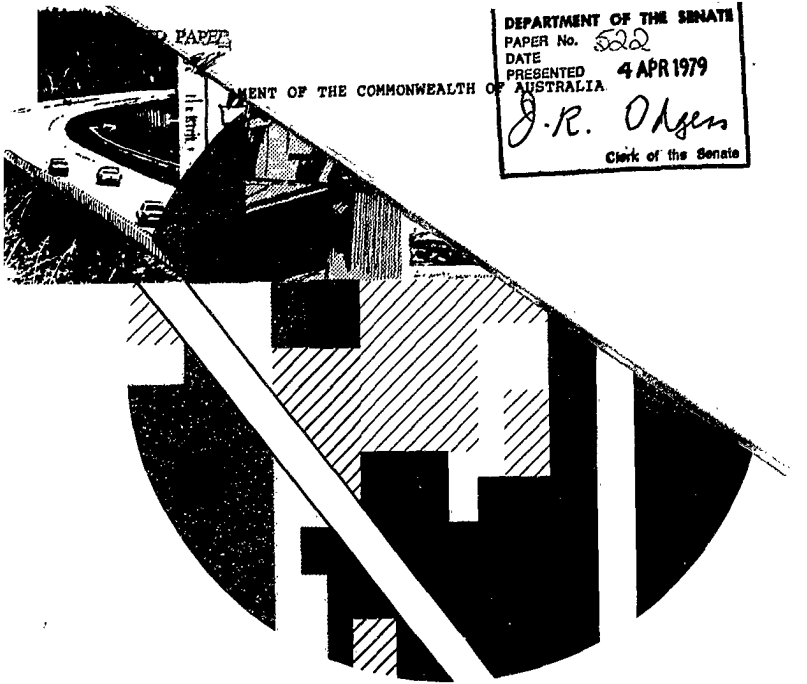

PLANNING IN THE A.C.T.

Procedures, processes and community involvement

Report of the Joint Committee
on the Australian Capital Territory

March 1979

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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

PLANNING IN THE A.C.T. - procedures, processes and community involvement

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TERMS OF REFERENCE

The Committee is asked to consider and report on the adequacy and public acceptability of the planning procedures and processes in the A.C.T. including:

(a) the adequacy of community involvement in planning and development;

(b) the role of the National Parliament, particularly in planning the "national" element of Canberra; and

(c) the relationship between the various groups involved in this process.

KEY TO ABBREVIATIONS

ACT	The Australian Capital Territory
DCT	Department of the Capital Territory
EIS	Environmental Impact Statement
FCC	Federal Capital Commission
NCC	National Capital Commission (Canada)
NCDC	National Capital Development Commission.
NCPC	National Capital Planning Commission (U.S.A.)

MEMBERSHIP OF THE COMMITTEE IN THE 31ST PARLIAMENT

Chairman	Senator J.W. Knight
Deputy Chairman	Mr K.L. Fry, M.P.
Members	Senator M.A. Colston[1]
	Senator S.M. Ryan
	Senator B.C. Teague[1]
	Mr W.G. Burns, M.P.
	Mr A.G. Dean, M.P.
	Mr J.W. Haslem, M.P.
	Mr U.E. Innes, M.P.
	Mr P.E. Lucock, M.P.
Clerk to the Committee	Mr P.F. Bergin[2].
Specialist Advisers	Dr A. Fogg
	Mr R. Graham.

MEMBERSHIP OF THE COMMITTEE IN THE 30TH PARLIAMENT

Chairman	Senator J.W. Knight
Deputy Chairman	Mr K.L. Fry, M.P.
Members	Senator B.R. Archer
	Senator D.M. Devitt[3]
	Senator S.M. Ryan
	Mr M. Baillieu, M.P.[4][5]
	Mr M.E. Baume, M.P.
	Hon. F. Crean, M.P.
	Mr J.W. Haslem, M.P.
	Mr M.E. Sainsbury, M.P.
Clerk to the Committee	Mr D.W. Nairn

1. Senators Teague and Colston were appointed to the Committee on 22 August 1978 in place of Senators Archer and Devitt.

2. Mr P.F. Bergin replaced Mr D.W. Nairn as the Clerk to the Committee on 6 November 1978.

3. Senator Devitt replaced Senator Georges on 18 August 1977.

4. Mr Baume replaced Mr Bungey on 13 October 1976.

5. Mr Baillieu replaced Mr McKenzie on 6 September 1977.

CONCLUSIONS AND RECOMMENDATIONS

The Committee's conclusions and recommendations are summarised in the following pages under seven headings:

A. Leasehold Provisions
B. Public Participation
C. Structure and Development Plans
D. Land Use Tribunal
E. Community Council
F. Environmental Matters
G. Regional Planning.

The conclusions and recommendations in this summary appear in an order different from that in which they appear in the report. This has been done to draw together in summary form the issues dealt with.

A. Leasehold Provisions

The Committee concludes that:

1. in the ACT the lease agreement is the key control document for implementing town planning. It should be so recognised and enforced in a manner comparable to the established town planning enforcement procedures in the States.

(para. 75)

2. (a) there are many cases of lease purpose clause infringements in the inner suburbs of Canberra.

(b) the enforcing authority, the Department of the Capital Territory, has until recently taken no action to enforce the provisions of the City Area Leases Ordinance 1936.

(para. 63)

3. breaches of section 10 of the City Area Leases Ordinance are occurring in Turner, Braddon, Reid and Kingston.

Breaches include:

- the use of premises as office accommodation by doctors, dentists, real estate valuers and other similar professional and business persons;
- the use of some premises as restaurants; and
- the use of premises in Torrens Street in conjunction with adjoining leases authorised for commercial uses in Lonsdale Street.

(para. 69)

4. (a) the requirements of section 10 of the City Area Leases Ordinance, should be enforced.

(b) the non-enforcement of the requirements is disturbing.

(para. 70)

5. even more disturbing is evidence that leases are being acquired for speculation and that lessees are applying pressures to bring about changes in approved land use from which they will make a financial gain.

(para. 71)

6. speculation in ACT leasehold based on probable changes in land use is undesirable and should be stopped.

(para. 78)

7. it does not seem reasonable that the Minister for the Capital Territory can simply veto an application under section 11A of the City Area Leases Ordinance for changed lease purpose thus preventing the issues being ventilated.

(para. 70)

8. the procedure under section 11A of the Ordinance should be relaxed so that persons wishing to vary their lease purpose clause would apply under this provision rather than using section 10.

(para. 76)

9. it is a cause for concern that the Commonwealth is not at present subject to development control under the City Area Leases Ordinance, so that as landlord the Commonwealth can authorise incompatible uses or can with impunity undertake incompatible uses in relation to premises it occupies.

(para. 73)

The Committee recommends that:

1. lease purpose clauses continue to be the basis of development control in the Australian Capital Territory.

(para. 180)

2. (a) applications under section 10 of the City Area Leases Ordinance for temporary non-conforming use by bona fide residents should be made to the Department of the Capital Territory rather than the Minister as at present.

(para. 181)

(b) section 11A of the City Area Leases Ordinance should continue to be the provision under which a land use change is sought.

(para. 77)

(c) applications to vary lease clauses under section 11A of the City Area Leases Ordinance should be made to the Department of the Capital Territory rather than the Supreme Court.

(para. 181)

(d) section 11A of the City Area Leases Ordinance be amended to ensure the full recovery by the Commonwealth of any increment arising from change of land use.

(para. 78)

(e) there should be a right of appeal by both the applicant and third parties against decisions made on these applications.

(para. 181)

3. section 9A of the City Area Leases Ordinance be amended to provide that:

(a) the Minister or the Department of the Capital Territory acting on his delegation should serve on a person in contravention of a lease, notice of intention to enforce the lease provision unless the illegal use is terminated within a specified time.

(b) failure to comply with the notice of intention would then become the basis for ensuing prosecution.

(c) substantial fines be the penalty for the offence.

(d) continued failure to comply should lead to termination of the lease under section 22 of the Ordinance.

(para. 75)

4. section 10 of the City Area Leases Ordinance be enforced both as to duration and the need to be a bona fide resident.

(para. 70)

5. a land use tribunal be established.

(para. 182)

6. action be taken to improve liaison and co-operation between the National Capital Development Commission and the Department of the Capital Territory to overcome problems of co-ordinating land planning and management.

(para. 180)

7. **Government departments and instrumentalities be obliged to conform with statutory planning provisions and lease purpose clauses.**

(para. 77)

B. Public Participation

The Committee concludes that:

1. the role of Canberra as the national capital and seat of government creates problems for public participation generally, but these problems are acknowledged by the community and are not insurmountable.

(para. 140)

2. considerable scope exists for allowing the local community a role in planning and development without endangering the national interest.

(para. 140)

3. there is scope for ensuring a greater right of involvement of the citizen in the existing planning procedures.

(para. 143)

4. there should be much more scope than at present for the communities affected, other interests and other departments to put forward their views on land use intentions.

(para. 77)

5. with the growth of the Canberra community difficulties have begun to arise with the system of planning, particularly with proposals for urban "infill" and redevelopment, and a greater need for public involvement is now evident.

(para. 170)

6. a co-operative and comprehensive system of information sharing and exchange, consultation and co-ordination is essential to allow a constructive contribution by interested members of the community at the time when that contribution can be taken into account and made use of by those responsible for making the final planning decisions.

(para. 127)

7. (a) public participation should occur from the earliest stages of the production of Structure and Development Plans.

(b) the community should have the opportunity to have a part in developing the goals that subsequent planning policies are designed to achieve.

(para. 173)

The Committee endorses the general concept of public participation in planning because it believes that:

1. there should be a continuous dialogue between the planners and the community at all stages of the planning process;

2. the whole planning process should be open and reasons should be given for decisions;

3. the public should be able to observe and intervene in the planning process; and

4. there should be some mechanism to enable the citizen to see that his contribution has been considered.

(para. 138)

The Committee recommends that:

1. to make public participation more effective the Minister for the Capital Territory:

   (a) develop a program to inform the community of the objectives, procedures and language of planning so that the participation of the community in planning will become increasingly informed and instructive; and

   (b) ensure that the planners are trained in the skills of communication with the public and to recognise the range of values in the community for which they are planning.

(para. 138)

2. there should be provision for the Minister for the Capital Territory and the Government to be informed of local views on future works. To enable this to happen at an early stage the Committee recommends that the three-year proposals and any firm long term programs of

NCDC should be tabled in the ACT Legislative Assembly which could report to the Minister making recommendations.

(para. 194)

C. Structure and Development Plans

The Committee concludes that:

1. for a planning and development control system to work effectively, the activities of all agencies involved in the process including public and private sector activities, should be subject to the controls imposed by the planning system.

(para. 151)

2. the experience of other capitals underlines the importance of ensuring that planning and development control is centralised, integrated and co-ordinated.

(para. 156)

3. NCDC is generally well regarded by the majority of residents of Canberra and the ACT.

(para. 125)

4. (a) many of the difficulties that State Governments have experienced with their planning systems have been avoided in Canberra.

(b) the system has strengths which it is important to preserve and was at its most effective when the task was to create the infrastructure for the community and when NCDC was mainly engaged in "broad acres" development.

(para. 167)

5. the adoption of a system of Structure and Development Plans would provide an opportunity for the range of contributions that a number of witnesses have suggested be made to the planning process.

(para. 164)

6. if a Structure and Development planning system is introduced in the ACT it should be given statutory force.

(para. 165)

7. a system of Structure and Development planning for the ACT, with statutory force, would ensure that current policy is stated and accessible to all who are involved in the planning and development process and would ensure that the community has a role in that planning process.

(para. 166)

8. the unified and generally consistent approach to and control of planning and development under a single statutory authority should be retained.

(para. 167)

9. (a) all those with interests and investments need to be quite clear about planning principles which must be widely known, accepted and enforced.

(b) the planning system should be a more accessible one.

(para. 169)

10. provision should be made for planning:

- at the regional level (i.e. the South East Region of New South Wales and the ACT);
- at the territorial level for the A.C.T. itself;
- at the metropolitan level which embraces North and South Canberra and the new towns of Woden-Weston Creek, Belconnen and Tuggeranong and is essentially the area covered by the 'plan of lay-out of the City of Canberra';
- at the town level; and
- at the local neighbourhood level.

(para. 172)

11. growth should henceforth be at a more uniform rate not subject to the sudden sharp rises and falls that have characterised the past. It is considered that the proposals made by the Committee in this report should facilitate this objective by providing a framework within which long and shorter term policy options can

be declared. The impact of government policy on the ACT economy must also be acknowledged and policies devised to encourage a steady rate of growth and it is hoped that governments will respond to this challenge.

(para. 169)

12. the Joint Committee on the ACT seems now to be perceived at times as a quasi-appeal body by persons objecting to particular planning proposals. If left as it is the procedure would no doubt evolve still further. However, there must be considerable doubts as to whether the role that is emerging for the Committee is an appropriate one.

(para. 84)

13. it is not appropriate that a committee representing the national interest should become involved in acrimonious disputes at the neighbourhood level simply because of the absence of any other mechanisms for the proper examination of grievances. This is considered to be a role much more appropriate for the ACT Legislative Assembly and its committees.

(para. 85)

The Committee recommends that:

1. **the National Capital Development Commission Act be amended so that NCDC's role with respect to planning and development of the City of Canberra be extended to include the whole of the Australian Capital Territory.**

(para. 171)

2. **the National Capital Development Commission Act be amended to provide for a system of Structure and Development Plans.**

(para. 173)

3. **the responsibilities of the Minister for the Capital Territory, as final arbiter in the preparation of the plans, be set out in the legislation.**

(para. 173)

4. **under the legislation the Minister for the Capital Territory be responsible for securing consistency and continuity in the framing and execution of a comprehensive policy with respect to the use and development of all land in the ACT in accordance with the Structure and Development Plans for the ACT.**

(para. 173)

The Committee envisages that:

1. legislation would set out the following steps for preparation of the Structure Plan:

   - NCDC would at the Minister's direction, publish a statement that a Structure Plan is to be prepared which would set down broad planning objectives and the policies by which these would be achieved. That statement would also invite submissions from the public to be made within a specified time;

- a program of public consultation would then be undertaken to establish preliminary goals;

- after considering the submissions and consultations NCDC would prepare a draft Structure Plan, make it readily available to the public and publicise it for a specified period;

- public announcements would call for submissions on the draft Plan within a specified period of time. Consideration of the draft Plan would include the goals, policies and physical aspects of the Plan;

- the draft Plan would at the same time be tabled in the Parliament and the ACT Legislative Assembly, for consideration in whatever way they may each determine;

- NCDC would respond to and comment on all submissions received, and the submissions, comments and NCDC's final recommendations would be tabled in the Parliament and the ACT Legislative Assembly;

- the Minister would then consider reports from both the Parliament and the ACT Legislative Assembly and, after undertaking such further enquiries as considered necessary, approve and promulgate the Structure Plan, incorporating in it such amendments to the draft as the Minister might consider desirable. Enquiries by the Minister could take the form of an

examination in public (described in para. 165) or the referral of certain matters to the Joint Committee on the ACT for inquiry and report; and

- the approved Structure Plan would then be tabled in both Houses of the Parliament.

(para. 176)

2. the appropriate legislation would set out the following steps for the preparation of Development Plans:

- NCDC would, at the Minister's direction, publish a statement that a Development Plan for a specific area is to be prepared. The statement would invite submissions to be made, within a specified time and consistent with the Structure Plan;

- NCDC would then prepare a draft Development Plan for a particular area, showing any existing uses and proposing plans and policies for future uses;

- each draft Development Plan would be put on public exhibition for a stated period of time, within which objections and comments from the public could be lodged with NCDC;

- NCDC would then forward an amended draft Plan, objections and submissions and its response to all objections and submissions to the Minister;

- the Minister would approve the Plan, with or without further amendment, after first submitting it to the ACT Legislative Assembly for advice and, if he considered it necessary, also to the Joint Committee on the ACT for comment. The Committee envisages that in exercising his discretion to refer the Plan to the Joint Committee on the ACT the Minister would have regard to the need for that Committee to consider matters of national capital concern. The Committee also envisages that the Minister could himself initiate independent enquiries, on environmental considerations for instance, before approving the Plan;

- once approved, the Plan would be required to be tabled in Parliament before coming into effect, thereby retaining for the Parliament the right to disallow it. It is envisaged that the Joint Committee on the ACT would, at its discretion, exercise scrutiny on behalf of the Parliament;

- on becoming law, the Plan would replace the plan of lay-out of the City of Canberra and the procedure for bringing down such a plan of lay-out, for the area concerned. The Plan must be consistent with the Structure Plan and provide roadways or reserve corridors for roadways included in the Structure Plan; and

- additions or amendments to a Development Plan would be carried out in the same manner as the preparation of the Plan itself (but insofar as Development Plans specify land use, the specified use can be altered by variations to lease purpose clauses. Authorised variations would become part of the Development Plan).

(para. 178)

D. Land Use Tribunal

The Committee recommends that a land use tribunal be established.

(para. 182)

Without seeking to determine all areas of jurisdiction, the Committee believes that the tribunal should:

- hear appeals against decisions of NCDC and DCT in relation to permits for proposed works, having regard to policies as indicated in Structure and Development Plans.

- hear appeals in cases involving the meaning of ordinances controlling land use as well as planning principles.

- hear appeals to decisions of DCT in relation to variations of lease purpose clauses.

(para. 182)

- operate as informally as possible to make it readily accessible to the community.

(para. 183)

- not deal with prosecutions for breach of lease purpose clauses. These should be dealt with by established courts of law.

(para. 185)

The Committee recommends that:

1. all relevant ACT ordinances and other laws relating to the ACT should be reviewed and amended where appropriate so that, as far as is practicable, matters concerning land use in the ACT should be able to be taken on appeal to the proposed land use tribunal and so that the ordinances and laws are consistent with the Committee's other recommendations in this report.

(para. 184)

2. matters which are open to appeal to the land use tribunal should not at the same time be appealable to the Administrative Appeals Tribunal.

(para. 184)

E. Community Councils

The Committee concludes that:

1. there is a need for community level organisations which can both represent the local community and act as a point of contact for planners and other government agencies to approach that community.

(para. 187)

2. Canberra communities should be encouraged to establish their own community councils.

(para. 189)

3. to encourage the establishment of community councils and to provide basic facilities, properly constituted community councils should receive some minimal government funding.

(para. 190)

4. the members of community councils should not be paid, nor should community councils have the power to levy charges or rates on the community.

(para. 190)

The Committee recommends:

1. the establishment of community councils on a voluntary basis.

(para. 192)

2. that the Minister for the Capital Territory propose the establishment of community councils and suggest the appropriate geographic areas that would constitute 'communities', the population that should be covered and functions to be administered.

(para. 192)

F. Environmental Matters

The Committee concludes that:

1. the procedures outlined in this report for the preparation of Structure and Development Plans are better adapted to providing for community involvement across the broad spectrum of planning and development activity in the ACT than could be achieved by a wider application of the Environmental Protection (Impact of Proposals) Act.

(para. 90)

2. the Structure Planning system will require examination of the environmental impact of urban development at a much earlier stage and with a wider perspective than generally occurs at present under the impact of proposals legislation.

(para. 179)

3. there should be memoranda of understanding between the Minister for the Capital Territory and the Minister for Science and the Environment to ensure that the system of Structure and Development Plans and the

Environmental Protection (Impact of Proposals) Act work in a comprehensive and complementary manner.

(para. 179)

The Committee recommends that:

1. the operations of the Environmental Protection (Impact of Proposals) Act be examined in relation to the proposals put forward in this report for the preparation of Structure and Development Plans.

(para. 90)

G. Regional Planning

The Committee concludes that:

1. there is a strong case for improved links between a regional organisation and those agencies involved in the planning of Canberra.

(para. 56)

The Committee recommends that:

1. the Commonwealth Government and the State Government of New South Wales give immediate attention to the establishment of a regional advisory body for the South East Region of New South Wales and the ACT as recommended by the South East Region Joint Steering Committee.

(para. 195)

2. both Governments concerned table in their respective Parliaments a statement on joint policy for the region, before the conclusion of the 32nd Commonwealth Parliament.

(para. 195)

Senators J.J. Long and A. Rae pose for the photographer, supposedly to settle the dispute about the site for the national capital. June 1910.

Mr King O'Malley, Minister for Home Affairs, drives the peg to inaugurate the construction of the national capital. February, 1913.

CHAPTER 1 - BACKGROUND TO PLANNING IN CANBERRA

1. In accordance with section 125 of the Constitution the Federal Parliament met in Melbourne for its inaugural session and continued to meet there for the next 26 years until the temporary Parliament House was opened in Canberra in 1927. A decision to locate the national capital in the Yass/Canberra district had been made in 1908 and was embodied in the Seat of Government Act 1908. The Act provided that the National Capital should comprise an area of not less than 2330 square kilometres and that it have access to the sea. Access to the sea was to be provided by the surrender of what is now the Jervis Bay Territory which was to be linked with the Capital Territory by the construction of a railway.[1] In April 1911 an international competition for the design of the new city was launched. First prize in the competition was won by Walter Burley Griffin, a landscape architect from Chicago. Criticism that the winning design was too extravagant, elaborate and costly caused the Government to refer the three best plans selected from the competition to a departmental board of experts for report. On 25 November 1912 the board reported that it was unable to recommend any of the designs and put forward for approval a design of its own, incorporating what it considered to be the better features of the designs referred

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1. Seat of Government Act 1908 and Seat of Government Acceptance Act 1909. The agreement between the governments of the Commonwealth and of N.S.W. as to the surrender of the Capital Territory and of the Jervis Bay Territory are schedules to the above Acts and the Seat of Government Acceptance Act 1922.

to it and embodying certain other suggestions.[2] After presenting the report to Parliament the Minister for Home Affairs, the Hon. K. O'Malley, formally gave his approval to the board's plan and issued instructions for work to commence immediately. The ceremony inaugurating and dedicating Canberra as the national capital took place on 12 March 1913. A change of government followed with the new Government inviting Burley Griffin to visit Australia to participate in the implementation of the board's design. Burley Griffin refused to co-operate with the board and after a number of exchanges was asked to prepare a report as to how his proposal might be implemented. Consideration of the report led to the decision to revert to his original plan. The Report Explanatory, as it is known, is an historic document and a key to the whole Griffin plan.[3] Burley Griffin remained in control of the work at Canberra, implementing and revising his plan until 31 December 1920, when the Federal Capital Advisory Committee was established under the chairmanship of Sir John Sulman. Burley Griffin was invited to sit on this committee as a member but refused. He had succeeded, however, in obtaining acceptance for the general concept of his design which was by then well established on the ground.

2. The Federal Capital Advisory Committee was established to inquire into and advise the Government on the progressive construction of the city with a view to enabling the Commonwealth Parliament to meet and the central administration of the Commonwealth Government to be established in Canberra as early as practicable (and on the basis of the acceptance of the plan of lay-out of the

2. See Parliamentary Paper No. 65 of 1912.

3. See Parliamentary Papers Nos 153 and 346 of 1914-15-16.

national capital city by Walter Burley Griffin). The Committee in its first report recommended changes to the concept which were not accepted by the Government[4] which did, however, concede to the Committee the power of recommending amendments to the Griffin plan provided they were not amendments on points of principle. Since that time no official suggestion has ever been made that the Burley Griffin plan be abandoned. The Committee remained in existence until July 1924 when it was superseded by the Federal Capital Commission (FCC)[5].

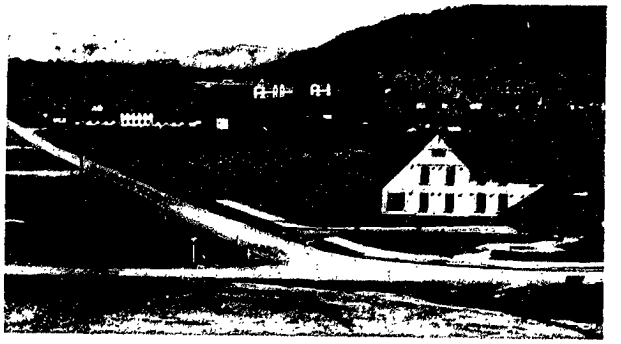
3. The FCC began its operations on 1 January 1925 under the Chairmanship of Mr John Butters. Mr Butters occupied the position on a full-time basis while the other two members were part-time. The FCC was given powers to plan, develop and administer Canberra. The Seat of Government (Administration) Act 1924, as well as providing for the establishment of the FCC, included as section 4 the following requirement:

> the Minister shall publish in the Gazette a plan of lay-out of the city of Canberra and its environs.

The plan eventually gazetted in 1925 was the general plan as prepared by Burley Griffin with modifications as approved up to that time. As subsequent modifications or variations to the plan have been approved it has been correspondingly

4. Construction of Canberra, First General Report of the Federal Capital Advisory Committee, Parliamentary Paper 134, 1920-1, Canberra, 1921.

5. The Seat of Government (Administration) Act 1924 provided for the establishment of a statutory corporation to be called the Federal Capital Commission.



Ainslie Hotel in 1929 with Civic in the background.

amended. The gazetted plan contained no reference to zoning, being merely a road plan without explanation, legalizing Burley Griffin's formal lay-out but not confirming his zoning principles as embodied in his Report Explanatory. The Report Explanatory has, however, continued to be an influential document although it has had no statutory effect. In addition, section 4, by providing the plan could only be varied by instruments tabled in the Parliament and which either House could disallow, ensured that Parliament became the custodian of the plan. The safeguards still stand in section 12A of the Seat of Government (Administration) Act.

4. The Federal Capital Commission operated in Canberra until 1927. It achieved much in this period when the population was approximately 5,700 but its operations were often resented by both the Parliament and the local community in Canberra. Its relative freedom from parliamentary and Public Service Board supervision was widely criticised. It was criticised by residents of the

Territory who complained of its approach to government as a business undertaking and the lack of provision for local participation in government. Opposition to the Commission grew and in 1927 a Representation League was formed in Canberra. Its aim was to gain representation in Parliament for the Territory. It also wanted an elected representative to have full voting rights on the FCC.[6]

5. The strains of the great depression, a reduction in development expenditure and the resignation of Sir John Butters led a new Government in 1930 to disband the Federal Capital Commission and the Territory became the responsibility of the Ministers for Home Affairs, Health, Works and the Attorney-General. In 1932 the functions of the Department of Home Affairs were transferred to the newly established Department of the Interior. An Advisory Council had been established by Ordinance in 1930 to advise the Minister for Home Affairs. The Advisory Council in its early years criticised the lack of funds, division of control and procrastination and postponement of the development of the city under the departmental form of government. These criticisms by the Advisory Council led the Government in 1938 to establish the National Capital Planning and Development Committee consisting of officials of the Departments of Interior, Works and Health and outside advisers on planning and architecture. Its function was to advise the Minister for the Interior on matters the Minister referred to it. On its own initiative it could advise him on other matters concerning city and regional planning for the national capital. Construction in the city came almost

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6. See pages 12 onwards of the report of the Joint Committee on the Australian Capital Territory, Self-Government and Public Finance in the Australian Capital Territory, Canberra, December 1974, Parliamentary Paper No. 26 of 1975.

to a standstill between 1930 and 1948 during the depression and World War II. This slow-down in growth led to considerable idle capacity on major works, such as the water storage at Cotter Dam.

6. In a recent book on the Government of the Australian Capital Territory, Professor Ruth Atkins identified other causes for the failure to proceed with Canberra's development than the depression and the war.[7] The accelerated growth under the FCC resulted from a commitment by Government to prepare the capital for the official opening of Parliament in 1927. One reason why the momentum was not sustained was the difficulty of transferring public service departments to Canberra at this early stage in its development. Public servants did not welcome the transfer to Canberra because of personal disruption and ensuing isolation. It was difficult enough to recruit a service in competition with State Public Services in Sydney and Melbourne without the problem of transfer to Canberra, as yet raw, unfinished and isolated. In addition, little in the way of financial assistance or inducement was being offered to public servants prepared but not necessarily required to transfer.[8]

7. During the Second World War a great expansion of the public service occurred but the new departments created had to be located in Sydney and Melbourne because of the ready availability of office accommodation which was not available in Canberra. After the war the public service

7. R. Atkins, The Government of the Australian Capital Territory, University of Queensland Press, 1978.

8. The Government of the Australian Capital Territory, pp. 48-55.

continued to grow. A key decision in Professor Atkins' view was the decision to locate the new Department of Housing and Construction in Melbourne rather than Canberra. Had the Department been located in Canberra then it might have been expected that the Department would have supported development in the ACT. As the expansion of the public service had taken place in Melbourne and Sydney there developed an interest on the part of the public servants themselves to stay there which aggravated the problem of transfer to the ACT.

8. Professor Atkins concludes that the decision to proceed with the development of Canberra represented the emergence of a consensus during the fifties as the inefficiencies of the dispersed public service were recognised. The Senate Committee report in 1955 gave expression to that view.

The Senate Select Committee on the Development of Canberra

9. In 1954 a Senate Select Committee was appointed to inquire into and report upon the development of Canberra in relation to the original plan and subsequent modifications. The Committee listed the following as problems which confronted it in making its report[9]:

- The provision of a form of administration which would permit unified direction and co-ordinated action, and which should have as its purpose the early completion of departmental transfers to Canberra.

9. Report from the Select Committee on the Development of Canberra, Parliamentary Paper S.2., 1955, Canberra, p. 70.

- The need for the city to be developed in a manner befitting a national capital with the protection of architectural standards and aesthetic values.

- The need to safeguard the principles of the city plan while at the same time providing for adequate forward planning, and the making of modifications or variations where desirable.

- The need to ensure that action taken to secure the protection of architectural standards and to safeguard the principles of the city plan should not unnecessarily hamper or delay departmental transfers, and the development of the city.

- The need for some form of local government and local expression in the making of decisions affecting the city's development.

10. Among the recommendations of the Select Committee were proposals that:

- Governmental control of Canberra be through a Minister holding a separate portfolio for the A.C.T.

- The system of divided departmental control of Canberra be replaced by a single authority. The authority should be constituted by a Commissioner responsible to the Minister for the administration, planning, construction and development of the national capital and have powers, subject to necessary modification, similar to those of the old Federal Capital Commission.

- Parliamentary oversight be exercised by a Senate Standing Committee on the Development of Canberra.

- A Legislative Council be created to carry out the legislative functions at a "State" level in respect of matters enumerated in the report. The Council would have no executive or administrative functions and the Parliament would retain the right of disallowance of any Ordinance introduced under the legislative powers of the Council. It should consist of six elected members, six nominated members, and the Commissioner of the authority as ex-officio president.

- As circumstances warranted, a Municipal Council for the City of Canberra and a Shire Council for the balance of the A.C.T. be established to deal with local government functions.

11. The situation revealed by the Senate Select Committee's report prompted the Government to take two steps to facilitate the future growth of Canberra. Sir William (later Lord) Holford, the Professor of Town and Country Planning at the University of London and an international authority in his field, was invited to examine the problem of Canberra's development and, during the same period, the National Capital Development Commission (NCDC) was established.

12. In his report[10] to the Government Sir William Holford surveyed the manner in which Burley Griffin's plan had been implemented and the difficulties engendered by social and economic progress, which could be encountered if the original plan was not subject to amendment. He stated that, in the light of past experience the choice for the future Canberra would be one of two alternatives: it would remain either a divided city, with the flood plain of the Molonglo as an open wedge between the federal town on the south bank and the municipality on the north, or it could become a unified city, metropolitan in character if not in size, a cultural and administrative centre and a national capital. Holford felt that three objectives should be achieved; a garden city, a modern system of communication by road and air designed with an eye to future trends and development, and that Canberra should eventually become a centre for several aspects of Australian culture.

13. After discussing the implications of his proposals, Holford turned to the administrative machinery necessary for their implementation. He felt that in order to organise and unify action a full time Commissioner should be appointed for a term of years and that the Commissioner should have the advice of a "director of planning" and a panel of experts. A small staff would be necessary to assist the director but, for the most part, he would depend upon consultants for specialised and professional services of a high standard and with wider experience than could be obtained locally, and on existing departments.

10. Sir William Holford, Observations on the Future Development of Canberra, A.C.T. Government Printer, Canberra, 1958.

14. Holford suggested that it might be necessary for the Commissioner to occasionally ask the departments for the formal secondment of one or more officers for agreed periods or for reports and designs to be prepared to terms of reference prescribed by the director. Holford also proposed that sufficient finance should be made available to enable realistic plans to be drawn up and adhered to during a continuing program although proposals for expenditure were to be made subject to the examination of a Senate Committee in addition to the usual parliamentary debates. He did not believe that there should be periodic and detailed scrutiny of expenditure in the course of operation as this would provide too many opportunities for captious criticism. Holford's report was tabled in Parliament on 15th May 1958, but was preceded in 1957 by an Act to establish a National Capital Development Commission (NCDC). The Commission commenced operation on 1 March 1958. Parliament had previously adopted another recommendation of the Senate Select Committee which was for the appointment of a parliamentary committee to keep under continuous review the development of Canberra. Although the Senate Committee had proposed a committee of the Senate it became evident that parliamentary interest was sufficiently wide to warrant the establishment of a Joint Committee. In March 1957 both Houses resolved to appoint a Joint Committee on the Australian Capital Territory[11]. That Committee first met on 11 April 1957.

11. Both Houses resolved to appoint a joint committee on the last sitting day in 1956 but time did not permit the appointment of members.

The National Capital Development Commission

15. The situation in Canberra at the time NCDC began its operations has been described by one writer as follows:

> Not much excuse was to be seen either, in the quality of the town itself. Dismembered parts of it retreated up various hillsides. Tracks led dustily across dry paddocks to lonesome squares of shops - short bursts of ceremonial boulevard collapsed to cross creeks on narrow wooden bridges, with regiments of elm and fir giving way abruptly to native scrub. A dairy farm on a flat flood plain separated groups of garden suburbs whose mannered geometry and regular government hedges spoke of 'planning' with arcadian monotony and inconvenience. For a long time there were no pubs. Visitors agreed with compulsory residents about the good sheep station spoiled, 'the seven suburbs in search of a city', 'the city without a soul', or a main street either. Besides golfers and rose growers, only a few rural spirits really enjoyed it for the mountains and the peace and the trout. There was not even much sense of importance. Most government was still done elsewhere. Parliament met less often than almost any in the world, its members coming by tedious overnight journeys to stay as briefly as possible in unlicenced boarding houses. They were the only reasons for the town's existence.[12]

16. In 1959 NCDC produced its first five year plan.[13] If Canberra was to be a worthy national capital, the Commission argued, it must have features which distinguish it from other cities. NCDC identified the following features that would give character to the city:

12. Hugh Stretton, Ideas for Australian Cities, Adelaide, 1974, p.30

13. NCDC, Planning Report - covering proposals for the five year period 1959-1964, Canberra, 1959, p.2.

- The parliamentary triangle was to be developed as a national area with the monumental buildings symbolic of government set in the lake system as originally conceived by Burley Griffin.

  > It is in the design of this landscape, the views it affords along the main axial lines and avenues and the relationship of one group of buildings to another, that the success of Canberra as a city of world standing will depend.[14]

- A recognition that Canberra was essentially a garden city which was perceived by NCDC as establishing a tradition in urban living, peculiarly Australian.

- In order that it would function effectively as a seat of Government it was necessary to diversify to ensure the provision of an employment base and a range of work opportunities particularly for the young.

- A safe and efficient transportation system.

The report concluded:

> The studies of the problems and possibilities of Canberra that have been made over the past nine months are the most comprehensive since the initial surveys early in the century. Three important conclusions have emerged: firstly, that the original ideas of the Griffin plan for the design of the Central Areas are basically sound: secondly, that the Gazetted Plan can be made to serve the present and future needs of the city provided it is amended and extended from time to time in the manner indicated in this report: and thirdly, that with the provision of a number of

14. Planning Report 1959-1964, p. 2.

special features in the central area, involving relatively small expenditure, Canberra can be endowed with characteristics which will give it great distinction among the capitals of the world.[15]

17. By 1962 when it presented its second report on Canberra's development[16] NCDC was able to report that the population had grown from 35,000 to 65,000 and was continuing to grow at the rate of 12 per cent annually. It had become in the short period since NCDC's inception the largest inland city in Australia. The Commission reiterated the importance it attached to the national capital aspects of the city:

> The first purpose of Canberra is to be the Seat of Government for the Commonwealth of Australia. Out of this initial purpose other functions grow.[17]

The report highlighted the emphasis placed by NCDC on satisfying the needs of the growing community:

> Much of the Commission's forward planning must be directed at satisfying the needs of a rapidly developing community, in which the emphasis will continue to be on young families. Their social, economic, cultural, recreational, health and welfare requirements all have to be considered.[18]

18. The Commission's 1962 Report reveals its preoccupation with creating the essential environment with emphasis on the development of North and South Canberra and with an eye to further development in Woden and Belconnen. NCDC had

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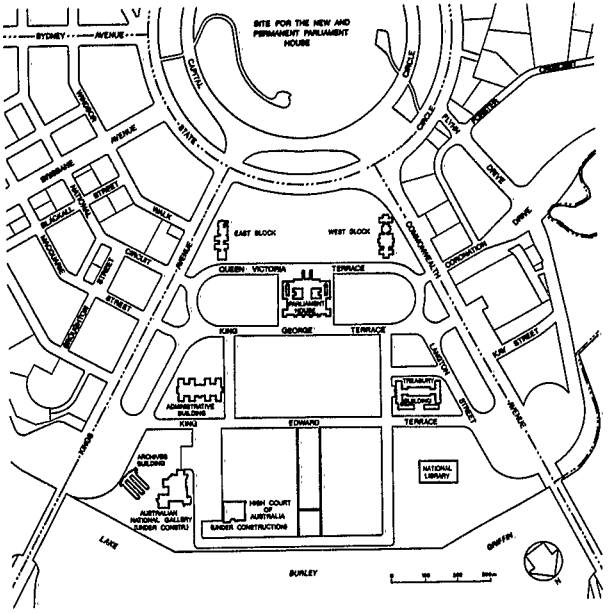
15. Planning Report 1959-1964, p. 15.

16. NCDC, Canberra Development 1962-1967, Canberra, 1962.

17. Canberra Development 1962-1967, p. 13.

18. Canberra Development 1962-1967, p. 11.



The present lay-out of the Parliamentary Triangle.

yet to formulate a grand design for the future. This came with the Commission's 1964 Report, The Future Canberra, subtitled "a long range plan for land use and civic design".[19] Historically this is a key statement of planning intention and has largely been adopted in the development of Canberra.

19. The main choice to be made, when considering the future plan, as seen by NCDC was whether to gradually intensify density at existing centres and continually extend the fringes of existing districts along lines similar to the traditional pattern of growth of other cities in Australia, or to preserve the open characteristics of the city, limit the extent of the existing districts and form new settlements in the surrounding rural areas.

20. The second option was the one chosen: "to provide for growth by the development of a series of clearly defined districts occupying the valleys between the main hills in the vicinity of the existing city". The report went on:

> To preserve the identity of these urban areas and to maintain the aesthetic advantage of the tree clad hills, the high land has been left free of buildings except for a few isolated installations ... The hills and ridges will thus form part of a parkland system ... which it is proposed should be permanently established as a distinct feature of the future city. These parklands, apart from their value as open country, will have a special role in providing corridors for future transport services ...[20]

19. NCDC, The Future Canberra - A long range plan for land use and civic design, Commonwealth Government Printer, Canberra, 1964.

20. The Future Canberra, p. 27.

In the report NCDC declared that the underlying principle of this concept was that the city's growth should be confined to the communication (transportation) lines identified. What was proposed was a system of linear growth along corridors identified in the report. These, it was stated, "indicate how the city should be extended indefinitely, if required, along the lines of the planning principles defined by adding additional districts with a means of communication located in wide transportation reservations."[21] Transportation was considered a crucial element in determining the principles for the city's growth. An extremely important assumption underlying the proposal was also expressed:

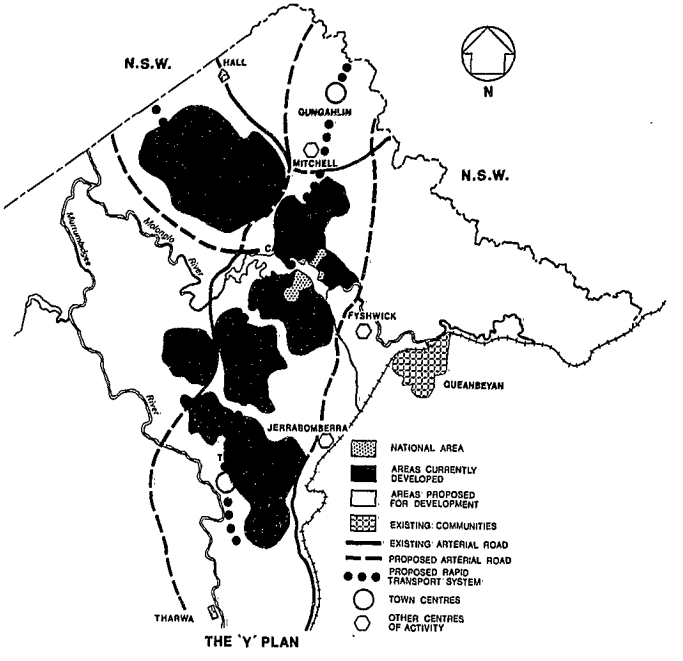
> The plan now proposed for the future city assumes that Canberra will remain a car reliant society - that is to say the percentage of people who use public transport for the critical journey to work will remain relatively small ... The basic assumption that the Canberra community will continue to rely heavily on use of private cars brings with it its own problems and particular needs which must be met.[22]

21. In 1970 the Commission produced a further document intended to indicate its future planning intentions which it published as Tomorrow's Canberra.[23] Many of the concepts put forward in The Future Canberra were refined. In particular the concept of linear developments evolved into what is now described as the "Y" plan. In preparing its 1970 report NCDC devised six optional land use patterns for towns of 50,000-150,000 people. Three computer models were used to evaluate the six optional general plans: a retail

21. The Future Canberra, p. 30.

22. The Future Canberra, p.29.

23. NCDC, Tomorrow's Canberra, ANU Press, Canberra, 1970.



THE 'Y' PLAN

market potential model; a travel demand model; an employment distribution model. This evaluation indicated that the optimum size for towns seemed to be between 100,000 and 150,000 people. Town centres should provide between three quarters of a million and one million square feet of retail space. Town centres could probably accommodate between 10,000 and 15,000 employees before access arterials became congested.

22. In regard to road transport it was concluded that expressways penetrating the towns would be a poor solution to the long range transportation needs of the Canberra region. Therefore, a system of arterial spines and peripheral freeways should be adopted. To facilitate public transport, growth should be channelled into a few radial corridors to increase the intensity of point-to-point movements and that the central areas should be as large an employment centre as possible short of destroying its symbolic function.[24]

23. A general planning concept was prepared and tested. Towns were grouped into three corridors radiating from the central area and forming a "Y". There were three towns in the southern corridor and two each in the north-west and north-east. The main element of the transportation system was to be a public transportation/arterial road spine running centrally along the corridors. This was to be supplemented by a peripheral freeway system defining the edges of the corridors and intended for all inter-town, regional and long distance movements other than those between adjacent towns. Freeways and central spines were to

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24. NCDC, Development of the New Towns of Canberra, A case study prepared for the United Nations Conference on Human Environment, Stockholm. June 1972, Canberra, 1971, pp. 15-16.

be connected by a local arterial system focussing on each town centre. The plan as shown was for about one million people. Generally, it used all the land capable of being developed to the south of the existing city without impinging on the water catchment areas. It was capable of providing for continuing growth on the same pattern by extensions of the two northern spines. This would involve eventual development outside the boundaries of the A.C.T. and within the State of New South Wales and was to that extent dependent on State decisions.[25]

24. From mid-1958 when NCDC came into full operation, the population of Canberra increased from 39,000 to 213,000 at March 1978.

> Over eighteen years (to 1976) the Commission had put in roads and services for 50,000 building blocks, built 17,000 houses and flats (of a total of 51,000 completed in the period), provided 55 schools, 73 sports grounds and 80 tennis courts, built three dams for water supply and in 1977 was completing the most elegant sewage works in the world (Lower Molonglo Water Quality Control Centre). All these efforts are part of what is described in the Commission's annual reports as 'normal basic community requirements' and generally account for about 80 per cent of the Commission's construction expenditure. Most of what is left is spent on 'Government offices' (15 per cent). The remaining 5 per cent is under the heading 'National Works'. Office buildings for about 20,000 public servants have been completed, but some 10,000 are still housed in temporary buildings and rented space. 'National Works' have included the creation of Lake Burley Griffin, a series of massive extensions to Parliament House, the neo-classic National Library, the Australian Mint, a National Athletics Stadium and buildings under construction for the High Court of Australia and the National Gallery. In 1976 dollars, the Commission's construction expenditure in 18 years amounted to about $1,500 million.[26]

25. Development of New Towns of Canberra, p. 17.

26. Peter Harrison, "Changing Urban Administration and Policy in the A.C.T.", a paper given at the UNESCO Seminar on Urban Management, Adelaide, 1977. (Not published: Exhibit 14 in the records of the inquiry).

25. The ACT is governed under section 122 of the Constitution as a Territory surrendered by the State of NSW and accepted by the Australian Government. Section 122 provides

> The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.

Under section 122 the Commonwealth therefore has wide power to make laws for a territory. This power has been interpreted to include all the power of a State Parliament in respect of a State as well as the powers the Commonwealth exercises in its own right.

26. In making laws specifically for the ACT the Parliament can either legislate directly or delegate its law making power to an appropriate authority. Most of the laws applying in the ACT are statutory rules made pursuant to section 12 of the Seat of Government (Administration) Act 1910 which authorises the Governor-General to make ordinances having the force of law in the Territory. The section requires ordinances to be tabled in each House of the Parliament. Either House may disallow an ordinance on notice given within fifteen sitting days after tabling. On disallowance the ordinance becomes void and of no effect. The provisions relating to tabling and disallowance also apply to regulations made under ordinances.

27. Laws made for the ACT are administered by departments and instrumentalities of the Commonwealth. The only elected body representative of the ACT community, the ACT Legislative Assembly[1], has very limited legislative powers. Generally, the most it can do is to propose legislation and to influence the content of law by persuasion. Section 11 of the Legislative Assembly Ordinance 1974, gives the Minister a discretion as to whether to refer an ordinance to the Assembly and a discretion whether to accept or reject its advice.

28. Most ordinances are prepared by Government departments or instrumentalities and submitted to Executive Council through responsible Ministers. Statutory authorities in the ACT such as the Capital Territory Health Commission and the ACT Schools Authority have been established by ordinance and given the power of proposing ordinances in relation to their functional areas. Ordinances take effect by virtue of publication in the Commonwealth Gazette and remain in force unless disallowed in accordance with the Seat of Government (Administration) Act by either House of Parliament. The dominant role in relation to all aspects of ACT government and administration is still played by the Commonwealth.

29. The Minister principally responsible for ACT matters is the Minister for the Capital Territory. The Department of the Capital Territory (DCT) and NCDC come under the Minister's administration. NCDC is responsible for planning, development and the government element of

1. The Minister for the Capital Territory has recently announced that the name of the Assembly will be changed to the A.C.T. Assembly, but in this report the Committee has used the existing title.

construction of Canberra. DCT administers public functions of the city and Territory including road transport, housing, welfare and a range of functions which elsewhere in Australia are the responsibility of State governments and local authorities. The Commonwealth, the owner of ACT lands under the leasehold tenure system, is responsible for the management of leased urban and rural lands and unleased lands used for water catchment and storage, forestry, recreation and institutional purposes. DCT is responsible for planning outside the Canberra city area and for the Jervis Bay Territory. It should be stressed that DCT is currently the authority responsible for planning and development outside the gazetted area of the City of Canberra and its environs. NCDC is limited to planning and development within the area gazetted as the City of Canberra. Other ministers most directly involved through their departments' responsibilities in the ACT include the Ministers for Education, Health, Construction, Social Security and the Attorney-General but nearly every Commonwealth department has some responsibility for ACT matters. In the non-government sector, developers, commercial entrepreneurs, home builders and community and other groups may be consulted in the course of the planning and development process. Apart from the Joint ACT Committees' public hearings on variations to the City Plan or proceedings under the Environmental Protection (Impact of Proposals) Act 1974 there is no formal requirement that the public be informed and involved in planning proposals.

30. Since 1972 there has been a move towards administrative independence with the establishment of a number of special purpose statutory authorities. The Capital Territory Health Commission and the ACT Schools Authority are the most important of these. A variety of boards, trusts and authorities to regulate different aspects of commercial and cultural activity in the ACT have also

been established. Some of these such as the ACT Electricity Authority, the ACT Milk Authority, the Canberra Retail Markets Trust and the Canberra Commercial Development Authority (which manages the Belconnen Shopping Mall) are concerned primarily with regulation of particular commercial activities. Others like the ACT Theatre Trust and the Canberra Public Library Service Advisory Committee are management and co-ordination bodies.

31. A feature of this development has been the form of management chosen. There being no responsible self-government in the Territory, these authorities and trusts are managed by governing bodies of various kinds accountable to Commonwealth ministers. The ACT Legislative Assembly nominates representatives to sit on many of these boards and authorities. This is the closest the Assembly comes to the exercise of some executive role in the Territory. In all cases finance is provided by annual appropriation by the Commonwealth Parliament. Rates, taxes, service charges and lease sale revenues are paid into Consolidated Revenue. A source of considerable dissatisfaction for those in the Territory concerned with constitutional development has been the absence of operational accounts to explain the true financial position of the Territory.[2]

32. There has been discussion about the possibility of some form of self-government for the ACT since its foundation. An Advisory Council of partly elected and

2. See, Joint Committee on the Australian Capital Territory, Report on Self-government and Public Finance in the A.C.T., December 1974, Parliamentary Paper No. 26 of 1975, Chapter 6; and
Commission of Inquiry into Land Tenures, Final Report, February 1976, Parliamentary Paper No. 151 of 1976, Chapter 9.

partly nominated members was established in 1930 and remained in existence until 1974 when it was replaced by the fully elected ACT Legislative Assembly. Various proposals for self-government have been put forward at different times and in 1973 the Joint ACT Committee was asked to widen its inquiry begun in 1972 into State and Municipal costs and revenues in the ACT to include the question of self-government. The Committee recommended a form of self-government for the ACT. This proposal was for a parliamentary form of government with a territorial assembly responsible for the administration of a range of functions. The Committee favoured a system whereby the Commonwealth would retain full power over those aspects of Canberra's government that contained an important national capital or seat of government element. Other functions would be administered by a territorial assembly. The assembly would exercise executive control over these functions and would be responsible for initiating and passing all legislation. Parliament would exercise a power of veto in the national interest over all territorial legislation. The procedure for achieving this would be a disallowance procedure. There was to be no Minister for the Capital Territory as such, but a Commonwealth Minister would be responsible for those functions reserved by the Commonwealth.

33. In suggesting functions to be reserved to the Commonwealth the Committee identified all the land related functions and everything to do with planning, development and the administration of ACT leasehold. These functions were to be integrated with those already performed by NCDC, which was to become a development corporation. ACT residents would be represented on the board of the development corporation by nominees of the Legislative Assembly.

34. In its report on self-government for the ACT the Joint Committee concluded that responsibility for functions should be demarcated so that it would be clear for what the Legislative Assembly and the Commonwealth Government were each responsible. The Joint ACT Committee recommended that within allocated spheres of interest both governments should be free from interference by the other. It was recognised that the national interest in Canberra pervaded all the affairs of the ACT including those aspects of administration entrusted to the Legislative Assembly. It was recommended that the Parliament rather than the Government should protect the national interest and exercise the power of veto. This it was felt would allow the Assembly greater freedom of operation. The Government could always take action to prevent development of which it disapproved by exercising its legislative powers under section 122 of the Constitution. Since the publication of that report further studies have taken place.

Land Policy

35. Leasehold has been the only form of land tenure in the Territory since 1910. The Commonwealth has gradually acquired the title to the considerable acreage of freehold land (9,644 hectares) held in the Territory at the time the Commonwealth accepted sovereignty. The decision to have a leasehold in preference to a freehold system of tenure resulted from opinions expressed in debates in Parliament that ACT lands should remain under the control of the Commonwealth. This found expression in the Seat of Government (Administration) Act 1910 which provided that "no Crown Lands in the Territory shall be disposed of for any estate of freehold".

36. Land not required immediately for the purposes of the city, essential headworks and other public or broad-acre institutional purposes was leased for rural use under the Leases Ordinance 1918. These leases contained a clause enabling land required for development purposes to be withdrawn without payment of compensation except for lessee-owned improvements on the land.

37. The City Area Leases Ordinance first passed in 1924 has continued to be the principal law regarding title and use of land in the ACT. The provisions of the Ordinance are discussed in paras 60-78. The Ordinance has been amended over the years as Governments have adapted the leasehold system to suit the needs of the time. The history of land policy in the ACT is outlined in paras. 8.8 to 8.15 of the First Report of the Commission of Inquiry into Land Tenures[3] and in the evidence of NCDC and DCT to that inquiry.

38. The main features of the leasehold system as enacted in 1924 included the following:

- a distinction was made between residential and different types of business leases;
- lease terms were not to exceed 99 years;
- leases were to be disposed of by auction or tender, subject to reserve prices. The amounts bid at auction or the reserve price paid determined the unimproved values for the purpose of determining the land rent payable;

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3. Commission of Inquiry into Land Tenures, First Report, Canberra, November, 1973. Parliamentary Paper No. 76 of 1974.

- land rent, the first year of which was payable at auction, was to be 5 per cent of the unimproved value; and

- unimproved values were to be reappraised after twenty years and every ten years thereafter. Transfer of the lease by the Commonwealth was made subject to the lessee complying with conditions in the lease as to the erection of specified buildings and improvements on the land within a period of three years from entering into the agreement for lease (the value of improvement was also specified).

39. The leasehold system as it operates today is similar in many respects to that contained in the 1924 Ordinance but there have been a number of important changes which have altered the system in material respects. The method of disposal of leases has varied. In general during periods of rapid growth auction systems have been in force. In periods of decline leases have been available for immediate sale at reserve prices. Currently in the ACT there is a mixture of auctions and over-the-counter sales.[4] Pricing policy has been affected by fundamental changes made in 1970 which led to the abolition of significant land rent.

40. A basic theory underlying the concept of the Canberra leasehold system was that adjustable land rent would be levied on the leases based on the unimproved capital value of the land. The idea derived from the

4. Department of the Capital Territory, A.C.T. Land Development and Administration, AGPS, Canberra, 1974. See Chapter 4 p. 19.

theories of Henry George. According to the concept the lessee would always pay through the land rent the real value for the land occupied. Increments in value would not accrue to the individual but would be reserved for the community thus becoming available for investment in further community infrastructure which would again enhance the value of the land. A crucial element in this system was the reappraisal of the unimproved land values. By providing for reappraisal at twenty year intervals the legislation did not allow for the effect of inflation and the consequent possibility of steep upward adjustments to land rent at intervals of twenty years.

41. The Commission of Inquiry into Land Tenures[5] noted that despite high premiums being bid for land during the period of growth during the sixties, the rental revenues were insufficient to provide a reasonable return on development outlays. At the same time rate revenues were falling increasingly behind the costs of providing municipal services. But the absence of any system of land development accounting or municipal accounting made it impossible to judge what the level of rents or rates should be if financial balance was to be achieved in each of these areas. The long periods between rental reappraisals and the low rate (5 per cent) applied to unimproved value meant that it was unlikely that the cost of acquiring and servicing land would be easily recouped. The long delays before reappraisal resulted in such substantial increases in land rent as to evoke considerable opposition from lessees (and cause hardship to some) and created considerable problems in equity as between holders of otherwise equivalent leases. Evidence placed before the Commission of Inquiry into Land

5. First Report, paras 8.16 - 8.17.

Tenures indicated that in 1970 a residential block reappraised in 1969 attracted a land rent of $228 per annum while a similar block valued in 1954 attracted an annual rent of only $40. A business lease valued in 1955 had an annual rent of $324 while an adjacent similar site reappraised in 1969 attracted an annual rent of $10,000.

42. In the face of what it believed to be legal and other difficulties in introducing more frequent reappraisals, the Government decided in 1970 to reduce land rent to a peppercorn value of 5 cents per annum "if and when demanded" and to increase rates to a level which initially would be equal to the revenue previously obtained from both rents and rates, which subsequently would be increased having regard to increases in municipal expenditure in Canberra and in rates in other capital cities. New leases continued to be disposed of by auction, but reserve prices were calculated at levels to return overall the costs of servicing development. The Commission of Inquiry into Land Tenures commented that it was clear that the main effect of the change was to substitute "a premium leasehold" system for a "rental leasehold system" and supported the conclusions that had been reached regarding land tenure generally, that the kind of tenure selected was not material to the achievement of planning objectives by the government in Federal Territories or in proposed growth centres. It illustrated the point with particular reference to the ACT:

> But even the Canberra leasehold system does not display many of the essential characteristics of pure leasehold [previously described]. For example, payment for land use rights in the Australian Capital Territory is now made by means of a lease premium or capital sum instead of by rent, compensation for improvements is paid to the lessee at the expiration of a lease, there is considerable flexibility in the interpretation of lease purpose clauses and in the opportunities which are provided for re-development of sites, there is no attempt to collect the unearned

> increment arising from community growth and there is only a partial attempt to collect the development value increment arising from permitted changes in land use.[6]

These reflections led the inquiry to conclude that a system of perpetual leases could be substituted for the present system in the ACT for residential land. Retention of more limited leasehold arrangements were, however, recommended for commercial and industrial land where very different criteria were perceived to apply. The recommendation with regard to perpetual leasehold for residential land has not been implemented.

Environmental Protection

43. The quality of Canberra's urban environment has generally been assured by laws passed to protect plants and soils and the decision that significant hills should be free of buildings. These principles have been reinforced by the declaration of areas of "special National concern" and the garden city concept. The result has been the spacious park-like atmosphere of urban Canberra in which city parks and gardens with their mixtures of native and exotic plant species:

> blend into a backdrop of farmlands, forested hills and other open lands vegetated mostly by native plant communities.[7]

These policies have resulted in the wide nature strips, hedges and open spaces characteristic of Canberra.

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6. First Report, para 6.4.

7. Transcript of Evidence, p. 381.

44. Branches within the Department of the Capital Territory are responsible for the development, maintenance, management and protection of urban areas, parks, forests, nature reserves, lakes and waterways, agricultural and grazing lands. The protective legislation is enforced by rangers and inspectors. An inter-departmental committee on environmental quality reports to the Minister for the Capital Territory. Sub-committees consider water, air and noise pollution. The Department maintains an internal working group on environmental quality.

45. Either the Minister or the Department is a member of the following national bodies and their standing committees which provide, on a national basis, mechanisms specifically designed to consider the likely effects of proposed government policies on city and rural environments:

Australian Environment Council

Australian Council of Nature Conservation Ministers

Australian Forestry Council

Australian Agricultural Council

Australian Transport Advisory Council

Australian Tourist Ministers Council

46. Additional consultation on environmental protection is available through the employment of specialist professional, technical and administrative staff, supported by outside groups such as universities, the CSIRO, colleges of advanced education and private consultants.

47. Water catchment areas in the ACT are protected by their remoteness and inaccessibility. There is also legislation which guarantees that they will remain areas of restricted access. Proposals for a national park

at Gudgenby, south of Canberra, include a minimum-access wilderness area. Much of the ACT is leased or licensed for grazing and agricultural purposes subject to various protective ordinances. This helps to maintain the present savanna/woodland appearance near the city. Leasing for grazing and agricultural use ensures that land is kept in production at least cost to the Commonwealth.

48. The Environmental Protection (Impact of Proposals) Act 1974 and its associated administrative procedures establish a mechanism which has important implications for planning processes in the ACT and for community involvement in those processes. The Act is particularly relevant to ACT planning procedures because of the extent of Commonwealth responsibility for public investment, planning and development. Proposals for development within the ACT put forward by NCDC, the Department of the Capital Territory, the Department of Health, Telecom, the ACT Electricity Authority, the Australian Broadcasting Control Board, the ACT Police, and the NSW State Electricity Commission have been or are at present subject to environmental assessment. This legislation is discussed in detail in paras. 86-90 Chapter 3.

Involvement of Federal Parliament

49. Section 12A of the Seat of Government (Administration) Act 1910 provides a procedure whereby any proposal to vary the plan of lay-out must be tabled in both Houses of Parliament for six sitting days. Either House may by motion disallow the proposed variations. The steps in the procedure are that the Minister by notice published in the Gazette notifies his intention to vary the plan. Simultaneously publicity is given to the proposal and citizens are invited to lodge objections with the Minister. The Minister then refers the proposals to the Joint ACT

Committee pursuant to para. 1(a) of the resolution of appointment of the Committee[8]. The Committee makes a report to Parliament on the results of its inquiry. The Minister then tables his instrument of variation in Parliament. The procedure is discussed in paras. 82-85 of Chapter 3.

50. The Parliament Act 1974 determined the site for the new and permanent Parliament House and defined an area, the Parliamentary Zone, where all buildings and works are the subject of specific parliamentary approval. The Joint Standing Committee on the New and Permanent Parliament House has been given the task of considering and making recommendations on the planning, design and construction of the new Parliament House.

Regional Aspects

51. Canberra is the economic centre for the south-east area of New South Wales with most commercial and industrial development centred on Canberra and Queanbeyan. The South-East Region of NSW provides services for residents of Canberra which include recreation and holiday facilities, food growing and construction materials. Some 35 per cent of tourists to the South Coast are residents of the ACT, 30 per cent of the region's beef output and pork production is consumed in the national capital. This market is an important part of the economic base for employment opportunities throughout the region.

52. Provision of services by the ACT for people in the region include tertiary and secondary education, hospital and medical specialist facilities including services for the

8. The resolution of appointment is set out in Appendix 1 of this report.

handicapped, and retail and service industries. Twenty per cent of hospital beds in the ACT are provided to cater for communities outside the Territory. Of students at Canberra Technical College 10 per cent come from the South-East Region of NSW.

53. Growth of employment opportunities within Canberra has provided an important alternative to communities of the region faced with a decline in rural industry. In the 1966-71 period about 16 per cent of Canberra's net population growth derived from inward movement of residents from the South-East Region.

54. An important implication of NCDC's strategy plan published in Tomorrow's Canberra was that the population of 1,000,000 for which the plan was designed to cater could not all be located within the ACT. The preferred strategy was for linear growth along selected corridors with new towns being located along the transport spine as the population growth dictated their development. A study group in 1973 consisting of NCDC, Treasury, the Public Service Board and the Departments of the Prime Minister and Cabinet and Capital Territory concluded that urban growth over the border was inevitable and noted the effects of rural sub-division and escalating land values in the areas designated in Tomorrow's Canberra. It recommended land-price stabilisation measures be applied in the areas of NSW north of the ACT and that a further sub-regional study be undertaken jointly with New South Wales authorities to prepare for urban expansion over the border by 1980. At first this proposal was treated sympathetically by the NSW Government. Mr Peter Harrison, who was for many years the Director of Planning at NCDC and is currently a Fellow of the Urban Research Unit in the Research School of Social Sciences ANU, in a paper delivered to the UNESCO Seminar on

Urban Management in Adelaide referred to a letter from the NSW Premier, Mr Askin, to the Acting Prime Minister in which it was stated:

> that his State [was] of the view that the future discussions on any proposal for the expansion of Canberra should concentrate on the proposition that the present boundaries of the ACT might be extended to cater for such expansion.[9]

A change of Premier, however, led to a change of attitude and the Government of Mr Lewis set up an Inquiry into the Expansion of the National Capital into NSW which reported in November 1975.[10] The circumstances surrounding that inquiry were described by Mr Harrison to the Adelaide seminar:

> The Commonwealth, at the direction of the Minister for DURD, Mr Tom Uren, refused to take part in the inquiry. The NCDC had to stand by while the Committee of Inquiry into the Expansion of the National Capital into NSW held hearings in the national capital. The Commission presented its 'evidence' to the Committee in an advertisement of four pages in the Canberra Times on 23 August 1975.

55. That Committee found from its examination and analysis of population projections for the ACT that there was 'not sufficient' reason for accepting that the population of the ACT would be likely to exceed the figure of 555,500 made by the National Population Inquiry in

9. Changing Urban Administration and Policy in the ACT.

10. Report of the Committee of Inquiry into Expansion of the National Capital into New South Wales, Sydney, November 1975.

1975.[11] It found a population of 800,000 to 1,000,000 predicted for Canberra by the year 2000 to be "quite unreal". The area of land available for development in the ACT, on the standards that NCDC had promulgated as acceptable, was sufficient to accommodate 650,000 persons at low density or 732,000 if 30 per cent of the population was accommodated in medium density. It found that the area of land available for urban development was capable of being increased by at least one third. The Committee of Inquiry found that there was no warrant for aspiring to make Canberra, as a national capital, a city of more than 500,000 and concluded that "up to and for a substantial period beyond the year 2000 A.D. there is no need to expand the geographic area of the Australian Capital Territory and its population". An important finding, however, was that "action is called for in respect of areas of NSW adjacent to the Territory, to make provision necessitated by the very propinquity of the Territory and provide for possible long term population contingencies".[12]

56. The Liberal/National Country Party Commonwealth Government announced in 1976 that all ideas of extending the ACT would be abandoned but that the New South Wales Government in co-operation with the Commonwealth would prepare a strategy plan for the South-East Region. The Report of the South East Region Joint Steering Committee was published in September 1976. It recommended establishment of bodies at both regional and sub-regional levels to advise governments on matters which affect the development and administration of the Region and the ACT sub-region. It

11. Borrie - Population and Australia - A Demographic Analysis and Projection, National Population Inquiry First Report Vol. 1, Parliamentary Paper No. 6 of 1975, and Vol. 2, Parliamentary Paper No. 7 of 1975.

12. Report of the Committee of Inquiry, pp. 10-13

said that representation on these bodies would recognise the interests involved. While some aspects may be covered by elected representatives of established organisations (for example, local government), the wider perspective of regional organisation may call for an increase in citizen representation. There is a strong case for improved links between a regional organisation and those agencies involved in the planning of Canberra. This is discussed further in Chapter 7.

Review of Administrative Actions

57. Recent legislation of the Commonwealth provides new remedies to citizens aggrieved by decisions of the Federal Government. The Administrative Appeals Tribunal Act 1975 and the Ombudsman Act 1976 apply in the ACT and are relevant to this consideration of planning procedures and processes. The Administrative Appeals Tribunal Act enables the Tribunals established by the Act to review decisions made pursuant to legislative enactments. The Ombudsman Act establishes a procedure for the investigation of "matters of administration". There have already been a number of cases where this legislation has been involved. The Administrative Decisions (Judicial Review) Act 1977 which has yet to be proclaimed will provide for the review by the Federal Court of certain decisions. The application of this legislation is set out in Appendix 2 of this report in a paper prepared by the Law and Government Group of the Legislative Research Service of the Parliamentary Library.

CHAPTER 3 - LEGISLATIVE PLANNING CONTROLS

58. In the Australian Capital Territory land for private development is leased under a Crown leasehold system for specific purposes for a term of years. Underlying the system of leasehold administration developed for the ACT is the assumption of orderly management and control in the wider public interest. Canberra does not have a zoning or prescribed land-use scheme enforced by legislation. Rather control is exercised through the enforcement of lease purpose clauses which specify the uses for which land can be used. The use of lease purpose clauses (residential, commercial and industrial) do form zones where like uses are permitted in particular areas and other uses excluded. The mechanism for the enforcement of the land use of the City of Canberra is the City Area Leases Ordinance 1936; the Leases Ordinance 1918; the Leases (Special Purpose) Ordinance 1925 and the Church Lands Lease Ordinance 1925.

59. Under the Leases Ordinance 1918 leases may be granted to tenants of government dwellings and for grazing and agricultural purposes or other miscellaneous purposes for which the provisions of the City Area Leases Ordinance are inappropriate. Under the Leases (Special Purposes) Ordinance 1925 and the Church Lands Lease Ordinance 1925 the Minister may grant leases for other than residential or business purposes. Leases for church sites and to diplomatic missions, clubs, registered associations, charitable and welfare organisations are usually granted under these Ordinances. In all there are 82 separate enactments which have some bearing on land management in the

ACT. These were listed and briefly described in the submission of the Department of the Capital Territory.[1]

The City Area Leases Ordinance 1936

60. This Ordinance applies only in the prescribed "city area". It empowers the Minister to make leases available by auction, by ballot, by inviting applications (tenders), or by direct grant, for residential and business purposes. Permitted land use is prescribed in the lease purpose clause and sanction for breaches are provided for in the Ordinance. Land use control is effected under section 9 of the Ordinance which provides that a person shall not use leased land for a purpose other than a purpose authorised by or under the lease. Section 9A provides that the Minister, a person resident in the ACT or a lessee of land in the Territory can proceed in the Supreme Court for an order directing the lessee or sub-lessee not to use the land or permit the land to be used for an illegal purpose. This provision was inserted late in 1977 and replaces a previous provision that prescribed substantial fines for breach of lease purposes. It is provided in section 22 that the Minister may determine a lease for breach of the covenant.

61. Under section 10 of the Ordinance the Minister for the Capital Territory has a discretion to approve an application by a residential lessee for approval to use the land also for the purposes of his or her profession, trade, occupation or calling. The Ordinance contains provisions for an occupier of a residential lease to obtain approval to

1. Evidence, pp. 411-422.

carry out the occupier's profession, trade, occupation or calling from the leased premises. Section 10 provides that:

> Where in any lease the lessee covenants to use the land included in the lease for residential purposes only, the land shall not be deemed to be used for any other purpose by reason only of any person, bona fide resident on the land, carrying on, with and subject to the approval of the Minister, and in accordance with such conditions relating to the use of the land as the Minister specifies, his profession, trade, occupation or calling on the land.

The Ordinance thus empowers the Minister to approve of non-conforming uses of residential land provided the occupier making the application is a bona fide resident of the premises in question. An adviser to the Committee, Dr Fogg, suggested that this might be redrafted with simplified wording along the following lines:

> (1) This section shall apply where in any lease the lessee covenants to use the land included in the lease for residential purposes only.
>
> (2) Any person bona fide resident on land may apply to the Minister for an approval to use such land for his profession, trade, occupation or calling.
>
> (3) Where application is made to the Minister under sub-section (2) the Minister may grant approval either unconditionally or subject to such conditions as he thinks fit, or may refuse approval.

In the same section the Minister is prohibited from granting approval of the carrying on of any offensive trade on the land, or activities which may become a danger or a nuisance to the tenants or occupiers of adjoining land or if the

Minister is satisfied it would not be in the public interest to approve the application. The Committee draws attention to the drafting of sub-section (2) which purports to bind the Minister by declaring criteria but grants the Minister discretion within the criteria that are supposed to bind him. It is considered that the Minister is already well armed with discretion and that the section provides elsewhere that he may attach conditions as to the use of the land so that the proviso (C) to sub-section (2) is redundant. Any approval granted under the section and any specified conditions must be published in the Gazette.

62. Section 11A of the Ordinance deals with variations of the purpose for which land is leased. The Supreme Court of the Australian Capital Territory may, on application of the lessee vary any provision, covenant or condition of a lease in relation to the purpose for which the land subject to the lease may be used. The Court must be satisfied that there are such circumstances existing as in the opinion of the Court make it desirable to vary the covenant in order that the reasonable user of the land should not be impeded. The Ordinance provides that the Minister may within 7 days of the application to vary a lease being lodged, certify that in his opinion the variations sought would be repugnant to the principles for the time being governing the construction and development of the City of Canberra, thus ousting the jurisdiction of the Court. Section 11A contains provisions for publicity to be given to the application and provides that the Court may grant leave to third parties to be heard in opposition to the application. Where an application is successful the lessee is required to pay to the Commonwealth approximately 50 per cent of any value added to the lease as a consequence of the change. The lessee may appeal against determinations made under the provisions to the Valuation Board of Review. Despite these provisions in the Ordinance for the enforcement of planning

schemes, evidence was placed before this inquiry that the Ordinance has either:

- proven to be inadequate for enforcing the planning policies and intentions set down by NCDC; or
- not been adequately enforced by the Department of the Capital Territory; or
- been subject to pressures for changes which have made it unenforceable and which if continued will make it totally ineffective as a statutory control.

63. Evidence submitted to the Committee indicated that there are many cases of lease purpose clause infringements in the inner suburbs of Canberra. Information in the form of Lands Titles Registration Office searches was submitted that revealed many infringements occuring in Torrens Street, Braddon and some other inner areas. The Committee concludes that there are many cases of lease purpose clause infringements in the inner suburbs of Canberra. The enforcing authority, the Department of the Capital Territory, has until recently taken no action to enforce the provisions of the City Area Leases Ordinance 1936.

64. Current provisions for enforcement of covenants under Canberra leases were criticised. This evidence related to section 9A of the Ordinance. The Committee was informed that in 1974 section 9A(3) of the Ordinance had prescribed a penalty of $200 for a breach of the covenants in the lease purpose clause with an additional daily penalty of $20 for each day on which the contravention continued. This is similar to legislation in the States for the enforcement of planning schemes. Section 22 of the

Ordinance provides the means for the Commonwealth to determine a lease for failure to comply with the provisions contained therein. The following weaknesses were identified in the City Area Leases Ordinance:

- where a sub-lease was unregistered and the lessee denied responsibility it was difficult to prove the identity of the sub-lessee and the "existence" of the sub-lease. It was a generally recognised loophole that a person could form a company to purchase a lease, or have that person's spouse acquire it and carry on an illegal activity without being prosecuted;

- the maximum fines were considered an insufficient deterrent; and

- the determination of a lease was seen as too severe a penalty.

65. In March 1976, the Ordinance was amended to overcome the problem of identifying lessees and to increase the penalties for a breach of lease to $1,000 for a first offence and $10,000 for a second offence. Section 22 was not amended and remains in force. In June 1976, Senator Wood, Chairman of the Senate Standing Committee on Regulations and Ordinances, gave notice of a motion for the disallowance of the amending Ordinance. The basis for the objection was that criminal sanctions, such as fines, were not the appropriate penalty for breach of contract. However, this overlooked the fact that there is also a breach of the planning scheme involved which carries a criminal sanction in each of the States. The Minister for the Capital Territory agreed that the penal provisions should be repealed and asked the Department of the Capital

Territory to investigate the use of injunctions to restrain the lessee from continuing in breach of lease scheme. The motion for disallowance did not proceed and the Ordinance remained in force.

66. On 24 August 1977 the Minister for the Capital Territory forwarded proposed amendments to the City Area Leases Ordinance to the ACT Legislative Assembly for advice before introducing them as law. In October 1977, before the Legislative Assembly had completed its consideration, the Minister gazetted certain amendments to the Ordinance. These amendments significantly altered section 9. The ability to impose substantial fines is replaced by allowing an application for an order to be made by citizens who are lessees or sub-lessees of land or premises in the Territory. Evidence suggests that the effect of these amendments is to place the onus of enforcing the planning schemes on individuals in those cases where the Minister is not prepared to act. Not only is this likely to impose substantial costs on individuals but there is no certainty that the necessary order will be granted by the courts.

67. Evidence was submitted concerning section 10 which makes provision for the Minister to approve an application by a resident wishing to conduct a business, occupation or calling from residential premises. The application is subject to the approval of the Minister and the proponent must be a bona fide resident. The legislative scheme thus provides a mechanism under section 10 whereby non-conforming uses of a temporary nature can be granted and a mechanism under section 11A where a lessee can obtain a change in approved land use. Under section 10 the applicant is required to be a bona fide resident of the land in question and the Minister can attach conditions to approval. This he does at present with regard to time, limiting the duration

of approval to 12 months in most cases. The approval thus lapses at the expiration of this period unless a fresh application is made and a new approval granted.

68. Evidence submitted to the Committee, in the form of lands titles searches, revealed:

- non-conforming uses occurring for which no section 10 approval had been obtained;
- non-conforming uses occurring for which approval had been obtained but which had subsequently expired; and
- non-conforming uses occurring where the lessee was not in fact a bona fide resident.

69. The evidence placed before the Committee indicated that the occurrence of lease purpose clause breaches in the ACT is widespread. One estimate suggested 3,000 cases of infringement in Canberra[2]. The Committee concludes that breaches of section 10 of the City Area Leases Ordinance are occurring in Turner, Braddon, Reid and Kingston. Breaches include:

- the use of premises as office accommodation by doctors, dentists, real estate valuers and other similar professional and business persons;
- the use of some premises as restaurants; and

2. Evidence, p. 1270.

- the use of premises in Torrens Street in conjunction with adjoining leases authorised for commercial uses in Lonsdale Street.

70. High rents for commercial premises in Canberra no doubt have led some proprietors of small businesses and professional persons to seek cheaper accommodation from which to operate. Evidence to this effect was given to the Committee. The evidence available suggested that there was pressure from within the community for more flexible arrangements regarding variations to lease purpose. The fact that residential properties can now be acquired at reasonable prices and with a potential for capital appreciation makes this an attractive expedient for many people. At the same time this would seem to be an unintended consequence of the planning scheme and to be in conflict with some of its principles. Commercial and industrial outlets in the ACT are carefully regulated. On this understanding many people have, in good faith, bid high prices for commercial and industrial leases. If the practice of allowing people to compete with them from residential leases is allowed to grow these persons could justifiably feel that they were being undermined by the authorities administering the system. Equally, those who have invested in residential leases have a right to the enjoyment of that use until a decision is made to change the planning scheme for their area. It is a decision also in which they have the right to be involved. Currently there is no appeal against a decision of the Minister to grant a non-conforming use by those affected by the decision. The Committee concludes that the requirements of section 10 of the City Area Leases Ordinance should be enforced. The Committee finds the non-enforcement of the requirements disturbing. The Committee recommends that section 10 of the City Area Leases Ordinance be enforced both as to duration and the need to be a bona fide resident. To condone

infringements will obviously create a climate of legitimacy for illegal uses. This has in it the capacity to undermine the basis of the planning system. It also amounts to an injustice towards those who have invested in legitimate commercial leases. At the same time the fact that people are seeking alternatives to the outlets provided through the system suggests the possibility that planning control is regarded by some as rigid and inflexible. In particular section 11A of the Ordinance needs to be looked at in this regard. It does not seem reasonable that the Minister can simply veto an application for changed lease purpose thus preventing the issues being ventilated. The Committee considers that there is a case for development decisions of this kind to be dealt with in a more open manner, though not necessarily by a court of law. This is considered further in Chapter 7.

71. Even more disturbing is evidence that leases are being acquired for speculation and that lessees are applying pressures to bring about changes in approved land use from which they will make a financial gain. It has been suggested to the Committee that some premises had been acquired and deliberately neglected to create a 'blight' in order to encourage a favourable climate for approval of changed land use for the particular area in question and discourage legitimate users from remaining. Members of the Committee inspecting Torrens Street, Braddon, saw examples of the effect of such misuse. The effects on residents also gave rise to concern. At the same time as the amenity of their area was being threatened the valuation of their houses for rating purposes was rising as sale values began to reflect a rise in price at the prospect of variation in designated land use for the area.

72. The Department of the Capital Territory's failure to enforce the planning scheme seems inexplicable. In its own evidence to the inquiry the Department stated its attitude, which indicated that it favoured a more flexible policy on urban change, as follows:

> From the Department's point of view there are advantages in having more general lease purposes clauses in the commercial and industrial field to allow the market to make its own judgment about use. This is often unacceptable to the Commission which for sound planning reasons, for example, better accessibility, proximity to parking or because of the visual impact, would prefer to specify very tightly the permitted use for some sites.
>
> The system of using lease purpose clauses as the instrument of planning may be thought to be trying to cover too many things. The purpose clause has been used to try to limit employment densities and to shape particular transport and parking patterns. It has been used to try to encourage particular kinds of economic activity in defined parts of the City. It has been used to try to link like with like, and on occasion to tuck offensive industries into some unseen corner. In all the system has worked reasonably well and the proportion of deliberate breaches is very small in comparison with the total number of existing leases.
>
> But as the city grows and the influence of the bureaucracy is increasingly diluted, the possibilities of breach become greater when clauses are too circumscribed. The arrangements for facilitating lease changes must become simpler and more readily useable.[3]

73. The Committee was impressed by evidence of the dangers of lease purpose clauses drawn in terms that were too general. The famous case that is quoted in Canberra is the case of the lessees who made large capital gains by the sale of residential blocks along Northbourne Avenue at

3. Evidence, pp. 402-403.

inflated prices. These eventually became hotels and motels - a use permitted by the authorities because of a liberal interpretation of the term "residential" in the purpose clauses. A situation was also brought to the attention of the Committee *where a site originally let as a mini-market* in Kambah permitted its eventual use as a tavern as a result of a broadly drawn lease purpose clause. It is also a cause for concern that the Commonwealth is not at present subject to development control under the Ordinance so that as landlord the Commonwealth can authorise incompatible uses or can with impunity undertake incompatible uses in relation to premises it occupies. The Commission of Inquiry into Land Tenures addressed itself to the questions in paras 4.15 to 4.23 of its Final Report. The problem is not a *constitutional or legal one. The Commission observed* that it was a political question whether government departments and statutory authorities are prepared to justify their development proposals publicly, before an independent tribunal. The Commission pointed out that:

> In the Australian Capital Territory, there is of *course no statutory planning scheme, with* the result that development for public purposes depends entirely on the decisions of public authorities.

The Commission's comments are worth quoting in full:

> We make four comments on this situation. First, it seems likely that the role of the public sector will expand in Australia, both in the Federal and State spheres. The number of government departments and statutory authorities and the range of matters with which they are concerned are likely to expand rather than contract, thereby creating an ever-increasing gap in the planning structure. Secondly, the performance of public authorities in observing the spirit of planning controls is uneven. Some authorities have been punctilious in this regard; others pay no attention to planning considerations. It is hardly to be expected that government agencies, which have been established to provide specialised services in particular fields, can evaluate all aspects of their development proposals objectively. Most departmental construction is planned by engineers trained to achieve the most economical result. But economy may be achieved only by sacrificing other planning requirements, and any cost advantage associated with a particular form of development needs to be publicly balanced against other criteria before that development can be regarded as acceptable. Thirdly, the absence of overall planning control of public sector development raises the possibility of intergovernmental or interdepartmental conflict over particular projects. The resolution of such conflicts may depend not on land use planning considerations but on the relative power of particular ministers and senior public servants. Independent review of the particular projects is more likely to result in dispassionate decisions. Fourthly, public development has occasioned some bitter controversies and confrontations in recent years, such as the arguments over Lake Pedder, the Black Mountain telecommunications tower in Canberra, the expressway program in Sydney and the Newport Power Station in Melbourne.[3]

74. The Committee is concerned also by an apparent scope for profitable speculation in ACT leasehold. This was demonstrated dramatically when changes to the planning scheme for the neighbourhood of Kingston were approved to permit more intensive development. In the course of acquiring residential land the developer in question was in the position of paying in excess of three times the previous residential value of houses acquired. It is not surprising that occurrences of this nature should lead people to assume

3. Final Report, p. 42.

that profits can be made by anticipating future planning changes.[4]

75. There is a provision associated with section 11A that requires a successful lessee to pay an additional premium upon approval of the land use change. Under this provision fifty percent less the sum of $1,500, of any increase in value attached to the land attributable to the authorised change of use is payable to the Commonwealth as betterment. This provision attracted comment from the Commission of Inquiry into Land Tenures in the course of its consideration of ACT leasehold. The Commission said in paragraph 8.18 of its First Report:

> The first weakness of the present system is that it does not succeed in capturing the whole of the unearned development value increment which results from a change in the purpose clause of a lease. This is partly because of the formula which requires the lessee to pay the lessor only half the increase in value less $1,500 and partly because of the manner in which the increase in value is determined, namely the difference between the market value for the new purpose (assessed when the application is made) and the market value of the lease for its original purpose (assessed at the same time). This difference fails to reflect the true measure of the unearned increment because the market value of a lease for its original purpose includes a component representing the value of a prospective permitted change in lease purpose. Thus in localities where a change in use has been approved for one lease, the values of all adjacent leases will rise because of the probability of a similar change of use being approved.
>
> The value increment resulting from a change in lease purpose should in future be calculated as the whole of the difference between the existing use value of a lease and its value in its new use. Further, the whole of the difference should be appropriated by the Crown and not merely half less $1,500.

4. One feature of this situation should be noted. In acquiring properties developers pay the market price which will reflect the proposed change of use. But it is the developer not the previous resident who will be required to pay the betterment under section 11A if his application for variation to the lease purpose clause is approved. He thus pays twice whilst the original resident gains the benefit. In the Kingston case the result was that the developer could not afford to proceed with development. The result is the effective blight of much of the area or the passing on of substantially increased costs to those who eventually purchase from the developer.

In the ACT the lease agreeement is the key control document for implementing town planning. It should be so recognised and enforced in a manner comparable to the established town planning enforcement procedures in the States. Injunctions have been used as an aid, but certainly not as a substitute, to restrain persons from breaching planning schemes. **The Committee recommends that section 9A of the City Area Leases Ordinance be amended to provide that the Minister or the Department of the Capital Territory acting on his delegation should serve on a person in contravention of a lease, notice of intention to enforce the lease provision unless the illegal use is terminated within a specified time. Failure to comply with the notice of intention would then become the basis for ensuing prosecution. Substantial fines should be the penalty for the offence and continued failure to comply should lead to termination of the lease under section 22 of the Ordinance.** It may be desirable to support these provisions with the power of injunction so that private citizens may proceed where the authorities fail to take action. Certain appeal provisions should apply and these are dealt with in Chapter 7 (para. 185).

76. There has been such confusion in the administration of the law that the possibility may exist that some of those in breach considered they had the support of the Department of the Capital Territory. The Minister for the Capital Territory's current policy of a moratorium to enable those in breach to conform with the law is supported. But it is

considered that the framework of the City Area Leases Ordinance should be preserved. It should remain a requirement that bona fide residents only should be entitled to approval under section 10 to carry out a profession, trade or occupation from residential premises. The Committee considers that there should be rights of appeal by both the applicant and third parties against determinations in this regard. This is considered further in Chapter 7. It should be stressed that section 10 should not become an alternative method of bringing about lease purpose changes to the procedure under section 11A. Much of the present difficulty is due to the difficulty of obtaining variations to lease purposes under section 11A. The Committee is of the view that the procedure should be relaxed so that persons wishing to vary their lease purpose clause would apply under this provision rather than using section 10. Section 10 would then apply only to the special *circumstances envisaged and not be perceived as a means of* obtaining a de facto variation and avoiding the levying of betterment.

77. **The Committee recommends that section 11A of the City Area Leases Ordinance continue to be the provision under which a land use change is sought. There should,** however, be an appeal procedure if the Minister should determine that the proposed land use in the application is repugnant to current planning policy. This and the general *question of who should formulate land use policy are* considered further in Chapter 7. The Committee concludes that there should be much more scope than at present for the communities affected, other interests and other departments to put forward their views on land use intention. **The Committee recommends that Government departments and instrumentalities be obliged to conform with statutory**

planning requirements and lease purpose clauses. The system of appeals is intended to be open to these authorities. These matters are discussed further in Chapter 7.

78. Finally the Committee concludes that speculation in ACT leasehold based on probable changes in land use is undesirable and should be stopped. **The Committee recommends that section 11A of the Ordinance be amended to ensure the full recovery by the Commonwealth of any increment arising from change of land use, this increment being the whole of the difference between the existing use value and its new use value, as recommended by the Commission of Inquiry into Land Tenures.** Such a provision should also have the effect of ensuring that valuation of leases does not reflect pressures for changed land use.

Building Ordinance 1972

79. Building construction is controlled under the Building Ordinance 1972. The ACT Building Manual, is published pursuant to this Ordinance and prescribes mandatory construction standards for privately erected buildings. The Ordinance provides for the appointment of a Building Controller with powers to license builders, to grant permits to erect approved structures, to approve plans and specifications and to issue stop-work or demolition notices. The Building Controller is assisted in maintaining standards by engineers and building inspectors. A lessee or builder may appeal to the Building Review Committee against decisions of the Building Controller. The Building Review Committee comprises five members of the Canberra community with expertise in building and a representative of the Department of the Capital Territory.

Building (Design and Siting) Ordinance 1964

80. Approval of the design and siting of buildings is granted by NCDC pursuant to the Building (Design and Siting) Ordinance 1964. The Ordinance provides for appeals to be made to the Design and Siting Review Committee. The Committee comprises three persons with expertise in a related field. Although the Ordinance provides for an appeal by the applicant against a decision of NCDC there is no provision for either appeal by third parties or for notifying persons likely to be affected by the proposed works. The Commission's design and siting policies have been published. The Design and Siting Review Committee cannot allow any appeal that is against a policy of the NCDC. That is, the policy is not open to review. Yet it is often the policy which people want to challenge.

81. Submissions were made to the Committee that the scope for appeals against determinations under both the Building and Building (Design and Siting) Ordinances are too restricted. The right of appeal is restricted to the applicant and there is no scope for third party appeals. This matter is considered further in the final chapter which discusses appeals.

The Seat of Government (Administration) Act 1910

82. Under section 12A of this Act the Minister may propose variations to the plan of lay-out of the City of Canberra and present them to Parliament as described in paragraph 49 in Chapter 2. The variation takes effect unless Parliament acts to disallow the proposals within six sitting days. The intention behind this provision in the Act was to protect the Burley Griffin plan and ensure that the Parliament could veto any proposals it considers not in the national interest. The present procedure involving a

committee of the Parliament is reasonably effective in achieving this aim, but as stated later it is considered that involvement of Parliament should occur earlier in the planning process.

83. The procedure that is now operative is a good example of how institutional arrangements can evolve to accommodate requirements not originally perceived. For many years the Minister referred proposals to this Committee which would convene a meeting to consider them and then write to the Minister with its comments. At this stage the reference to the Committee was made before the gazettal of intention to vary the plan had occurred. The Minister's gazetted notice would take account of the Committee's views. As the matters encompassed in proposals became more complex it was customary to invite NCDC and other departments to brief the Committee on what was involved. There was, however, no publicity given by the Committee to its deliberations and no public record of any advice given to the Minister. In particular no report was made to the Parliament. This was changed in 1971 when the practice of making reports to the Parliament on variations commenced. Because the report to Parliament is a public document the significance of the Committee's function as a means of informing the community as well as the Parliament was recognised. The result was increasing interest within the local community in the Committee's work.

84. After Mr Justice Fox in Kent v. Cavanagh[6] had drawn attention to shortcomings in the procedure for altering the plan, steps were taken by the Department of the Capital Territory to give more publicity to the Minister's

6. Kent v. Cavanagh (1973) ACTR p. 44

proposals. Objections were invited by the Minister and referred to the Committee. The Committee adjusted its procedures accordingly and began to take evidence in private from objectors. The Committee in the previous Parliament became conscious of much wider public interest in its activities and decided that it should conduct public hearings on proposals. This has given very wide publicity to planning intentions with commensurate increase in the involvement of the Committee in many aspects of planning proposals. The Joint Committee on the ACT seems now to be perceived at times as a quasi-appeal body by persons objecting to particular planning proposals. If left as it is the procedure would no doubt evolve still further. However, there must be considerable doubts as to whether the role that is emerging for the Committee is an appropriate one.

85. In the first place the composition of the Committee and the resources in terms of staff, time and money do not qualify it to assume the role of a general appeal body against planning decisions. The present procedures, tied as they are to variations to the plan of lay-out distinctly limit the scope for proper consideration of proposals. The plan of lay-out is not a land use or zoning plan and a strict interpretation of the Committee's functions would limit the scope of its activities to agree or disagree with proposals to add, vary or delete reservations for roads. The examination of proposals for roads necessarily requires the Committee to be informed on the associated land use proposals. This means that the Committee can exert some influence through the need for the authorities to obtain Parliamentary approval for road reservations. But it will be appreciated that land use proposals are usually well advanced before the question of reference to this Committee even arises. The Committee has no control over the timing of proposals brought to it for consideration. In some cases

these involve short term projects to be implemented as soon as approval is gained. In others they involve projects which may not be implemented for many years. The opportunity is not provided for the planning proposals to be examined systematically and at sufficient distance from their implementation to make the requisite judgments. The procedure is no substitute for proposals that will be discussed later in this report for a systematic presentation of planning intentions with opportunities for the community to participate. Nor is it appropriate that a committee representing the national interest should become involved in acrimonious disputes at the neighbourhood level simply because of the absence of any other mechanisms for the proper examination of grievances. This is considered to be a role much more appropriate for the ACT Legislative Assembly and its committees. One other shortcoming should also be noted. Because the process of gazettal, examination by the Committee, reporting to Parliament and tabling of the instrument under the Act are tied to Parliamentary sitting periods inconvenience can be caused when Parliament is adjourned, prorogued or dissolved for long periods as it is for example during national elections.

Environmental Protection

86. As noted earlier the Environmental Protection (Impact of Proposals) Act 1974 applies to planning and development in the ACT. For the most part, proposals have been given environmental clearance without an impact statement being directed or a public inquiry being conducted. However, environmental impact statements (EIS) have been prepared on the following matters:

Googong Dam
Molonglo Parkway
Black Mountain Telecommunications Tower
Mt Taylor Telecommunications Facility
Deakin Telephone Exchange
Police Radio Facilities
Canberra Brickworks
Belconnen/Royalla Power Line
Development of Hall District
Canberra Refuse Planning Strategy

In addition, a public inquiry was conducted into the Molonglo Parkway Proposal in 1973 (i.e. prior to enactment of the Environmental Protection (Impact of Proposals) Act).

87. The Act has been used in the ACT mainly in relation to project type developments. However, consistent with the wide ambit of the Act it has the potential to be applied to other proposals such as those relating to the Canberra "infill" program and future urban development. It was examined in a recent Report of the House of Representatives Standing Committee on Environment and Conservation, *The Commonwealth Government and the Urban Environment - Formulation and Co-ordination of Policies* in May 1978.

88. In its evidence to this inquiry and to the House of Representatives Committee NCDC submitted:

> The EIS procedures has advantages and limitations. The principal advantages are that it requires the Commission to prepare and publish a concise statement of the environmental impacts of a particular project. If necessary, there can be a public hearing and people opposing the proposal have the opportunity of stating their case before an independent arbitrator. This is of particular value where a project is controversial and sensitive.

The limitations are:

- the introduction of the EIS into the urban planning process tends to cause delays and increase financial costs;
- the effort involved in preparing an EIS for public release often exceeds the effort required for the technical investigation of the environmental impacts and diverts resources away from studies of other key environmental issues;
- the systematic EIS approach which identifies and evaluates a series of alternatives for one project at one point in time does not lend itself to the dynamic and integrated operations involved in the long term structure plan for a new town;
- staging differences for various parts of a large project often preclude the preparation of a comprehensive EIS for such a project until after irreversible decisions have been made;
- the full implications of an urban project on other projects which are related functionally or geographically are often too broad to enable an EIS to present the project in its full context;
- the need for planning to be flexible and able to change in response to evolving community needs means that the proposals presented in a final EIS will not necessarily be implemented without change;
- for some projects, the controversial and/or environmental issues are often resolved through direct community involvement early in the planning, making an EIS unnecessary;
- the application of EIS procedures in the ACT has the potential to duplicate or come into conflict with the operation of the Joint Committee on the ACT;
- the level of response to an EIS tends to reflect the level of controversy of the project rather than the often unrelated extent of environmental impact;

- public responses tend to be narrow, concentrating on the adverse environmental impacts of options for a project without examining the often more significant environmental benefits;

- an EIS is not always an effective means of obtaining the views of people likely to be affected by a project. e.g. people of low income or with limited education, future residents.[7]

89. These statements led one witness to comment:

> At the moment the only legislation which appears to expose the NCDC even to the possibility of meaningful public scrutiny in regard to their planning proposals is the Environmental Protection (Impact of Proposals) Act 1974. In their submission to this Committee, in Part 2 on page 23, they list numerous limitations, which they see in the legislation but their views on this matter do not, to me anyway, seem particularly well balanced. They appear to consider the major limitations are that the preparation of the Environmental Impact Statement is a bit of a nuisance which tends to delay projects and leads to increased costs. To me, at least, it seems that what the NCDC views as limitations are in fact the advantages of the legislation in terms of the objectives of that legislation.[8]

90. Given the volume of activity by Government departments and instrumentalities in the ACT it is obvious that the Environmental Protection (Impact of Proposals) Act is capable of much wider application in the ACT than it is elsewhere in Australia. Procedures could be developed under the legislation which would provide opportunities for public involvement over a wide range of matters. This would be particularly so if the potential of the legislation is realised so that it is made to apply to proposals with social and economic implications as well as those that

7. Evidence, pp. 104-106.

8. Evidence, pp. 493-4.

relate directly to the physical environment. The Committee is of the view, however, that the procedures outlined in Chapter 7 of this report are better adapted to providing for community involvement across the broad spectrum of planning and development activity in the ACT than could be achieved by a wider application of the Environmental Protection (Impact of Proposals) Act. The scope of that Act was criticised by the Commission of Inquiry into Land Tenures which commented:

> The legislation ensures that any hearings on development proposals will be independently conducted and that findings will be publicly announced, but we consider that it contains two weaknesses. In the first place, the legislation only applies to such cases as the Minister for the Environment determines; some public development will therefore escape its ambit. Secondly, the public hearings and findings will generally be the responsibility of a single Commissioner who will normally be a public servant. However able such a Commissioner may be, he can hardly achieve the width of knowledge and experience that would be encompassed in a well-balanced, multi-member board. However intellectually honest and independent the Commissioner may be in fact, as a public servant he will not appear to be independent to the public.[9]

Other criticisms are: that many basic decisions are made before EIS's are completed; that alternatives (particularly that of not proceeding with the project) are rarely given meaningful consideration; that since the EIS is prepared by the proponent it is bound to be biased in favour of the project; and that the EIS procedure does not include provision for comparing actual and predicted impacts and ensuring that promised safeguards are implemented. **The Committee recommends that the operations of the Environmental Protection (Impact of Proposals) Act be examined in relation to the proposals put forward in Chapter 7 of this report (see para. 179).**

9. Final Report, p. 43.

National Capital Planning Committee meeting, 14 February 1974. This was the last meeting to be chaired by Mr W.C. Andrews before he retired.

Interior of Belconnen Mall.

CHAPTER 4 - THE NATIONAL CAPITAL DEVELOPMENT COMMISSION

91. The powers and functions of NCDC are set out in the National Capital Development Commission Act 1957. Section 11 defines the Commission's functions in wide terms, *empowering* it "*to undertake* and carry out the planning, development and construction of the City of Canberra as the National Capital ..." The Commission may "do all things necessary or convenient to be done for or in connection *with, or incidental to,* the performance of its functions and the exercise of its powers". It is prohibited from undertaking constructions on leased land and from doing anything inconsistent with the plan of lay-out of the City *of Canberra and its environs.*

92. The Commission is responsible for the formulation of its own policies, and section 12 of the Act sets out *procedures for informing the Minister of* policy decisions. Provision is also made for circumstances where the Minister and the Commission differ on matters of policy. The Act requires the Minister and the Commission to endeavour to *reach agreement and where agreement cannot be reached* the Governor-General may determine the policy to be adopted.

93. The Commission is funded by annual appropriations of the Parliament pursuant to *section 18(1) of the Act.* It has a one-line appropriation. Funds can be expended only in accordance with the particulars of proposed expenditure submitted to the Minister by 31 March each year and approved by him pursuant to *section 21 of the Act. Section* 25 establishes a National Capital Planning Committee to advise the Commission on the planning, development and construction of the city. This Committee consists of the Commissioner,

two architects, two engineers, two town planners and two other persons with special knowledge and experience in artistic or cultural matters.

94. By administrative order the following responsibilities were transferred to the Commission in 1958:

- town planning;
- preparation of capital works and services programs;
- approval of programs of expenditure on parks and gardens;
- selection of sites for disposal under the City Area Leases Ordinance and the Leases (Special Purposes) Ordinance;
- determination of building covenants;
- selection of sites for Government buildings; and
- approval of lease variations.

In 1969 the Buildings (Design and Siting) Ordinance was gazetted. This Ordinance authorised NCDC to grant absolute or conditional approval or to refuse applications for building development in respect of external design and siting. Under the Ordinance design and siting approval is a prerequisite to building approval or the issue of a building permit by the Building Controller.

95. The Commission, under section 3(2) of the National Capital Development Commission Act 1957, is constituted by the Commissioner in whom the legal authority of the Act is vested. The Act also provides for two Associate Commissioners to advise and assist the Commissioner. In practice, the Commissioner and the Associate Commissioners together form a triumvirate who constitute the governing body and exercise the powers provided under the Act. This

triumvirate meets formally as "the Commission" at least once a week. A record is kept of resolutions passed at its meetings.

96. The Commission as it was originally conceived was to be essentially a management organisation with a relatively small staff of professionals and administrators who would arrange for the detailed work of design and construction to be carried out by external agencies. Although most of its planning is done internally, it issues briefs to agents for design and documentation, calls tenders for approved projects, awards contracts, and monitors performance of the entire planning, design and construction process. An organisational chart of the Commission's structure is shown in Figure 1 and details of the Commission's system of internal management are outlined in NCDC Technical Paper No. 18 which was part of its submission to the Committee's inquiry.[1]

97. The Commission is autonomous within broad guidelines of Government policy. It must exercise some judgment therefore, as to those decisions which it can take on its own authority and those on which it should seek guidance from the Government. The Minister is informed of policy decisions either under section 24(1)(b) or section 12. Section 24(1)(b) requires a report on the operations of the Commission to be furnished each quarter. While these quarterly reports are essentially an historical record of events during the preceding quarter, they do provide an instrument by which the Minister may be informed. Alternatively NCDC may proffer advice to the Minister on policy matters pursuant to section 12 of the Act.

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1. See also evidence, pp. 79-155.

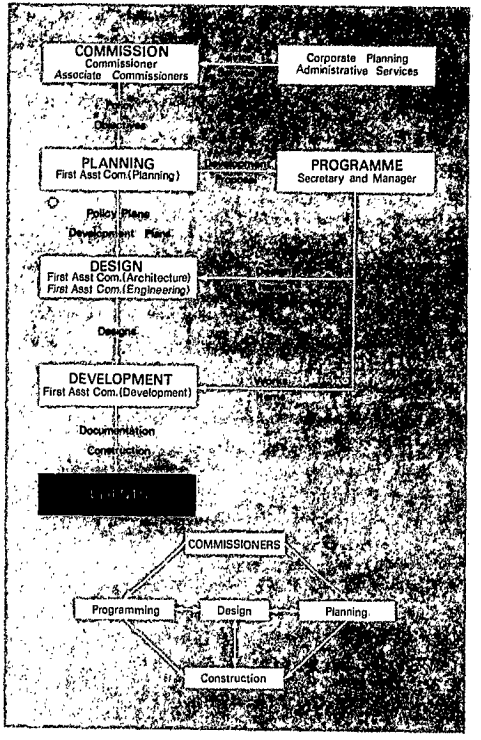


Figure 1. NCDC: Idealised organisation structure.

98. Although there is no provision in the Act for the Minister to direct the Commission, the Government must approve its annual budget and can thereby control its policies. In practice NCDC is guided by the Minister's advice as to Government policies and priorities. There are a number of ways in which the Minister may influence NCDC activities. NCDC cannot expend any of its money except in accordance with particulars of expenditure approved by the Minister. The Commission selects sites and defines development conditions for leases. The Minister exercises powers under the leasing ordinances and so can determine whether to issue leases or not.

99. In its evidence to the inquiry NCDC stressed the importance of the development aspect of its role. It has land to develop and is allocated funds to undertake this task. Management of this system can involve hundreds of individual projects simultaneously. These projects have their own lead times, and are undertaken on behalf of different clients and implemented by different agents and contractors. Figure 2 outlines the general procedures NCDC goes through in the building of a neighbourhood. Several new neighbourhoods are usually being constructed at the same time as other planning and development work such as headworks, arterial roads, major buildings and site works for private development. NCDC must undertake this work within prescribed budgets and in accordance with its approved three year programs which are developed after consultation with other agencies affected. To this must also be added increasing involvement in urban change as the city ages.

100. The Commission is required to co-ordinate a range of activities and ensure that all planning and programming information is available on schedule in order that decisions on proposed works can be implemented. To facilitate these

management tasks NCDC has recently established a system of internal organisation based on the principles of corporate management.[2] This system results in the management process being broken into three parts - planning, works program and development process. Planning involves NCDC in preparing two types of plans: Structure Plans and Development Plans. Structure Plans are conceptual documents which reflect policy and are expressed in general terms. Development Plans represent the detail needed for implementation. In both cases maps and drawings are supported by documentation in the form of reports evaluating alternatives and indicating preferrred policies, programs and schedules. NCDC's works program is the schedule of all works to be commenced, continued or completed during the period of the program together with details of timing (commencement and completion dates) and expenditure. It therefore prepares a seven-year program, a three-year program and an annual program. The seven-year program provides a projection and analysis of the medium to long term direction of Canberra's development, covering likely investment by both the government and private sectors. The three-year program identifies projects likely to be undertaken by the Commission in the short term. The three-year program is the basis for the Commission's design work and the three-year estimates of expenditure. The first year of the three-year program is refined and reviewed in a continuing process to become the annual program. The annual program identifies the actual work to be undertaken in a given financial year and details expenditure on works already under construction.

2. NCDC has published documents in its series of technical papers describing the corporate management concept. They are available as Technical Paper Nos 8 and 27 in the series. See also the NCDC Annual Report for the year ending June 1978.

101. The three-year program and to a lesser extent the annual program are flexible and capable of adjustment at relatively short notice. Within the framework of the three-year and annual programs there are government and statutory requirements to be met including the three-year forward estimates which are submitted to the Department of Finance following approval by the Minister, and the annual particulars of expenditure which are submitted to the Minister by 31 March each year and form the basis for the expenditure proposals for the following financial year.

102. When the detailed requirements for a particular project have been determined and documented a brief is prepared for issue to an agent. The objectives, requirements, standards and other details are spelt out to ensure that the design meets the need and can be built within the cost estimate. In general, agents are offered a returnable brief to give them the opportunity of seeking amendments before design work is commenced. The selection of agents is governed in the first instance by particular skills, experience and demonstrated capacity to perform in time and with quality. The Department of Construction is engaged as an agent for about fifty per cent of work and NCDC endeavours to distribute work as evenly as possible among firms in Canberra employed as its agents. The performance of agents is monitored regularly and in the case of unsatisfactory performance NCDC can terminate its agreement with the agent.

103. Contracts for construction are awarded on a competitive tendering basis using a standard set of conditions which have been adopted by all public works departments in Australia. Variations on the open tendering system are adopted. The most common being pre-registration and invitation to those on a short list to submit tenders. Another system involves the employment of an agent as the

project manager with the responsibility for constructing the project for a pre-determined fee. The agent engages subcontractors on NCDC's behalf in accordance with prescribed tender procedures.

104. For every construction task NCDC exercises its own project management role. In this way it can monitor progress, deal with complications arising from delay, process claims and variations to the contract, oversight the contractor's rate of expenditure and arrange complementary action on work outside the project. Information on each project and contract is computerised which enables effective management control to be exercised. On the completion of a project the Commission transfers the building or works to its client. This completes NCDC's part in the development process.

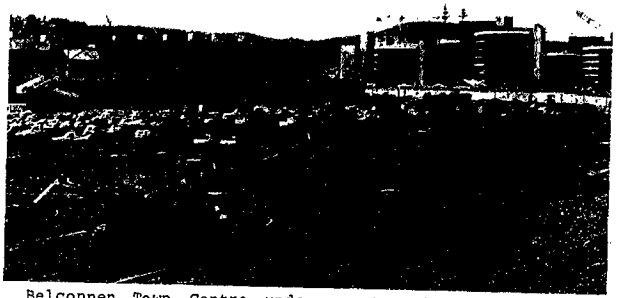
105. The Commission uses the term "client" to describe the relationship with other authorities on whose behalf development works are undertaken. For the most part these clients include other Government departments and instrumentalities such as the Department of Administrative Services (government offices), the Department of Health and the Capital Territory Health Commission (health centres, hospitals) and the Department of Education and the ACT Schools Authority (pre-schools, schools, colleges). This has been explained by the Commission in the following terms:

> the Commission has and requires clients in the planning and construction of buildings and works. The Commission provides the infrastructure and facilities for a "client"; the infrastructure or facility as a Government asset is managed and maintained by the client.[3]

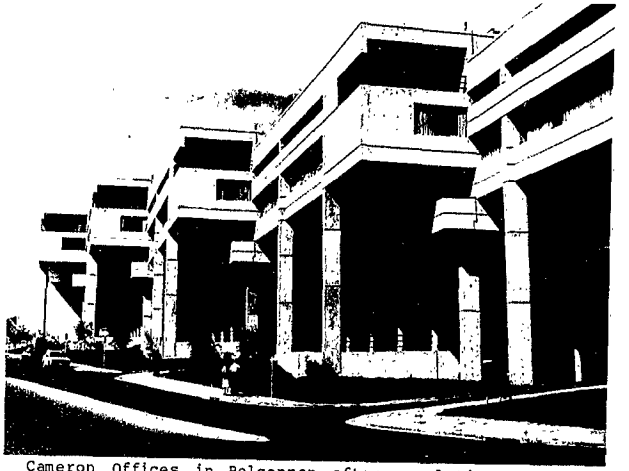
3. Evidence, p. 106.

In some cases the Commission has entered into formal agreements with major clients so that the respective responsibilities are clearly defined. Other clients are dealt with on the basis of practices developed over the years.

106. In summary, the Commission undertakes general land use planning for the city, arrives at planning policies and programs which can be submitted to the Government and made public, prepares detailed project plans, carries out the physical construction work to create the servicing infrastructure for the city, and returns the serviced land to the Department of the Capital Territory for release, with proposed conditions and land use controls where development under a lease is to take place. The Department then undertakes the disposal of the land under leasehold and the maintenance and management of the new urban units. The Commission's planning intentions are achieved through the specification of land use where land is to be leased for private purposes, through its construction of basic services and those buildings necessary to the city and the community and through its general development charter. NCDC is thus a comprehensive development authority undertaking as an integral function the planning of the city and supervising much of its physical construction. The multi-disciplinary nature of the Commission's organisation aims to achieve a balance of technical, social, economic and management factors under unified direction. By virtue of its own actions, the Commission can create the residential districts within the new towns, thus assuring the appropriate proximity of work place and living area. It has direct working links with the Department of the Capital Territory, the chief operating and managing Department, so that co-ordination of management and development is accordingly simplified. The following features of the system facilitate its activities:



Belconnen Town Centre under construction. Belconnen Mall is on the left, with Cameron and Benjamin Offices in the background. March 1978.



Cameron Offices in Belconnen after completion. These offices house Commonwealth Government departments.

- there is a leasehold system which gives positive and detailed control over land use;

- the leasehold system offers the opportunity to the government through NCDC and DCT to direct land use in a specific way at a chosen time as leases require development performance to occur within periods stipulated in the document of lease;

- location of Government and private employment can be directly influenced to give shape and substance to the new town activity centres; and

- there is a simple system for development financing and assurance of funds based on annual programs.

Because of the central position of NCDC in the structure much of the evidence received related to the Commission's role.

107. In its submission DCT commented that NCDC had functioned with certainty, distinction and generally with strong public support but that its task needed restating in the light of the city's historical development, its growth prospects and new ideas about Government and community roles. This review might, for example:

- give the local community a stronger voice on the National Capital Planning Committee;

- bring the ACT Legislative Assembly and the Commission into some formal pattern of consultation;

- require the public exhibition not only of street planning (as now) but of land use planning and replanning, and subjects such as design and siting policies; and

- permit the more relaxed public canvassing of lease change of purpose than present laws encourage.[4]

The Department submitted that the scope of NCDC powers should be extended to include the ACT generally, not just "the National Capital" or city areas. But it reiterated its objection to proposals that NCDC should be made responsible for the administration of leases:

> The Crown's estate management function is quite dissimilar to the city planning function. Each would be compromised by a merger. The interests of the lessor and lessee are not the same as those of the planner and are best observed and protected by the present arrangement. This allows for an independence of view which could be less available if lease management were entirely the handmaiden of planning.[5]

NCDC planning decisions frequently create management problems which the Department then has to deal with.

108. Government departments with functional responsibilities in the ACT made submissions detailing the nature of their relationship with NCDC. As noted these departments are perceived by NCDC as its clients for the purposes of development undertaken on their behalf. The

4. Evidence, p. 399.

5. Evidence p. 400.

departments reported satisfactory working relationships and administrative arrangements with NCDC.

109. The Department of Construction submitted that the level of public participation in Canberra to date has been limited because of the lack of established procedures for such participation in planning decision-making. Community contribution to planning has been mainly through a small number of established groups often not oriented towards planning, or through public meetings arranged by NCDC to discuss particular matters. The community, however, is not represented in the final decision making process and is not necessarily advised of the outcome. The Department saw it as inevitable that "economic necessity" would result in a pattern of much more concentrated development for Canberra in the future. The Department estimated that:

> within Canberra's current level of infra-structure development and at existing levels of population density, a total National Capital population some twofold that currently existing could be accommodated within the same spatial and geographical extent of today's Canberra.
>
> Future planning must therefore primarily gear its efforts to the municipal and citizen levels of planning and development within the satellite valleys, and for older Canberra, appropriately focus its attention on the Seat of Government or National Capital aspects.[6]

110. The Department of Construction submitted that the major planning emphasis in the past had been directed towards physical planning aspects and that social planning objectives had not been given adequate attention. The Department saw the need for two levels of public participation. One at the executive level of the central planning authority and the other through formal procedures

6. Evidence, p. 1150.

to provide a two-way flow of information through consultation between the public and NCDC. The Department stated that without a strong and authoritative institution like NCDC it was doubtful whether a planning agency could really be successful. The planning authority should be a strong one but it should be broadened to include the other participants in the government of Canberra. It would thus obtain wider perspectives so that co-operation between the main groups could be improved. However, these innovations should not be at the expense of the final authority of professional planners. The Department concluded that voting arrangements on the upgraded NCDC should "safeguard the capacity of the professional planners to ensure that in the last resort their views are adopted by the planning authority as the authority's views".[7]

111. A number of witnesses were critical of the lack of scope that exists at present for citizen involvement in the planning process. Typical of many submissions was that of a surveyor and planner who identified the principal acts and ordinances and planning documents of the ACT relating to planning and evaluated the degree of public involvement permitted. He concluded that:

- there is no statutory requirement for NCDC to involve any community organisation;
- the process assumes the existence of community organisations whose affairs are relevant to the particular planning submission. The community, therefore, has the responsibility to organise itself and react to an NCDC proposal at fairly short notice;
- NCDC has not accepted the possibility of presenting its planning submissions to the community through public meetings. There is no provision for public notification by NCDC of the details of particular development submissions or for the receipt and consideration of individual objections; and
- the activities of NCDC are not subject to the usual political checks of elected community leaders (and) the ACT Legislative Assembly is not specifically involved in the process.[8]

112. He submitted that full community involvement is only possible when the community:

- has access to all the relevant information held by NCDC;
- is able to express its opinion to NCDC as a whole group or as a combination of sub-groups; and

7. Evidence, p. 1165.

8. Evidence, p. 532.

- is able to seek remedies for its complaints through local politicians in control of NCDC.[9]

113. The submission concluded that since the objective of community control of the planners through its elected representatives cannot be achieved in the short term:

> an interim strategy of seeking wider public knowledge of planning behaviour through the exposure of planning issues at public meetings, should be adopted.
>
> With the co-operation of NCDC the conflicts of interest in a particular submission could be exposed and the planners could bring their skills to assist the community resolve its development problems.
>
> Even if this assistance could not be obtained, the exposure of the planning issues at a public meeting would form a valuable input to both the planners and the community's understanding of the problems in a particular development submission. Community attitudes and values would be better understood by the planners and these could replace the very abstract and unresearched aims which form the basis of plans in current planning practice.[10]

114. These general ideas were supported in other evidence. The Society for Social Responsibility in Science submitted that because of the significant role played by NCDC in the life of Canberra, and because of the impossibility of anticipating every contingency, it is essential that NCDC's plans and activities be subjected to meaningful public review, including possible revision in response to such review, and that this be done on a

9. Evidence, p. 533.

10. Evidence, p. 533.

continuing basis. The Society proposed that NCDC be re-structured so that it is controlled by a governing body representing various interests within the community.

115. The ACT Council of Social Service submitted that the existing planning framework in the ACT did not allow sufficient involvement for "either a democratically elected value awarding body (a Territorial Government) or the various private sector and voluntary organisations and individual households that constitute the community".[11] The scope of planning must be seen to extend beyond development controls and design and siting regulations, which create an orderly and beautiful city. In relation to NCDC the Council stated:

> We have argued previously that greatest community conflict with the NCDC arises from its powers to make planning decisions that fall within the ambit of social, economic and environmental areas. We repeat that it is a competent body in terms of implementing planning decisions and giving them physical reality. Various branches of DCT and other agencies act as both policy developers and implementers in these other areas. Community based organisations are also very active in these areas, and there is a need, in addition to community boards to draw these organisations together as an alternative source of advice to the ACT Government. We recommend that a Community Committee for Social Development be encouraged to fulfil this function.[12]

116. Business interests in Canberra submitted that NCDC's structure did not accommodate sufficient understanding of commercial interests in the city and did not have procedures that would enable these interests to

11. Evidence, p. 910.

12. Evidence, p. 918.

participate in the planning process. The Committee is aware of and shares the concern of commercial and business interests in Canberra about the present business climate. The sudden sharp reduction in the city's growth rate unfortunately coincided with an expansion of retail and commercial outlets which had been planned at a time when high growth rates were being experienced and it was assumed that they would continue. NCDC should not be held responsible for this situation which illustrates Canberra's vulnerability to changes in economic conditions and government policy. It is considered that future planning should recognise this fact and should attempt to moderate the effect of significant changes in economic conditions.

117. In its submission to the inquiry the Canberra Chamber of Commerce recommended the inclusion of business and commercial interests of the city in the institutional structure of NCDC. It recommended that it nominate a member to the National Capital Planning Committee. The submission is similar to that of other organisations which have recommended that NCDC be broadened to include a wider range of interests.

118. Some submissions were received which give an indication of NCDC's interaction with the community. In 1976 NCDC put forward policy options for comment involving a number of matters. This included a call for comment on the question of "urban infill" in inner Canberra. As part of its presentation on this issue it indicated areas that might be considered suitable for more intensive development. This resulted in a strong reaction from residents of some areas where "infill" was being considered. Some of these groups, the Mount Ainslie-Majura Protection Association, the O'Connor Hill Protection Assocation and the Calvert Park Protection Association, each of which later made submissions to the inquiry, mounted substantial campaigns against the

proposals. It is noteworthy that these propositions on which comment was requested by NCDC were not put forward as actual proposals but only as possible policy options.

119. A number of witnesses in evidence to the inquiry cited the "urban infill" exercise as an example of NCDC's failure to devise appropriate measures for involving the public in decision-making. The following points were submitted as examples of defects in this exercise in public participation:

- difficulties in understanding the site descriptions of the vacant land;
- the uncertainty created about the future of the nominated areas;
- the impression given in the presentation that NCDC wished to retain full discretion over the type of development in arbitrarily designated "areas of national concern";
- the impression given in the presentation that NCDC intends to proceed with detailed design on proposed residential sites and that the public was simply to be informed of the subdivision details and conditions of release;
- the absence of an undertaking by NCDC to respond to any comments it received and the absence of commitment or even suggestion that NCDC would make public the conclusions drawn by it from the responses to its proposals.

120. Another matter brought to the Committee's attention which may be considered as a case study concerns the development of the Belconnen suburb of Charnwood. Charnwood was developed in the early seventies in accordance with the Radburn scheme of town development. Accordingly, the entire neighbourhood was developed with the Radburn principles in mind. Radburn planning has houses facing onto communal parkland with only pedestrian access, while access to roads is from the rear of the houses. An interconnecting system of landscaped pathways allows pedestrians safe, pleasant access to other houses, shops, recreational facilities and schools. It is essential for the proper functioning of the concept that landscaping and the provision of associated facilities such as shops and schools occur simultaneously with, or within a reasonable time of, the neighbourhood being opened for development. In the case of Charnwood this did not occur or was seriously delayed leading to extreme dissatisfaction on the part of residents. The success of the experiment in terms of resident satisfaction obviously required that the advantages of the system be seen to outweigh the disadvantages. It was unfortunate therefore, that a large number of families moved into the suburb before any of the advantages were evident and in some cases apparently without being aware of the special nature (and requirements) of the Radburn development. In addition the neighbourhood was settled before much of the essential infrastructure associated with Radburn had been constructed. The immediate cause of concern was the failure to provide the pathways and associated landscaping to make the pedestrians ways usable.

121. Out of their dissatisfaction with the planning and development of the area the local residents formed themselves into an association, the Charnwood Community Action Group, which was able to bring pressure to bear on NCDC. As a result of this action on their part some of

their grievances were remedied. In reflecting on this experience the Action Group in its submission to the inquiry drew on its experience to make a number of general points about planning in Canberra and community relations with NCDC. The Group submitted that unless the residents had formed themselves into a pressure group they believed it was unlikely that NCDC would have acted to remedy the shortcomings in the implementation of Radburn at Charnwood:

> It was felt that only by means of publicity could the NCDC be prodded into action, as all efforts up to that point by individuals or small groups of residents to get worthwile information from NCDC had been futile. In fact, events shortly proved the tactic successful. Following newspaper stories, several television news stories, interviews on local radio with members of the committee and letters to the Canberra Times, NCDC quickly made a commitment to a program of works to remedy the suburb's immediate problems.[13]

122. It was stated that as a result of the publicity resulting from this action the neighbourhood received a bad name. This led to problems of disposing of unsold leases and a decline in property values. This would have been avoided, in the residents' view, if greater care had been taken initially before the dissatisfaction arose. The residents were disturbed by the failure of NCDC and the Department of the Capital Territory, having sponsored Radburn, to support this concept once the residents had moved in. The submission stated:

> Once the NCDC committed itself to developing almost a whole suburb on the Radburn principle, it should have been prepared to put all its efforts into

13. Evidence, p. 1574.

gaining acceptance of that type of development by the people who were destined to live there.[14]

123. The group also pointed to what it saw as a failure of NCDC to gain support for this design concept from the building industry. The private sector did not actively support the concept. This resulted in less private development in the neighbourhood than had been expected. It also resulted in some private houses being approved which did not meet the guidelines. At the same time the Action Group alleged that NCDC adopted an extremely inflexible position on some design and siting applications which in their view were consistent with the idea of Radburn, such as two storey houses. The Group's conclusion led to its recommending to the Committee the need for overall goals for community involvement in the planning process. These goals included:

- an increasing flow of information between NCDC and the ultimate consumers of its services;
- staff development within NCDC and DCT so that personnel of both organisations obtain a more positive and less remote view of their roles and the social impact of the planning services they are providing; and
- a fostering of community involvement so that citizens become more familiar with the planning process and hence less hostile towards NCDC and DCT officials.[15]

14. Evidence, pp. 1578-9.

15. Evidence, p. 1583.

The Charnwood Community Action Group submitted that greater community involvement would allow citizens to exert some degree of control over the development of their city and their immediate environment. This could ultimately take the form of an elected citizens group or council to keep the planners in touch with the consumers.

124. Other expressions of dissatisfaction and submissions calling for procedures for greater involvement of the local community have pointed, among other matters, to claims of:

- a failure to meet the needs of the non-motorist in the community by providing an adequate public transport system;
- failure to plan provisions that would accommodate the special needs of more elderly citizens;
- insensitivity on the part of NCDC engineers when designing major roadways to provide adequate acoustic control or to correctly site the roads to avoid inconvenience to residents; and
- the absence of a procedure that would enable neighbours affected by proposed additions or alterations to houses in their suburbs to appeal against approval of such additions to the Design and Siting Review Committee (which is administered by NCDC).

125. Consideration of the evidence to the inquiry might suggest an unrelieved atmosphere of hostility towards NCDC in the Canberra community. However, these submissions are selective and could not be regarded as an accurate

reflection of the community's attitude towards NCDC. Groups and individuals making submissions were often critical of aspects of NCDC administration, particularly the existing scope for public involvement in the planning process but there was general consensus that NCDC is a competent authority and that it has succeeded in creating a very acceptable environment in the ACT. No submission actually recommended the abolition of NCDC although many suggested modification of its powers, democratisation of its governing body or that it be placed under the control of the ACT Legislative Assembly. The Committee concludes that NCDC is generally well regarded by the majority of residents of Canberra and the ACT.

126. The Committee is prepared to concede many of the points of criticism made but not necessarily to endorse many of the solutions proposed. While the merits of NCDC are widely recognised and acknowledged this is not to say that there is no room for improvement to meet changing circumstances. However any proposed changes should be approached with caution. The system should be adapted to allow a constructive contribution by interested members of the community at a time when that contribution can be taken into account and made use of by those responsible for making the final planning decisions. When public comment is sought on a published plan major options have usually been already decided and the planners are committed to the published plan. A more important aspect is the level of resources available to the community relative to those of the planning body. The planning body is a unified coherent organisation in possession of all the essential information while affected citizens usually have little time or opportunity to meet, inform themselves, discuss and consolidate their own attitudes. In those instances where residents have met to form a consensus of local opinion with which to approach the planners it has all too often been in an attitude of

confrontation arising out of particularly contentious proposals. At present the possibility of dialogue between planners and residents on an equal footing and in a constructive mood is limited. To invite the public to participate when most options have been excluded by decisions previously made is to invite confrontation. Recent experience in Canberra has often been of this negative kind. The Committee has at times experienced this situation when considering proposals to vary the Canberra City Plan. The proposals in relation to which public objection is invited are frequently proposals which have long since been pre-empted by earlier decisions. In many cases little real scope remains for meaningful public involvement or for adjustment to major proposals.

127. The problem for this inquiry has therefore been to suggest a system to encourage and foster public involvement in the planning process. The system should be such that all those with a legitimate interest have an opportunity to examine proposals, if they wish, to make a contribution at an appropriate level and in a way relevant to the nature of their interest. There should be avenues which are identifiable, practical and responsive. The Committee has reached the conclusion that a co-operative and comprehensive system of information sharing and exchange, consultation and co-ordination is essential to allow a constructive contribution by interested members of the community at a time when that contribution can be taken into account and made use of by those responsible for making the final planning decisions.

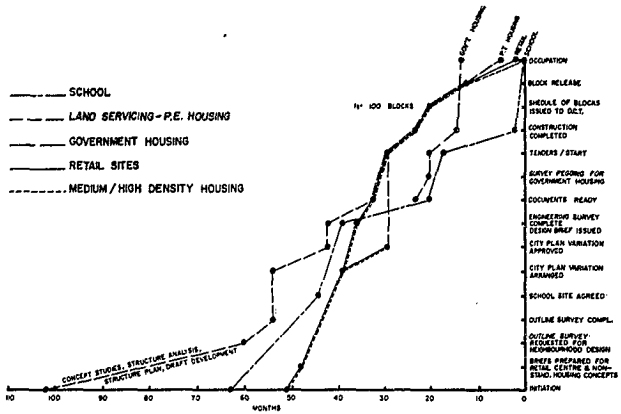


Figure 2. Typical pipeline for planning development and construction.

CHAPTER 5 - PUBLIC PARTICIPATION IN PLANNING

128. The concept of public participation in planning has inspired an impressive literature and has been a popular topic for academic analysis. The notion has come to Australia primarily from Britain and from the United States of America. It has implications for most aspects of public sector decision-making. Dissatisfaction both with governments and institutions of government to meet the needs of their consumers is one factor that has inspired this movement:

> ... there is more and more articulate protest against the prerogatives of governmental planning. People no longer resign themselves so amenably to decisions which disrupt their neighbourhoods or displace them from their houses. Authority seems at once more intrusive and more remote determining the public interest by a collusion of bureaucracy and expertise beyond effective democratic control. Thus the structure of representative government does not seem an adequate protection of the citizen's autonomy and threatens to alienate people losing their fundamental consent.[1]

129. Two aspects of the discussion need to be isolated. On the one hand there is the discussion which perceives paticipatory democracy as a means of making government more responsive to the needs of consumers of government services, for citizens to have more opportunities to contribute and to have vested rights within the existing structure of planning. On the other hand advocates of participatory democracy see it as a means of compensating for failures which they perceive in the traditional power structure of representative democracy. The movement generally had its

1. Peter Marris & Martin Rein, Dilemmas of Social Reform, Penguin Books, 1976, p.13

genesis in the USA during the presidencies of Kennedy and Johnson and the experience of public participation in programs of the U.S. Office of Economic Opportunity. The Economic Opportunities Act (U.S.A.) of 1964 contained a clause requiring that the community action programs for which provision was made in the legislation, be carried out with the maximum possible participation of residents of the areas and members of the groups served. The history of these programs has been documented.[2]

130. This experience of community action revealed problems with the idea of public participation. By establishing programs and federal agencies to run them the central government was challenging the authority of representative government in the States and of City Hall, which felt threatened by these new entities funded directly from sources of government other than their own. Many of the programs were originally conceived in universities and were inspired by high minded ideals. It was believed that programs to alleviate poverty would be more effective if the target groups were involved in their development and administration. But within the agencies that were created battles took place between rival factions for control of the programs and the results were different from what had been envisaged. The programs failed eventually because they lost the support of central government. This was attributable to the distraction of government by the Vietnam War and the realisation that finance for the "new society" and the war could not be simultaneously raised. Once funds to maintain the programs terminated, the basis for the action groups' existence disappeared.

2. Moynihan, D.P., Maximum Feasible Misunderstanding, New York Free Press, New York, 1969.

131. The experience gave rise to considerable analysis of why these programs had failed to achieve their objectives. Many commentators found the answer in the nature of existing power strutures which led to analysis encapsulated in the slogan of "more power to the people". The work of the American writer Sherry Arnstein[3] illustrates this approach. Arnstein's eight rung ladder classifies forms of public participation according to the degree of effective decision-making power they afford to the citizen. She identifies three major categories: non-participation, token participation and citizen power. The first category is further sub-divided into manipulation and therapy of the citizen by the agency; the second category is divided into informing, consulting and placating the citizen; and the third, into partnership of citizen and agency, delegated power (delegated from agency to citizen) and citizen control.

132. Other writers have attempted a similar exercise in analysis and classification as a basis for evaluating the experience of participatory democracy. An example is that of the Australian commentator Dr Leonie Sandercock[4] who identifies the following kinds of participation:

- 'Participation as market research' where the emphasis is on the responsibility and power of the bureaucracy and the participant is seen as a consumer.

3. S. Arnstein, "A Ladder of Participation" in Journal of the American Institute of Planners, July, 1969. pp. 216-224.

4. L. Sandercock, Public Participation in Planning - a report prepared for the Monarto Development Commission, Adelaide, 1975.

- *'Participation as Partaking in Benefits'* which argues for the humane treatment of the masses but rejects the idea that they should exercise any control over what they receive.

- 'Participation as Decision-Making' where the citizen is no longer the beneficiary or victim of 'welfare colonialism' but a policy-maker, a voting member of the governing board of directors or part of a team of planners.

- 'Participation as Employment in Programs of Social Therapy' where the citizen or consumer is encouraged to contribute to the operation of a program or the preparation of a plan.

- 'Participation as the Dissolution of Organised Opposition' where the authorities co-opt leaders of protest groups into the planning process but essentially retain power themselves.

- 'Participation as Grass-Roots Radicalism' where a challenge by the poor on behalf of their interests to bureaucratic domination is deemed as necessary.

133. The concept of participatory democracy has come under challenge and it is now recognised that whatever the stimulus to the desire for people to participate, participation is no substitute for traditional institutions of representative government as there is otherwise no way that the participants can be held accountable by those in whose name they are acting. This view is expressed by Professor Harvey Cox thus:

> The greatest danger with the indiscriminate advocacy of power to the people is that it might result in a weakening of government capacity to achieve many of the objectives the advocates themselves want attained, while placing power in the hands not of people but of a chaos of small groups of committed activitists. And then we are back at square one. People's democracy in any of its multivareat guises, has nothing to do with democracy and no more to do with people than the vision of any other clique of self-appointed prophets. It is no answer to the problem of making government responsive to make it vulnerable to the pressures of those who merely shout the loudest proclaiming their own particular version of the future.[5]

In her paper Dr Sandercock states as one of her conclusions:

> Participation is not a substitute for planning or for regular government. (It often leads to non-planning and semi-anarchic government). It is not an effective means of radical social change. (It often has the opposite effect in fact). And it is not an effective way of involving the 'have nots' in decision-making. (All procedures so far used are biased in favour of the middle classes).[6]

In favour of participation she concludes that participation can:

- keep public authorities honest, humane and thoughtful of the people they serve;

- reassure people by keeping them informed and by consulting them;

- usually elicit informed responses on questions of local detail; and

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5. W. Harvey Cox, Cities: The Public Dimension, Penguin Books, 1976, p. 181.

6. Public Participation in Planning, p. 1.

- justify a certain amount of expense and delay, for the above reasons.

She also concludes that other means are more effective for obtaining reform:

> It is more important to establish criteria other than power for evaluating participatory processes. My general answer to the problem is that principles of redistributive social justice and equality of opportunity are more important than the principle of participation when there is conflict between the two.

134. The other discernible strand is a trend towards greater public participation in planning which seeks involvement of consumers to ensure that their needs are met and which works through existing agencies of government. In this case what is sought is a share in decision-making rather than the power to control decision-making. In Britain the problem has been perceived as one of involving people in the range of services provided under the welfare state and the co-ordination of the activities of different government agencies. The reorganisation of social services and the introduction of structure planning and corporate planning came from a realisation that social problems need a multi-faceted approach. In Britain there has been an attempt to incorporate public participation within the existing structures for the administration and delivery of services. In the sixties and seventies in Britain there were a number of influential reports on a variety of different aspects of government such as education, health and welfare and in particular, local government administration. The importance of physical planning in co-ordinating services and also its impact on the

7. Public Participation in Planning, p. 4.

environment was recognised and amendments were made to the Town and Country Planning Acts which recognised the central role of town planning in implementing and co-ordinating initiatives in social and economic policy areas as well as physical planning.

135. The Skeffington Committee in 1968[8] was established to make recommendations about how the public could best be involved in the development of planning proposals. This arose because of the report of the Planning and Advisory Group in 1965[9] which had recommended the inclusion of structure planning within the development planning system which was to be a written statement of policy intention augmenting the detailed land use plans. Its recommendations included proposals that:

- an initial statement should be published outlining how the planning authority proposes to inform the community together with a timetable showing the main opportunities for participation and indicating pauses for consideration of contributions;

- representations should be considered simultaneously as plans are formulated, with definite pauses to provide opportunities for public reaction. Alternatives should be presented to the public with a statement by the authority about why it prefers the plan it does;

8. Report of the Committee on Public Participation in Planning (the Skeffington Committee), People and Planning, HMSO, 1969.

9. Planning Advisory Group, The Future of Development Plans, London, HMSO, 1965, for the Ministry of Housing and Local Government.

- community forums should be established with administrative functions for such things as the collection and dissemination of information and the mobilisation of opinion transferred to them;

- community development officers should be appointed to involve those who do not join organisations;

- the public should be told what their representations have achieved; and if rejected, why; and

- greater efforts should be made to provide more information and better education about planning generally on the principle that only if there is better public understanding of planning and the procedures, will a local planning authority's efforts be rewarded when they seek public participation in their own development plans.

The Planning Advisory Group's recommendations although welcomed have been criticised on the grounds that the community forums were elitist in concept to be composed of what the Skeffington Committee called the 'yeast of the community'. That is to say churches, political parties, trade unions and voluntary organisations. One commentator has noted:

> The community forum was not, on the whole, well received by those intended to be involved in it. They feared emasculation as independent groups. In any case, the problem with any such body of representatives of 'responsible opinion' is how to define criteria for membership. The good, the godly, and the middle class?[10]

10. Cities: the Public Dimension, p. 4.

136. Most commentators have noted the problem of representing the interests of people who traditionally do not join organisations. Many of these people belong to lower socio-economic groups whose interests are likely to be swamped by the better organised and articulate middle class groups. The Skeffington Committee recommended the appointment of community development officers to motivate these groups but this presents problems.

> For the 'non-joiners', that is the vast majority of those likely to be deeply affected by change, yet another caretaker - the community development officer, was proposed. The Committee was fuzzy on where his loyalties should lie - and this is a critical weakness in the position of anyone in such a role. To gain the confidence of the under-privileged any such person must be involved with them - but as an employee of the local authority his job would depend on its definition of his effectiveness and not that of the local people. If he were to be really effective as the people's spokesman, it could take a bold authority to stomach him.[11]

137. The Skeffington Committee allowed only six weeks for contributions to be made from the point when the plans were exhibited. This led to the accusation that it failed to distinguish between public participation and public relations. This was seen in its leaving 'participation' to the final stages rather than at the beginning stage of identifying available choices. It is widely acknowledged that if public participation is to be effective it should occur early rather than late in the planning process. But it is also conceded that it is more difficult to raise people's interest and involve them in projected rather than actual proposals. For people to be involved they need resources to enable them to compete with the planning professionals in their own territory. The number of people

11. Cities: The Public Dimension, p. 183.

with expertise is limited and usually already employed by planning agencies. To be effective it is necessary, therefore, to provide participants with financial resources. This is likely to be expensive. Voting statistics for local government elections, attendance at local meetings, responses to opportunities to comment on proposals (such as those recently put forward by NCDC) the proportional figures of those involved in trade unions, political parties, parents and citizens associations, indicate that the majority are not using existing opportunities to become involved. This suggests that some new form of participation in local decision making is not likely to be different in its appeal. The possibility is that people who will take advantage of the new opportunities will be the same people who take part in traditional community activities.

138. The Committee endorses the general concept of public participation in planning because it believes that:

- there should be a continuous dialogue between the planners and the community at all stages of the planning process;
- the whole planning process should be open and reasons should be given for decisions;
- the public should be able to observe and intervene in the planning process; and
- there should be some mechanism to enable the citizen to see that his contribution has been considered.

The Committee recommends that to make public participation more effective the Minister for the Capital Territory:

- **develop a program to inform the community of the objectives, procedures and language of planning so that the participation of the community in planning will be increasingly informed and instructive; and**
- **ensure that the planners are trained in the skills of communication with the public, and to recognise the range of values in the community for which they are planning.**

139. These considerations are relevant to the matters that the Committee has been asked to examine in this inquiry. The Committee has been asked to consider specifically:

- the adequacy of community involvement in planning and development;
- the role of the National Parliament, particularly in planning the "national" element of Canberra; and
- the relationship between the various groups involved in this process.

The evidence taken by the inquiry indicates that those 'various groups' presently involved in the process, on the whole, are Government departments or instrumentalities and professional and trade associations such as engineers, architects and building and allied trades. The evidence they have given to the inquiry suggests that the procedures for consultation with NCDC are generally satisfactory to these groups and that the integrated system of planning and development control has been effective in the past. The evidence indicates that some institutions and organisations

with an important advisory role are not sufficiently represented in the process. This includes the ACT Legislative Assembly, bodies represented by the ACT Council of Social Service and commercial interests such as the Canberra Chamber of Commerce, societies with special interests and knowledge about particular functional aspects such as the National Parks Association of the ACT, the Murrumbidgee Monitor Association, the Canberra and District Historical Society and bodies representing sport such as the ACT Sports Council. The Committee is satisfied that bodies such as these have a valuable contribution to make and possess information that could improve the outcome of the planning process.

140. The role of Canberra as the national capital and seat of government creates problems for public participation generally, but these problems are acknowledged by the community and are not insurmountable. As has been shown most of the essential infrastructure regarding these functions of the city has been either provided for or planned for. The national interest is very well protected by the constitutional position of the Commonwealth with regard to the Territory which makes it the only effective lawmaker. The national interest is also protected by the Commonwealth ownership of ACT lands and its control over the leasehold system and its institutional control of planning and development through NCDC and DCT. Parliament has a role at present through the Joint ACT Committee and through Parliament's power to disallow ACT Ordinances. The Committee concludes that considerable scope exists for allowing the local community a role in planning and development without endangering the national interest.

141. There have already been experiments with participatory models for ACT government administration such as arrangements for the administration of education in the

ACT. Another ACT public instrumentality, the Capital Territory Health Commission, informed the Committee of internal procedures aimed at involving the community. Community involvement occurred in the design of the model health centres at Melba and Scullin and elsewhere, the community was required under the arrangement, to actively seek the establishment of Health Centres and to establish a case to the satisfaction of the authorities that the centres were needed and wanted. Evidence was presented to the Committee by associations representing residents in the areas of Kambah, Woden, Belconnen and Weston Creek. Some groups have been established in protest against development proposals or because of particular problems in the planning of their neighbourhood. These groups are often effective in achieving their immediate aim which is to stop or modify a development proposal which they perceive as adversely affecting their area. Experience, however, suggests that such groups often act in pursuit of local interests rather than the broader interests of the community. Any proposal for new development or more intensive development within a settled area, will for instance, frequently result in opposition from some residents. It is of course healthy that people should be able to voice vigorous opposition to planning proposals but it is essential that their claims and those of NCDC should be arbitrated and weighed in a forum that can consider the interest of the wider community. The interests of people in one area for the preservation of open space or its conversion to community park needs to be balanced against the interest that others have in being able to acquire houses, against the desirability of controlling suburban sprawl and the interest of the general rate payer who may have to pay the bill for maintenance and servicing the open spaces. Decisions about the locality of public facilities such as remand centres or halfway houses for psychiatric patients need to be made in the interest of the whole community. It is decisions such as these that should

be open to public involvement but any one particular group of residents should not be able to determine the outcome. In the final chapter these developments are given further consideration by the Committee.

142. Existing arrangements for public participation in Canberra may be summarised as:

- publication and dissemination of information through publications of NCDC and the Department of the Capital Territory;
- public exhibitions of planning proposals, though usually at a late stage of development;
- contact between NCDC and DCT staff and community groups, industry organisations, professional bodies and political representatives, through public meetings, seminars and daily consultations;
- provision of access to technical information through NCDC's Technical Paper Series;
- media briefings in response to requests for information and the regular provision of background information on NCDC and DCT programs to local and national newspapers, radio and television;
- periodic briefings of the ACT Legislative Assembly; and

NCDC's "Infill" exhibit, Monaro Mall. Janu

Discussion between NCDC and the Ainsli Group.

- submissions to Parliamentary and Legislative Assembly committees of inquiry and ad hoc inquiries established from time to time by ministers or the Government.

The NCDC expressed to the Committee the view that:

> Effective community relations depends upon the availability of relevant information, the achievement of mutual understanding, the ability of the Commission's own staff to gain the confidence of community representatives and, finally, the willingness of the Commission itself to let its staff reach agreements with the community and ensure that they are promptly implemented.[12]

In its evidence however, NCDC recognised the scope for improvement in these arrangements to meet deficiencies including:

- the lack of an effective review process by Parliament in relation to NCDC's strategic planning policies and proposals;
- the lack of a formally defined role for the ACT Legislative Assembly in the planning process; and
- the lack of an effective mechanism for formally exhibiting plans to the public and obtaining comment, for reaching agreements with the Legislative Assembly as the representatives of local community interests, and for formal endorsement of plans and policies by the Minister representing the Government.

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12. Evidence, p. 63.

143. The Committee concludes that there is scope for ensuring a greater right of involvement of the citizen in the existing planning procedures. Some evidence has recommended fundamental changes to the system. Some of these proposals have implications beyond the simple aim of providing greater rights of public involvement. They are discussed in the next chapter.

CHAPTER 6 - ALTERNATIVE MODELS AND PROPOSALS FOR CHANGE

144. It has been necessary in this inquiry to consider changes taking place with regard to planning and development control elsewhere in Australia and some relevant overseas experience. The situation in Great Britain is relevant because Australian town planning law and practice, including that in the ACT, has been partly modelled on British legislation and continues to be influenced by British ideas and experience. Submissions made to this inquiry by NCDC proposing a system of structure and development plans and a corporate management approach for administration derive in part from reports made to government in Great Britain in the late sixties and early seventies which introduced these concepts in British planning law.[1] The system operating in the ACT has been influenced by the example of the British New Towns. Some attention is also given to the position in other national capitals.

145. The Committee was told by NCDC[2] that the present system of planning control operating in the Australian States is modelled on British planning legislation, particularly the Town and Country Planning Act of 1932. In Australia statutory planning schemes are typically prepared

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1. Planning Advisory Group, The Future of Development Plans, London, HMSO, 1965, for the Ministry of Housing and Local Government.
   Ministry of Housing and Local Government, Report of the Committee on the Management of Local Government (The Maud Report), HMSO, London, 1967.
   Ministry of Housing and Local Government, Report of the Committee on the Staffing of Local Government (The Mallaby Report), HMSO, London, 1967.

2. Evidence, pp. 138-9.

for individual local government areas (and in some cases metropolitan and regional areas) involving a land use map and a planning scheme ordinance which together specify permitted land uses, land uses which are permitted subject to conditions, and prohibited land uses. The planning scheme shows among other things the proposed location of the main roads, utility services, schools and parklands. It allocates land for private uses by zoning for different types of land use and density and designates land for public uses. It is essentially a zoning system which has the force of law. Only in South Australia, where locally initiated planning regulations are used to implement the development plan, has the traditional planning scheme system been modified. However, it seems from evidence presented to the Committee that the various regulations which may be made by local authorities, collectively amount to much the same approach as is found in the single planning scheme prevalent in other States. The effect of these schemes is to provide for strict control under statute with the need to obtain numerous clearances with certain uses prohibited. Each planning scheme is prepared by the local council over a period of years, is publicly exhibited and is then reviewed, amended if necessary and approved by their respective State Government. Subsequent revision and amendment is equally cumbersome. The planning scheme is implemented by the local council which in normal circumstances also exercises separate controls over the sub-division of land and building standards. During the plan preparation period, the local council can exercise interim development control powers based on a draft plan which can be varied by resolution of the council at any time. Many local councils prefer the flexibility of this "interim" development control arrangement and accordingly defer prescription of the final plan for as long as they possibly can. An additional

incentive to do this is the fact that generally compensation is not payable by a local authority until a scheme is approved.

146. To summarise the situation these State systems have the following general features in common:

- essentially a town plan in the States divides a town into various zones in which the use of land is limited. There may be residential, industrial, light industrial, commercial and other zones where only the designated use of the land is allowed. However, a small range of other uses may be allowed at the discretion of the local authority;

- planning activity is usually initiated by way of resolution of a local authority;

- the preparation of a town planning scheme is a matter entirely for local or statutory authorities and it is only after a proposed scheme has been prepared that the citizen has an opportunity to inspect the schemes, comment or lodge objections;

- in all States there is a requirement for approval at State Government level and no scheme can come into effect simply by activities at the local level. This procedure usually follows the receipt of public objections and the consideration of those objections by the authority proposing the scheme and later at State level;

- once the scheme is approved it is gazetted and becomes legally binding on the public and the local authority itself;

- similar steps are involved when changing a town planning scheme; and

- the rigidity of the statutory planning system and the consequent difficulty of obtaining changes has led to procedures such as the interim development order and the approval of non-conforming uses within the system which frequently are subject to less control. (It has been found necessary in Queensland to modify it by a system of re-zoning initiated by individual landowners. Appeal rights then arise from the local authority's decision in relation to re-zoning.)

147. With regard to the statutory provisions for the public's involvement and the appeal systems in all States, procedures involve two basic provisions:

- land owners may lodge written objections to a proposed town plan or proposed changes to a plan before the planning proposal becomes legally binding; and

- where planning schemes are prescribed by law appeals usually apply to those decisions in which the planning scheme allows the responsible authority to exercise a discretion as to whether it refuses, allows or allows with conditions, a development application. In other words, the

> tribunal determines the fairness of the decision but is generally not intended to make planning decisions on its own account.

The only fundamental exceptions to this generalisation are Queensland and Tasmania. In the former, all local authority decisions on individual re-zoning applications may be taken on appeal to the Local Government Court by the dissatisfied applicant. Third party rights differ distinctly when Brisbane is compared with the rest of the State. Objection rights leading to a right of appeal to the Court outside Brisbane are only available in relation to interim development applications and applications under the discretionary column in approved schemes. There are no third party rights of objection or appeal in relation to re-zoning or subdivision applications. By contrast, third party objections and appeals are available within the Brisbane boundaries in relation to re-zoning and subdivision applications apart from minor ones. In Tasmania there are no appeal rights under a gazetted scheme but there is an Interim Planning Board which deals with interim development appeals. Provision is also made for an informal system of planning review by the Commissioner for Planning.

148. In nearly all States shortcomings in planning processes which have developed under existing procedures have been identified and State Governments are looking for alternative procedures both to provide a context for planning and for development control. In its Final Report on Land Tenures the Commission of Inquiry stated that:

> There should be a move away from statutory zoning and towards a system of project evaluation, based on prepared development plans or guidelines and on

non-statutory, flexible but comprehensive master plans.[3]

Discussions with officials in all State capitals indicated that there was a trend away from statutory planning towards more flexible arrangements. The Final Report of the Commission of Inquiry into Land Tenures was critical of the planning systems in the States based on statutory zoning schemes. In Britain itself the legislation upon which State schemes are based has long been superseded by a system of development planning discussed later in this chapter.

149. These ideas appear to have had some influence on thinking about planning and development controls in Australia and seem to have influenced the Commission of Inquiry into Land Tenures.[4] The Commission drew attention to the shortcomings of the statutory zoning systems in operation in most of the States. Its principal recommendation was for a new system that, among other things, would reserve the incremental rises in land values, on change of nature of land use, to the community at large. It also proposed new planning legislation which would recognise responsibilities at different levels of government and the increasingly complex nature of public sector decision-making. There is evidence that the States accept these criticisms and are seeking more flexible kinds of planning control systems. In evidence to this inquiry, Dr Alan Fogg, Reader in Law at the University of Queensland, stated:

3. Final report, p. 39.

4. See p. 38 of the Final Report where extensive reference is made to the British system.

Elsewhere in Australia, pre-submission public participation proposals have yet to achieve legislative status. Nevertheless, they formed an integral part of measures which were proposed for Tasmania and New South Wales. It would seem that Tasmania's Planning and Development Bill 1975 and the Environmental Planning Bill 1976 in New South Wales are not now likely to appear on the statute book[5], but even if these proposals are defunct, we have the anatomy of a corpse which can be dissected. However, such notions are not completely dead since a Western Australian Committee to Review Planning Authorities reported in June 1977 in favour of a new administrative system in that State. Among the recommendations were the creation of broad structure plans at the regional level covering existing and proposed major land use, future growth centres and principal communication systems. The existing metropolitan plan for Perth with a cadastral[6] base is to be replaced by a broad regional structure plan which will show only broad existing proposed zones and reserves, together with additional information such as underground water catchment areas, land affected by aircraft noise, and areas for preservation for historical conservation reasons. At the local level there are to be structure plans, action plans and detail plans providing a variety of approaches to more specific problems. Even these local plans are not to be binding in law, and are to be processed through a system of planning permissions whereby every proposed development requires an application from the private sector and an approval from the public sector before it may go ahead. The plan itself does not grant any legal entitlement to develop.

These efforts in three States to switch from old-fashioned zoning schemes to a system of project evaluation can be seen as an attempt to approach the Canberra attitude towards plan-making. The difference lies in the development control area. Because of free-hold interests it is necessary for

5. The Committee understands that the Tasmanian Government intends to reintroduce its Bill this year.

6. "Cadastral" - Of, showing, the extent, value and ownership, of land for taxation (OED).

States to propose a system of planning permissions whereby an application is necessitated from a private individual who wishes to develop. In Canberra this aspect is coped with through leases.[7]

150. A problem that affects planning in all the States is the proliferation of agencies with public responsibilities and the absence of procedures to co-ordinate their activities. Reference was made to this problem in Chapter 3 in regard to the control of public sector development. In some States Crown departments and instrumentalities are not bound by planning schemes and so are not accountable legally to the public for their development activities. This has contributed to planning problems. These are noted and discussed at para. 4.18 of the Final Report of the Commission of Inquiry into Land Tenures. The Commission recommended that all public authorities including government departments be bound in the same way as private developers under the development control system as proposed with rights of appeal vested in the public against development decisions of these authorities.

151. In the ACT the problem of fragmentation of planning responsibilities between different government agencies does not arise to the same extent because of the statutory powers of NCDC. Problems have been identified, however, in enforcing the planning system against departments and statutory authorities breaching purpose clauses where the decision to permit the breach is a Cabinet decision. Also DCT tolerates breaches both by the Crown and other lessees as noted in Chapter 3. The Committee concludes that for a planning and development control system to work effectively the activities of all agencies involved in the process,

7. Evidence, pp. 2016-7.

including public and private sector activities, should be subject to the controls imposed by the planning system.

152. In Australia there are over 800 local government councils which form a third tier of government in all the States. These councils range from the largest, the Brisbane City Council which is the only example of a unitary form of local government delivering a wide range of services across a metropolitan area, to some shire councils in rural areas serving populations of fewer than 10,000 people. The responsibilities of local government for planning and development control vary from State to State and within States and there is no uniformity in the nature of the services provided or the levels of expertise available to the councils. There have been attempts to rationalise the system and most States have commissioned inquiries into local government boundaries which have made recommendations that the number of councils be reduced and rationalised so that councils are of more even size.[8]

8. Victoria: Report of the Local Government Advisory Board, Govt. Printer, Melbourne, 1974 (the Voumard Report).
Tasmania: Municipal Commission of Tasmania, Report on Matters Relating to Local Government, Govt. Printer, Hobart, 1974 (the Brettingham-Moore Report).
South Australia: First and Second Reports of the Royal Commission into Local Government Areas (the Ward Commission), Govt. Printer, Adelaide, 1973 and 1974.
Western Australia: Local Government Boundaries Commission (The Heron Commission), Report on Metropolitan Municipal Boundaries, 1972, Govt. Printer, Perth, 1972. Royal Commission on Metropolitan Municipal District Boundaries (the Johnston Commission), Report, Govt. Printer, Perth, 1974.

153. The foregoing digression on the situation in the States supports the Committee's view that much of what is occurring in the States is of limited application to the ACT. The problems of co-ordinating the activities of developers in public and private sectors is resolved in the ACT by the central position of NCDC. But the system needs to be reinforced to ensure that fragmentation does not occur which will be the case unless the principle that all development should be subject to central control continues to be recognised as one of the principal strengths of the ACT planning system. Methods of public participation can be devised without necessarily making disruptive changes to the planning system in the ACT. It would be a mistake to introduce outmoded statutory planning procedures just so that there can be public participation and to impose a rigid, detailed town plan as in the States; when there is evidence that the States would generally like to move away from such plans and when Canberra has developed effectively without one. It would also be a mistake to impose a rigid, legalistic objection and appeal system on Canberra when the evidence indicated to the Committee that there could be methods of involving the public in the planning processes at an early stage. The evidence ran against the somewhat intimidating appeal tribunal or court systems used in most of the States.

154. Comparisons with other national capitals are difficult to draw. Capital cities such as Washington, Ottawa and Bonn (See Appendix 3) are all large communities in comparison with Canberra whose population has recently passed 200,000. Their development in social and historical terms is very different. The feature they share in common with Canberra is that each is the capital city of a federation. There are very few other features that are held in common. Ottawa, Washington and Bonn are located in highly urbanised regions of their particular countries,

whilst Canberra's development has taken place in a sparsely populated agricultural region. In Bonn and Ottawa the national capital has been imposed on existing communities. It is the kind of situation that might have arisen had Sydney or Melbourne been selected as the national capital of Australia, a situation in which the national capital role would have been in competition with the other functions which the city had already acquired. Canberra, somewhat like Brasilia, differs from these other national capitals in that it has been consciously planned as a national capital and its development has occurred in a sparsely populated area relatively remote from other major urban centres. It will be noted from the discussions in Appendix 3 that problems have arisen because of the involvement of State, Federal and local governments in Washington and Ottawa. The creation of a separate Capital Territory of 2330 square kilometres has cushioned Australia's capital from some of these problems with States of the Federation with the exceptions of some problems that arise in regard to Queanbeyan and the nearby towns of the south east region. The development of the city was not however impeded by the presence of existing and autonomous communities. In Washington and Ottawa the impact of the surrounding region on the city and the need for the national capital elements to be accommodated to a significant extent by the existing structure is substantial. Looking at Canberra the impact the city has had on the surrounding region is most noticeable. This has led to Canberra becoming an important regional centre and the natural location of a wide range of services and amenities which would otherwise be supplied from Sydney. But it has removed the community from many of the pressures that beset most Australians who live in large cities with complex urban problems. This can be viewed as beneficial or otherwise, depending on the observer's point of view.

155. Aspects of Canberra's development other than the national one are worthy of note. The visitor is likely to be equally impressed by the residential environment of Canberra as by the national monuments. The carefully designed residential neighbourhoods, the convenient location of schools and shops and public facilities, the short journeys to work and the comparatively unpolluted atmosphere and the natural beauty of the setting are obvious to the visitor. It is at once an exemplar of the possibility of creating new communities in Australia and the best example in Australia of a planned city.

156. Planning so far has amply provided for the needs of national capital and seat of government functions. The areas for national building have been identified and the communication and office location system has ensured that seat of government functions can generally be managed efficiently. It is conceivable that the government of Canberra could be transferred to local control including the management of land and leasing and many aspects of development and development control without prejudicing the future of Canberra as a national capital or impeding the operations of the Commonwealth Government. But, as previously noted, NCDC's contribution has largely been to create a planned urban community which in many ways is a model. An important consideration will be the extent to which the achievements obtained so far through planning can be preserved while at the same time creating machinery for greater public involvement through participation in planning. The Committee concludes that the experience of other capitals underlines the importance of ensuring that planning and development control is centralised, integrated and co-ordinated.

157. The importance of this principle was recognised by the Commission of Inquiry into Land Tenures in its recommendations on the most appropriate planning structure for the areas selected for intensive growth and for Federal Territories. The Commission recommended regional commissions as the most appropriate administrative arrangement for achieving the government planning aims in Federal Territories and growth centres. Regional commissions being a modified form of the development corporations which were pioneered in Britain after the Second World War as a means of achieving decentralised growth. Britain has some 28 New Towns in various stages of growth. The New Towns Act 1946 and subsequent legislation (now consolidated in Acts of 1965 and 1968) give the Secretary of State for the Environment power to designate any area of land as the site of a New Town. The Minister must consult the local authorities concerned and allow the public an opportunity to comment on the proposals.[9]

158. The British New Town development corporations differ from the National Capital Development Commission in that the corporation is responsible for development and land (estate) management and must act as a business undertaking. Revenues from the land and property (either from disposal or rent) are used to defray the costs of development and to meet loan commitments. They are not paid into Consolidated Revenue. Secondly the corporations do not have the client relationships which the Commission has. Many clients of the corporations (e.g. education, main roads), have their own budget for construction. This means that the corporations are dependent on other government agencies for creating an integrated community. These agencies have their own

9. Department of the Environment, Town and Country Planning in Britain, HMSO, London, 1975, pp. 14-16.

priorities which may not coincide with the priorities of the development corporation. A recent performance review of the development corporations exposes these problems of overlapping responsibilities and fragmented control and funding.

159. The Commission of Inquiry into Land Tenures recommended in its Final Report that regional commissions be established to perform certain tasks and that NCDC be reconstituted as such a commission. In its First Report the Commission of Inquiry had recommended the formation of development corporations but reviewed its recommendations after strenuous objections by local government bodies. In Chapter 8 of its First Report the Commission of Inquiry outlined how it envisaged the operation of these corporations in Federal Territories and metropolitan growth centres. In the ACT the Commission noted that NCDC already had powers over development control which the Commission of Inquiry recommended should be extended to include:

- responsibility for all development and re-development in the public sector as well as in the private sector so that government departments and instrumentalities should be subject to the system;
- more effective use of the abilities of the private sector; and
- additional powers so that it becomes responsible for the management as well as the development of estates under public ownership.

160. The last point is a reference to the combination of the Department of the Capital Territory land functions with those of NCDC under one administration. This is opposed by

the Department which claims that there are virtues in separate administration. In its report on self-government the Joint ACT Committee recommended a body similarly constituted to that proposed by the Commission of Inquiry into Land Tenures with representation of the ACT Legislative Assembly on its management board. NCDC no longer appears to favour this alternative[10] and the Department of the Capital Territory is opposed to it.[11] The Committee considered the possibility of some combination of the Department of the Capital Territory land functions with those of NCDC but does not favour such a proposal. Some conflicts arise between planning and management as witnessed by the way in which the City Area Leases Ordinance has been enforced. The Committee believes that these conflicts can be resolved without amalgamation and deals with this question further in Chapter 7.

161. In its submission to the present inquiry NCDC sought endorsement for the approach that it is currently pursuing within the Commission. It was described in the submission in the following terms:

> The Commission proposes that the various categories of plans currently referred to as master plans, action area plans, land use plans, etc. be reduced to only two formal types of plan, namely the STRUCTURE PLAN[12] and the DEVELOPMENT PLAN. Each of these plans would be supported by a Written

10. Evidence, p. 138.

11. Evidence, p. 400.

12. NCDC has since advised that it now uses the term "Policy Plan" rather than "Structure Plan". The Committee agrees that the new title is more descriptive but for the purposes of this report has retained the more widely used term "Structure Plan".

> Statement which would contain details of the underlying principles or concepts, relevant analytical data and development proposals involving, in the main, changes of land use.[13]

The proposals put forward in its submission were to be understood in the context of the evolving system of Structure and Development Plans occurring within the Commission itself. The proposal included tribunals to hear appeals pursuant to some legislation but also included a procedure allowing for exhibition of planning proposals.

162. Another report on Structure Planning in Britain, comments on the process and the other developments which accompany it in the area of local government reform processes:

> The introduction of Structure Planning itself, the reformed management of local government, the appeals for greater public involvement in policy-making, the growth of corporate planning and other policymaking are all aspects of a broad movement towards greater conscious rationality in local policymaking. When the Planning Advisory Group reported in 1965 it seemed as though town and country planners were "blazing a lonely trail" in seeking clear articulation of social aims and objectives, the formulation of alternative policies to serve those aims, the evaluation of alternatives by reference to explicit criteria and assumptions, the monitoring of outcomes and effects so as to keep policy under review and make it responsive and relevant.[14]

163. This kind of approach is reflected in some recent reports produced in Australia which clearly recognise the problem of co-ordinating activities right across the

13. Evidence, p. 69.

14. Centre for Environmental Studies, Aspects of Structure Planning in Britain, London, 1975.

spectrum of the public sector such as the Report on Consultative Arrangements and the Co-ordination of Social Policy Development[15] which recommended a range of consultative arrangements to ensure the exchange of information between agencies with different functional responsibilities. The ACT Council of Social Service in its submission to this inquiry referred to the importance of this aspect and recommended that consultative councils be set up.

164. The Committee concludes that the adoption of a system of Structure and Development Plans would provide an opportunity for the range of contributions that a number of witnesses have suggested be made to the planning process. The report on Aspects of Structure Planning in Britain, however, points to the difficulties associated with the process not the least of which is the essential vagueness of the requirements as to consultation and the difficulties in co-ordinating all contributions to the satisfaction of all the agencies involved.[16] In evidence to this inquiry Dr Fogg commented that:

> The alternative (to statutory planning) is a system of project evaluation under the aegis of a highly persuasive, but not legally binding, structure plan that adds social and economic factors to the familiar exercise of physical allocation of land uses. Although both the New South Wales and Tasmanian Bills contemplate a finished product termed a plan, it is clear that these were to be policy-style documents subject to continuous polishing and review. Planners were to be emancipated from the servitude of compiling static land-use allocation maps, and their efforts diverted towards guiding change within society.

15. Task Force on Co-ordination in Welfare and Health (2nd Report), Consultative Arrangements and the Co-ordination of Social Policy Developments, Canberra, AGPS, 1978.

16. See particularly pages 187 onwards.

Planning was to emphasise desired results rather than restrictions, and would call in aid social surveys, data banks, mathematical models and similar sophistications. Development control was part of a feed-back process whereby plans were regularly adjusted to keep them on target. This can be regarded as an example of the fashionable "systems" perspective, and McLoughlin, the foremost propagandiser for this technique, has referred to the role of the planner "as a helmsman steering the city".

But there are a number of serious issues which arise. There is no doubt that the proposed changes seriously diminished the protection previously given to property owners. In New South Wales, regional environmental plans and the structure version of local environmental plans were basically intended as written expressions of policy supported by a variety of illustrative material. True, the Planning and Environment Commission said that "the structure plan map would show the precise zonings," but it was clear that in urban areas this meant only major elements such as the location of a town centre, significant industrial areas, large shopping centres and the like. Illustrative matter can mean diagrams and these may be merely cartoons, while "broad brush" zoning is unlikely to give certainty to individual landowners about development possibilities. These would need to be tested by some form of application, at least before the issuance of a detailed environmental plan. Herein lay the danger. Because the regional and structure versions of local environmental plans were to be vague and uninformative as to detail, a landowner might not make appropriate "submissions" with respect to broad strategies contained in them; at the detailed planning stage his "submissions" might be too late since the broad strategies would have been adopted and his original failure to comment or object could be fatal at the point of implementation of proposals. The familiar attack on a planning scheme which is founded on unjustified invasion of property interests was therefore likely to be diminished in importance as both a tactic for individual protection and method of improving a draft scheme for the benefit of a neighbourhood or community. Nevertheless, arguments that apply in the State context have little relevance in Canberra where the inherited difficulties associated with freehold land do not obtain.[17]

17. Evidence, pp. 2018-9.

165. The Committee concludes that if a Structure and Development planning system is introduced in the ACT it should be given statutory force. It would not be sufficient for it to be adopted and implemented simply at the discretion of NCDC which could under its present powers alter or abandon the system if it were not satisfied with it. This is not to suggest that the system should not be altered or abandoned if it is not working. The Committee considers that bodies other than NCDC should be involved in the decision. It is also noted that NCDC's submission makes no reference to one of the features of the structure planning system, namely, the examination in public (para. 177). This has been described as follows:

> The Town and Country Planning (Amendment) Act of 1972 introduced the 'examination in public' into the development planning system. Structure plans (introduced under the 1968 Act) i.e. those outlining an authority's policy and general proposals, are to be submitted to the Secretary of State, with a statement about the steps that have been taken to publicize the plan and secure public participation, and about the consultations ensuing. Authorities are asked to detail the issues that have emerged, and how they have taken account of views put to them. The Secretary of State has a statutory duty to consider all objections to a structure plan. After due time for dealing with objections, the Secretary of State is to select matters to be examined in public by a small panel with selected participants, including the local planning authority. The matters for discussion are those which should enable the Secretary of State to decide on the plan, and concern broad issues rather than objections as such.
>
> The key concept underlying this is the replacing at structure plan level of the formalized, legalistic inquiry into objections with an intensive but informal discussion by participants who are interested but not necessarily objectors. In selecting participants the basic criteria is 'the effectiveness of the contribution which, from their knowledge or the views they have expressed, they can be expected to make to the discussion of the matters to be examined'. To help them local

> authorities are asked to give them reasonable access to publishable material, and people with views in common are encouraged to get together beforehand the better to develop their arguments.[18]

166. The Committee considers that a system of Structure and Development planning for the ACT with statutory force would ensure that current policy is stated and accessible to all who are involved in the planning and development process and would ensure that the community has a role in that planning process.

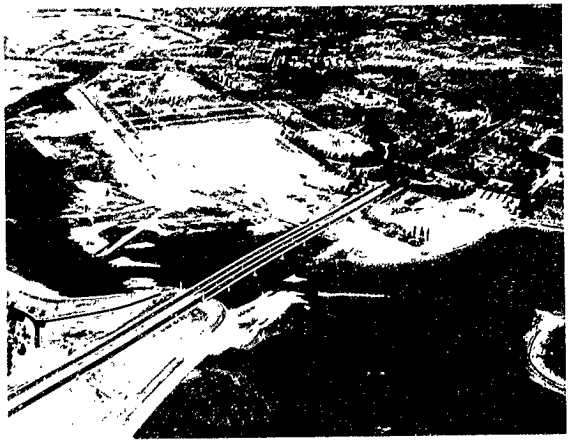
18. Aspects of Structure Planning in Britain.

CHAPTER 7 - FUTURE PLANNING PROCEDURES

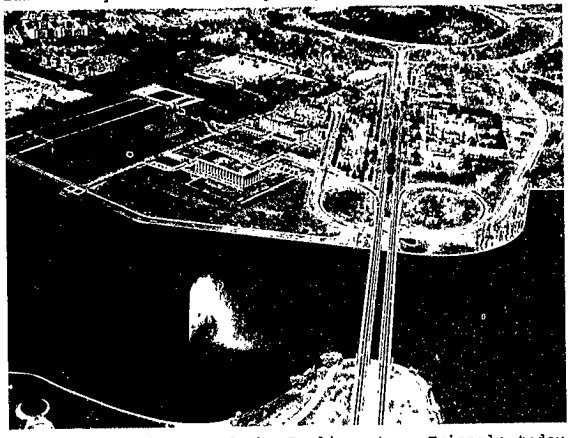
167. In discussing the history of Canberra's development in Chapter 1 certain features stood out. There has been a firm resolve on the part of the Commonwealth to make Canberra a worthy national capital and a well planned and beautiful city. The Committee believes that NCDC has been an effective means of achieving this and that the planning system has worked reasonably well. The planning system itself is an attempt by the Commonwealth to provide a model for rational planning. Many of the difficulties that State Governments have experienced with their planning systems have been avoided in Canberra. The system has strengths which it is important to preserve and was at its most effective when the task was to create the infrastructure for the community and when NCDC was mainly engaged in "broad acres" development. The Committee concludes that the unified and generally consistent approach to and control of planning and development under a single statutory authority should be retained.

168. As a statutory authority with comprehensive powers NCDC has been an effective vehicle for the planning of a national capital virtually from its initial stages, for the administration of the large funds required and for co-ordinating the activities of government departments and construction firms involved in Canberra's early development. Placing an individual commissioner at its head was an appropriate means of making the body directly responsive to its client, the Commonwealth. Although further large scale urban development can be foreseen, "infill" and redevelopment may now assume much greater importance. The essential national capital infrastructure is now in place though some national projects still remain to be completed, notably the permanent Parliament House and the National Museum.

169. The discussion in Chapter 1 revealed a continuity in concept and purpose from Walter Burley Griffin's period as Federal Capital Director of Design and Construction to the present day. Continuity is important in relation to planning. All those with interests and investments need to be quite clear about planning principles which must be widely known, accepted and enforced. The Committee considers that the planning system should be a more accessible one. Data and information should be readily available and planning policies clearly stated. Involvement of the community in the planning process should be encouraged in the development of proposals, particularly in the early stages. It is acknowledged that this will slow the process down and will lead to additional expense. NCDC informed the Committee that it currently spends about $1,000,000 per annum for wages, overheads and the cost of materials such as publications, incurred by the External Relations Branch. The Committee regards reasonable additional expense, however, as warranted if it results in widespread public acceptability of planning decisions and ensures that development activity in the Territory responds to the legitimate aspirations of its inhabitants as well as the special demands of a national capital. Currently there is not the very rapid growth that has characterised most of the past twenty years. Future growth rates may be lower. But in the Committee's view growth should henceforth be at a more uniform rate not subject to the sudden sharp rises and falls that have characterised the past. It is considered that the proposals made by the Committee in this chapter should facilitate this objective by providing a framework within which long and shorter term policy options can be declared. The impact of government policy on the ACT



Lake Burley Griffin nearing completion. 1963.



Lake Burley Griffin and the Parliamentary Triangle today.

economy must also be acknowledged and policies devised to encourage a steady rate of growth and it is hoped that governments will respond to this challenge.

170. With the growth of the Canberra community difficulties have begun to arise with the system of planning, particularly, for example, with proposals for urban "infill" and redevelopment, and a need for greater public involvement is now evident. Those shortcomings of the system identified earlier in the report suggest the need for greater opportunities for the involvement of the public. In particular, the fact that land-use planning and development control remain Commonwealth functions means that NCDC and other Commonwealth bodies are not accountable directly to the electors of the ACT. Some means to ensure that they respond appropriately to the ACT community therefore need to be devised. Some modification of the powers of NCDC as presently set down in the National Capital Development Commission Act of 1957 are required to prescribe consultative procedures and to ensure a framework for public involvement.

171. Responsibility for important functions in the ACT is now shared between NCDC and DCT. NCDC is responsible for planning, development and construction within the area of the gazetted plan of lay-out of the City of Canberra. The remainder of the ACT is not within this mandate. NCDC is, however, the de facto planning authority for the remainder of the Territory although this responsibility is theoretically that of DCT. In evidence DCT suggested that NCDC's responsibility be extended to cover the whole of the Territory. The Committee recommends that the National Capital Development Commission Act be amended so that NCDC's role with respect to planning and development of the City of Canberra be extended to include the whole of the Australian Capital Territory.

172. The system should be such that all those with a legitimate interest should have the opportunity to make a contribution. There should be scope for the local community to put forward ideas and to have them considered. At the same time, the national interest in the capital must be protected and overall territorial and regional concerns must be recognised. The Committee concludes that provision should be made for planning:

- at the regional level (i.e. the South East Region of NSW and the ACT);
- at the territorial level for the ACT itself;
- at the metropolitan level which embraces North and South Canberra and the new towns of Woden - Weston Creek, Belconnen and Tuggeranong and is essentially the area covered by the "plan of lay-out of the City of Canberra". (This would include any new towns in the future, such as Gungahlin);
- at the town level; and
- at the local or neighbourhood level.

The planning system within the ACT would comprise the Structure Plan (general strategies and policies) and Development Plans (more detailed land use plans) showing both the existing infrastructure and details of proposals for future growth as indicated in the Structure Plan. At the same time there should be clear procedures for preparing Plans and a process of land use control prescribed by statute. There should also be basic statutory provisions for public participation in this process.

173. The Committee concludes that public participation should occur from the earliest stages of the production of Structure and Development Plans. The community should have the opportunity to have a part in developing the goals that subsequent planning policies are designed to achieve. This is preferable to the community being given only an opportunity to respond to plans and policies already drawn up. As noted in paragraph 126 such an approach is only likely to invite confrontation. The principal aim of public participation in this context is to provide people with an opportunity to take part in the planning of their community. But there must be a means of resolving any differences between the planning authority and the people or differences within the community. The Committee recommends that the Minister perform this function, so that in amending the National Capital Development Commission Act to provide for a system of Structure and Development Plans, the role and responsibilities of the Minister must be clearly defined. (See paragraphs 176, and 178.) The Committee further recommends that the legislation set out the responsibilities of the Minister as final arbiter in the preparation of Plans. Drawing on precedents in English planning legislation it is proposed that it be the responsibility of the Minister to secure consistency and continuity in the framing and execution of a comprehensive policy with respect to the use and development of all land in the ACT in accordance with the Structure and Development Plans for the ACT.

The Structure Plan

174. The Structure Plan[1] would be a statement or series of statements of overall planning policy and a framework

1. As noted earlier NCDC has advised that it now prefers the term 'Policy Plan'.

within which detailed development proposals would be formulated. It would not express detailed planning and development proposals. It would be designed to preserve and allow the continued extension of the unique features and requirements of the ACT, such as:

- the fundamental principles and concepts developed over the years based on Walter Burley Griffin's original plan;
- matters peculiar to the national capital, such as the parliamentary area and places of special national concern;
- transport, communications and government employment policies;
- policies regarding reserves, open spaces and water catchment areas; and
- areas where questions of security might be of importance such as roads between the airport and parliamentary and defence areas.

The Structure Plan would have regard to social, economic and environmental considerations and to the Territory's relationship with neighbouring areas in New South Wales. The Plan would also establish policy for the re-development of existing urban areas and future urban development in rural areas.

175. The Committee proposes that in preparing the Structure Plan a program of public participation be undertaken in order to assist in the development of planning goals. The program should incorporate procedures for properly identifying the needs and aspirations of the

different groups within the community. The goals so developed should then be used as the basis for the development of planning policies, these being the statements of the types of programs to be implemented in order to achieve the stated goals. The program of participation could take a number of forms, but its main aim should be the identification, as far as possible, of the aspirations of the Canberra community. In order to be comprehensive the program should be conducted in relation to area and interest based groups including:

- community groups;
- Government departments and instrumentalities;
- business organisations;
- trade unions; and
- welfare organisations.

It is likely that different methods will have to be used for different groups. Participation should not be restricted to members of these groups but they can provide the organisational focus for the exercise of ascertaining community attitudes. Individuals and organisations not formally consulted would also be able to make submissions at this early stage. The policies so developed should then form the basis for all planning action in Canberra. The social and economic needs of the community together with national capital and seat of government aspects should provide the basis for policies and resultant plans and proposals. The initial consultation process should be seen by NCDC as the beginnings of a continuing exercise of community involvement as policies and plans are developed and implemented.

176. The Committee envisages that legislation would set out the following steps for preparation of the Structure Plan:

- NCDC would at the Minister's direction, publish a statement that a Structure Plan is to be prepared which would set down broad planning objectives and the policies by which these would be achieved. That statement would also invite submissions from the public to be made within a specified time;

- a program of public consultation would then be undertaken to establish preliminary goals;

- after considering the submissions and consultations NCDC would prepare a draft Structure Plan, make it readily available to the public and publicise it for a specified period;

- public announcements would call for submissions on the draft Plan within a specified period of time. Consideration of the draft Plan would include the goals, policies and physical aspects of the Plan;

- the draft Plan would at the same time be tabled in the Parliament and the ACT Legislative Assembly, for consideration in whatever way they may each determine;

- NCDC would respond to and comment on all submissions received, and the submissions, comments and NCDC's final recommendations would be tabled in the Parliament and the ACT Legislative Assembly;

- the Minister would then consider reports from both the Parliament and the ACT Legislative Assembly and, after undertaking such further

enquiries as considered necessary, approve and promulgate the Structure Plan, incorporating in it such amendments to the draft as the Minister might consider desirable. Enquiries by the Minister could take the form of an examination in public (described in para. 165) or the referral of certain matters to the Joint Committee on the ACT for inquiry and report; and

- the approved Structure Plan would then be tabled in both Houses of the Parliament.

The Committee envisages that the Structure Plan would be a "living" document, capable of continual development and change. Additions or amendments to the Plan would follow the same processes as for the preparation of the Plan itself.

Development Plans

177. There should be a comprehensive system of Development Plans which would be the official land-use plans for the ACT and would also replace the existing plan of lay-out of the City of Canberra and its environs. These Plans, which should be readily available to the public, should indicate such details as shopping centres, parks, schools, residential and industrial areas and the road lay-out. It is stressed that Development Plans would not establish the often inflexible zoning which occurs in the town planning procedures in force in the States. Development Plans will in effect specify land use zones but these will be a means of achieving the aims and objectives of the communities rather than an end in themselves and will be more flexible than the zoning schemes in the States. Although the Development Plans should be clear and detailed in showing

existing uses and indicating future uses, they should not prevent any use from being proposed and considered under the procedures recommended in paragraphs 181-183. Land-use controls would continue to be managed through purpose covenants in leases. (See paragraphs 180-183).

178. The Committee envisages that the appropriate legislation would set out the following steps for the preparation of Development Plans:

- NCDC would, at the Minister's direction, publish a statement that a Development Plan for a specific area is to be prepared. The statement would invite submissions to be made, within a specified time and consistent with the Structure Plan;

- NCDC would then prepare a draft Development Plan for a particular area, showing any existing uses and proposing plans and policies for future uses;

- each draft Development Plan would be put on public exhibition for a stated period of time, within which objections and comments from the public could be lodged with NCDC;

- NCDC would then forward an amended draft Plan, objections and submissions and its response to all objections and submissions to the Minister;

- the Minister would approve the Plan, with or without further amendment, after first submitting it to the ACT Legislative Assembly for advice and, if he considered it necessary, also to the Joint Committee on the ACT for

comment. The Committee envisages that in exercising his discretion to refer the Plan to the Joint Committee on the ACT, the Minister would have regard to the need for that Committee to consider matters of national capital concern. The Committee also envisages that the Minister could himself initiate independent enquiries, on environmental considerations for instance, before approving the Plan;

- once approved, the Plan would be required to be tabled in Parliament before coming into effect, thereby retaining for the Parliament the right to disallow it. It is envisaged that the Joint Committee on the ACT would, at its discretion, exercise scrutiny on behalf of the Parliament;

- on becoming law, the Plan would replace the plan of lay-out of the City of Canberra and the procedure for bringing down such a plan of lay-out, for the area concerned. The Plan must be consistent with the Structure Plan and provide roadways or reserve corridors for roadways included in the Structure Plan; and

- additions or amendments to a Development Plan would be carried out in the same manner as the preparation of the Plan itself (but insofar as Development Plans specify land use, such land use can be varied by the procedures outlined in paragraphs 181-183 as the variations would become part of the Development Plan).

The Committee stresses that should any urgent need to vary a Development Plan arise, so that the foregoing procedures cannot be immediately complied with, this should only be

done at the Minister's discretion and on his responsibility, with the procedures as set out above to be subsequently complied with.

179. The Committee is concerned that the arrangements proposed for the preparation of Structure and Development Plans are not duplicated by procedures and enquiries under the Environmental Protection (Impact of Proposals) Act. The Structure Planning system will require examination of the environmental impact of urban development at a much earlier stage and with a wider perspective than generally occurs at present under the impact of proposals legislation. At the same time the Committee is also concerned that Government departments and instrumentalities be bound by Structure and Development Plan provisions and that the Environmental Protection (Impact of Proposals) Act does not relieve them of any responsibility under the planning provisions. The Committee has already recommended that the environmental legislation be examined in relation to the proposals in this chapter[2] (para. 90). There should be memoranda of understanding between the Minister for the Capital Territory and the Minister for Science and the Environment to ensure that these two systems work in a comprehensive and complementary manner.

180. The Committee recommends that lease purpose clauses continue to be the basis of development control in the ACT. However, problems have frequently occurred because of the division of land planning and management functions between NCDC and DCT. For example, planning decisions made by NCDC

2. The Committee notes that the House of Representatives Standing Committee on Environment and Conservation is currently inquiring into environmental protection and resource management which will include the impact of proposals legislation referred to.

can create problems in the administration and management of the leasehold system by DCT. The Committee therefore recommends that action be taken to improve liaison and co-operation between the Commission and the Department to *overcome problems of co-ordinating land planning* and management. If necessary some more formal structure, such as a Commission/Department committee, should be established to resolve these matters quickly and effectively to avoid uncertainty and inconvenience to the public of the kind referred to earlier in this report. The existence of Structure and Development Plans would simplify this aspect of administration.

181. It is the Committee's view that applications under section 10 of the City Area Leases Ordinance for temporary non-conforming uses by bona fide residents should be made to DCT rather than the Minister as at present. Decisions of DCT could be appealed against by the applicant and third parties as outlined in paragraphs 182-183. Applications to vary lease purpose clauses under section 11A should be made to DCT, rather than the Supreme Court, with an appeal procedure as outlined below. Should a variation be allowed any resultant increment in the value of the lease should be assessed according to a set formula by DCT and in accordance with the principles outlined in paragraph 78. Appeals by the applicant against such assessments should also be available under the provisions outlined in paragraphs 182-183.

Land Use Tribunal

182. Both NCDC and DCT saw the need for an appeal tribunal to permit appeals to be made on some land use decisions on which no appeals are available at present. The Committee agrees that there is an obvious need for such a tribunal. A tribunal having a number of members with

expertise from several relevant disciplines is better equipped to hear appeals than a single judge with necessarily more limited expertise. Such a tribunal is better able to arbitrate on planning decisions without undue restriction arising from the common law and the doctrine of precedents. A tribunal possessing its own expertise is able to reach decisions more quickly and, with a reduction in the *need for legal representation of parties, can reach* decisions at less expense to the citizen. (See Appendix 7.) The Committee recommends that a land use tribunal be established. The tribunal would have jurisdiction in matters involving proposed works and the use of land. The Structure and Development Plans would be the basis of interpretation of policy and persons seeking permits and approvals within this framework should have the right to challenge interpretations placed on the policy by NCDC and DCT. Without seeking to determine all areas of jurisdiction, the Committee believes that the tribunal should, for example:

- hear appeals against decisions of NCDC and DCT in relation to permits for proposed works, having regard to policies as indicated in Structure and Development Plans;

- hear appeals in cases involving the meaning of ordinances controlling land use as well as planning principles, for example, in relation to a decision by DCT under section 10 of the City Area Leases Ordinance concerning the use of premises by the occupier for the occupier's profession, trade or occupation; and

- hear appeals to decisions of DCT in relation to variations of lease purpose clauses. It is envisaged that under section 11A of the City

Area Leases Ordinance a lessee seeking variation of his lease purpose clause would initially apply to DCT rather than the Supreme Court for approval. Appeals against DCT's decision could be made to the tribunal by the applicant and by third parties objecting to the proposed variation. DCT would determine the amount to be paid as betterment according to a prescribed formula in the Ordinance. The lessee would be given the right to appeal to the tribunal against the assessment.

183. Again without seeking to determine in detail how jurisdiction would arise and how appeals would be initiated and heard, the Committee envisages that the following pattern would be followed:

- applications for building permits, siting and design approvals, lease purpose clause variations and other similar applications should be made to the appropriate authority;

- the authority should ensure that those who will be directly affected or who have a direct interest in the matter are informed of the proposals with a period for written comments or objections to be lodged;

- the authority would make its decision from which either the applicant or any objector or number of objectors could appeal to the tribunal;

- in addition to the applicant and the deciding authority, those who lodged written objections to the application should be entitled to be heard before the tribunal. Where parties were

unaware of the application or where new issues arise the tribunal may exercise discretion in allowing other parties to appear;

- the tribunal should not operate under the adversary trial system, but should be encouraged to take evidence in any way it sees fit, making its decision in fairness and equity having regard to sound planning principles, the policies expressed in the Structure and Development Plans and the merits of each individual appeal;

- the tribunal should be encouraged to assist persons appearing before it without legal representation to give their evidence;

- the tribunal should be one of public record, with power to take evidence on oath;

- the tribunal should be required to give reasons for its determinations;

- the tribunal should have a discretionary power to make orders as to costs; and

- the tribunal should be able to invite the Minister to make a submission as to matters he considers relevant to issues before the tribunal. The Minister, on his own initiative should be able to make a submission if it appears to him that matters before the tribunal would affect national capital aspects of planning.

Although there may be difficulty in ensuring so through legislation, the Committee envisages that the tribunal should operate as informally as possible to make it readily accessible to the community.[3] The tribunal should have available to it through its members expertise from, for example, valuers, surveyors, architects, independent town planners, urban geographers, the building and allied trades, and persons with knowledge and experience in ACT administration. This is not intended as a prescriptive list but merely to illustrate that the tribunal would need to have scope to draw on members with a range of expertise depending on the nature of the issues raised on appeal. There should be a person appointed as president of the tribunal to be responsible for nominating panels to consider particular cases. Legislation should make provision for the appointment of the president and members of the tribunal and their remuneration. The tribunal should be an independent

3. Section 21(1) of the Victorian Town and Country Planning Act states:
'On the hearing of any appeal the Appeals Tribunal shall -
(a) act according to equity and good conscience and the substantial merits of the case without regard to technicalities or legal forms and shall not be bound by the rules of evidence but, subject to the requirements of justice, may inform itself on any matter in such manner as it thinks fit.'

Section 23 of the South Australian Planning and Development Act states:
'At the hearing of an appeal or matter -
(a) the procedure shall, subject to this Act, be determined as the board as constituted for the purpose of the hearing thinks fit;
(b) the board as so constituted shall not be bound by the rules of evidence; and
(c) the proceedings shall be conducted with as little formality, and with as much expedition, as the requirements of this Act and any other appropriate law and a proper consideration of the matters before the board permit.'

body, free from day to day control by government and should make an annual report to Parliament on its operations. It may also be helpful in expediting proceedings to allow hearings before one member of the tribunal but only if this is acceptable to all parties.

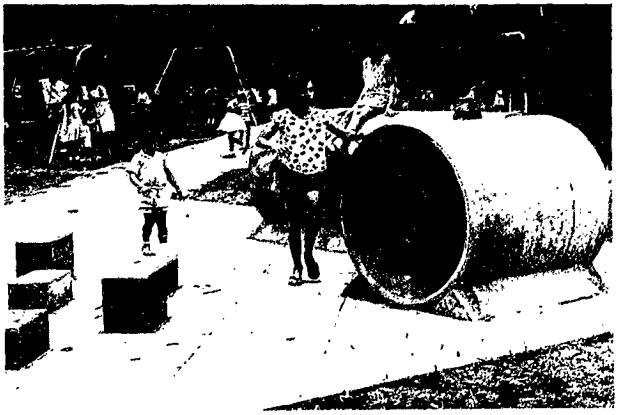
184. The Committee indicated earlier (paragraph 77) that the arrangements outlined in this chapter should apply to Government departments and instrumentalities which should be required to obtain the approval of NCDC or DCT to their development activities. The system of appeals is intended to be open to these authorities. In view of the foregoing proposals, the Committee recommends that all relevant ACT ordinances and other laws relating to the ACT should be reviewed and amended where appropriate so that, as far as is practicable, matters concerning land use in the ACT should be able to be taken on appeal to the proposed land use tribunal and so that the ordinances and laws are consistent with the Committee's other recommendations in this report. The Committee is concerned that there should not be undue delays or fragmentation of the planning and development processes. The Committee further recommends that matters which are open to appeal to the land use tribunal should not at the same time be appealable to the Administrative Appeals Tribunal.

185. Prosecutions for breach of lease purpose clauses are not, however, considered to be matters that should be considered by the tribunal. These should be dealt with by established courts of law. It is considered that such matters do not involve interpretation of policies but questions of fact and law. Thus if, as the Committee recommends in Chapter 3 (para. 75), penalties for breach arise after failure to comply with duly served notice to observe the law then this is a case for a fine or other statutory sanction which should be dealt with by courts of

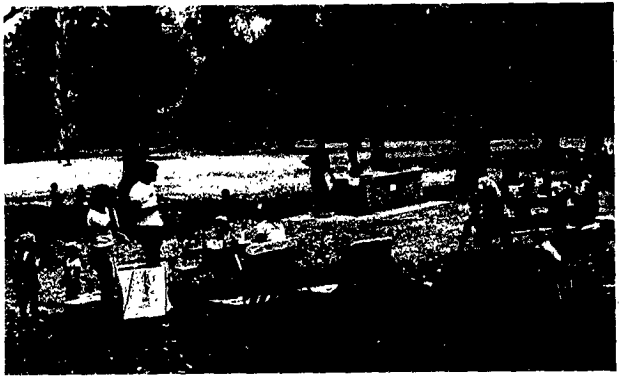
competent jurisdiction. A lessee should be able to seek a change of lease purpose under section 11A or a temporary permit under section 10 if he has not already done so, before a prosecution proceeds. Such an application could suspend a notice of breach until the application and any subsequent appeal to the tribunal is resolved. If a gross breach is being committed an injunction could be sought from the court while an application is made and any appeal to the tribunal is being heard. This will ensure that in all cases ample means would have been afforded within the framework just outlined for lessees to apply for variation of lease purpose or a change in policy.

Involving the Community

186. The Committee has already outlined the stages at which the community should be involved in the planning process. If there is to be an obligation for planners and developers to consult with the local community then there must be some regular and reliable points of access to the community. In addition, the community should be better organised and better informed than it generally is at present. In Chapter 5, the Committee discussed the problems of involving citizens in determining the kinds and quality of services provided at taxpayers' expense. One of the weaknesses in the position of those who advocate participatory democracy, as already noted, is how to establish the legitimacy of those who claim to speak on behalf of the community. The result is often that the discussion proceeds in a circle ending with the proposition that those who claim to represent the community should be elected. Another problem is to identify an organisation within a locality which can be said to represent the general interests of the area. This has led to debate in liberal



Recreation area, Cotter Dam Reserve. 1965.



Recreation/Picnic area, Telopea Park. 1977.

democracies about the most appropriate level at which the community can have a direct say in what takes place rather than simply the right of occasionally voting.

187. The Committee sees the need for community level organisations which can both represent the local community and act as a point of contact for planners and other government agencies to approach that community. Such organisations would also be capable of providing a venue for dialogue on government services other than planning. Dissatisfaction has been expressed in many cities with the lack of "grass-roots" or community level representation within larger local or city government jurisdictions. Canberra has grown to a size where some degree of localised community representation is considered necessary.

188. In looking at models of community representation outside Canberra the Committee has been particularly impressed by the parish councils which have existed in areas outside the cities in Britain.[4] The parish councils are uniquely representative of the neighbourhood and have functioned for a long time as a lower tier in the British system of representative government. Their special attributes and their viability over time has led in recent years to calls for similar representation within the cities of Britain. The Committee is also aware of some modern examples of attempts to create bodies to represent the community at the local or neighbourhood level. Examples are

4. Royal Commission on Local Government in England, Volume III and Research Appendices and Appendix 8, "Parish Councils", HMSO, 1969, p. 165 and p. 183.

to be found in Washington D.C. (See Appendix 3), Hawaii, and Indianapolis in the United States of America.[5]

189. The Committee is of the opinion that Canberra communities should be encouraged to establish their own community councils. The essence of such a community council is that at the level of most primary interactions, variously termed the home district, community, local, parish and neighbourhood level, residents should have as strong a voice and authority to adapt local services to local circumstances and wishes as may be compatible with the claims of the wider city. It is envisaged that such councils would have a role in the planning process. They could become the point of reference for consultation in regard to planning proposals affecting their area, but not to the extent that they would exclude people from otherwise participating in the planning process. These community councils should have no statutory duties such as providing services and facilities which are already the duty of government agencies. All of their powers should be permissive which is to say that if the council wished to provide a new service or facility to local residents then it should be permitted to do so if it has the resources and support. The elected councillors would then be accountable to the community for their own performance and for the performance of those they might employ such as

5. R.E. Dahl, 'The Popularity of the Neighbourhood Community Idea', Readings in Urban Sociology, 1969;
W. Hampton and J.J. Chapman, 'Toward Neighbourhood Councils', Political Quarterly, Vol. 42, 1971;
P.J. Morton, 'Parish Pumps Revived' New Society, Jan. 1970;
W. Harvey Cox, Cities: The Public Dimension, Penguin Books, 1976.

community development officers and advocate planners.[6] Such services should not conflict or interfere with statutory services and facilities already provided by agencies of government. They would be supplementary to statutory services and include such things as community centres and recreation facilities.

190. To encourage the establishment of community councils and to provide basic facilities, properly constituted community councils should receive some minimal government funding to provide accommodation, filing equipment, stationery and postage. It would be expected that councils would make use of community accommodation already available. As the size of communities will vary, funding to each council should be on some proportionate basis. The Committee concludes that the members of community councils should not be paid, nor should community councils have the power to levy charges or rates on the community.

191. To fulfil the role of an important community adviser to planning bodies, councils would need to keep records of communications with planners and to keep up to date with planning proposals, their implementation and community attitudes. While councils will act as community watchdogs on planning and other issues it is intended that councils and the authorities providing statutory services and facilities act in a spirit of co-operation. An ongoing

6. The existence of such an institution might suggest solutions to some of the problems noted in Chapter 5. On the question, for instance, of resources to enable the community to meet planners on their own terms, a council might be funded to employ an advocate planner in relation to a specific proposal which was controversial in the area. It would obviously not be sensible to expect such bodies to employ professional staff on a continuing basis.

two-way flow of information between community and government agencies could obviate many of the conflicts that occur at present. Not only might potential conflicts be avoided but it is hoped that the delivery of government services might generally be improved and be better used by an informed public.

192. In keeping with the very nature of community councils they should be optional. If it should be decided to introduce such councils, it should be put to the "communities" as an option for their consideration (as was done, for example, in Hawaii). **The Committee recommends the establishment of community councils on a voluntary basis. The Committee further recommends that the Minister for the Capital Territory propose the establishment of community councils and suggest the appropriate geographic areas that would constitute "communities", the population that should be covered and functions to be administered.** The procedure for the establishment of community councils should be provided by way of ordinance. The ordinance should provide that the Minister "may" declare a community council for an area. There should be a model constitution attached as a schedule to the ordinance. The ordinance should provide the Minister with a discretion in exercising the power to declare community councils. He should be fully satisfied that there is sufficient community support to warrant the establishment of a council.

193. The main object of introducing community councils is to provide a counterbalance to power at the centre. The object is not to remove policymaking from the centre, as this would almost certainly lead to some highly undesirable consequences, but to make it more sensitive to the needs and wishes of citizens and other particular circumstances at the point of impact of government regulations, services, facilities and planning decisions.

194. Currently NCDC's annual works programs (and three-year and longer term proposals) must be cleared by the Minister and Federal Cabinet. **The Committee recommends that there should be provision for the Minister and the Government to be informed of local views on future works. To enable this to happen at an early stage the Committee recommends that the three-year proposals and any firm long term programs should be tabled in the ACT Legislative Assembly which could report to the Minister making recommendations.** The Minister should be required to consider any proposals or suggested changes by the Assembly and give reasons if they are not accepted. The Assembly would devise its own procedures for canvassing views within the community.

Planning at the Regional Level

195. It was pointed out in Chapter 2 that planning and development at the regional level involves the Federal Government, the New South Wales Government, and local governments in the region. The question of relations at this level has been the subject of a recent detailed study culminating in the report of the South East Region Steering Committee. The report recommended the establishment of a regional advisory body to assist existing agencies in the preparation of a co-ordinated planning and investment framework for the region. **The Committee recommends that the Commonwealth Government and the State Government of New South Wales give immediate attention to the establishment of a regional advisory body for the South East Region of New South Wales and the ACT as recommended by the South East Region Joint Steering Committee. The Committee also recommends that both Governments concerned table in their respective Parliaments a statement on joint policy for the region, before the conclusion of the 32nd Commonwealth Parliament.**

196. The Committee has suggested adjustments to the existing planning system which conserve its strengths, remove its shortcomings and make it more responsive to the needs and wishes of the community. The growth of Canberra, the likelihood of increasing re-development and "infill" proposals, a growing interest in these matters on the part of the community together with demands for more participation in the process have made changes to the present system necessary. The adoption of a Structure Plan and Development Plans and the establishment of a land use tribunal will provide statutory provisions for public participation in planning and appeals on planning and land use decisions. With lease purpose clauses remaining the means of land use control, land use provisions can be both flexible and more effectively enforced. The system of community councils should provide even better access by individuals and communities to the planning process on a continuing basis as well as improving involvement for groups and individuals in the home district. Finally, the Committee has suggested measures to ensure planning in the ACT is carried out within the context of regional planning through a regional advisory body. We believe that by preserving the valuable elements of the existing system, along with the changes and additions recommended in this report Canberra will have a more flexible planning process which involves the community in a continuous and direct fashion, allowing more scope for community, group and individual participation and with greater protection through community consultation and appeals mechanisms.

J.W. KNIGHT
Chairman
19 March 1979

APPENDIX 1

Conduct of the inquiry and resolution of appointment

CONDUCT OF THE INQUIRY

The Committee

The Joint Committee on the Australian Capital Territory was first appointed by resolution of both Houses of Parliament in March 1957 and has been re-appointed in succeeding Parliaments. The present Committee was appointed for the life of the 31st Parliament by resolution of the House of Representatives on 2 March 1978 and agreed to by the Senate on 7 March 1978.*

2. The duties of the Committee as specified in its Resolution of Appointment are to:

(a) examine and report on all proposals for modification or variations of the plan of lay-out of the City of Canberra and its environs published in the Commonwealth of Australia Gazette on 19 November, 1925, as previously modified or varied, which are referred to the committee by the Minister for the Capital Territory, and

(b) examine and report on such other matters relating to the Australian Capital Territory as may be referred to the Committee -

(i) by the Minister for the Capital Territory, or

(ii) by resolution of either House of the Parliament.

* Votes and Proceedings of the House of Representatives No. 6 of 2 March 1978; No. 7 of 7 March 1978 and No. 10 of 14 March 1978 and Journals of the Senate No. 7 of March 7 and No. 8 of 8 March 1978.
The full text of the resolution is given at Attachment A.

The Present Inquiry

The matter was referred to the Committee in the previous Parliament on 8 December 1976 by the Hon. A.A. Staley, Minister for the Capital Territory pursuant to paragraph 1(b) of the Committee's resolution of appointment. *Terms of reference were:*

"The Committee is asked to consider and report on the adequacy and public acceptability of the planning procedures and processes in the Australian Capital Territory including:

(a) the adequacy of community involvement in planning and development;

(b) the role of the National Parliament particularly in planning the 'national' element of Canberra; and

(c) the relationship between the various groups involved in this process.

The terms of reference for the inquiry were advertised in late December 1976. Some persons and organisations were contacted directly and asked to make submissions. *The first public hearing was held on Monday,* 18 April 1977. In the 30th Parliament:

- sixty-three submissions were received of which thirty-four were presented at public hearings.

- the Committee conducted seven public hearings.

- during August 1977 a Sub-committee visited Darwin, Adelaide and Albury-Wodonga and obtained information relevant to the inquiry.

- the Committee reported on 3 November 1977 informing Parliament of progress made with the inquiry during the 30th Parliament and recommending that the Committee be re-appointed in the 31st Parliament and that it have access to the records of the previous committees.

In the present Parliament -

- the matter was referred again to the Committee by the Minister for the Capital Territory, the Hon. R.J. Ellicott, Q.C., M.P. on 3 April 1978.

- the Committee wrote to all organisations and individuals who had made submissions to the inquiry in the previous Parliament inviting them to up-date their previous submissions. The Committee also accepted further submissions to the inquiry from the submitters listed at the end of Appendix 6.

- the Committee conducted three further public hearings when it completed taking evidence from those who had made submissions and took additional evidence from NCDC which had accepted the Committee's invitation to make a final submission to the inquiry.

- the Committee visited Hobart, Melbourne and Perth in June and Brisbane and Sydney in July and obtained information relevant to the inquiry.

A full list of witnesses appearing at public hearings is at Appendix 5 of this Report. A list of those consulted during visits to the States is included at the end of Appendix 5. In addition, the Committee had access to material submitted to the inquiry in the form of exhibits (see Appendix 5) and the published material listed in the bibliography at Appendix 4.

On 21 November 1978 a statement by the Committee was made to both Houses that the Committee would await the outcome of the Referendum to determine the future governmental arrangements for the Territory. The result of the Referendum held on 25 November 1978 was to reject self-government and vote for no change to governmental arrangements. The statement also pointed out that further consideration was to be given to issues such as the means of public participation and procedures for appeals against planning decisions.

Late in 1978 the Committee appointed two specialist advisers to assist it in its deliberations. They were Dr A. Fogg, Reader in Law, University of Queensland and Mr R. Graham, City Planner, Hobart City Council.

Attachment A
(Appendix 1)

RESOLUTION OF APPOINTMENT

The resolution of appointment of the Committee is as follows:

(1) That a Joint Committee be appointed to:

(a) examine and report on all proposals for modification or variations of the plan of lay-out of the City of Canberra and its environs published in the Commonwealth of Australia Gazette on 19 November 1925, as previously modified or varied, which are referred to the committee by the Minister for the Capital Territory, and

(b) examine and report on such other matters relating to the Australian Capital Territory as may be referred to the committee -

(i) by the Minister for the Capital Territory, or

(ii) by resolution of either House of the Parliament.

(2) That the committee consist of 10 members, 4 Members of the House of Representatives nominated by either the Prime Minister, the Leader of the House or the Government Whip, 2 Members of the House of Representatives nominated by either the Leader of the Opposition, the Deputy Leader of the Opposition or the Opposition Whip, 2 Senators nominated by the Leader of the Government in the Senate and 2 Senators nominated by the Leader of the Opposition in the Senate.

(3) That every nomination of a member of the committee be forthwith notified in writing to the President of the Senate and the Speaker of the House of Representatives.

(4) That the members of the committee hold office as a joint committee until the House of Representatives expires by dissolution or effluxion of time.

(5) That the Committee elect as Chairman of the committee one of the members nominated by either the Prime Minister, the Leader of the House or the Government Whip, or by the Leader of the Government in the Senate.

(6) That the committee elect a Deputy Chairman who shall perform the duties of the Chairman of the committee at any time when the Chairman is not present at a meeting

of the committee, and at any time when the Chairman and Deputy Chairman are not present at a meeting of the committee, the members present shall elect another member to perform the duties of the Chairman at that meeting.

(7) That the committee have power to appoint sub-committees consisting of 3 or more of its members, and to appoint the Chairman of each sub-committee who shall have a casting vote only, and refer to any such sub-committee any matter which the committee is empowered to examine.

(8) That a majority of the members of a sub-committee constitute a quorum of that sub-committee.

(9) That members of the committee who are not members of a sub-committee may take part in the public proceedings of that sub-committee but shall not vote or move any motion or constitute a quorum.

(10) That the committee or any sub-committee have power to send for persons, papers and records.

(11) That the committee have power to move from place to place.

(12) That any sub-committee have power to move from place to place, adjourn from time to time and to sit during any adjournment.

(13) That the committee or any sub-committee have power to authorise publication of any evidence given before it and any document presented to it.

(14) That the committee be provided with necessary staff, facilities and resources.

(15) That the committee in its inquiries take account of the investigations of other Parliamentary committees and avoid duplication.

(16) That the committee have leave to report from time to time and that any member of the committee have power to add a protest or dissent to any report.

(17) That the committee or any sub-committee have power to consider and make use of the evidence and records of the Joint Committees on the Australian Capital Territory appointed during previous Parliaments.

(18) That the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

APPENDIX 2

The operation of the Administrative Appeals Tribunal, the Ombudsman and the provisions of the Administrative Decisions (Judicial Review) Act 1977 (prepared by the Law and Government Group - Parliamentary Library Legislative Research Service).

THE OPERATION OF THE ADMINISTRATIVE APPEALS TRIBUNAL, THE OMBUDSMAN AND THE PROVISIONS OF THE ADMINISTRATIVE DECISIONS (JUDICIAL REVIEW) ACT 1977

Administrative Appeals Tribunal

The Administrative Appeals Tribunal Act 1975 establishes the Tribunal whose function is to review certain decisions made in the exercise of powers conferred by Commonwealth Acts, A.C.T. Ordinances and subordinate legislation made under these Acts or Ordinances[1]; these are described as "enactments".

Not all powers under enactments can be reviewed. There must be a specific provision identifying the power under which a decision is made, and the person or persons whose decisions may be reviewed[2]. There are provisions to cover delegates and acting office-holders and to ensure that a subsequent office-holder will be treated as having made a decision made by his predecessor. Boards, committees or other unincorporated bodies of two or more persons empowered by an enactment to make a decision are persons for the purposes of the Act.[3]

Decision is defined widely to include:

"(a) making, suspending, revoking or refusing to make an order or determination;

1. Most NT Ordinances are not to be covered but regulations may be made for review of decisions under NT Ordinances where the Ministers of the Territory do not have executive authority under the Northern Territory (Self-Government) Act 1978.
2. For example, Section 18A of the Agricultural Tractors Bounty Act 1966 provides that applications may be made to the Tribunal for a review of-
"(d) an approval of the Minister given under sub-section 9 (1) or a refusal of the Minister to give an approval under that sub-section." (Sub-section 9 (1) deals with approval of payment of bounty.)
3. Some of the provisions specifying which decisions may be reviewed are set out in the Administrative Appeals Tribunal Act in a schedule. Others are contained in the legislation containing the relevant policies or in the case of sub-ordinate legislation they may be in the parent Act or Ordinance. Some A.C.T. Ordinances are already covered including some decisions about rates. It is proposed that a large number of decisions under A.C.T. laws will eventually be subject to review by the Tribunal.

(b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission;

(c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument;

(d) imposing a condition or restriction;

(e) making a declaration, demand or requirement;

(f) retaining, or refusing to deliver up, an article; or

(g) doing or refusing to do any other act or thing."

Failure to do an act or thing within a period prescribed in an enactment is treated as making a decision not to do the act or thing.

An application to review a decision may be made by or on behalf of any person or persons whose interests are affected by the decision; person includes the Commonwealth and its authorities. An organization or association (whether or not incorporated) is taken to have an interest affected by a decision if the decision relates to a matter included in the objects or purposes of the organization or association and was made after the matter was included in those objects or purposes.

The procedure for review is that the applicant may apply to the decision-maker for a statement setting out the findings on material questions of fact, the evidence or other material on which those findings were based and the reasons for the decision (unless these matters were contained in the original decision or have already been given). The statement must be sought within 28 days of the receipt by the applicant of a written decision, and within a reasonable time of the making of other decisions, and should be furnished by the decision-maker within 14 days of the request. If the Attorney-General certifies that the disclosure of these matters would be contrary to the public interest in that it would prejudice the security, defence or international relations of the Commonwealth, would involve the disclosure of the deliberations of Cabinet or its Committees or would otherwise form the basis for a claim of Crown privilege in a court, the statement need not be supplied and the applicant is notified to that effect.

Applications are then made to the Tribunal for review. The period is normally 28 days from the receipt by the applicant of the material facts, evidence and reasons for the decision or of a notification that the Attorney-

General has given a certificate that a statement will not be given, although they may be made without requesting a statement.

The parties to a proceeding are the applicant, the decision-maker and other persons having an interest who are made parties by an order of the Tribunal. Procedures are to be informal and the Tribunal is not bound by the rules of evidence. There is provision for preliminary conferences of parties in private (after which decisions may be made by the Tribunal), but hearings are usually to be in public unless the Tribunal directs otherwise.

The Tribunal has power to take evidence on oath or affirmation and may summon persons to give evidence and to produce documents. The findings of material fact, the evidence or other material on which those findings were based, the reasons for the decision and all other relevant documents are to be supplied by the decision-maker to the Tribunal which may require more information if it considers that the information supplied is inadequate. The Attorney-General may certify material on the same grounds as those relating to the statement sought by the applicant. The information is not withheld from the Tribunal but is not to be made known to the parties or to the public if it relates to security, defence or international relations or the deliberations of Cabinet or its Committees. In other cases, the President of the Tribunal may determine the claim made in the certificate and may make the information available to the parties or may allow them to inspect the document.

The Tribunal may, in reviewing a decision, exercise all the powers and discretions of the decision-maker under the relevant enactment and may affirm, vary or set aside the decision; if the decision is set aside the Tribunal may substitute its own decision or may remit the matter for reconsideration giving directions or recommendations. Decisions are to be in writing and are normally to include the reasons for making the decision, including findings of material fact and the evidence on which these were based (this is subject to the rules about the making public of information or documents the subject of a certificate by the Attorney-General and the provisions relating to private hearings).

There is provision for appeals to the Federal Court of Australia and for referral of questions of law to that court by the Tribunal.

It can be seen that, if a decision made by a person (including a Minister) is specified as one which may be the subject of a review, the powers of the Tribunal are extensive because the decision may be varied or a substituted

decision be made. Matters may not be excluded from the jurisdiction of the Tribunal on public interest grounds; so that, even if a decision is made on defence or security grounds or to give effect to a Cabinet decision, it is possible for it to be considered by the Tribunal which cannot have evidence withheld from it. In some cases, however, the reasons for the Tribunal's decisions, being based on evidence the subject of a certificate by the Attorney-General, may not be made public.

The Ombudsman

The **Ombudsman Act** 1976 provides that the Ombudsman shall investigate action relating to a "matter of administration" by a Department or prescribed authority if a complaint is made to him and may also do so of his own motion.

There is no definition of "matter of administration" and the distinction between policy and administration is not clear. A superficial distinction is that a policy decision will be made generally to be administered in particular cases; but some decisions have been classed as policy decisions although they relate to an individual; and the fact that a decision is expressed generally and embodied in a Departmental directive to be applied by officers to individual cases does not make it necessarily a policy decision.

Certain matters may not be investigated even if they relate to a matter of administration. These include action taken by a Minister, but not by his delegate and it appears from the words of the Act that action taken by an officer of a Department or prescribed authority in making a recommendation to a Minister may be investigated despite the fact that the final action was made by the Minister. According to press reports the Solicitor-General has written an opinion that this is incorrect and that the advice to a Minister may not be investigated; the Ombudsman is critical of this view which on the words of the Act is difficult to understand and is apparently based on the overall effect of the system of responsible government. Other actions that may not be investigated include those taken by Justices or Judges of courts created by the Parliament or by magistrates or coroners in the Territories and action taken in relation to employment of public servants or the staff of prescribed authorities. The Ombudsman is not confined to investigating action taken in pursuance of a specific power conferred by any enactment but he may investigate such action if it is otherwise within his jurisdiction.

There are cases where the Ombudsman may exercise a discretion not to investigate a complaint. These include cases where the action complained of has been known for more

than 12 months, frivolous or vexatious complaints and complaints where some other body has or can review the action.

There are detailed provisions relating to Departments and "prescribed authorities". "Department" includes all Public Service Departments (except the five Parliamentary Departments). "Prescribed authority" generally means bodies corporate and unincorporated bodies established by an enactment for a public purpose and various office-holders but excludes bodies such as the ACT Legislative Assembly and bodies such as courts. Some bodies which might otherwise have been thought to be "prescribed authorities" are excluded but are treated as being parts of larger prescribed authorities.

The procedure is for a complaint to be made in writing to the Ombudsman (unless he investigates of his own motion). He informs the responsible Minister, and the principal officer of the Department[4] before he commences, conducts his investigations in private and can obtain information and make such inquiries as he thinks fit, including discussions with Ministers. He may require the answering of questions and the production of documents but not if the Attorney-General certifies that the disclosure of information or documents would be contrary to the public interest on grounds of prejudice to security, defence or international relations, of disclosure of communications with State Ministers or of disclosure of the deliberations or decisions of Cabinet or its Committees. Evidence may be taken on oath or affirmation and there is power to enter premises (with exceptions).

When the Ombudsman completes his investigation he must furnish particulars of the results to any complainant. If he believes after investigating the action that-

(a) the action was-
  (i) contrary to law;
  (ii) unreasonable, unjust, oppressive or improperly discriminatory;
  (iii) legal but based on an unreasonable, unjust, oppressive or improperly discriminatory rule of law;
  (iv) based on a mistake of law or fact; or
  (v) otherwise wrong;

4. Generally, provisions relating to Departments apply equally to prescribed authorities. The Permanent Head of a Department is the principal officer, in the case of a prescribed authority the person entitled to preside at meetings is usually the principal officer. In this paper, references to a Department may be taken to include references to a prescribed authority.

(b) that discretionary powers were exercised for improper or on irrelevant grounds; or

(c) that irrelevant considerations were taken into account in reaching a decision to exercise a discretionary power or that reasons should have been given relating to the exercise of discretionary powers,

he may make a report to the relevant Department and send a copy to the relevant Minister.

In no case can the Ombudsman replace the decision or action of the Department with his own. He can recommend that a decision should be referred again for further consideration, that mitigating action should be taken, that decisions should be cancelled or varied, that rules of law or enactments should be altered, that reasons should be given for a decision or that other things should be done.

If a Department does not respond to a recommendation of the Ombudsman by reasonable action he may then report to the Prime Minister and to Parliament. As his jurisdiction only involves the making of recommendations after investigation this is his principal weapon if he believes that his recommendations are being ignored.

Judicial Review of Administrative Decisions

The **Administrative Decisions (Judicial Review) Act** 1977 has not yet been proclaimed.

The Act provides for the review by the Federal Court of certain decisions. These must be of an administrative character and made or proposed to be made under an enactment but do not include a decision by the Governor-General. "Decision" is defined very broadly as in the case of the **Administrative Appeals Tribunal Act** 1975 to include all actions relating to the making, suspending, revoking or refusing of orders, awards, determinations, certificates, approvals and so on. The width of the definition is relevant because there is no need as in the Administrative Appeals Tribunal for any specific legislative provision providing that a decision may be reviewed by the Court.

However the decision must be one of an administrative character and, as in the **Ombudsman Act** 1976, the concept of administration is not defined.

Persons aggrieved by a decision may apply to the Court for orders for review and persons whose interests are likely to be adversely affected may apply in advance. The grounds for review are broad; they include breaches of natural justice, failure to observe legal procedures, lack of jurisdiction or authority under an enactment, improper

exercises of power, errors of law, fraud, lack of evidence to justify the decision and that the decision was otherwise contrary to law.

Applications for a statement of facts, evidence and reasons may be made to the decision-maker if these are not contained in the original decision and the Attorney-General may give a certificate that to disclose the information would be contrary to the public interest on grounds that it would prejudice security, defence or international relations, would involve the disclosure of deliberations of Cabinet or Cabinet Committees or would otherwise form the basis of Crown privilege. This does not prevent the giving of evidence or the production of documents to the Court.

Applications for review may, in general, be made within 28 days of the giving of the facts, evidence and reasons for a decision by the decision-maker although they may be made without requesting a statement.

The Court may quash or set aside a decision, refer the matter for future consideration, subject to directions, declare the rights of the parties and direct the parties to do or refrain from doing anything which in the opinion of the Court is necessary to do justice between the parties.

The original jurisdiction of the High Court under paragraph 75 (v) of the Constitution will continue once the new procedures under this Act are in operation but it is hoped that the alternative processes will be more flexible, giving a wider scope to the Federal Court in the decisions it may review and the kinds of order it can make.

8 February 1979

Law & Government Group
LEGISLATIVE RESEARCH SERVICE

APPENDIX 3

Brief description of other national capitals with details on Washington, Ottawa and Bonn.

BRIEF DESCRIPTION OF OTHER NATIONAL CAPITALS WITH DETAILS ON WASHINGTON, OTTAWA AND BONN

Most national capitals, certainly in the western world have been in existence for centuries and perform many other functions (such as Paris and Stockholm). Involvement by the national government in the planning of such cities varies but is generally limited. The most relevant examples as far as Australia is concerned are Washington, Ottawa and Bonn each of which is the capital of a Federation and these are discussed below.

WASHINGTON

Washington is an example of a federal capital located originally in a territory specially established for this purpose, but which has outgrown its boundaries since. In 1802 an area of 259 square kilometres (100 square miles) was ceded from the States of Virginia and Maryland to form a new Federal District (the District of Columbia) for the capital of the United States. In 1847 the Federal Government retroceded the Virginia portion, leaving a Federal district of 155 square kilometres (60 square miles). Since 1940 nearly all growth in the region has occurred outside the District of Columbia in the Virginia and Maryland suburbs. By 1960 a majority of the population lived in the suburban jurisdictions. Today the Washington metropolitan area has about three million inhabitants of whom only 700,000 live in the District of Columbia. Washington has a unifunctional economy being dominated by the activities of the Federal Government. Washington D.C. is represented in the Congress by only one non-voting delegate who is a member of the House of Representatives.

The District is endeavouring to gain full voting representation in both the House of Representatives and the Senate.

Planning and development in the area involves three levels of Government: the Federal government, two States and 60 municipalities. The Federal Government has no constitutional powers in the suburban areas outside of the District over and above those it has in all States. However, in 1960 the concept of regional federal interest received some legal recognition in the passage of the Washington Metropolitan Region Development Act. This Act proclaimed congressional concern for regional planning, development and inter-governmental co-operation, but expressed no clear policy concerning that interest, nor provided machinery to state and develop it.

Within the District of Columbia where the Federal Government can exercise full control, the 700,000 residents have been empowered since 1973 to elect their own Mayor and City Government. There is a separation of powers between the Mayor's executive office and the Council which has legislative powers. The Chairman of the Council is elected at large and therefore has a similar mandate to that of the Mayor. In addition to the Chairman the Council has 12 members; one elected from each of the eight wards and four elected at large. Including the Mayor there are fourteen elected officials to deal with a population of 700,000. Council membership is considered to be a full-time job and all councillors are paid accordingly.

The National Capital Planning Commission (NCPC) consists of five citizen members and seven ex officio members. Three of the citizen members are appointed by the President and two by the Mayor. Presidential appointees include at least one resident each of Maryland and Virginia

and the two mayoral appointees must be District residents. The seven ex officio members include the Secretary of the Interior; the Secretary of Defence; the Administrator of General Services or their nominated alternatives; the Mayor of the District of Columbia; and the Chairmen of the Senate and House Committees of the District of Columbia.

The responsibilities of NCPC include: Federal planning in the entire metropolitan area, review of the District of Columbia plans in order to preserve the Federal interest, preparation of a six-year Federal Capital Improvements Program, and various approval and reviewing functions.

Notwithstanding these responsibilities, the NCPC has no control over the form of metropolitan growth. It has no jurisdiction over non-Federal land outside of the District of Columbia. Therefore, it only controls planning and development in the National Capital District in regard to the impact that the development may have on the Federal interest. Those Federal agencies whose planning or development proposals are not approved by the NCPC are not bound to accept the Commission's decision as final. The NCPC has lacked the full range of Federal agency representation and does not have the administrative authority to resolve location problems or develop a location policy which will be respected by all Federal agencies.

In addition to the NCPC, Congress has established independent Federal agencies which influence the physical shape of the city: The Redevelopment Land Agency, the National Capital Housing Authority and the Fine Arts Commission. Parkland acquisition is divided between National Capital Parks, a Branch of the National Park Service and the NCPC. The effect of these arrangements is often a procedure of multiple clearances.

In addition, there are numerous other authorities impinging on the planning and development of the city. The Federal Corps of Engineers is responsible for water supply, the General Services Administration for the acquisition of Government buildings, the Federal Aviation Administration for the National and Dulles Airports and the 43 kilometres of road to Dulles Airport.

The States of Virginia and Maryland have acted in separate ways, to seek metropolitan order in their parts of the region. Maryland created the Maryland - National Capital Park and Planning Commission to plan for Montgomery and Prince Georges Counties. Virginia created the Northern Virginia Regional Planning and Development Commission. In addition, there are numerous single purpose agencies to undertake a particular function, for instance, the Washington Metropolitan Transit Authority responsible for building an underground railway system and the Washington Metropolitan Area Transit Commission.

In recent years the various levels of government have recognised the problems of fragmentation and have formed the Washington Council of Governments. This is a voluntary association of local elected officials to discuss, consult and co-operate on area wide concerns. Although the Council of Governments (COG) performs a useful function in evaluating plans and policies and providing a common data base for planning activities, it has no powers of its own and its effectiveness is therefore limited.

OTTAWA

Ottawa is an example of a federal capital not located in a territory governed by the central government. The Canadian Constitution gives the responsibility for municipal government to the Provinces, and the national

capital is subject to the government of two Provinces, Ontario and Quebec. Ottawa is largely influenced by the Government of Ontario while Hull, which adjoins it, is under control of the Government of Quebec.

The Provincial Governments control the planning and development of Ottawa and Hull and their adjacent municipalities. In Ontario there is a Regional Council for Ottawa and its surrounding municipalities while in Quebec there is the Outaouais Regional Community. Both regional bodies have responsibilities for metropolitan planning and other functions.

The Federal role in the Ottawa-Hull area is dominated by two agencies, the National Capital Commission (NCC) and the Department of Public Works. The NCC is given certain functions within the National Capital Region, an area of 4664 square kilometres of which 2720 square kilometres is situated in Eastern Ontario and 1942 square kilometres in Western Quebec. In 1971 the total population of the national capital region was 628,477 of which 24 per cent live in Quebec and 76 per cent live in Ontario.

The NCC is "to prepare plans for and assist in the development, conservation and improvement of the National Capital Region in order that the nature and character of the Seat of Government of Canada may be in accordance with its national significance".

The planning function of the NCC is related to its functions in the National Capital Region. It prepares advisory metropolitan plans but they do not lead to practical implementation. The Commission is not represented on either the Ottawa Regional Council or the Outaouais Regional Community who are preparing their own metropolitan plans.

There is some co-ordination between the NCC and the Ottawa City Council. The General Manager of the NCC attends the meetings of the Council's Planning Board and the NCC is also represented on various technical committees of the Council.

In respect of development the Commission's activities are limited and most of the activity is related to managing the large Federal land holdings in the Region and assisting in works carried out by the Provinces and municipalities. The Department of Public Works is responsible for the construction and maintenance of Federal buildings in the capital.

BONN

With the division of Germany in 1945 the Government of the Federal Republic of Germany selected Bonn as its national capital. Bonn at the time was an existing community with a long history and the seat of government was superimposed on it. In recent years the respective roles of Federal, State and local governments have been defined.

The National Government is responsible for matters such as population and employment distribution, the location of major communications, freeways and public transport throughout the country and these powers equally apply to Bonn. The City Council already had control over land use and development.

In 1975 a formal agreement was made which sets up the machinery to develop the "National Area" (which had been defined previously and comprises the Parliament and Government offices within an area of 760 hectares) to improve the transportation system in the city and to develop a metropolitan strategy. The costs of planning, development

and construction of the infrastructure in the National Area are to be borne by the respective levels of government in the following proportions: Federal 67 per cent, State 28 per cent and Local 5 per cent.

The City has been given the responsibility to prepare a plan and implement the development proposals for the National Area but with the approval of State and Federal Governments. The agreement also recognises that transportation is an essential part of the development of the city as the national capital, a tourist city and a regional centre and for this reason the development of transport facilities and related building must be integrated.

The agreement provides for the setting up of a joint Committee of the Federal Capital of Bonn with five representatives from each level of Government. Senior technical officers can participate in the meeting. The role of this body is to: prepare a co-ordinated development plan for the National Area, a long-term program and annual budget; prepare a structure plan, development and financing programs for the metropolitan area; and set up an office controlled by an Ordinance. The Committee makes its recommendations to the political body which consists of the relevant Federal Minister, State Minister and the Mayor.

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74. Schwartzkoff, John. Participation in Geelong. Community (DURD), v.2, July 1975 : 6-7.

75. Senior, D. Public involvement in planning. In Robson, W.A. and Crick, B. The future of the social services, Harmondsworth : Penguin, 1970.

76. Shelton, A.J. Public participation in practice. Architects' Journal, v.154, 13 October 1971 : 805-808.

77. Styles, Brian J. Public participation : a reconsideration. Town Planning Institute Journal, v.57, April 1971 : 163-167.

78. Thornton, Robert. Public participation in planning. Local Government Administration, v.15, December 1970 : 189-196.

79. Town Planning Court to go. West Australian, 15 October 1976.

80. Warren, R.L. Model cities; first round : politics, planning and participation. American Institute of Planners Journal, v.35, No. 4, July 1969 : 245-252.

81. Whitney, David. Attitudes to the public. Planner, v.60, January 1974 : 496-498.

82. Wilson, J.Q. Planning and politics : citizen participation in urban renewal. In Bellush, J. and Hausknecht, M. Urban renewal: people, politics, and planning. New York : Doubleday, 1967.

83. Young, S. et. al. Popular participation in planning. Melbourne Commonwealth Bureau of Roads, 1974.

84. Zetter, Roger. Toward less participation in planning. New Society, v.25, No. 566, August 1973 : 332-334.

APPENDIX 5

List of Witnesses and Exhibits

LIST OF WITNESSES, EXHIBITS AND BODIES CONSULTED

Witness	Exhibit No. and description	Pages of Evidence
Dr P.D. Hughes M.L.A., 25 Shackleton Circuit, Mawson, A.C.T.	No. 1 - Town and Country Planning Act 1961 (Vic.) No. 2 - The New Cities of Campbelltown/Camden/Appin, and New Cities for the Bathurst/Orange Growth Area.	5- 45
National Capital Development Commission Mr A.J.W. Powell, Commissioner. Mr H.L. Westerman, Associate Commissioner. Mr G.C. Shannon, Associate Commissioner.		46- 261 & 1839-1956
National Parks Association of the Australian Capital Territory Dr C.P. Hook, Librarian and Publicity Officer. Mr N.W. Esau, Treasurer.	No. 3 - NPA Involvement Community Affairs.	264- 290
A.C.T. Chapter, Royal Australian Institute of Architects. Mr A.K. Cooper, President. Mr M.B. Willoughby-Thomas, Vice-President. Mr J.C. Webster, Member of the Sub-Committee.	No. 4 - Extract from Architecture Australia, June/July 1976, Vol. 65, No. 3.	291- 329
Mr D.M. Harman, 7 Nicholls Place, Higgins.	No. 5 - The Future Canberra - A Search Conf. July 1975.	330- 344

Witness	Exhibit No. and description	Pages of Evidence
Action for Public Transport Ms. G. Watt, Committee Member. Mr A.N. Sorrensen, Committee Member.	No. 6 - Getting on the Right Track - Action for Public Transport. - Submission to the Commonwealth Government regarding improvements to Canberra's public transport system.	345- 359
Department of the Capital Territory. Mr C.H.C. Davis, First Assistant Secretary, Lands Division. Mr R.J. Corrigan, Assistant Secretary, Lands Division. Mr P.C. O'Clery, Assistant Sec. Land Policy Branch. Mr R.G. Gallagher, Director, Lands Division.		360- 472
Professor P.C. Young, 28 McLachlan Cres., Weetangera.		474- 507
Mr R.D. O'Sullivan, Authorised Surveyor and Planner, 25 Mirning Cresc., Aranda.		508- 559
Mr R.K.H. Johnson, Blackwall Chine, RMB 252, Bungendore, N.S.W.		560- 577
Mr G.C. Barker, Architect, 7 Hagen Place, Kambah.		578- 602

Witness	Exhibit No. and description	Pages of Evidence
Mr W.W. Lennon, Member of the Legislative Assembly.		603- 627
Mr R.N. James, 10 Beltana Road Pialligo.		630- 659
Queanbeyan City Council. Mr J.B. McManus, Town Planner.	No. 7 - Report of the South East Region Joint Steering Committee - 30 September 1976.	660- 688
Department of the Environment, Housing and Community Development. Mr R.B. Lansdown, Secretary. Mr K.E. Thompson, First Assistant Secretary. Mr R.F. Pryor, Assistant Secretary, Cities Branch. Dr R.C. Bunker, First Assistant Secretary, Research Directorate.		689- 745
Society for Social Responsibility in Science (A.C.T.) Dr R.J. Bartell, Secretary. Dr L.H. Day, Committee Member.	Nos 8, 9, and 10 Consultative Workshops on Transportation Planning: An Evaluation. Consultative Workshop Series in Conjunction with NCDC, Action for Public Transport and Council of Social Service of the ACT to examine Transport Planning in Canberra - An Evaluation. As others see us..The Great Participation Fallacy.	746- 773

Witness	Exhibit No. and description	Pages of Evidence
A.C.T. Council on the Ageing. Mrs J. Graham, Vice-Chairman. Dr J.R. Corry, Executive Member. Mr R.L. Walker, Vice-Chairman.	No. 11 - The Needs of the Aged - 1976 A Working Paper.	774- 791
National Council of Women of the Australian Capital Territory. Mrs K.A. Penketh, President. Mrs H.M. Ross, Executive Member. Mrs J.A. Parker, National Convenor, Child and Family Standing Committee of the National Council of Women.		792- 806
Institution of Surveyors. Mr J.K. Le M. Nicolson, President. Mr C.W. Watson, Secretary. Mr J.I. Brett, Fellow and Member, Urban Design Sub-Committee. Mr D.J. Sheaves, Chairman, Urban Design Sub-Committee.		807- 828
A.C.T. Electricity Authority. Mr W.E. Bolton, Chairman.		830- 840

Witness	Exhibit No. and description	Pages of Evidence
A.C.T. Council of Parents and Citizens Associations.		841- 863
Mr C. Mobbs, President.		
Mr P. Stott, Treasurer.		
Australian Capital Territory Schools Authority.		864- 907
Dr H. Beare, Chief Education Officer.		
Mr N.R. Edwards, Director, Planning Branch.		
Mr I.J. Alder, Member.		
A.C.T. Council of Social Service.	No. 12 - Planning Appeals Tribunal.	908- 945
Mrs J. Hayes, Executive Director.		
Mr M. Woods, Past Convenor, Urban and Community Development Task Force.		
Mr E. Wensing, Convenor.		
Department of Education.		1081-1108
Mr R.A. Foskett, First Assistant Secretary, Territorial Education Branch.		
Mr R.A. Graf, OIC, Technical and Further Education, Planning and Building Branch.		

Witness	Exhibit No. and description	Pages of Evidence
Capital Territory Health Commission.		1109-1140
Mr E.R. Boardman, Commissioner.		
Mr R.F. Gordon, Assistant Commissioner, Policy and Planning.		
Department of Construction.		1141-1176
Mr G.H. Warwick Smith, Secretary.		
Mrs P. Morris, Principal Project Officer, Environment Planning Studies.		
Mr A.D. Joines, First Assistant Secretary.		
Mr A.R. McIntyre, Director, ACT Region.		
Department of Administrative Services.		1177-1192
Mr J.R. Clark, Assistant Secretary, Planning and Review Branch, Property Division.		
Canberra Chamber of Commerce.		1193-1230
Dr E.D.L. Killen, Chairman.		
Mr D.W. Alexander, Member of the Executive.		

Witness	Exhibit No. and description	Pages of Evidence
Radio 2CC, on behalf of Capital City Broadcaster Pty. Ltd. Mr B.W. Merchant, News Editor.		1231-1242
Mr J.B. Gilchrist, 27 Doonkuna Street, Braddon.	No. 14 - Peter Harrison, Changing Urban Administration and Policy in the A.C.T., a paper at the UNESCO Seminar on Urban Management, Adelaide, 1977.	1258-1293
Mr T.G. Birtles, Principal Lecturer in Applied Geography, Canberra College of Advanced Education.		1294-1329
Representing the Leaseholders of Sections 21 and 29 Braddon. Mrs J. Dalla. Mr A.R. O'Dea.	Nos 15, 16 and 17. Photocopies of original lease title deeds offered in 1924. Copy of Petitions by certain lessees of Sections 21 and 29 Braddon. Feasibility of Land Use Sections 21 and 29 Torrens Street, Braddon.	1330-1352
Murrumbidgee Monitor Association. Dr R.K. Darroch, Committee Member. Ms N.L. Pratt, Convenor. Dr G.N. Evans, Committee Member.		1353-1412

Witness	Exhibit No. and description	Pages of Evidence
Telecom Australia. Mr D.A. Brooke, Superintending Engineer, Planning Headquarters. Mr T.D.W. Hewitt, Acting Manager, Programming and Projects Branch. Mr B.L. Kennedy, Superintending Engineer, Planning and Programming Branch, New South Wales Administration, 53-55 Elizabeth Street, Sydney.		1413-1428
Department of Social Security. Mr G.R. Dunham, Registrar. Mr A.W. Luchetti, Assistant Registrar. Mr J.B. Lleonart, Assistant Director-General, Management Services Division.		1430-1452
Mr E.G. Wensing, 63B Torrens Street, Braddon.		1453-1516
Australian Labor Party. Ms A. Evans, Secretary, Canberra City Branch. Mr J. Riddell, Membership Secretary, Canberra City Branch. Mr A.N. Sorrensen, Canberra City Branch.		1517-1541

Witness	Exhibit No. and description	Pages of Evidence
Kambah Residents Association.		1542-1560
Mr D.H. Terracini, President.		
Charnwood Community Action Group.		1561-1605
Mr C.J. Fogarty, President.		
Ms J.K. Gifford, Committee Member.		
South Mawson Residents Association.		1606-1620
Mr B.J. Good, President.		
Mr G.P. Gillespie, Acting Secretary.		
Mr P.H. May, Executive Member.		
Calvert Park Protection Association.		1621-1649
Mrs J.M. Galloway.		
Mr J.L. Carstairs.		
Mr I. O'Connor.		
O'Connor Hill Protection Association.		1650-1760
Mrs H.M. Hunt, President.		
Dr D. Fraser, Honorary Treasurer.		

Witness	Exhibit No. and description	Pages of Evidence
Weston Creek Community Association.		1762-1785
Mr R. Lord, President.		
Mr A.F. Wright, Vice-President.		
Mr A. Robinson, Senior Vice-President.		
Red Hill Progress Association.		1786-1805
Mr H.C. Ross, Committee Member.		
ACT Sports Council Incorporated.		1806-1821
Mr T. O'Neill, President.		
Mr D.J. Elphick, Senior Vice-President.		
Mr V.J. Paral, Member.		
Master Builders Association of the A.C.T.		1822-1838
Mr D. Andrew, Executive Director.		
Department of Transport.		1957-1974
Mr C.W.M. Freeland, Deputy Secretary, Policy and Planning.		
Mr M. O'Brien, Acting Engineer, Class 3.		
Mr G.K.R. Reid, Acting Director, Bureau of Transport Economics.		

Witness	Exhibit No. and description	Pages of Evidence
Mr B.E. Butler, 23 Gawler Crescent, Deakin.		1975-1998
Mrs E.C. Butler, 23 Gawler Crescent, Deakin.		1975-1998
Mrs G.L. Moore, 21 Gawler Crescent, Deakin.		1975-1998
Canberra and District Historical Society, Canberra.		1999-2011
Mrs N. Phillips, Secretary.		

ORGANISATIONS AND INDIVIDUALS CONSULTED

The Committee held discussions with the following organisations and individuals in the locations indicated:

DARWIN

Department of the Northern Territory.
Northern Territory Housing Trust.
Town Planning Board.
Darwin Reconstruction Commission.
Mrs D. Lawrie - Member of N.T. Legislative Assembly.
Mr G. Tamberling - Cabinet Member for Local Government and Finance.
Mr M. Perron - Cabinet Member for Planning and Education.

Corporation of the City of Darwin.
Darwin Citizens' Council.
Hooker Projects Pty. Ltd.

ADELAIDE

Mr J. Hullick - Local Government Association of S.A.
South Australian Housing Trust.
City of Adelaide Planning Commission.
Department of Housing and Urban Affairs.
Ms A. Rein - "Shelter".
South Australian Council of Social Service.
City of Adelaide Council.

ALBURY-WODONGA

Albury-Wodonga Development Corporation.
Dr H. Nowick - Uncle Bens Pty. Ltd.
Wodonga City Council.
Albury-Wodonga Regional Council for Social Development.

HOBART

Town and Country Planning Commission.
Housing Department.
Mr C.S. Wilkinson - Valuer-General.
Department of the Environment.
Hobart City Council.
North Hobart Residents' Action Group.
Tasmanian Council of Social Service.

MELBOURNE

Ministry for Planning.
Town and Country Planning Board.
Victorian Housing Commission.

Municipal Association of Victoria.
City of Melbourne.
N.O.W. Coburg one stop shop.
Victorian Council of Social Service.
Victorian Consultative Committee on Social Development.
Department of Regional and Country Planning, University of Melbourne.
P.G. Pak Poy and Associates Pty. Ltd.

PERTH

Local Government Association.
State Housing Commission.
Mr W. Cooper - Senior Lecturer, Department of Social Science, W.A. Institute of Technology.
Mr T. Meslin - consultant to South Perth Ratepayers' Association and Canning River Conservation Society.
Mr N. Halse - Southern Foreshores Protection Society.
Mr F. Robinson - Department of Community Welfare.
W.A. Council of Social Service.

BRISBANE

Co-ordinator General's Department.
Department of Commercial and Industrial Development.
Department of Local Government.
Department of Housing.
Department of Transport.
Brisbane City Council.
Dr A. Fogg - Reader in Law, University of Queensland.
Mr P. Day - Lecturer, Department of Town and Regional Planning, University of Queensland.

SYDNEY

Local Government Appeals Tribunal.
Sydney City Council.
Inner Sydney Regional Council for Social Development.
N.S.W. Planning and Environment Commission.
Land Commission.
Housing Commission.
N.S.W. Council of Social Service.
Mr C. James - Advocate planner, Wooloomooloo Redevelopment Project.
Professor R. Atkins.
Professor J. Toon - Associate Professor, Head of the Department of Town and Country Planning, University of Sydney.
Dr Z. Nittim - Senior Lecturer, Department of Town Planning, University of N.S.W.

APPENDIX 6

List of submissions received by the inquiry.

LIST OF SUBMISSIONS RECEIVED

Submission No.	Received From
Received in the 30th Parliament	
1	Mr W. Lennon, Member of the Legislative Assembly.
2	Mr S. Bennett, private resident of Red Hill (deceased).
3	Mr A. Robinson, private resident of Weston.
4	Dr P. Hughes M.L.A., private resident of Mawson.
5	Torrens Development Association Inc.
6	Mrs J. Mathews, private resident of Campbell.
7	Mr N.D. Bridger, private resident of Chifley.
8	Department of Social Security.
9	A.C.T. Council of Parents and Citizens Associations Inc.
10	2CC Radio Station.
11	Telecom Australia.
12	National Capital Development Commission.
13	Woden Community Service Inc.
14	Australian Labor Party (Canberra Branch).
15	Calvert Street Park Protection Association.
16	Department of Education.
17	Professor P. Young, private resident of Weetangera.
18 & 18A	Queanbeyan City Council.
19	Country Women's Association of Australia.
20	Mr R. Johnson, private resident of Blackwall Chine, Bungendore, N.S.W.
21	Mr and Mrs I. Mills, private residents of Narrabundah.

Submission No.	Received From
22	Department of Administrative Services.
23	Department of the Capital Territory.
24	Mr R.D. O'Sullivan, private resident of Aranda.
25 & 25A	A.C.T. Council on the Ageing.
26	Action for Public Transport.
27 & 27A	Mrs L. Rudduck, private resident of Reid.
28	Lessees of Sections 21 and 29 Braddon.
29	Department of Transport.
30 & 30A	O'Connor Hill Protection Association.
31	Major-General K. Mackay.
32	South Mawson Residents' Association.
33	Capital Territory Health Commission.
34	National Council of Women of A.C.T. Inc.
35	Mr B. James, private resident of Pialligo.
36	Weston Creek Community Association Inc.
37 & 37A	Mr D.M. Harman, private resident of Higgins.
38	Pedal Power A.C.T. Inc.
39	Charnwood Community Action Group.
40	Professor R. Atkins, private resident of Woollahra, N.S.W.
41	Urambi Primary School Board, Kambah.
42	Royal Institute of Architects (A.C.T. Chapter).
43	A.C.T. Amateur Basketball Association.
44	National Parks Association of A.C.T. Inc.
45	Department of Environment, Housing and Community Development.
46	Mr G.C. Barker, private resident of Kambah.

Submission No.	Received From
47	A.C.T. Schools Authority.
48	Kambah Residents' Association.
49	Institution of Surveyors, Australia (Canberra Division).
50	Society for Social Responsibility in Science.
51	Mt. Ainslie-Majura Protection Association.
52	Council of Social Service of the A.C.T.
53	Royal Australian Planning Institute.
54	Canberra and District Historical Society Inc.
55	Mr & Mrs E. Butler, and Mr & Mrs H. Moore, private residents of Deakin.
56	Murrumbidgee Monitor Association.
57	Mr T.G. Birtles, Principal Lecturer in Applied Geography, Canberra College of Advanced Education.
58	Mr E. Wensing, private resident of Braddon.
59	Albury City Council.
60	Canberra Chamber of Commerce.
61	Mr H. Ross, private resident of Red Hill.
62	Department of Construction.
63	A.C.T. Electricity Authority.
64	Mr J. Gilchrist, private resident of Braddon.
Received in the 31st Parliament	
65	Master Builders Association.
66	A.C.T. Sports Council.
67	National Capital Development Commission Supplementary Submission.
68	Dierk von Behrens.

Submission No.	Received From
69	Mr J. Leedman, Member of the Legislative Assembly.
70	Shoptraders Association - Woden Plaza.
71	Ainslie Primary School Board.
72	Dr A. Fogg, Reader in Law, University of Queensland.

APPENDIX 7

The case for an independent appeal tribunal (prepared by a specialist adviser to the Committee Dr Alan Fogg, Reader in Law, University of Queensland).

THE CASE FOR AN INDEPENDENT APPEAL TRIBUNAL

In Chapter 7 of this report the Committee recommends that an independent land use tribunal should be established with a wide jurisdiction to hear and decide appeals from governmental decisions.

The arguments in favour of such arrangements may not be self-evident to everyone. In this Appendix the alternative types of appeal systems are canvassed and reasons are given for the choice of an independent tribunal coupled with some observations on constitution and jurisdiction. Essentially there are three alternatives:

(1) Decision by the responsible Minister of the Crown, usually following a public inquiry conducted on his behalf.
(2) Decision by a specialised planning Court.
(3) Decision by a specialised independent tribunal.

Only in Western Australia are there still provisions allowing the Minister to decide planning appeals, and even in that State he has the advantage of being able to refer appeals to an official Advisory Committee. Further, a disappointed applicant has the choice of appealing to the Minister or to a Town Planning Appeals Tribunal. The only State where a specialised court operates to hear the first appeal from decisions by planning authorities is Queensland. New South Wales, Tasmania (for interim development appeals), South Australia and Victoria have all opted for the independent tribunal solution.

1. Advantages of a Tribunal

The advantages claimed for administrative tribunals are generally calculated to be (a) cheapness, where cheapness is an essential ingredient of justice; (b) speed; (c) expert knowledge of the technical matters involved; and (d) capacity to give effect to policies of social improvement without undue restriction arising from common law policies and the doctrine of precedent.

Perhaps the main argument for a tribunal is that its membership can comprise persons from differing disciplines concerned with aspects of the planning process. For example, in South Australia the chairman is an experienced legal practitioner holding judicial office, two Commissioners have local government experience, two have planning qualifications, and two have more generalised experience of public life and have governmental or commercial expertise. Similarly, under the Victorian Town and Country Planning Act 1961 one-third of the members of the Appeals Tribunal are lawyers, one-third experienced in town and country planning, and one-third drawn from public administration, commerce or industry.

By contrast, a court system invariably consists of a single judge dealing with a planning appeal, and he can hardly be expected to be in a position to combine the different qualifications and quality of experience of a three or four man tribunal. The inclusion of a lawyer as chairman of a tribunal is in general a decided advantage because of a legal man's inherent feeling for fair play and open procedure, although legal chairmen must always be on guard against creating a court-like atmosphere to the extent of turning administrative proceedings into an adversary trial.

Administrative tribunals can be divided into two broad categories, firstly those which are genuinely independent, and secondly those which are part of the machinery of governmental administration. In Australia it is clear that there is a general rejection of the notion that a planning appellate tribunal of the characteristics described be regarded as a mere functioning cog of the machinery of administration. The rationale for the creation of those planning tribunals existing in Australia at the present time has been that they should be independent of the government and that their duties should be adjudicative rather than administrative; consequently they should be free from ministerial directions. To quote the Franks Committee which investigated appeal tribunals in the United Kingdom in 1957:

> The members of the tribunal are neutral and impartial in relation to the policy of the minister, except insofar as that policy is contained in the rules which the tribunal has been set up to apply.[1]

2. Functions of Planning Tribunals

What should a planning appeal body do? Is it an adjudicative body in the sense of balancing public and private interests, or is it an administrative body which should take an executive decision following expressed guidelines of general policy?

There is no doubt as to what happens where a judicial system exists, as in Queensland which has a Local Government Court. Here the court is carrying out its

1. Administrative Tribunals and Enquiries, Report of the Committee, Chairman Rt. Hon. Sir Oliver Franks, Reported 15 July 1957. Command Paper No. 218, para. 25.

traditional function of adjudication. However, its specialised jurisdiction and expertise mean that it can take into account factors which would not normally be relied upon in civil litigation. For example, it is traditional to attach a good deal of weight to council policy adopted by resolution, and the very nature of the decisional exercise demands that conflicting expert evidence be weighed as to the merits of such policies and their applicability to the particular development under scrutiny by the court. *Nevertheless, the fundamental distinction obtains, and the* court is vested with carrying out the policy expressed by Parliament in the principal legislation and subordinate instruments made under it. In Queensland this means the City of Brisbane Town Planning Act and the Local Government Act, together with town planning schemes made under powers vested in local authorities by statute. Quite frequently courts have been given the job of assessing proposals in the light of specific planning considerations with the addition of the vague head of public interest. Whenever this specific responsibility has been given to a court in planning appeal matters, the reaction has been to interpret it in a rather narrow way so as to avoid adding new heads of discretion to a specific enumeration thereof, so that no general notion of public interest is invoked.

Courts obviously operate in a fairly narrow sphere, and exercise an essentially adjudicative function between the public authority and the citizen. A similar attitide can be discerned in the activities of those tribunals set up *in South Australia, Victoria and New South Wales to deal* with development appeal matters. It is instructive to see what the Chairman of the South Australian Planning Appeal Board has said in a general way about the functions of the Board. After coupling the Board with the Land and Valuation Court in New South Wales and the Local Government Court in Queensland, he went on to say:

> These bodies are not in themselves policy-making bodies. Yet these courts and the Board are concerned with the implementation of planning in accordance with planning Acts which confer wide discretions on them in a field where the boundary between policy making, which is not their function, and policy implementation, which is their function, is not always easy to define, particularly when the policy implementation, which is their function, involves these courts and the Board in implementing the planning policy, not of a Government Department or of a local government authority, but the planning policy of Parliament itself.[2]

It is obvious, then, that both courts and tribunals of an independent character have much the same function to fulfil. They are machinery provided by Parliament for adjudication rather than part of the machinery of administration, and in all these cases Parliament has deliberately provided for a decision outside and independent of the department concerned. This independence means that that tribunal or court is free from the influence, real or apparent, of the department concerned with the subject matter of their decisions.

There is a clear dichotomy between court and tribunal adjudication on the one hand, and ministerial decision upon the other. In the latter case any public inquiry held to investigate the merits of a planning appeal is essentially part of the machinery of administration, whereby a recommendation eventually is made to the Minister, with which he can disagree if he thinks fit. Essentially, under the system of ministerial decision the only elements that are akin to a court or independent tribunal are those relating to fair procedures and not to an unbiased decision.

2. Roder, "Interim Development Control and Zoning in the light of Planning Appeal Determinations under the Planning and Development Act of South Australia," (1969) A.P.I.J. 17, p. 17.

The Franks Committee itself recognised that the principle of impartiality could be applied only with reservations to a system of ministerial inquiry and decision. The elimination of courts or tribunals from an examination of the merits of planning proposals means that the Minister must exercise a function which is quasi-judicial. Decisions are taken not on the basis of legal rules, as in a court of law, or in accordance with case law, but on a judgment as to what course of action is, in the particular circumstances and in the context of ministerial policy, desirable, reasonable and equitable. However, the very nature of policy is elusive, and unsuccessful appellants may often feel justified in believing that they are batting on a sticky wicket. The very fact that appeals in the United Kingdom are frequently heard by ministerial inspectors in the offices of the local authority concerned does not engender confidence in a fair and objective hearing. The contrast with the courts is very striking, as the following quotation illustrates:

> The usual complaint of the civil litigant is not that his case has not been fairly and impartially heard and determined, but that, owing to the complexity of the system, the delay and expense are excessive. The views of the planning applicant, except when he is successful, (though quite often of the delay) but frequently take the view that the inquiry or hearing is nothing more than an opportunity for him to let off steam.[3]

3. Third Parties

In Chapter 7 of the report the Committee recommends that objectors should be able to appeal to the proposed land use tribunal in the same way as disappointed applicants. The rights of these so-called "third parties" to object to a

3. Grove, "Planning and the Appellant", (1963), 49 J.T.P.I., 128, p. 128.

developer's proposal and then to take the issue on appeal is an area where lively and different opinions have been expressed. One argument is that the inclusion of third party rights introduces complication to the appeal system, is productive of delay and blackmail techniques, and can cause developers' projects to be abandoned because of the high cost of loan interest. The contrary argument emphasises the unfairness which may be done to neighbouring residents if they are not granted rights of this character. Third party rights of objection and appeal are currently available in Queensland, South Australia and Victoria. Usually neighbours feel the need for such rights where multiple dwelling or flat development is proposed in an existing single-family residential area. In New South Wales Mr Justice Hardie expressed the case for third party rights in the following way in K.R. Wilson Pty. Ltd. v. Kogarah Municipal Council (1966) 12 L.G.R.A. 259:

> The time is now opportune to place on record that there is a real danger that this type of multi-unit residential development is likely to proceed apace in other suburban areas unless and until an amendment to the relative legislation is made to enable aggrieved owners of properties in the locality, subject to appropriate safeguards and to the establishment of an important question of planning principle, to challenge by appeal decisions of local councils granting consent, just as aggrieved owners can by appeal challenge decisions refusing such consent.
>
> Failure to provide some adequate machinery to reverse erroneous decisions of councils granting planning consent will put it beyond the power of the community to call a halt to still more and more development of a type which must ultimately destroy the amenity of many residential areas.

4. Constitution, Procedures and Practice of Tribunals

There is a tendency in Australia to appoint comparatively few people to sit on planning appeal tribunals. Three or four seems to be the favourite number, and the general practice is to require that the chairman shall have legal qualifications. The Franks Committee had this to say about a legal chairman:

> We attach great importance to the quality of chairmanship. Objectivity in the treatment of cases and the proper sifting of facts are most often best secured by having a legally qualified chairman, though we recognise that suitable chairmen can be drawn from fields other than the law. We therefore recommend that chairmen of tribunals should ordinarily have legal qualifications but that the appointment of persons without legal qualifications should not be ruled out when they are particularly suitable.[4]

A good deal of emphasis is given to the need to foster an informality of atmosphere in hearings before tribunals. The Franks Committee's objective of securing an informal atmosphere combined with a formal procedure is obviously the intention of legislation in New South Wales, South Australia, and Victoria. However, the Kerr Committee did not think that the requirement of informality should lead to a ban on legal representation.

Planning tribunals should, and when set up in Australia usually do, conduct their hearings in public. This is obviously the correct answer, subject perhaps to special circumstances relating to public security, personal

4. Franks Committee, para. 55. This opinion was shared by the Commonwealth Administrative Review Committee (the Kerr Committee) Report, August 1971, Canberra, AGPS, Parliamentary Paper 144 of 1971, para. 320.

and professional reputation, and the like. Another important point of identity between the Australian appellate planning tribunals is that legal representation is not banned by statute, and this again is obviously a proper attitude. All tribunals have the power to put witnesses on oath and, although originally some of their disciplinary powers were rather restricted, this omission has been remedied in, for example, South Australia, by an amendment to the original legislation.

A usual legislative attitude in Australia towards appellate tribunals is to provide for the preparation and publication of detailed reasons for decision. This is rightly considered to be highly important, since the knowledge that their decisions will become widely known and subject to detailed scrutiny encourages the adjudicators to think fairly and carefully. The parties to an appeal have the reassurance of seeing that points made by them have been given proper consideration, and the publication of decisions builds up a body of precedents that conduces to reasonable consistency and guides the thinking of public agencies as well as private landowners. One danger which adjudicators must guard against is excessively lengthy judgments from a tribunal, since the production of reasons can amount to an industry in itself.

What should the right of appeal from a tribunal decision be? The Franks Committee suggested that the ideal appeal structure for tribunals should take the form of a general appeal on fact, law or merit from a tribunal of first instance to a second appellate tribunal. The only qualification upon this strong advice was that, in exceptional cases, it was considered that an especially strong and well qualified tribunal of first instance did not need the constraint of a second tribunal of appeal above it in the hierarchy. There is little doubt that a tribunal

with a lawyer and two technically qualified members would constitute a well qualified tribunal within the ambit of the Franks Committee's recommendation, and there is no need for a second appellate tribunal in the ACT.

The Franks Committee also felt that there should be no appeals to the ordinary courts on questions of fact or on the merits, but that there should always be access to those courts on questions of law. In addition, that Committee recommended that the remedies by way of certiorari, prohibition and mandamus should be retained, but the relief by way of appeal on a point of law is wider in scope than certiorari. On certiorari the court may only quash a decision, while on appeal the court may, in effect, substitute its own opinion. Again, on certiorari the court must find the error of law on the face of the record, while on appeal it can also look at the notes of evidence. All State jurisdictions in Australia give a right to the disappointed appellant to appeal on a point of law to a court, and in South Australia there is an appeal on facts, merits and law to the Land and Valuation Court. The majority view of limiting further appeals to issues of law only is reflected in the recommendation contained in Chapter 7 of this report.

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