



AUSTRALIAN GOVERNMENT RESPONSE

**REPORT OF THE JOINT STANDING COMMITTEE ON THE NATIONAL
CAPITAL AND EXTERNAL TERRITORIES**

***THE WAY FORWARD – INQUIRY INTO THE ROLE OF THE NATIONAL
CAPITAL AUTHORITY***

MINISTER FOR HOME AFFAIRS

DECEMBER 2008

Introduction

On 19 February 2008, the Minister for Home Affairs, the Hon Bob Debus MP, requested the Joint Standing Committee on the National Capital and External Territories ('the Joint Standing Committee') to inquire into and report on the role of the National Capital Authority ('the Authority').

The terms of reference for the inquiry required the Joint Standing Committee to review the:

- administration of the National Capital Plan ('the Plan');
- Authority's governance arrangements;
- level of oversight required to achieve the highest standards in design in the Australian Capital Territory (ACT);
- opportunities for greater cooperation with ACT Government planning authorities; and
- promotion of the national capital.

The Joint Standing Committee identified three key objectives for its inquiry:

- to ensure that the Commonwealth protect and promote the unique design of Canberra because it represents the intrinsic character of the national capital;
- where possible, align land administration with planning jurisdiction; and
- foster greater co-operation and collaboration between the Commonwealth and the ACT Governments on planning and related matters.

On 16 July 2008, the Joint Standing Committee tabled its report *The Way Forward – Inquiry into the Role of the National Capital Authority* ('the Report').

The Government will take the opportunity of this latest Joint Standing Committee report to consider how best to meet the Commonwealth's obligation to the national capital. Issues considered in the process may be outside the scope of the Joint Standing Committee's specific recommendations, but will address the issues raised.

The Government acknowledges the important work of the Joint Standing Committee and wishes to maintain the momentum created by the inquiry and Report. However, the Government will not immediately commit to all the current recommendations because it might need to implement the recommendations differently after a review of planning and land management responsibilities (discussed in the Government's response to Recommendation 14).

Background

The Authority was established in 1989, under the *Australian Capital Territory (Planning and Land Management) Act 1988* ('the Act'). The Authority comprises five members: currently a part-time Chairperson; a full-time Chief Executive; and three part-time non-executive members.

The functions of the Authority are established under section 6 of the Act. The functions are:

- (a) to prepare and administer the National Capital Plan;
- (b) to keep the Plan under constant review and to propose amendments to it when necessary;
- (c) on behalf of the Commonwealth, to commission works to be carried out in Designated Areas in accordance with the Plan where neither a Department of State of the Commonwealth nor any Commonwealth authority has the responsibility to commission those works;
- (d) to recommend to the Minister the carrying out of works that it considers desirable to maintain or enhance the character of the national capital;
- (e) to foster an awareness of Canberra as the national capital;
- (f) with the approval of the Minister, to perform planning services for any person or body, whether within Australia or overseas; and
- (g) with the Minister's approval, on behalf of the Commonwealth, to manage national land designated in writing by the Minister as land required for the special purposes of Canberra as the national capital.

The Act establishes the Plan, which ensures that Canberra and the Territory 'are planned and developed in accordance with their national significance'. The Act also establishes the Territory Plan, which ensures, in a manner not inconsistent with the Plan, that the ACT is planned and developed to provide the people of the Territory with an attractive, safe and efficient environment in which to live and work and have their recreation.

The powers of the Minister are established by section 7(1) of the Act, which allows the Minister to give the Authority general direction, in writing, as to the performance of its functions.

The process for developing and amending the Plan is set out in sections 14 to 23 of the Act. In performing this function, the Authority has the independence to propose amendments to the Plan, which the Minister may approve.

Summary of the Report

The Joint Standing Committee proposed that the governance arrangements of the Authority should allow more independence to the Authority, commensurate with its status as a statutory authority. The Joint Standing Committee also recommended the development of a single integrated planning document for the ACT, comprising the National Capital Plan and the Territory Plan. The plan would be integrated through agreed definitions and clear geographic boundaries.

Chapters 1-3 of the Joint Standing Committee's report provide a summary of the Joint Standing Committee's role, previous reviews undertaken of the Authority and the role of the Authority. Recommendations are contained in Chapter 2 and Chapters 4-11.

The Joint Standing Committee's report contains 22 recommendations. The Government accepts 13 of those recommendations in full, in part or in principle.

The Government does not accept four recommendations that primarily relate to delegating planning powers to the ACT, the functions of the proposed National

Capital Consultative Council and providing funding for a three dimensional digital plan.

The Government notes that the proposed Council is similar in form to the Minister for Home Affairs' *Minister's Canberra Consultative Forum*. This forum enables ACT region representatives to express their views to the Minister for Home Affairs and the ACT Chief Minister. The Government considers that any changes to the Forum and the establishment of a new council should only have a consultative function, rather than any specific decision-making or recommendatory functions.

The Government has noted five recommendations relating to: the position of Commonwealth Architect; airport planning; the preparation of a joint sustainable transport plan; resourcing for the Authority; and an independent review mechanism for certain decisions of the Authority.

The Government considers that the creation of the position of Commonwealth Architect may duplicate the role or the services currently available to the Authority.

<p>Recommendation 1: That the Commonwealth Government affirm its direct and enduring commitment to the future of Canberra as a planned national capital on behalf of all Australians.</p>
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The Government accepts this recommendation.

The Commonwealth has an enduring interest and commitment to the future of Canberra as a planned national capital on behalf of all Australians. The ACT is vested in the Commonwealth by virtue of section 125 of the *Constitution* for establishing the Seat of Government. Canberra is the home of our democratic institutions such as the Parliament of Australia and the High Court. Canberra is a unique capital city. It is one of only four capital cities in the world that has been planned as a capital city from its inception.

Canberra is also home to the memorials that honour the men and women who sacrificed their lives to protect the interests and values of the people of Australia. In Canberra, icons of national significance, like the National Museum of Australia, reflect our national identity, ideals and aspirations.

The Government affirms its direct and enduring commitment to the future of Canberra as a planned national capital on behalf of all Australians.

Recommendation 2: That the *Australian Capital Territory (Planning and Land Management) Act 1988* be amended to include the following provisions:

- That the National Capital Authority board consists of a Chairperson and seven members.
- That a minimum of two National Capital Authority board members be from the ACT region.
- That a person appointed as a National Capital Authority board member by the Commonwealth Government must have qualifications or expertise relevant to a field related to the Authority's functions as set out in section 6 of the *Australian Capital Territory (Planning and Land Management) Act 1988*.
- That the Chief Executive no longer have ex-officio status on the National Capital Authority board.
- That the appointment of Chief Executive should be made on recommendation of the National Capital Authority board and the Chief Executive be fully accountable to the board.

The Government accepts this recommendation in part.

The Government agrees in principle to amending the Act to provide for the Authority comprising a minimum of five and a maximum of seven members. However, the Government will consider the overall structure of the Authority in the context of the inter-governmental committee that will consider how to best align and streamline planning and land management (discussed in the Government's response to Recommendation 14).

The Government also agrees that greater engagement of local and national perspectives is one way of ensuring that the ACT and Commonwealth Government interests in the development of the national capital are properly considered.

The Government does not agree that the Chief Executive should not be a member of the Authority. The Chief Executive will continue to remain on the Authority board, while being responsible for staff of the Authority as an Agency Head for the purposes of the *Public Service Act 1999* and the *Financial Management and Accountability Act 1997*. The Chief Executive will continue to provide operational and advisory support to the Authority in the exercise of its statutory functions.

Recommendation 3: That the *Australian Capital Territory (Planning and Land Management) Act 1988* be amended to require the Chairperson of the National Capital Authority to appear twice a year before the Joint Standing Committee for the National Capital and External Territories.

The Government accepts this recommendation in principle.

The Government supports increased accountability measures to allow for greater scrutiny of the operations of the Authority. The Chairperson should be accountable for the Authority's performance of its statutory functions. The Government notes that the appropriate mechanism to achieve the objective of this recommendation is an

amendment to the Joint Standing Committee's Standing Resolution of Appointment and will refer consideration of the change to the Committee Secretariat.

Recommendation 4: That a National Capital Consultative Council be established. This Council would have representatives from the Commonwealth Government and the ACT Government, the community and business. The Council would be co-chaired by the responsible Minister and the ACT Chief Minister.

The Government accepts this recommendation in principle

The Government agrees that consultative mechanisms enabling the Commonwealth to hear from the ACT Government, ACT community and business representatives would provide valuable information and support to the reform process.

The Government notes that the Minister for Home Affairs has an existing Canberra Consultative Forum and will consider whether this forum can form the basis for a National Capital Consultative Council.

The Forum, and its predecessor, the Canberra Region Ministerial Forum, has been a longstanding mechanism for fostering links between the Commonwealth Government, the ACT Government and the Canberra business community.

The Council will assist the Government in its further consider the planning relationship between the Commonwealth Government and the ACT Government in the context of its review to streamline planning and land management responsibilities in the ACT (discussed in the Government's response to Recommendation 14).

Recommendation 5: That the Commonwealth Government establish the position of Commonwealth Architect within the Department of the Prime Minister and Cabinet.

The Government notes this recommendation.

The Government, including the Authority and the responsible Minister, has the power to obtain any advice it requires in the performance of its functions. This includes obtaining architectural services. Section 44 of the Act allows the Minister, upon recommendation of the Authority, to appoint a committee to give advice to the Authority or to assist in the performance of its functions.

The Government expects that the Authority will continue to seek advice of highly skilled and experienced architects when required. The Government will also retain the ability to obtain architectural advice on its building and/or land management projects through normal departmental procurement mechanisms.

The Government is also concerned that the creation of the position of Commonwealth Architect may only serve to duplicate and complicate the role of the Authority in the exercise of its statutory functions relating to planning and development of areas of land in the ACT.

If the Government is provided with further evidence that the position of Commonwealth Architect is desirable, and will not duplicate the functions of the Authority, then it may be considered further.

Recommendation 6: That the *Australian Capital Territory (Planning and Land Management) Act 1988* be amended to require all draft amendments to the National Capital Plan and all proposed works (with the exception of de-minimus works) in the Parliamentary Zone to be referred to the Joint Standing Committee on the National Capital and External Territories for its consideration and report, if necessary, within three months.

The Government accepts this recommendation in principle.

The Government values the important role the Joint Standing Committee plays in scrutinising and reporting on draft amendments to the Plan. Since its inception, the Joint Standing Committee has undertaken several reviews of the Authority and its operations.

However, the Joint Standing Committee is established by resolution of appointment of both Houses of Parliament. The Speaker of the House of Representatives and the President of the Senate must introduce amendments to the resolution. Both Houses of Parliament must agree to any amendment to the resolution of appointment of the Joint Standing Committee.

The Government is encouraged by the Joint Standing Committee's resolve to review all draft amendments to the Plan and all proposed works (with the exception of de-minimus works) in the Parliamentary Zone. The Government notes that any expansion of the Joint Standing Committee will likely involve an increase in responsibilities and administrative burdens to the Joint Standing Committee. The Joint Standing Committee has indicated that it is willing to accept this eventuality.

The Government will consider how best to implement this recommendation in the context of its review to streamline planning and land management responsibilities in the ACT (discussed in the Government's response to Recommendation 14).

Recommendation 7: In the interest of improving uniformity between the two planning systems, the Development Assessment Forum model should be assessed by the National Capital Authority for its relevance and application to the National Capital Plan and a report provided to the Joint Standing Committee and Minister within three months from the date of the Government Response to this report.

The Government accepts this recommendation in principle.

The Government will ask the Authority to make an assessment of the relevance and application of the Development Assessment Forum model in the context of its review to streamline planning and land management responsibilities in the ACT (discussed in the Government's response to Recommendation 14).

Recommendation 8: That existing relevant Commonwealth and Territory legislation be amended to protect the heritage of all Designated Areas in Canberra.

The Government accepts this recommendation in principle.

The Government understands that, although the ACT can list heritage places in Territory Land that is Designated Area, the usual statutory systems of the ACT and Commonwealth governments to protect the places do not generally apply. The Government will work with the ACT Government to consider how best to implement this recommendation in the context of aligning and streamlining planning and land management responsibility (discussed in the Government's response to Recommendation 14).

Recommendation 9: That the role of the National Capital Authority be clarified to include promotion of the national cultural icons located in the Central National Area.

The Government accepts this recommendation in principle.

The Authority's current promotion function under section 6(e) of the Act is to foster an awareness of Canberra as the national capital. The Government accepts that greater clarity may be given to this particular function to provide certainty as to the scope and purpose of the Commonwealth's role in this area.

Recommendation 10: That the National Capital Consultative Council prepare a domestic and international tourism and marketing plan for the national capital for consideration by both the ACT and Commonwealth Governments in their next respective budgets. In addition, the Committee recommends that such a plan factor in the Centenary of Canberra celebrations in 2013.

The Government does not accept this recommendation.

Under Schedule 4 of the *Australian Capital Territory (Self-Government) Act 1988*, the ACT Government has responsibility for governing matters relating to tourism. The Government recognises that the Commonwealth has a responsibility to promote the national capital for its national significance. However, the Government considers that the preparation of a joint tourism and marketing plan would enmesh the Commonwealth Government in areas of traditional responsibility of the ACT Government.

The Government agrees that the Centenary of Canberra in 2013 is an opportunity to celebrate the role of Canberra as a national capital to Australia. Australians should be afforded an opportunity to experience and learn more about Canberra as a national capital.

The Government is committed to celebrating and commemorating Canberra's centenary and will work with the ACT Government to ensure that there is a national celebration of the capital as a place of national significance and meaning that represents our national identity, heritage, culture and democratic values.

The Government is canvassing options for how best to celebrate and commemorate Canberra's centenary in consultation with the ACT Government.

Recommendation 11: That the Department of Infrastructure, Transport, Regional Development and Local Government consult with the National Capital Authority to ensure that the Airport Master Plan and the major development plan is in line with the National Capital Plan.

The Government notes this recommendation.

The *Airports Act 1996* ('the Airports Act') and associated regulations provide a comprehensive regulatory regime to ensure orderly land use planning and development of the leased Commonwealth airports. The Airports Act requires the airport lessee companies prepare key planning documents such as master plans, major development plans and environmental management strategies. Airport lessee companies must provide a 60 business day public consultation period prior to lodgement of the plan/strategy with the Minister for Infrastructure, Transport, Local Government and Regional Development. This provides the community with the opportunity to scrutinise an airport's planning intentions and proposed developments, including environmental and other impacts.

Airport lessee companies must also advise in writing State, Territory and Local Government planning authorities of their intention to submit a draft major development plan to the Infrastructure Minister. In deciding whether or not to approve the plan, the Infrastructure Minister must have regard to the outcome of the consultations undertaken by the airports lessee company.

On 10 April 2008, the Infrastructure Minister announced the Government's commitment to the development of a National Aviation Policy Statement.

The Government recognises that a key challenge at major airports is integrating planning for the development of airport sites with consideration of the impacts of development outside airports. The National Aviation Policy Statement is a more appropriate forum to consider the planning issues for Canberra International Airport, within a whole-of-Government framework.

The National Aviation Policy Green Paper will outline possible policy directions, settings and reforms for the Australian aviation industry and will be released for public comment in the latter half of 2008. A Government White Paper will be finalised in mid-2009 addressing each of the key short, medium and long term challenges identified.

Recommendation 12: That the National Capital Consultative Council make recommendations to the Commonwealth Government for a policy to govern future locations of Commonwealth Government agencies in Canberra.

The Government does not accept this recommendation.

The Government considers that the proposed National Capital Consultative Council, or the existing Minister's Canberra Consultative Forum, should not have specific decision or recommendatory powers but should remain a consultative forum. However, the Government acknowledges the impact of the Commonwealth's accommodation decisions on the ACT and the ACT's town centres. The Government commits to working with the ACT Government to ensure that it is consulted on matters that are relevant to the holistic development of Canberra as the national capital.

Recommendation 13: That the Commonwealth and the ACT Government prepare a joint Sustainable Transport Plan which is recognised in both the National Capital Plan and the Territory Plan.

The Government notes this recommendation.

The Government acknowledges that there should be close consultation between the Commonwealth and ACT Governments in developing a sustainable approach to Canberra's transport needs and that planning needs to take account of transport implications.

The Government does not agree that the transport issue should be considered solely within the planning framework. The Government will work with the ACT Government to canvass options for how this recommendation may be implemented.

Recommendation 14: That, as a possible interim measure to resolve duplication, the Commonwealth consider amendments to the *Australian Capital Territory (Planning and Land Management) Act 1988* to permit the National Capital Authority and ACT Planning and Land Authority to negotiate a memorandum of understanding to delegate the planning jurisdiction for Territory Land which has designated status under the National Capital Plan from the NCA to ACTPLA. Such delegation would need to be accompanied by the necessary resources to fulfil these functions.

The Government does not accept this recommendation.

The multi-layered framework for planning and land management in the ACT creates a significant amount of confusion for stakeholders wishing to develop, maintain or enhance areas of the national capital.

The Government does not consider that a Memorandum of Understanding, permitting the ACT Planning and Land Authority to be a delegate under the Act, would achieve a reduction in the complexities associated with planning and land management responsibilities.

However, the Government is seeking to reduce duplication in responsibilities between the Commonwealth and ACT planning authorities. The Government will establish an inter-governmental committee comprised of representatives of Commonwealth departments, the ACT Government and other stakeholders.

The inter-governmental committee will determine options for how best to simplify the planning and land management responsibilities that are divided amongst several stakeholders in the ACT. The inter-governmental committee will report to the Government with options for implementation as soon as practicable.

Recommendation 15: That, in the interests of removing unnecessary complexity and red tape:

- 'Special Requirements' be removed from the National Capital Plan;
- All areas of National Land previously subject to Special Requirements be converted to Designated Areas; and
- Any areas of Territory Land previously subject to 'Special Requirements' where the Commonwealth has a significant and enduring planning interest be converted to Designated Areas until a broader review of the National Capital Plan and Territory Plan is undertaken to assess whether such areas should be considered for future gazettal as National Land.

The Government accepts this recommendation in principle.

The Government will consider how best to implement this recommendation through the options prepared by the inter-governmental committee for simplification of planning and land management responsibilities in the ACT.

Recommendation 16: The strategic goal of ecologically sustainable development should be embedded as a major principle in the *Australian Capital Territory (Planning and Land Management) Act 1988*.

The Government accepts this recommendation in principle.

The Government considers that the United Nations Environmental Program *Melbourne Principles for Sustainable Cities* provide a comprehensive and integrated understanding of sustainable development principles for cities which should inform any changes to the simplification of the planning system in ACT. The Melbourne Principles are accessible at:

http://www.cidb.org.za/Documents/KnowledgeCentre/melbourne_principles.pdf

The Government is committed to encouraging ecologically sustainable development. The Government will consider the best ways to encourage ecologically sustainable development in Canberra through the options prepared by the inter-governmental committee for simplifying the planning and land management responsibilities in the ACT and the review of the Commonwealth's national capital responsibilities.

Recommendation 17: That the *Australian Capital Territory (Planning and Land Management) Act 1988* be amended to enshrine the policies and principles of national significance as described in the proposed National Capital Land Use Plan in a schedule of the Act, and that the proposed Implementation Strategy be included as a disallowable instrument. The Act should also be amended to specify a requirement for the National Capital Land Use Plan and Implementation Strategy to be reviewed every three to five years.

The Government accepts this recommendation in principle.

The Government acknowledges that the meaning of national significance in the Plan should be clarified and established within the legislation establishing the ACT's planning system.

The Government will consider how best to implement this recommendation through the options prepared by the inter-governmental committee for simplification of planning and land management responsibilities.

Recommendation 18: That the National Capital Authority and ACT Planning and Land Authority form a joint working group to achieve a single integrated document which:

- Comprises the statutory plans, and agrees on clear geographic boundaries between the two plans based on the committee's objective that, where possible, land administration be aligned with planning jurisdiction;
- includes harmonised language, definitions and structure;
- provides guidelines for interpretation of the two plans;
- provides advice to the Commonwealth Government on enshrining the policies and principles relating to national significance across the Australian Capital Territory in the form of the National Capital Land Use Plan in the *Australian Capital Territory (Planning and Land Management) Act 1988*; and
- provides advice to the Commonwealth and ACT Governments on the key elements of the Implementation Strategy.

The Government accepts this recommendation in principle.

The Government intends to simplify complexities and ambiguities, particularly relating to definitions, used in both the National Capital Plan and the Territory Plan. The Government recognises that the development of a single integrated framework and the simplification of terms and guidelines has positive benefits for individuals and businesses seeking to develop areas of land in the ACT.

The Government will work closely with the ACT Government to establish the best ways to implement this recommendation. This will be achieved through the options prepared by the inter-governmental committee for simplification of planning and land management responsibilities.

Recommendation 19: That the National Capital Authority be resourced to participate in the working parties and reviews as required.

The Government notes this recommendation.

The Government will work with the Authority to ensure its full participation and engagement in the inter-governmental review of planning and land management responsibilities in the ACT.

Recommendation 20: That any draft amendment(s) to the National Capital Plan proposing uplift of Designated Areas and a formal geographic re-alignment of planning jurisdiction be referred to the Joint Standing Committee on the National Capital and External Territories for inquiry.

The Government accepts this recommendation in principle.

The Government agrees that significant changes to the planning system and the Plan should be subject to the scrutiny of the Joint Standing Committee. However, the framework for the inter-governmental committee establishing options for simplification of the planning system in the ACT is yet to be determined. The Government does not wish to pre-empt any decision it may take about the future use of Designated Areas and/or the geographic realignment of planning and land management responsibilities in the ACT.

The Government will consider how best to implement this recommendation in the context of aligning and streamlining planning and land management responsibilities in the ACT.

Recommendation 21: That, in the interest of aligning the National Capital Authority's planning system with the ACT's, the *Australian Capital Territory (Planning and Land Management) Act 1988* be amended to include a provision for decisions on development applications made under the Act to be subject to review through the Commonwealth Administrative Appeals Tribunal.

The Government notes this recommendation.

The Government is committed to balancing the concerns of ACT residents about planning and development decisions with protecting the Commonwealth's interests in the development of the national capital. The Government will consider this recommendation through the options prepared by the inter-governmental committee for simplification of planning and land management responsibilities in the ACT.

Recommendation 22: That the Commonwealth provide resources to the National Capital Authority to continue the development of a cost effective three-dimensional integrated plan in digital format which is available online with the purpose of gaining efficiencies in planning and enhancing consultation.

The Government does not accept this recommendation.

The Government does not consider that the development of a digital format plan for the ACT is a priority when considered against the recommendations already proposed by the Joint Standing Committee. The Government further considers that the Authority should review the need for a digital plan against proposed changes to the planning framework and the available technology.

It will be open to the Authority, should it consider it appropriate, to seek funding for such a project within the normal Government fiscal and resource allocation processes.

Other Actions

In addition to implementing the Joint Standing Committee's recommendations, the Government has also decided to enhance the available powers of the responsible Minister.

The Government considers it appropriate for the responsible Minister, on behalf of the Commonwealth, to intervene directly in a matter that is in the national interest. The determinative power will be a reserve power, of last resort, accompanied by safeguards that require the responsible Minister to make a direction in writing and to table the direction and the reasons for the making of the direction before the Parliament.

The Act provides for the Authority to prepare and administer the Plan and to suggest amendments to the responsible Minister for his or her approval. The Minister may approve the proposed amendments or direct the Authority to consider a particular matter or make suggestions for the Authority's consideration. However, there is no provision in the Act that allows for the breaking of a "deadlock" situation, should the Authority decline to change a proposed amendment that the Minister is not prepared to approve.

The Government will amend the Act to allow the responsible Minister to issue binding policy directions to the Authority about its operating model, including consultation and best practice business planning.

The Auditor-General recently criticised the Authority's management of diplomatic leases. The Government has already formed an inter-departmental committee in response to a recommendation from the Auditor-General relating to the development of a whole-of-Government approach to administering diplomatic leases.