Commonwealth jurisdiction and approval processes

2.1 Canberra is the Commonwealth seat of government and the national capital of Australia. It is home to Australia’s principal governmental, judicial, cultural, scientific, educational, and military institutions and hosts diplomatic missions and residences from a wide range of foreign governments. It holds special meaning not only for its many residents, but for all Australians, and is protected by a range of safeguards intended to preserve the National Capital’s character and heritage.

2.2 This chapter will examine the areas and legislated protections under the Commonwealth’s jurisdiction that the Light Rail Stage 2 (LRS2) project engages as well as the Commonwealth approvals process for the project.

National Capital Plan

2.3 The Australian Capital Territory (Planning and Land Management) Act 1988 (Cth) (Planning and Management Act) provides for a National Capital Plan (the Plan) to ensure that Canberra and the ACT are ‘planned and developed in accordance with their national significance’. The Plan is the ‘strategy and blueprint giving effect to the Commonwealth’s interests and intentions for planning, designing and developing Canberra and the Territory’.

---

1 Australian Capital Territory (Planning and Land Management) Act 1988 (Cth), s. 9.
2.4 The Plan is a Commonwealth disallowable legislative instrument. This means that it was tabled in both Houses of the Commonwealth Parliament for approval. Similarly, any amendment to the Plan must be tabled in both Houses of the Commonwealth Parliament, and may be disallowed in whole or part by either House.

2.5 The Plan establishes the following key matters of national significance in the planning and development of Canberra and the ACT:

- the pre-eminence of the role of Canberra and the Territory as the centre of National Capital functions, and as the symbol of Australian national life and values;
- conservation and enhancement of the landscape features which give the National Capital its character and setting, and which contribute to the integration of natural and urban environments;
- respect for the key elements of the Griffins’ formally adopted plan for Canberra;
- creation, conservation, and enhancement of fitting sites, approaches, and backdrops for national institutions and ceremonies as well as National Capital uses; and
- the development of a city which both respects environmental values and reflects national concerns with the sustainability of Australia’s urban areas.

2.6 At its broadest level, the Plan prescribes broad land use controls across the whole ACT. However, the Plan may specify areas that have the ‘special characteristics of the National Capital’, known as Designated Areas. It may set out detailed conditions and priorities of planning, design, and development for Designated Areas.

2.7 Designated Areas are divided into precincts. Planning and development in Designated Areas is subject to general codes, which provide detailed controls for particular aspects of development, or types of development; and precinct codes, which provide objectives, and planning and design controls for each specific precinct.

---

4 Legislation Act 2003, ss. 38 and 42.
6 Australian Capital Territory (Planning and Land Management) Act 1988 (Cth), s. 10(1).
Central National Area

2.8 The Central National Area is a Designated Area that comprises the following precincts (see Figure 2.1):

1. Parliamentary Zone
2. Barton
3. Deakin/Forrest Residential Area
4. City Hill
5. West Basin
6. Constitution Avenue and Anzac Parade
7. Australian Defence Force Academy, Royal Military College Duntroon, and Campbell Park Precinct
8. Australian National Botanical Gardens
9. Jerrabomberra Wetlands
10. Lake Burley Griffin and Foreshores
11. Acton Peninsula
12. Diplomatic Precinct
13. Australian Institute of Sport
14. Australian National University
15. CSIRO Black Mountain
16. Canberra Airport (which is within the Central National Area but is not within a Designated Area).

Rapid public transit in the Plan

2.9 The Plan provides for an inter-town public transport system and sets out the general location for transit corridors suitable for express public transport systems, such as light rail (see Figure 2.2). Its policies for the inter-town transit system state that public transport planning and provision will:

- reserve a route for the development of a public transport service to link major employment nodes, which will (as far as practicable) be segregated from other transport systems and will operate with priority right-of-way; and

- reserve a corridor between the city centre, the town centres and major employment nodes, suitable for priority or segregated right-of-way transport services for an inter-town and express public transit system.\(^7\)

---

Figure 2.1  Precincts of the Central National Area

Source  National Capital Plan 1990, s. 4.
Figure 2.2 National Capital Plan, General Policy Plan—Metropolitan Canberra

Source National Capital Plan 1990, s. 3.1.4
Parliamentary Zone

2.10 The Parliamentary Zone is established by the *Parliament Act 1974* (Cth) (Parliament Act) and is a Designated Area Precinct of the Central National Area under the National Capital Plan. It comprises the area bounded by the southern edge of Lake Burley Griffin, Kings Avenue, State Circle and Commonwealth Avenue (Figure 2.3).

2.11 The Parliament Act provides that the construction of buildings or any other works within the Parliamentary Zone must be approved by resolution of both Houses of Parliament. In addition, as a Designated Area, the Parliamentary Zone is subject to the general codes and precinct codes prescribed by the National Capital Plan.

Figure 2.3 Parliamentary Zone

*Source* National Capital Plan 1990, s. 4.3.1
Parliamentary Precincts

2.12 The Parliamentary Precincts are established by the *Parliamentary Precincts Act 1988* (Cth) and comprise the land surrounding Parliament House and bounded by Capital Circle (see Figure 2.4).

2.13 The Parliamentary Precincts are under the control and management of the Presiding Officers, the Speaker of the House of Representatives and the President of the Senate. The Presiding Officers may, subject to any order of either House, take any action they consider necessary for the control and management of the precincts.

Figure 2.4 Parliamentary Precincts

Source Parliamentary Precincts Act 1988, Schedule 1 [colour added]
Parliament House Vista

2.14 The Parliament House Vista is a listed place on the Commonwealth Heritage List, under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) (see Figure 2.5). It comprises:

…the whole of the area bounded by the northern alignment of State Circle, the western alignment of Kings Avenue, the southern alignment of Parkes Way and the eastern alignment of Commonwealth Avenue, excluding the Archbishops Residence and grounds being Block 1 Section 2 Parkes; the whole of Anzac Parade and Anzac Park and the whole of Section 39, Campbell.  

Figure 2.5    Parliament House Vista

2.15 The routes for the inter-town public transport system outlined in the National Capital Plan do not enter the Parliament House Vista. As such, these routes are unlikely to engage any heritage considerations regarding the Vista.

2.16 However, as elements of the ACT Government’s proposed route alignment cross directly through the Parliament House Vista, it is expected that it would engage heritage protections and require assessment under the EPBC Act (outlined below). The ACT Government’s decision to pursue a route that is, in part, inconsistent with the Plan and that crosses through the Vista has therefore added complexity to the approval process.

2.17 Heritage is discussed in greater detail in Chapter 4 of this report.

Commonwealth approval processes

2.18 The ACT light rail is a Territory project. The ACT Government is responsible for the development, design, planning and (if approved) implementation of the project. As such, decisions about the details of the LRS2 project proposal, such as the route, use of technologies, business case, and costings are the prerogative of the ACT Government.

2.19 Once a final design proposal has been produced by the ACT Government, those aspects of the proposal that pass through or engage with the above areas will be subject to (sometimes simultaneous) consideration, and approvals from the following Commonwealth agencies:

- Department of the Environment and Energy (Environment);
- National Capital Authority (NCA); and

2.20 Other agencies, such as the ACT Environment Planning and Sustainable Development Directorate, are also involved in the broader consideration of the project. However, Territory considerations and approval processes are outside the scope of this inquiry.

Department of the Environment and Energy

2.21 The EPBC Act provides that actions that have or are likely to have a significant impact on a matter of national environmental significance require approval from the Australian Government Minister for the Environment (Minister for the Environment). The Assistant Secretary, Assessments and Waste Branch, Department of the Environment and Energy, Kim Farrant, explained that the ‘environment’ is defined broadly under the EPBC Act and includes:
...ecosystems, and their constituent parts including people and communities; natural and physical resources; the qualities and characteristics of locations, places and areas; heritage values of places; and the social, economic and cultural aspects [of locations, places and areas].

2.22 First, the ACT Government will make a referral to the Minister for the Environment, which is subsequently released to the public for ten business days to allow for comment on whether the project is likely to have a significant impact on matters of national environmental significance. Within 20 business days of receipt of a referral, the Minister for the Environment must decide whether the proposed action requires formal assessment and approval under the EPBC Act.

2.23 If the Minister for the Environment decides that the proposed action is likely to be significant and therefore formal assessment and approval is required, the action is called a ‘controlled action’. The ACT Government has advised that its initial discussions with Environment indicate that LRS2 is likely to be a controlled action, which it expects will be assessed by Environmental Impact Statement (EIS).

2.24 If this is the case, the ACT Government will prepare a draft EIS, following Commonwealth EIS Guidelines issued by Environment for the project. The draft EIS is then lodged with Environment, where it will be released to the public for comment. The ACT Government will then prepare a revised/final EIS addressing and taking into account public comments.

2.25 The final EIS is assessed by Environment, which prepares a recommendation report for the Minister for the Environment. The Minister will then make a decision to either approve the proposed action; to approve the proposed action with conditions; or not to approve the proposed action. For assessment by EIS, a decision must be made within 40 business days of receiving the finalised EIS.

---

2.26 The ACT Government advised the committee that it intends to prepare a single EIS to address the requirements of the relevant Commonwealth and Territory laws. Environment agreed that it will endeavour to streamline the process where appropriate. Environment advised that:

… we would look to streamline the process as much as possible and… would possibly agree to an EIS process that addressed all our matters as well as matters for the ACT government or any other approving authority that might want to utilise that information… We would try and align it as much as we thought was appropriate.\textsuperscript{15}

2.27 The ACT Government explained that the EIS ‘will investigate in detail the implications of the project’ including urban renewal and development implications; adjustments to traffic arrangements; and heritage and visual considerations. It assured the committee that engagement and consultation will be fundamental to the EIS process, which will incorporate ‘thorough engagement with regulatory stakeholders, stakeholders along the route, and any other stakeholders with administrative responsibilities relating to the project’.\textsuperscript{16}

2.28 The ACT Government explained that ‘this engagement will assist the Territory in adjusting the design of the project and developing strategies to manage the project’s implementation’ and advised that ‘the EIS will be supported by a suite of specialist studies considering a range of matters, including, for example, heritage implications, visual sensitivity, traffic considerations, noise and vibration, and biodiversity’.\textsuperscript{17}

**National Capital Authority**

2.29 The National Capital Authority (NCA) prepares and administers the National Capital Plan (the Plan) and as such is the lead agency in the Commonwealth approvals processes for LRS2. Following successful approvals from other agencies and the Parliament during the approval process, the NCA is responsible for administering the final decision for the Works Approval (see Figure 2.6).

**Licence Agreement to use National Land**

2.30 In passing through the Central National Area, the LRS2 will traverse national land owned by the Commonwealth. As such, the ACT

\textsuperscript{15} Mr Michael Smith, Director, Southern NSW and ACT Assessment Section, Assessments and Waste Branch, Department of the Environment and Energy, *Proof Committee Hansard*, Canberra, 28 June 2018, p. 10.


\textsuperscript{17} ACT Government, *Submission 25*, p. 59.
Government will need to negotiate land access licences with the Commonwealth through the NCA, specifying principles such as cost, areas of work, etc. The Licence Agreement forms part of the final decision regarding the Works Approval (see Figure 2.6).

2.31 The ACT Government has advised that it will seek to negotiate land access licences that provide:

- access to the light rail system for the Territory (and its contractor and operator and maintainer) for the purpose of constructing, operating, and maintaining the light rail;

- a prerogative for the Commonwealth to suspend light rail services for specific events, such as events of national significance or matters of state;

- a term that reflects and is consistent with the long-term nature of the investment in permanent infrastructure; and

- other matters required to make the agreement acceptable to the infrastructure investment market, such as cure periods for default. \(^{18}\)

2.32 The ACT Government explained that it anticipates the Commonwealth Government ‘would not seek to obtain licence fees (other than de minimis amounts)’ in recognition of the ACT Government’s significant financial investment in the LRS2, which will ‘directly benefit the Australian Government’. \(^{19}\)

Responsibility for costs arising from construction and operation

2.33 The NCA will have ultimate responsibility for the safety, care, and maintenance of assets on National Land. LRS2 will result in significant changes to the road network and place additional infrastructure and assets on National Land. \(^{20}\) The NCA explained that it cannot be financially disadvantaged as a result of the decision to construct a light rail system. \(^{21}\)

2.34 The NCA advised the committee that the ACT Government must provide an undertaking that it will assume responsibility for all costs arising from the construction and operation of light rail on land managed by the NCA. \(^{22}\) It explained that:

The quantum of these maintenance costs will be dependent on the final route location, design and construction standards, the extent of works and on-going risk assessments and treatment plans.

---

\(^{18}\) ACT Government, Submission 25, pp. 68-69.

\(^{19}\) ACT Government, Submission 25, p. 69.

\(^{20}\) National Capital Authority, Submission 22, p. 4.

\(^{21}\) National Capital Authority, Supplementary Submission 22.2, p. 5.

\(^{22}\) National Capital Authority, Supplementary Submission 22.2, p. 5.
Funding arrangements that guarantee the additional land management costs arising from the light rail system must be in place prior to an agreement to grant Works Approval. This will ensure these assets are maintained to a standard that is expected of the National Capital and its relevant regulators.\(^\text{23}\)

2.35 The NCA explained that ‘detailed arrangements that guarantee the additional land management costs arising from the light rail system do not impact on the NCA must be agreed prior to a Works Approval application being submitted’.\(^\text{24}\)

**Works Approval assessment**

2.36 The Planning and Land Management Act provides that proposals for works in Designated Areas must be submitted to the NCA (together with any plans and specifications that the NCA may require). Proposals for works must be found to be in accordance with the National Capital Plan and are subject to approval by the NCA.\(^\text{25}\) Approximately 65 per cent of the proposed route will be subject to Works Approval by the NCA.\(^\text{26}\)

**Pre-application meetings**

2.37 The NCA noted that, while it has not yet received a Works Approval application from the ACT Government for LRS2, it has been consulted and periodically briefed regarding ongoing development of the project and will continue to provide feedback as the project progresses.\(^\text{27}\)

2.38 The ACT Government advised that, as of September 2018, there had been 72 separate items of engagement on a pre-application basis between the ACT Government and the NCA regarding LRS2, noting that:

> Transport Canberra and City Services has spent considerable effort engaging with NCA since December 2016. Many of the features of the route proposed and preferred by the ACT Government have been because of suggestions and directions by NCA officials.\(^\text{28}\)

2.39 The NCA explained that its meetings with the ACT Government are intended to ‘provide guidance as to the NCA’s expectations when assessing a final Works Approval’, and provide ‘advice about the

\(^{23}\) National Capital Authority, *Submission 22*, p. 4.

\(^{24}\) National Capital Authority, *Supplementary Submission 22.2*, p. [5].

\(^{25}\) *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth), s. 12.

\(^{26}\) National Capital Authority, *Submission 22*, p. 3.

\(^{27}\) National Capital Authority, *Submission 22*, p. 3, 9.

\(^{28}\) ACT Government, *Supplementary Submission 25.2*, pp. 3-4.
requirements of the Plan that must be addressed in the development of the light rail route'.

Assessment

2.40 The NCA advised that, if Works Approval is sought, it will carefully consider whether the proposal is consistent with polices in the National Capital Plan, such as ensuring that:

- substantial works of architecture, engineering and landscape within the Territory are designed to contribute positively to the overall composition, symbolism and dignity of the National Capital;
- development in the National Capital seeks to achieve harmony between architecture and landscape to give continuing effect to the ‘City Beautiful’ and ‘Garden City’ characters of the city;
- the proposal demonstrates respect for the key elements of the Griffins’ formally adopted plan for Canberra, reinforcing and complementing the geometric lines of the Main Avenues; and
- accessible movement systems for a diversity of pedestrian, cycle, and public transport modes are provided, with good connections between different modes of transport.

2.41 If the Works Approval application is considered suitable for approval and EPBC Act matters have been resolved, the NCA will recommend to the Minister responsible for territories that parliamentary approval be sought.

Commonwealth Parliament

2.42 The Parliament Act provides that any proposal for building or other works on land within the Parliamentary Zone must be approved by the Parliament. This requires either a joint proposal by the Speaker and the President or a proposal by the relevant Minister to be approved by resolution of each House.

2.43 The Department of Infrastructure, Regional Development and Cities advised the committee that the NCA will conduct an initial assessment of the Works Approval application, ‘ensuring consistency with the statement of planning principles set out in section 2 of the National Capital Plan’ (see Figure 2.6). Once it is satisfied, the NCA will recommend that the Minister responsible for territories table the Works Approval application in the House of Representatives and the Senate for approval by resolution.

31 Parliament Act 1974 (Cth), s. 5.
32 Department of Infrastructure, Regional Development and Cities, Submission 16, p. 4.
2.44 The Parliament may refer the Works Approval application to the Joint Standing Committee on the National Capital and External Territories for inquiry and report.  
2.45 Once the proposal is passed by both Houses, the Works Approval application then returns to the NCA for its final decision of the Works Approval application.

Works Approval

2.46 Once the Licence Agreement to use National Land has been signed; EPBC Act matters have been resolved; and the Works Approval application has been approved by both Houses of Parliament, the NCA makes the final decision regarding the Works Approval, concluding the Commonwealth approvals process for LRS2.

33 Joint Standing Committee on the National Capital and External Territories, Resolution of appointment, passed by the House of Representatives on 1 September 2016 and Senate on 12 September 2016.
Figure 2.6 Commonwealth approval processes

Source National Capital Authority, Submission 22, p. 3
Committee comment

2.47 The Commonwealth has a responsibility to safeguard and preserve the National Capital’s character and heritage for all Australians. The Commonwealth’s interests and intentions are articulated in the National Capital Plan, which enshrines in law the strategy for planning, designing and developing Canberra and the Territory.

2.48 LRS2 passes through and adjacent to a number of key cultural and heritage sites. As such, like all projects and proposals in these areas, it must be consistent with the National Capital Plan. Its design must demonstrate sufficient understanding of the symbolic, functional, ceremonial, and heritage values that are core to the Central National Area and Parliamentary Zone and are outlined in the National Capital Plan.

2.49 The committee acknowledges the ACT Government’s aim to improve Canberra’s public transport network for residents and visitors. Furthermore, it notes that the light rail project is bringing to fruition the Griffins’ vision for Canberra, in which trolley cars travelled down the city’s main avenues. However, the development of light rail amenity must not come at the cost of the long-term character and heritage of the National Capital Area and the Parliamentary Zone.

2.50 The committee is satisfied that the Commonwealth approvals process is robust and will provide appropriate consideration for the LRS2 project, maintaining a balance between progress and protection of heritage. The project is of ongoing interest to the committee and it looks forward to following its development and progress.

Recommendation 1

2.51 The committee recommends that the Minister responsible for territories refer any Works Approval application or any amendment to the National Capital Plan relating to the light rail project to the Joint Standing Committee on the National Capital and External Territories for inquiry, prior to its tabling in the Parliament.