with unfortunate consequences for the planning and development of the heart of the city that is “the heart of the nation”.

The NCA publicly acknowledges that it has a responsibility to work together with the ACT Government and the Canberra community as critical stakeholders in the future of Canberra. However, while the NCA talks the talk and holds many meetings with ACT stakeholders, the NCA's actual role, as demonstrated in the case studies in this paper, is primarily to serve as a veto point, blocking anything that is contrary to its vision of Canberra and its landscape.

As the NCA itself points out, Canberra is not yet done. The original vision of the Griffin Plan was never fully implemented (as well documented in the NCA's excellent book, *The Griffin Legacy*), and in the 2020s we are only beginning to recover from the damage of the misguided Y Plan of the 1960s. We welcome the NCA's efforts to improve Canberra's urban environment through projects such as *The Griffin Legacy* and the *Parliamentary Zone Review*. However, to achieve the urban transformation that is required, we must reshape the NCA from a veto point into a true facilitator of progress.

We believe that reform is urgently needed to realign the NCA with the reality of the capital it is responsible for. To build the Canberra of the future, policy must be aligned with delivery. This means ensuring that the NCA and the ACT Government have, at the highest levels of organisational leadership, a shared understanding of what it means to plan the national capital.

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Case studies

Canberra Light Rail

The light rail system is the centrepiece of the ACT Government's efforts to improve Canberra's public transport network. All stages of the future light rail network are likely to require NCA works approval, due to the interactions with the Main Avenues and Approach Routes as well as the National Capital Open Space System, however Stage 2 from Civic to Woden is likely to be the most difficult stage of the network as it traverses the Parliamentary Zone.

In its submission to the Joint Standing Committee on the National Capital and External Territories inquiry into fostering and promoting the significance of Australia's national capital, the ACT Government stated:

"[T]he project is subject to a larger number of planning approvals, which are also more complex, than any other equivalent projects around Australia. In addition to the various ACT Government planning approvals, under the ACT Planning and Development Act 2007 the project is also subject to various Commonwealth approvals under the following legislation, with various stages of community consultation:

- the Environment Protection and Biodiversity Conservation Act 1999
 - Referral to the Department of Climate Change, Energy, the Environment and Water
 - Undertaking Environmental Impact Statement (EIS)
- Planning and Land Management Act 1988
 - Works Approval from National Capital Authority (may result in JSC Inquiry)
 - National Capital Plan Amendment (may result in JSC Inquiry)
- Parliament Act 1974
 - Approval from both Houses of Parliament (may result in JSC Inquiry)
 - A land access licence will also need to be entered into with the Australian Government.

The ACT Government would welcome the opportunity to collaborate with the Australian Government to develop a streamlined approval process, which can appropriately respond to design development as the project progresses and any changes made in response to technical challenges. This collaboration would help in ensuring a timely delivery of this critical project for the Nation's Capital City."¹

¹ ACT Government, Submission No 37 to Joint Standing Committee on the National Capital and External Territories, Parliament of Australia, *Inquiry into fostering and promoting the significance of the national capital* (May 2023) 11.

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The most difficult stage of the approval process has been NCA works approval. In evidence to the Committee, Mr Damien Haas, Deputy Chair of the Public Transport Association of Canberra, said:

“The National Capital Authority is an effective mechanism to implement some of the changes that the committee might recommend but, in terms of public transport, and light rail specifically, it is not well-resourced. Its level of knowledge of light rail is not what I would call high, and some of the decision-making relating to light rail stage 2 is not what I would call the best decision-making available. You can see that in some of the friction between the ACT government and the National Capital Authority in the approvals process, which has taken considerable time. We think the best way to approach this, to reduce some of that friction and to ease the processes of getting better public transport through the Parliamentary Zone and servicing the national institutions, is to allow the ACT government to select or offer up two people for the National Capital Authority Board and also for funding of a position in the National Capital Authority itself to liaise with the ACT government in overseeing light rail at a senior level so that the right advice and the right communication can occur. That is an effective way for the projects which are now on the books, and which have been supported by the federal government, to be achieved by the territory government. That is one of the best ways to approach this issue.”²

Mr Ryan Hemsley, Chair of the Public Transport Association of Canberra, added:

“For [the John Gorton Building multi-storey car park] works approval to proceed, six documents of over 215 pages were required. The traffic report was two pages, and that says that we'll need to do a traffic study. By comparison, light rail stage 2A—which doesn't actually reach the Parliamentary Zone; sits well on the edge, on the northern side of the lake—required 27 documents of over 1,800 pages and a 164-page traffic report. I do wonder which one of those two items is likely to induce more traffic; is it the building, which is specifically designed to host and hold 1,000 cars, or is it the light rail service, which attracts zero traffic? These are the sorts of questions that need answers. What threshold level of information does the NCA require to undertake and give works approval to a project? We think there's some inconsistency there between the types of projects that the NCA looks at and the amount of time and energy that's taken to get a project to a stage where the NCA can give it its works approval.”³

² Evidence to Joint Standing Committee on the National Capital and External Territories, Parliament of Australia, Canberra, 31 July 2023, 2 (Damien Haas, Deputy Chair, Public Transport Association of Canberra).

³ Ibid 4 (Ryan Hemsley, Chair, Public Transport Association of Canberra).

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While the NCA has defended the speed of the works approval process for Stage 2A, stating that it was only three months from when the application was received to when it was approved,⁴ to focus on the timeframe of formal public consultation and issuing of a decision notice is to miss the point entirely.

Obviously, the ACT Government would not submit an application for works approval on a major politically-sensitive piece of infrastructure without absolute certainty that the application had the support of the NCA. The ACT Government has been engaging with the NCA on the design of Stage 2 for several years leading up to the formal application, including the critical decisions regarding the areas where the NCA would mandate wire-free running, which has added substantial cost to the project and requires retrofitting of existing LRVs with batteries.⁵

The ACT Government has invested many millions of dollars into the design and planning work that has gone into Light Rail Stage 2. Every NCA requirement comes at a cost to both ACT and federal taxpayers, especially with requirements which emerge later in the planning process, costing more to comply with. Better strategic alignment between the NCA and the ACT Government would correct misunderstandings at an early stage and minimise costs.

We must also consider the environmental necessity of light rail: every additional day of planning negotiation means an additional day of car dependency and CO₂ emissions for tens of thousands of Canberrans who won't be making use of safe, reliable, emissions-free public transport.

Dairy Road

The Dairy Road precinct in Fyshwick is a major development undertaken by Molonglo, a well-established Canberra property developer. Dairy Road is Territory Land and is not in a Designated Area, however it is subject to NCA Special Requirements under the National Capital Plan.

Following negotiations with the ACT Government, the Territory Plan was varied in Variation 377⁶ to rezone the area from industrial to mixed commercial use, and to provide for a maximum of 1,300 dwellings within the Dairy Road mixed use area (which Molonglo estimated could house up to 2,000 residents).⁷

⁴ Jasper Lindell, 'NCA defends approval speed for light rail stage 2A extension', *The Canberra Times* (online, 12 July 2023)

<<https://www.canberratimes.com.au/story/8266984/nca-defends-approval-speed-for-light-rail-extension/>>.

⁵ Tom Maddocks, 'Canberra's light rail extension to be wireless despite 'significant' retro-fitting cost', *ABC News* (online, 18 Feb 2020)

<<https://www.abc.net.au/news/2020-02-18/canberra-light-rail-2a-to-be-wireless-despite-cost-increase/11974872>>.

⁶ *Planning and Development (Plan Variation No 377) Approval 2021* (ACT).

⁷ *Territory Plan 2008* (ACT), Fyshwick Precinct Code, r R18.

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In its submission to the Joint Standing Committee on the National Capital and External Territories inquiry into fostering and promoting the significance of Australia's national capital, Molonglo gave evidence that despite the ACT Government's willingness to permit up to 1,300 homes on the site, the NCA refused to engage properly and attempted to impose a Development Control Plan with rules that "bore no relationship to the site context, including entirely arbitrary height and setback provisions".

Following direct advocacy to the NCA Board, a compromise was reached, however the approved DCP is "a compromised solution that remains difficult to administer". Molonglo states that "the expense, delay and uncertainty has made Molonglo cautious about pursuing any future investment within the National Capital in which the NCA may have any degree of influence over the outcome".⁸

In the recently-approved Estate Development Plan, Molonglo is now only proposing 408 dwellings.⁹ While there are legitimate planning concerns that must be considered in large-scale developments like Dairy Road (for example, we are concerned about issues with public transport accessibility), arbitrary height and setback restrictions prioritise abstract landscape considerations over Canberra's housing supply needs and the environmental desirability of infill over greenfield development. Molonglo's decision to scale down the Dairy Road precinct means that around 900 homes will need to be delivered elsewhere in the ACT.

The Dairy Road precinct is a key example of how uncertain, unclear development requirements harm the ability of developers to make responsible investment decisions, and the ability of the ACT Government to develop housing policy.

London Quarter

In August 2023, Walker Corporation abandoned its proposed London Quarter development, an 11-storey office development on the corner of London Circuit and Northbourne Avenue (an NCA Designated Area) which was intended as the future home of the Department of Employment and Workplace Relations, the Department of Education and the Australian Electoral Commission. The NCA had requested significant amendments to the works approval, and the developer withdrew its application on the grounds that they were no longer able to meet their clients' delivery timeframes. Industry sources were quoted in the Canberra Times as saying the NCA was the "only roadblock" to the delivery of the project, and that the decision could wipe \$2

⁸ Molonglo, Submission No 42 to Joint Standing Committee on the National Capital and External Territories, Parliament of Australia, *Inquiry into fostering and promoting the significance of the national capital* (5 May 2023) 2.

⁹ Ian Bushnell, 'Molonglo opts for more space in Dairy Road residential development', *The RiotACT* (online, 26 March 2023) <<https://the-riotact.com/molonglo-opts-for-more-space-in-dairy-road-residential-development/645521>>.

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billion from the ACT economy.¹⁰ This has left three large Commonwealth agencies scrambling to find alternative arrangements for office accommodation.

In the ACT Legislative Assembly, Ms Jo Clay MLA (Chair of the Standing Committee on Planning, Transport and City Services and ACT Greens spokesperson for planning, transport and active travel) criticised this decision as a poor outcome for Canberra, and a poor outcome for emissions:

“[I]t is really difficult when they are making decisions that are moving in a different direction to our own policies. ... [I]t was a real loss of good urban densification and it is a real contrast when you look at the development that we are getting in business parks on the city's edge when we lose something like this in our city centre.

The block that [the decision] related to at the moment is the lowest value urban land use you can get. It is a surface car park. A surface car park right in the heart of Canberra is only providing amenity to the people who park there. It means we have lost all the other land uses we could have for that. It cannot be residential. It cannot be commercial or civic infrastructure. It cannot be community land. The worst aspect of it is we have lost the opportunity to have Canberrans work in a part of Canberra that has the best public transport access. We have lost the chance to have more people live close to where they work and play and we have lost the chance for government to provide services that we know we can provide really easily in convenient, central locations like that.

There is a huge difference between locating jobs in Civic compared to other parts of Canberra. I will just run through that a lot of the implications have a big impact on how we travel around Canberra. This is the problem: if we have these decisions made around us, it is really hard for us to do our transport well. Our 2021 census data shows that of the workers who commuted to work in Civic, we had 23 per cent catching public transport, 14 per cent using active travel and 63 per cent coming to work by car. That is a lot of people driving. I was a bit surprised at how high that is but it is because we are still pretty car-dependent in Canberra.

But when you compare that to other areas where we have commonwealth office jobs you really see the difference. In Barton, we have only nine per cent of people catching public transport—nine per cent versus 23 per cent, when you are looking at Civic—12 per cent by active travel and 80 per cent by car. It locks us into a car-based commute. It gets worse when you look at the Canberra Airport. Out there, we have only four per cent of journeys to work by public transport, two per cent by active travel and 94 per cent by car. That is what happens when we get these planning decisions made around us.

¹⁰ Miriam Webber and Brittney Levinson, 'London Quarter project at block 40, section 100 scrapped by Walker Corporation', *The Canberra Times* (online, 25 August 2023) <<https://www.canberratimes.com.au/story/8321282/major-govt-office-move-scrapped-as-london-quarter-project-falls-through/>>.

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If we want to get more than five times as many people using public transport and more than seven times as many people using active travel, the simplest way we can do that is to have more people working in Civic rather than on the outskirts of Canberra. It really matters in a climate crisis when 60 per cent of our emissions come from transport. If we keep making decisions like this we are not going to shift the dial.

The NCA has also recently approved a multistorey car park in the parliamentary triangle. Again, we are seeing some really low value land uses. It is only around 300 metres from the Barton bus interchange, which is a key public transport hub for commuters in the parliamentary triangle and people use that all through the week. If we want to increase public and active transport use, we need to prioritise public and active transport. That is what our transport hierarchy says. We really need all our planning decision makers to be doing that.

It was a poor outcome for Canberra, I think. It was a poor outcome for emissions and it was a poor outcome for making the ACT more liveable. These decisions have a long-lasting impact and I hope that we can move to a world where we are starting to make much better co-location decisions.”¹¹

We fully endorse Ms Clay's remarks. Civic is an ideal place for Canberra's major employers, including the Australian Public Service, to take advantage of the agglomerative effects of city centres that allow them to hire the best staff while being easily accessible via sustainable transport from all parts of the city.

The NCA's insistence on design changes appears to have ignored both the developer's and the agencies' commercial requirements, and neglected the ACT Government's priorities for sustainable transport and economic development in the city centre.

Yarralumla Brickworks

The Yarralumla Brickworks brownfields redevelopment site has been an ongoing saga for many years. This site, which has been disused for decades, is vital for delivering urban infill in Canberra's inner south to improve Canberra's housing supply, and is currently sitting empty and vulnerable to vandalism.

In February 2015, the former ACT Land Development Agency presented an ambitious plan for a development that would deliver 1,800 dwellings to house approximately 3,000 people.¹² The NCA's Chief Planner determined that the NCA would not support the plan for a number of

¹¹ Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 30 August 2023, P2452 (Jo Clay).

¹² Australian Broadcasting Corporation, 'Yarralumla brickworks site: More dwellings, larger estate feature in revised plan for new Canberra estate', *ABC News* (online, 24 February 2015) <<https://www.abc.net.au/news/2015-02-24/revised-plan-for-yarralumla-brickworks/6230708>>.

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reasons largely related to perceived impact on the Governor-General's residence at Government House.¹³

While there are obviously legitimate interests in ensuring Government House can fulfil the Governor-General's needs and provide an appropriate setting for state and diplomatic functions, the NCA's concerns, in our view, go beyond legitimate concern for national capital functions and are instead a classic example of NIMBYism. The NCA has aligned itself with existing residents who oppose additional housing in one of Canberra's most expensive suburbs, rather than the potential residents of a future Yarralumla.

The NCA announced that it was satisfied after the LDA scaled the development back to a mere 380 dwellings.¹⁴

¹³ Kirsten Lawson, 'National Capital Authority will not support Yarralumla development as it stands', *The Canberra Times* (online, 7 May 2015) <<https://www.canberratimes.com.au/story/6068016/national-capital-authority-will-not-support-yarralumla-development-as-it-stands/>>.

¹⁴ Georgina Connery, 'NCA, residents welcome scaled-back development of Old Canberra Brickworks', *The Canberra Times* (online, 29 August 2015) <<https://www.canberratimes.com.au/story/6062194/nca-residents-welcome-scaled-back-development-of-old-canberra-brickworks/>>.

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Restructuring the NCA Board: a modest, immediate reform

A number of reviews of the NCA's role and structure have occurred over the years, including JSCNCET inquiries in 2004 and 2008, the 2009 Taskforce on the Commonwealth's National Capital Responsibilities, and the 2011 Independent Review of the NCA conducted by Dr Allan Hawke (the Hawke Review). All of them have made recommendations for significant reforms to the NCA's role in the ACT planning system, and have considered in depth the complex issues surrounding the role of the NCA, its governance structures, the division of responsibilities between the NCA and the ACT Government, the scope of the Designated Areas, and so on.

Many of these recommendations have simply been ignored.

In this paper, rather than attempting to exhaustively catalogue our views on how the NCA's structures and processes need to be reformed, we focus on what we believe to be the most obvious strategic reform that can be **implemented immediately** by the Parliament, namely improving ACT representation on the NCA Board.

The NCA's current structure means that the NCA's strategic leadership lacks full awareness of the ACT Government's vision for Canberra, and vice versa. It means that despite the frequent contact between NCA officers and ACT Government officers, the ACT Government still interacts with the NCA from the perspective of an external party, rather than from the perspective of a co-equal partner that is deeply integrated into the Commonwealth's vision for the capital. The level of government that is responsible for delivering most of Canberra's civic infrastructure and is directly accountable to the people of Canberra must have direct input at the highest strategic levels of the NCA.

The current structure of the Board

At present, the NCA Board consists of a Chair and 4 other members (including the Chief Executive, who is the only full-time member), all appointed by the Governor-General acting on the advice of the Federal Executive Council (in effect, on the advice of the Commonwealth Minister for Regional Development, Local Government and Territories).

Pursuant to a voluntary arrangement between the Commonwealth and the ACT Government that came out of the 2011 Hawke Review, one board member has been appointed on the basis of a recommendation of the ACT Government.

Recommendations from previous reviews

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The 2004 and 2008 JSCNCET inquiries were comprehensive reviews of the role of the NCA and the nature of Canberra's dual planning systems.

As noted in the report of the 2008 inquiry, the key recommendations of the 2004 inquiry were not implemented.¹⁵

The 2008 report recommended that the NCA Board be expanded to 8 members (including the Chair, and with the Chief Executive no longer being on the board), with a minimum of 2 members from the ACT region.¹⁶

The 2011 Independent Review of the National Capital Authority (the Hawke Review) recommended that the NCA Board be expanded to 7 members, consisting of a Chair, Deputy Chair, Chief Executive and 4 other members, with 1 board member nominated by the ACT Government to represent the interests of the Canberra community.¹⁷

We note that many recommendations from these previous reviews have been explicitly rejected, only accepted in part, or simply not followed through with by the Government. The Board remains at 5 members, and most recommendations regarding restructuring the Board have been ignored.

The Government accepted the Hawke Review's recommendation in relation to the nomination of a single board member by the ACT Government, however it did not do so by amending the PALM Act. Instead, the Government merely agreed to invite the ACT Government to recommend a nominee to fill the next available vacancy.¹⁸

Merit-based selection

The PALM Act, like most other legislation relating to statutory offices, doesn't specify how members should be selected, leaving the process essentially at the discretion of the Minister. We strongly support the current Minister's decision to implement a merit-based selection process.

According to documents obtained by Greater Canberra under the *Freedom of Information Act 1982*, the selection panel convened in 2022 to fill the latest vacancy on the Board, under the Minister's new merit-based process, included Mr Ben Ponton, Director-General of the ACT

¹⁵ Joint Standing Committee on the National Capital and External Territories, Parliament of Australia, *The Way Forward: Inquiry into the role of the National Capital Authority* (Report, July 2008) 2 [1.7].

¹⁶ Ibid, 42 [4.61].

¹⁷ Allan Hawke, *Canberra a Capital Place: Report of the Independent Review of the National Capital Authority* (Report, 18 July 2011) 84.

¹⁸ Commonwealth Government, *Australian Government response to Canberra a Capital Place: Report of the Independent Review of the National Capital Authority* (2012) 12.

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Environment, Planning and Sustainable Development Directorate.¹⁹ We support the continued participation of the ACT Government in these selection processes.

Recommendation 1: The current merit-based selection process for NCA board members should continue permanently. Consideration should be given to legislating a requirement for a merit-based process, while still ensuring the Minister has appropriate freedom and ministerial accountability in relation to appointments. The ACT Government should be represented on all NCA board selection panels.

Increasing ACT representation on the Board

We agree with previous reviews that the NCA Board should be expanded, and we are pleased that while the Government has not adopted the recommendations to expand the Board, it has chosen to invite the ACT Government to nominate a Canberra community representative. However, this does not go far enough in addressing the misalignment between the NCA's national capital role and the ACT Government's planning and infrastructure responsibilities.

The ACT Government should be directly represented on the Board, and that this should be guaranteed by an amendment to the PALM Act.

Recommendation 2: The *Australian Capital Territory (Planning and Land Management) Act 1989* should be amended to enlarge the Authority to 7 members, consisting of 4 members appointed by the Governor-General on the advice of the Commonwealth Minister and 3 members appointed directly by the ACT Executive.

The ACT Executive should be permitted to designate up to 2 of their 3 members as ex officio members who hold ACT statutory offices or public service positions. Such appointees should have an indefinite term, and should be removable by the ACT Executive for any reason, as well as by the Governor-General for misbehaviour or incapacity, and should not be paid.

Non-public official ACT appointees should be ACT residents selected through a merit-based selection process supervised by the ACT Government, and otherwise be subject to the same requirements as Commonwealth appointees.

ACT appointees, like Commonwealth appointees, should be subject to the provisions of the *Public Governance, Performance and Accountability Act 2013* and other legislation applicable to Commonwealth office holders, however ACT public officials should not be required to disclose a conflict of interest or exclude themselves from

¹⁹ Email, 6 September 2022 (Document No. 10, FOI 2122/15, National Capital Authority).

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decision-making for a conflict of interest that arises purely by virtue of their ACT government employment.

This recommendation should be enacted within the term of the 47th Parliament.

Providing for a Board of 7 members, with 3 ACT representatives, will ensure that ACT Government interests will be well represented but will not control a majority, thus respecting the national character of the NCA.

In addition to selecting a representative of the Canberra community (similar to the current informal practice), the PALM Act should explicitly permit the appointment of up to 2 ACT Government officers. Direct Board-level participation by the ACT Government is necessary to ensure high-level strategic alignment, in particular surrounding major projects undertaken by the ACT Government that interact with NCA interests.

ACT public officials should be exempted from conflict of interest provisions in relation to conflicts that arise only due to their ACT Government position. Such an exclusion is necessary to reflect the relationship of the ACT Government and the NCA as partners in planning and infrastructure delivery. Section 13B of the *Australian Institute of Health and Welfare Act 1987* is an example of existing legislation that provides an exemption from conflict of interest requirements for state and territory government appointees to the board of a Commonwealth agency.

Representation of APS employer interests

The NCA's planning decisions have a significant and direct impact on the Australian Public Service, in particular its workforce planning. The APS has a significant impact on Canberra's role as the national capital, and on Canberra's local community and economy.

The Commonwealth should consider appointing a senior APS leader with experience in workforce planning as a Board member. Given that there is no intergovernmental aspect to appointing such a member, this can be easily done within the existing legislative framework and we do not believe that this needs to be legislated in the PALM Act.

Such a member would, by virtue of their experience in their other position, also bring significant public sector governance expertise and other relevant skills to the Board.

Recommendation 3: The Commonwealth should consider appointing a senior APS leader to the NCA Board to represent the interests of APS employers.

Organisations with similar board structures

Washington National Capital Planning Commission

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As with many aspects of the Australian Constitution that have American origins, Canberra's very existence is partially inspired by Washington, DC.

Washington's planning system, much like Canberra's, is primarily administered by an elected local government through the DC Office of Planning. However, a number of federal agencies continue to have strategic or statutory planning responsibilities, most notably the National Capital Planning Commission (NCPC). NCPC was, alongside the NCA, a founding member of the Capitals Alliance international forum.

The NCPC is led by 12 commissioners, of whom 8 represent federal interests and 4 represent DC interests.²⁰ The federal commissioners are:

- 3 appointees (the Chair and 2 others) of the President of the United States, of whom at least one must be a resident of Virginia and at least one must be a resident of Maryland
- the Chair of the US House of Representatives Committee on Oversight and Reform
- the Chair of the US Senate Committee on Homeland Security and Governmental Affairs
- the Secretary of Defense
- the Secretary of the Interior
- the Administrator of General Services

The DC commissioners are:

- the Mayor of the District of Columbia
- the Chair of the Council of the District of Columbia
- 2 mayoral appointees who are residents of the District of Columbia

The ex officio commissioners are generally represented by alternates.

In this structure, the federal government maintains a two-thirds supermajority of representation on the commission. However, the legislative and executive branches of DC's state-level government are also represented, as is the DC community.

This arrangement specifically acknowledges the importance of having the DC government directly represented on the Commission, as well as members of the DC community chosen by DC elected officials.

Sydney Harbour Federation Trust

The Sydney Harbour Federation Trust is a Commonwealth agency set up to protect the national interest in key ex-Defence land holdings around Sydney Harbour. While these land holdings are very different from those controlled by the NCA - historic sites and parks in suburban Sydney, as opposed to national capital areas in urban Canberra - the Harbour Trust has functions and powers which are similar to the NCA's in many ways, including strategic and statutory planning.

²⁰ 'About the Commission', *National Capital Planning Commission* (Web Page)
<<https://www.ncpc.gov/about/commission/>>.

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As with the NCA, the Trust manages its own planning assessment and approvals framework, and developments on Trust land are exempt from NSW planning legislation and the control of NSW authorities or the local council.

Section 11 of the *Sydney Harbour Federation Trust Act 2001* provides for the NSW Government to recommend up to 2 Trust members, and requires that the Commonwealth Minister invite the NSW Government to make such recommendations whenever a vacancy arises that decreases this representation.

Other Commonwealth boards with state or territory representation

Many other Commonwealth statutory boards have members appointed on the recommendation of state and territory governments, or who are specific state or territory officeholders.

For example, the *Infrastructure Australia Act 2008* provides for 3 of the 12 board members to be appointed by the Infrastructure Minister “by agreement between the States, the Australian Capital Territory and the Northern Territory”.²¹ The *Australian Institute of Marine Science Act 1972* provides for a council member to be appointed by the Governor-General on the nomination of James Cook University (at present, the Vice-Chancellor²²), which is a Queensland statutory authority.²³ The *Australian Crime Commission Act 2002* establishes a board consisting of a number of Commonwealth officeholders as well as the Commissioners of all state and territory police forces ex officio.²⁴

In our research, we found around 30 Commonwealth entities with boards, councils, or advisory committees which either included state or territory public servants or officeholders serving ex officio, members nominated by state or territory governments or agencies (including local government), or a requirement for state and territory governments to be consulted before the Commonwealth makes an appointment. It is clear that state and territory representation on Commonwealth boards is an established practice.

²¹ *Infrastructure Australia Act 2008* (Cth), s 8(2)(e).

²² ‘AIMS Council’, *Australian Institute of Marine Science* (Web Page) <<https://www.aims.gov.au/about/corporate-profile/aims-council>>.

²³ *Australian Institute of Marine Science Act 1972* (Cth), s 12(1)(ba).

²⁴ *Australian Crime Commission Act 2002* (Cth), s 7B.

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Further reforms

Reforming the NCA's board structure will not resolve all the tensions that exist between the national and local interests in Canberra's planning. However, it is a straightforward reform that can be implemented immediately with negligible impact on the NCA's operations or budget.

Previous inquiries into the NCA have recommended other reforms, requiring more detailed consideration to identify the options that will deliver the best planning, infrastructure and social outcomes. It is not hugely surprising that many of those recommendations have been completely ignored by the Government. However, we must continue to explore options to further evolve the ACT planning system.

Potential future reforms, which have been explored in past reviews, could include altering the scope of the NCA's functions and powers, completely transferring planning responsibilities to the ACT Government, or developing a new joint Commonwealth-ACT approach to planning regulation in key areas. All of these options would have significant operational and fiscal implications.

The last detailed review of the NCA's structure was the 2011 Hawke Review. Canberra's urban planning landscape has changed significantly since 2011, with an entirely new ACT Planning Act and Territory Plan being developed, a significant new focus on delivering urban infill to address the housing crisis, and the ACT Government's delivery of light rail as the most significant city-shaping infrastructure project since self-government, requiring significant NCA involvement.

A further structure and governance review should be held 3 years after our recommendations for board reform are implemented. This will allow the impact of the reforms to be assessed fairly.

Recommendation 4: The Joint Standing Committee on the National Capital and External Territories should initiate a comprehensive NCA structure and governance review to consider the broader issues around the Commonwealth's role in Canberra's urban planning. This inquiry should be held 3 years after board reforms are implemented.

Following the implementation of board reforms, and the completion of the ACT Government's Planning System Review and Reform Project, the NCA should also undertake a comprehensive review of the National Capital Plan.

The last comprehensive review of the National Capital Plan was undertaken in 2015, resulting in NCP Amendment 86 in 2016.²⁵ This review was the first comprehensive review since the

²⁵ *National Capital Plan - Amendment 86 - Revised National Capital Plan* (Cth).

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development of the initial NCP in 1990. While it may seem too soon to undertake another comprehensive review within the next few years, a review would allow the benefits of better-aligned high-level strategy to flow through into the National Capital Plan more quickly, and could be done more easily than the 2015 review given the relative recency of Amendment 86.

The scope of this review should include consideration of a range of significant issues, such as:

- the scope and scale of Designated Areas and Special Requirements
- the impact of the National Capital Plan on housing supply
- the impact of RL617 height restrictions in Civic
- the rules applicable to Main Avenues and Approach Routes
- addressing car dependence through prioritisation of public and active transport, including further development of the light rail network, and strategies to achieve mode shift targets.

Recommendation 5: A comprehensive review of the National Capital Plan should be initiated within a reasonable timeframe after board reforms are implemented.