

## The NCA's consultation with the community

### Introduction

- 5.1 Changes to urban design plans, in any jurisdiction, are important to the communities affected. These changes can be wide ranging or very specific. It is essential that communities are consulted about proposed changes to urban plans and their views taken into account. Often they will have an insight into the potential impact of a planning proposal that may not be appreciated by a planning authority.
- 5.2 The *Australian Capital Territory (Planning and Land Management) Act 1988* (the PALM Act) requires the National Capital Authority (NCA) to keep the National Capital Plan (NCP) under review and to propose amendments when necessary. The PALM Act also specifies that there be public consultation in relation to amendments to the NCP. In particular, it can propose Draft Amendments which can have a general or site specific outcome. In addition, the NCA is responsible for initiating Development Control Plans (DCP) and assessing development applications in certain places. These processes involve consultation with the community.
- 5.3 This chapter will examine the NCA's consultation performance and possible options for enhancing community consultation.
- 5.4 The NCA's consultation procedures for Draft Amendments, Development Approvals, Development Applications and Development Control Plans, as submitted by the NCA, are contained in Appendix D.

## Consultation performance, community concerns and expectations

- 5.5 The NCA's opinion of its consultation is widely dissimilar to the views expressed by individuals publicly and through the committee's current and previous inquiries. These diverging views are examined in the following discussion.
- 5.6 In relation to the adequacy of consultation on draft amendments, the NCA stated that the 'consultation on draft amendments provides an appropriate level of engagement for any interested member of the Australian public, including the local community, in the making of the National Capital Plan.'<sup>1</sup>
- 5.7 Submissions pointed to the difference between the NCA's assessment of its own performance in this area and the widespread dissatisfaction in the community with the quality of the NCA's public consultation.
- 5.8 Dr Jenny Stewart brought attention to the NCA's appraisal of its performance and that of the community. Dr Stewart stated:
- We have on paper at the moment quite elaborate consultative arrangements whereby the NCA is supposed to consult with the community, amongst others, about planned changes to the National Capital Plan. From their perspective – and I have looked at the NCA's submission – they do it splendidly. However, from the community's perspective they do it very badly indeed.<sup>2</sup>
- 5.9 Dr Enrico Taglietti, an eminent Canberra architect, advised that his experience at NCA workshops was a 'waste of time.'<sup>3</sup>
- 5.10 Mr David Wright, stated:
- ...what you really need is a good set of rules and regulations governing public consultation that in some ways define what people's legitimate expectations of a consultation process are so that they engage in matters that are relevant and which can be addressed in dealing with a particular issue.<sup>4</sup>
- 5.11 In particular, Mr Wright noted that while consensus was ideal, if you cannot achieve that 'you should at least be able to get across that people's

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1 National Capital Authority, *Submission 55*, p. 36.

2 Dr Jenny Stewart, *Transcript T5*, p. 64.

3 Dr Enrico Taglietti, *Transcript T5*, p. 87.

4 Mr David Wright, *Transcript T4*, p. 17.

views that were not incorporated were in fact taken seriously and responded to.<sup>5</sup>

5.12 Similarly, Dr N Keith Boardman commented that when the NCA makes a decision 'they should set out the salient features of why they made the decision and possibly why they have rejected views which were put forward by community groups.'<sup>6</sup>

5.13 In contrast to criticisms of the NCA's consultation, the ANU stated:

In regard to engagement with the community, the NCA has recently introduced a consultation protocol that has significantly enhanced engagement and consultation with the Canberra community. Examples of this engagement have been the Molonglo development, *Griffin Legacy*, and developments along Anzac Parade.<sup>7</sup>

5.14 Similarly, the Master Builders Association of the ACT stated:

We do not subscribe to the notion of NCA not consulting. In our view, NCA has clearly moved towards more publicly accountable protocols for community liaison without unnecessary and often spuriously motivated third party appeals. This seems to have provided a more acceptable form of consultation than the situation in the Territory, where third party appeals can cause, and have cause, delays for many developments, often with detrimental consequences.<sup>8</sup>

5.15 During hearings the NCA's perception of its consulting performance remained the same. The NCA stated:

An important component of any modern planning regime is accountability and consultation in planning and development. It has been suggested by some that there is an inadequate opportunity for consultation about planning and development by the Commonwealth, through the authority, in the central areas of Canberra. This is not so. Let me start with amendments to the plan. The process to change the National Capital Plan, which most people refer to as amendments to the plan, are fully set out in the PALM act and described in our submission. This chart summarises that process, from proposals by the authority, statutory consultation, approval by the minister and scrutiny by the

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5 Mr David Wright, *Transcript T4*, p. 17.

6 Dr Norman Boardman, *Transcript T4*, p. 56.

7 Australian National University, *Submission 35*, p. 4.

8 Master Builders Association of the ACT, *Submission 49*, p. 3.

parliament. I do not have time to enumerate all of the steps now, but we put it to you that the current statutory plan amendment process is transparent and effective and demands a high level of public engagement, ACT government involvement, accountability and scrutiny.<sup>9</sup>

- 5.16 The committee believes that this continued assertion of the adequacy of consultation provisions is contradicted by the evidence.
- 5.17 This is particularly so when despite such assurances, the NCA in its submission noted that one of its key achievements in the period 1989-2008 was the publication of the 2007 Consultation Protocol. It was also noted that the protocol was the subject of a commendation for social and community based planning of the Planning Institute of Australia (ACT Division).<sup>10</sup>
- 5.18 When the NCA introduced the consultation protocol, they did so acknowledging the problems it has with consultation. In 2006, prior to the implementation of the consultation protocol, the NCA commented:
- I will not get into whether or not I would agree that there have been gaps, but certainly there have been issues raised associated with consultation. In our business plan for this financial year, we are looking at establishing a consultation protocol and, as part of that, we have been looking at the kinds of consultation that exist in other jurisdictions, and also the development assessment forum recommendations in association with that. The consultation associated with amendments is statutory and appears to have worked fairly well over the years. Obviously not everybody can be happy all of the time, but they have proved to be fairly robust in relation to making amendments to the plan.<sup>11</sup>
- 5.19 The committee notes that to date there has been insufficient evidence of the use and effectiveness of the consultation protocol.

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9 National Capital Authority, Ms Annabelle Pegrum, *Transcript T1*, p. 31.

10 National Capital Authority, *Submission 55*, Appendix C, p. 69 and p. 73.

11 Senate Rural and Regional Affairs and Transport Legislation Committee, National Capital Authority, Ms Annabelle Pegrum, *Transcript*, 17 February 2006, p. 79.

### Case Study: *Griffin Legacy* Amendments

In relation to consultation for the *Griffin Legacy* Amendments, the Chief Executive of the NCA commented that 'I still stand by the authority's position that consultation on the *Griffin Legacy* in particular was exemplary and it has been recognised as that.'<sup>12</sup>

The committee examined the *Griffin Legacy* Amendments and, in particular, the NCA's consultation.<sup>13</sup> As part of the consultation for these Draft Amendments, the NCA was keen to publicise the number of submissions received and those supporting and those opposed to the Draft Amendments.

The majority of the submissions to the *Griffin Legacy* Draft Amendments were prepared on templates created by the NCA and made available at the public exhibition site. The templates contained three tick boxes where people could select 'I support this amendment', 'I support some of this amendment but have concerns', and 'I do not support this amendment.' Space was also provided for comments. The NCA was willing to accept templates with a simple tick and no name provided. These anonymous so-called submissions were then counted as supportive submissions for the purposes of the NCA's reporting of the percentage of supportive submissions as compared with submissions opposing the *Griffin Legacy* proposals. The NCA failed to differentiate between written submissions and these 'tick-a-box' submissions.

The committee noted at the time that these details of the methodology for consultation were initially withheld on claimed 'privacy grounds' with the NCA arguing that they had not obtained submitters permission to publish. The committee responded by obtaining the submissions in confidence and the method of compiling and reporting community feedback was exposed.

**The committee will continue to take a close interest in the performance of the NCA in relation to their consultation practices and performance.**

5.20 The committee as part of its 2004 inquiry into the role of the NCA also examined the NCA's record on consultation in view of the repeated complaints that the NCA has failed to engage in adequate consultation. As part of that report, the committee brought attention to consultation problems with:

- the Benjamin Office Development;
- the public artwork to celebrate the centenary of women's suffrage;

12 National Capital Authority, Ms Annabelle Pegrum, *Transcript T5*, p. 14.

13 Joint Standing Committee on the National Capital and External Territories, 2007, *Review of the Griffin Legacy Amendments*, Parliament of Australia, Canberra.

- the suffrage memorial;
- Draft Amendment 39 – Deakin/Forest Residential area;
- the proposal for pay parking in the Parliamentary Zone;<sup>14</sup>
- York Park Oaks heritage protection; and
- the proposed National Library Forecourt development.

5.21 The then committee concluded:

The issue of the consultation process employed by the NCA has been of concern to the committee for some time. Despite the committee relaying its concerns to the Authority, on the basis of complaints the committee has received, the situation does not appear to have been rectified.

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The committee is particularly concerned that the Authority appears to consider that simply informing stakeholders of its proposal, rather than actively engaging in a two-way process, is sufficient consultation<sup>15</sup>

5.22 During 2007, Draft Amendment 53: Albert Hall brought further attention to the NCA's consultation. Draft Amendment 53 sought to develop the area to the north of Albert Hall and make significant changes to the existing traffic arrangements. Under the original proposal, Flynn Place would be removed and Commonwealth Avenue would have more 2 to 4 storey buildings, and an 8 storey building. The NCA stated:

The National Capital Authority proposes Draft Amendment 53 - Albert Hall Precinct to the National Capital Plan to set out a framework of land uses and planning and urban design principles and policies to guide future development of the Albert Hall Precinct as a mixed use and open space precinct with increased tourist activities and links to surrounding national attractions.<sup>16</sup>

5.23 The NCA conducted its first public information session at the Albert Hall on 5 March 2007. The conduct of the information session as well as the

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14 Joint Standing Committee on the National Capital and External Territories, 2004, *a national capital, a place to live, Inquiry into the role of the National Capital Authority*, Parliament of Australia, Canberra, pp. 99-104.

15 Joint Standing Committee on the National Capital and External Territories, 2004, *a national capital, a place to live, Inquiry into the role of the National Capital Authority*, Parliament of Australia, Canberra, p. 105.

16 National Capital Authority, Draft Amendment 53, viewed 18 June 2008, <<http://www.nationalcapital.gov.au>>.

proposed redevelopment was met with significant criticism. The Friends of the Albert Hall stated:

When the NCA put forward its proposal for Draft Amendment 53 for development in this precinct, they announced a public consultation process, and it took place here in the Albert Hall on 3 March. That was their idea of public consultation. For those of us who were here on 3 March 2007, there were no site boards or glorious displays – as we are about to enjoy – there were not enough chairs and there was no audio system, so clearly not many people were assumed to be interested in this. It was quite an exciting event to be part of, perhaps a little bit like the citizens' rally here in the late 1920s demanding representation in the federal parliament for the ACT as taxation was paid by its citizens. The 5 March debacle was followed by another attempt to have something that they could refer to as a community consultation process, which took place at Regatta Point and which was much more like we are about to witness here.

I have to say, that is a very unsatisfactory mode of proceeding and a very unsatisfactory assumption about what constitutes public consultation. Public consultation, as we have said in our submission, is not red tape, it is not a complication; it is the very lifeblood of processes of democratic government, including planning processes.<sup>17</sup>

5.24 Dr David Headon noted similar concerns about the NCA's consultation record. Dr Headon stated:

The first two public meetings convened by the NCA on the Albert Hall will not be forgotten in a hurry. The organisation appeared to be ill prepared, arrogant and dismissive.<sup>18</sup>

5.25 The NCA acknowledged that there were some concerns with the consultation. The NCA stated:

At the time of the proposal, we did call a public meeting. I heard the comments about that meeting and I accept the criticism that there was insufficient material available here, but I do not accept the criticism that our officers behaved improperly. In fact, I had to deal with officers who felt they were harassed and bullied at that public consultation meeting and with the facilitator that we had

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17 Friends of the Albert Hall, Dr Lenore Coltheart, *Transcript T1*, p. 18.

18 Dr David Headon, *Submission 8*, p. 10.

here, who found it almost impossible to even stand up and have his voice heard.<sup>19</sup>

- 5.26 Mr David Wright commented that the NCA responded positively to community comment about preserving the cultural and heritage values of the building. Mr Wright stated

The proposals set out in Draft Amendment 53 took the proposals set out in *The Griffin Legacy* to its next level of detail and this generated considerable opposition from people concerned that the proposals in some way diminished the historic, cultural and heritage values associated with the Albert Hall. The Authority responded positively to these concerns by making significant changes to the proposals they first exhibited.<sup>20</sup>

- 5.27 The NCA argued that it took into account community views and committed to more community consultation when it became obvious that there was significant community concern. The NCA stated:

Having heard the critique of the draft amendment, we did exactly what we are supposed to do, which is to continue to consult and commit to more consultation on the issues that people were raising – namely, transport issues, heritage issues and general urban design. We committed to workshops; we committed to additional work.<sup>21</sup>

### Case Study: Albert Hall Precinct

On 2 April 2007 the NCA announced revisions to Draft Amendment 53. Specifically, the NCA agreed not to proceed with the 25-metre high landmark building north of Albert Hall, 'and to ensure primary users will not be commercial and to consider as an alternative the benefits or otherwise of providing for future low-scale public buildings, such as a performing arts centre or concert hall with ancillary users.'<sup>22</sup>

In addition, the NCA 'agreed to conduct a series of special community and professional workshops on heritage, traffic, and urban design and on any other significant matters identified in the submissions on Albert Hall received by the close of public consultation on 4 May 2007 and prior to finalisation of the Draft Amendment for consideration by the Minister.'<sup>23</sup>

19 National Capital Authority, Ms Annabelle Pegrum, *Transcript T1*, p. 49.

20 Mr David Wright, *Submission 68.3*, p. 7.

21 National Capital Authority, Ms Annabelle Pegrum, *Transcript T1*, p. 49.

22 National Capital Authority, Special Authority Meeting, *minutes SA2007*, 1 and 2 April.

23 National Capital Authority, Special Authority Meeting, *minutes SA2007*, 1 and 2 April.



At an NCA board meeting on 22 May 2008, the board:

Agreed that because significant changes have been made to the draft amendment to date (and that there may be further revisions after the NCA has conducted the community and professional workshops and concluded discussions with the ACT Government) Draft Amendment 53 would be re-released for a further period of public consultation. This re-release will follow the workshops to be conducted in the near future.<sup>24</sup>

The handling of Draft Amendment 53 by the NCA resulted in extensive community criticism.

The committee is also aware that there was very little comprehension of the changes possible arising out of the Parliamentary Zone Review and notes that once this detail became public, it attracted criticism from the public. The Friends of the Albert Hall Inc. commented:

The friends was formed as a direct result of the failure of the National Capital Authority's planning in this precinct. We arose directly out of intense and widespread community anger about Draft Amendment 53 to the National Capital Plan. We reflect the views of the 3,364 people who were so outraged about Draft Amendment 53 that they signed a community petition calling for it to be withdrawn. This petition was lodged in the federal parliament. The intention of Draft Amendment 53 was to allow for massed commercial development in the precinct. It would have effectively allowed the absorption of Albert Hall by the adjoining international hotel. The elements of the original Draft Amendment 53 would have seriously damaged the heritage precinct, led to the loss to the Canberra community of a much-loved municipal facility with an 80-year history, damaged significant national listers, removed green spaces and produced major traffic complications for all travellers along a key transport route.<sup>25</sup>

Perhaps the NCA's insistence in its approach notwithstanding significant community concern illustrates the organisation's failure to comprehend the importance of informed public consultation and the process that underpins that engagement.

**Therefore, the committee proposes that Draft Amendment 53, Albert Hall Precinct, not proceed and that proposed changes to traffic conditions south of the Lake on Commonwealth Avenue bridge also not proceed.**

24 National Capital Authority, 2007, 'Albert Hall: NCA Listens Draft Amendment-53', 22 May, viewed 18 June 2008, <<http://www.nationalcapital.gov.au>>.

25 Friends of the Albert Hall Inc., Dr Lenore Coltheart, *Transcript T1*, p. 14.

### Case Study: Mr Spokes Bike Hire

The evidence received from Mr Spokes Bike Hire owners Mr Martin Shanahan and Ms Gillian Edwards about the ongoing complex problems they have experienced in the dealings with the NCA is an example of the frustration experienced by a local business in the central national area of Canberra.

Mr Spokes Bike Hire operates its business in the West Basin precinct and many of its clients ride around the central basin of the lake. The business is clearly one which operates around Lake Burley Griffin as well as the Parliamentary Triangle and West Basin.

The owners of Mr Spokes Bike Hire gave evidence that they have needed to be assertive and proactive in their efforts to secure consultation from the NCA. Their representations have related to two concerns: Draft Amendment 61 for the West Basin (One of the *Griffin Legacy* group of amendments) and, subsequently, the Commonwealth Place Kiosk expression of interest (EOI) process.

In September 2006, the owners of this operating business were ignored in the original round of public consultation by the NCA for Draft Amendment 61. It transpired that the NCA had deemed the business as one, which did 'not provide a service that utilised the lake' and therefore did not fit within the gambit of responsibility held by the NCA for consultation. This is despite the business being party to the NCA's Lake Users Consultation Group.

The owners offered the following time line of events to explain to the committee what they had endured:

- In September 2006, a meeting was held with the Managing Director, Planning and Urban Design, NCA to discuss the West Basin Development and its impact on Mr Spokes Bike Hire which resulted in email correspondence documenting the outcomes, inclusive of a general understanding that options would be explored to accommodate Mr Spokes Bike Hire in the event of the development proceeding.
- That subsequent correspondence of September 2007 from the Chief Executive of the NCA renounced any implied commitment that resulted from these discussions, declaring that the issues impacting on Mr Spokes Bike Hire were primarily a matter for the ACT Government.
- Despite the NCA holding this view, it is understood that if the owners of Mr Spokes Bike Hire were to make changes or amendments to their operation, in addition to consulting the ACT Government under their lease provisions, they would still ultimately need to seek permission from the NCA.

The owners of Mr Spokes Bike Hire and other West Basin businesses hold the view that the NCA has not acted in good faith, nor in the broader interests of the community in its approach to these discussions.<sup>26</sup>

In relation to the EOI process in pursuit of securing businesses for the kiosks, their particular complaint is the NCA's failing to take into account the impact on existing businesses that are already providing similar or complimentary services in the lake precinct, and failing to provide a genuine opportunity to participate in the EOI.<sup>27</sup>

The committee notes the apparent failure of the NCA to determine what type of service(s) the community would need or benefit from in order to meet the NCA's objective to 'enliven' the Parliamentary Triangle/Foreshore precinct, prior to entering into a public EOI process.<sup>28</sup>

The committee recognises that owners of Mr Spokes Bike Hire have made representations to the NCA, local Members and Senators, former and current Ministers, with a view to gaining a fairer outcome from the process.

Further, this has been pursued with a view to finding alternative options, pursuant to original commitments dating back to September 2006. It is understood that the NCA was requested to return to the discussions with a view to finding options in early 2008. To date no solution or options have been tendered by the NCA, with the NCA resolved that it has done all it can and/or is obliged to in accordance with its legislative responsibilities.

**The committee suggests that the NCA undertake immediate consultation with the operators of Spokes Bike Hire to find a resolution to the outstanding complaints.**

## ACT planning consultation and the DAF model

5.28 The ACT Government reported that it has introduced the Development Assessment Forum's (DAF) leading practice model for development assessment, which responds to the Council of Australian Governments (COAG) national reform agenda.<sup>29</sup> The DAF model proposes:

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26 Spokes Bike Hire, *Submission 31*, p. 3; Spokes Bike Hire, Ms Jillian Edwards, *Transcript T2*, p. 77; Canberra Region Tourism Operators Association, *Submission 30*.

27 Spokes Bike Hire, *Submission 31*, p. 2.

28 Spokes Bike Hire, *Submission 31*, p. 2.

29 ACT Government, *Submission 69*, p. 3.

- ten leading practices that a development assessment system should exhibit. These practices articulate ways in which a system can demonstrate that it is efficient and fit for purpose; and
- six tracks that apply the ten leading practices to a range of assessment processes. The tracks are designed to ensure that, at the time it is made, an application is streamed into the most appropriate assessment pathway.<sup>30</sup>

5.29 The ten leading practices proposed by DAF are:

Table 5.1 Ten leading planning practices proposed by the DAF model

<b>1 Effective policy development</b>	Elected representatives should be responsible for the development of planning policies. This should be achieved through effective consultation with the community, professional officers and relevant experts.
<b>2 Objective rules and tests</b>	Development assessment requirements and criteria should be written as objective rules and tests that are clearly linked to stated policy intentions. Where such rules and tests are not possible, specific policy objectives and decision guidelines should be provided.
<b>3 Built-in improvement mechanisms</b>	Each jurisdiction should systematically and actively review its policies and objective rules and tests to ensure that they remain relevant, effective, efficiently administered, and consistent across the jurisdiction.
<b>4 Track-based assessment</b>	Development applications should be streamed into an assessment 'track' that corresponds with the level of assessment required to make an appropriately informed decision. The criteria and content for each track is standard.  Adoption of any track is optional in any jurisdiction, but it should remain consistent with the model if used.

30 Development Assessment Forum 2005, *A Leading Practice Model for Development Assessment in Australia*, DAF, p. 1, viewed on 18 June 2008, <[http://www.daf.gov.au/reports\\_documents/leading\\_practice.aspx](http://www.daf.gov.au/reports_documents/leading_practice.aspx)>.

<b>5 A single point of assessment</b>	<p>Only one body should assess an application, using consistent policy and objective rules and tests.</p> <p>Referrals should be limited only to those agencies with a statutory role relevant to the application. Referral should be for advice only. A referral authority should only be able to give direction where this avoids the need for a separate approval process.</p> <p>Referral agencies should specify their requirements in advance and comply with clear response times.</p>
<b>6 Notification</b>	<p>Where assessment involves evaluating a proposal against competing policy objectives, opportunities for third-party involvement may be provided.</p>
<b>7 Private sector involvement</b>	<p>Private sector experts should have a role in development assessment, particularly in:</p> <ul style="list-style-type: none"> <li>• Undertaking pre-lodgement certification of applications to improve the quality of applications.</li> <li>• Providing expert advice to applicants and decision makers.</li> <li>• Certifying compliance where the objective rules and tests are clear and essentially technical.</li> <li>• Making decisions under delegation.</li> </ul>
<b>8 Professional determination for most applications</b>	<p>Most development applications should be assessed and determined by professional staff or private sector experts. For those that are not, either:</p> <p>Option A – Local government may delegate Draft Amendment determination power while retaining the ability to call-in any application for determination by council.</p> <p>Option B – An expert panel determines the application.</p> <p>Ministers may have call-in powers for applications of state or territory significance provided criteria are documented and known in advance.</p>
<b>9 Applicant appeals</b>	<p>An applicant should be able to seek a review of a discretionary decision.</p> <p>A review of a decision should only be against the same policies and objective rules and tests as the first assessment.</p>

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**10 Third-party appeals**

Opportunities for third-party appeals should not be provided where applications are wholly assessed against objective rules and tests.

Opportunities for third-party appeals may be provided in limited other cases.

Where provided a review of a decision should only be against the same policies and objective rules and tests as the first assessment.<sup>31</sup>

- 5.30 In August 2005, the Local Government and Planning Ministers' Council recognised the DAF model. The Council 'agreed that the model was an important reference for individual jurisdictions in advancing reform of development assessment and acknowledged the work of the Development Assessment Forum.' In addition, the Council 'noted that the Australian Capital Territory has already announced it will adopt most of the model in its new planning legislation.'<sup>32</sup> The DAF stated:

The DAF leading practice model is a toolkit that can be adapted and adopted by jurisdictions to suit their specific needs. Application of the model in each jurisdiction will result, over time, in the increased harmonisation of systems across Australia.

Development assessment should not operate in isolation but within a framework of good planning policy. To be efficient, assessment must operate in conjunction with effective policy development. DAF emphasises that any review or implementation of a new development assessment process must include the formulation of strategic and statutory planning policies that meet community expectations.<sup>33</sup>

- 5.31 The advantages of the DAF model and its relevance to NCA planning and development approval were examined as part of the inquiry. The Law Society of the ACT noted the value of the DAF model and commented that 'there are elements in the model that can be considered by the NCA'.<sup>34</sup>
- 5.32 The Royal Australian Institute of Architects (RAIA) noted that 'under the DAF model, the role of community consultation in the development

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31 Development Assessment Forum 2005, *A Leading Practice Model for Development Assessment in Australia*, DAF, pp. 2-3, viewed on 18 June 2008, <[http://www.daf.gov.au/reports\\_documents/leading\\_practice.aspx](http://www.daf.gov.au/reports_documents/leading_practice.aspx)>.

32 Local Government and Planning Ministers' Council, 'Communiqué', 4 August 2005.

33 Development Assessment Forum 2005, *A Leading Practice Model for Development Assessment in Australia*, DAF, p. 2, viewed on 18 June 2008, <[http://www.daf.gov.au/reports\\_documents/leading\\_practice.aspx](http://www.daf.gov.au/reports_documents/leading_practice.aspx)>.

34 Law Society of the ACT, Mr Chris Wheeler, *Transcript T2*, p. 63.

assessment process is to address aspects of projects where competing policy objectives require resolution.<sup>35</sup>

- 5.33 The Planning Institute of Australia discussed the key processes and outcomes of the DAF model:

It is a system that basically streamlines development applications into what are called 'tracks'. The most complex development applications get the most complex assessment process, and the simplest get the simplest development assessment process. In some instances you can say there are some 'as of right' developments or there are some developments that should be treated quickly, efficiently, in accordance with a code. What the ACT government have done is to put into effect that tracking system with their new Territory Plan. It comes back to dealing with simple development applications quickly and efficiently in accordance with the code but making more difficult and complex development assessments able to be either considered in accordance with the code or given a more difficult and therefore slightly longer merit assessment.<sup>36</sup>

- 5.34 The NCA noted that the new Territory Plan embraces the DAF model, and concluded that 'we support the implementation of the DAF leading practice model.'<sup>37</sup>
- 5.35 A range of organisations also endorsed the DAF model. The committee notes the uptake of the DAF model but at this early stage will wait for further advice about its effectiveness.
- 5.36 The committee notes that the DAF model weights the community consultation towards the beginning of the process, where policies are set for geographically defined areas. The DAF model limits appeals unless certain actions have been taken earlier in the process.
- 5.37 The committee also notes that while the DAF model is now recognised as best practice, if it is adopted by the NCA, the process of developing and approving draft amendments will still require scrutiny through this committee.
- 5.38 The committee believes that the application of the DAF model to the NCA's consultation processes may be a positive step.

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35 Royal Australian Institute of Architects, Mr David Flannery, *Transcript T1*, p. 73.

36 Planning Institute of Australia, Ms Sue Holliday, *Transcript T3*, p. 23.

37 National Capital Authority, Mr Todd Rohl, *Transcript T5*, p. 18.

## The role of the committee

- 5.39 The committee has a history of scrutinising and reporting on draft amendments to the NCP but there is no legislative basis for this process. Previously, the Minister of the day has advised the committee of receipt of a draft amendment from the NCA which is subject to Ministerial approval and tabling in the Parliament. When the amendments are tabled in the Parliament they are subject to a 15 sitting day disallowance period.
- 5.40 The Minister may ask the committee if it wishes to conduct an inquiry into the draft amendment before Ministerial approval occurs, and in most cases before it is tabled in Parliament. This course of action is at the discretion of the Minister. In addition, there are no protocols on the length of time the committee may take to conduct an inquiry.
- 5.41 The treatment of the *Griffin Legacy* amendments highlights some of the problems that can occur with this process. The amendments were tabled in the Parliament in December 2006 and subject to a disallowance period that would expire in March 2007. The time pressures placed on the committee were significant. The committee conducted a roundtable forum on 23 February 2007 and was just able to report before the end of the disallowance period. These amendments were complex and were the subject of significant public interest.
- 5.42 The question of whether referral of a draft amendment to the committee for inquiry should be discretionary or compulsory was examined. Mr David Wright stated:
- I agree with a proposition ... that rather than the Minister having the discretion to refer a draft amendment to the joint standing committee there should be a compulsory referral. Whether the committee then chooses to inquire is up to the committee. I think that would provide a new level of assurance about the openness of the system.<sup>38</sup>
- 5.43 Proposed works by the Commonwealth in the Parliamentary Zone may be referred to the committee by either House of Parliament, the Minister or the President of the Senate and the Speaker of the House of Representatives to inquire and report. These types of inquiries are rare. The last inquiry of this nature was into the King George V Memorial in May 1995.
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- 5.44 It should be noted that the Parliamentary Standing Committee on Public Works is precluded under section 5AA (1) of the *Public Works Committee Act 1969* from scrutinising works in the Parliamentary Zone.
- 5.45 The practice in recent times has been for the Minister to offer the committee a briefing from the NCA on a proposed work. Later the Minister then tables notice of the work in both Houses of Parliament and usually cites that the committee has been briefed. These briefings **do not constitute approval** by the committee of the work.

## Conclusions

- 5.46 The NCA's record on consultation is generally poor. Individuals and community groups have expressed concern that the NCA is inflexible and fails to even address the concerns raised through its community consultation processes. These criticisms are juxtaposed against the NCA's own appraisal of its consultation record where on several occasions during the current inquiry it suggested that its consultation was 'exemplary.'
- 5.47 This divergence of views between what the NCA perceives and what some community groups perceive about the consultation process is a serious issue that must be addressed. The committee urges the NCA to apply continuous improvement to its consultation process.
- 5.48 It was often the case that people who criticised the NCA's consultation process understood that individual views could not always be incorporated into a planning proposal. However, there was a strong view that in any consultation, community views, whatever their quality, should be acknowledged and reasons given for why they are not being used.
- 5.49 The relevant legislative provisions and the new consultation protocol seem to provide a sound structure for consultation. There is a legislative requirement for consultation in relation to draft amendments. In addition, the consultation protocol outlines the framework of consultation relating to draft amendments, development approval, development applications and development control plans. The protocol, in particular, sets out the timeframes required for various approval processes. The committee will follow with interest the level of compliance by the NCA with its consultation protocol.
- 5.50 There is a more fundamental issue here. The NCA is an advocate for its own development proposals creating a disincentive for acknowledging criticism and perhaps contributing to poor consultation processes. This

effect may be mitigated by the committee's extensive scrutiny of the NCA's consultation processes.

- 5.51 To enhance compliance, consideration should be given to inserting the consultation protocol into the NCP.
- 5.52 The committee has in the past inquired into draft amendments. These inquiries tend to focus on the processes used by the NCA and the community impact. This is a constructive and important part on increasing accountability for adherence to consultation requirements.
- 5.53 Currently, there is no automatic referral of draft amendments to the committee. Where draft amendments have been referred to the committee the Minister usually waits until the committee has reported before deciding to table the amendments.
- 5.54 Some groups have proposed and the committee agrees that there should be an automatic referral of draft amendments to the committee for any inquiry it may wish to make prior to the amendments being tabled in the Parliament. The committee should be required to undertake the inquiries as efficiently as possible, and certainly within three months. It should be noted that some amendments may be of a less significant nature and may not need a committee inquiry. The committee would make this decision.
- 5.55 In addition, all proposed works in the Parliamentary Zone, not of a de minimus nature, should be referred to the committee for its consideration. These works should be subject to scrutiny by the committee.
- 5.56 The committee believes dramatic improvements in the NCA's handling of consultation will be required to restore public confidence in the capacity of the organisation to perform its duties. In this regard, the committee will be keeping a close watching brief on all matters relating to consultation by the NCA.
- 5.57 As part of the effort to restore public confidence the committee has urged specific action in relation to the failure in consultation processes in relation to both the Albert Hall and the situation facing local business, Mr Spokes Bike Hire.

**Recommendation 6**

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

**Recommendation 7**

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