

JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL AND EXTERNAL TERRITORIES

INQUIRY INTO THE ROLE OF THE NATIONAL CAPITAL AUTHORITY

SUPPLEMENTARY SUBMISSION

by

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JSC – OPENING STATEMENT/SUPPLEMENTARY SUBMISSION

Author's Note: This paper was prepared initially as an opening statement. However, it was not used in this manner because of its length and the fact that it deals with a number of matters of importance raised during the course of the Inquiry that it is now provided with the agreement of the Committee as a Supplementary Submission. (DTW 1 May 2008)

INTRODUCTION

I have nothing I wish to change in my original submission. While there are a few minor typographical errors there are no errors of fact requiring modification to the submission. However, I would like to add two further recommendations:

That

- 1 The definition of Designated Areas be amended to include all National Land.***
- 2 The Committee request the NCA to provide a liaison officer to advise the Committee Secretariat on matters of fact and to provide an efficient conduit to the Authority's records and advice.***

I would also like to comment on some of the key issues or propositions that appear to me have emerged from the submissions, the hearings to date and on the Authority's recent proposals as presented to the Committee last week.

I find myself in the rather odd position of appearing to defend a position the Authority has already indicated it would be prepared to relinquish. I, like a number of others, don't agree with the Authority or their proposals, for example, to reduce the extent of Designated Areas or to abandon the use of Special Requirements. These changes proposed by the Authority have done nothing to induce me to change the views I have expressed in my submission. Indeed there are a number of perhaps unintended consequences which can arise from these propositions which are not in the interest of the National Capital and may not be in the interest of the ACT Government either.

I spent the last 17 years of my professional career trying to make the planning system as set out in the *Australian Capital Territory (Planning and Land Management) Act 1988* work. I believe that the Act was inspired and provided for a planning system that, for the most part, has worked. Consider the number of real controversies or failures of the legislation or the two Plans it spawned that are genuinely attributable to a failing of the Act or of either of the Plans. There have been remarkably few. Most have occurred where the Territory Government (as opposed to the Territory planning authority), have sought to operate outside or challenge the provisions of the National Capital Plan.

Other criticisms of the Authority have arisen over policies introduced by the Commonwealth which had a significant effect on Canberra but which were beyond the control of the Authority. The sale of Canberra Airport and the wider Commonwealth Property Divestment Programme are two cases in point.

Another controversy – the redevelopment of residential properties fronting State Circle – was a classic case of urban change where the hitherto common interests of lessees was breaking down. The Authority was placed in the invidious position of having to address the progressive run down of

an area at the very doorstep of the Parliament while trying to safeguard the interests and amenity of residents who wished to remain as owner-occupiers. The Authority was in a LOSE – LOSE situation. I suspect the ACT Planning Authority would have fared little better in the circumstances.

The Rural Villages issue saw the Authority unfairly criticised. In my view it responded very promptly to the Bush Fire emergency, for example, by granting an *en globo* approval to the Territory for any works required in Designated Areas to render areas safe after the fires. The Authority immediately made it clear that Uriarra Village could be rebuilt and sought to explore whether the residents of the scattered settlement at Pierce’s Creek could be relocated to Uriarra. When the Territory sought to capitalise on the situation and seek a much larger development I was more than disappointed that the ACT Government should choose such a time and place to test the resolve of the Authority and the jurisdiction of the National Capital Plan.

Others have complained that the Authority should not have been involved in the decision about Gungahlin Drive. Such a view fails to recognise that under the PALM Act the Authority has a statutory responsibility for the planning of National and arterial roads. It simply had no choice.

I make these points, not to criticise the Territory government or the ACT administration, but to demonstrate that the controversies, the alleged failings of the dual planning system, have been few and far between. In short, the PALM Act and both the National Capital Plan and Territory Plan have served Canberra well for two decades, both as the National Capital and the home to more than 300 thousand people.

Having said that, I am not seeking to defend the *status quo*. In my view, any legislation, and certainly any plan, warrants serious review after they have been in place for almost a generation. I offer almost 30 suggestions or recommendations on how the existing system can be fine-tuned. I do not, however, support any major change to the current planning responsibilities of the two levels of government. My recommendations, set out in my submission, relate to each of the key components of the planning system:

- The General Principles and Policies of the National Capital Plan
- Designated Areas
- Works Approval
- Special Requirements
- Public Consultation
- National and Territory Land
- Governance

What is really required is recognition by both Governments of their respective roles and a sustained commitment to the planning and development of Canberra as both the National Capital and a growing city. In that regard, I believe that a much greater commitment is required from the Commonwealth than has been shown in the period since self-government.

EMERGING THEMES FROM THIS INQUIRY

1 One Planning Authority – I believe such an arrangement to be totally impractical if that involves the same organisation reporting to two Governments. If reporting to only one organisation

that organisation must be a Commonwealth authority, unless of course, the Commonwealth is about to totally abrogate its responsibilities to both the founders of Federation and current and future generations of Australians. Just as I do not support a single planning authority reporting to the ACT Legislative Assembly, I do not support a single planning authority reporting to the Parliament. Such an arrangement would not be in the spirit of Self Government.

It should be noted that there are also certain practical difficulties involved. Ask yourselves:

- Who employs the Chief Executive?
- Who employs the staff?
- Who sets the budget?
- Who resolves disputes between National and territorial interests and priorities?
- Is the National Capital interest merely served by a Unit, just like the District Planning Units for Belconnen etc within a broader, territory planning organisation?

2 One Plan – One plan with one set of policies for the whole of Canberra is not a good arrangement without fundamental changes in attitude. This requires – as a minimum – that the Territory government accept that the Commonwealth interest takes precedence over that of the Territory and that both the Territory and Canberra were both established as the Seat of Government – really nothing has changed to alter that fact.

At what might be described as a ‘superficial’ level we already have ‘one plan’. The Territory Plan identifies all the land use policies that apply throughout the ACT with the exception of Designated Areas which are separately identified. If as, I suggest, the land use policy categories and the land use definitions used in the National Capital Plan are reviewed with a view to integrating them with those of the Territory Plan then a more consistent and comprehensive presentation of the two plans would be possible.

3 One Approval – Claims that there should be only one approval fails to recognise that there isn’t a single lease in the ACT that is subject to a works approval by the NCA and a Design and Siting approval by ACTPLA. They are mutually exclusive!

4 Reduction of Duplication – Having read through all the submissions at least once, I have yet to see anyone who argues for a reduction in duplication actually provide an example of such ‘duplication’. There are instances, such as Gungahlin Drive Extension, where the NCA approved certain sections (in a Designated Area) and where the ACT PLA approved the rest. The Authority had no option to become involved as it is a statutory responsibility specified in the PALM Act. That both planning authorities were involved in a development assessment and approval is almost inevitable when dealing with networks such as roads or electricity easements etc. The only means of remedying this is to extend the Designated Areas to include the whole network of National and arterial roads and indeed of all major networks that would otherwise cross the boundary of Designated Areas.

5 Transfer of all but the Parliamentary Triangle to the Territory – There are those who advocate an increase in the jurisdiction of the ACT Government and the ACT Planning authority and a consequent diminution of the Commonwealth’s role and that of the NCA. A straw poll of the submissions made to this inquiry suggests that this view is held by a minority and a very small

minority at that. On the contrary, there was a substantial number of submissions that supported the Commonwealth taking a leading role in the future planning of Canberra. What was also clear was that there was little support for the ACT planning authority taking over additional planning responsibilities. I support this view for four reasons:

- I could not find one skerrick of evidence in the ACTPLA/ACT Government's submission that it really had any appreciation of national significance or of the role of Canberra as the National Capital.
- The ACT planning authority, however constituted, is an administrative arm of any incumbent Territory government. It is thus subject to much short-term political pressure and control.
- One cannot assume that the present ACT Government's administrative arrangements continue over time: how many reviews of the ACT planning authority legislation have we seen over the last 15 years?
- Once the Commonwealth relinquishes control, they are not only irretrievable, those changes can be exacerbated by other changes introduced by subsequent ACT Governments and the Commonwealth would be powerless to intervene. The abandonment and dismantling of the neighbourhood principle is a case in point. Nothing can be taken for granted

6 More public consultation/more engagement with the Canberra Community – I caution against an uncritical response to the clarion call for more public consultation. I have pointed out that legislation does not provide for good consultation. Good rules are required to clarify legitimate expectations of the process but the results are usually a function of the attitudes the various parties bring to the consultation process. In short, it is the **quality** of public consultation, not the **quantity** of public consultation that is important. Rather than focus on greater engagement with the Canberra Community, I argue that the Authority's efforts should be directed at reducing the need for direct engagement with the Canberra community on development approvals and that its priority should be to engage its national constituency more through, *inter alia*, engaging the States and Territories through their professional institutes, through a revision to the composition of the Authority and, indeed through the members of this Committee and their Parliamentary colleagues.

7 Introduction of an Appeals Mechanism: The Authority's policy decisions (amendments to the National Capital Plan) are already subject to review by the Minister, the Joint Standing Committee and the Parliament itself. This is entirely appropriate. I cannot recall an instance of where a lessee would have wanted to appeal against a refusal by the Authority, nor can I recall a major controversy where the Authority's position was objected to that was not a matter of policy and therefore the subject of a Draft Amendment to the Plan and the public consultation processes set out in the PALM Act. Based on my experience, the introduction of an appeals mechanism to deal with the Authority's works approval decisions does not appear warranted.

8 Commonwealth Architect/Design Advisory Committee: Some, mainly architects, have called for the introduction of the position of a Commonwealth Architect and/or the establishment of a Design Advisory Committee. Such propositions, in my view, would simply add further layers – layers of red tape – over a system that has already demonstrated that it produces good design outcomes. Such an arrangement fails to recognise that the Authority already engages independent design advice and many of the major public works are the subject of design competitions and these are subject to competition juries composed, in the main, of eminent design professionals. It also

fails to recognise that works approval is a function exercised by a delegate of the Minister under the PALM Act. The delegate is responsible and accountable for the decision, not the Authority or a third party such as the Commonwealth Architect. In my view, both propositions are an unnecessary complication of a streamlined and effective works approval process.

9 NCA Power of Veto: Some submissions have proposed that the area over which the NCA has specific control (i.e. Designated Areas) could be reduced and replaced by giving the Authority a Power of Veto over Territory planning decisions. I do not support such a proposition on the basis that such a mechanism demeans and diminishes the autonomy of the ACT planning authority and institutionalises a *Big Brother - Little Brother* relationship. While there are obvious practical difficulties with such an arrangement (e.g. is the Territory planning authority obliged to refer decisions to the NCA and, if so, what decisions?), the more important criticism I have is that it is reactive and negative. The current planning system is clear unambiguous about the relationship between the two levels of government, the two planning authorities and the two plans. If the present co-operative arrangements that have been developed and nurtured over the last two decades by the two authorities can be maintained, I see no justification for placing the Territory planning authority in a position that it involves it continuously having to look over its shoulder to see whether the NCA is going to intervene and overturn its decision. The present separation of jurisdictions has served us well to date and should, in my view be maintained.

10 Strengthen Commonwealth's planning role: A review of the Submissions to the Inquiry show overwhelming support for the Commonwealth to maintain control of planning of the National Capital. That support is also extended to the NCA (or an equivalent statutory authority) as the appropriate authority to undertake that task on behalf of the Commonwealth. Importantly, that support has come strongly and almost unanimously from the professional Institutes governing the design professionals (planners, architects, landscape architects and engineers alike); key industry lobby groups; from design practitioners; from the National Institutions, from academics. The support for an independent federal planning authority to oversee the interest of the National Capital both in the long and short term has come from the Authority's sister authorities in Ottawa and Washington. Perhaps, somewhat surprisingly given the public perception of the State Circle issue, support has also come from residents and lessees of the Forrest-Deakin Residential Area for the Authority's planning role in such areas to continue.

NCA PROPOSALS – POSSIBLE UNINTENDED CONSEQUENCES

1 Reduction in Designated Areas

I do not support the removal of the Designated Area status for the Inner Hills. I offer one simple example of the unintended consequences of such an action: At present the Designated Areas are the only areas of Australia where the various telecommunications carriers require development approval from a planning authority. Once the Designated Area status is removed the protection of the inner hills from inappropriate development by telecommunication carriers will be lost. That control has benefitted both the Commonwealth and the Territory and this should be seriously considered before accepting the removal of Designated Area status.

The removal of Designated Area status does not necessarily guarantee that planning control will pass to the Territory – as the ACT Government found to its cost when the National Capital Plan was

amended to remove Canberra Airport from the Central National Area as defined in the Plan. Similarly, any National Land sites located in those parts of Designated Areas where it is proposed to 'uplift designation', would not be subject to planning control by the ACT Government.

2 Removal of Special Requirements

Special Requirements apply in two quite different circumstances. In the first place it provides a vehicle for the Authority to advise the ACT planning authority of the nature and extent of a 'national capital interest' in limited areas of the Territory and the City without having to assume direct planning control. It is both a positive mechanism and provides a safety valve or a zone of comfort in which the boundaries between the absolute responsibility of the NCA and Territory planning authority can be defined. Typically these have related to development along the Main Avenues and Approach Routes. If the special requirements provisions in the legislation are to be abandoned then either the Commonwealth is abandoning the long standing recognition of Areas of Special National Concern or the Commonwealth's interest is intended to be secured by more prescriptive provisions of the National Capital Plan – a much less flexible and responsive arrangement than exists at present.

The second use of Special Requirements relates to the requirement in the Plan that all National Land outside Designated Areas be the subject of a Development Control Plan which *inter alia* should 'reflect the relevant provisions of the Territory Plan'. Without the use of Special Requirements the Territory's planning interest in those sites is no longer secured. This situation will be made worse by the rolling back of Designated Areas where additional National Land sites are exposed. National Land sites outside the (reduced) Designated Areas will no longer be subject to development control by either the NCA or the Territory planning authority. Given the extent of the Commonwealth's presence in the ACT this arrangement is in neither the interests of the NCA or the Territory planning authority.

NCA Liaison Officer

I made a recommendation at the start of my address that:

The Committee request the NCA to provide a liaison officer to advise the Committee Secretariat on matters of fact and to provide an efficient conduit to the Authority's records and advice.

I made that recommendation on the basis of my experience as an Adviser to the Committee. I am conscious of the fact, as I am sure members of the Committee are, that the Committee has a very tight timetable in which to report. It has also received more than 80 submissions, including supplementary submissions. That is approximately double the number received at the Committee's Inquiry in 2003. Many of the submissions are lengthy and detailed and offer many constructive suggestions which in my view require thorough investigation, **both individually and collectively**, before being recommended to Government. Given the far-reaching effects of, and the inter-relationships between many of these ideas, it is important that they be given full and careful consideration. The Secretariat is not really in a position to investigate the merits or otherwise of some recommendations and is certainly not in a position to resolve conflicting evidence within the timeframe available. I believe that seeking the assistance of a liaison officer from the Authority to

assist the Secretariat would be of considerable benefit to both the Secretariat and the Committee in setting the long term basis of planning in the National Capital.

Given both the quantity and quality of the submissions, I believe they warrant a thorough content analysis so that, at the very least, the complexities are understood and the views of all respondents are both acknowledged and, most importantly, individually considered and responded to in the Committee's report.

CONCLUDING REMARKS

I have argued that both the enabling legislation and the dual planning system have served both the National Capital and Canberra as a growing city well for almost a generation. I argue that, to coin a phrase,

if it ain't broke – don't fix it.

However, I have made almost 30 suggestions or recommendations as to how it might be fine-tuned.

On first reading of the 80+ submissions I can see no ground swell of support for any radical change. Certainly, there is little support for a major transfer of additional planning powers to the Territory.

I believe the majority view is that The National Capital Authority is doing a worthwhile job and it is doing it professionally and efficiently.

If there is a clarion call - it is for the Commonwealth Government to vigorously renew its commitment to Canberra as the National Capital.

I believe the vast majority of those who have made submissions and presented evidence to the Committee want the Commonwealth to:

- put the Dollars back into Canberra by re-instating the NCA budget and, in particular, the previously earmarked funds for the Griffin Legacy
- put the Capital P back into the NCA, and even
- emphasise the Capital A in Authority by providing it with the financial resources and, hopefully, the bi-partisan political support necessary to carry out its role positively, co-operatively and effectively.

This inquiry is vitally important to the future of the Canberra as Australia's National Capital. I respectfully suggest that the Committee needs to apply the precautionary principle, it needs to apply vision and imagination in recommending the most appropriate planning arrangements to take Canberra beyond its Centenary and well into the 21st Century and beyond.

