

*While the National perspective will remain pivotal, we should not presume that this perspective is incompatible with a more streamlined, consistent and publicly accountable approach. To this end, planning should align, not overlap, consultation should be mandatory, and notification and appeal on development and approvals should be consistent across all areas.<sup>1</sup>*

## **Reforming the Planning Regime**

### **An Uncertain Planning Process**

- 5.1 Disparities between the processes employed by the National Capital Authority and the ACT planning authorities have triggered calls for more certainty in the planning process and a more streamlined and cost-effective planning regime for the Territory. A number of witnesses referred to the need to clarify grey areas of jurisdiction between the ACT Planning and Land Authority and the NCA. The present situation reflects provisions in the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) which require that the two planning bodies have overlapping responsibilities. The ACT Government described the two-tiered system, which requires proponents to seek approval for leasing matters with one authority and then development works approval from another, as

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1 ACT Government, Submissions, p 202.

“fundamentally flawed”.<sup>2</sup> This has been the source of much confusion and frustration, largely due to the lengthy delays in the planning and approval process.<sup>3</sup>

- 5.2 As a result, the ACT faces the threat of losing jobs and income, according to Mr Paul Cohen from the Planning Institute of Australia (ACT).<sup>4</sup> Mr Cohen stated:

I have seen something like \$70 million of potential investment walk away with two developers who simply shook their heads at the layers of complicated planning.<sup>5</sup>

Mr Cohen’s evidence was supported by the Property Council of Australia (ACT) and the Housing Industry Association, adding weight to the view that the planning community is becoming increasingly disillusioned with the delays and uncertainty which appear to be commonplace under the present regime.<sup>6</sup> The Housing Industry Association stated that this adversity in the planning process can have a negative effect on innovation and affordability and that:

...un-cooperative demarcations between the Commonwealth and Territory Governments only create uncertainty for people wishing to invest in the city’s future’.<sup>7</sup>

- 5.3 Executive Director of the Property Council’s ACT Division, Ms Romilly Madew, suggested that it was the situation where both authorities play a role in the approval process which is contributing to the frustration. Ms Madew cited an example:

We have a member who comes under that area. He had to go through the NCA and then through ACTPLA. The building has not even started yet, and it has probably been 2½ years now. He has expressed absolute frustration at both. He felt that he had to go to one and then to the other and that there might not have been good talking between the two. There has been a lot of confusion there. He has now had to go to the

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2 Mr Lincoln Hawkins, Transcript, 15 August 2003, p 87.

3 The Housing Industry Association (HIA) added that its local members regularly experience frustration with the discrepancies between the jurisdictions. See Housing Industry Association, Submissions, p 102.

4 Ms Romilly Madew, Transcript, 16 October 2003, p 278.

5 Mr Paul Cohen, Transcript, 20 June 2003, p 7.

6 Ms Romilly Madew, Transcript, 16 October 2003, p 278, Housing Industry Association, Submissions, p 102.

7 Housing Industry Association, Submissions, p 102.

(Administrative Appeals Tribunal). Basically, it has been a very unhappy process, to the point where he will probably make a decision whether he will pull out or not. That means loss of jobs—it is a substantial development.<sup>8</sup>

- 5.4 As well as being confusing and costly, the Canberra Business Council stated that the current approval process “has the propensity to stifle activity that would add to the well-being of the people of Canberra and to the Territory as the national capital”.<sup>9</sup>
- 5.5 The ACT Government believes that simplifying administration by bringing about a coinciding of land responsibility with planning approvals would provide a rational and effective solution.<sup>10</sup> The Property Council of Australia (ACT) also argued that one piece of land should fall under the jurisdiction of one planning authority.<sup>11</sup> The Council acknowledged that for this to be possible there would need to be amendments to the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth).<sup>12</sup>
- 5.6 The National Capital Authority accepts that the present arrangements can cause confusion. The Authority noted that:

Under current arrangements there can be confusion over the planning concept of Designated Areas (where the Authority has works approval) and land status or tenure. This occurs because Territory Land and National Land can fall within Designated Areas. The fact that the Authority is responsible for works approval on Territory Land (particularly when the ACT Government is the proponent of the works) is seen by some as inappropriate.<sup>13</sup>

The NCA further stated that from time to time, people confuse the legislative planning arrangement with land administration (National Land and Territory Land).<sup>14</sup> According to the Authority, this has led to perceptions that the NCA has no legitimate planning rights on Territory Land.<sup>15</sup>

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8 Ms Romilly Madew, Transcript, 16 October 2003, p 278.

9 Canberra Business Council, Submissions, pp 260-261.

10 Mr Lincoln Hawkins, Transcript, 15 August 2003, p 87.

11 Property Council of Australia (ACT), Submissions, p 139

12 Property Council of Australia (ACT), Submissions, p 141.

13 National Capital Authority, Submissions, p 180.

14 National Capital Authority, Submissions, p 189.

15 National Capital Authority, Submissions, p 189.

- 5.7 In order to address the uncertainty in the planning process, the Committee has examined the following issues:
- the need for a review of the National Capital Plan;
  - the NCA’s planning control over arterial roads;
  - the question of whether the dual-planning arrangement is the most appropriate or whether a more integrated approach should be adopted;
  - measures to remove overlap from the planning regime; and
  - policies for areas of Territory Land subject to special requirements.

## **The National Capital Plan – In Need of Review**

- 5.8 The National Capital Plan has provided the framework for planning in the ACT since its inception in 1990. The plan has certainly served Canberra well in terms of meeting its objective of ensuring that Canberra and the Territory are planned and developed in accordance with their national significance, and the results are clearly evident. However, over time, the plan has become the source of much of the uncertainty in the planning process. In its present form, the plan has been described as “redundant” and “irrelevant” and it has been argued that in many areas, it has little to do with the administration of the national capital significance of Canberra.<sup>16</sup>
- 5.9 The National Capital Authority maintains that the object of the National Capital Plan “continues to be relevant, and safeguards the status of the Australian Capital Territory as the Seat of Government for all Australians”.<sup>17</sup> However, on the basis of the evidence it has received, the Committee queries whether this is an accurate reflection. The Planning Institute of Australia (ACT), for example, stated that:

Much of what the plan purports to cover has no National Capital significance at all, and where significance does exist, outside of the Central National Area, that significance relates to qualities of those places as a visual backdrop to the Central National areas and not to its land use.<sup>18</sup>

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

17 National Capital Authority, Submissions, p 185.

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

- 5.10 The first major review of the National Capital Plan since its gazettal in 1990 commenced in 1998 and was effectively completed in 2001. The review was accepted by the Government in Portfolio Budget Statements from 1999-2000 to 2002-03.<sup>19</sup> However, this review was conducted internally and once again, the weight of evidence would suggest that the Authority's review failed to get to the core of those issues which continue to hinder the planning and development of the Territory. It would appear to the Committee that the first step to streamlining the planning process is to expose the National Capital Plan to a comprehensive, independent review process in which all relevant stakeholders are afforded a say.
- 5.11 While the NCA recognises that effective planning instruments respond to changing opportunities and pressures, the Territory argued that the National Capital Plan has "failed to keep pace with changing realities".<sup>20</sup> The Territory suggested that the spatial planning task it recently embarked on was intended to account for the changes in demographics, people's values and lifestyles and should be used as the basis for a comprehensive review of the National Capital Plan.<sup>21</sup>
- 5.12 The ACT Government is particularly critical of the prescriptive nature of the plan which it claims inhibits opportunities for the Territory to respond flexibly to emerging challenges.<sup>22</sup> Managing Director of the Capital Airport Group, Mr Stephen Byron, also criticised the prescriptive nature of the plan. Mr Byron believes that a review of the National Capital Plan would:
- ...open up the opportunity for (design control) to be done on performance benchmarks rather than prescriptive measures. The same is importantly true when it comes to land use...we need to move away from this prescriptiveness to facilitate developers to be creative, to broaden the land use and to have mixed use.<sup>23</sup>
- 5.13 Mr Bruce Wright insisted that the blame for the current state of the National Capital Plan should not lie with the NCA, which, in his

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19 National Capital Authority, Submissions, p 183.

20 Ms Annabelle Pegrum, Transcript, 19 September 2003, p 207.  
ACT Government, Submissions, p 222.

21 ACT Rejoinder Submission to the 2004 Commonwealth Grants Commission Review, February 2003, p 10.

22 ACT Government, Submissions, p 222.

23 Mr Stephen Byron, Transcript, 16 October 2003, p 288.

view, has struggled against inadequate resources and a statutory regime which has made it difficult to incorporate substantial amendment.<sup>24</sup> However, Mr Wright does concur with the popular view that the current plan has lost much of its relevance:

It is clear that the National Capital Plan is out of date; that it fails to recognise the changes over many years in Canberra's governance, demographics, outlook, and economy and that it seeks to control aspects of development which are of limited, if any, national significance.<sup>25</sup>

5.14 The Planning Institute holds the view that the inclusion of irrelevant material in the National Capital Plan is due to the NCA being bound by Section 10 of the *Australian Capital Territory (Planning and Management) Act 1988* (Cth) which specifies the contents of the plan. The Planning Institute therefore suggested that one of the primary objectives of a review of the plan should be to remove material which does not specifically relate to the national capital function.<sup>26</sup>

5.15 While retention of the concept and role of the National Capital Plan is generally supported, a review of the plan is recognised as an essential step in establishing a more streamlined planning regime for the Territory and ensuring the plan is a more effective instrument.<sup>27</sup> One of the key recommendations from the ACT Government is that the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) be reviewed with the view to limiting the level of control the National Capital Authority exercises over the Territory:

The ACT Government has chosen to make planning and land management more transparent and accountable. To ensure the ACT government and its agencies can be effective and responsive to the ACT community, it must have the capacity and ability to plan for its future and implement strategic initiatives. This requires that the role, responsibilities and mandate of the ACT's Planning and Land Authority be clear and separated from any overlap with the NCA. It is therefore timely that a review of the *ACT (Planning and Land Management) Act 1988* be undertaken to achieve the strategic outcomes outlined above.<sup>28</sup>

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24 Mr Bruce Wright, Transcript, 20 June 2003, p 10.

25 Wright, Submissions, p 88.

26 Planning Institute of Australia (ACT), Submissions, p 56.

27 The Institution of Engineers Australia, Submissions, p 209.

28 ACT Government, Submissions, p 228.

5.16 In addition, the Territory believes that the current National Capital Plan “underscores the hierarchical nature of the planning system and the subservient role the ACT Government has in the strategic planning of the city”.<sup>29</sup> The Territory is concerned that the current spatial structure and form of the city can only be changed through an amendment to the National Capital Plan and that through this process, the Commonwealth essentially has the final say.<sup>30</sup> As a result, the Territory is faced with a degree of uncertainty. For example, in its submission to the Commonwealth Grants Commission Review, the ACT Government argued that:

...it is difficult for the ACT Legislative Assembly to plan and prepare forward works programs and land release if its decisions can be overturned.<sup>31</sup>

## Clarification of Terms

5.17 One of the motivations behind calls for a review of the National Capital Plan is the lack of clarity regarding definitions for terms used in the plan such as ‘Designated Areas’, areas which are deemed to have ‘Special Characteristics’ of the national capital and areas of ‘national significance’. Despite such concerns, the National Capital Authority holds the view that:

Matters of national significance as described in the National Capital Plan are strategic, comprehensive and practical, and recognise the value of the unique purpose, setting, character and symbolism of Australia’s National Capital.<sup>32</sup>

5.18 The National Capital Authority published *The Symbolic Role of the National Capital – from Colonial argument to 21<sup>st</sup> Century ideals* in September 2003 and recently published a brochure, *National Significance in the National Capital*, to further articulate the principles of national significance. However, it has been suggested that the definition of significant terms and concepts should be addressed as part of a comprehensive review of the National Capital Plan:

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29 ACT Rejoinder Submission to the 2004 Commonwealth Grants Commission Review, February 2003, p 13.

30 ACT Rejoinder Submission to the 2004 Commonwealth Grants Commission Review, February 2003, p 13.

31 ACT Rejoinder Submission to the 2004 Commonwealth Grants Commission Review, February 2003, p 13.

32 National Capital Authority, Submissions, p 185.

The National Capital Authority should rigorously consider, investigate, articulate and expose to national and local consultation, definitions of both the *national significance* of the Capital and the features which determine whether an area has the *special characteristics* of the Capital.<sup>33</sup>

- 5.19 In its proposal for a revised planning framework, the ACT Government identified the need for certain terms in the plan to be redefined, emphasising that otherwise their interpretation would be “inevitably prone to subjectivity”.<sup>34</sup> In particular, the Territory addressed the need to define the terms with regard to the:
- essential and symbolic contribution the area makes to the qualities of the Australian Capital;
  - spatial attributes and qualities that are to be conserved or enhanced; and
  - preferred or particular land uses.<sup>35</sup>

## Scope of the Review

- 5.20 While the Committee supports the concept of the National Capital Plan as the guiding document for the planning and development of Canberra, the Committee shares the view expressed in many submissions that the current plan is in need of a comprehensive review.<sup>36</sup> In recommending a review of the plan, the Committee notes Mr Wright’s concern that “a review by either government will fail to address legitimate concerns and aspirations of the other” and therefore emphasises the need for the review to be undertaken in partnership with the ACT Government.<sup>37</sup>
- 5.21 The Committee believes that the findings from the Griffin Legacy Project should form the basis for such a review.<sup>38</sup> Furthermore, the Committee believes that the review should recognise and reflect the implementation of the other recommendations in this report. The review should involve an extensive consultation process with all relevant stakeholders - including the general public - at both a local and a national level.

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33 Wright, Submissions, p 88. See also Malcolm Smith, Submissions, p 118.

34 ACT Government, Submissions, p 231.

35 ACT Government, Submissions, p 219.

36 See, for example, Wright, Submissions, p 88, Smith, Submissions, pp 117-118, Planning Institute of Australia (ACT), Submissions, p 56.

37 Wright, Submissions, p 88.

38 See p 6, this report.



## Recommendation 6

- 5.22 **That, in collaboration with the Territory Government, the Federal Government initiate an independent and comprehensive review of the National Capital Plan on the basis of the implementation of the recommendations of this report and the need for a more integrated approach by both planning authorities.**

## Planning Control of Canberra's Arterial Road Network

- 5.23 Another area which has been the source of much contention in recent times, owing to the debate over the Gungahlin Drive Extension, is the provision which enables the NCA, through the National Capital Plan, to establish the general planning policies for the Territory's arterial road systems.<sup>39</sup> For the purposes of the National Capital Plan, the arterial network in the Territory is deemed to comprise two elements:

...the arterial roads within Canberra's urban areas, which are major traffic collectors and distributors, and the network of peripheral parkways which serves to carry traffic between towns along routes lying largely at the periphery of the built-up areas.<sup>40</sup>

- 5.24 The National Capital Plan also sets out general policies with respect to the planning of national roads. These consist of the roads within the National Triangle and the main avenues and approach routes which include the Federal, Barton, Kings and Monaro Highways from the Territory border to their eventual junction at State Circle in the vicinity of Parliament House.<sup>41</sup>
- 5.25 Mr Malcolm Smith acknowledged the Authority's strategic planning role involving land use and transport issues. However, he questioned the need for the NCA to decide the location of arterial roads, particularly those – as in the case of the Gungahlin Drive Extension – which primarily serve the domestic needs of Territory residents.<sup>42</sup>

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39 Section 10 (2b), *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth).

40 National Capital Authority, *Consolidated National Capital Plan*, June 2002, p 9.

41 National Capital Authority, *Consolidated National Capital Plan*, June 2002, p 9.

42 Smith, Submissions, p 117.

- 5.26 The Committee considers that the long-running debate over the Gungahlin Drive Extension has been regrettable, particularly for the residents of Gungahlin whose transport needs have yet to be addressed due to delays in construction of what, for them, is a vital piece of infrastructure. The Committee concurs with the notion put forward by Mr Smith, that deciding how traffic should be distributed from Gungahlin to other parts of Canberra should be a determination for the ACT Government. Nevertheless, the Committee acknowledges that the National Capital Authority has a planning responsibility for the policies that affect national institutions such as the Australian Institute of Sport, and the Committee believes it is important that agreed policies for such areas are incorporated into the National Capital Plan. The Committee also believes it is imperative that the NCA continues to maintain control over the planning of national roads in accordance with policies set out in the National Capital Plan.
- 5.27 Removing the Authority's prime responsibility for planning of the arterial road system would require an amendment to the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth). The Committee therefore recommends:

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### **Recommendation 7**

- 5.28 **That Section 10 (2b) of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) be amended to remove planning of arterial road systems from the National Capital Plan and that the responsibility for the planning of arterial roads be transferred to the Territory Government.**

## **Views on the Dual-Planning System**

- 5.29 While there is a difference of opinion as to which planning framework is the most appropriate for the ACT, the majority view from the evidence received supports the retention of the current dual-planning arrangement. As the National Capital Authority pointed out, "there is no simple administrative structure to address what is a complex duality of interest".<sup>43</sup> The Authority believes that the current regime

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43 National Capital Authority, Submissions, p 195.

in the ACT is not unlike that in place throughout Australia with the existence of State and local planning authorities.<sup>44</sup>

- 5.30 This view is supported by the National Trust of Australia (ACT), which insists that “the days of a single authority are gone forever”.<sup>45</sup> However, even those who favour the dual-planning system per se, recognise that the current arrangement is failing to deliver desirable outcomes for the Territory.<sup>46</sup> Mr Bruce Wright, for example, argued that even under the current statutory regime, “an adequately resourced National Capital Authority could and should tread much more lightly on ACT planning”.<sup>47</sup>
- 5.31 The National Trust urged that the NCA continue to embrace its responsibilities with regard to maintaining Canberra’s national significance and in particular, its protection of the National Capital Open Space System. However, at the same time, the Trust argued that development control and urban planning should remain a prerogative of the Territory:
- The political reality is that Canberra has local self government through the Assembly and urban planning and particularly the control of development is one of the most keenly debated local issues, with strong community groups in virtually every part of Canberra ready to engage in and have a view about planning and development. It is vital that these sorts of responsibilities remain at the Territory level with the accompanying values of local responsiveness and accountability that a locally based system demand and produce.<sup>48</sup>
- 5.32 While supporting the continuation of the dual planning system, the Housing Industry Association (HIA) added that there are issues regarding greater clarity of the respective roles and jurisdiction of the planning bodies which need to be addressed. The HIA warned that, at present, the opportunity for the ACT to deliver a planning system which is predictable, affordable and flexible is “at risk of being

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44 Macdonald, E., Canberra planners can face tough territory, *The Canberra Times*, 12 April 2003, p 3.

45 National Trust of Australia (ACT), Submissions, p 20.

46 National Trust of Australia (ACT), Submissions, p 20.

47 Wright, Submissions, p 88.

48 National Trust of Australia (ACT), Submissions, p 20.

squandered by the turf battles for the control of Canberra's future planning".<sup>49</sup>

## Support for an Integrated Planning Framework

5.33 Currently, the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) gives the NCA overriding control over land use planning of the Territory, a responsibility which does not require the Authority to consult with the ACT community. The Territory Government argued that the current dual-planning arrangement fails to recognise the extent to which the ACT has developed since the introduction of self-government and does not reflect the "reasonable expectations" of the ACT community to make their own decisions for their future.<sup>50</sup> The Territory favours an integrated approach to planning rather than the existing dual planning arrangement.<sup>51</sup> The ACT Government stated:

We believe there should be an integrated process rather than a two-tier process. The states are responsible for economic, transport and social planning issues across their states, and that impacts on the planning regimes undertaken by local government. In the ACT, the ACT administration does both state and local functions, so the ACT Government is accountable for economic, transport and social issues as well as for detailed urban planning issues.<sup>52</sup>

5.34 This view led the Territory to suggest a revised planning framework in which there is one plan, administered predominantly by the Territory. While this one plan would involve the NCA defining areas exhibiting 'special characteristics' of the national capital and outlining planning policies and principles for these, all other land would be subject to planning policies prepared by the Territory.<sup>53</sup> Under the Territory's proposed regime, responsibility for planning administration of National Land would be retained by the Authority.

5.35 Former NCDC Commissioner, Mr Tony Powell suggested that the Committee give consideration to varying the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) to "enable the

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49 Housing Industry Association, Submissions, p 94.

50 ACT Government, Submissions, p 222.

51 ACT Government, Submissions, p 218.

52 Mr Robert Tonkin, Transcript, 15 August 2003, p 86.

53 ACT Government, Submissions, p 229.

reconstitution of the National Capital Authority as a jointly administered and jointly funded National and Territory statutory planning authority”.<sup>54</sup> Mr Brett Odgers also supported an integration of the two planning bodies, however he suggested that the National Capital Plan and the Territory Plan need not be amalgamated.<sup>55</sup> According to Mr Odgers, at the very least, a memorandum of understanding should clarify the respective functions of the ACT and Commonwealth planning bodies and provide for their integration.<sup>56</sup>

- 5.36 The proposal for an integrated plan gained support from some witnesses, most notably Mr Malcolm Smith and Mr Brian Binning. Mr Smith stated that he believes such an approach is the most likely to provide positive outcomes for both the Commonwealth and the Territory:

An environment within which both Commonwealth and Territory planning agencies subscribe to a shared strategic plan for Canberra, have an agreed and integrated programmes and projects, and improved liaison procedures, would in my opinion be in the best interests of both governments and the Australian and local communities they represent.<sup>57</sup>

- 5.37 In his submission, Mr Binning proposed that the Committee design a set of principles which could be integrated to form a ‘Joint Metropolitan Plan’ for Canberra, which should then be endorsed by both the Commonwealth and Territory Governments.<sup>58</sup> The OECD’s review into the future of Canberra also subscribed to a joint approach to planning:

The ACT and NCA should support a single comprehensive strategic planning process and the development of a shared strategic vision for Canberra expressed in simple, non-technical terms to assure broad public understanding.<sup>59</sup>

- 5.38 While some submissions canvassed the suggestion that a joint strategic plan should be administered by a single joint planning authority representative of both the Commonwealth and the

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54 Powell, Submissions, p 268.

55 Odgers, Submissions, p 38.

56 Odgers, Submissions, p 38.

57 Smith, Submissions, p 122.

58 Binning, Submissions, p 137.

59 Organisation for Economic Co-operation and Development, 2002, *Urban Renaissance – Canberra: A Sustainable Future*, OECD, p 174.

Territory, the Committee concurs with Mr Binning's view that this arrangement would be unworkable.<sup>60</sup> In an address at the Planning Institute National Congress in 2001, former Director of the National Capital Plan, Mr John Bolton, made clear the Authority's view on the suggestion that planning in the ACT could be managed by a single planning authority:

The Authority considers that it would be organisationally impracticable and ideologically naïve to expect a single planning authority, however constructed, to satisfy the different planning objectives of the Commonwealth and Territory and to meet the sometimes conflicting needs of the two assemblies.<sup>61</sup>

## Planning Control over Territory Land

5.39 This issue of overlapping jurisdictions is critical to resolving the complications of the current planning system. Residents, developers and members of the planning community have readily voiced their frustrations with the current planning system in the ACT.<sup>62</sup> The ACT Government maintains that it should be afforded the opportunity to influence further development of the Territory without prejudicing its national capital characteristics. The Territory's reasoning that it should be entrusted to comply with guidelines established in collaboration with the National Capital Authority was supported by other witnesses.<sup>63</sup> The Institution of Engineers Australia, for example, commented that:

...the theme of the national capital needs to permeate throughout the ACT. That does not necessarily mean to say that the National Capital Authority or some equivalent has to have specific authority over every detail of the ACT but, in some way, the national presence needs to be reflected. If you translate that into various mechanisms, a possible mechanism would be that the ACT administer some of the approval

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60 Binning, Submissions, p 135.

61 Mr John Bolton, Address to *RAPI National Congress*, 2001.

62 See, for example, Housing Industry Association, Submissions, p 102, Powell, Submissions, p 263, Odgers, Submissions, p 37.

63 See, for example, Submissions, pp 88-89, 117.

processes for planning and land development under guidelines and so on set by the NCA.<sup>64</sup>

- 5.40 The Committee recognises the need to ensure that the two planning authorities co-exist in a way which ensures that the planning process is streamlined and transparent. In light of the evidence received, the Committee supports the Territory's call to simplify the current system.<sup>65</sup> Both planning authorities agreed that it would be desirable to eliminate multiple planning and development control responsibilities in any one area. It was acknowledged, in particular, that the current situation, whereby Territory Land can also be designated, poses a number of difficulties.<sup>66</sup> The NCA, for example, commented that:

Ideally, the land within the established Designated Areas should be National Land declared as required for the special purposes of Canberra as the National Capital. This would contribute to a greater clarity and certainty in the role and responsibilities of the Commonwealth in the detailed planning, design and development of the National Capital.<sup>67</sup>

The ACT Government, on the other hand, stated that:

a realignment and coincidence of National land and National planning responsibilities is required to refocus on the key issues of strategic National importance.<sup>68</sup>

- 5.41 The Territory argued that it should be granted planning control over all Territory land, including what are currently Designated Areas.<sup>69</sup> Furthermore, the Territory believes that it should be entrusted to exercise this control in a manner consistent with development policies which should be determined by a review of the National Capital Plan.<sup>70</sup>
- 5.42 The Committee is well aware of concerns about the capacity and willingness of the Territory to manage and protect the national capital

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64 Mr Michael Evans, Transcript, 15 August 2003, p 145.

65 Mr Robert Tonkin, Transcript, 15 August 2003, p 86.

66 See National Capital Authority, Submissions, p 186, ACT Government, Submissions, p 235.

67 National Capital Authority, Submissions, p 186.

68 ACT Government, Submissions, p 219.

69 ACT Government, Submissions, p 238.

70 ACT Government, Submissions, p 238.

aspects of Canberra.<sup>71</sup> In 1995, during debate on a motion in the ACT Legislative Assembly to consider the creation of a single planning authority for the Territory, former MLA Mr Gary Humphries (now Senator for the ACT) acknowledged the need for some level of Commonwealth oversight:

If we have financial considerations which might tempt us to want to cut corners with respect to planning issues, we should rightly be bounced by someone who is acting in the national interest.<sup>72</sup>

- 5.43 However, the Committee believes that this oversight is achieved by the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) which is quite clear in its directive that the Territory Plan cannot be inconsistent with the National Capital Plan.<sup>73</sup> Therefore, there is scope for the National Capital Plan to stipulate further planning and design conditions, so that any works approved by the Territory are required to comply with parameters outlined in the plan. This would, in effect, ensure that any future Territory government could not approve development which would undermine the city's national significance. This being the case, the question then arises as to why it would be necessary for the National Capital Authority to retain the extent of planning control it currently has.
- 5.44 On the basis that these additional protections were incorporated into the National Capital Plan, it would not be unreasonable for designation to be uplifted in areas where the NCA currently has planning responsibility on some Territory Land. The Committee believes this will enable the NCA to focus its efforts on maintaining and enhancing those areas which are undoubtedly significant to the national interest, such as the Central National Area, Lake Burley Griffin foreshores, diplomatic areas and National roads. Any threat to the national capital character of the city would continue to be addressed by Section 26 of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) which enables continued Commonwealth oversight through policies in the National Capital Plan.

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71 See, for example, Stokes, Submissions, p 17, National Trust of Australia (ACT), Submissions, p 22, Mickle, Submissions, p 25.

72 ACT Legislative Assembly *Hansard*, 20 September 1995, p 1536.

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



## Areas of Territory Land to remain Designated

- 5.45 While the Committee supports uplifting Designated Area status from specified sections of Territory Land, there are three areas of Territory Land whose Designated Area status should be retained. These are the Deakin/Forrest residential area, the 'Inner Hills' of the National Capital Open Space System (NCOSS) and the main avenues and approach routes.

### Deakin/Forrest Residential Area

- 5.46 The Deakin/Forrest precinct is the only standard residential land included within a Designated Area. The fact that the Deakin/Forrest residential area is designated under the National Capital Plan means that the residential properties are subject to different terminology, development conditions and planning processes from other residential properties in the surrounding suburbs or elsewhere in the ACT. Given its setting in the immediate surrounds of Parliament House, the majority of the Committee supports the retention of Designated Area status for this precinct.<sup>74</sup> Despite the area in question occupying Territory Land, given its prominence in Griffin's plan and its location adjacent to the parliamentary precinct, the majority of the Committee believes it is essential that the NCA continues to oversee planning and development control in this area.
- 5.47 This recommendation is not supported by Labor members of the Committee, who maintain that Designated Area status should only be retained for those blocks in the Deakin/Forrest area which front State Circle. This view was put forward in a Minority Report to the Committee's inquiry into Draft Amendment 39 to the National Capital Plan, in October 2002.<sup>75</sup>

### The Inner Hills (of the National Capital Open Space System)

- 5.48 The Inner Hills form an integral component of the Central National Area and Walter Burley Griffin's plan for Canberra. The importance of the natural setting of the National Capital has been recognised by the inclusion of policies for the National Capital Open Space System

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74 See Joint Standing Committee on the National Capital and External Territories, 2002, *Striking the Right Balance: Draft Amendment 39 National Capital Plan*, Canprint, Canberra.

75 See Minority Report, Labor Members, Joint Standing Committee on the National Capital and External Territories, 2002, *Striking the Right Balance: Draft Amendment 39 National Capital Plan*, Canprint, Canberra, p 51.

in the National Capital Plan. The NCOSS is incorporated in the plan under four separate land use categories:

- Lake Burley Griffin;
- Hills, Ridges and Buffer Spaces;
- River Corridors; and
- Mountains and Bushlands.<sup>76</sup>

5.49 The Hills, Ridges and Buffer Spaces include the 'Inner Hills' which, despite comprising Territory Land, are specified as a Designated Area under the National Capital Plan.<sup>77</sup> The National Capital Plan addresses the importance of the Inner Hills in providing the scenic backdrop and natural setting for Canberra's urban areas.<sup>78</sup> The plan states:

It is therefore critical that the hill areas be preserved from urban development and their essential landscape/ environmental character retained and reinforced to provide the unified background and landscape setting for the National Capital.<sup>79</sup>

The Committee concurs with the National Capital Authority's view that designation under the National Capital Plan is the most appropriate way of securing this.<sup>80</sup>

## Main Avenues and Approach Routes

5.50 The main avenues and approach routes have Designated Area status but coincide with Territory Land.<sup>81</sup> Special Requirements apply to the land adjacent to main avenues.<sup>82</sup>

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76 National Capital Authority, *Consolidated National Capital Plan*, February 2002, p 109.

77 See Section 10(1), *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth). The Inner Hills Designated Area includes Black Mountain, Mount Ainslie, Mount Majura, Mount Pleasant, Russell Hill, Red Hill, Mount Mugga, O'Connor Ridge, Bruce Ridge, Mount Painter, The Pinnacle, Lyneham Ridge, Oakey Hill, Mount Taylor, Isaacs Ridge, Mount Stromlo, Mount Arawang, Neighbour Hill, Wanniasa Hill, and Narrabundah Hill

78 National Capital Authority, *Consolidated National Capital Plan*, February 2002, p 109.

79 National Capital Authority, *Consolidated National Capital Plan*, February 2002, p 109.

80 National Capital Authority, *Consolidated National Capital Plan*, February 2002, p 109.

81 Except for those parts of the main avenues and approach routes within the Central National Area that are on National Land.

82 See National Capital Authority, *Consolidated National Capital Plan*, February 2002, pp 74-75.

5.51 Although the roads themselves occupy Territory Land, the Committee recognises the considerable importance of these roads as the gateways to, and main thoroughfares of, the national capital.<sup>83</sup> The National Capital Plan states that:

Canberra's main avenues and approach routes have historically been subject to rigorous planning scrutiny and care has been taken to ensure that suitably high standards of development and landscaping have been observed.<sup>84</sup>

It is therefore appropriate that the National Capital Authority continue to maintain responsibility for the main avenues and approach routes.

### Recommendation 8

5.52 **That the National Capital Plan be amended so that Designated Area status is uplifted from all Territory Land with the exception of the Deakin/Forrest residential area, the Inner Hills and the main avenues and approach routes; and that in assuming planning responsibility for the areas to be uplifted, the Territory Government uphold the principles articulated in the National Capital Plan.**

### Territory Land subject to 'Special Requirements'

5.53 The ACT Government argued that it is the issue of 'areas subject to special requirements' which has "perhaps caused the greatest confusion for the community".<sup>85</sup> As discussed in Chapter Four, these areas are not designated but are deemed to have special national capital interest. The Territory suggested that the concept of special requirements should be replaced with development guidelines incorporated into the National Capital Plan.<sup>86</sup>

5.54 The NCA acknowledges that the application of special requirements can, at times, be "confusing and inefficient", particularly where they occur on Territory Land.<sup>87</sup> According to the Authority, this is because

83 For details of the main avenues and approach routes, see National Capital Authority, *Consolidated National Capital Plan*, February 2002, pp 73-75.

84 National Capital Authority, *Consolidated National Capital Plan*, February 2002.

85 ACT Government, Submissions, p 237.

86 ACT Government, Submissions, p 237.

87 National Capital Authority, Submissions, p 181.

both planning authorities are involved in the development process, albeit at different stages.<sup>88</sup> However, it appears that the real problem is that Development Control Plans for areas subject to special requirements are developed on an ad hoc basis.<sup>89</sup>

- 5.55 The NCA agreed that it would be a better outcome for special requirements on Territory Land to be identified in the National Capital Plan as policy.<sup>90</sup> This would remove the requirement for the preparation of a DCP for Territory Land which is subject to special requirements, and enable the ACT planning authority “to administer such areas without reference to the Authority and would obviate any perception of duplication of process”.<sup>91</sup>
- 5.56 The Committee agrees with the ACT Government’s view that the confusion arising from areas of Territory Land which are subject to special requirements could be rectified by the inclusion of guidelines and policies in the National Capital Plan. This would negate the need for both planning authorities to be involved in the development process by allowing the Territory to assume planning responsibility, and at the same time, ensuring that areas deemed to be desirable in the interests of the national capital continue to be protected.

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### **Recommendation 9**

- 5.57 **That the National Capital Plan be amended to incorporate a set of agreed planning principles for areas of Territory Land subject to special requirements, and that:**
- **these principles be developed jointly by the Commonwealth and Territory planning authorities;**
  - **the Territory assume planning responsibility for these areas; and**
  - **the Territory act in accordance with these agreed principles.**

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88 National Capital Authority, Submissions, p 181.

89 ACT Government, Submissions, p 237.

90 See Transcript, 19 September 2003, p 207, where Chief Executive of the National Capital Authority, Ms Annabelle Pegrum, stated, “ideally special requirements would be developed as policy under the plan...which would then free the Territory to administer those areas of the capital without any reference back to the Commonwealth”.

91 National Capital Authority, Submissions, p 186.