



Anyone who isn't confused doesn't really understand the situation.¹

The Planning Framework

National Capital Plan

- 4.1 The *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) provides for the preparation and administration of the National Capital Plan. The object of the plan, as identified in the Act, is 'to ensure that Canberra and the Territory are planned and developed in accordance with their national significance'.² The National Capital Plan was prepared by the National Capital Planning Authority (NCPA) and took effect on 21 December 1990. This followed extensive public consultation, agreement by the ACT Government, support by the then Joint Parliamentary Committee on the Australian Capital Territory and approval by the then Minister for the Arts, Tourism and Territories and support of both Houses of Parliament.
- 4.2 The plan sets general policies for land use and the planning of national and arterial road systems throughout the ACT. Key objectives of the plan are to:

1 Ed Murrow 1908-65 (in Walter Bryan's *The Improbable Irish*, 1969).

2 Section 9, *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth).

1. Recognise the pre-eminence of the role of Canberra and the Territory as Australia's National Capital.
2. Further develop and enhance a Central National Area which includes the Parliamentary Zone and its setting and the main diplomatic sites and national institutions, as the heart of the National Capital.
3. Emphasise the national significance of the main approach routes and avenues.
4. Respect the geometry and intent of Walter Burley Griffin's formally adopted plan for Canberra.
5. Maintain and enhance the landscape character of Canberra and the Territory as the setting for the national capital.
6. Protect the undeveloped hill tops and the open spaces which divide and give form to Canberra's urban areas.
7. Provide a plan offering flexibility and choice to enable the Territory Government to properly fulfil its functions; and
8. Support and promote environmentally responsible urban development practices.³

Territory Plan

- 4.3 Section 25 of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) provides for the ACT Legislative Assembly to set up a Territory planning authority responsible for preparing and administering the Territory Plan.⁴ In response to the Commonwealth legislation, the ACT Government introduced the *Land (Planning and Environment) Act 1991* (ACT) which commenced on 2 April 1992. The responsibilities of the Territory planning authority are carried out by the ACT Planning and Land Authority (formerly ACT Planning and Land Management or PALM) within the ACT Department of Urban Services as well as other ACT Government agencies. The Act also provides that:

3 National Capital Authority, *Consolidated National Capital Plan*, June 2002, p 6.

4 Section 25, *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth).

The object of the Territory Plan is to ensure, in a manner not inconsistent with the National Capital Plan, the planning and development of the Territory to give the people of the Territory an attractive, safe and efficient environment in which to live and work and have their recreation.⁵

- 4.4 The current Territory Plan came into effect in October 1993 following extensive public consultation and discussions with the National Capital Authority. A substantial number of variations to the plan have been processed since that time. The National Capital Authority considers proposed variations to the Territory Plan to ensure their consistency with the National Capital Plan and its statutory object.

The Relationship Between the Two Plans

- 4.5 Section 11 (2) of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) states that ‘the Commonwealth, a Commonwealth authority, the Territory or a Territory Authority shall not do any act that is inconsistent with the (National Capital) Plan’.⁶ In addition, Section 26 of the Act states that the Territory Plan is not to be inconsistent with the National Capital Plan:

The Territory Plan has no effect to the extent that it is inconsistent with the National Capital Plan, but the Territory Plan shall be taken to be consistent with the National Capital Plan to the extent that it is capable of operating concurrently with the National Capital Plan.⁷

- 4.6 These sections of the Act are particularly important for the purpose of this inquiry, as they indicate that even on land where the Territory has responsibility for planning and development approval, there is a provision for Commonwealth intervention if the Territory fails to adhere to the principles and policies set out in the National Capital Plan. Accordingly, if Designated Area status were to be uplifted from any areas in the ACT where the Authority currently has planning control, development approvals would still be conditional on compliance with the principles articulated in the National Capital Plan. These arguments were echoed by Justice Crispin of the ACT

5 Section 25, *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth).

6 Section 11, *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth).

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

Supreme Court in his ruling on the matter of planning approval for work on the Gungahlin Drive Extension. In his judgment, Justice Crispin stated:

Since neither the Territory enactments nor the Territory Plan may be inconsistent with the National Capital Plan, the scope for Territory regulation of planning and development in designated areas will plainly be limited and, even in addressing issues not specifically covered by the National Capital Plan it would be bound to apply any relevant principles or policies set out in that plan. Furthermore, it would be open to the National Capital Authority to include in the National Capital Plan provisions which effectively covered the field in relation to all developments or developments of particular kinds on designated areas which effectively covered the field and simply left no scope for any Territory planning decisions save, perhaps, for a decision as to whether the development should be permitted at all.⁸

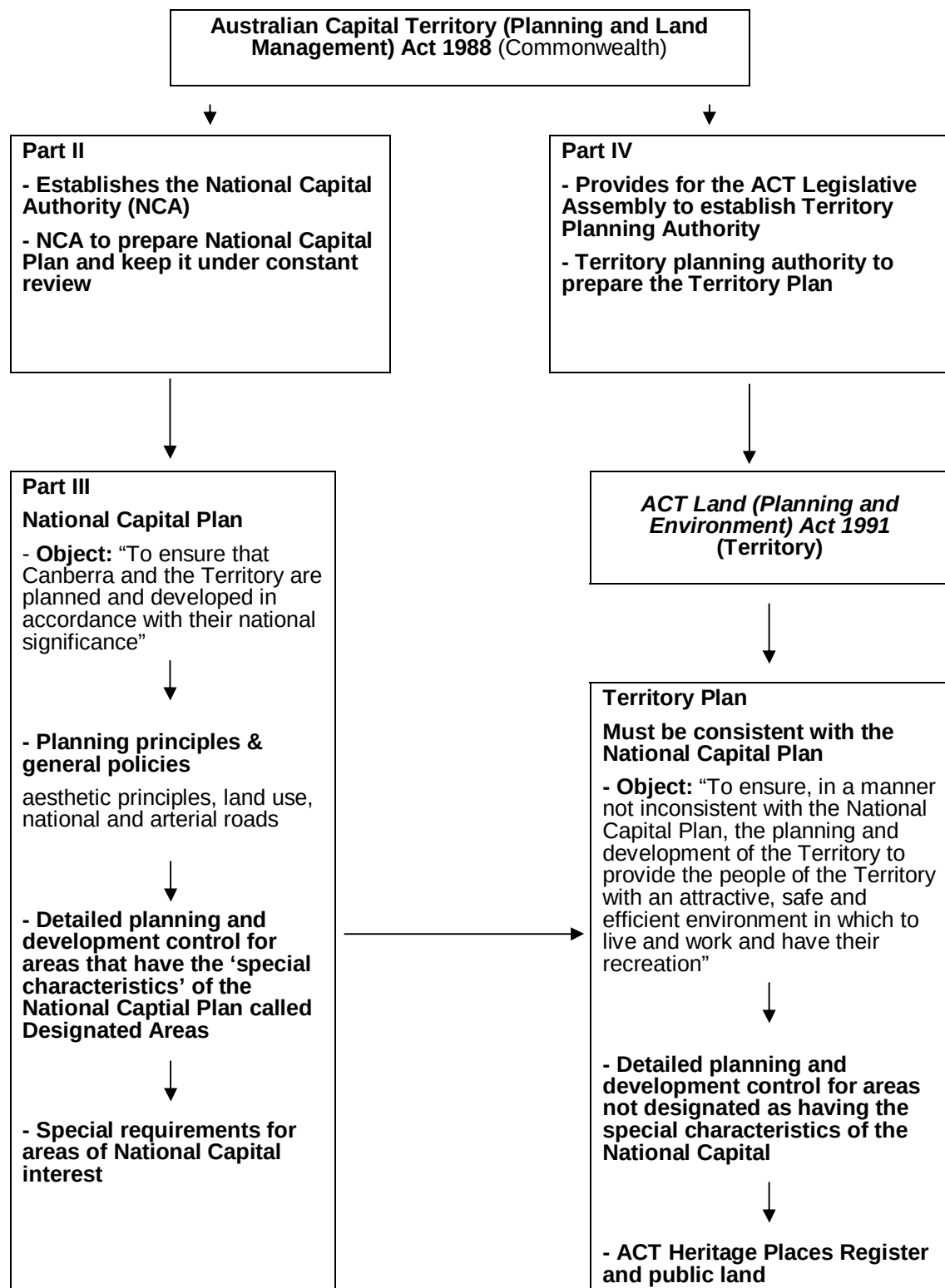
- 4.7 Mr Bruce Wright used the example of Canada's National Capital Commission to highlight the risks of confining federal planning powers to National Land. Mr Wright stated that "the Ottawa experience demonstrates that federal authorities would lose influence over significant vistas, view corridors and urban structure".⁹ However, the Committee believes that if the Commonwealth were to relinquish planning control of certain areas to the Territory, Section 11 of the Act would empower the NCA to constrain any development which threatened the national capital character of the Territory through guidelines and policies in the National Capital Plan. While such a move would necessitate a comprehensive review of the plan, it would then, according to Mr Wright, allow the system to achieve what it was originally intended to achieve:

Give the Commonwealth Government total control over the heart of the capital; in some other areas give it the capacity to constrain some development choices which would impact significantly and adversely on National Capital character; and let the local government have its way unconstrained elsewhere. That was the apparent intention of the current

8 *Save the Ridge Incorporated v Australian Capital Territory and Kenoss Contractors Pty Ltd* [2004] 204 ACTSC 13, 16-17.

9 Wright, Submissions, p 87.

Figure 4.1 Relationship Between the National Capital Plan and the Territory Plan



Source: National Capital Authority, November 2002

system: the failings have come from the lack of connection between planning decisions and costs, the consequently excessive National Capital Plan lacks *raison d'être*. With such definitions, the National Capital Authority could begin the task of identifying the scope of a revised National Capital Plan.¹⁰

Designated Areas

- 4.8 Section 10 of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) states that the National Capital Plan may specify areas of land that have the special characteristics of the national capital to be Designated Areas; and:

...set out the detailed conditions of planning, design and development in Designated Areas and the priorities in carrying out such planning design and development.¹¹

The National Capital Plan identifies three primary factors for determining those areas of land which have the 'special characteristics of the national capital' and the extent to which they are Designated Areas:

- Canberra hosts a wide range of national capital functions – activities which occur in Canberra because it is the national capital and which give Canberra a unique function within Australia.
 - Griffin's strong symbolic design for Canberra Central has given the national capital a unique and memorable character.
 - Canberra's landscape setting and layout within the Territory have given the Capital a garden city image of national and international significance.¹²
- 4.9 'National Capital functions' include parliamentary buildings, Commonwealth agencies, official residences of the Prime Minister and Governor General, embassies, national institutions and major national associations.¹³ As outlined in the plan, the Designated Areas comprise:

10 Wright, Submissions, pp 88-89.

11 Section 10, *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth).

12 National Capital Authority, *Consolidated National Capital Plan*, June 2002, p 10.

13 National Capital Authority, *Consolidated National Capital Plan*, June 2002, p 10.

- Lake Burley Griffin and its Foreshores
- the Parliamentary Zone
- the balance of a Central National Area adjoining the lake and the Zone, and extending from the foot of Black Mountain to the airport
- the Inner Hills which form the setting of the Central National Area
- the Main Avenues and Approach Routes between the ACT border and the Central National Area.¹⁴

4.10 The NCA explained that:

Designated areas cover some national land and some territory land but all this land, through the history of the capital, has been considered to have the special characteristics of the national capital. That is, it goes to national capital uses, it goes to Griffin's symbolic design for the city and it goes to the landscape setting and the metropolitan plan of the city.¹⁵

The fact that Designated Areas include both Territory Land and National Land continues to be the source of much confusion among both planners and the wider ACT community. The Committee believes that addressing this issue is critical to achieving greater transparency in the planning process. At present, much of the confusion can be attributed to three areas:

- designated land that is also Territory land;
- areas which are not designated, but are subject to special requirements; and
- the works approval process for works in Designated Areas.

Designated Land that is Territory Land

4.11 Various complexities emerge where Territory Land is also designated land under the National Capital Plan. Although leasing matters are the responsibility of the Territory, works approval for developments must be obtained from the NCA. This is a source of tension for the ACT Government which stated that, as a consequence:

14 National Capital Authority, *Consolidated National Capital Plan*, June 2002, p 11.

15 Ms Annabelle Pegrum, Transcript, 19 September 2003, p 206.

- the Territory does not determine design and development objectives;
- Territory Plan policies do not apply;
- there is no statutory community consultation on any development or Works approval decision; and
- neither the applicant, nor any third party, has any appeal rights.¹⁶

4.12 The ACT Government noted that there are issues for the Territory with regard to “equity, accountability, opportunity, cost and the effective realisation of the Territory’s urban planning strategies”.¹⁷ A recent example of the problems which can arise from this situation arose with Draft Amendment 39 to the National Capital Plan.¹⁸

Areas Subject to Special Requirements

4.13 Section 10 of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) provides that special requirements may apply to areas which are not designated, but which are “desirable in the interest of the national capital”.¹⁹ The difference between areas where special requirements apply and Designated Areas is explained in the National Capital Plan:

The difference between Designated Areas and areas where special requirements apply is that in Designated Areas the National Capital Authority has the planning responsibility, including works approval, whereas in areas where special requirements apply, any development proposal is administered through the Territory Plan by the Territory planning authority in compliance with the special requirements specified in the National Capital Plan.²⁰

4.14 In areas subject to special requirements, the NCA requires all development to be subject to a Development Control Plan (DCP) which sets out the special requirements for the site or area.²¹ As

16 ACT Government, Submissions, p 235.

17 ACT Government, Submissions, p 235.

18 See Chapter Six, this report.

19 Section 10, *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth).

20 National Capital Authority, *Consolidated National Capital Plan*, February 2002, p 12.

21 The National Capital Authority aims to complete the preparation and approval of Development Control Plans within 40 working days – see National Capital Authority,

outlined in the Authority's submission, such areas include the land fronting the main avenues and approach routes, the Australian Institute of Sport, the river corridors, some major institutions such as the Tidbinbilla Deep Space Tracking Station, the Namadgi National Park and certain areas of urban open space such as Haig Park and Telopea Park.²²

Works Approval Process for Works in Designated Areas

- 4.15 Because it is so defined in the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth), planning approval is referred to as "Works Approval" by the NCA.²³ "Works" include the construction, alteration, extension or demolition of buildings or structures, landscaping, tree-felling or excavations, but excludes anything done inside buildings or structures.²⁴ Works in Designated Areas require the prior written approval of the NCA and must meet any detailed conditions of planning, design and development set out in the National Capital Plan. The Authority's role is to negotiate with applicants to achieve quality outcomes in design which are appropriate and embody the special characteristics of the national capital.²⁵

Lack of Appeal Processes

- 4.16 Works considered by the Authority in Designated Areas are not generally subject to statutory public consultation. This has been the source of much frustration for some property owners as they are denied the opportunity to object to proposals on neighbouring sites.²⁶ The disparity between the appeals processes of the Territory and the National Capital Authority was raised on a number of occasions during the inquiry. It was also a major point of contention during the Committee's inquiry into Draft Amendment 39 to the National

Development Control Plans – in the Interests of the National Capital brochure, November 2002.

22 National Capital Authority, Submissions, p 181.

23 National Capital Authority, Submissions, p 181.

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

25 National Capital Authority, Submissions, p 180.

26 See sections on Draft Amendment 39 and Benjamin Offices developments in Chapter Six.

Capital Plan which affected residents in the Deakin / Forrest area.²⁷ There is currently no provision in the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) for planning appeals relating to the merits or otherwise of works approvals granted or refused by the Authority.²⁸ The National Capital Plan states that:

In normal circumstances, the Authority would wish to avoid situations where appropriate solutions could not be achieved through negotiation. However there may be circumstances where this is not possible, and, legally, in such circumstances the Authority's views on the merits of the proposal would stand.²⁹

- 4.17 The Authority pointed out that there is recourse under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (ADJR) to determine whether a decision has been made correctly but even the NCA itself acknowledged that this is “a fairly drastic step to have to take”.³⁰ Since the National Capital Plan came into effect, there have been no challenges to NCA decisions under ADJR.³¹ The Authority informed the Committee that it is looking at opportunities for a review process so that the decision maker is subject to a review, which may involve an internal review by the Authority.³² The Authority pointed out that:

What we are trying to do is look at mechanisms that might allow for some sort of mediation or response where people do have a concern. Under the current Act, we cannot introduce an appeals mechanism that is equivalent to the Territory's. I also think it is fair to say that if government considers an appeal mechanism, it needs to do so with a critique of how well or otherwise the one in the Territory performs because it has become quite litigious and difficult, particularly with respect to third-party appeal.³³

- 4.18 Mr Malcolm Smith described the current works approval process as “most unusual” given that there are no requirements for the

27 Joint Standing Committee on the National Capital and External Territories, 2002, *Striking the Right Balance: Draft Amendment 39 National Capital Plan*, Canprint, Canberra, pp 37-44.

28 National Capital Authority, *Consolidated National Capital Plan*, June 2002, p 143.

29 National Capital Authority, *Consolidated National Capital Plan*, June 2002, p 143.

30 Mr David Wright, Transcript, 19 September 2003, p 231.

31 National Capital Authority, Submissions, p 180.

32 Mr David Wright, Transcript, 19 September 2003, p 231.

33 Ms Annabelle Pegrum, Transcript, 19 September 2003, p 231.

Authority to publicly notify applications or to process them within a statutory time limit or for third or first parties to have appeal rights.³⁴ The Planning Institute also found the current arrangements to be unsatisfactory and believes that the NCA must be subject to formal processes for administering development applications and its decisions must be subject to administrative review (with only limited access for third party appeals).³⁵ The Planning Institute further believes that applicants for works approval should have the right to seek review with respect to NCA decisions or failure for a decision to be delivered within the prescribed period.³⁶

- 4.19 The National Capital Plan notes that when the rights of citizens are affected, recourse to an appeals process may be appropriate. However, the plan points out that, because only a very small amount of leased land is located in Designated Areas, the number of development proposals or consequent appeals would “certainly not justify the establishment of any special purpose appeals mechanism”.³⁷
- 4.20 There would appear, then, to be insufficient avenues for appeal by those who feel aggrieved by NCA decisions regarding works approvals in Designated Areas. The Committee concurs with the view expressed by the Planning Institute and Mr Smith - that the omission of the right for the Territory’s residents to appeal against decisions made by the National Capital Authority represents a denial of natural justice. The Committee therefore believes that the relevant section of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) should be amended so that there is provision for appeal against NCA decisions to approve or not approve works in Designated Areas.

Recommendation 4

- 4.21 **That the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) be amended to include the provision for an independent appeals process against National Capital Authority decisions regarding works approvals, in addition to the current option for review under the**

34 Mr Malcolm Smith, Transcript, 19 September 2003, p 244.

35 Planning Institute of Australia (ACT), Submissions, p 58.

36 Planning Institute of Australia (ACT), Submissions, p 58.

37 National Capital Authority, *Consolidated National Capital Plan*, June 2002, p 143.

Administrative Decisions (Judicial Review) Act 1977 (Cth).

Amendments to the National Capital Plan

- 4.22 Section 6 of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) requires the NCA to subject the National Capital Plan to constant review and to propose amendments to it when necessary. The Authority maintains that the current arrangements regarding amendments to the plan are appropriate:

The statutory process to amend the Plan provides for independent and expert planning consideration by the Authority, appropriate opportunity for Australians (including the local community) to comment on proposals, appropriate consultation with the Territory planning authority, approval by the responsible Commonwealth Government Minister, and scrutiny by the Australian Parliament. The Plan Amendment process is transparent and effective.³⁸

- 4.23 The Committee is very familiar with the amendment process, given that draft amendments to the National Capital Plan are referred to the Committee for consideration prior to being presented before both Houses of Parliament. As of May 2003, forty-six draft amendments had been proposed by the Authority, thirty-three of which had been approved in the last thirteen years. A further four were currently in progress, while nine had been withdrawn, deferred or replaced with updated proposals.³⁹
- 4.24 The Territory considers it unsatisfactory that amendments to the plan are required for administrative refinements or modifications to the General Metropolitan Structure Plan.⁴⁰ By statute, the Commonwealth Parliament is required to approve all amendments to the National Capital Plan and the Territory maintains that there is “no reasonable justification” for this level of Commonwealth involvement in what are essentially local ACT planning matters.⁴¹ The ACT Government points out that:

38 National Capital Authority, Submissions, p 185.

39 A full list of those amendments which have been approved is attached at Appendix D.

40 ACT Government, Submissions, p 232.

41 ACT Government, Submissions, p 232.

Using the Territory's planning and legislative framework to plan and administer changes to the metropolitan structure of Canberra would ensure the community is consulted on these decisions. The engagement of the ACT community in planning activities is of paramount significance to the ACT Government.⁴²

- 4.25 The Territory Government is also dissatisfied with the level of consideration afforded to its views on draft amendments to the National Capital Plan. The ACT claims that its comments on draft amendments are only given the same amount of consideration which is extended to the general public, even where a proposed amendment will have an effect on the Territory's planning and land management framework.⁴³

The Commonwealth/Territory Planning Relationship

- 4.26 Since the establishment of self-government in the ACT, the perceived difficulties of the dual planning system have, on occasion, created friction and animosity between the Commonwealth and the Territory. The inevitability of conflict arising from the new planning arrangements was recognised by Mr John Langmore, MP, during debate on the *Australian Capital Territory (Planning and Land Management) Amendment Bill 1990* (Cth). Mr Langmore stated that:

The matter will not always be free of conflict. Inevitably there will be conflict over issues. There was conflict over the division of land between National Land and local land. Inevitably there is conflict over the use of powers, the powers of designation, and over the use of special conditions which the National Capital Planning Authority can impose on the Territory.⁴⁴

- 4.27 The confusion and frustration emerging from the current planning environment has incited calls for the establishment of a single planning authority to oversee planning and land management in the ACT. The present arrangement whereby the Territory Government is required to seek works approval from the NCA where works occur on

42 ACT Government, Submissions, p 233.

43 ACT Government, Submissions, pp 232-233.

44 House of Representatives *Hansard*, 15 November 1990, p 4256.

Designated Areas of Territory land remains a contentious issue. The tension between the two was intensified by the recent conflict concerning the Gungahlin Drive Extension (GDE) which led ACT political parties to call for a reduced role for the Federal Government in ACT planning matters. The situation has deteriorated to the extent that the relationship between Commonwealth and Territory authorities has been described as “deplorable”.⁴⁵

The Statutory Planning Relationship

- 4.28 Statutory requirements ensure that the NCA and the ACT Government are involved in consultation for amendments to the National Capital Plan and the Territory Plan. This assists in avoiding potential inconsistencies and facilitates liaison between agencies on matters affecting both the national and local significance of Canberra and the Territory. The potential of the two planning systems to clash is addressed by Section 26 of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) which requires that the Territory Plan not be inconsistent with the National Capital Plan.⁴⁶
- 4.29 The NCA believes that frequent changes to the Territory planning system have led to difficulty in the Authority ascertaining which areas of the Territory Government have carriage of planning considerations as well as creating some instability in the non-statutory planning relationship between the two authorities.⁴⁷ Despite this, the Authority maintains that “in the vast majority of cases the division of development control responsibilities is absolutely clear”.⁴⁸ The Authority also anticipates that the new, independent ACT Planning and Land Authority will improve definition and lines of communication.⁴⁹
- 4.30 The NCA believes that the co-operation of the two planning authorities is evidenced by the fact that of the 46 draft amendments to the National Capital Plan proposed by the Authority to date, approximately half have been in response to a request from the ACT

45 Odgers, Submissions, p 37.

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

47 National Capital Authority, Submissions, p 192.

48 National Capital Authority, Submissions, p 191.

49 National Capital Authority, Submissions, p 193.

Government or one of its agencies, to deal with a problem at either a policy level or on a site specific basis.⁵⁰

- 4.31 The NCA views the current relationship as the norm and maintains that it is not dissimilar to dual planning regimes across Australia which involve both state and local planning authorities.⁵¹ The ACT Government, however, rejected this assessment, stating that “in no other comparable jurisdiction does the Commonwealth determine and enforce a metropolitan planning outcome”.⁵² The Territory argued that the NCA’s views fail to acknowledge the change in the ACT Government’s administrative responsibilities as a consequence of the introduction of self-government.
- 4.32 The source of greatest tension between the Commonwealth and Territory planning authorities is the statutory provision for the NCA to bear responsibility for approving works on Territory Land within Designated Areas. The NCA acknowledged that this requirement is one that the ACT Government “has never appeared to be comfortable with”.⁵³
- 4.33 While the Authority maintains that it has upheld the national capital interest in each case and ensured that quality design outcomes are achieved, the ACT argued that in many cases, the works administered by the Authority have had little, if anything, to do with maintaining national significance.⁵⁴

The Non-Statutory Planning Relationship

- 4.34 While there is no direct Territory Government representation on the Authority and no Commonwealth/ NCA representation on the ACT Planning and Land Authority, the NCA claims to share a good working relationship with the Territory planning agency. The NCA describes the current relationship as “appropriate and effective”.⁵⁵ This view is shared by the ACT Government which perceives the working relationship between the agencies as “sound”.⁵⁶ Mr Malcolm

50 National Capital Authority, Submissions, p 190.

51 See Macdonald, E., Canberra planners can face tough territory, *The Canberra Times*, 12 April 2003.

52 ACT Government, Submissions, p 245.

53 National Capital Authority, Submissions, p 193.

54 ACT Government, Submissions, pp 230-231.

55 National Capital Authority, Submissions, p 188.

56 ACT Government, Submissions, p 239.

Smith also stated that there was evidence that, at the operational level, liaison between the two planning bodies “has been generally constructive and effective”.⁵⁷

- 4.35 The NCA insists that although the number of professionals with shared experience has declined, relations have continued to strengthen. Regular meetings are held between the two planning authorities at Chief Executive / Executive Director level. Regular liaison meetings are also held at senior officer level on matters such as the management of the National Capital Plan, Territory Plan and Spatial Plan. Day-to-day liaison occurs at project officer level on individual planning and development matters.⁵⁸
- 4.36 The Australian branch of the International Council on Monuments and Sites (Australia ICOMOS) stated that “conflicting decisions made at the Commonwealth and Territory Government levels potentially hinders and alienates community support”.⁵⁹ According to the Housing Industry Association, it is this relationship between the planning authorities which is the aspect of the Committee’s inquiry of greatest concern to its members.⁶⁰ The Royal Australian Institute of Architects added that “communication, consultation and liaison between the two are sometimes dysfunctional over key projects especially when pending decisions are politicised”.⁶¹ Mr Malcolm Smith suggested that the tension between the respective Ministers and planning agencies is “not necessarily unhealthy, in that it should force the respective interests to properly justify their proposals”, however he conceded this may not always happen.⁶²
- 4.37 The ACT Government stressed to the Committee that many of its concerns are more in line with Commonwealth Government policy rather than with the NCA itself:

It needs also to be said that to the extent there are difficulties in the professional relationship between the NCA and the ACT planners, much of this is beyond the control of the NCA. Commonwealth policies referred to above, over which the NCA’s control is limited, have been the source of some of the

57 Smith, Submissions, p 121.

58 National Capital Authority, Submissions, p 192.

59 Australia ICOMOS, Submissions, p 46.

60 Housing Industry Association, Submissions, p 102.

61 Royal Australian Institute of Architects, Submissions, p 415.

62 Smith, Submissions, p 121.

ACT's most critical concerns. Chief amongst these has been the Commonwealth Government's policy in relation to the development and sale of Commonwealth land.⁶³

The Fiscal Relationship

4.38 The Commonwealth's role in overseeing the planning and development of Canberra as the national capital imposes costs on the ACT Government. The Commonwealth provides some compensation to the ACT for costs incurred due to Canberra's unique role as the national capital. However, the ACT Government described assertions made by the NCA that the National Capital Plan does not impose additional costs on the ACT Government, or that they are no different to the costs incurred in other states, as "perplexing".⁶⁴

4.39 According to the ACT Government, the National Capital Authority's lack of responsibility for the economic consequences of its decisions sets it apart from the dual planning arrangements of the States, a view supported by Mr Bruce Wright, who believes the ACT relationship is "complicated by some unique and interlocking issues". In his submission, Mr Wright stated:

There is an absence of accountability in Commonwealth decision-making affecting the ACT. Decisions of the Commonwealth impose both benefits and costs on the ACT. But they are made without acknowledged regard for these consequences. The self-government legislation requires the Commonwealth's National Capital Authority to develop a plan which sets 'standards for the maintenance and enhancement of the character of the National Capital and ... general standards and aesthetic principles to be adhered to in the development of the National Capital', yet makes no provision for the costs of implementing those standards on land managed by the ACT administration.⁶⁵

4.40 The ACT Government claims that it has incurred considerable costs as a result of NCA requirements which the Territory believes it should not be required to bear:

63 ACT Government, Submissions, p 27.

64 ACT Rejoinder Submission to the Commonwealth Grants Commission 2004 Review, p 7.

65 Wright, Submissions, p 82.

The extra layers of administration in relation to having to meet NCA and other national capital aspects of the planning framework creates additional cost burdens on the ACT Government which is not the case for other states.⁶⁶

- 4.41 A recent example of costs imposed on the ACT as a result of NCA actions arose with the Gungahlin Drive Extension controversy. The ACT Government believes it incurred considerable costs because the NCA would not give an indication of its position on the alignment until extensive work had been done by the Territory and a formal proposition had been made.⁶⁷ The ACT Government estimated the direct cost to the ACT of delays caused by NCA processes on the Gungahlin Drive Extension at \$750,000.⁶⁸
- 4.42 The ACT Government advised the Commonwealth Grants Commission that it costs the Territory \$34.759m per annum to meet the requirements of the National Capital Plan and the NCA in relation to matters which it considers are 'State Government' activities.⁶⁹ In its 2004 report on state finances, the Commonwealth Grants Commission recognised that the ACT Government incurs above standard costs in a number of areas, due to requirements of the National Capital Authority and the National Capital Plan.⁷⁰

66 *National Capital Influences – 'All Pervasive in Service Delivery'* – ACT Workplace Discussions, 13 November 2002, p 95.

67 ACT Rejoinder Submission to the Commonwealth Grants Review on State Finances 2004.

68 ACT Government, Submissions, p 333.

69 ACT Government, Submissions, p 334.

70 Commonwealth Grants Commission, 2004, *Report on State Revenue Sharing Relatives 2004 Review*, pp 76-77. These are outlined in table 8.1.

Table 4.1 National Capital Allowances and Special Fiscal Needs

Category	Allowance assessed in 2003 Update using 1999 Review methods	2004 Review allowance
	\$m	\$m
<i>National Capital Allowances</i>		
Education	4.000	(a)
General public services	3.400	5.000
Administration of justice	0.200	(b)
Public safety and emergency services	0.615	1.900
Culture and recreation	1.385	4.870
National parks and wildlife services	0.000	0.100
Urban transit	1.500	1.500
Total national capital allowances	11.100	13.370
<i>Special fiscal needs</i>		
Roads	0.000	2.600
Police	10.900	7.400
Corporate affairs	4.100	4.200
Total special fiscal needs	15.000	14.200

(a) Allowance included in the normal assessment of student numbers and ESL costs.

(b) Discontinued because the ACT introduced new criminal compensation legislation.

Source Commonwealth Grants Commission, *Report on State Revenue Sharing Relatives – 2004 Review*.

Opportunity for Cross-Representation

4.43 Some witnesses identified the need to introduce additional processes to improve liaison between the ACT Government and the NCA.⁷¹ One obvious course of action – which has been recommended by a number of witnesses – is for cross representation on the respective planning authorities.⁷² The Planning Institute of Australia (ACT) described the current lack of reciprocal authority membership as “a fundamental flaw in the overall planning system in Canberra”.⁷³ Mr Malcolm

71 See, for example, Housing Industry Association, Submissions pp 102-104, Property Council of Australia (ACT), Submissions, p 142.

72 See, for example, Powell, Smith, Planning Institute of Australia (ACT), Property Council of Australia (ACT), Submissions.

73 Planning Institute of Australia (ACT), Submissions, p 55.

Smith also called for more formal Executive meetings and Ministerial liaison.⁷⁴

- 4.44 In late 2002, the ACT Government sought the views of the then Minister for Regional Services, Territories and Local Government about the prospect of cross-representation to enhance the working relationship between the two planning agencies. The proposal was refused on the basis that:
- it would present a conflict of interest for the individuals holding membership of both bodies – that is, it would not be appropriate for a Territory representative to participate in discussions on matters where draft amendments to the National Capital Plan are concerned;
 - in order to give effect to the proposal, an amendment to the *ACT (Planning and Land Management) Act 1988* (Cth) would be required which, according to the then Minister, “goes beyond the intended role of the Authority and its members”; and
 - additional appointments to the Authority board – given that the five positions have already been filled until mid 2004 – would also constitute a breach of the *ACT (Planning and Land Management) Act 1988* (Cth).⁷⁵
- 4.45 Mr Tony Powell believes that the new governance framework for planning in the Territory (that is, the formation of the ACT Planning and Land Council) has created an ideal opportunity for cross-representation. According to Mr Powell, this council has the potential to enhance the “largely ineffectual working relationship between the two existing planning systems”.⁷⁶
- 4.46 Despite the popular view throughout the evidence which supports cross-representation on the respective boards of the two planning authorities, Mr Bruce Wright argued that such a move would not provide a solution to the problems at hand:
- Requiring ‘local’ or ACT Government representation on the National Capital Authority would be an unsatisfactory and internally inconsistent resolution to the identified problems in planning of the capital...finding the right path between (the national and local interest) should be a public process based

74 Smith, Submissions, p 123.

75 ACT Government, Submissions, pp 337-338.

76 Powell, Submissions, p 270.

on clearly articulated principles, not dependent on how the numbers add up in a private meeting of the governing group of a statutory agency deliberately stacked with conflicting interests.⁷⁷

The Committee's Views

- 4.47 As former ACT MLA, Mr Trevor Kaine, stated back in 1995, “the question of planning has been a political hot potato ever since the Territory was established”.⁷⁸ Mr Kaine also forecasted that this situation would not change in the future. The recent trend which has seen public disputes between the ACT Chief Minister and the relevant Commonwealth Minister with responsibility for the Territory being aired in the local media have confirmed this view. Such publicity only adds to the perception that there is little cooperation between the Territory and Commonwealth planning authorities although both authorities have argued that the working relationship is, in fact, a healthy one. The Committee is well aware of a number of recent issues which have contributed to mounting tensions between the two governments, and believes that this only intensifies the need to facilitate more cohesion in the planning and development process.
- 4.48 The Committee supports the view that the relationship would be enhanced by having cross-representation on the respective boards of the two planning authorities. In the opinion of the Committee, this is a logical step which would improve the operations and understandings of both organisations and minimise the opportunity for conflict. The Committee recognises that in the past, the relative structures of the two authorities has not allowed for this to be practical, but agrees with Mr Tony Powell’s assertion that the new ACT Planning and Land Council provides an appropriate outlet for this to occur.⁷⁹ The Committee acknowledges that the ACT Planning and Land Council is an advisory board, and therefore concurs with the Planning Institute’s view that the most appropriate level of representation would be for the relevant officers to provide advice as ex-officio members.

77 Wright, Submissions, p 87.

78 ACT Legislative Assembly *Hansard*, 6 December 1995, p 2687.

79 Powell, Submissions, p 270.

- 4.49 While the Committee is aware of concerns about reciprocal board membership representing a conflict of interest, the Committee supports the views of the ACT Government that any such issues could be worked through within the respective bodies and that “in the longer term, the benefits of reciprocal representation would certainly outweigh any such issues”.⁸⁰

Recommendation 5

- 4.50 **That, in addition to Recommendation 3, the Federal Government negotiate with the ACT Government to initiate reciprocal representation on the respective boards of the National Capital Authority and the ACT Planning and Land Council, and that Section 33(1) of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) and the relevant Territory legislation be amended to facilitate this.**

80 ACT Government, Submissions, p 341.