

# SUBMISSION 32.1

## Supplementary Submission to the Parliamentary Joint Standing Committee on the National Capital and External Territories

### Inquiry into the role of the National Capital Authority

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Joint Standing Committee on the  
National Capital and External Territories

Submission No: ..... 32.1 .....

to Received: .....

5 May 2008

#### 1. Introduction and response to the NCA's submissions

We wish to thank the Committee for this opportunity to present a supplementary submission to this important inquiry.

We have had an opportunity to read and reflect on the NCA's submissions to the Inquiry and we are resolutely opposed to the NCA's proposals to effectively hand over planning and development control over large parts of Canberra to the Territory Government. This is contrary to the views we expressed to the Committee in our original submission and we believe it is contrary to the obligations imposed on the Commonwealth by S.125 of the Constitution.

As we stated in our submission, the Commonwealth is the owner of the ACT and it cannot abrogate its responsibility for protecting the national interest in the ACT by handing it over to the Territory Government. The Territory Government is not obliged nor motivated to take account of the national capital characteristics. The NCA's propositions also run counter to existing planning systems in all the other jurisdictions in Australia where state governments retain their superior role.

We firmly believe the Commonwealth should always retain its superior jurisdiction in relation to planning and development matters in the ACT. Indeed, we believe the Commonwealth needs to regain some of the controls and responsibilities that it gave to the Territory in the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) (ACT(PALM) Act 1988).

This can be achieved by:

- Creating a new Commonwealth statutory authority with primary responsibility for all planning and development matters within the ACT.
- Requiring the new Authority to report to the Parliament through a Committee of the Parliament. The composition of the Joint Parliamentary Committee could comprise the ACT Members and Senators (of which there are currently

<sup>1</sup> The views expressed in this submission are personal and do not reflect the views of our respective employers. Between the three of us we have over 80 years of urban and regional planning experience.



four) and a further seven Members or Senators drawn from each of the other jurisdictions. An advisory committee of Commonwealth and ACT Government representatives and experts could support the Joint Parliamentary Committee, with a majority being drawn from the ACT.

- Removing the requirement for two separate plans within the ACT.
- Giving the new Authority as part of its charter, the responsibility for preparing and keeping under review a long term vision and strategic plan for Canberra's planning and development to reflect the national significance of the Capital Canberra.
- Requiring the new Authority to work closely with the NSW Government and neighbouring local Councils to ensure Canberra's planning and development needs are considered in a regional context.
- Providing sufficient resources and powers to the new Authority for it effectively discharge its functions and responsibilities.
- Giving the new Authority the power to delegate genuine local planning matters to the ACT Government with a clear power to recall matters which may require consideration of national capital significance.
- The composition of the new Authority to include relevant city planning and design skills, environmental skills and Commonwealth and Territory Government representatives.
- Giving the new Authority the jurisdiction to regulate the activities of other Commonwealth Departments and agencies in the ACT, including a referral and concurrence role under the *Environment Protection and Biodiversity Conservation Act 1999* for all matters within the ACT.
- Including in its functions, responsibility for the planning and development of infrastructure, such as transport, water and major construction projects.

We believe these proposals will go a long way to restoring the Commonwealth's obligations for the ACT arising from its ownership of the ACT.

In commenting on the NCA submission we wish to note the difficulty in accessing the NCA documents. Whilst we appreciate the volume of the material they provided to the Committee was necessarily detailed and well presented graphically, the size of the PDF document was beyond the capacity of some domestic computers. Not all members of the public are able to access such large documents and we had to call upon the services of the Committee secretariat in order to access the documentation. We record our sincere thanks to the Committee secretariat for responding to our requests for assistance and for their patience and support.

## **2. Additional comments on the current arrangements**

As we discussed in our earlier submission, there are too many agencies or Departments with quite separate responsibilities for planning and land management in the ACT. This creates tension and frustration as each agency pursues its own interests. In doing so the results lead to planning inefficiencies and imbalances and a situation where no one agency is responsible for the cumulative effects of separate decisions. Currently, the extent of departure or diversion from the essential planning principles for the National Capital occurs all too frequently.



Under the ACT(PALM) Act 1988, land in the ACT is divided into National Land and Territory Land. The two are mutually exclusive.

National Land is defined in the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) as land that 'is intended to be used by or on behalf of the Commonwealth'. The major agencies with National Land management responsibilities include;

- the National Capital Authority (NCA) which has responsibility for the Parliamentary Zone and land for Diplomatic Missions,
- the Department of Defence which has responsibility for land at Russell and Duntroon,
- the Department of Finance and Administration which has responsibility for some buildings within the Parliamentary Zone and land at Barton, and
- the Department of Infrastructure, Transport, Regional Development and Local Government which has responsibility for the Canberra Airport.

Planning for these assets is controlled by the *National Capital Plan* administered and kept under review by the National Capital Authority.

The Department of the Environment, Water, Heritage and the Arts also exercises some control over activities that has, will have or are likely to have a significant impact on matters of national environmental significance or involving Commonwealth land under the *Environment Protection and Biodiversity Conservation Act 1999*.

Territory Land is defined in the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) as 'any land that is not National Land'. Under the ACT(PALM) Act 1988 the Territory Government has responsibility for administering Territory Land. Some of this land is in 'designated areas' that fall under the control of the NCA, but the Territory Government administers the land leases.

Outside the ACT and over the border, the NSW Government is responsible for planning and development matters. Under the *Environmental Planning and Assessment Act 1979* (NSW), the State Government delegates certain planning and development functions to local government Councils. These include Queanbeyan City Council, Palerang Council and Yass Valley Council.

This complexity of jurisdictions and responsibilities ensure nothing but confusion and a complete lack of strategic oversight of the National Capital and its surrounding region. As Geoff Campbell, a former Chief Planner in the former NCDC and the Territory Government says in his submission, there is an urgent need to rationalise and simplify these arrangements.

The aim of having one dominant Commonwealth planning agency is to retrieve for the Commonwealth the same level of planning powers currently available through State planning systems, where State planning agencies and planning Ministers retain the strategic planning, major project co-ordination and infrastructure



investment powers and delegate detailed planning responsibilities to local government authorities.

To ensure that the most effective administrative outcome is identified and implemented the Commonwealth should commission a study into the efficient administrative planning needs of Canberra as the national capital and as a model sustainable city for the nation.

### **3. The need for a planning study and long term strategic plan/vision**

As part of the rationalisation of the institutional arrangements, it would be essential to undertake at the outset a comprehensive study of the long term population growth needs of Canberra and the region, and in particular its setting and the long term opportunities presented by Canberra's proximity to Sydney and Wollongong. As Geoff Campbell points out, it is only a matter of time before a decent rail link will be developed to improve the transportation links between Canberra and Sydney. Such a development would provide a major impetus for further growth along the transport corridor and to ensure such investments, including the possibility of a new Sydney Airport are carried out in a sustainable manner, a Commonwealth role would be most advantageous.

An urgent long term study of Canberra's planning and development needs to be properly resourced and equipped with appropriate expertise. Only the Commonwealth can provide adequate resources with the NSW and ACT Governments providing a contribution cognisant of their capacity. This study should also take account of the new paradigm – sustainability, and be able to draw on the experiences overseas.

Canberra once was and has the opportunity to once again, be a model for urban development into the future, reflecting the best approaches to sustainability in resource use in its development and ongoing demand for scarce energy and water resources.

For example, in Britain decisions have recently been made on the location of proposed 'eco-towns' and discussions are currently under way on the powers and administrative arrangements for overseeing these developments. These eco-towns will be explicitly required to provide the full range of facilities, including the need to increase travel by foot, bicycle and public transport.

There are strong indications that the Commonwealth is highly interested in the urban agenda (infrastructure, housing, sustainable cities). If the Commonwealth is going to have any chance of leading the way toward changing our cities and regional towns for the better in the face of climate change and sustainability in general, then the Commonwealth needs to retain and perform in its own patch – Canberra. It will struggle to influence the development of the State capital cities to the degree that it could shape this region.



#### 4. The need for a comprehensive overhaul of current legislative arrangements

As discussed in our initial submission, there is need to overhaul the existing legislation governing planning and development in Canberra. Rather than tinker with the existing legislation, we urge the Committee to consider starting fresh with new legislation.

Apart from our suggestions above about the role and function of a new statutory authority reporting to the Parliament, some important considerations include:

- Retention of Commonwealth ownership of land in the ACT
- Retention of the leasehold system of land tenure in the ACT as reflected in Section 125 of the Australian Constitution, Section 9 of the *Seat of Government (Administration) Act 1910* and Section 29 of the *Australian Capital Territory (Planning and Land Management) Act 1988*, which provide the statutory basis for Canberra's leasehold system.
- The need to bring all Commonwealth Departments and agencies and some Government owned enterprises (such as Telstra) and other telecommunications providers, under the direct planning control of the new Authority for all of their activities in the ACT.
- The need to provide the new Authority referral and concurrence powers under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) for matters in the ACT.
- Provision of staff and other resources to ensure high standards of planning and development.
- Research, as part of the planning study, into ways for Canberra to become an environmentally sustainable model for urban development in Australia.

There has also been some talk of Canberra being considered for nomination to the UNESCO World Heritage List. Under current arrangements Canberra cannot be considered for inclusion as a World Heritage Property until it is included in the National Heritage List and shown to be properly protected and managed. We understand that the NCA is advanced in its investigations into the possibility of nominating Canberra to the National Heritage List.

We would therefore like to draw the Committee's attention to Parts 5 and 6 of our paper on '*Canberra's National Planning Heritage*' that was attached to our initial submission. In Part 5 we discuss the requirements under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) for entering places on the National Heritage List and the obligations that arise from entering a place on the List. In Part 6 we discuss the values that can potentially be attributed to Canberra's planning history that would add weight to an application for entering Canberra on the National Heritage List. These parts of our paper provide an outline of the obligations that are associated with entering a place on the National Heritage List. If Government decides as a result of this Committee's current inquiry to change the legislation to remove the classification of 'designated areas' and restore the Commonwealth's superior status as the primary agency with responsibility for

Canberra's planning and development, we would urge the Committee to consider recommending that Canberra be entered on the National Heritage List.

## **RECOMMENDATIONS**

1. That the Committee confirms the need for a strong Commonwealth role and responsibility for the planning and sustainable development of Canberra as the nation's capital and as a model for other Australian jurisdictions.
2. That the Committee agrees to investigate the most effective way for the Commonwealth to manage, protect and conserve the national significance of Canberra as the nation's capital, including a comprehensive review of the legislative planning arrangements between the Commonwealth and ACT Govt in a two tier arrangement, with the Commonwealth taking the lead strategic planning role and the ACT responsible for implementation at the local level under delegated authority from the Commonwealth.
3. That the Committee agrees to require the Commonwealth agency responsible for the planning and management of the Commonwealth's responsibility for the ACT to undertake a study into the future planning and development of Canberra to achieve the best outcomes for 1 and 2 above.
4. That the Committee agrees to ensure that the Commonwealth agency responsible for the planning and management of the ACT is properly resourced for the planning and infrastructure provision role, with suitable skills and the expertise needed to carry out these important and urgent roles.