

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

REVIEW OF THE NATIONAL CAPITAL PLAN

Report of the Joint Parliamentary Committee
on the Australian Capital Territory

May 1990

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Deputy Chairman	Senator M E Reid
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Secretary to the Committee	Mr I A Dundas

TERMS OF REFERENCE

That the Joint Committee inquire into and report on the draft National Capital Plan.

FOREWORD

The National Capital Planning Authority began the task of preparing the Draft National Capital Plan in May 1989. The first stages in this process resulted in the publication of two volumes of a draft Plan which received wide circulation as part of a public consultation process.

A Joint Committee on the Australian Capital Territory was formed in the 35th Parliament also in May 1989. It began a review of the draft Plan as soon as the first volume was published. This review was a formal inquiry based on submissions received by the Committee, submissions received by the National Capital Planning Authority and the contents of the draft Plan itself. That Committee held several public hearings as well as holding private briefing sessions with the Chief Planner of the ACT Interim Territory Planning Authority and senior staff of the National Capital Planning Authority.

The Committee prepared a report on its inquiry but was unable to table this report before the Parliament was dissolved. The Committee was able to advise the National Capital Planning Authority of many of its concerns at the briefing sessions and at meetings between the Committee's Chairman and the Authority's Chairman.

In March 1990 the then Minister for Arts, Tourism and Territories certified a draft National Capital Plan. This Plan was substantially different to the initial two draft Volumes considered by the Committee in the 35th Parliament. The new draft was prepared in the light of the submissions made to the National Capital Planning Authority and the public debate that followed the release of the initial drafts. The revision of the initial drafts were made after the Committee advised the Authority of its concerns.

The present Committee has decided to table the draft report prepared by the Committee in the 35th Parliament. It considers that it is important to do this so that a more informed assessment can be made of the certified draft as an evolutionary document that has progressed from the initial drafts scrutinised by the Committee. It is also important to provide the Parliament with the opportunity to review the extent to which the certified draft reflects the concerns of the previous Committee.

In tabling this report the Committee acknowledges the work of the previous Committee and stresses that the report was the work of that Committee. The Committee appointed in the 36th Parliament contains several members who did not sit on the previous Committee. While the new Committee has resolved to publish the report it cannot be taken that the report necessarily reflects the views of all members of the Committee in the 36th Parliament.

The Committee intends to examine the certified draft to determine whether it is an adequate basis for the future planning and development of Canberra and to assess the Authority's response to all the comments and criticism made of the initial draft. It proposes to complete this review before the plan itself is finalised and brought into the Parliament.

John Langmore
Chairman

22 May 1990

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1. THE DRAFT NATIONAL CAPITAL PLAN AND THE COMMITTEE'S INQUIRY

Introduction

1.1 The National Capital Plan is being prepared by the National Capital Planning Authority (NCPA) in accordance with the provisions of the *Australian Capital Territory (Planning and Land Management) Act 1988*. The Act, which provides for the continuation of Commonwealth involvement in planning and development control in the Territory after the introduction of Territorial self government, establishes the NCPA and charges it with the responsibility of preparing and administering the Plan. The proposed object of the Plan is to ensure that Canberra and the Territory are planned and developed in accordance with their national significance.

1.2 The NCPA is required to prepare a draft plan and make it available for public comment before it proceeds to finalise the National Capital Plan. The NCPA chose to present the draft in two volumes, the first of which was published in July 1989. The second volume of the draft was published in October 1989. In addition to making the draft available for public comment the NCPA is also required to consult with and take account of the views of the Territory planning authority. The Commonwealth Minister for Arts, Tourism and Territories is to approve the plan and submit it to the Federal Parliament. If the ACT planning authority objects to the draft plan the Minister is to consult with the ACT Government before he approves the Plan. The final plan is to be laid before both Houses of the Federal Parliament, where it may be disallowed.

1.3 The Minister for Arts, Tourism and Territories wrote to the Committee in July 1989 asking it to inquire into the draft Plan. The Committee considered that its principal task was to ensure that the draft Plan was in accordance with both

the letter and spirit of the legislation. The Committee also had to ensure that the draft Plan proposed the establishment of an appropriate planning framework which would protect and enhance the national capital aspects of Canberra while allowing the people of Canberra to take responsibility, through the ACT Legislative Assembly, for the general planning and development of other aspects of the Territory.

1.4 The Committee started its task with the attitude that it was necessary for the Commonwealth to be involved in planning and development in the Territory to the extent that it could exercise over-riding control in relation to the national capital function of Canberra. To satisfy itself that the Commonwealth had the authority and the means to be so involved the Committee had to consider both the adequacy of the legislation and the work of the NCPA as represented in the draft Plan. It followed that if the legislation was adequate and if the NCPA's draft Plan properly reflected the intent and scope of the legislation then the national significance of Canberra and the Australian Capital Territory would be protected and enhanced.

1.5 It could be argued that the Committee should have confined its review to assessing the appropriateness of the contents of two volumes of the draft plan. However the Committee found that some of the criticism of the draft plan appeared to be based on a misunderstanding of the legislation. Much of the criticism that was directed at the NCPA either questioned its interpretation of the legislation or challenged the provisions of the Act. Given that the legislation emphasised public consultation the Committee consider that these criticisms needed to be evaluated, particularly given that the problems seemed to be as much with the legislation as with the draft Plan.

1.6 The Committee did not attempt to rigorously review the alternatives for the development of the Territory and has not in this report presented its own vision of Canberra's

future. This would be a large and complex task which could not be completed within the time available to complete the review of the draft Plan. The NCPA and the Territory planning authorities are also not yet in a position, nor have they had the time, to undertake such a review. It must be recognised that this is an important task that must be undertaken in the near future but which cannot be rushed or completed in a superficial way.

1.7 Beyond the turn of the century it is going to be difficult to contain urban Canberra within the boundaries of the Australian Capital Territory. This development will have significant implications for the New South Wales government and local Government bodies adjacent to the Territory as well as for the Australian Capital Territory Government and the Commonwealth. The Committee is aware that a regional planning co-ordination group involving these authorities has been formed. Progress towards the long term planning of Canberra will require preparatory action involving all levels of government in the near future. In this regard the National Capital Plan and the Territory Plan, when it is prepared will only be preliminary steps. The future of Canberra should be a matter of continuing concern to the Federal Parliament and the Committee considers that long term plans and proposals should be referred to a parliamentary committee charged with reviewing such matters as soon as they are drafted.

The Australian Capital Territory (Planning and Land Management) Act

1.8 The Australian Capital Territory (Planning and Land Management) Act provides for the continued planning of the Australian Capital Territory by two planning authorities. It ensures that Canberra's role as the National Capital is given priority over Territory planning requirements. The NCPA, which is subject to direction from the relevant Commonwealth Minister, is given the task under the Act of ensuring that

Canberra and the Australian Capital Territory are planned and developed in accordance with their national significance. The legislation also provides that the ACT Legislative Assembly should establish a Territory planning authority which will prepare and administer a Territory Plan. The object of the Territory Plan is to provide for the planning and development of the Territory in a manner consistent with the National Capital Plan.

1.9 The Act specifically provides that the National Capital Plan must:

- . define planning principles and policies designed to ensure that Canberra and the Australian Capital Territory are planned and developed in accordance with their national significance;
- . set standards for the maintenance and enhancement of the character of the National Capital;
- . set general standards and aesthetic principles to be adhered to in the development of the National Capital; and
- . set out general policies to be implemented throughout the Territory in relation to land use and the planning of the national and arterial road system.

The legislation also provides that the National Capital Plan:

- . may set out detailed conditions of planning, design and development in Designated Areas; and

. may set out Special Requirements for the development of any other area where it is desirable to do so in the interests of the National Capital.

1.10 It is clear the Act requires the NCPA to be involved generally in planning throughout the Territory as well taking a particular and detailed interest in specific areas where the National Capital aspects are more significant. It is also clear that the Act anticipates that there will be aspects of the Territory as a whole, and not just the Parliamentary Triangle, which may contribute to the national character and significance of the Capital. There is no doubt that the national significance is intended to take priority over Territorial aspects.

National significance

1.11 The Australian Capital Territory (Planning and Land Management) Act refers to concepts such as the national significance of Canberra and the Territory, the character of the National Capital and the interests of the National Capital. These concepts are not defined but they establish a basis for the NCPA to determine how closely it needs to be involved in planning and development and what matters the National Capital Plan should cover. The Act does not however establish any criteria or rationale for identifying Designated Areas although it does provide that in Designated Areas the NCPA will be the authority with sole responsibility for approving works. It is implicit that Designation may be applied to those areas which are most important to the special character of the National Capital and where it is necessary for the Commonwealth to exercise direct control over development.

1.12 The two draft volumes of the National Capital Plan reflect the provisions of the Act. Volume 1 deals with Designated Areas while Volume 2 sets down the general principles and policies to apply throughout the Territory. Volume 2 also prescribes Special Requirements for certain areas. In preparing the draft the NCPA recognised that the national significance of Canberra is derived from the city's role as the National Capital. The NCPA argued that as a result of the urban design and built form which have been achieved in the City these now represents both the symbolic role of the capital and the high ideals and aspirations of the people. In this regard the fact that Canberra was a new and planned city, is based on the Griffin plan, had developed a garden city character and had been developed according to high environmental and aesthetic standards all contribute to the national significance of Canberra. Therefore all these factors require attention in the draft Plan and matters over which the NCPA needs to exercise some measure of control.

1.13 The NCPA has also identified activities associated with the National Capital role of Canberra that are of national significance. These are:

- . constitutional activities - the office of Governor-General, meetings of Parliament and Cabinet, sessions of the High Court;
- . administrative activities - headquarters and policy forming activities of the Public Service;
- . national cultural and educational activities - services and functions of the National Library, War Memorial, National Gallery, Australian National University;

- . ceremonial activities - celebration of national occasions (Anzac Day, Australia Day), opening of Parliament, official welcomes to distinguished visitors; and
- . international activities - work of embassies and high commissions, representation of UN agencies.

1.14 The NCPA used a number of criteria or principles in assessing matters such as national significance. In considering the relevance of previously established planning policies the NCPA reported that it had used the following criteria:

- . the structure of Griffin's design - the landscape setting, the Parliamentary and Central Areas, and the emphasis given to the major avenues and approaches to the city;
- . the cost effectiveness of particular strategies, policies and practices to accommodate future growth;
- . the impact of the policy on Territory's environment and on the quality which residents valued and which helped to make Canberra a pleasant and convenient place to live in; and
- . how far the policy affected the capacity of the Plan to accommodate growth and change over the next decade.

1.15 The need for Special Requirements in certain areas is also discussed for each category of area where such requirements are proposed. This step is required because the Act specified that Special Requirements are not mandatory but could be applied where it is considered necessary in the

interests of the National Capital. This is a vague concept which required subjective judgement. In the first instance this judgement has been exercised by the NCPA. The adequacy of the NCPA's explanations and the appropriateness of its decisions are discussed below.

1.16 In relation to Designated Areas the NCPA considers that it has the task of determining what characteristics of Canberra with a special national significance can be identified with particular places and localities. It has named these places and localities as Designated Areas for special consideration within the future growth and development of Canberra. The NCPA uses the following four main guidelines in defining the boundaries of Designated Areas.

- . An area will be designated where it is necessary to maintain the integrity of the key structural elements which form the special character of the National Capital. Planning actions which match the function of each element and cater for its future needs will serve to maintain that integrity.
- . Areas will be designated where the detailed planning or management measures (or both) should have been primarily the concern of the Commonwealth.
- . A fragmented approach will be avoided. If one part of the main structural elements of the historic plan are to be designated, the designation will apply to the whole element.
- . The boundaries of designated areas will be clearly defined in such a way that plans could be properly implemented.

The draft National Capital Plan

1.17 The two volumes of the draft Plan discussed in some detail the origins and development of Canberra as well as the national significance and special characteristics of the City. The most important consequence of the Plan is the planning environment it created by setting out principles, policies, Special Requirements and Designated Areas. These measures are significant because they set the course for Canberra in its role as the National Capital and also define the residual planning and development role that will be left to the Territory planning authority.

1.18 The draft plan proposes 24 principles and 80 policies which are to apply throughout the Territory. They deal with matters such as the maintenance and enhancement of Canberra's national significance, the planning and development of urban and industrial areas, the equitable provision of services across each of the towns and suburbs of Canberra, location of employment centres, the landscape setting, broadacre uses, transport, urban design, the environment and the provision of infrastructure.

1.19 Special Requirements are proposed in relation to approach routes and the avenues approaching the central area of Canberra, the major institutions, selected precincts, Civic and for protection zones around six Commonwealth facilities. With the exception of Civic the Special Requirements are basically that the areas in question be developed according to an approved plan prepared either by the occupier of the land, the Territory planning authority or the NCPA. The Special Requirements for Civic are much more detailed and impose specific requirements on developers.

1.20 The NCPA identified the following three categories of areas which it considers represents the main elements of

Canberra's urban structure that determines the character of the National Capital and which therefore need to be delineated as Designated Areas:

- . the Central National Area;
- . the main Avenues of the Griffin Plan; and
- . the Open Space Setting.

1.21 In relation to the 'Central National Area' and the Avenues the Authority sets down policies for land use, transport, urban design, landscaping, heritage and environment, building design and maintenance. Policies for each of the various elements of the 'Open Space Setting' are also proposed. As an interim measure the policies and controls introduced and authorised by the former National Capital Development Commission continue to have effect.

Further review and development of the Plan

1.22 The Australian Capital Territory (Planning and Land Management) Act imposed a restrictive timetable on the NCPA for the preparation of the National Capital Plan. The NCPA decided to develop a workable Plan as quickly as possible. The Chief Executive of the Authority told the Committee that he considers the Plan was:

"... a plan which meets Canberra's development needs for the next five to ten years ..."¹

1.23 Completion of the Plan is to be followed by a comprehensive review of all planning issues and existing policies. The Chief Executive stated that it is intended to review the structure of Canberra's development and the location of urban land use. This review, which will be undertaken jointly with the Territory planning authority, will take two years. As discussed above the Committee agrees that

1. Evidence p 265.

this review is an essential and urgent task and accepts that the NCPA has little option but to work within the framework of existing policies and development controls if it is to meet the deadline imposed by the Act. As a consequence the Committee consider the plan should be considered to be a first edition that will be revised sometime before the turn of the century.

1.24 The draft Plan itself is not totally prescriptive but creates a requirement for additional work and leaves many gaps to be filled by the Territory authorities. Apart from the plans that will be necessary to satisfy the Special Requirements the Plan also foreshadows a landscape master plan and a management plan for the 'Central National Area'. Management plans are also envisaged for Lake Burley Griffin and its foreshores and other elements of the Open Space Settings together with conservation plans to control planning and development of heritage sites. The general policies promulgated for application throughout the Territory also provide that management plans for non urban areas are to be prepared by the ACT Administration, that conservation plans will be prepared for listed heritage sites that are affected by development proposals and that rural areas are to be further studied to assess their potential for rural, open space, recreation and tourist use. In many ways it can be seen that the draft Plan proposed other subsidiary planning and management processes and was not intended to be the end of the planning process in Canberra.

National Land and the National Capital Plan

1.25 Prior to the commencement of self government in the Australian Capital Territory the Commonwealth declared specified areas in the Territory to be National Land. This action was taken pursuant to the provisions of the Australian Capital Territory (Planning and Land Management) Act. The Commonwealth retained responsibility for the management of

these areas while the management of the remainder of the land in the Territory was transferred to the Territory government. The Act specifies that only land that the Commonwealth is using, or intends to use, can be declared as National Land but it doesn't require National Land to have any special significance in terms of the National Capital character of Canberra.

1.26 The process of identification of National Land occurred independently to, and separate from, the preparation of the National Capital Plan and was not a part of the procedures for identifying Designated Areas or Special Requirements. Volume Two of the draft Plan explained:

... This process of declaring National land has no direct bearing on the National Capital Plan. Rather, it is an administrative arrangement intended to ensure that the Territory Government has the freedom to manage and administer the land throughout the Territory while not hindering the Commonwealth's proper conduct of its own affairs...²

1.27 Although the National Land and National Capital Plan process are not linked the areas of declared National Land are significant in the National Capital Plan. For example a large proportion of the 'Central National Area', which is proposed as a Designated Area under the draft Plan, is also National Land. A significant number of areas where it is proposed Special Requirements will apply are also National Land. This means that many parts of the Plan will impinge on Commonwealth rather than Territory land management. This is an important consideration given that much of the criticism of the draft Plan alleged that the Plan usurped the role of the Territory government and the area identified as Designated Areas or where Special Requirements will apply was too extensive.

2. National Capital Plan, Draft Proposal Volume 2, National Capital Planning Authority. Pl.

2. CRITICISM OF THE STRUCTURE AND SCOPE OF THE DRAFT PLAN

2.1 The National Capital Planning Authority received 173 submissions and letters in response to Volume One and a further 124 in response to Volume Two of the draft National Capital Plan. Publication of Volume One also precipitated a public debate at various seminars in Canberra and in the pages of the Canberra Times. This was accompanied by a series of public meetings and seminars staged by the NCPA itself in Canberra and inter-state. In all of this a number of strong criticisms were made of the NCPA and the draft Plan. There was even more support and positive comment intended to strengthen and extend the scope of the draft. Much of the criticism and the supportive comments were also put forward in the evidence and submissions taken by the Committee.

2.2 Of the 173 submissions and letters received in relation to Volume One the Committee considers that less than half contained comments of much relevance to the draft Plan. A majority of the responses referred only to the question of whether or not there should be a casino in Canberra. This issue is outside the scope of the Committee's inquiry and will not be further discussed in this report. Of the remainder of the responses many more supported the draft Plan than generally opposed it. In many cases the submissions suggested additions to the areas that should be identified as Designated Areas or proposed development controls that should apply in such areas. The need to protect the Open Space System and to include other parts of the hills and reserves around Canberra in the Designated Areas was strongly supported.

2.3 The submissions received after Volume Two was published were generally more substantial and relevant than those made in response to Volume One. The responses to Volume Two include submissions that made strong criticism of the NCPA

and the draft Plan. However the majority of submissions strongly supported the draft and some were made to counter the criticisms by the Canberra Association for Regional Development and others who had taken a stand against the draft.

2.4 Generally those who supported the draft Plan or who made suggestions, proposals and positive criticisms commensurate with the provisions of the Plan were conservation groups, residents associations, academic and professional associations and private individuals. Most, but not all of the submissions and letters from individuals supported the Authority and its Plan. There were several submissions that generally accepted the overall approach taken by the NCPA but proposed that the boundaries of Designated Area be varied. Some submissions proposed extensions of the Designated Areas while others questioned the appropriateness of some designation proposals. Those who opposed the draft Plan or who recommended substantial revision were mainly commercial groups and organisations. Many of these submissions stated unequivocally that the NCPA had exceeded its authority. These submissions proposed that the scope of the plan needed to be reduced. The Interim Territory Planning Authority (ITPA) made a number of comments that can only be incorporated in the Plan if the draft is significantly revised.

2.5 The Committee regards the number or origin of the responses to the draft Plan to be of secondary influence. It considers that the strength and relevance of the arguments are more important than the frequency with which they are put forward. Not all the arguments put forward in the submissions were convincing or relevant. In some cases the submissions were based on an incomplete reading or misinterpretation of the draft Plan. For example, one submission which called for an extension of the Commonwealth's role in protecting the Open Space System from development suggested that the Plan should require management plans to be developed for all open space areas. The draft Plan in Volume Two actually proposes as a

general policy that management plans shall be prepared by the ACT Administration for non-urban areas throughout the Territory. Volume One also proposes that the open spaces which are to be Designated Areas be managed according to plans approved by the NCPA. Another submission which was critical of the Plan suggested that it should provide for possible expansion of existing industrial areas and that the NCPA's role should be to establish national principles in relation to such areas and allow the local authorities to undertake detailed planning. It appears to the Committee that this is precisely what the draft Plan proposes when, in Volume Two, it sets down Principle Seven relating to the location of industrial areas but then does little more than define a broad range of permissible land use categories for such areas. The detailed planning and development of existing and future industrial areas is to be the domain of the Territory Plan. These are two examples of the many specific criticisms and comments that the Committee cannot reconcile with the contents of the draft Plan.

2.6 It is not surprising that the draft Plan should be incorrectly or incompletely understood given the urgency with which it was drafted and published and the short time then allowed for public comment. These difficulties were compounded by the NCPA's decision to deal with only the Designated Area option in the Volume One of the draft and to leave other matters to Volume Two which was not published until three months later.

2.7 The criticisms made of the draft Plan can be divided into general criticisms that deal with the approach, scope, structure and presentation of the Plan and specific criticisms which deal with aspects of the content of the Plan. The remainder of this chapter discusses the general criticisms made of the draft plan and the next chapter discusses the criticisms made of the specific planning principles, policies, controls and other provisions of the draft. The Committee's evaluation of the draft Plan and these criticisms is contained

in Chapter Four together with the Committee's conclusions about the revisions that the draft Plan requires.

Perceived general deficiencies in the Plan

2.8 Two major criticisms of the Plan as a whole were that it failed to plan for the future of Canberra and that it lacked a vision. The submissions critical of the plan argued that these deficiencies were the consequence of:

- . a lack of analysis of the demographic, economic and social trends which will determine the future growth and development of Canberra;
- . a deliberate emphasis on detailed, short term development controls relevant to metropolitan planning rather than consideration of strategic long term planning issues relevant to the development of the National Capital; and
- . an uncritical re-presentation of old policies and existing development controls.

2.9 This lack of vision was raised with the NCPA at a public hearing and the Chief Executive told the Committee that:

... it (is) very difficult to escape from the fact that the Territory was established for the purposes of seat of government. Therefore, one needs to view the existence of the Territory and its character, the character of development that occurs within it in that kind of context ... (but) ... there has been a deliberate structure established for metropolitan development in Canberra ... it is

much more about the economics of development and the efficiency of developing and operating in a particular city ...¹

2.10 In this regard a very generalised vision and the intent of the draft plan can be discerned even in the absence of a clear visionary statement. It appears that the draft Plan assumes Canberra will continue to develop as it is at present in accordance with previously adopted plans and policies of the former National Capital Development Commission (NCDC), the most recent and important of which are the 1984 Metropolitan Canberra Policy and Development Plan, the 1989 Civic Centre Canberra Policy Plan and the Gungahlin Policy Plan Development Plan. The NCPA also stated that it used the report on Metropolitan Canberra by the previous Joint Parliamentary Committee on the Australian Capital Territory as a guide in preparing the draft Plan.

2.11 The Australian Capital Territory (Planning and Land Management) Act provides that published and gazetted NCDC policies may continue to have effect. Volume One of the draft Plan explains that the transitional provisions ensure that gazetted NCDC planning policies will continue in effect until the National Capital Plan becomes operational. As a result, numerous NCDC planning policies were gazetted in the Commonwealth of Australia Special Gazette No S 37 on 30 January 1989. Of the gazetted policies, those which relate to the Draft Designated Areas are scheduled in Appendix B of Volume One of the draft Plan as "Draft Detailed Conditions of Planning, Design and Development - Gazetted NCDC Policies". The draft Plan states that it is intended that by this means these policies will continue in effect within Designated Areas after the transition period ends and until varied or replaced by subsequent amendments of the National Capital Plan.

1. Evidence p 261.

2.12 A similar step was taken in Volume Two with several gazetted NCDC policies being listed in an appendix as policies incorporated in the Plan.

2.13 In this way the Metropolitan Canberra Policy and Development Plan along with other plans fundamental to the evolving structure and development of Canberra are incorporated in the draft Plan and it is these policies which contain the vision of the future of Canberra which underlies the draft Plan.

2.14 The NCPA foreshadowed that all major policies will be reviewed and that the Plan is intended to provide directions for the next five to ten years. The Territory Plan which is to be developed by the Territory planning authority should also make a significant contribution to defining Canberra's future. Therefore the Committee considers that, at this stage, it may not be necessary for the National Capital Plan to contain more than the NCPA has provided in the draft and an emphasis on existing policies may be justified in the short to medium term. So far the NCPA has done little more than maintain the status quo as the basis for future planning. In so doing it is protecting what is beautiful and effective about the National Capital. There is no value in change for changes sake and the NCPA has not had time to propose carefully reasoned changes that might be beneficial. In the area of planning there is also great value in stability for this makes the planning framework predictable. However it needs to be recognised that the national capital and territorial needs may change. These will be accommodated through the evolving process of planning.

2.15 Another major criticism was that the draft Plan will impose significant costs on the Territory and, to compound this, was inimical to commercial development. The Canberra Association for Regional Development (CARD) stated in its submission in relation to Volume Two of the draft Plan that:

We were naturally disappointed that the Plan showed no understanding or anticipation of the economic future and potentialities of the ACT and the surrounding region ... the section headed up "The Future of the Capital" commencing on page 25, is totally inadequate and clearly acknowledges the lack of economic reality in the NCPA planning process. The future role of the private sector is dispatched in less than a page, with no proper understanding that the complete engine of physical, economic and social dynamics will be in the hands of the private sector ... even minimal attempts to understand the role of the private sector in creating employment, in creating wealth and a worthwhile revenue base for the city's municipal and Territorial obligations, in responding to the Federal and Territory Governments' needs and contributing to the health and welfare of the Territory's citizens, have not been made.

2.16 The Chief Executive of the the NCPA told the Committee that he considered that the comments about the lack of economic analysis were largely rhetorical and that there were no substantial arguments to show that the Plan was uneconomic. The NCPA engaged a consultant to examine the economic and financial impacts of the proposals in the draft Plan including the implications for the Territory government and its capacity to raise revenue from land resources. It is intended to include a cost analysis in the final version of the Plan but the Chief Executive cautioned that it was very difficult to get real cost data in relation to urban development or to make comparative cost analyses. The Committee does not accept the argument put forward by CARD in its submission to the NCPA that the private sector will be the complete engine of physical, economic and social dynamics. Both the private and public sectors are changing continuously and exert powerful effects on the ACT economy.

2.17 The nature of the Commonwealth-Territorial financial relationship is not an issue that can be discussed and resolved in the draft Plan nor is it for the NCPA to determine who should pay and in what proportion. This is matter for

negotiation between the Commonwealth and the Territory in the context of the *Australia Capital Territory (Self-Government) Act 1988*. However many submissions referred to the lack of discussion of financial implications and the Committee consider that an analysis of the cost burden imposed on the Territory by the Plan is required as a basis for negotiation. Such information should be presented by the NCPA either in the final Plan or a subsequent document. The NCPA is doing more work in this area and the Committee expects that the draft Plan will be amended to reflect the NCPA's conclusions. It must also be the subject of a reference to the Commonwealth Grants Commission. The reference to the Commonwealth Grants Commission will need to stress the dual nature of Canberra as the National Capital and as a self-governing territory.

2.18 The submissions that argued against the draft Plan on the grounds that it will constrain private enterprise or impose additional costs on the Territory did not present any supportive financial analysis or cost impact statements. This limited the Committee's capacity to evaluate these claims. In addition to presenting its own costings and financial analysis the NCPA could place the debate on a more informed level by requesting the private sector representatives to provide specific examples and cost impact studies in support of their arguments. A similar approach could be adopted for the submissions which proposed an broader scope for the Plan and extensions of Designated Areas. These submissions were also deficient in terms of discussing the financial implications of their proposals.

2.19 The only criticism about the adverse impact on private enterprise that was substantiated by the evidence available to the Committee was that draft Plan could create confusion in the minds of developers or actually complicate the development approval process. However, the only significant area of unleased land where it is proposed that development is to be specifically prohibited is the Open Space System and the Committee found strong support for the

continued protection of this area. It is likely that private developers will rarely be involved in seeking development approvals from the NCPA.

2.20 The criticism that the Plan would lead to delays in the development approval process was repeated in a number of submissions. The Master Builders' Construction and Housing Association of the ACT suggested that the draft Plan and the proposed ACT planning arrangements will create a confused system of divided responsibilities as well as creating a regime of over-regulation and protracted control procedures. It was anticipated that the development approval processes would not be cost-effective and would lead to unnecessary administrative delays. This type of concern is not confined to groups generally opposed to the draft Plan but was recognised as a potential problem by others. For example, Pat Troy, of the Australian National University Urban Research Unit, strongly supported the NCPA and generally endorsed the draft Plan but also expressed concern that the existence of two planning authorities will make it difficult to implement the change of direction he believes is necessary to give effect to the principles expressed in the Plan.

2.21 The establishment of two planning authorities is a requirement of the Australian Capital Territory (Planning and Land Management) Act and, in the context of the current timetable for the introduction of new planning arrangements, is going to go ahead. If sensible joint planning procedures are developed the existence of two separate authorities should not be a matter of deep concern. There are precedents where two levels of government with different planning priorities have worked effectively together to prepare and administer plans covering areas in which both had interests. The NCPA advised the Committee that the relationship between the National Capital Plan and the Territory Plan was similar to

the situation in state capitals where state governments and city councils both have an interest in planning and development.² In Melbourne and Perth, for example, strategy plans are embodied by statutory metropolitan region schemes. These set out broad policy which local authorities have to be consistent with in their detailed planning.

2.22 It does not necessarily follow that the new arrangements in the ACT will necessarily result in unreasonable delays. Whether or not this occurs will depend on the working arrangements to be developed between the NCPA and the Territory planning authority. It will also depend on the success the Plan has in clearly explaining the requirements and procedures to those involved or interested in the development of the Territory. It is clear that some people believe the draft Plan fails to do this.

2.23 One way to minimise this problem would be to eventually publish the National Capital Plan and the Territory plan together. The Chief Executive of the NCPA told the Committee when asked if this was possible that:

I think that once the content of this document has been resolved - and that is partly a matter to be resolved with the Territory planning authority - I do not see any problem at all in assimilating that within a joint publication that says that these are the planning policies for the Australia Capital Territory, jointly set out by the Territory planning authority in its Territory plan and ours in the National Capital Plan ... Nor do I have any difficulty in terms of simplifying processes in which there may be private developments that the Authority has to consider and take some decision on because they are in Designated Areas. I do not see any problem in those developments initially being examined by the Territory Planning Authority and some comment being passed at the NCPA, so that there is a Territory Government view

2. National Capital Planning Authority letter to the Committee 6 February 1990.

expressed on a particular development that is being considered. There is no point for any of us in having a complex planning process - it is just silly - and I will certainly be trying to simplify it to work out things as cooperatively as we can.³

2.24 This possibility is not canvassed in the draft Plan nor is the administration of the Plan discussed in sufficient detail to allay concerns about bureaucratic delays.

The relationship between National and Territorial planning responsibilities

2.25 One of the most serious criticisms that is frequently made of the draft Plan was that the NCPA had attempted to exceed its powers and authorities and that the draft Plan intruded into the area of responsibility of the ACT government. It was argued that the NCPA produced a plan that is too detailed and extensive in scope. Part of the problem was that the draft Plan appeared to contradict the introduction of self government in the Territory. For example, the Building Owners and Managers Association (BOMA) submitted that:

The draft National Capital Plan clearly is constructed on a basis that effectively ignores the grant of self-government.

Planning, and its economic and lifestyle consequences, plays such a fundamental role that if the National Capital Plan is to impose a rigorous, detailed and intrusive regime - unchangeable by the voters of the Territory - it makes a farce of the decision of the Commonwealth Parliament.

The Commonwealth will be back in exactly the situation that it was clearly wishing to change when it abolished the National Capital Development Commission, and established a full Territory Government.

3. Evidence p 264.

... the most fundamental clauses of the Act are open to very different interpretations.

In the opinion of BOMA, the legislative intent is quite clear: issues are only for the Authority if they relate to the national significance of Canberra and the Territory. The Plan shall 'set general standards and aesthetic principles' and 'shall set out the general policies' and so on. Only in relation to Designated Areas does the Act refer to 'detailed conditions of planning, design and development'.

In those terms, it is an absurdity, and an insult to the ACT Government and its citizens, to prescribe the colour of buildings, or where there shall be shop fronts. It is also, in the view of BOMA, entirely contrary to the points made by the responsible Minister in his second reading speech on the Bill where he said 'the ACT will be responsible for the normal range of State-type planning and development matters', and also said 'this Bill is further evidence of the Government's commitment to giving the people of the Territory the same rights and responsibilities as their fellow Australians.

2.26 Another matter for interpretation which also contributes to the debate about where the limits of the NCPA's authority lies is the lack of definition of the concept of national significance. On this matter BOMA stated in its submission to the NCPA that the Act is intended to protect this interest but that:

... it was not the intention of the Parliament to hobble the ACT Government. It wanted to ensure the genuine national interest without destroying the ability of Territory citizens, through their elected Government, to manage their own affairs.

The basic objection of BOMA to the draft National Capital Plan is the way in which it has proceeded on the assumption that everything which happens in the Territory is of national significance.

In the opinion of BOMA, there is no greater degree of national significance in, for example, the hierarchy of shopping centres in Canberra than there is in the same issue in Sydney, Melbourne or anywhere else in Australia.

2.27 The Association went on to suggest that where there is doubt about what is of national significance then this matter should be left to the Territory government. This view is contradicted by other submissions which argue in favour of the broad application of the NCPA's powers. For example a representative of the National Parks Association suggested that:

...if in doubt about designation of an area it may be safer at this stage to designate, and revoke this later if circumstances warrant it...⁴

2.28 One of the ways it is seen that the draft Plan intruded too far into the areas of responsibility of the ACT government is that it contains too much detail or its provisions are too specific in relation to parts of the Territory not identified as Designated Areas. CARD submitted that:

the extent of special requirements for major institutions and selected precincts, including the town centres and Civic and so-called protection zones have not been properly analysed or argued and ... will preclude from the Territory Government substantial areas for decision making.

2.29 Whether or not the level of detail is intrusive is a matter of opinion. Many of the submissions received by the NCPA accept and support the policies proposed in the draft Plan. It is argued that it is necessary to have detailed provisions spelt out to protect features seen as important to maintaining the character of the National Capital. For

4. Evidence p 76.

example, the Joint House Department wrote to the NCPA supporting the proposal to use the Plan to limit the height of buildings in Civic. The Department stated that the relationship of Civic with the Parliamentary Triangle and the need to reinforce the prominence of Parliament House was the main factor making it necessary to restrict the height of buildings in Civic. The Department therefore supported such detail being contained in the Plan. Other submissions criticise the Plan for going so far as to prescribe height limitations but, in this example, the Committee considers that this level of detail is required in the interest of maintaining the character of the national capital.

2.30 The building height limit in Civic is not expressed in terms of the height of the building or the number of stories but restricts the top of buildings to below 617 metres above mean sea level. The limit expressed this way can be related to topographical features. The historical basis for the limit and the importance of this restriction in terms of the character of the National Capital were detailed in the Civic Centre Canberra Policy Plan which stated:

Mount Ainslie, Black Mountain, Red Hill and Mount Pleasant are fundamental to the plan of Canberra. Griffin used them as anchors to the axial lines which form the basic structure of his plan. Vistas along many avenues terminate on them. In many ways, the most striking feature of Canberra is the sense in which the hills enfold the city and their trees penetrate into the urban fabric. The characteristic of Canberra is worth preserving.

Civic is part of the same 'amphitheatre' which contains the Parliamentary Zone, the Australian War Memorial, Russell and Barton. Even though Civic might be considered as a separate administrative entity, it can never be perceived as a separate physical entity. The form of Civic is forever and inextricably linked to the form of the National Capital.

The (National Capital Development) Commission first introduced height controls in Civic in 1968. The Commission adopted an absolute limit ... (which was) ... the intended height of the Towers of the New Parliament House on Camp Hill. The decision to construct the New Parliament House on Capital Hill could have led to a building height limit in Civic without reducing the prominence of Parliament. However, only the slender flagpole element is higher than the buildings in Civic. The 20 year-old limit ... is still valid.⁵

2.31 The Chief Executive of the NCPA provided reasons why the Plan contained detailed requirements in a number of areas, he explained:

...we have tried to be specific in what we meant and tried to be specific in what we intended in the national capital plan. We tried to be specific because I am very much aware of the fact that at some point there will be, under Territory legislation, some form of court system or tribunal system dealing with planning objections and planning appeals. Our documents will be brought up for reference as a background to what the Territory plan means and what the national capital plan means quite frequently.⁶

2.32 With the exception of Civic the Committee considers that most of the land use policies are very general rather than specific. Civic however is the area of most contention and the submissions critical of the draft Plan refer to problems and restrictions that the proposed policies will create in the development of the city centre. The draft Plan proposes that Civic will partly be a Designated Area and the Special Requirements will apply in the remainder. The Special Requirements include several detailed design and siting standards and Volume Two of the draft includes a detailed land use plan.

5. Civic Centre Canberra Policy Plan 1989, National Capital Development Commission, p 112.

6. Evidence p 262.

2.33 The NCPA argued that:

"... (Civic is) ... an area which is part of the parliamentary zone; has been planned and developed in a particular way over the past 35 to 40 years; has a certain character. If we elect to say nothing about that area or that character we are, I suppose, essentially saying that we are not concerned with it. In fact, because of its situation as part of the parliamentary zone, because it has always been regarded as one of those areas of special national concern, we have said that we need to have a view as to what should happen in Civic; we need some special requirements under the Act. What are those special requirements? If we ask that question we have to be specific."⁷

2.34 Whether or not the level of detail and apparent intrusion into Territory matters is justifiable will be discussed further in Chapter Four. The fact that this issue has been subject to so much criticism suggests that the draft Plan needs to deal with this more comprehensively. The draft Plan needs to explain what it is trying to achieve with its principles and policies, why in each case it has aimed at the level of detail or generality presented in the draft and how the principles and policies will be applied in practice to control and influence planning and development.

2.35 Some of the short comings of the Plan appear to be the result of difficulties created by the provisions of the Australian Capital Territory (Planning and Land Administration) Act. A number of the submissions received by the NCPA referred to these problems as well as discussing the draft Plan. The Act created problems because:

- . it does not define concepts such as the national capital interest;
- . it does not specify the circumstances under which Designated Areas may be specified;

7. Evidence p 263.

it is unclear how Special Requirements can be enforced and what level of detail they can contain;

there is no provision which specifically allows the NCPA to delegate any of its powers and authorities to the Territory planning authority in these cases where it would be more appropriate for the NCPA to oversee rather than directly control developments; and

the timetable imposed on the NCPA to prepare the draft Plan was too restrictive.

3. CRITICISMS OF THE SPECIFIC PROVISIONS OF THE DRAFT PLAN

Designated Areas and Special Requirements

3.1 The first Volume of the draft Plan published by the NCPA deals mainly with the identification of Designated Areas. The plan delineates the areas where the NCPA proposes to retain direct control over development. The main criticisms of the proposed Designated Areas were that some of the areas were not of national significance and that designation will inhibit legitimate development in those cases where the proposed Designated Areas are leased land.

3.2 The NCPA saw a need to designate the major Avenues and diplomatic areas in Yarralumla and Mawson but this was questioned by a number of submissions and it was suggested that these areas could be dealt with by Special Requirements. Similarly the need to designate the 'Open Space Setting', particularly those areas not directly visible from the 'Central National Area', was questioned and apparent inconsistencies were pointed out.

3.3 Several submissions in response to Volume One argued that areas such as Ainslie Avenue, University Avenue, residential areas in Forrest and parts of the Lake Burley Griffin foreshore should not be designated. On the other hand many other submissions proposed that additional areas, mainly elements of the 'Open Space Setting' and sites occupied by Commonwealth institutions should be designated. The Australian National University argued that the University's site in Acton should be designated and repeated this argument even though Volume Two of the draft plan proposed that Special Requirements should apply to the University's site. The CSIRO also proposed that its Black Mountain, Yarralumla, Gungahlin and Ginninderra sites be designated. The draft Plan proposed

that the national scientific research centres on the Black Mountain and Yarralumla sites be classified as Major Institutions and be made subject to Special Requirements. There is no reference in the draft Plan to the Gungahlin and Ginninderra sites but the CSIRO argued that they should be treated in the same manner as the other sites because this would be administratively helpful and that all four sites are of major national importance. There were other calls for various areas to be designated but these did not necessarily relate solely to matters of national significance but rather to nature conservation, heritage reservation or the restriction on development. For example the President of the National Parks Association told the Committee that the issues of conservation of the open space areas and the maintenance of the special character of the national capital's setting are linked. The Association argued that there was merit in extending the Designated Areas to include more of the open space areas and supported designation because it could contribute to the protection of natural areas.

3.4 The ITPA proposed criteria for the selection of Designated Areas that, if adopted, would significantly alter the boundaries. These criteria were:

- . Designation should occur where an area is National Land of national capital significance;
- . Designation should occur where National Land sites are large, likely to be permanent and require their own-estate planning;
- . Special Requirements rather than Designation should be used where both Governments have a considerable interest in an area;

. Special Requirements rather than Designation should occur where the Commonwealth has an interest in leased Territory Land; and

. a Special Requirement should apply to all National Land that is not Designated and this Special Requirement should require that the land be subject to the Territory Plan.

3.5 Using these criteria the ITPA proposed that the following areas should be Designated:

. The Area of National Land that is described as Lake Burley Griffin;

. The Area of National Land which accommodates the Parliamentary Zone including the area within State Circle and the area between Commonwealth and Kings Avenue to the shores of Lake Burley Griffin;

. The Area of National Land between Lake Burley Griffin and Parkes Way excluding leased Territory land;

. The Areas of National Land which accommodate the Prime Minister's Lodge, the Barton Offices, York Park and the area between State Circle and Macquarie Street;

. The Areas of National Land which accommodate Government House, the future Museum of Australia and the site for the future lodge of the Prime Minister;

. The Area of National Land which accommodates Russell Offices;

. The Area of National Land which accommodates the Australian War Memorial;

. The Area of National Land which accommodates the Botanic Gardens.

3.6 This is much less than the area proposed by the NCPA for Designation and does not include the 'Open Space Setting' and the Avenues. The areas not proposed by the NCPA but which the ITPA would include in the Designated Areas are:

. The areas of National Land which accommodate Australian Defence Force Academy and Duntroon;

. The area of National Land which accommodates the CSIRO complex adjacent the Botanic Gardens;

. The area of National land which accommodates Campbell Park Offices; and

. an Area of National Land which can be defined as accommodating the Airport, but excluding other adjacent National Land.

3.7 The ITPA recommended in relation to the areas where it and the NCPA both have an interest that it would be:

appropriate that the planning instrument used permits each planning authority to express its requirements. The most suitable instrument that the Act allows is that of Special Requirements and it is recommended that the NCPA manifests its national capital interests in determining detailed Special Requirements for these areas. The ITPA and later the TPA would then be required to observe such requirements.

3.8 The NCPA sought legal advice about the potential to use Special Requirements to control development. It was advised that there was doubt about whether Special Requirements could be used to specify areas where development cannot occur and that it may not be valid for the NCPA to stipulate as a Special Requirement that its agreement be obtained before a development proceeds. Where the NCPA wants to directly control or prevent development it may need to use designation to ensure this is achieved.

3.9 On this basis the NCPA told the Committee that if it wants to prevent certain types of developments in areas of national significance that are not Designated Areas, then it may have to introduce detailed land use plans or development control plans. These plans could be prepared by the Territory planning authority and adopted as Special Requirements once agreed to by the NCPA.

3.10 Volume Two did not revise the Designated Areas or propose that any of the areas proposed for Designation should instead be subject to Special Requirements. The Special Requirements that are proposed by the NCPA are intended to apply in areas where it is considered unnecessary for the Commonwealth to retain the same high level of control over developments as for Designated Areas. Therefore the type of Special Requirements promulgated by the NCPA in Volume Two can not be considered as an alternative to Designation.

3.11 At the conclusion of the public consultation process the NCPA briefed the Committee on changes it was considering to the proposals for Designated Areas and the use of Special Requirements. The NCPA is proposing that the Designated Area approach be retained but that significant adjustments may be made to the areas to be included in this category. The NCPA is considering designating only the carriage ways of the Avenues and not the adjacent blocks which would instead become subject to Special Requirements as well as also considering extending Designation to the Territory. It is also considering not

proceeding with the proposal to designate a part of the Murrumbidgee River corridor. Instead it would require that a management plan and a policy plan be developed as a Special Requirement.

3.12 The NCPA is also considering adding to the Designated Area category. Additional areas that may be included are National Land incorporating the ADFA and RMC sites, the Canberra airport and the Campbell Park offices. The Australian National University site and the adjacent CSIRO complex may also be designated. On the other hand the NCPA is proposing minor changes to the boundaries of the proposed central National Area Designated Area to exclude some parts of Civic and is reviewing the boundary in the vicinity of Constitution Avenue. The Special Requirements for Civic may be revised but will generally be retained. It is proposed not to proceed with the application of Special Requirements to other town centres.

3.13 These revisions reflect the arguments and opinions put forward in submissions and have been developed following discussions with the ITPA. Several areas were still being reviewed and were the subject of negotiation with the ITPA.

Civic

3.14 Some of the most controversial provisions of the draft Plan are those relating to Civic. It is proposed that parts of Civic be designated and the Special Requirements apply to the remainder. The draft plan stated:

Civic is part of Canberra's Central Area, and as such has a special role in the context of the National Capital Plan. It is in the interests of the National Capital that its development should be planned and managed to conform with land use and design principles for the Central Area as a whole, while fulfilling its essential function as the city's predominant commercial centre.

3.15 The NCPA's intention in Civic is to continue to apply the Civic Centre Canberra Policy Plan and the Metropolitan Policy Plan which provide for limitations on the development of Civic and for the development of other town centres. In particular the draft Plan states that Civic should not be the preferred location for further Commonwealth office accommodation.

3.16 This approach was criticised as being anti-development and the NCPA's authority to make such provisions was questioned. BOMA submitted to the NCPA that:

The proposal in the Plan to effectively ban Commonwealth offices in Civic is:

- a. an outrageous intervention in decision making by the Commonwealth Government, which has a clear responsibility to put its officers where they work best. Some will do that in Civic and some elsewhere, and that is no business of the Authority. There seems to be a complete lack of comprehension by the Authority that the market system of rating and rents automatically reflects demand for different locations, and imposes costs on those who want the most favoured.
- b. a recipe for a wholesale withdrawal of private sector investment in the Territory - if such a capricious policy is followed in Civic, where will the next problem occur?
- c. a certain means of denuding the Territory of revenue when at the same time it will be forced into providing even more expensive infrastructure in distant town centres.

- d. an administrative nightmare in terms of land leasing (for which the Territory has sole responsibility).

3.17 This submission was supported by submissions from other industry associations but the NCPA's proposals were also supported by submissions from others who sought limitations on the development of Civic.

3.18 The Special Requirements proposed for Civic are more specific and detailed than those proposed for other areas. They refer to matters such as building height limits in various parts of Civic, building colours, cladding and facades. They also included a detailed land use plan. The Plan is required by the legislation to set general policies for land use throughout the Territory and accordingly the draft Plan prescribes broad categories of permissible land use. In areas other than Civic the draft Plan only describes permissible land use in the most general terms. However in relation to Civic the plan provides a detailed map which divides Civic into twelve sectors and describes eight land use categories. This map reflects existing land use patterns but several specific objections have been raised on the grounds that it will preclude developments which have long been planned and, in at least one case, previously approved.

3.19 The ITPA objected to the proposed planning requirements for Civic and submitted to the NCPA that:

...where the Commonwealth and the ACT had a shared interest in an area, Special Requirements rather than Designation should be the mechanism that is adopted. Nowhere is this mechanism more appropriate than in Civic. The Planning and Land Management Act requires that the Territory planning authority prepares the Territory Plan with the object of attractiveness, safety and efficiency. The ITPA therefore shares the NCPA's concern that Civic functions effectively and efficiently.

We also share the NCPA's views that Civic, due to its location and role in the overall functioning of Canberra must be planned, but at a standard which contributes to the realisation of Griffin's planning concepts. While the Planning and Land Management Act makes it clear that the objective of the National Capital Plan is to ensure that Canberra and the Territory are planned and developed in accordance with their national significance, the Act also suggests the character of the planning instruments that are available to achieve this objective.

However, the achievement of these objectives does not require a National Capital Plan to specify in a highly detailed manner the means to reach this goal. For example, it is not necessary to identify in the National Capital Plan the activities that ought to take place in specific precincts of buildings in Civic. Rather the Plan should set general aesthetic and functional standards and allow the Territory Plan to determine the means of giving effect to such standards. However, it may not be inappropriate for the National Capital Plan to identify the kinds of activities that are permitted on the area of City Hill bounded by Vernon Circle.

Other areas receiving special attention in the Plan

3.20 The draft Plan proposes that three broad categories of land should be designated and, in addition to Civic, proposes four categories where Special Requirements should apply.

3.21 The Avenues which constitute key elements of the Griffin plan are proposed for designation in the vicinity of the 'Central National Area'. Volume Two of the draft plan extends the protection provided to the designated Avenue by proposing Special Requirements for the approach routes and avenues beyond the Designated Areas through to the Territory border. The NCPA in proposing these Special Requirements provides a partial response to those submissions made in response to Volume One which call for the Avenues to be designated to the Territory border. In opting to apply Special

Requirements the NCPA does not go so far as to propose an extension of the Designated Areas but some measure of protection would be provided and the draft Plan stated that:

It is in the interest of the National Capital to ensure that the approaches to the city and the appearance of the buildings and signs flanking the major avenues are of a quality suited to the role and status of the city.

3.22 However the Special Requirement is neither specific nor detailed but requires that development and works must conform with a comprehensive plan. The only guidelines that the NCPA provide in the draft Plan are very general and basically require that the approach routes retain their rural character and that a formal character appropriate to the major axes of the city as ceremonial and professional ways be established and enhanced for the Avenues.

3.23 The submissions to the NCPA raised some questions about the proposals for the Avenue and Approach Routes. Apart from those submissions that challenged the appropriateness of Designation on the grounds that it involved a Commonwealth intrusion into Territorial matters there were other criticisms that suggested the width of the Designated Areas was too great. The NCPA was criticised for extending the Designation of Northbourne Avenue for, in some places, a depth of two residential blocks adjacent to the road reserve. That the draft Plan refers to planning and promoting development of the Avenues was also raised as a concern in a few submissions either because it would change the relatively open nature of some Avenues or would detract from residential amenity.

3.24 The other main area that is proposed for Designation is the 'Open Space Setting'. The draft Plan states that:

The major open space framework of Canberra, which is basic to the structure of the National Capital, includes Lake Burley Griffin

and its Foreshores, the Inner Hills and the Murrumbidgee River Corridor. Clearly this open space forms an integral part of the Griffin vision of Canberra.

The National Capital system of open space derives its national significance from the unique setting which has blended city and country to symbolise the character of the National Capital and provide for the present and future needs of the living city.

3.25 Most of the submissions to the NCPA that referred to the status of the open space system stressed the need to protect this area from development and many proposed extension of the area to be Designated. The effect of designation will be to allow the NCPA to control any development in these areas and this could include preventing or permitting any proposed development. The Plan also proposes that:

A key priority is to define zones of high nature conservation value and to protect them, primarily by gazetting them under the ACT Nature Conservation Act 1980. Management plans can then be developed to protect, enhance and manage these areas. Other lesser but still important conservation areas which can function as corridors for wildlife movement and habitat protection, as well as easements for urban infrastructure also need to be protected.

3.26 Some of the submissions to the NCPA questioned the national capital significance of the open space system and the need for these areas to be Designated. CARD for example in its submission to the NCPA stated that:

Land space in the ACT is limited and therefore the future population capacity will be limited. The degree of open space to meet the Capital's planning characteristics requires definition. The defined open space will limit capacity unless incursion into nature areas will be allowed.

3.27 Other submissions referred to inconsistencies in the boundaries of the proposed Designated Areas. It was also suggested that if Territory management plans provided for the long term protection of the open space areas it would not be necessary for them to be Designated Areas.

3.28 The area proposed for designation includes Lake Burley Griffin in its entirety and its foreshores, the inner hills including the more prominent features such as Black Mountain and areas less obvious from the central National Area such as the western slopes of Mount Stromlo, and parts of the Murrumbidgee River Corridor including the Bullen Range. It was suggested in some submissions that the part of the Murrumbidgee corridor and other parts of the 'Open Space Setting' proposed for designation were not in the same category in terms of significance to the national capital as the Parliamentary Zone and that there was a need for a hierarchy of provisions or that such areas should only be dealt with by Special Provisions. It was also suggested that either the whole, or none, of the Murrumbidgee corridor should be Designated and that it was inconsistent to designate only part of the corridor.

3.29 The draft Plan appears to recognise that not all the Designated Areas are as significant as some others. In relation to the proposed designation of the Murrumbidgee corridor the draft Plan states that the principle in designating the area is:

To protect and enhance the environmental quality, landscape setting, and natural and cultural resources of the Murrumbidgee River Corridor. To conserve an important national resource and a key open space element and provide a buffer between the developed urban areas and the more remote mountains and bushlands to the west of Canberra. Protection and enhancement of these values is to be integrated with the use of the river for recreation and tourism, and with other parts of the NCOSS.

3.30 This is a much less convincing reason than that put forward for Designating the Inner Hills where the NCPA puts a principle which stresses the relationship of the proposed Designated Area to the character of the National Capital. In relation to this area the draft Plan states:

To protect the Australian landscape character and setting of the scenic backdrop to the 'Central National Area' and approach routes; to maintain the visual definition and physical containment of the surrounding towns; to ensure that the hills and ridges remain unprejudiced by any development which may diminish their values; and to ensure that their landscape, environmental and recreation qualities become an integral part of the National Capital.

3.31 Arguably the most important part of Canberra, in terms of relevance to the character of the national capital, is the 'Central National Area'. The draft Plan proposes that this area be Designated including the Parliamentary Zone and adjacent areas, the Yarralumla, Deakin and O'Malley diplomatic areas, the Barton office area the northern foreshores of Lake Burley Griffin, sections in Civic including City Hill, Constitution Avenue, ANZAC Parade and the War Memorial and the Russell area. The importance of this area to the National Capital was generally accepted but the relevance of some areas has been questioned. The need to extend the Designated Area into residential areas of Forrest and the impact this would have on leases was raised as problem but several submissions from local residents supported the proposal. Similarly the need to Designate the Diplomatic Areas, the area north of Lake Burley Griffin and parts of Civic was also questioned and it was proposed that these were areas where the Commonwealth's objectives could be achieved through the application of Special Requirements.

3.32 Most of the areas, other than Civic, where it was proposed that Special Requirements should apply, were not the subject of the same sort of major criticism that were made in

response to the Designated Area proposals except to the extent that it was alleged in some submissions that the NCPA should not extend its controls outside the Parliamentary Zone. In relation to the Selected Precincts such as the Town centres where it was proposed that such requirements should apply, the NCPA stated that:

it is in the interests of the National Capital to ensure appropriate and high quality development of certain key areas in Canberra which help to define and create the character of the city as a National Capital.

3.33 The NCPA's reason for selecting the sites occupied by Major Institutions to be areas where Special Requirements will apply is similar:

It is in the interest of the National Capital to achieve a quality of site development that reflects the functions and importance of major institutions in the city.

3.34 In relation to the proposal to apply Special Requirements to certain Protection Zones the NCPA stated that:

It is in the interests of the National Capital to recognise and provide for major uses constraining development in the area where they are located and necessitating protection for or from that area.

3.35 In all of these cases the interests of the National Capital are referred to as the underlying reason for applying Special Requirements but this reasoning is not explicitly extended to each of the individual sites and areas which are included within each category. It also appears that in some cases the NCPA has not undertaken a complete analysis of specific site requirements. For example, in relation to the Protection Zone associated with the National Biological Standards (NBSL) Laboratory the NCPA may have underestimated the site protection needs. The Department of Community Services and Health submitted that there was a need for a

buffer zone extending beyond the site itself but the NCPA appears to have restricted the Special Requirement to the block occupied by NBSL.

3.36 There were also inconsistencies in the sites identified. The Department of Defence, which operates a number of areas where Special Requirements were proposed, submitted that the need for protection zones associated with all Defence facilities should be considered where those facilities are associated with activities such as explosive ordinance storage and field training ranges. As discussed above the CSIRO pointed out that some but not all of its facilities were identified as Major Institutions where Special Requirements would apply.

General Policies and Principles

3.37 Some submissions made to the NCPA in response to the general policies, planning principles and standards proposed in Volume Two of the draft plan suggested that they be revised or reworded in relation to some matters of detail. However the principles, policies and standards were generally accepted as adequate, if somewhat broad, statements. Some submissions suggested that the policies and standards were too specific and restrictive while others argued that they were so vague and general that they could be open to abuse by developers. It was also suggested that they did not pay sufficient attention to the landscape elements of the built environment which are fundamental to defining the essential garden city character of Canberra.

3.38 The Royal Australian Institute of Architects, while broadly agreeing with the objectives of the Plan, proposed a restructuring with the principles, policies and planning requirements set down in the following way:

1 Planning Principles of National Significance

These should be durable for several decades and would enshrine the unique qualities and National Significance of the City.

2 Planning Principles for Environment Quality

These should be durable for a considerable period of time and would be the criteria for the quality of construction and maintenance of the City.

3 Planning Requirements for Specific Areas

These would be subject to periodic review in response to the needs of a developing City.

3.39 It is suggested that the idea of special precincts which have specific urban design master plans could be expanded and could include all of the following areas:

- . Civic
- . Town Centres
- . National Institution Campuses
- . National Association Areas
- . Diplomatic Enclaves
- . Industrial Zones
- . Inner Residential Areas

3.40 Such master plans would include intended employment levels.

3.41 The Institute suggested that this presentation of principles and policies would make the Plan easier to understand and leave the responsibility for the preparation of detailed plans with the Territory Government. The NCPA would then examine and endorse the plans for compliance with its National Capital objectives.

3.42 The low incidence of critical comments about the principles and policies could be because they were generally well accepted or it could have been that they were either not understood or were overlooked because attention was focused on proposals for Designated Areas and Special Requirements. The principles and policies are fundamental parts of the plan and need to be as clear and as well understood as possible. The Committee considers that the Plan therefore needs to draw attention to them as much, if not more than, it gives prominence to the Designated Areas and Special Requirements.

4. PROPOSALS FOR REVISIONS AND AMENDMENTS TO THE DRAFT PLAN

Presentation and Structure of the Plan

4.1 The Committee considers that the draft Plan has been prepared in accordance with the provisions of the Australian Capital Territory (Planning and Land Management) Act. It endorses the NCPA's interpretation of the Act and does not consider that the NCPA has exceeded its legal authority. The NCPA's proposals established a framework which provide for the planning and development of the Territory whilst protecting the special features of Canberra which are characteristic of the City's role as the National Capital. The Committee therefore gives qualified support to the draft while recognising that it has shortcomings.

4.2 The draft Plan fails to live up to the expectations that many held for it. This is evidenced by the comments and criticisms that have been forwarded to both the NCPA and the Committee. However, these expectations were unrealistic, given the time constraints that the NCPA had imposed upon it and the difficulties created by the doubts surrounding some provisions of the Act.

4.3 The Committee believes that the NCPA was faced with an extremely difficult task. Under the circumstances it was reasonable for the NCPA to adopt the strategy of incorporating existing NCDC policies and preparing what is, in the view of the Committee, an Interim Plan that would serve for a limited period and become the foundation for a more considered plan. This is the case even though this approach was likely to lead to dissatisfaction in some quarters. The NCPA's approach should, if followed by the proposed review of the policies,

lead to the preparation of a revised second edition of the Plan within the next few years. This will then serve with the Territory Plan as the guide to the Territory's development through the early part of the next century.

4.4 The Committee considers that it is important that the Plan recognise and respond to the respective roles of the NCPA and the Territory planning authority. It should not be an attempt at a complete Territory Plan but should rather be a framework for future planning. The many criticisms of the Plan suggest that, even if the draft Plan has taken on this role, it has not been seen to do so. As a minimum the draft Plan needs to be revised to stress and clarify its role.

4.5 The Committee has noted several other deficiencies in the contents of the draft Plan or the way the NCPA's proposals are presented and has identified several areas where the NCPA needs to do more work. Unless these deficiencies are corrected in the final Plan it is likely that it will remain a document that is surrounded by conflict and this conflict will detract from the essential purpose of the Plan.

The NCPA's Invisible Vision of Canberra's Future

4.6 The criticism that the Plan lacks vision, or is not really a Plan at all but rather a collection of development controls, appears on the surface to be valid and has been a major factor contributing to the criticism of the Plan by its opponents. The Committee agrees that the draft Plan does not present an overall picture of where Canberra is headed and that the treatment of demographic and economic trends is superficial. These matters are dealt with in Volume Two but only in a most cursory manner, without an attempt to identify the consequence of the various factors impacting on Canberra.

4.7 It is generally expected that a major plan, such as the National Capital Plan is intended to be, will show what the pattern of urban development will be, based on evaluations of political, social and economic factors. It might also be expected that such a Plan would include an indicative development program of some kind. The incorporated gazetted NCDC policies contain a vision for Canberra's future, at least in respect of the broad metropolitan and city structure. As far as the Plan is concerned this vision is less than fully visible and is not discussed in a way that makes it clear it is incorporated in, and is basic to, the Plan. There is a need to make the adoption and incorporation of these policies more explicit and prominent.

4.8 The Committee endorses the intention to review these policies and considers that this should also be made explicit in the Plan together with a timetable for the review. This review should be conducted in consultation with the Territory authorities and involve extensive public consultation carried out on a national scale. The Committee considers that when this review is completed it should be referred to the Joint Committee on the Australian Capital Territory before it is incorporated in the next edition of the National Capital Plan. The present Committee does not intend to comment on the existing NCDC policies at this stage other than to generally endorse the report on Metropolitan Canberra by the Committee in the previous Parliament.

4.9 The dispersed structure of metropolitan Canberra with the town centres embedded in the framework constructed by the Y-Plan is a major characteristic of the city. It is of great significance, in the same way as Burley Griffin's plan, to the development of Canberra as a distinctive national capital. The need to identify areas to accommodate the long term expansion of the city and the review of the Metropolitan Policy Plan may result in modifications to the Y-Plan designed to solve planning problems that may emerge over the next few years. In

the context of the National Capital Plan, it is most appropriate to retain the existing pattern of the metropolitan structure as a basis for future planning. Any changes that are proposed following the policy review can be included in the next edition of the Plan.

Economic Projection and a Role for Private Enterprise

4.10 The Plan would be greatly enhanced, and a major criticism would be overcome, if it presented more substantial economic and demographic data. It should discuss the future nature and composition of the Territory's economy, population and workforce and how the trends in these factors will affect the development of the Territory and its role as the National Capital. The Plan should make it clear how the principles, policies, standards and requirements it sets down are linked to NCDC policies and the future development forecast by this economic analysis.

4.11 In relation to the future economy and the implications it will have for planning and development, the Committee does not consider that those who have argued that the Territory is, or should be, undergoing a process of 'normalisation', have established a convincing case. The city's role as the National Capital and the importance of the public sector will continue to be the dominant elements even though the private sector will expand. A balanced approach is required which reflects the place of both the private and public sectors and which accommodates the dual role of Canberra as the National Capital and a self governing territory. The high standards and principles which form the basis for the planning and development of Canberra as the National Capital will remain appropriate and should not be diluted.

4.12 The Committee considers that those who argued the Plan will inhibit development and is anti private enterprise did not establish a convincing case. Professor Max Neutze made a submission to the Committee in which he took a counter position:

Although the ...(Plan)... has been criticised as restrictive, it is restrictive only in the sense that it attempts to provide for land use needs in locations that achieve planning and objectives. It provides sufficient space for all requirements. It does not simply provide space where market demands are evident; that would be a negation of planning.¹

4.13 In Professor Neutze's view measures to protect and enhance the character and environment of Canberra would contribute to its economy. He submitted that:

In my view the role of Canberra as the National Capital is crucial to its future prosperity and development. The National Capital role and a high standard of planning and quality of the environment make Canberra a pleasant place to live and result in the attraction of people to live here. These features also attract a small but growing private business community.

The essential elements of the planned national capital include the main avenues, the open space system (especially the hill tops and lake foreshores), the monumental buildings and the federal triangle, and the major institutions. Volume 2 gives due attention to all of these features.

4.14 The Committee agrees with Professor Neutze's views and notes that in many areas the Plan provides for, and can be seen to be encouraging, the type of development that is appropriate to the city's role as the National Capital. This is the case for example with the Avenues proposed for Designation, where the planning principle refers to "planning

1. Professor Max Neutze, submission p3.

and promoting development". The principles, policies and Special Requirements proposed in Volume Two of the draft state the conditions that development and works should conform with. In so doing they anticipate that development will occur and attempt to accommodate it. They certainly do not exclude development as an option and most of the principles, policies and Special Requirements do little more than seek to impose standards and general conditions appropriate to the National Capital. These standards have not inhibited development in the past and are unlikely to do so in the future. Many of the criticisms made in relation to these aspects of the Plan are misleading and unfounded. In particular the Committee considers that the dire predictions made by CARD and BOMA, for example, are exaggerated.

4.15 The draft Plan does not inhibit private enterprise in the way that some have argued, but this view has developed, partly because the NCPA did not explain in adequate detail what trends they expect in industrial and commercial growth in the Territory. The inclusion of more comprehensive and detailed economic analysis and forecasting, as recommended above, will give the Plan more credibility as a planning document and to help increase its acceptance by the commercial sector. The NCPA advised the Committee that it has engaged consultants to review the role of the private sector and the revised Plan will include an expanded discussion on economic development and the role the private sector will play.

Planning and Development Procedures - Commonwealth and Territory Roles

4.16 The only way that it appears that the Plan could act as an unreasonable constraint on the private sector is if the existence of two planning bodies increases the complexity of the development approval process. There is a need for the NCPA to deal with the concerns about the administration of the Plan and the delays it might cause. The procedures to be adopted

need to be explained in the Plan or in a subsidiary information pamphlet. There is also an onus on both the NCPA and the Territory planning authority to work together to ensure that the National Capital Plan and the Territory Plan become fully integrated and that there is one set of simple administrative procedures to deal with development and works approval. This should include a one-stop office for presenting planning applications - a proposal to which the NCPA and the ITPA have already agreed.

4.17 There is also a need to develop agreed procedures for effective inter-agency consultation in the approval of all the site and area specific development plans foreshadowed in the draft National Capital Plan. To facilitate this the National Capital Plan should, where possible, require that these secondary plans should be incorporated in, and be an integral part of, the Territory Plan. This will help clarify the planning process and leave the Territory planning authority with a major responsibility for planning even in areas where the NCPA has proposed Designation or Special Requirements. For example the Special Requirement that calls for development plans covering the town centres should be revised to provide for the Territory Plan to cover this in the same way as intended by the draft Plan.

4.18 In taking this line the Committee is not arguing that the draft Plan intrudes beyond the area of responsibility of the NCPA as defined by the legislation. Rather the Committee is concerned to see that neither the NCPA nor the Territory Planning authority are prevented from exercising their respective roles by a conflict which could be avoided if co-operative administrative arrangements are introduced. The Committee considers that the NCPA has prepared a draft Plan that accords with the national capital planning role that the Commonwealth intended to retain for itself when it introduced this legislation. With the exception of the land use plan for Civic, the draft National Capital Plan establishes a framework and presents guidelines to enable the Territory planning

authorities to exercise a planning role in respect of all Territorial land. Even in the part of the Open Space System that the NCPA proposes should be a Designated Area a role has been left for the ACT authorities. There is a need however for the NCPA to make this clearer and indicate how all of the proposals can be related to the Territory Plan and the role of Territory planning authority.

4.19 The Committee also considers that the Plan needs to discuss the implications for Commonwealth-Territorial financial relationships. Concern about the costs that might be imposed by the high standards imposed by the proposals in the draft Plan contributed to the obstructive arguments put up against the Plan. The financial implications should be discussed in the Plan and the NCPA should provide as much cost information as possible. This can be done without in anyway requiring the NCPA to back away from the approach it has taken. The future financial relationship that should be developed in relation to the Commonwealth requirements is a matter for negotiation between governments. The NCPA cannot itself resolve this issue in the Plan at this stage but it should be discussed in detail because it sets the basis for future planning. The NCPA has engaged a consultant to report on the cost implications of the plan. It aims to identify a process whereby these implications can be identified and will incorporate this in the revised draft. The Committee considers that the Commonwealth should assume financial responsibility for additional infrastructure costs created by the Plan above the costs that would have otherwise been incurred by the Territory. The same principle should apply to recurrent maintenance costs. The Committee also considers that this question of the financial implications of the National Capital Plan should be the subject of a reference to the Commonwealth Grants Commission. The Commission would need to take particular account of the dual nature of Canberra as the National Capital and as a self governing Territory.

Designated Areas, Special Requirements and Other Provisions

4.20 A further way that the NCPA could facilitate acceptance of the Plan and the development of co-operative working arrangements with the Territory planning authority would be to reduce the use of designation and make greater use of Special Requirements as an alternative. The Committee's view is that the national capital interests should remain paramount. It is necessary for this interest to be protected by the NCPA exercising direct control over development in most of the proposed Designated Areas. The Committee has noted the legal advice referred to by the NCPA. The Australian Government Solicitor's office was asked by the NCPA if the Plan could set out as a Special Requirement that no development take place in a particular area. The reply was:

On balance I think not, although the contrary is clearly arguable. Such a requirement is more properly to be characterised as a prohibition. If the NCPA wishes to exert total and absolute planning control over a particular area then it ought do so by designating such area (providing, of course, the area possesses the 'special characteristics of the National Capital').

The Authority was also advised by private solicitors that it consulted that:

We advise, on balance, that the special requirements could not be used to prevent all development ... (the question of whether or not Special Requirements could be used to specify areas where development could only occur with the NCPA's agreement) ... also involves some uncertainty. If the requirement for the Authority's agreement, in effect, is equivalent to the obligations imposed under Section 12 (1) ... (for Designated Areas) ... of the Planning Act, then it is possible that such a requirement maybe invalid.

4.21 The NCPA was advised that if it wanted to exert total planning control over a particular area then it ought do so by designating the area. It was considered to be more appropriate for the NCPA to designate the areas which have the special characteristics of the National Capital rather than specify Special Requirements.

4.22 The NCPA was also advised that it would be argued, though not necessarily successfully in a court, that a Special Requirement would be invalid if it amounted to a 'detailed condition of planning design and development'. It would be difficult to determine where a Special Requirement ends and a detailed condition begins but the Australian Capital Territory (Planning and Land Management) Act makes a distinction between the two.

4.23 The legal opinions obtained by the NCPA included the advice that where a Special Requirement is proposed the NCPA's control over any development would not be directly over the owners or occupiers of the land but would be indirect control through the Territory authorities who would be unable to approve anything that was inconsistent with the Plan. In the leased areas land use is already determined by the purpose ascribed to the lease. The NCPA should be able to specify a range of permissible uses, recognising existing uses, and set Special Requirements in these areas. The Territory authorities could then apply these Special Requirements as part of its administration of planning in the Territory.

4.24 The NCPA has several options available to it ranging from Designation of areas that allows it to directly control development, through to Special Requirements which allow it considerable indirect control. It also has the ability to set principles, policies and standards that the Territorial Plan must comply with. It could also simply make a comment about an issue but note that the decision should be left to the Territory government. While Designation may give the NCPA the

strongest power to protect the character of the national capital it is not necessary for the NCPA to exercise this alternative as widely as it has proposed in the draft Plan. There are some areas where Designation is not necessary either because the area is not of great significance to the character of the National Capital or the Commonwealth's requirement can be met by a less stringent planning control.

4.25 There is no doubt that most of the area described in the Plan as the 'Central National Area' should be Designated. City Hill with the land inside Vernon Circle and Anzac Parade together with the precincts of the Australian War Memorial should be retained as Designated Areas along with the area, in what the NCPA calls the 'Central National Area', which is also gazetted National Land. This area that the Committee considers needs to be Designated is one of the most important elements of the city's national capital character. The Commonwealth interest in this land is reflected in the fact that nearly all of it is gazetted National Land. The only parts which could be deleted from the NCPA proposals for the 'Central National Area' without compromising the special character of the National Capital are the Deakin and O'Malley diplomatic areas, and those parts of Civic, Acton and Reid north of Parkes Way. The NCPA should retain some measure of control over these areas and they could be dealt with by detailed Special Requirements. The diplomatic areas are gazetted National Land and the Territory Plan will not apply. These areas could therefore be designated without infringing on the role of the Territory but Special Requirements should be applied to the leased areas in Reid and Civic and the area between London Circuit and Vernon Circle rather than designating these areas.

4.26 The Committee considers that the Avenues, except for those parts within the 'Central National Area', should be treated consistently for their entire length to the Territory border. There is a need for the Commonwealth to exercise a strong influence over development of the Avenues and approach routes because of their significance to the National Capital.

It is clear that the NCPA did not intend to set these areas aside from development and therefore it is not necessary to take a course that would legally allow it to prevent development. The NCPA has shown that, as with its proposals for Civic, it can develop Special Requirements that are reasonably detailed. To ensure that the planning principles appropriate to the Avenues are achieved the NCPA could apply similar requirements to those proposed for Civic. They will need to be more specific and detailed than most of the other Special Requirements contained in the draft Plan. The NCPA's proposal to designate only the carriageways and to extend this designation through to the border while applying Special Requirements to land fronting the Avenues is a reasonable compromise. It would protect the Commonwealth's interest in preserving the character of the National Capital without unduly restricting the Territory's role.

4.27 The NCPA included University Avenue and Ainslie Avenue in their Avenues category but neither of these routes play the role that may have been prescribed for them in the Griffin Plan and they do not make such a significant contribution to the character of the national capital that they need to be separately identified for special protection. Unless Special Requirements would otherwise apply because of the location of these Avenues in Civic they do not need to be the subject of any such provisions. The Committee notes that the Australian National University has proposed that the Acton campus should be a Designated Area. CSIRO proposed that the Black Mountain site should also be Designated. The Committee agrees with these proposals on both areas as they are significant elements of central Canberra and serve important national functions.

4.28 The Committee considers that the Inner Hills part of what the NCPA calls the 'Open Space Setting' should be designated because there is no doubt that this area is of national significance and that it should not be developed. Similarly all of the area of Lake Burley Griffin and its

foreshores should be Designated as proposed by the NCPA, not just the part of this area gazetted as National Land.

4.29 The Committee considers that the rural landscape setting of the Lanyon area and of the west bank of the Murrumbidgee in the Lambrigg-Lanyon area should be retained. The remainder of that part of the Murrumbidgee River corridor that was proposed for designation is of great significance as a natural landscape and could be protected by a combination of Special Requirement and nature conservation controls administered by the ACT Government. Neither the Murrumbidgee Corridor nor the Lanyon areas need to be designated but Special Requirements should be developed to protect the character of the existing landscapes. The Committee considers that Special Requirements should also be developed for the Molongolo River.

4.30 The Committee considers that Civic is one of the most important and prominent parts of Canberra. It is a principal focal point of Griffin's plan and development there has potentially important impacts on the character of the National Capital. The Committee endorses the moves by the NCPA to make specific provisions for Civic in the National Capital Plan. It strongly endorses the proposals for detailed Special Requirements. However rather than impose a new detailed land use plan as proposed in Volume Two of the draft Plan the NCPA should, at this stage, seek to continue to apply the land use plan included in the Civic Centre Canberra Policy Plan. This Policy Plan should continue to apply without amendment until it is examined in the proposed review of gazetted policies and the Territory Plan is promulgated. In the long run the NCPA and the Territory planning authority should jointly develop a new Civic master plan.

4.31 The draft Plan stated that Civic has an essential function as the city's predominant commercial centre. The NCPA's proposed policy is:

Civic Centre shall continue to serve both as

the main metropolitan centre and as the town centre for Canberra Central. It shall continue as the most specialised centre for retailing, commercial, entertainment and community facilities providing for metropolitan, regional and tourist needs.

The Committee supports the role that the NCPA envisaged for Civic.

4.32 To ensure that the other town centres are also developed and to ease the pressure that could lead Civic to become over-developed the NCPA proposed a restriction on further Commonwealth employment in Civic. The Committee notes that this proposal is consistent with Commonwealth employment location policy and is intended to help preserve the character of Civic which contributes so much to the National Capital. The Committee considers that the dispersal of employment opportunities is desirable and that the other town centres should be developed. Civic should develop as the main commercial centre of Canberra rather than a centre of employment for Commonwealth public servants working in policy and program management areas. It is appropriate for the Commonwealth to maintain offices in Civic for agencies involved in providing services to the public. Every opportunity should be taken to locate Commonwealth public service office accommodation in centres other than Civic.

4.33 The Committee considers that Plan could be considerably enhanced if the explanations provided in the draft to justify proposals for Designated Areas and Special Requirements are expanded. As discussed above the Committee agrees that most of the selected areas require some sort of protection either by Designation or Special Requirement. The NCPA has in some cases failed to justify its decisions even though they are correct. This was most apparent in the case of some Special Requirements. The Australian Capital Territory (Planning and Land Management) Act states that Special Requirements may be applied when they are in the interests of the National Capital. Each time the NCPA proposed a Special

Requirement it stated in the draft Plan that this was the case. However, there was very little explanation of what this interest was, why it required the introduction of Special Requirements or how these would protect the interests of the National Capital. There is clearly a need for the NCPA to develop and present criteria for the identification of Designated Areas and areas for Special Requirements. It will need to show how these criteria were developed and how they were applied. As part of this exercise the NCPA will also have to develop clear and brief statements which define concepts such as the interest of the National Capital. The Special Requirements should also be agreed to by the Territory planning authority. The Committee expects that such agreement should be able to be achieved given that the ITPA has indicated that in many areas it agrees with the intent of the plan in terms of the pattern of development in Canberra.

4.34 The planning principles and policies proposed by the NCPA constituted a major part of the draft Plan but received comparatively little attention in the public comments and criticisms. The Australian Capital Territory (Planning and Land Management) Act provides that these principles and policies apply throughout the Territory and must be adhered to. It also provides that the Territory Plan must not be inconsistent with the National Capital Plan. Therefore the principles and policies can be a powerful way for the NCPA to influence and direct the planning and development of the Territory. They do not provide the NCPA with the same sort of powers as Designation and they may in practice be more difficult to enforce than the development controls that Designation provides. They will however be fundamental to determining the way Canberra is maintained and developed. The Committee endorses the general thrust of the policies and principles put forward by the NCPA but considers that given their significance to the Territory Plan they should be the subject of detailed discussion between the NCPA and the ITPA before the Plan is finalised. The Committee notes that NCPA is reviewing the policies and principles. Like the Special

Requirements these should be substantially agreed to by the Territory authorities. The Committee would have no problems with revised policies and principles that are similar to those proposed in the draft Plan.

Gazetted National Land

4.35 The Committee does not agree with the ITPA proposals for Designation to apply only to gazetted National Land nor does it accept the ITPA proposals that various additional areas of National Land be Designated. These proposals seem to be more concerned with the question of who controls the land and the division of responsibility between the two Planning authorities rather than the need to identify and protect those parts of the Territory most significant in terms of the character of the National Capital. To Designate land primarily on the basis of its ownership would violate the principle that Designation should apply only when it is clearly in the interest of the National Capital for the NCPA to exercise direct control over development to protect the Special characteristics of the National Capital. Nor is it necessary for the Commonwealth to gazette the Designated Areas as National Land. Designation provides the NCPA with adequate control over development but does not imply that the Commonwealth should own, occupy or manage the land. There are some areas of Territorial Land which should be designated. In these cases the Committee considers that it would be preferable for the Territory planning authority to have a direct role in planning and development. The Committee considers that as a basic rule the NCPA should be the planning authority for National Land and should consult with Territory authorities in respect of Designated Areas that are not also National Land.

4.36 There is a need for the Commonwealth to develop procedures to ensure that all National Land is developed and managed according to requirements of the National Capital Plan. The Committee also considers that the Commonwealth should not do anything which is inconsistent with the Territory Plan. The National Capital Plan should discuss the administrative and consultative arrangements that will be required to co-ordinate the Commonwealth's land development and management agencies in the Territory. It was not possible in the context of the Committee's inquiry to examine the procedures for the definition, identification, management or planning of National Land. This is a matter that the Committee considers should be addressed by a future inquiry.

Appeals, public consultation and the provisions of the Act

4.37 Many of the criticisms made of the draft Plan are more a consequence of the provisions of the Australian Capital Territory (Planning and Land Management) Act than of the contents of the draft. One matter that is raised in many submissions is the lack of an appeal process. The Act requires a comprehensive consultation and review process in the preparation of the Plan and the NCPA has gone to great lengths to bring the draft Plan to the attention of the Australian public and to seek their comments. In the long run the Plan may be subject to legal action and administrative decision made under the provisions of the Act may also be challenged. This however does not constitute a formal appeals process specific to the Plan.

The Chief Executive of the NCPA told the Committee that:

The process ...(of plan making)... is one which involves public consultation. It involves hearings such as this. It involves ministerial approval. It involves parliamentary allowance or disallowance of the

plan. I do not think you need any other form of hearing or appellant mechanism in that plan making business. It would be very unusual. I think Queensland is the only State, for example, when change of land use zoning is able to be disputed and dealt with in front of a court. I do not think in the plan making business you really need an additional appeals mechanism. In the plan administration business where, say, in a designated area, someone has a piece of leased land and wishes to develop it in some way and makes an application to us and we refuse, there probably is a case for some mechanism of appeal.

The Act makes no provision for that, but at the moment I have, in fact, had some discussions about this. I cannot see, for example, the need to create a special appeals board, because the number of possible cases that would come before the Authority would be very small indeed. The amount of leased land or leasable land that is within designated area is very tiny. So I do not know whether a special mechanism would be warranted...

Because the areas that we are dealing with are largely national land - there is not a lot of territorial land and certainly not a lot of leased land - most of our dealings will be with Commonwealth agencies in the plan administration sense. That is, in a sense proper, in that Territory legislation cannot bind those agencies whereas the Commonwealth legislation clearly does or intends to...

With any development application we were dealing with we would seek a view from ... (the Territory Planning Authority)... there is no question about that. I have no idea of the number of applications that one would get, but I would imagine they would be pretty small in number. Once we have a legal national capital plan in place, the only areas from which we would receive and consider applications would be those designated areas, whereas at the moment we have a lot of things being referred to us by the Territory Planning Authority for comment or advice under these interim arrangements.²

2. Evidence, p 266.

4.38 The Committee agrees with most of the argument put by the Chief Executive but notes that the few areas of leased land that will be in Designated Area may become the subject of dispute that would need to be resolved through some process of appeal or administrative review. The *Administrative Decisions (Judicial Review) Act 1977* would probably provide an avenue of review against planning decisions. The Committee considers that the Administrative Decisions (Judicial Review) Act and the requirement that the Plan, and any amendments to it, be subject to Parliamentary scrutiny provide a check on the NCPA. To the extent that the NCPA will be involved in making decisions about development proposals or lease purpose variation proposals there also needs to be some form of appeal mechanism against the decisions. The Australian Capital Territory (Planning and Land Management) Act needs to be amended to provide for such appeals.

4.39 The Committee considers that the deficiencies of the Australian Capital Territory (Planning and Land Management) Act should be addressed. It may be legislatively difficult to provide clearer definitions of the concepts such as the 'Special characteristics' and the 'interests' of the National Capital. These concepts are fundamental to the Plan and the level of dispute that has arisen over the draft Plan suggest that there is an unacceptable level of uncertainty. The differences between the concepts of 'detailed conditions of planning, and development' and 'Special Requirements' is also of importance but not properly explained in the legislation.

4.40 The failure of the legislation to facilitate the development of good working relationship between the NCPA and the Territory authorities is also a matter of concern. The Act could for example allow the NCPA to delegate some of its power and authority in certain areas. The Act could also clarify matters such as the application and enforcement of Special Requirement which can allow the NCPA to guide but not directly control developments.

4.41 There is a need to review the Australian Capital Territory (Planning and Land Management) Act just as there will be a need to review the operation of the Plan and the NCPA. There are matters that the Committee itself will investigate in the future. One matter that will require urgent attention before such a review is the requirement that when the Governor-General is satisfied that the Plan sufficiently covers the Territory he shall declare the planning transition period to be over but that this must occur within one year after self-government was proclaimed in the Territory. It seems unlikely that all of the provisions of the Act relating to the preparation of the Plan can be satisfied within this time frame. The Act also allows for the Plan to be certified as an interim measure before it is finalised. The Act needs to be amended to allow the Governor-General to declare an end to the transition period prior to the development of a final plan. This should be done to allow the National Capital an additional six months in which to finalise the plan.

5. CONCLUSIONS AND RECOMMENDATIONS

5.1 The intention of the Australian Capital Territory (Planning and Land Management) Act is quite clear. It provides for the establishment of an authority to prepare a plan that will control and direct the future planning and development of Canberra in such a way as to protect the Commonwealth's interests which arise because of Canberra's role as the National Capital. An important objective of the Plan is to protect and enhance the characteristics of Canberra which are important to the way it works as the nation's capital city.

5.2 The Committee concludes the NCPA has produced a draft National Capital Plan that complies with the Act. The draft Plan contains proposals, which if adopted, would provide a sound basis for the continuing planning and development of Canberra in a way that would preserve the character of the city as the National Capital. The provision of the draft Plan and the role adopted by the NCPA are in accordance with the intention of the Act and the Committee rejects the criticisms that the NCPA sought to exceed its authority or to usurp the role of the government of the Australian Capital Territory.

5.3 The draft Plan has short comings and it needs changes and additions before it is produced as a final Plan. These revisions relate more to presentation of the proposed planning measures rather than any fundamental change in what the draft Plan proposes and should aim to help overcome the conflict that has arisen in response to the draft Plan. Most importantly the NCPA needs to provide more explanation of its approach and its views. It also needs to provide more justification for its proposals and to show how they relate to the requirements of the Act.

5.4 In the preceding chapters the Committee has discussed the comments and criticism that were made during the consultation phase of the preparation of the Plan. In Chapter Four it has presented its own analysis of the Plan and, in so doing, drew upon the comments made by others. From this analysis the Committee makes the following recommendations related to the contents of the Plan and their presentation.

5.5 The Committee recommends that:

1. the Plan be revised to stress and clarify its role in relation to the Territory Plan;
2. the adoption and incorporation of gazetted NCDC policies be made more explicit and prominent;
3. the intention to review gazetted NCDC policies in consultation with the Territory planning authority be made explicit and a timetable for the review should be included in the Plan;
4. the Plan should make it clear how the principles, policies, standards and Special Requirements it sets down are linked to NCDC policies;
5. the principles, policies, standards and Special Requirements established by the Plan be substantially agreed to by the Territory planning authority before they are adopted;
6. the Plan present more substantial economic and demographic data and it discuss the future composition of the Territory's economy,

population and workforce and how the trends in these factors will affect the development of the Territory and its role as the National Capital;

7. the Plan explain how it responds to the economic and demographic developments based on this economic analysis;
8. the administration of the Plan and procedures to overcome the delays it might cause to the development approval process need to be explained in the Plan or in a subsidiary information pamphlet;
9. the National Capital Plan, where possible, require that secondary site and area specific development plans foreshadowed in the draft Plan should be incorporated in, and be an integral part of, the Territory Plan;
10. the Plan should discuss the implications of the Plan for Commonwealth-Territorial financial relationships;
11. criteria for the identification of Designated Areas and areas for Special Requirements should be developed and presented in the Plan;
12. Vernon Circle and City Hill, the area in Civic and Acton south of Parkes Way, Anzac Parade and the precincts of the War Memorial and those areas of National Land between Parkes Way and Constitution Avenue be Designated Areas but the remainder of Civic, Acton and Reid that was proposed for designation only be subject to Special Requirements;

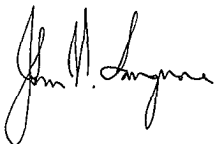
13. the Avenues be treated consistently from the Territory border to the Central National Area and the carriage ways should be designated while land fronting the Avenues be subject to Special Requirements;
14. the ANU campus at Acton be a Designated Area and gazetted as National Land and the CSIRO Black Mountain site be designated;
15. unless Special Requirements would otherwise apply to University Avenue and Ainslie Avenue because of their location in Civic they should not to be the subject of any such provisions nor do they need to be Designated Areas;
16. the Plan propose Special Requirements for the whole of the Murrumbidgee and Molongolo River corridors rather than designation, and the area where Special Requirements will apply include the Lanyon area to preserve the rural landscape character of this area;
17. apart from the changes proposed by the Committee the revised Designated Areas proposals outlined to the Committee by the NCPA be included in the final Plan;
18. the definitions and explanations provided to justify proposals for Designated Areas and Special Requirements be expanded and clarified; and

19. the Plan discuss the administrative and consultative arrangements that will be required to co-ordinate the Commonwealth's land development and management agencies in relation to the planning, development and management of National Land and explain the procedures for the administration and management of Designated Areas and National Land.

5.6 The Committee also recommends that:

1. the NCPA and the Territory planning authority integrate the National Capital Plan and the Territory Plan and jointly develop a set of simplified procedures, including a one stop office, for the administration of the Plan and the approval of planning applications;
2. the Commonwealth accept full financial responsibility for additional infrastructure costs, management and maintenance created by the Plan above and beyond the cost that would have otherwise have been incurred by the Territory, and that the Commonwealth Grants Commission be asked to review the cost implications of the Plan taking account of the dual role of Territory as the National Capital and as a self governing Territory; and

3. administrative procedures in relation to the application of the Plan and the management of all land the Commonwealth has an interest in, be developed and adopted by the NCPA and be binding on the Department of Administrative Services and other Commonwealth authorities with land management interests in the ACT;
4. the Australian Capital Territory (Planning and Land Management) Act be reviewed and amended to allow appeals against NCPA planning decisions in relation to leased Territory land and to require the NCPA to consult with the Territory planning authority in relation to Territory land that is a Designated Area.

A handwritten signature in black ink, appearing to read 'J. Langmore', is written over a horizontal line.

J Langmore, MP
Chairman
May 1990