



CANBERRA A CAPITAL PLACE

REPORT OF THE INDEPENDENT REVIEW
OF THE NATIONAL CAPITAL AUTHORITY

DR ALLAN HAWKE AC

JULY 2011

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“

... WITH THE MOUNTAINS TO THE SOUTH AND TO THE EAST
AND THE SHIMMER FROM THE RIVER,
THE SCENE INVOKED A MENTAL, IF NOT A VOCAL, EXCLAMATION:
WHAT A MAGNIFICENT SITE FOR ONE OF AUSTRALIA'S FUTURE CITIES.

”



JOHN GALE, ARGUABLY THE "FATHER OF CANBERRA", HAD THIS PROPHETIC VISION ON CHRISTMAS DAY 1855
WHEN RIDING ACROSS THE LIMESTONE PLAINS TO CAPITAL HILL.

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THE HON SIMON CREAN MP
Minister for Regional Australia, Regional Development
and Local Government
Parliament House
CANBERRA ACT 2600

Dear Minister

I am pleased to provide you with the Report of the Independent Review (the Review) of the National Capital Authority (NCA) in accordance with your media release of 2 March 2011.

The Review was tasked with considering the effectiveness and efficiency of the NCA in performing its three key functions against the backdrop of previous inquiries into the roles and responsibilities of the agency, including:

- › the Joint Standing Committee on the National Capital and External Territories 2004 Inquiry;
- › the Joint Standing Committee on the National Capital and External Territories 2008 Inquiry; and
- › the 2009 Taskforce on the Commonwealth's National Capital Responsibilities.

The Review has synthesised the outputs of these previous investigations, drawn on discussions with key stakeholders and other contributors as well as considering unsolicited written submissions.

Some might be inclined to ask what's different about this Review to its predecessors.

The answer to this lies in the context against which the Review has been conducted and arrived at its conclusions and recommendations:

- › the Government has a renewed commitment to, and investment in, Australia's major cities through:
 - › the National Urban Policy, released by the Minister for Infrastructure and Transport, the Hon. Anthony Albanese MP, in May 2011; and
 - › the Council of Australian Government's agreement on Capital City Strategic Planning Systems to ensure Australian cities are competitive, productive, liveable, and placed to meet future challenges;
- › the Government has reinstated regional development programs to the Commonwealth's purview; and
- › the celebrations for the Centenary of Canberra in 2013, which aim to increase the pride and ownership of Australians in their national capital and build on the positive image and reputation of Canberra as a city, a community and the national capital.

This environment provides the opportunity for the Commonwealth to reiterate the NCA's mandate, as set out in the PALM Act, and restore the NCA's funding to an appropriate level.

The inescapable fact is that the NCA is not financially sustainable under current funding levels. The abolition of an entire function and/or a major change to the form of the agency would be required to achieve sustainability within existing resources. This would be perceived as an abrogation of the Commonwealth's responsibility for the national capital.

The Review nevertheless provides options that would enable the NCA to operate within its current resources or be abolished.

Implementing these options would be construed as churlish in the face of the Commonwealth's current agenda on cities. Indeed, the other States and Territories might well ask why they should follow COAG's Capital City Strategic Planning Systems reforms, or implement the National Urban Policy, when the Commonwealth Government is not prepared to demonstrate leading practice its own backyard.

In addition to options that would enable the NCA to operate under existing resources, the Review also identifies different funding options that would, depending on the combination of funding elements chosen, permit the NCA to deliver a national capital to be truly proud of.

Against that background, and as the Commonwealth returns to surplus, the extent to which the NCA's vision of a national capital "*which symbolises Australia's heritage, values and aspirations, is internationally recognised, and worthy of pride by all Australians*" is realised will depend on which funding model is selected.

Conclusions and findings that are more advisory in nature are interspersed throughout the Report for your further consideration in due course. You might like to task the Secretary of your Department with collecting those into a single submission and providing advice on their handling.

In closing, I want to pay particular tribute to Rebecca Sorensen who provided the Secretariat for this Review and undertook much of the research and drafting of the Report. Any errors, omissions or oversights are my responsibility.

Yours sincerely



ALLAN HAWKE

18 July 2011

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GLOSSARY OF TERMS AND SHORT FORMS USED

3D	Three-dimensional
AAT	Commonwealth Administrative Appeals Tribunal
ACAT	ACT Civil and Administrative Tribunal
ACT	Australian Capital Territory
ACTPLA	ACT Planning and Land Authority
AGD	Attorney-General's Department
ANAO	Australian National Audit Office
APS	Australian Public Service
AWM	Australian War Memorial
CGC	Commonwealth Grants Commission
CMD	Chief Minister's Department
CNMC	Canberra National Memorials Committee
COAG	Council of Australian Governments
DAF	Development Assessment Forum
DCP	Development Control Plan
DEEWR	Department of Education, Employment and Workplace Relations
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
FMA Act	<i>Financial Management and Accountability Act 1999</i>
GIS	Geographic Information Systems
GSP	Gross State Product
IAP2	International Association for Public Participation
IGC	Inter-Governmental Committee
JSC	Joint Standing Committee on the National Capital and External Territories
MOU	Memorandum of Understanding
NCA	National Capital Authority
NCDC	National Capital Development Commission
NCEPT	National Capital Education Tourism Project
NCPA	National Capital Planning Authority
NPP	New Policy Proposal
NSW	New South Wales
NT	Northern Territory
OECD	Organisation for Economic Co-operation and Development
PACER	Parliament and Civics Education Rebate
PALM Act	<i>Australian Capital Territory (Planning and Land Management) Act 1988</i>
RLF	Regional Leaders' Forum
RNE	Register of the National Estate
ROC	Regional Organisation of Councils
SEROC	South Eastern Regional Organisation of Councils
SEWPaC	Department of Sustainability, Environment, Water, Population and Communities

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EXECUTIVE SUMMARY



“I have planned a city not like any other city in the world. I have planned it not in a way that I expected any Government authorities in the world would accept. I have planned an ideal city – a city that meets my ideals of the city of the future.” ¹

“[Canberra] is all exceedingly grand, dignified, elegant ... yet reposeful; it will soon rank with Washington as one of the world’s great monumental capitals ... Canberra achieves the difficult feat of being one of the last cities beautiful, and also the world’s biggest garden city.” ²

“Canberra ... conceived of and shaped as a work of art ... [remains] one of the treasures not only of Australia but of the entire urban world.” ³

“Strategies [for Canberra] should encourage innovative design solutions; develop an ACT cultural identity; link Civic more positively to an enriched range of nearby national capital uses; build on the existing asset base; reduce dependence on the car; and encourage increased use of public transport.” ⁴



This Review examines the roles and responsibilities of the National Capital Authority (NCA). The Commonwealth has a keen interest in planning Canberra as the seat of the Australian Government. The Minister for Regional Australia, Regional Development and Local Government regards it as essential to get the correct balance between the Commonwealth’s and Australian Capital Territory (ACT) Government’s planning responsibilities in the National Capital.

The Review drew on work already produced by various taskforces and committees of inquiry as well as targeted consultations with key stakeholders in order to make recommendations on the future roles and responsibilities of the NCA for consideration by the Australian Government.

The National Capital Plan specifies five roles that the City of Canberra performs as the National Capital:

- › the seat of Government;
- › the location of the National Parliament and the Executive;
- › the centre of national administration;
- › the location for national institutions in research, education, arts, music and sports; and
- › a symbol of Australian national life and a location for memorials and ceremonial events.

Imposition of ACT self-government against the wishes of the citizenry has been accompanied by a waning Commonwealth interest in the National Capital over the succeeding 21 years.

The tendency to use Canberra as a surrogate pejorative to describe decisions made on Capital Hill has not helped the cause. Deriding the National Capital as out of touch with mainstream Australia belies the fact that the

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1 Walter Burley Griffin, New York Times, 2 June 1912.

2 Peter Hall, Cities of Tomorrow, 2002.

3 John W Reys, Professor Emeritus, Cornell University, 1995.

4 OECD’s Urban Renaissance study of Canberra, A Sustainable Future, 2002.

representatives of our Commonwealth Parliament come from all around Australia and represent the interests of their electorates.

Canberrans are torn between on the one hand responding to the slight or silence on the other as beneficiaries of what the city has to offer those who live here.

Overweening nationalism is not the Australian way, but there is room for Australians, led by the Australian Government, to take greater pride in their national capital. The city is, after all, a permanent and enduring symbol of Australia's unity as a nation, and home to the institutions that represent our democracy. Canberra is inextricably bound to the concept and realisation of the aims of Federation – a national asset that belongs to all Australians.

The run up to the Centenary of Canberra celebrations in 2013 provides the opportunity to restore things to their proper place. That can be achieved through the Commonwealth reiterating the NCA's mandate, as set out in the PALM Act, and by restoring the NCA's funding to an appropriate level. In time, it should be possible to increase the NCA's funding base so that it can develop its planning responsibilities in partnership with the ACT Government.

The NCA is responsible for the Commonwealth's ongoing interest in the planning and development of Canberra. It discharges this primarily through the National Capital Plan, the key objective of which is to ensure that Canberra and the ACT are planned and developed in accordance with their national significance. In effect, this means two planning systems for Canberra – one administered by the NCA, the other by the ACT Government.

While the ACT Government is responsible for providing social services and public infrastructure, it does not have strategic planning responsibility for the whole of the ACT. As a consequence, the ACT Government is limited in how it can respond to urban development pressures. Before the ACT can implement any strategic change, it must be assessed by the NCA as consistent with the General Policy Plan in the National Capital Plan or the NCA has to agree to prepare and sponsor an amendment to the National Capital Plan.

The urban form from the National Capital Plan and the so called Y-Plan (first introduced in 1967) have reinforced growth in a particular pattern, influencing service planning, such as public transport, road networks and other infrastructure, reinforced by certain limits on height, density and location of permitted development.

These arrangements were canvassed in an inquiry by the Joint Standing Committee on the National Capital and External Territories (JSC) in 2008, but remain an unresolved issue. During the course of the Review, however, the beginnings of a joint approach to reform, which of necessity will focus on defining matters of national significance, were evident in discussions with current and former officials in the ACT public service and Australian Public Service.

Currently the Matters of National Capital Significance outlined in the National Capital Plan are:

- › Canberra and the Territory's pre-eminent role as the national capital;
- › preservation and enhancement of the landscape features which give the national capital its character and setting;
- › respect for the key elements of Walter Burley Griffin's formally adopted plan for Canberra;
- › creation, preservation and enhancement of fitting sites, approaches and backdrops for national institutions and ceremonies as well as national capital uses; and
- › the development of a city which both respects environmental values and reflects national concerns with the sustainability of Australia's urban areas.

These matters are very broadly defined. The ACT Government's view has been that revised Matters of National Capital Significance should be developed that are more specific, have associated actions and, crucially, are supported by appropriate Commonwealth Government funding. One example of this would be the ongoing management of hills and ridges and the impacts of the national open space system in achieving more efficient land use and other service outcomes such as transport.

In parallel to resolving planning related issues, the need for the Commonwealth's responsibilities for maintenance and stewardship of Commonwealth land in the ACT, and the role of the NCA in educating Australians about their national capital has also been considered. The Commonwealth Government has an obligation to fund the delivery of its responsibilities to the national capital not only in relation to municipal maintenance and the operation of national attractions for which it is responsible, but also in funding promotion of Canberra as the national capital.

It has been argued that a single, fully integrated planning document could incorporate both the principles and policies of the National Capital Plan and the detailed requirements of the Territory Plan.⁵ It follows that a single document would articulate the pre-eminent national interest and vision, in addition to the local aspirations for Canberra.

This Review believes that the simple fact that the Commonwealth focus in the ACT is so remarkably different to the Territory's, warrants two separate plans. This does not mean that there cannot be similar approaches to formatting and language, or that other joint initiatives, such as a single online planning portal, cannot be progressed.

Designated Areas makes a clear distinction between where the NCA and the ACT Government have detailed planning control (conceptually no different to the States where boundaries between each Local Government Area determine which council is responsible for planning). It is only in a few areas where you have one agency or jurisdiction responsible for works approval and another responsible for the lease where there may be perceptions of overlap.

Proposed changes to special requirements should remove the perception of duplication (except to the extent that the special requirements prescribed in the National Capital Plan may be replicated in the Territory Plan). The proposed changes will remove the need for the ACT Government to refer to the NCA or the National Capital Plan at all.

The NCA Board should be representative of the nation, as well as recognising the needs of the local community. There is opportunity for the Canberra region to be directly represented through the nomination of one Member to the Board by the ACT Government. At the same time, increasing the number of Board Members will increase the breadth of views and experience brought to the table.

Given the significance of the National Capital, the Government needs to respond quickly to this Report. Canberra, as the National Capital, is a place of symbolic importance to the Australian people and the Commonwealth Government should adopt a policy position which actively works to preserve and enhance that national interest.

This Report should be released to the community in the near future with a commitment to announce a formal response by 30 September 2011. This approach will minimise speculation about the nature and recommendations of the Review.

A number of broad implementation strategies are open to Government if it were to accept most or all of the recommendations.

Those recommendations which go to reforming and optimising the planning system, the National Capital Plan, the NCA's role in fostering awareness of Canberra as national Capital and the way in which the NCA consults and makes itself transparent and accountable can all be implemented by the NCA Board within the existing legislation.

.....
5 2008 JSC Report, page 179.

It is important that the Commonwealth Government give, and be seen to give, the NCA clear guidance about the performance of its functions. In respect of the above reforms, the Minister should issue a strong Statement of Expectations outlining the need for the above reforms and setting an implementation timeline. The NCA Board should then respond accordingly through their Statement of Intent.

Some recommendations require legislative change. Government would need to assess the potential to include these within the legislative program for the remainder of this parliamentary term, but interim arrangements which could give effect to the intent of the recommendations.

Finally, the package of recommendations needs to be considered in the context of the form of agency which would deliver them and the manner in which it is resourced.

The reviewer believes that the NCA should be retained as an independent statutory authority and be resourced appropriately to fulfil its role. This structure gives the necessary independence to ensure probity in planning decisions.

There is potential to retain a similar level of statutory independence, while yielding savings which could be reinvested in core operations, by partially integrating the NCA into a department of state. This is a viable option but not the preferred one. Careful attention would need to be given to developing a structure which preserves the status of the NCA and protects the responsible Minister and Departmental Secretary from exposure to controversial planning decisions.

Financial sustainability is one of the key challenges facing the NCA and the Review has assessed three broad levels of future resourcing.

The option of providing base funding only (as per the NCA's 2011-12 budget bid) is not sufficient to deliver a standard of asset management which most Australians would consider appropriate for the National Capital.

The "Modest Improvement" funding increase is an option which appropriately balances the NCA's operational needs with the Government's commitment to return the budget to surplus. This moderate position should be adopted until such time as the budget returns to surplus, after which a very high priority should be given to again increasing the level of funding to enable service delivery standards for a "National Capital to be proud of".

GUIDE TO THIS REPORT

Chapter One provides background to the Review, including an examination of previous inquiries and working parties into the roles and responsibilities of the NCA. The Review has drawn on the information within the reports of these reviews, in addition to other supporting documentation.

Chapter Two provides a snapshot of the ACT including the path to self-government, the size of the Legislative Assembly, population growth and the economy, the ACT's place in the region, and the ACT Government's relationship with the Commonwealth, before turning specifically to the ACT Government's position on the NCA Review. This Chapter provides essential context and background to understand where the ACT Government is coming from. One formal recommendation stems from this Chapter.

Chapter Three examines the role of the Commonwealth in the national capital, including the current extent of the Commonwealth's interest, and establishes where the Commonwealth should focus attention. Four formal recommendations stem from this Chapter.

Chapter Four scrutinises the highly contentious area of planning in the national capital, and examines the effectiveness and efficiency of current arrangements. Seven formal recommendations stem from this Chapter.

Chapter Five outlines the NCA's current role in preserving and enhancing the national estate. Importantly, this chapter describes how co-ordination between Commonwealth agencies is possible and would contribute to a more integrated approach to managing the central areas of Canberra. Two formal recommendations stem from this Chapter.

Chapter Six examines what role the NCA should play in fostering awareness of the national capital, clarifies this role and how it could be carried out. Three formal recommendations stem from this Chapter.

Chapter Seven examines the NCA's structure, including governance and reporting arrangements. Three formal recommendations stem from this Chapter.

Chapter Eight identifies the past approach to community engagement and the criticism this has received, and outlines the NCA's evolving commitment to improving public participation, transparency and accountability. One formal recommendation stems from this Chapter.

Chapter Nine discusses delivery of the Commonwealth's responsibilities and the functions that the NCA should perform. It also examines how these could be delivered and raises some funding options. No formal recommendations stem from this Chapter.

Chapter Ten deals with some other issues such as the operations of the Canberra National Memorials Committee, and heritage. Four formal recommendations stem from this Chapter.

Attachment A shows how and where the 2004 and 2008 JSC Report Recommendations are dealt with in this Report.

Stakeholders views are reflected in the Report. Submissions to the Review are listed at *Attachment B*, while those who participated in meetings with the Reviewer are listed at *Attachment C*.

Some of the issues are complex and multi-faceted. Improving current arrangements involves the interaction of multiple formal recommendations. The following table of key issues highlights the range of benefits which would follow from implementing the Review's recommendations.

ISSUE: TRANSPARENCY, ACCOUNTABILITY AND PUBLIC PARTICIPATION

Previous Arrangements: The NCA has, from time to time, been criticised as having poor consultation practices and a lack of both transparency and accountability. These criticisms were eroding both public and parliamentary confidence in the NCA.

Current Arrangements: Since 2008, the NCA has put considerable effort into improving opportunities for public participation. The NCA has also improved its transparency and accountability to the parliament and public with key initiatives including half-yearly appearances before the Joint Standing Committee on the National capital and External Territories and an annual Public Forum. These arrangements appear to be working and should continue.

Reason / Benefit: The NCA cannot, and does not, expect to have independence without accountability. The mechanisms above allow both elected representatives and the public to hold the NCA to account for its actions and decisions. Over time, this should build, and maintain, public confidence in the NCA.

ISSUE: THE “NATIONAL INTEREST” IN CANBERRA AS THE NATIONAL CAPITAL CAN BE A DIFFICULT CONCEPT TO EXPLAIN AND/OR COMPREHEND. THIS RESULTS IN CONFUSION ABOUT THE NEED FOR, AND ROLE OF, A BODY SUCH AS THE NCA.

Current Arrangements: The National Capital Plan defines five “Matters of National Significance”. These are broad and general in nature and cannot be easily or objectively applied. This hampers explanation of NCA decisions and contributes to friction between the NCA and the ACT Government.

Proposed Arrangements: Improve the structure and expression of the “Matters of National Significance” as the over-arching principles which guide the planning and development of Canberra as the National Capital.

Reason / Benefit: A clear and objective statement of the “Matters of National Significance” will allow stakeholders to better anticipate and comprehend the NCA’s position on particular proposals. It will also ensure the NCA remains focused and does not interfere in matters outside its proper domain.

ISSUE: THERE IS AN IMBALANCE IN RESPONSIBILITY FOR THE FUTURE SHAPE AND FORM OF THE CITY WHICH DOES NOT APPROPRIATELY RECOGNISE THE ACT GOVERNMENT’S ROLE.

Current Arrangements: The Commonwealth, through the NCA, currently has sole responsibility for setting the strategic form of the city. This arrangement does not appropriately recognise the ACT’s rights to benefit from land sales or its role in funding the construction of key urban infrastructure.

Proposed Arrangements: Increase the ACT Government’s power and role in respect of strategic planning – particularly in the areas of land use allocation and infrastructure planning outside the Central National Area.

Reason / Benefit: This will establish a more cohesive joint planning effort and empower the ACT Government to play a greater role in shaping the future form of Canberra.

ISSUE: THERE IS CONFUSION ABOUT WHERE, AND WHY, THE NCA HAS DETAILED PLANNING AND DEVELOPMENT APPROVAL POWERS.

Current Arrangements: The areas where the NCA has detailed planning and development approval powers are referred to as the “Designated Areas”. This nomenclature does not aid common understanding of why it is important for the NCA to have such a role. The actual footprint of the “Designated Areas” has not been subject to a comprehensive review for many years.

Proposed Arrangements: Clarify and redefine the current Designated Areas in which the NCA has planning approval responsibility. Rename them as “Areas of Special National Importance”.

Reason / Benefit: This will improve common understanding of which areas the NCA is involved in and why. It will also ensure there is a legitimate and strong reason for the NCA to have such a role in those places.

ISSUE: SPECIAL REQUIREMENTS ARE ONE OF THE MOST CONFUSING AND CONTENTIOUS PLANNING TOOLS IN THE CURRENT SYSTEM.

Current Arrangements: “Special Requirements” areas are, essentially, areas where the NCA writes the rules and the ACT Planning and Land Authority administers them.

Proposed Arrangements: Simplify and change the form of “Special Requirements” to enable the ACT Planning and Land Authority to undertake their planning role with no reference to the NCA or National Capital Plan.

Reason / Benefit: This will improve clarity and efficiency of the planning system.

ISSUE: HAVING TERRITORY LAND WITHIN THE DESIGNATED AREAS LEADS TO PERCEPTIONS OF DUPLICATION.

Current Arrangements: Development proponents need both land administration approval from the ACT Government and planning or development approval from the NCA in those ACT areas included in the Designated Areas.

Proposed Arrangements: Align, where possible, land management and detailed planning responsibilities. Where this is not practical, ensure detailed planning principles are optimised to reduce perceived overlap and improve efficiency.

Reason / Benefit: This will reduce confusion and complexity in planning. ACT Government land management agencies who undertake activities in the current Designated Areas will be key beneficiaries.

ISSUE: THE NCA HAS BEEN CRITICISED FOR CONDUCTING PUBLIC EVENTS WHICH PRIMARILY BENEFIT LOCAL RESIDENTS AND FOR CANCELLING SUCH EVENTS DUE TO BUDGETARY PRESSURES.

Current Arrangements: The NCA has a statutory role to “foster awareness of Canberra as the national capital”. This role has never been objectively defined and has, at different times, included operation of the National Capital Exhibition at Regatta Point, management of a Travelling Exhibition and conduct of many popular public events. Since budget cuts in 2008, the sole activity has been the operation of the National Capital Exhibition.

Proposed Arrangements: Clarify the NCA’s “foster an awareness...” role as focussing on education and outreach activities related to the special role of Canberra as the National Capital.

Reason / Benefit: This will ensure targeted allocation of resources and a special focus on reaching those who do not already have a understanding of the importance of the National Capital.

ISSUE: THE NCA IS NOT FINANCIALLY SUSTAINABLE IN THE MEDIUM OR LONG TERM.

Current Arrangements: The NCA manages within existing resources by strictly prioritising expenditure and a risk-based methodology. This means that some asset management activities which contribute primarily to aesthetics or user amenity have been reduced. Even with this approach, the NCA is at risk of running out of cash during 2012-13.

Proposed Arrangements: Appropriately resource the NCA to undertake its future roles in the areas of planning, education, outreach and land management.

Reason / Benefit: This will enable the NCA to fulfil its statutory responsibilities to an appropriate standard and in a financially sustainable manner.

ISSUE: THE NCA HAS BEEN CRITICISED FOR NOT ADEQUATELY CONSIDERING THE INTERESTS OF THE LOCAL COMMUNITY AND/OR THE ACT GOVERNMENT.

Current Arrangements: While three of the current board members, including the Chairman and Chief Executive, are long-term Canberra residents, the ACT Government and local community do not have any direct role in recommending candidates for possible appointment to the NCA Board.

Proposed Arrangements: Invite the ACT Government to recommend a person for appointment to the board of the NCA.

Reason / Benefit: This will improve consideration of local interests in NCA decisions.

The list of formal recommendations follows. These recommendations are dispersed throughout the Report in the context of the issues at hand. In addition to formal recommendations, there are also suggestions throughout the report that Minister Crean might wish to pursue.

The Review has had regard to the need to minimise budgetary implications and legislative change, and where feasible offers recommendations that can be implemented with no legislative change. In some subject areas, adequate change cannot occur within the confines of current legislation.

The stark reality is that under existing funding levels the NCA is not a financially sustainable organisation.

Different funding options are canvassed in Chapter Nine, representing variations on the themes, providing the opportunity to select a package of different line items that Minister Crean might wish to select and present for consideration.

Such an approach would be consistent with the Commonwealth Government's National Urban Policy and COAG Agreement on Capital City Strategic Planning Systems combined with the Centenary of Canberra in 2013 and the Budget returning to surplus represent a combination of factors that support a renewed Commonwealth interest in the national capital and an undeniable case to fund the NCA to these ends.

This would give tangible effect to pursuit of the NCA's vision:

"A national capital which symbolises Australia's heritage, values and aspirations, is internationally recognised, and worthy of pride by all Australians."

RECOMMENDATIONS

1. The ACT Self-government Act should be reviewed with a view to enacting a new Bill in 2013 to mark the Centenary of Canberra.
2. The five criteria (aesthetic, historic, education/scientific, political, and social/cultural) for determining national significance, as described by the Taskforce on the Commonwealth's National Capital Responsibilities, be incorporated into the National Capital Plan.
3. The current Designated Areas and areas subject to "Special Requirements" be accepted as the areas which currently demonstrate national significance and where the Commonwealth should maintain a high level of interest.
4. If a nomination for parts of Canberra to be included on the National Heritage List is successful, Designated Areas be amended to include those subject to the heritage listing.
5. To the extent that any of the above requires a change in the "designation" status (ie changing the planning decision-maker), a clear transition plan should be prepared which ensures natural justice for and minimises loss or windfall gains for land holders. For example, it might be agreed that the planning decision maker for an existing undeveloped site would only change either prior to its sale or after its initial development – depending on which would best balance the national interest and minimisation of unintended economic impact.
6. The Government consider providing one-off funding to enable the NCA to undertake a comprehensive policy and format review of the National Capital Plan, with the view to reflecting contemporary planning themes, more closely aligning the National Capital Plan with the Territory Plan in structure and terminology, and implementing other relevant recommendations of the Review.
7. The NCA and ACT Government progress talks around reforming the General Policy Plan to assign "Principal Responsibility Areas" to the relevant jurisdiction and agree on an appropriate Inter-Governmental agreement to give effect to the operation of this approach to strategic planning. This should be done in the context of the comprehensive review of the National Capital plan.
8. Designated Areas be renamed "Areas of Special National Importance."
9. Special Requirements continue to apply under the National Capital Plan.
10. All Special Requirements that stipulate the need for a Development Control Plan be removed and a set of detailed principles and policies for the area developed jointly between the National Capital Authority and the ACT Planning and Land Authority.
11. Special Requirements for other areas be reviewed as part of a comprehensive review of the National Capital Plan.
12. In the interest of improving uniformity between the two planning systems, the DAF Leading Practice Model for Development Assessment be assessed by the NCA for its relevance and application to the National Capital Plan.

- 13.** Unless the Inter-Agency Committee reaches an alternate conclusion before the end of 2011, the Government adopt a policy position whereby all new embassies and high commissions established in Canberra are required to pay annual rent and that rent be considered in the context of resolving the NCA's budget pressures.
- 14.** The NCA become the sole Commonwealth agency responsible for capital works within Designated Areas.
- 15.** Section 6(e) of the PALM Act be amended to read:

"to foster awareness of the national capital by informing and educating Australians and visitors about its significance and role."
- 16.** The NCA prepare a five-year plan of information and education activities for the Minister's agreement.
- 17.** The NCA's role in "promotion" be clarified to identify the Commonwealth's role as informing and educating Australians and visitors about the significance and role of the national capital.
- 18.** Board numbers be increased to seven, comprising a Chair, Deputy Chair, Chief Executive and four other members (one nominated by the ACT Government).
- 19.** ACT Government nominate a member of the board to represent the interests of the Canberra community.
- 20.** The NCA Board should recommend the Chief Executive Officer to the Minister, for decision.
- 21.** The NCA consider adopting the International Association for Public Participation's "Public Participation Spectrum" for use in the Commitment to Community Engagement to clearly identify to the public the respective roles of the NCA and the public in varying public participation processes.
- 22.** Consideration be given to reforming the current EPBC Act assessment process to require assessment by only one agency (the NCA) as part of the Government's response to the recommendations of the 2009 Report of the EPBC Act Review.
- 23.** Proponents of proposals that require consideration by the CNMC undertake an EPBC assessment/ referral prior to consideration by the Committee.
- 24.** Proponents of proposals that require consideration by the CNMC undertake public consultation prior to the NCA providing advice to the Committee.
- 25.** All vacant positions in the CNMC be filled as soon as possible in accordance with the *National Memorials Ordinance 1928*.

CHAPTER ONE: BACKGROUND TO THE REVIEW

“Here, on this spot, in the near future, and, I hope, the distant future too, the best thoughts for Australia will be given expression to, both in legislative and administrative acts. I hope that this City will be the seat of learning as well as of politics, and it will also be the home of art.”⁶

In March 2011, the Minister for Regional Australia, Regional Development and Local Government, the Hon. Simon Crean MP, who is also the Minister responsible for the Territories, announced a review into the National Capital Authority’s roles and responsibilities (the Review) (see *Attachment D*), with the following terms of reference:

- “1. The independent review will examine the extent and delivery of the Commonwealth’s responsibilities in the ACT (Australian Capital Territory) through the NCA (National Capital Authority), including the structure of this agency and its effectiveness and efficiency in performing its three key functions:
 - › promotion of the national capital;
 - › planning in the ACT; and
 - › preserving and enhancing the national estate.
2. The review will draw on existing information and reports on the roles and responsibilities of the NCA, consultation with key stakeholders, and reference additional materials that the independent reviewer considers necessary in order to properly conduct the review within these Terms of Reference.
3. The review will make recommendations on the future role and responsibilities of the Commonwealth in the national capital and on the most appropriate means of meeting those responsibilities having regard to the fiscal responsibility of Government:
 - › the review will recommend at least one option that involves the tailoring of the NCA’s functions to operate within its existing resources;
 - › further recommendations will include the future role of the NCA, the statutory functions the NCA should perform, and the NCA’s method of delivery of those functions; and
 - › the review will also make reference to the NCA’s governance arrangements, particularly in relation to its reporting requirements.

Minimising budgetary implications and legislative change required to implement recommendations are important.”

This review was commissioned at a time when working parties established as a result of the last major review into the NCA in 2008 have not produced an outcome, and the financial sustainability of the agency is questionable.

Importantly the Territories, Local Government, Regional Australia and Regional Development functions are all vested in the one Minister, the Hon. Simon Crean MP, who will be able to draw all these elements together when considering this Review Report and what to do about it. The alignment of that constellation with the Minister’s expressed desire to get outcomes in an area that has bedevilled previous attempts is a hopeful portent for the future.

6 Andrew Fisher, Prime Minister, at the laying of the foundation stones and naming of the federal city, 12 March 1913.

THE NATIONAL CAPITAL AUTHORITY

The NCA, originally known as the National Capital Planning Authority (NCPA), is established under the *Australian Capital Territory (Planning and Land Management) Act 1988* (the PALM Act). The agency was established in tandem with ACT self-government, to ensure the Commonwealth's continued broad oversight of planning in the ACT, and a more detailed involvement in the planning, design and development of areas identified as having the special characteristics of Australia's national capital. The NCA was to reflect the Commonwealth's interests in the national capital and carry out its intentions for the city. In 1996, the name was changed from the NCPA to the NCA to reflect the broader range of functions undertaken by the agency other than planning.

The PALM Act prescribes the NCA's powers and functions and makes it subject to general Ministerial Direction by the Minister for Regional Australia, Regional Development and Local Government.

Section 6 of the PALM Act sets out the NCA's functions. Collectively, these functions provide the framework to:

- › secure the planning and development of Canberra as the National Capital;
- › accommodate the Seat of Government and associated national and cultural requirements;
- › provide public places and assets for national purposes and for all Australians to visit and enjoy;
- › enhance the unique character and symbolic meaning of the capital; and
- › develop appreciation of Canberra as the National Capital.⁷

PREVIOUS INQUIRIES, WORKING PARTIES AND REPORTS

Since its inception in 1989, reviews of the Agency's functions have encompassed such topics as land management and capital works functions, diplomatic leasing, governance, and the broader roles and responsibilities of the NCA.

Each review (while making recommendations for change) reaffirmed the NCA's principal functions as relevant to the effective management of the Commonwealth interest in the ACT.

Inquiries and reviews of the roles and responsibilities of the NCA, and of the national capital more broadly, suggest a continuing lack of certainty about the Commonwealth's role in the national capital.⁸

The advent of self-government in 1988 has been accompanied by confusion about what the Commonwealth should actually do in the national capital and how this might best be done. No substantive changes have occurred since this time to either the NCA's role or the legislation under which it operates. Establishment of various working parties to determine what should be done has not resulted in any difference and the uncertainty remains.

Confusion between determining the Commonwealth's responsibilities and criticising the performance of the agency or agencies carrying out those responsibilities has also characterised some earlier reviews.⁹ Each review concluded that the Commonwealth has a primary and enduring interest in the national capital, and that the NCA is best placed to uphold this interest.

7 National Capital Authority Portfolio Budget Statement 2010-2011.

8 Taskforce on the Commonwealth's National Capital Responsibilities - Taskforce Report, 2009.

9 Taskforce on the Commonwealth's National Capital Responsibilities - Taskforce Report, 2009.

The Annual Report of the NCA stands referred to the JSC for any inquiry the Committee wishes to make.¹⁰ In 2003, the JSC commenced an inquiry into the role of the NCA. This inquiry was completed in 2004 and examined the role of the NCA, the agency's management of the National Capital, management issues relating to Designated Areas, and the relationship between the NCA and the ACT Government planning authority.¹¹

As *Attachment E* shows, the Government Response accepted only one of the 2004 JSC Report's 11 recommendations; the balance being noted or not accepted.

In 2007, the JSC conducted a public forum to examine the NCA's proposed Griffin Legacy amendments. These four amendments are some of the most significant amendments to the National Capital Plan, and provide a blueprint to restore the intended urbanity and vitality of the national capital's core areas.

Following concerns raised during the inquiry process, the JSC recommended that the (then) Minister for Local Government, Territories and Roads move to disallow the four amendments to allow the NCA to further refine the amendments, taking into account key issues such as building height, traffic and transport implications, and loss of green space and significant vistas. A full list of the JSC recommendations is at *Attachment F*.

The Minister did not move to disallow the Griffin Legacy amendments. Although Senator Bob Brown did move a disallowance motion, the Senate did not support the motion and the amendments were subsequently incorporated into the National Capital Plan.

In February 2008, the (then) Minister for Home Affairs, the Hon. Bob Debus MP, reopened the debate about the role of the NCA by requesting the JSC to conduct another review of its functions.¹² The Terms of Reference focussed on administration of the National Capital Plan, governance arrangements for the NCA, the level of oversight required to maintain the highest standards of design in the ACT, opportunities for greater cooperation with local planning authorities and promotion of the national capital and new infrastructure projects.¹³

The 2008 JSC recommendations resulted in the formation of an Inter-Governmental Committee (IGC) on planning and a Taskforce on the Commonwealth's National Capital Responsibilities.

Collectively, the work of these three groups provides the most contemporary examination of the NCA's roles and responsibilities, particularly in regard to planning and the relationship between the NCA and the ACT planning authority. The work of these parties is discussed in more detail below.

10 JSC Resolution of Appointment for the 40th Parliament (February 2002-August 2004). The current JSC Resolution of Appointment contains the same provision.

11 2004 JSC Report.

12 The Joint Standing Committee on the National Capital and External Territories of the 40th Parliament undertook a similar review of the roles and responsibilities of the National Capital Authority in 2004.

13 Joint Standing Committee on the National Capital and External Territories, *The Way Forward, Inquiry into the Role of the National Capital Authority, 2008*.

THE WAY FORWARD: INQUIRY INTO THE ROLE OF THE NATIONAL CAPITAL AUTHORITY – 2008; TASKFORCE ON THE COMMONWEALTH'S NATIONAL CAPITAL RESPONSIBILITIES; AND INTER-GOVERNMENTAL COMMITTEE ON PLANNING

The 2008 JSC report, *The Way Forward, Inquiry into the Role of the National Capital Authority*, concluded that the NCA should continue to exist. Three key objectives emerged from this report:

- › ensure the Commonwealth protect and promote the unique design of Canberra because it represents the intrinsic character of the National Capital;
- › where possible, align land administration with planning jurisdiction, provided the first objective is achieved; and
- › foster greater cooperation and collaboration between the Commonwealth and ACT Government on planning and related matters.¹⁴

As *Attachment G* shows, the Government accepted completely, in part or in-principle 13 of the 22 recommendations; the balance being noted or not accepted.

In response to the 2008 JSC Report, the Government also established a Taskforce to define the Commonwealth's interests and responsibilities in the national capital and consider ways in which the Commonwealth maintains, develops and protects the elements of the national capital that are of importance to all Australians, as well as the costs of the NCA's activities.

Convened in February 2009, the Taskforce's Terms of Reference were agreed between the Prime Minister and the Minister for Home Affairs. Membership was drawn from the Attorney-General's Department (AGD) (Chair); Department of the Prime Minister and Cabinet; Department of Finance and Deregulation; the (then) Department of the Environment, Water, Heritage and the Arts; and the NCA.

In addition, an IGC on planning to develop proposals for a simplified and streamlined planning system in the ACT was established by the Government. Together with the outcomes from the work of the Taskforce, it was envisaged that detailed recommendations for the national capital's planning framework could be devised.

The Taskforce finalised its report in December 2009, but no action has been taken on its recommendations, which are at *Attachment H*.

The IGC experienced difficulties in dealing with its remit, did not reach any conclusions and has never issued a report.

14 Joint Standing Committee on the National Capital and External Territories, *The Way Forward, Inquiry into the Role of the National Capital Authority, 2008*.

CHAPTER TWO: THE AUSTRALIAN CAPITAL TERRITORY AND SELF-GOVERNMENT

“Anyone who is a democrat, who believes in democracy, who considers that freedom is important, must recognise that it is an anomaly that the ACT, the capital of democracy, does not have democracy itself.”¹⁵

As Minister Crean said when announcing the Review:

“It is essential that we find the correct balance between planning responsibilities between the Commonwealth and the ACT Government in the National Capital.”

This Chapter provides essential context and background to understand where the ACT Government is coming from with respect to its position on this Review.

Only one Recommendation emerges from this Chapter, and while some may see it as peripheral to the Terms of Reference, it is a vitally important matter to the ACT Government.

The sometimes esoteric topic of the ACT’s self-government arrangements was the subject of much public comment during the course of the Review of ACT Public Sector Structures and Capacity, including as a result of the introduction of two Bills in the Senate by the Leader of the Australian Greens, Senator Bob Brown, seeking to remove the prohibition on the Legislative Assembly for the ACT (the Assembly) making laws with regard to euthanasia, and to remove the capacity of the Commonwealth Executive to overturn administratively a law passed by the Assembly.¹⁶

The history of self-government in the ACT is a somewhat chequered one: among the members of the First Assembly in 1989 were representatives of the Abolish Self-government Coalition and the No Self-government Party. The fact that a significant majority of Canberrans were opposed to self-government, coupled with the sentiment that Canberra was a better place when it was overseen by the National Capital Development Commission (NCDC), still underpins some criticisms of the ACT’s current governance arrangements.

That said, there is an emerging maturity in the self-government arrangements, the 20th Anniversary of which were celebrated in 2009. There is no official suggestion or groundswell of support for a return to direct administration by the Commonwealth, and a growing sense that the ACT Government is poised to enter the next phase of development. Indeed, in public discussion of Australian Federation reform, regional governance arrangements similar to those already in place in the ACT are often promoted.

15 Langmore, J. (1988) *House of Representatives Hansard*. 3 November, page 2427.

16 See the Australian Capital Territory (Self-Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill 2010, and the Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill 2010 at <http://parlinfo.aph.gov.au/parlInfo/search/search.w3p>.

THE PATH TO SELF-GOVERNMENT

In keeping with the compromises reached at the time of Federation to overcome rivalry between Sydney and Melbourne over which city should become the new capital, as embodied in section 125 of *The Constitution*¹⁷, the Commonwealth Parliament passed the *Seat of Government Act (1908)* which declared “the Seat of Government of the Commonwealth shall be in the district of Yass-Canberra in the State of New South Wales”.¹⁸

The foundation stones of the national capital were laid in 1913. This occasion, commemorated as Canberra Day in March each year, will form the centrepiece of Centenary celebrations in 2013.

From its creation until 1989, the ACT was administered by the Commonwealth Minister responsible for Territories under section 122 of The Constitution, supported by a range of bodies including the Federal Capital Advisory Committee, the Federal Capital Commission, the Department of Home Affairs, and the NCDC. The roots of current debate about the sustainability of Canberra, its urban form, and planning regimes represent the legacies of planning and development decisions made by these bodies and the Commonwealth Governments to which they were responsible.

By the 1960s, calls were being made by politicians and ACT residents for some form of self-government for the ACT. Ken Fry (Member for Fraser 1974 – 1984) and John Langmore (Member for Fraser 1984 – 1996) both devoted a significant part of their maiden parliamentary speeches to the importance of self-government to the people of the ACT.

In the late 1980s, the Commonwealth Government decided, in the face of community opposition, to grant self-government to the ACT, and in 1988, the Commonwealth Parliament passed four key pieces of legislation:

- › the *Australian Capital Territory (Self-Government) Act 1988* (the Self-Government Act);
- › the *Australian Capital Territory (Electoral) Act 1988*;
- › the PALM Act; and
- › the *ACT Self-Government (Consequential Provisions) Act 1988*.

The NCA was established under the PALM Act¹⁹ to represent the Commonwealth Government’s:

*“... continuing interest in the strategic planning, promotion, development and enhancement of Canberra as the National Capital. The functions of the NCA provide an enduring framework to secure the planning and development of Canberra as the capital; to accommodate the Seat of Government and associated national and cultural requirements; to provide national public places for all Australians to visit and enjoy; to enhance the unique character and symbolic meaning of the capital; and to develop appreciation of the capital as a reflection of our democracy and national life.”*²⁰

The Self-Government Act is, in effect, the ACT’s constitution, prescribing the size and powers of the Assembly and role of the ACT Executive. It also contains provisions that, while understandable precautions at the time, now look out of place in light of the maturity and acceptance of the ACT’s self-government arrangements. Principal among these is the capacity of the Commonwealth Executive to administratively overturn a law validly made by the Assembly. This last occurred under Prime Minister Howard, when the Civil Unions Act 2006 was disallowed by the Governor-General on Commonwealth Government advice.

The proposed powers of the Assembly attracted considerable comment during debate on the Self-Government Act. Professor George Williams, Anthony Mason Professor of Law at the University of New South Wales and regular contributor to the *Sydney Morning Herald*, advocated greater responsibilities being given to the Assembly:

17 See <http://www.comlaw.gov.au>

18 See <http://www.comlaw.gov.au>

19 See <http://www.comlaw.gov.au>

20 Commonwealth Government (2010a) *The National Capital Authority*.
http://www.nationalcapital.gov.au/index.php?option=com_content&view=category&layout=blog&id=36&Itemid=146

*"As a matter of democratic principle and good governance, the Commonwealth should not remove power from a self-governing jurisdiction. Removing power is a blunt instrument that prevents the making of any laws on a subject, whether for good or ill. It also calls into question the good faith of the Commonwealth in granting self government to the territories in the first place."*²¹

The power of the Commonwealth Parliament to legislate for the Territories is not questioned, especially in relation to the seat of the national capital, but a legislative "disallowance" process would provide for greater scrutiny, transparency and debate than the administrative procedures set out in section 35 of the Self-Government Act.

SIZE OF THE ASSEMBLY

Elections for the First Assembly were held in March 1989 and the Assembly first met in May of that year. The General Election for the current 7th Assembly was held on 18 October 2008, and its first meeting took place on 5 November 2008.

The Assembly is a unicameral parliament of 17 members elected from three multi-member electorates: Brindabella, Ginninderra and Molonglo. Brindabella and Ginninderra return five members each, and Molonglo seven. Members are elected using the Hare-Clark system of proportional representation and serve a fixed four-year term.

The size of the ACT Executive is limited to the Chief Minister and up to four Ministers by section 41 of the Self-Government Act. While that number could be increased by enactment of the Assembly, in a chamber of 17 members where minority government is the norm, increasing the size of the Ministry is not practical given the need for Government Members to fulfil other parliamentary roles, including backbenchers participating fully and properly in the ongoing work of the Assembly and its Committees.

The appropriate size of the Assembly has been debated since the first considerations of self-government. In its 1984 report to the then Minister for Territories and Local Government, the Task Force on the Implementation of ACT Self-Government recommended the ACT Legislative Assembly's size be governed by three main principles:²²

- › it must be large enough to provide for adequate and fair representation of the ACT community;
- › it must be able to function as a workable legislature; and
- › so far as is possible it should have the capacity for adequate scrutiny of the executive government.

That Task Force also found the ACT community to be the most under-represented in Australia and that the ACT was almost completely unrepresented at the state and local level. Its "advisory representation" at the state and local level was 1:13,150 people compared to the national average of 1:1,720.

The Joint Parliamentary Committee on the ACT's 1975 Report on Self-Government and Public Finance in the ACT²³ recommended that the Assembly have 19 members, and the Taskforce on the Implementation of ACT Self-Government supported 19 or 21 Members. In its 1990 Report, the Assembly Select Committee on Self-Government considered 17 members for 170,000 electors to be the minimum number required for a Westminster system with a Government, Opposition and parliamentary committees.²⁴

21 Williams, G. (2010) "Euthanasia Bill Needed for Healthy Democracy", *Sydney Morning Herald*. 9 November.
<http://www.smh.com.au/opinion/politics/euthanasia-bill-needed-for-healthy-democracy-20101108-17kh8.html?skin=text-only>

22 Commonwealth Government (1984) *Task Force on the Implementation of ACT Self Government Report to Minister for Territories and Local Government Canberra*, page 39.

23 See Parliament of Australia (1975) *Report on Self-Government and Public Finance in the ACT*, Canberra.

24 See <http://www.parliament.act.gov.au/committees/index1.asp?committee=137&inquiry=846&category=19>

In 2002, the Assembly Standing Committee on Legal Affairs reported “a majority of the committee recommends that the Legislative Assembly for the ACT be increased to 21 members based on three electorates of seven members each”. The Committee considered options of 21, 23 and 25 members, but on balance settled on 21 because it was a modest increase in size (and therefore cost), and it recognised the greater proportionality of representation provided in seven member electorates.²⁵

The Committee argued that 23 members would achieve adequate constituent representation, parliamentary contribution (especially on committees), and sound Executive governance. It also noted 25 members would permit five smaller electorates, and reflect the proportionality of five-member electorates in the Tasmanian House of Assembly and other Hare-Clark jurisdictions.

ACT citizens remain significantly under-represented today in comparison to the rest of Australia. At a combined state and local government level, representation in the ACT is 1:14,285 compared to Tasmania at 1:1,110 and the Northern Territory (NT) at 1:685.

TABLE 1: ELECTED MEMBERS AT EACH LEVEL OF GOVERNMENT ²⁶

	COMMONWEALTH	STATE/TERRITORY			LOCAL GOVERNMENT	TOTAL REPS	ENROLMENT AT 30/06/2010	RATIO ALL LEVELS OF GOVERNMENT	RATIO LOCAL AND STATE GOVERNMENT
	HOUSE OF REPRESENTATIVES*	SENATE	LOWER HOUSE	UPPER HOUSE					
NSW	49	12	93	42	1,518	1,714	4,552,976	1:2,656	1:2,754
VIC	37	12	88	40	631	808	3,506,844	1:4,340	1:4,620
QLD	29	12	89	0	553	683	2,684,538	1:3,931	1:4,181
WA	15	12	59	36	1,278	1,400	1,341,005	1:958	1:977
SA	11	12	47	22	715	807	1,099,031	1:1,362	1:1,402
TAS	5	12	25	15	281	338	356,203	1:1,053	1:1,110
ACT	2	2	17	0	0	21	242,842	1:11,564	1:14,285
NT	2	2	25	0	148	177	118,401	1:669	1:685
TOTAL	150	76	443	155	5,124	5,948	13,901,840	1:2,337	1:2,429

The *Northern Territory (Self-Government) Act 1978* [Cwlth]²⁷ provides for the Executive's size to be set by the NT Administrator. When the NT Legislative Assembly was faced with the same challenges confronting the ACT of size and capacity it considered moving to a committee system of government but ultimately enlarged its Legislature from 19 to 25 in 1983.²⁸ The NT Government currently has eight Ministers including the Chief Minister.

A key challenge facing the ACT, which is ultimately hindering performance and capacity, is the breadth and volume of ministerial responsibilities in a Cabinet of four or five spanning the uniquely broad range of functions with which the Government is charged. The ACT while geographically contained, is unique in that the Government is responsible for matters dealt with by state governments (e.g. health, education, justice) as well as municipal functions that fall to local councils elsewhere. The Chief Minister is also a member of the Council of Australian Governments (COAG).

25 Legislative Assembly for the ACT (2002) *Report No. 4 of the Standing Committee on Legal affairs - The Appropriateness of the Size of the Legislative Assembly for the ACT and Options for Changing the Number of Members, Electorates and Any Related Matter*. Canberra, page 32.

26 Data from Electoral Commissions as at 30 June 2010.
* reflects redistribution at the 2010 Election.

27 See <http://www.comlaw.gov.au>.

28 See *Electoral Amendment Act (1982)* (NT).

In light of the importance of robust and accountable democratic processes in the ACT – characterised by high standards of parliamentary debate, a legislative program covering a range of complex issues, and an active Assembly Committee process – and the significant under-representation of the citizens of the ACT, there is an overwhelming case for increasing the size of the Assembly. This would enable Members to serve their constituents better, allow the Ministry to be expanded to seven thereby establishing a more reasonable spread of responsibilities, and enhance the capacity of the Legislature to scrutinise the activities of the Executive through a more active committee process.

MODERNISATION OF THE SELF-GOVERNMENT ACT

The last significant review of the Self-Government Act was conducted in 1998 by a panel chaired by Philip Pettit.²⁹ A number of Pettit's recommendations that have not been implemented remain just as relevant today. Reform of the Self-Government Act, while central to the ACT Government's operations, has for some time been at the periphery of the Commonwealth Government's interests and legislative priorities.

The lead up to the Centenary of Canberra in 2013 provides a timely opportunity for the Self-Government Act to be reviewed, updated, and perhaps stripped of what might, despite their merits in the early years of self-government, now be considered anachronistic colonial type powers. The outcomes of any such review should not alter the ultimate power and right of the Commonwealth Parliament to legislate for, or about, the ACT and the national capital, but it would be a significant and welcome vote of confidence in the maturity of the ACT's governance arrangements.

Key issues for consideration might include:

- › inclusion of a preamble recognising the traditional ownership of the land on which Canberra sits, and, in line with recommendation 2 of the Pettit Report, indicating that if the Commonwealth does choose to overrule an enactment of the Assembly, it would be on the grounds that the legitimate interests of the Commonwealth require such action;
- › removal of the power of the Commonwealth Executive to administratively overturn an enactment of the Assembly (without, of course, diminishing the power of the Commonwealth Parliament to do so legislatively); and
- › granting of the power to the Assembly to determine its own size.

It is entirely appropriate, 21 years after self-government, that the Assembly should be able to independently determine its own size, along with the size of the ACT Executive. Section eight of the Self-Government Act currently provides that the Commonwealth Government may, by regulation, increase the size of the Assembly, but can only do so with the concurrence of the Assembly. That the Assembly should be empowered to determine its own size is a fundamental issue of principle. While awaiting a legislative amendment to this end, the Commonwealth could support through Regulation an increase in the size of the ACT Assembly if the Assembly was moved to seek an increase in its size.

RECOMMENDATION 1

The Commonwealth review the ACT Self-Government Act with a view to enacting a new Bill in 2013 to mark the Centenary of Canberra.

29 See ACT Government [1998] *Review of the Governance of the Australian Capital Territory*, Canberra.

THE ACT IN 1989 AND 2010

POPULATION

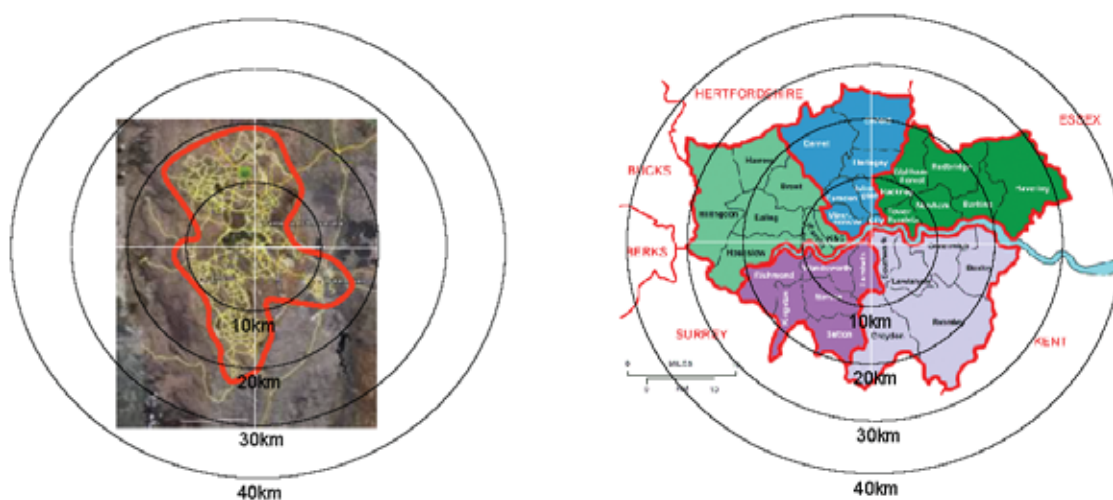
In 1911, when the international design competition for the national capital was announced, the population of the (then) Federal Capital Territory was “1714 people, 1763 horses, 8412 cattle, and 224,764 sheep”.³⁰ In 1990, the ACT population was around 283,000. Canberra today has a population of more than 350,000 (with that growth over time matched by a commensurate decline in its livestock holdings).

Canberra’s population growth rate has averaged 1.2% over ten years, below Australia’s overall growth rate. Over the last ten years the 0-14 age group experienced a decline in average annual growth, while the number aged over 85 more than doubled, increasing by an average of 7.9% per year. Based on current trends, the ACT’s population is projected to reach 400,000 by 2022; 434,300 by 2030 and 500,000 by 2050. Currently 9.5% of the population is aged 65 or older and this cohort is expected to double by 2030.

GROWTH

Today, largely as a result of decisions made by the various bodies and people responsible for the development of Canberra from 1913 to 1989, the city occupies a geographical area spanning around 40 kilometres from North to South and 25 kilometres from East to West. This is broadly equivalent to the area of Sydney bounded by the coast to the East, Hornsby to the North, Cronulla to the South, and Strathfield to the West. As shown in **Figure 1** below, the spread of Canberra is comparable with Greater London which has a population of more than seven million.

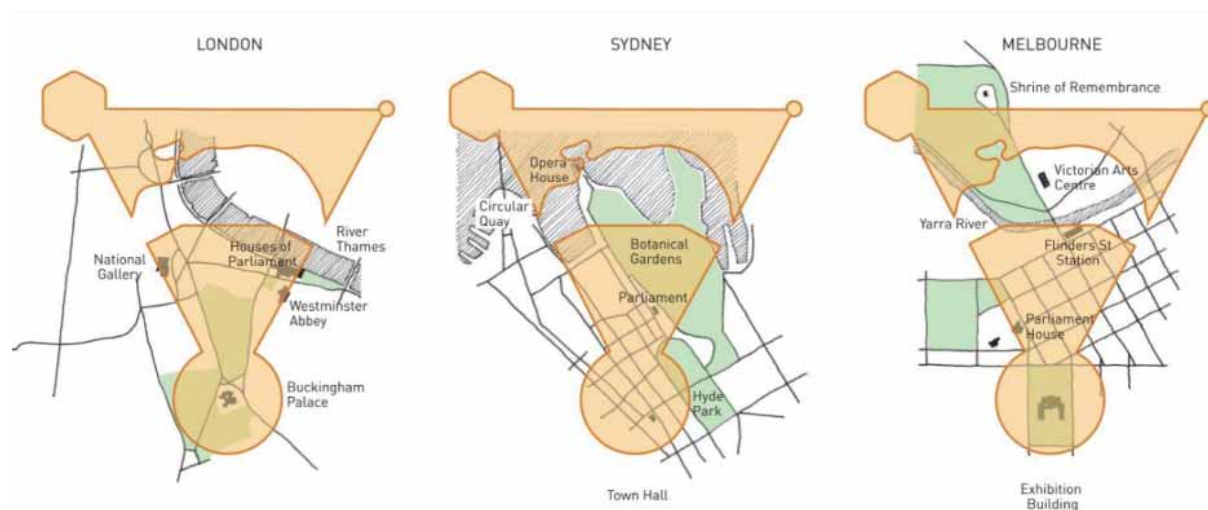
FIGURE 1: CANBERRA AND LONDON



30 Taylor, K. & Headon, D. (eds) (1997) *Canberra. The Guide*. Harper Collins, Sydney, page 22.

The following diagrams overlay the Parliamentary Zone on the cities of London, Sydney and Melbourne.³¹ Few people would perceive that this symbolic area of Canberra is equivalent in size to these central business districts, given the relative density of the urban form and the myriad of activities they support.

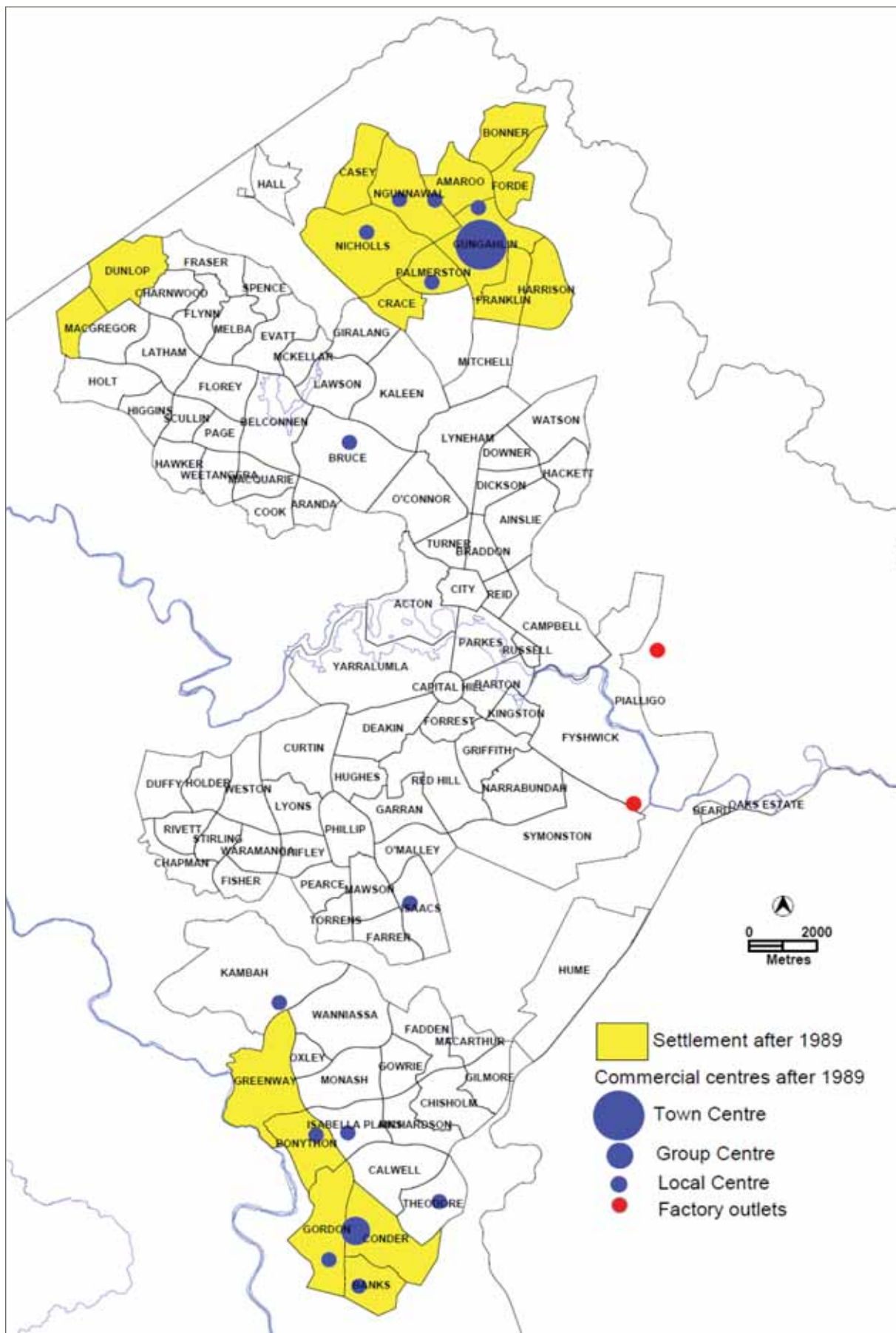
FIGURE 2: – PARLIAMENTARY ZONE COMPARISONS – LONDON, SYDNEY AND MELBOURNE



Most of Canberra was planned and developed through the 1960s and 1970s. At that time, the NCDC drew on the best international concepts for modern suburban planning including catering extensively for private cars. Under a planning blueprint called *Tomorrow's Canberra*, planners created what became known as the *Y plan* which laid out a system of freeways (called parkways) that linked a series of dispersed town centres set in the middle of suburban residential areas.

31 Image courtesy of the National Capital Authority.

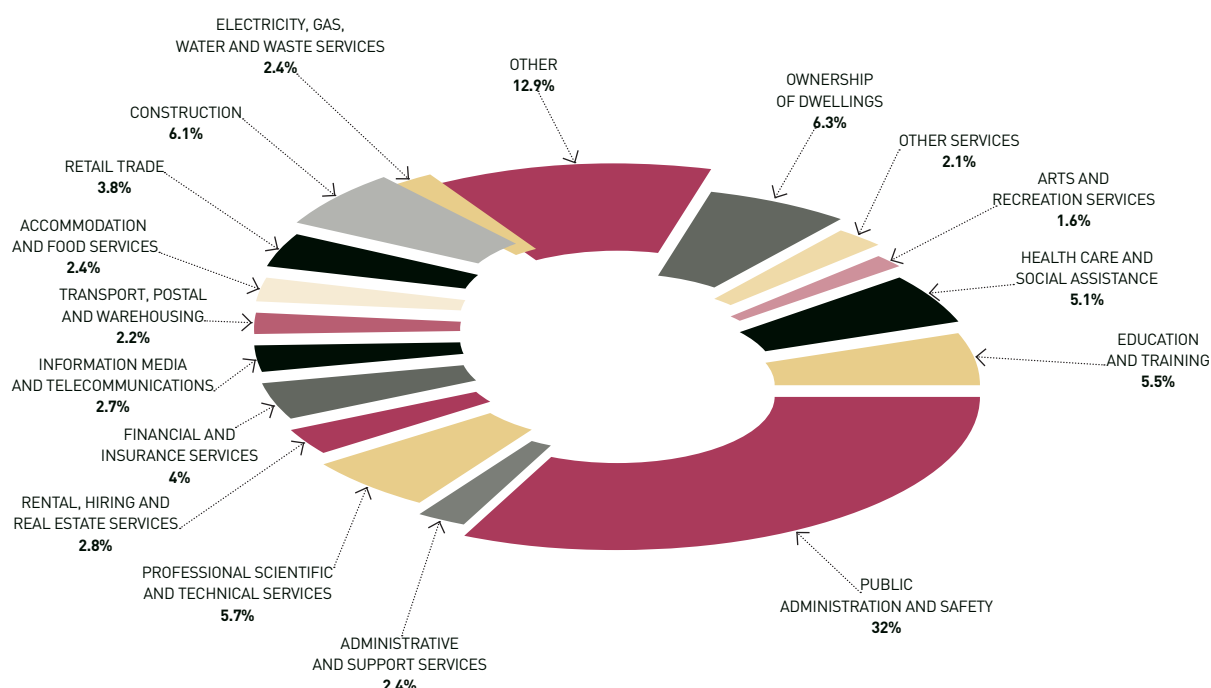
FIGURE 3: SETTLEMENT AND NEW CENTRES POST-1989



THE ACT ECONOMY

Over the past 20 years the ACT's real Gross State Product (GSP) per person has grown by an average of two per cent per annum. Substantial improvements in labour productivity have been a key driver of this growth. Figure 4 shows a breakdown of the ACT's GSP, which demonstrates the extent to which the economy is influenced by the activities of the Commonwealth Government, and to a lesser extent the ACT Government: the Public administration and safety sector representing 32% of GSP. In June 2010, ACT Government consumption and investment represented around 7.5% of total economic activity in the ACT.

FIGURE 4: SHARE OF ACT GROSS STATE PRODUCT (INDUSTRY VALUE-ADDED), JUNE 2009³²



The ACT has a relatively narrow revenue base, largely due to the significant Commonwealth Government presence. Reflecting this, the Commonwealth Grants Commission (CGC) has assessed the ACT Government's revenue raising capacity at \$363 per person lower than the Australian average.

The ACT also faces disadvantages due to its limited capacity to raise revenue from sources relied upon by State counterparts (for example, mining interests, manufacturing and industry). As a result, around 44% of total revenue comes in the form of Commonwealth Government grants.

Taxes raised by the ACT Government account for some 31% of total revenue. The majority of the ACT's own source taxation revenue comes from three areas: payroll tax, land transactions and general rates.

It is not commonly realised that the ACT's GSP (at the national level the equivalent concept is Gross Domestic Product) at \$27,773 million is greater than both Tasmania's (\$23,340 million) and the NT(\$16,248 million).³³

32 Australian Bureau of Statistics (ABS) 2010.

33 Australian Bureau of Statistics (ABS) 2010.

CANBERRA IN 2010 – A SNAPSHOT

- › The average Canberra house size has increased from 149m² to 213m² over 20 years.
- › Australia has the largest average house size in the developed world and Canberra has the largest average house size in the nation.
- › Canberra's ecological footprint (the area needed to support current lifestyles) is around 9.2 hectares per person. It has increased by eight per cent in five years and nearly 25% in ten years. Canberra's ecological footprint is 13% above the Australian average and nearly 3.5 times the global average.
- › At the 2006 census, there were 131,271 private dwellings in Canberra. Over the next 20 years, 49,000 more homes will be needed in Canberra.
- › Seventy-five per cent of Canberrans currently live in detached dwellings.
- › As with the national trend, the median house price has more than doubled in ten years.
- › The ACT provides a level of public housing twice the national average.
- › The largest emission source for greenhouse gases is electricity use which contributed 64.5% of ACT emissions in 2006. Electricity use in the commercial sector has increased by 16.3% since 2002.
- › Electricity and gas consumption has grown more quickly than the population.
- › Residential electricity consumption is higher than the national average.
- › Houses and cars account for around 94% of Canberra's greenhouse gas emissions.
- › In 1993-94, less than a quarter of waste in Canberra was recovered for recycling, but by 2003-04 nearly three quarters was recovered.
- › Canberra is about ten times less dense than Melbourne and Sydney and is one of the lowest density cities in the world.
- › Over half the ACT is protected in conservation reserves.
- › Less than one quarter of the ACT is suitable for urban development, most of which is already developed.
- › Canberra has a higher car dependence than the national average.
- › Since 1990 the amount of road infrastructure maintained by the ACT Government has grown by nearly 30%.

CANBERRA AS THE REGIONAL CENTRE

The Minister for Regional Australia, Regional Development and Local Government has demonstrated the Government's strong and enduring commitment to regional Australia, exemplified in the 2011-12 Budget.

Canberra has become the major regional centre in South-Eastern New South Wales (NSW), providing employment, retail, health and other services to a population far in excess of the resident ACT population. Around 20,000 people living in the surrounding region travel to work in the ACT each day. The daily flow in the opposite direction is about 4,000. Every day the ACT provides health, education, community and justice services to a large number of NSW residents.

These strong links make regional demography a significant driver of future infrastructure and service demand in the ACT. The South-Eastern region of NSW is projected to grow, and to age, at a faster rate than the ACT. The population of the region is projected to increase by 28,000 over the next ten years (12.8%), and by 55,000 over the next 20 years (25.2%). Much of this growth will occur in the areas closest to the ACT: Queanbeyan, Palerang, and the Yass Valley.

TABLE 2: FORECAST REGIONAL POPULATION GROWTH 2011-2031³⁴

	2011	2016	2021	2026	2031
ACT	356,300	377,400	398,500	418,900	438,000
Cooma-Monaro	10,300	10,300	10,400	10,400	10,500
Goulburn Mulwaree	27,400	27,700	27,900	28,100	28,200
Palerang	14,300	15,800	17,300	18,800	20,300
Queanbeyan	42,400	46,900	51,600	56,300	60,900
Yass Valley	15,000	16,200	17,500	18,800	20,000
Total Region	465,700	494,300	551,300	577,900	602,500

REGIONAL GOVERNANCE ARRANGEMENTS

Given the importance of the surrounding region,³⁵ the ACT Government works with the Commonwealth, NSW and local government entities, to foster regional relationships; to promote collaborative initiatives; to plan appropriately to take into account the interplay of cross-border issues in its strategic and service planning (including infrastructure impacts); and to understand and seek recovery of cross-border service costs, including the cross border health agreement. The extent of regional service delivery by the ACT means cross-border service data is a continuing issue, particularly in the context of the need to support cost recovery through CGC processes.

Relationships with the region have been part of the Chief Minister's Department (CMD) policy responsibility for some time, covering support for the Regional Leaders' Forum (RLF)³⁶ established in 1995, as well as development of the Regional Management Framework with NSW, which was finalised in 2006. This provides a framework for resolving cross border matters and planning issues.

In addition to the RLF and its relationship with the NSW State Government, the ACT also supports other regional relationships, including:

- › the Regional Development Australia (RDA) ACT Committee (established in 2007). RDA Committees provide support and advice on regional issues and initiatives to various levels of government, and assist the coordination of regional planning and development issues. In carrying out this role, RDA Committees work closely with various levels of government and other regional organisations, including other RDA Committees. RDA Committees can also undertake and oversee specific regional development projects; and
- › the Regional Organisation of Councils (ROCs) – NSW partnerships between groups of local government entities to collaborate on matters of common interest. They are diverse in size, structure and mandate, but are open to approaches from government and non-government bodies where those bodies believe local

34 Chief Minister's Department (2010) *ACT Population Projections for Suburbs and Districts, 2007 to 2019 and New South Wales Statistical Local Area Population Projections 2006 – 2036*. ACT Government, Canberra.

35 The Region is generally referred to as the Australian Capital Region consisting of the ACT and the 14 surrounding Local Government Areas of Bega Valley, Bombala, Boorowa, Cooma-Monaro, Eurobodalla, Goulburn Mulwaree, Harden, Palerang, Queanbeyan, Snowy River, Tumut, Upper Lachlan, Yass Valley and Young.

36 The Regional Leaders' Forum (RLF) provides an opportunity for the ACT government, Local Governments surrounding the ACT; State and Federal Members of Parliament; and Regional Development Australia Committees within the region the RLF covers, to speak directly about regional issues. It is co-chaired by the Chief Minister and the NSW Minister for Planning. Membership of the RLF has grown to include:

- › NSW Local Councils with an association with the ACT (Eurobodalla, Young, Boorowa, Upper Lachlan Shire, Harden, Yass Valley, Goulburn –Mulwaree, Queanbeyan, Palerang, Snowy River, Cooma-Monaro, Bombala, Tumut Shire, Tumbarumba, Cootamundra, Gundagai and Bega Valley);
- › NSW and Federal members of parliament with seats in the RLF region;
- › Chairs and Executive Officers from RDA Committees within the RLF region; and
- › the ACT and NSW Governments.

government involvement would be beneficial. There are four ROCs within the region covered by the RLF: South Eastern Region of Councils (SERO); Southern Councils Group; Central NSW Councils; and Riverina Eastern Regional Organisation of Councils. SEROC has the majority of RLF councils, with 12 of the 17 councils as members.

The ACT also participates in the Council of Capital City Lord Mayors.

OUTCOMES FROM THE TIME TO TALK PROCESS

The outcomes of the *Canberra 2030 - Time to Talk* process, which were released on 24 January 2011, present a bold but achievable vision for Canberra's future. The challenge will be to continue the conversation with the community about refinement of that vision, and how progress is made from vision to reality. It will require the ACT Government, business and the broader community to continue to talk, to partner and to focus on the future issues identified during consultation:

- › population growth and the needs of young and old Canberrans;
- › management of resources, including energy, water and land;
- › housing affordability and diversity;
- › integrated and sustainable transport;
- › a compact city and quality urban development; and
- › Canberra's role in the region.

The vision emerging from the *Time to Talk* process includes:

- › Canberra will maintain its reputation as a "capital in the bush" and as a city known for clean air, open space and convenience;
- › Canberra will be at the centre of a region offering stimulating, highly skilled jobs in a clean green economy;
- › to lower Canberra's carbon emissions, the community will invest in sustainable transport and buildings;
- › there will be a shift from current motor vehicle dependency to more sustainable options;
- › incentives and planning codes that reduce energy and water use in new and old houses will conserve resources;
- › by 2030 new development will create a more compact city; and
- › broad and early community engagement will be led by the ACT Government taking a more "open government" approach to future planning of the city.

THE ACT'S RELATIONSHIP WITH THE COMMONWEALTH GOVERNMENT

It is inescapable that there are two governments based in Canberra and that there will inevitably be some sharing of responsibilities between them given Canberra's status as the national capital, even if that sharing of responsibility occurs in the context of a very unbalanced power relationship. There are from time to time, as there are in any relationship, points of friction and disagreement, of frustration and disappointment, but in general, the relationships between the ACT and Commonwealth Governments, and the ACT public service and Australian Public Service (APS) are close and productive.

Those relationships are, however, complicated by a number of legacy issues that add unnecessary delay and uncertainty to decision-making processes in the public and private sectors, or amount to a significant distraction and reputational (if not legal) risk. Most of these are covered in this Report.

The Majura Parkway was one such matter.

COMMONWEALTH FUNDING TO THE ACT

As outlined above, Commonwealth Government grants comprise around 44% of total ACT Government revenue. The Commonwealth has historically provided compensatory payments to the ACT Government in recognition of the unavoidable additional costs incurred by the ACT because of Canberra's status as the national capital, or because of legacies inherited from the Commonwealth at self-government. This process, in part, recognises the impact of the National Capital Plan prepared by the NCA in placing restrictions on some planning and development decisions in the ACT which can lead to higher costs for the ACT Government (including in relation to policing and maintenance of certain roads).

Under the previous federal financial framework, and as recommended by the CGC in the lead-up to self-government, the ACT received two Specific Purpose Payments for the extra costs arising from its role as the national capital:

- Assistance for Water and Sewerage Services - for the higher maintenance and operational costs arising from the excess length of water and sewerage mains due to the dispersed nature of urban development in the ACT; and
- National Capital Influences - compensating for factors such as its "rating disability" – the inability to rate Commonwealth property and the extra costs incurred by the ACT Government due to the national capital's design and layout.

Under the 2008 federal financial relations framework, these were consolidated into one payment for ACT municipal services and classified as general revenue assistance. This funding is estimated at \$35.4 million for 2010-11.

JERVIS BAY

The *Jervis Bay Acceptance Act (1915)* (Cwlth) applies ACT law to the Jervis Bay Territory as if it were part of the ACT.

Before ACT self-government, Jervis Bay was part of the ACT and was managed by the Commonwealth Government. With self-government in 1989, fee-for-service arrangements between the ACT and the Commonwealth were put in place to ensure continuity of service delivery to the Jervis Bay Territory. Since the mid 1990's, the ACT has indicated that legacy statutory and service arrangements do not make sense in the self-government environment. A revised statutory framework and arrangements with adjoining NSW would not only remove the need for the ACT to provide services at a distance, but also bring policy benefits if community and other services provided to Wreck Bay aligned more closely with those in NSW.

The ACT has a contractual arrangement with the Commonwealth Government for Jervis Bay service delivery. Agreements for provision of services in the Jervis Bay Territory are contained in Memorandums of Understanding (MOU) (most of which expired in 1996 or earlier, except the Primary and Preschool Education Services, which expired at the end of the 2003 academic year).

While some service levels have been maintained in accordance with levels set out in the specific MOU, others have ceased or are performed on an as needed basis. Since expiration of the MOUs, the ACT has expressed a desire to cease all service provision to the Jervis Bay Territory. Resolving this issue is complicated by responsibility for the territories function having moved across three Commonwealth agencies over the past four years.

The ACT has nevertheless continued the fee-for-service arrangements. While health services are not provided, the ACT still provides a school at Wreck Bay and other regulatory or statutory services where it would be difficult to engage non-government service providers. These include welfare services, family support, licensing and registration, courts, registrar general services, fair trading, building control, electrical and plumbing inspections, and some roads services. A number of *ad hoc* services are also called upon which are often required at short notice.

Resolving this legacy issue to the benefit of the Wreck Bay Community would remove this distraction from the ACT Government's core service delivery obligations to the people of Canberra.

The Minister for Regional Australia, Regional Development and Local Government might wish to charge his Department with pursuing an outcome in this area.

THE ACT GOVERNMENT'S POSITION ON THE NCA REVIEW

The remainder of this Chapter sets out the Reviewer's understanding of the ACT Government's position on this Review of the NCA's roles and responsibilities.

PLANNING OVERLAP

Following the 2008 JSC Inquiry into the role of the NCA, the ACT has been working with the relevant Departments and the NCA to give effect to the core elements of the Inquiry's recommendations.

The ACT's aim is a harmonised approach, with clear areas of operation between the two planning jurisdictions to support both ACT and national capital interests and reduce duplication and overlap.

Their objective is to remove the duplication and overlap that currently exists in planning for the Territory, while continuing to recognise the need and role for both a national and local planning presence in the nation's capital. Notwithstanding these dual requirements, the ACT sees an urgent need to better integrate national and local planning activities.

The ACT believes that the reality of self-government could be achieved by defining the NCA's principal functions to relate to the National Triangle and other national land where the National Capital Plan currently applies.

National interests and investments in areas outside direct Commonwealth control would be supported by a clear definition of "matters of national significance" in both the National Capital Plan and the Territory Plan. This would embed clearly defined national interests in ACT planning, as well as define the role of the Commonwealth planning agency.

From the ACT Government's view, the National Capital Plan would no longer require the Metropolitan Structure Plan. This is an overarching and detailed plan for the Territory that sets out areas of land-use and transport corridors and, as a Commonwealth statutory instrument, overrides the ACT Territory Plan, which sets out detailed conditions of land-use and development.

The key problem here for the ACT Government is that this level of Commonwealth strategic planning conflicts with self-government arrangements as the Commonwealth has transferred state obligations to manage the land but without State-like planning authority. This level of Commonwealth strategic planning does not reflect the political and fiscal reality of self-government or the responsibilities that rest with ACT Government in their view.

The ACT Government believes that its efforts to introduce contemporary planning legislation, with the objective of a simpler, faster and more effective system, is compromised in those areas where the NCA also has jurisdiction over the land to which this legislation applies.

This introduces complexity, uncertainty and delay and is inconsistent with the COAG national reform agenda in this area.

The ACT has also raised the issue of paid parking in the Parliamentary Zone as an impediment to integrated transport planning in the ACT.

ACT PREFERRED APPROACH TO FUTURE PLANNING ARRANGEMENTS

STRATEGIC PLANNING

The ACT's preferred approach is based on two general principles:

1. *"strategic land use planning resides with the Government that has administrative responsibility for the development and provision of services for the City (excluding land within the Parliamentary Triangle, diplomatic precincts and National land); and*
 2. *development assessment responsibility aligns with administration of land."*
- › A National Capital Plan and a Territory Plan will sit under a set of national capital principles (matters of National Capital Significance), which would each guide individual developments in the ACT where relevant to the respective jurisdictions. The Commonwealth will retain planning and development approvals only for areas of "extreme National Capital Significance" such as the Parliamentary Triangle.
 - › There will be a mandatory review requirement of the National Capital Plan and Territory Plan every five years (or earlier if both Governments agree).
 - › Matters of National Capital Significance are to be developed jointly by the Commonwealth and the ACT (with the possibility of wider engagement with the Australian community) and included in the National Capital and Territory Plans. They will be clear in definition and scope and link to identifiable actions (e.g. preserve, enhance, etc).
 - › Where Matters of National Capital Significance apply to land administered by the ACT Government (eg hills and ridges), the Commonwealth Government will fund these appropriately to achieve and reflect the desired outcomes of National Capital Significance.
 - › Alternatively, responsibility for areas of extreme national importance currently administered by the ACT would be returned to the Commonwealth, which would take up planning and management responsibility.
 - › The National Capital Plan would not require a comprehensive Metropolitan Structure Plan or ACT-wide land use plan. In its place would be a framework plan that pictorially illustrates the Matters of National Capital Significance, with the ACT Planning Strategy setting out strategic land use planning for Canberra and the ACT demonstrating consistency with the framework plan (the principles).
 - › The ACT develops the strategic land use plan (the Planning Strategy) and detailed Territory Plan for the Territory consistent with the Matters of National Capital Significance.

LAND MANAGEMENT

- › The overall aim is to align planning with land administration.
- › The Commonwealth retains planning and development approval only for areas of extreme national significance. The National Capital Plan policy covers only these areas (as per general principle 2 above).
- › There will be harmony of terminology, public consultation and engagement protocols between these plans.
- › A review of Designated Areas will align, where possible, National land and Territory land with their National Capital Significance. With agreed exceptions, all designated areas and special requirements on Territory land will be removed. De-designated areas would be appropriately zoned under the Territory Plan to reflect current use.
- › The outcomes of this review will be reflected in the revision of the National Capital Plan and Territory Plan.
- › Where Designated Area Territory land is retained, the NCA approval process is replaced with Development Control Plans (DCPs) prepared and administered by the ACT Planning and Land Authority (in consultation with the NCA).
- › Remove special requirements immediately.
- › As a result of these changes the plans will be integrated with reduced or no areas of overlap. A single plan could be produced representing respective Commonwealth and ACT Government plans. This integrated plan would be an information document rather than a statutory plan.

ADMINISTRATIVE ARRANGEMENTS

- › The ACT will nominate a person for appointment to the NCA Board, subject to the agreement of the Governor-General in Executive Council.
- › The Commonwealth will establish a transparent review process for NCA development and works approvals decisions.
- › The Commonwealth and the ACT will establish consultative arrangements to improve the planning partnership between the two Governments.
- › An Intergovernmental Agreement will provide for consultation between the Commonwealth and the ACT on planning matters.
- › Dispute resolution will be through an arbitral panel connected to the Commonwealth AAT. (This would be chaired by a member of the AAT.)

MATTERS OF NATIONAL CAPITAL SIGNIFICANCE

Currently the Matters of National Capital Significance outlined in the National Capital Plan are as follows:

- › the pre-eminence of the role of Canberra and the Territory as the National Capital;
- › preservation and enhancement of the landscape features which give the National Capital its character and setting;
- › respect for the key elements of Walter Burley Griffin's formally adopted plan for Canberra;
- › creation, preservation and enhancement of fitting sites, approaches and backdrops for national institutions and ceremonies as well as National Capital uses; and
- › the development of a city which both respects environmental values and reflects national concerns with the sustainability of Australia's urban areas.

The ACT considers these are too broad and general, and require greater definition to support a robust planning framework.

New Matters of National Capital Significance should be more specific and have associated actions supported by appropriate funding from the Commonwealth – whether actions are required or supported by the NCA or the ACT Government. An example of this would be the ongoing management of hills and ridges and the impacts of the national open space system in achieving more efficient land use and other service outcomes such as transport.

The Commonwealth and ACT Government should jointly develop Matters of National Capital Significance – with the possibility of wider national community engagement on these issues and how they might be funded.

DESIGNATED AREAS

The ACT and Commonwealth should review Designated Areas to align, where possible, National land and Territory land.

With agreed exceptions, designation and special requirements applying to Territory land should be uplifted. De-designated areas would be zoned under the Territory Plan to reflect current use.

The ACT considers the key national areas where the Commonwealth would continue to exercise planning control as:

- › the National Triangle including Parkes Way and to the northern edge of Constitution Avenue, excluding City Hill;
- › the Lodge and Government House;
- › the Russell Offices Precinct;
- › Majura National Land;
- › Anzac Parade and the War Memorial;
- › the Australian National University;
- › Lake Burley Griffin and the foreshores; and
- › the Diplomatic areas.

Genuine national capital considerations should be expressed through the Matters of National Capital Significance.

COAG REFORM COUNCIL CONSIDERATION

The COAG Reform Council's review of capital city strategic planning systems resulted in the provision of preliminary findings to Governments earlier this year.

The ACT Government noted the importance of effective coordination with the NCA if it was going to deliver on the strategic goals for Canberra. Both the NCA and the ACT Government raised concerns about the effectiveness of the coordination to achieve a complementary planning approach for the Territory.

The COAG Reform Council is thus looking to this Review to deliver results where previous reviews have been unable to.

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CHAPTER THREE: THE COMMONWEALTH'S ROLE IN THE NATIONAL CAPITAL

"The City that is to be should have a splendid destiny before it, but the making of that destiny lies in your hands, the hands of your children, and those who come after them. Remember that the traditions of this City will be the traditions of Australia. Let us hope ... that here will be reflected all that is finest and noblest in the national life of the country; that here a city may arise where those responsible for the government of this country in the future may seek and find inspiration in its noble buildings, its broad avenues, its shaded parks, and sheltered gardens – a city bearing perhaps some resemblance to the city beautiful of our dreams." ³⁷

"I name the capital of Australia – Canberra." ³⁸

HISTORY OF THE COMMONWEALTH'S INTEREST IN THE NATIONAL CAPITAL

Canberra is one of a handful of cities in the world which have been planned as national capitals from their inception. In 1901, the Australian Constitution determined that the site for the new capital of the Federation would be within the state of New South Wales, at least 100 miles from Sydney, and contain an area of not less than 100 square miles.³⁹ Pursuant to the *Seat of Government Acceptance Act 1909*, NSW ceded an area of over 900 square miles, including land at Jervis Bay to allow the new capital access to the sea.

Many localities were proposed for the new capital city, with debate over the final location ensuing throughout much of the following decade. Legislation approving the Yass-Canberra site was enacted in 1908.

The city officially came into being in January 1911, when title to 911 square miles of land in the "district of Yass-Canberra" was passed to the Commonwealth by the State of New South Wales.⁴⁰ The same year an international competition for the design of Canberra was launched, with the winning design by Chicago-based architects Walter Burley Griffin and Marion Mahony-Griffin announced in 1912.

37 Lord Denman, Governor-General, at the laying of the foundation stones and naming of the federal city, 12 March 1913.

38 Lady Denman, wife of the Governor-General, 12 March 1913. Kamberra ("meeting place") was a name used by the Aboriginal people living there when British settlers arrived. Canberry was one of the six stations in the district in 1828.

39 Commonwealth of Australia Constitution Act, section 125.

40 National Capital Plan, page 1.

Key features of the Griffins' design for Canberra remain intact, the National Capital Plan identifying four main elements:

- › the use of topography as an integral design feature and as a setting;
- › a symbolic hierarchy of land uses designed to reflect the order and functions of democratic government;
- › a geometric plan with the central triangle formed by grand avenues terminating at Capital Hill, the symbolic centre of the nation; and
- › a system of urban centres.⁴¹

Since Canberra was first confirmed as the Seat of Government of the Commonwealth, successive governments have maintained an ongoing commitment to its progression (notwithstanding that some governments have been more devoted to the development of the national capital than others). When self-government was introduced in the ACT, the Commonwealth ensured that it retained an ongoing responsibility for planning and development as it related to Canberra's role as the national capital.

A table showing the history of the Commonwealth's role in planning of the ACT is reproduced below.

TABLE 3: HISTORY OF THE COMMONWEALTH'S ROLE IN ACT PLANNING

ERA	PLANNING BODY	FUNCTION
1921-1924	Federal Capital Advisory Committee	To advise the Minister of Home Affairs on Canberra's construction and review the Griffin Plan.
1925-1930	Federal Capital Commission	To construct and administer Canberra.
1930-1937	Duties split between the Department of Home Affairs; AGD; Department of Health; and Department of Works (in 1932 the Department of Home Affairs and Department of Works merged to become the Department of the Interior).	To plan and administer Canberra.
	Advisory Council	Advisory body comprising a Civic Administrator; the Secretaries of Home Affairs and Works, Director General of Health, and three Canberra residents (The Office of Civic Administrator was abolished in 1932.)
1938-1957	National Capital Planning and Development Committee	Advisory body to the Minister of the Interior to safeguard the Griffin Plan and maintain high aesthetic standards worthy of a national capital.
1958-1989	National Capital Development Commission	To plan, develop and construct Canberra as Australia's national capital.
	National Capital Planning Committee	Advisory Committee to the National Capital Development Commission.
1989-1996	National Capital Planning Authority	To ensure that Canberra is planned and developed in accordance with its national significance.
1996-Present Day	National Capital Authority	In 1996, the name was changed from the National Capital Planning Authority to the National Capital Authority to reflect the broader range of functions undertaken by the agency other than planning.

The Government's response to the 2008 JSC Report, *The Way Forward – Inquiry into the Role of the National Capital Authority*, provides a useful starting point to define the Commonwealth's responsibility in the national capital:

"The Commonwealth has an enduring interest and commitment to the future of Canberra as a planned national capital on behalf of all Australians. The ACT is vested in the Commonwealth by virtue of section 125 of the Constitution for establishing the Seat of Government. Canberra is the home of our democratic institutions such as the Parliament of Australia and the High Court. Canberra is a unique capital city. It is one of only four capital cities in the world that has been planned as a capital city from its inception.

41 National Capital Plan, page 15.

Canberra is also home to the memorials that honour the men and women who sacrificed their lives to protect the interests and values of the people of Australia. In Canberra, icons of national significance, like the National Museum of Australia, reflect our national identity, ideals and aspirations.

The Government affirms its direct and enduring commitment to the future of Canberra as a planned national capital on behalf of all Australians.”⁴²

Fundamentally, the Constitution established a Commonwealth Government to represent the Australian people with its seat of government in the Australian Capital Territory. At its broadest level, the Commonwealth has an enduring commitment to the whole of the Australian Capital Territory. Section 125 of the Constitution, given effect through the *Seat of Government Act 1909* and *Seat of Government Act 1922*, provides that the whole of the Australian Capital Territory was given to the Commonwealth for the purpose of the establishment of a seat of government.

WHAT IS THE NATIONAL CAPITAL?

Canberra’s function as the Seat of Government and as the nation’s capital has been the basis for the establishment here of Australia’s principal governmental, judicial, cultural, scientific, educational and military institutions. It has resulted in foreign governments establishing legations and diplomatic residences, and in an increasing number of national organisations and institutions seeking a presence in the Capital.

The introduction of ACT self-government has created a circumstance where two governments, the Australian Government and the ACT Government, share responsibility for the further development of Canberra.

The ACT Government is responsible for managing the affairs of the Territory on a parliamentary, legislative, administrative and financial basis comparable to the Australian States. Uniquely, the ACT Government also manages those functions which, in the States, are performed by local government. The ACT Legislative Assembly has the general power to make laws for the peace, order and good environment of the Territory.

WHAT IS NATIONAL SIGNIFICANCE?

The objective of the National Capital Plan is to ensure that Canberra and the Territory are planned and developed in accordance with their national significance.⁴³ In order to establish an effective relationship between the Commonwealth’s interest in the planning and development of Canberra and the Territory as the national capital, and the ACT Government’s interest in planning and development in the interests of good government of the Territory, it is essential to have as complete an understanding as possible of the implications and intent of the concept of “national significance” as presented in the object of the National Capital Plan.⁴⁴

In attempting to ascribe meaning to the concept of national significance, the National Capital Plan discusses the importance of the national capital in terms of its representation and symbolism of Australia’s democracy, life and achievements; of a home to national administration and national institutions; and the unique character and setting of the city.

.....
42 Government response, page 5.

43 PALM Act Section 7.

44 National Capital Plan, page 4.

Current matters of national significance in planning and development of Canberra and the Territory are identified as:

- › the pre-eminence of the role of Canberra and the Territory as the national capital;
- › preservation and enhancement of the landscape features which give the national capital its character and setting;
- › respect for the key elements of Walter Burley Griffin's formally adopted plan for Canberra;
- › creation, preservation and enhancement of fitting sites, approaches and backdrops for the national institutions and ceremonies as well as National Capital Uses; and
- › development of a city which both respects environmental values and reflects national concerns with the sustainability of Australia's urban areas.⁴⁵

Current Designated Areas identified in the National Capital Plan (those areas deemed to have the special characteristics of the national capital) are almost identical to the "Areas of Special National Concern" identified in 1964 which built on the particular importance attached to the main elements of the Griffin Plan and gave them an extended expression as places of "national significance". The "Current Designated Areas" thus include the central area, lakeshore, hills and ridges, and the main avenues and approach routes to Canberra.

Both the PALM Act and National Capital Plan use concepts such as "national significance", "characteristics of the national capital" and "interest of the national capital". Such terms, frequently contested and often elusive in definition, are intended to establish the basis on which the Commonwealth determines how closely it needs to be involved in planning and development in certain areas of Canberra.

Implicit in the PALM Act, National Capital Plan and Territory Plan is the duality of role that Canberra plays. On the one hand, Canberra functions as the seat of government, as a place for national administration and national institutions, and as a ceremonial and symbolic place. On the other, Canberra also provides a place to live, work and play, in the same manner as other cities.

Establishing whether a place, landscape or activity has national significance is the contribution of the place, landscape or activity to the role or function of Canberra as the national capital (as opposed to the Territory or the city).

No report or inquiry has doubted that there are elements of Canberra and the Territory that have national significance. What has been lacking, until recently, is a common set of criteria or methodology for determining national significance.

In response to this, the 2009 Taskforce on the Commonwealth's National Capital Responsibilities developed an approach to establishing whether a place, activity or event is of "national capital significance". Importantly, the approach adopted by the Taskforce is robust enough to withstand scrutiny (of which there will no doubt be lots), and is flexible enough to be applied in future reviews into the relevance of areas deemed to be of national capital significance.

.....
45 National Capital Plan, page 6.

TASKFORCE ON THE COMMONWEALTH'S NATIONAL CAPITAL RESPONSIBILITIES' APPROACH TO NATIONAL CAPITAL SIGNIFICANCE⁴⁶

A summary of the Taskforce's approach is provided below. In order to establish national capital significance, the Taskforce reviewed and considered the approaches that have been adopted in determining cultural significance both within Australia and internationally. Most methodologies involve testing and analysing the importance of things against a set of criteria.

Accordingly, the Taskforce established criteria to determine whether a place, activity or event is of national capital significance. The criteria endeavour to identify the full range of aspects of what has been considered important in Australia's national capital, drawing on historical developments and previous reviews. The criteria are not mutually exclusive (the same place, event or activity may demonstrate elements relevant to one or more criteria) and should be considered of equal weight. The five criteria are as follows:

AESTHETIC

Its importance in exhibiting picturesque and visual elegance, integrating natural and urban environments:

- › as a place engendering inspiration and satisfaction of the senses, and/or
- › as a place setting standards representing the pinnacle of urban and landscape design or natural beauty.

Considerations: balance, contrast, texture, scale, composition, setting, landscape, built form, views, perspectives, shape, colour and natural form.

HISTORIC

Its importance in the course of Australia's natural or cultural history, demonstrated by associations with important persons, events of national significance, development or cultural phases which have had a major effect in Australia's human occupation.

EDUCATION/SCIENTIFIC

Its importance as a national seat of learning, research and investigation, intellectual stimulation, innovation, scientific and technical experimentation.

Its importance as a place for nationally and internationally recognised education institutions, research facilities or research collections.

⁴⁶ Taskforce on the Commonwealth's National Capital Responsibilities, pages 15-17.

POLITICAL

Its special function as a seat of government embodying the nation's democratic ideals:

- › reflecting the government's national and international roles, and
- › as a place to exchange information and interact with national bodies and community groups.

SOCIAL/CULTURAL

Its strong or special associations for many Australians:

- › as a place embodying environmental and municipal sustainability,
- › as a desirable place to live, work and play,
- › as a place for events which have social, political or cultural significance to the nation, and
- › as a place of pride, national ideals, memory or national symbolism.

The Taskforce rightly concluded that there is no location or area within the Territory that has no national capital significance since all parts of the Territory contribute to the unique city and its environment.

In undertaking their assessments, the Taskforce considered the NCA's proposal of 2008, put forward during the JSC's inquiry, against their criteria. At this time, the NCA considered that Designated Areas should cover those places at the heart of the national capital that accommodate national capital functions, symbolic and cultural places, national public places, the geometry and layout of the city and the diplomatic precincts. Application of these criteria would have involved considerable "uplift" of Designated Areas.⁴⁷

The Taskforce concluded that there was no evidence or reasoning to support the NCA's proposal, and that the proposal ignored one of the three primary considerations for identifying and deciding Designated Areas. That is, the NCA's proposal gave little consideration to the landscape setting and layout of Canberra that give the capital a garden city image of national and international repute. The Taskforce considered that the NCA's response at the time may have been a response to reduced resources (or another reason), rather than based on evidence or representing the full range of the Commonwealth's responsibilities.

Work by the Taskforce confirmed earlier assessments of land required for national capital use or to protect national significance. Through application of the criteria, the areas that demonstrate national capital significance (and therefore those areas where the Commonwealth should bear the primary responsibility) largely match the current Designated Area and areas of "Special Requirements".

The Taskforce recommended that for the purposes of discussions with the ACT Government in the context of the IGC on planning, the current Designated Areas and "special requirements" areas should be accepted as describing areas of national capital significance and therefore the focus of the Commonwealth's responsibilities. This Review accepts that recommendation – i.e. the Current Designated Areas and land subject to special requirements appropriately identify areas of national capital significance.

The NCA is currently investigating the merits of nominating parts of the national capital to the National Heritage List. The area being considered includes the central national area of Canberra, including Lake Burley Griffin and the Parliamentary Zone, as well as the main avenues and the inner hills providing the landscape backdrop to the city.

47 2008 NCA JSC Inquiry submission.

Listing in the National Heritage List would reinforce the national significance of Canberra and continue to build civic pride in the national capital, as well as protecting the national heritage values of Canberra into the future.

If the nomination is successful, the geographic area identified in the heritage listing should fall under the detailed planning control of the NCA and therefore be included within the Designated Areas. The current gap that exists whereby heritage places on Territory Land that are in Designated Areas are not afforded the greatest heritage protection available is discussed in Chapter Ten of the Report.

The Taskforce also recommended that the criteria for determining national capital significance and the Commonwealth's responsibility for elements of the national capital be adopted and incorporated into the National Capital Plan as part of any comprehensive review.

This Review agrees with the Taskforce's assessment of those areas which demonstrate national significance and where the Commonwealth should bear primary responsibility. This Review also agrees that criteria for determining national significance should be incorporated into the National Capital Plan.

RECOMMENDATION 2

The five criteria (aesthetic, historic, education/scientific, political, and social/cultural) for determining national significance, as described by the Taskforce on the Commonwealth's National Capital Responsibilities, be incorporated into the National Capital Plan.

RECOMMENDATION 3

The current Designated Areas and areas subject to "Special Requirements" be accepted as the areas which currently demonstrate national significance and where the Commonwealth should maintain a high level of interest.

RECOMMENDATION 4

If a nomination for parts of Canberra to be included on the National Heritage List is successful, Designated Areas be amended to include those subject to the heritage listing.

RECOMMENDATION 5

To the extent that any of the above requires a change in the "designation" status (ie changing the planning decision-maker), a clear transition plan should be prepared which ensures natural justice for and minimises loss or windfall gains for land holders. For example, it might be agreed that the planning decision maker for an existing undeveloped site would only change either prior to its sale or after its initial development – depending on which would best balance the national interest and minimisation of unintended economic impact.

Also deserving of attention is the concept discussed by the Taskforce that not all areas identified as demonstrating national significance require the same level of control. There is a distinction between those areas where direct or overt Commonwealth involvement is required, as opposed to those areas where broader Commonwealth oversight is required. The Taskforce considered that the extent of the Commonwealth's role should be directly linked to the potential for the loss or diminution of national significance of the place.⁴⁸

This concept is currently somewhat realised through the distinction between Designated Areas (where the Commonwealth through the NCA has direct detailed planning responsibility), and areas subject to Special Requirements (areas where these requirements are desirable in the interests of the national capital, but where the Territory also has a planning role).

48 Taskforce on the Commonwealth's National Capital Responsibility, page 20.

THE NATIONAL CAPITAL SINCE SELF-GOVERNMENT

Up until 1989, the Commonwealth was solely responsible for planning the national capital.

In 1989, with the advent of ACT self-government, responsibilities for land management were divided between the Commonwealth and the new Territory Government. A large measure of the Commonwealth's responsibility for the Territory was devolved to the ACT Government.

In accordance with the PALM Act, both the Commonwealth and the ACT Governments have responsibilities for planning within the national capital. The NCA is responsible for the Commonwealth's interest represented by the National Capital Plan. As a statutory body, NCA decisions on individual works applications are independent of the responsible Minister.

ACTPLA is responsible for the ACT Government's interests, administering a Territory Plan that must not be inconsistent with the National Capital Plan.

Commonwealth land use and planning interests should therefore be consistent with both its operational needs and providing a capital city suited to its national and international aspirations.

The ACT Government is responsible for capital works across the Territory, providing municipal infrastructure ranging from schools and hospitals to sewers and roads. The NCA provides some infrastructure on some areas of national land. Responsibilities for the construction (and maintenance) of works can appear to be duplicated – for example, the NCA is responsible for some areas of road and traffic management, while the ACT is responsible for areas adjacent to these sites. These different infrastructure responsibilities also have the potential to create perceptions of conflict and uncertainty.

THE GENERAL EXTENT OF COMMONWEALTH FUNCTIONS

The NCA is established under the *Australian Capital Territory (Planning and Land Management) Act 1988* (the PALM Act). The NCA's functions are set out in section 6 of the PALM Act as:

- a. to prepare and administer a National Capital Plan;
- b. to keep the Plan under constant review and to propose amendments to it when necessary;
- c. on behalf of the Commonwealth, to commission works to be carried out in Designated Areas in accordance with the Plan where neither a Department of State of the Commonwealth nor any Commonwealth authority has the responsibility to commission those works;
- d. to recommend to the Minister the carrying out of works that it considers desirable to maintain or enhance the character of the National Capital;
- e. to foster an awareness of Canberra as the National Capital;
- f. With the approval of the Minister, to perform planning services for any person or body, whether within Australia or overseas; and
- g. with the Minister's approval, on behalf of the Commonwealth, to manage National Land designated in writing by the Minister as land required for the special purpose of Canberra as the national capital.

This legislated suite of functions can be summarised to describe the NCA's role in three key areas:

- › planning the national capital;
- › fostering an awareness of the national capital (promotion); and
- › developing, maintaining and enhancing the national capital (including asset management).

These functions provide the framework to:

- › secure the planning and development of Canberra as the national capital;
- › accommodate the seat of government and associated national and cultural requirements;
- › provide public places and assets for national purposes and for all Australians to visit and enjoy;
- › enhance the unique character and symbolic meaning of the capital; and
- › develop appreciation of Canberra as the National Capital.

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CHAPTER FOUR: PLANNING THE NATIONAL CAPITAL

“... the ACT Government and the people of Canberra have concerns arising out of the dual planning system... the concerns are two-fold really – the additional costs that the National Capital Plan may impose upon the Territory, particularly the way in which it restricts land use, and the confusion which seems to be ... created by a dual planning system.

ACT business has to contend with the concepts of the National Land and the Territory Land, land in Designated Areas and land subject to special requirements. Maybe it is because it is so new that it is still causing this confusion and it will all become clear, but I believe there are some grey areas and there are some areas which the Commonwealth has attempted to retain which I believe is not justified. Contending with planning authorities, I am sure all would realise, can be complicated in the best of circumstances, but where there are two bodies answerable to two different governments in a city the size of Canberra, I think it is confusing.”⁴⁹

CURRENT ARRANGEMENTS

The NCA is responsible for the Commonwealth’s ongoing interest in the planning and development of Canberra. It discharges this primarily through the National Capital Plan, the key objective of which is to ensure that Canberra and the ACT are planned and developed in accordance with their national significance.

In prescribing matters to be covered in the National Capital Plan, sections 10(2)(a) and (b) of the PALM Act require the National Capital Plan to set out:

- › the planning principles and policies for giving effect to the object of the Plan;
- › standards for the maintenance and enhancement of the character of the National Capital;
- › general standards and aesthetic principles to be adhered to in the development of the National Capital; and
- › general policies for land use, and for the planning of national and arterial road systems throughout the Territory.

Sections 10(1) and 10(2)(c) and (d) of the PALM Act also provide that the National Capital Plan may specify:

- › areas of land that have the special characteristics of the National Capital as Designated Areas. The National Capital Plan may set out detailed conditions of planning, design and development in Designated Areas, including priorities for carrying out these activities; and
- › special requirements for the development of any area, being requirements that are desirable in the interests of the National Capital.⁵⁰

49 Senator Margaret Reid, 1990.

50 *Consolidated National Capital Plan*, September 2009, page 3.

At the broad policy level, the National Capital Plan provides a framework for land use and development for the whole of the ACT. At its most detailed level it governs conditions of planning, design and development proposals in Designated Areas.

Section 9(b) of the PALM Act prescribes that one function of the NCA is to keep the National Capital Plan under constant review and to propose amendments to it when necessary.⁵¹ The PALM Act further prescribes the processes and requirements for amending the National Capital Plan, including public consultation, submission and referral to the Minister, the Minister's powers and Parliamentary scrutiny.

RELATIONSHIP BETWEEN THE NATIONAL CAPITAL PLAN AND THE TERRITORY PLAN

In addition to the National Capital Plan, the PALM Act also requires establishment of an ACT Government planning authority to prepare and administer a Territory Plan. The object of the Territory Plan is to provide people with an attractive, safe and efficient environment in which to live and work and have their recreation.

The PALM Act makes it clear that the National Capital Plan prevails over the Territory Plan, but the two plans are intended to be complementary.

STRATEGIC PLANNING

One of the most complex and controversial areas of planning in the ACT is strategic planning, which includes land use, transport, infrastructure, and urban form planning.

The National Capital Plan presently enables the Commonwealth Parliament to control the overall layout and environment of the national capital:

- › by identifying urban development areas and those areas not to be developed for broadscale urban use;
- › prescribing general policies of land use (including the location of town centres, industrial areas and tourist centres); and
- › planning for national and arterial road systems throughout the Territory.

These elements are illustrated in the General Policy Plan – Metropolitan Canberra (**Figure 5**).

Importantly, this plan, in conjunction with the General Policy Plan – Australian Capital Territory (**Figure 6**), identifies the National Capital Open Space System (NCOSS).

The NCOSS includes Lake Burley Griffin, the hills, ridges and buffer spaces which provide the landscape setting for the city, the river corridors and the mountains and bushland areas of the ACT. The NCOSS provides a valuable environmental and recreational resource, in addition to contributing to the “city in a landscape” philosophy.

Major changes to the urban form of Canberra have occurred since commencement of the National Capital Plan in 1990, notably through Amendment 63 to the Plan. This amendment will facilitate greenfield development to the west of the city in the Molonglo Valley. The General Policy Plan – Metropolitan Canberra has not, however, undergone a comprehensive review since inception of the National Capital Plan.

51 Section 6(b) PALM Act.

FIGURE 5: GENERAL POLICY PLAN - METROPOLITAN CANBERRA

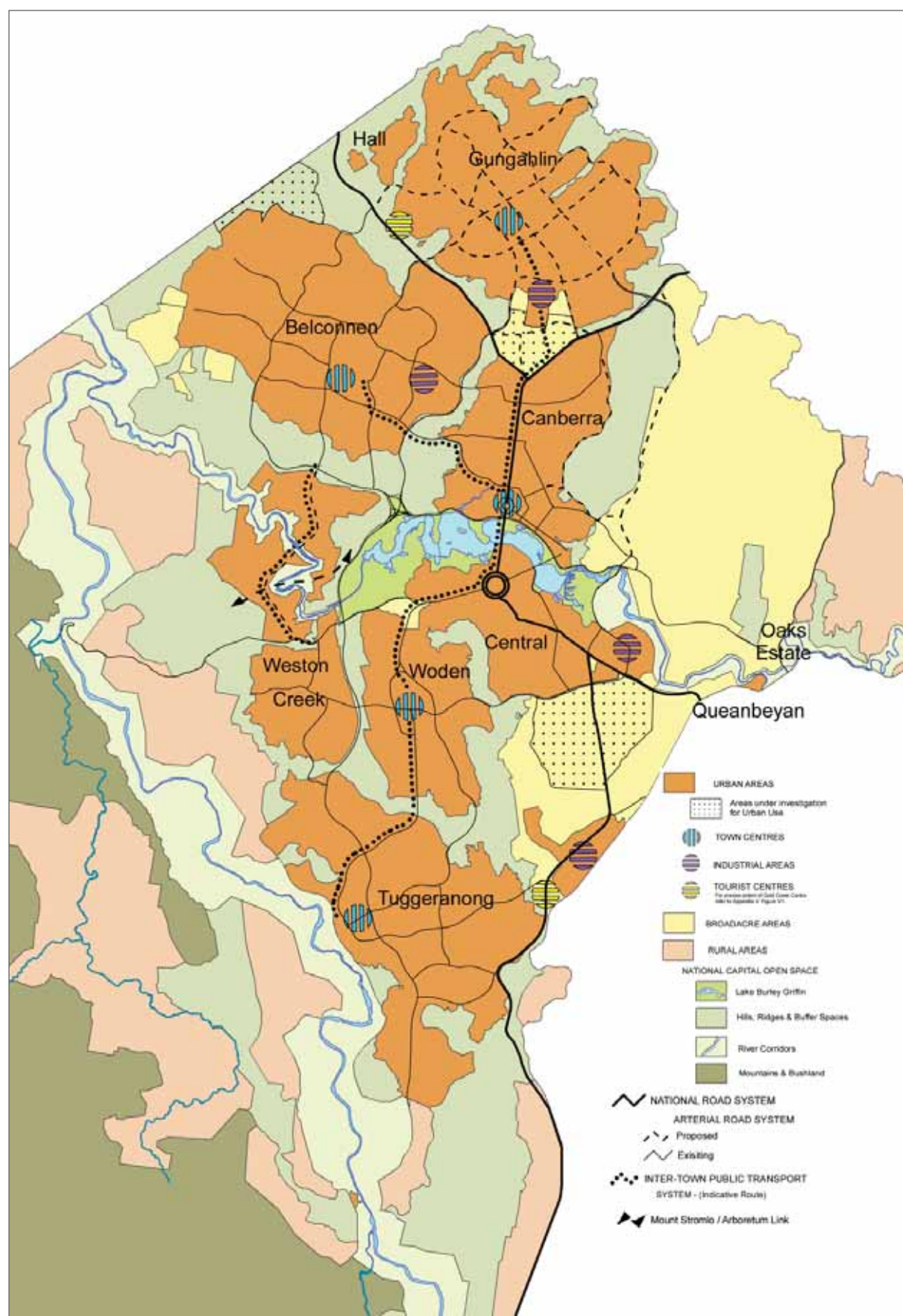
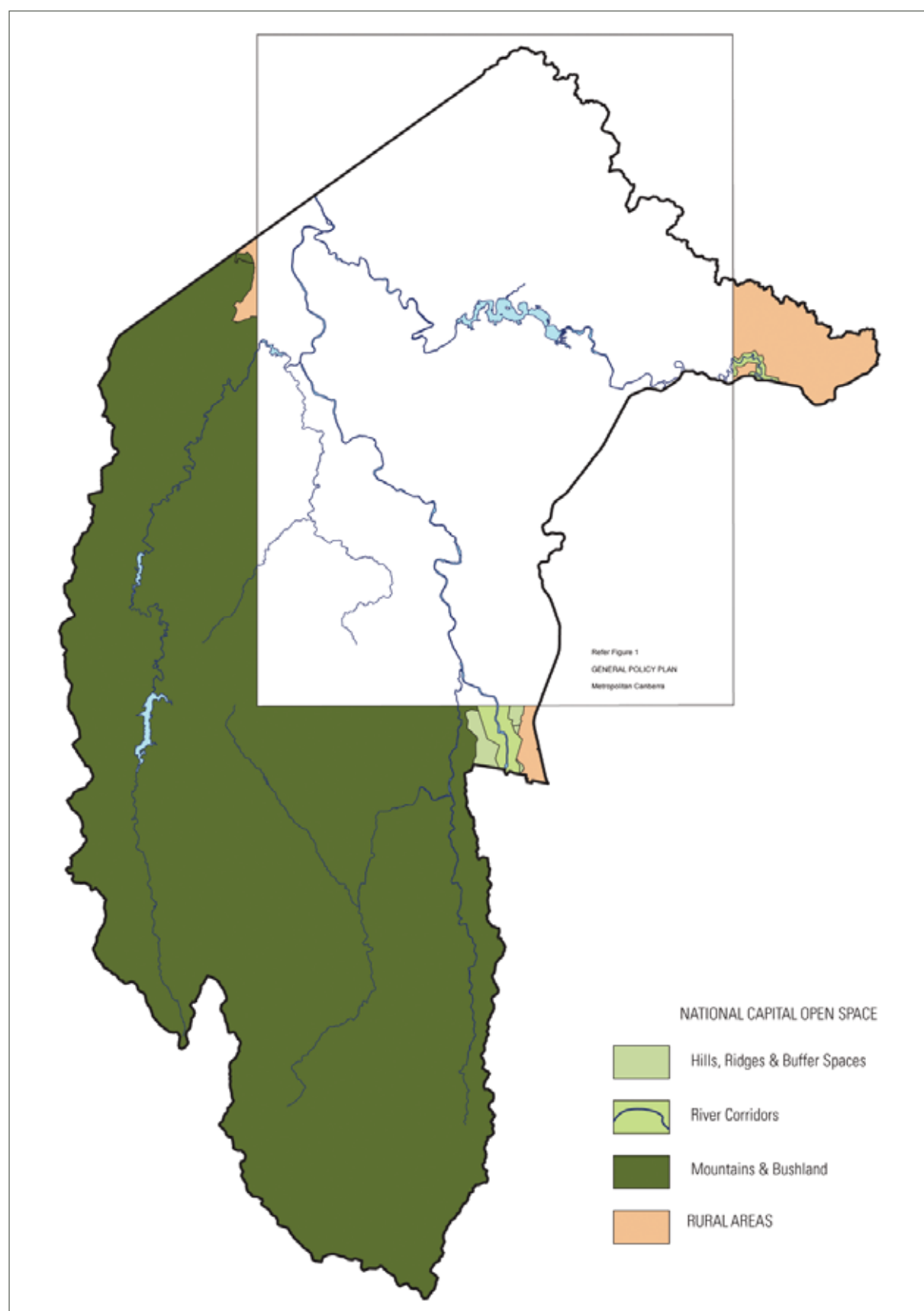


FIGURE 6: GENERAL POLICY PLAN – AUSTRALIAN CAPITAL TERRITORY



DESIGNATED AREAS AND WORKS APPROVAL (DEVELOPMENT ASSESSMENT)

Section 10 of the PALM Act prescribes that the National Capital Plan may specify areas of land that have the special characteristics of the national capital to be Designated Areas. Within Designated Areas, the National Capital Plan may set out the detailed conditions of planning, design and development.⁵²

The National Capital Plan identifies three primary factors in determining those areas that have the “special characteristics of the national capital”:

- › Canberra hosts a wide range of National Capital functions – activities which occur in Canberra because it is the National Capital and which give Canberra a unique function within Australia;
- › the Griffins’ strong symbolic design for Canberra Central has given the Capital a garden city image of national and international significance; and
- › Canberra’s landscape setting and layout within the Territory have given the Capital a garden city image of national and international significance.⁵³

The National Capital Plan identifies the Designated Areas as comprising:

- › Lake Burley Griffin and its foreshores;
- › the Parliamentary Zone;
- › the balance of the Central National Area adjoining the lake and Parliamentary Zone, and extending from the foot of Black Mountain to the airport;
- › the Inner Hills which form the setting of the Central National Area; and
- › the Main Avenues and Approach Routes between the ACT border and the Central National Area.⁵⁴

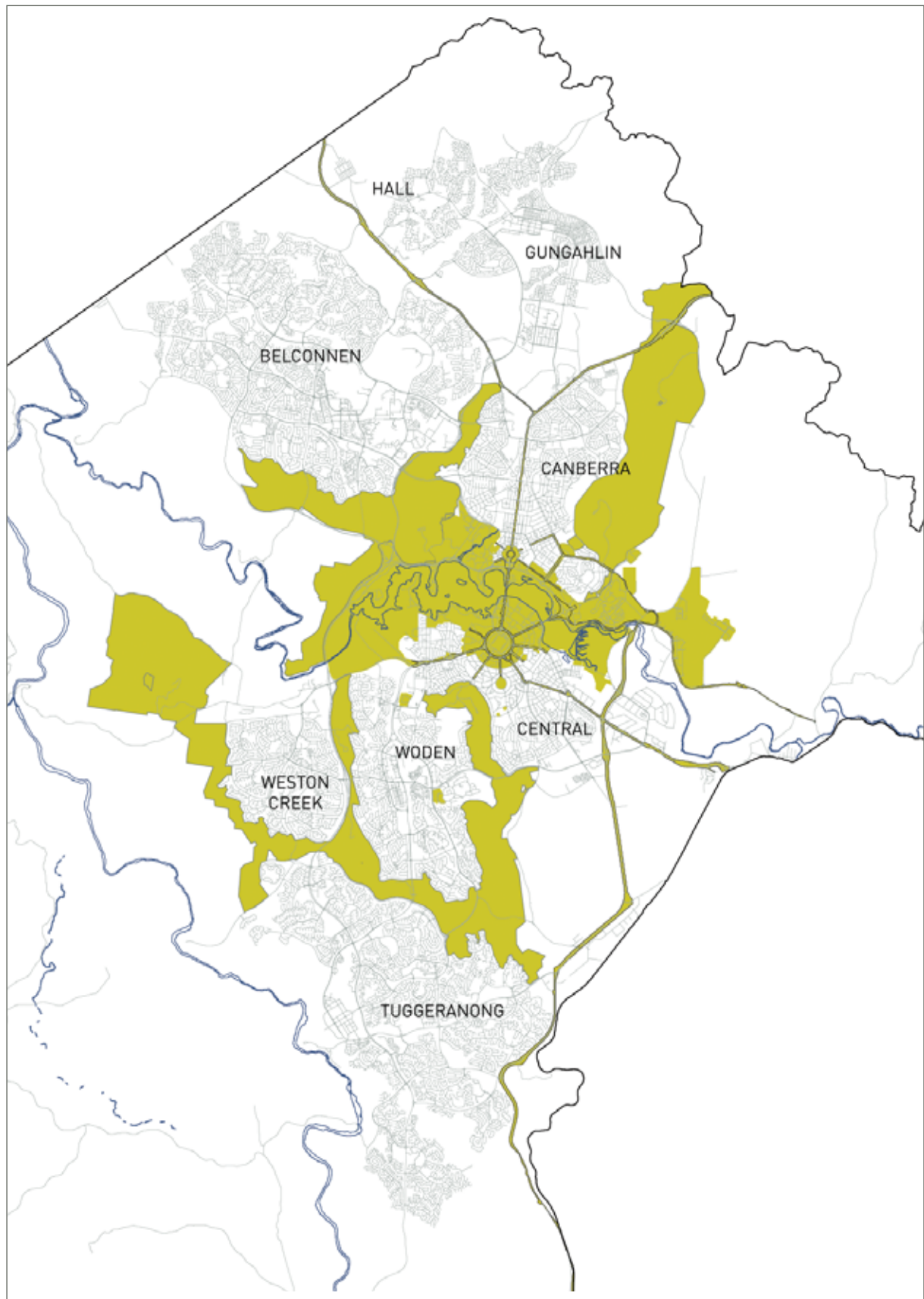
The current Designated Areas are illustrated in **Figure 7**.

.....
52 Section 10 PALM Act.

53 Consolidated National Capital Plan, page 14.

54 Consolidated National Capital Plan, page 15.

FIGURE 7: DESIGNATED AREAS



In accordance with section 12 of the PALM Act, the NCA has responsibility for approving works within Designated Areas. Under section 5 of the *Parliament Act 1974*, works within the Parliamentary Zone are subject to approval by both Houses of Parliament, and separate to, the works approval by the NCA.

Works deemed '*de minimis*' (or minor) are not referred to Parliament because of the "*de minimis non curat lex*" principle, which translates to "the law is not concerned with trivial matters." Such works may include tree maintenance, footpath replacement, road line-marking and installation of minor signage.

The PALM Act defines "works" as the construction, alteration, extension or demolition of buildings or structures; landscaping; tree-felling; or excavations; but excludes anything done inside buildings or structures.

LAND MANAGEMENT

The Commonwealth is the owner of all land in the ACT, having originally acquired the land from NSW under legislative arrangements. The PALM Act provides that land used by or on behalf of the Commonwealth may be declared National Land, and managed by the Commonwealth. All other land is Territory Land. The ACT Government is vested by statute with responsibility for the management and control of Territory Land. This includes the power to grant interest in (sell) land – these rights and responsibilities are effectively equivalent to freehold ownership. Individuals in the ACT do not "own" the land but hold crown leases issued by the ACT Government that, if ended, result in the land reverting to the control of the ACT Government.

The status of land in the ACT, whether it be "National Land" or "Territory Land", does not determine planning responsibilities. Under current arrangements, there is considerable confusion over the planning concept of Designated Areas (where the Commonwealth exercises detailed planning control) and the land tenure concept of National Land (where the Commonwealth both owns and manages the land). Confusion is created because Territory Land and National Land can both fall within Designated Areas and is therefore subject to Works Approval processes by the NCA.

In a similar vein, land subject to Special Requirements may be either National Land or Territory Land. Despite a clear statutory separation of planning responsibility, there is a perception of overlap in responsibility between the NCA and the ACT Government.

In describing the complexity of the current planning arrangements in the ACT, there are five combinations of planning and land management which apply:

- › land within Designated Areas that is National Land (for example the Parliamentary Zone);
- › land within Designated Areas that is Territory Land (for example the ACT Legislative Assembly);
- › National Land where Special Requirements apply (for example Benjamin Offices);
- › Territory Land where Special Requirements apply (for example Canberra Avenue); and
- › Territory Land, administered by the Territory.⁵⁵

55 ACT Government submission to 2008 JSC Inquiry.

NATIONAL LEADERSHIP – STRATEGIC PLANNING

The accountability of the NCA, and its approach to consultation and public participation in planning and development matters is addressed in Chapter Eight.

In 2004, the JSC reported that despite the advent of self-government in the ACT almost 15 years ago, there appeared to remain a large degree of uncertainty about the areas for which the NCA has statutory planning responsibilities. The ambiguous dual planning regime created confusion and frustration for planners, developers and residents.⁵⁶ Four years later the 2008 JSC report described the same sentiments.⁵⁷

In addition to continuing confusion over the respective roles of the Commonwealth and ACT Government in planning for the national capital, the National Capital Plan remains largely out of touch with present-day planning practices. Despite this, there is considerable scope for the National Capital Plan and the NCA's practices to become leading practice within Australia.

In June 1996, the National Commission of Audit found “... *no clear rationale or constitutional basis for Commonwealth involvement*” in regional development and urban management.

On 17 July 1996, the Government announced termination of the regional development and urban programs (including the Better Cities program) to eliminate duplication of State and local government activities in these areas. Interestingly, regional development was not removed from the Department of Transport and Regional Development's title. A similar approach had been taken in 1975 when the Fraser Government abolished the Department of Urban and Regional Development created by the Whitlam Government.

The Organisation for Economic Co-operation and Development's (OECD) 2006 Report on Competitive Cities in the Global Economy argues that, in the past:

“National urban policies ... have been reactive and remedial, not pro-active and dynamic. Urban issues must be given greater visibility and higher priority in national policy...”

COAG addressed this by agreeing in December 2009:

“... to reforms to ensure our capital cities are well placed to meet the challenges of the future. National criteria for capital city strategic planning systems will provide the platform to re-shape our capital cities. The criteria will ensure our cities have strong, transparent and long-term plans in place to manage population and economic growth; plans which will address climate change, improve housing affordability and tackle urban congestion. They will also:

- provide for future-oriented and publicly available long-term strategic plans;*
- be integrated across functions (for example, land-use, infrastructure and transport) and coordinated between all three levels of government;*
- clearly identify priorities for future investment and policy effort by governments;*
- provide for effective implementation arrangements and supporting mechanisms; and*
- support and facilitate economic growth, population growth and demographic change.*

COAG agreed that by 1 January 2012 all States will have in place plans that meet the criteria and noted that the Commonwealth will link future infrastructure funding decisions to meeting these criteria. These reforms will secure better outcomes from investments of all governments and they will strengthen public confidence in planning systems.

56 JSC 2004 Report, page 3.

57 JSC 2008 Report, page 128.

The COAG Reform Council will independently review the consistency of capital city strategic planning systems with the new national criteria during 2010 and 2011. A jointly appointed, expert advisory panel will be established to support the COAG Reform Council in this work. The COAG Reform Council will also support continuous national improvement in capital cities strategic planning and build and share knowledge of best-practice planning approaches.

COAG recognised that all States are working to strengthen urban planning. The reforms adopted today will support all governments in working with communities and the private sector, to create productive, liveable and sustainable cities for the future.”⁵⁸

The Government has now recognised the importance and role of cities in ensuring economic success and citizens' well-being.

The 2009 COAG agreement on Capital City Strategic Planning Systems outlined a national objective “to ensure Australian cities are globally competitive, productive, sustainable, liveable and socially inclusive and are well placed to meet future challenges and growth” and nine criteria for future strategic planning of capital cities.⁵⁹ Capital city strategic planning systems should:

1. Be integrated:
 - a. Across functions, including land-use and transport planning, economic and infrastructure development, environmental assessment and urban development, and
 - b. Across government agencies;
2. provide for a consistent hierarchy of future oriented and publicly available plans, including:
 - a. long term (for example, 15-30 year) integrated strategic plans,
 - b. medium term (for example, 5-15 year) prioritised infrastructure and land-use plans, and
 - c. near term prioritised infrastructure project pipeline backed by appropriately detailed project plans;
3. provide for nationally-significant economic infrastructure (both new and upgrade of existing) including:
 - a. transport corridors,
 - b. international gateways,
 - c. intermodal connections,
 - d. major communications and utilities infrastructure, and
 - e. reservation of appropriate lands to support future expansion;
4. address nationally-significant policy issues including:
 - a. population growth and demographic change,
 - b. productivity and global competitiveness,
 - c. climate change mitigation and adaptation,
 - d. efficient development and use of existing and new infrastructure and other public assets,
 - e. connectivity of people to jobs and businesses to markets,
 - f. development of major urban corridors,
 - g. social inclusion,
 - h. health, liveability and community wellbeing,
 - i. housing affordability, and
 - j. matters of national environmental significance;

58 Council of Australian Governments' Meeting, 7 December 2009 Communiqué.

59 <http://www.coagreformcouncil.gov.au/agenda/cities.cfm>

5. consider and strengthen the networks between capital cities and major regional centres, and other important domestic and international connections;
6. provide for planned, sequenced and evidence-based land release and an appropriate balance of infill and greenfields development;
7. clearly identify priorities for investment and policy effort by governments, and provide an effective framework for private sector investment and innovation;
8. encourage world-class urban design and architecture; and
9. provide effective implementation arrangements and supporting mechanisms, including:
 - a. clear accountabilities, timelines and appropriate performance measures,
 - b. coordination between all three levels of government, with opportunities for Commonwealth and Local Government input, and linked, streamlined and efficient approval processes including under the *Environment Protection and Biodiversity and Conservation Act 1999*,
 - c. evaluation and review cycles that support the need for balance between flexibility and certainty, including trigger points that identify the need for change in policy settings, and
 - d. appropriate consultation and engagement with external stakeholders, experts and the wider community.⁶⁰

On 18 May 2011, the Minister for Infrastructure and Transport, the Hon. Anthony Albanese MP, released *Our Cities, Our Future – A National Urban Policy for a productive, sustainable and liveable future*. The Policy outlines the Australian Government's overarching goals for the nation's cities and how the Government will play a role in making them more productive, sustainable and liveable.

The NCA in collaboration with the ACT Government is best placed within the ACT to fulfil the National Urban Policy's objectives.

The Commonwealth Government has clearly demonstrated that investment in Australia's cities is back on the agenda. The Government needs to extend this commitment to investing in Australia's national capital through the NCA.

ACT GOVERNMENT LEADERSHIP

The principle of subsidiarity rests on higher levels of Government not undertaking what a lower level of Government can do for itself.

In the national capital, this principle is affected by two tiers of government having a direct interest in the city.

The ACT Government's interest will be driven by their obligations to Territory residents, and in ensuring a competitive economy. That consideration will need to give due weight in their plans, policies and activities to national objectives.

New criteria for strategic planning systems in our major cities should focus on balancing infill and greenfields development. Three key challenges will drive this:

- › building productive cities with efficient transport and communications networks;
- › building affordable, liveable city communities; and
- › building sustainable cities.

60 <http://www.coagreformcouncil.gov.au/agenda/cities.cfm>

In this regard, economic, environmental, social, cultural and equity factors are inextricably linked and will require an integrated approach.⁶¹

Governing the City State (One ACT Government – One ACT Public Service) together with the “Canberra 2030 – Time to Talk” Report provides a basis for the way forward to a sustainable city with clean air, clean water, public transport, affordable housing, open spaces and a state of the art sewage system.

Edward Glaeser’s seminal work encapsulated in “Triumph of the City”⁶² sets the scene rather nicely:

- › *“there is a near-perfect correlation between urbanization and prosperity across nations;*
- › *cities thrive when they have many small firms and skilled citizens;*
- › *cities aren’t structures – cities are people; and*
- › *we live in an age of expertise, when earnings and knowledge are closely linked.”*

Canberra writ large in its people, educational facilities and aspirations.

“Carbon emissions from driving and home energy use in America’s greenest metropolitan areas are still more than ten times the emissions in the average Chinese metropolitan area.

“But as India and China get richer, their people will face a choice that could dramatically affect all our lives. Will they follow America and move toward car-based exurbs or stick with denser urban settings that are far more environmentally friendly? If per capita carbon emissions in both China and India rise to U.S. per capita levels, then global carbon emissions will increase by 139 percent. If their emissions stop at French levels, global emissions will rise by only 30 percent. Driving and urbanization patterns in these countries may well be the most important environmental issues of the twenty-first century.

“Indeed, the most important reason for Europe and the United States to get their own “green” houses in order is that, without reform, it will be awfully hard to convince India and China to use less carbon. Good environmentalism means putting buildings in places where they will do the least ecological harm.

“This means that we must be more tolerant of tearing down the short buildings in cities in order to build tall ones, and more intolerant of the activists who oppose emissions-reducing urban growth. Governments should encourage people to live in modestly sized urban aeries instead of bribing home buyers into big suburban McMansions. If ideas are the currency of our age, then building the right homes for those ideas will determine our collective fate.

“The strength that comes from human collaboration is the central truth behind civilisations” success and the primary reason why cities exist. To understand our cities and what to do about them, we must hold on to those truths and dispatch harmful myths. We must discard the view that environmentalism means living around trees and that urbanites should always fight to preserve a city’s physical past. We must stop idolizing home ownership, which favors suburban tract homes over high-rise apartments, and stop romanticizing rural villages. We should eschew the simplistic view that better long-distance communication will reduce our desire and need to be near one another. Above all, we must free ourselves from our tendency to see cities as their buildings, and remember that the real city is made of flesh, not concrete.”

61 Walking, Talking, see Colin Stewart Architects May/June 2011 publication, discussing a more sustainable, compact and humanist Canberra city.

62 Edward Glaeser, “Triumph of the City”, how our greatest invention makes us richer, smarter, greener, healthier, and happier, The Penguin Press, New York, 2011.

THE NATIONAL CAPITAL PLAN

IN NEED OF REVIEW?

Section 6(b) of the PALM Act requires the NCA to keep the National Capital Plan under constant review and to propose amendments to it when necessary.⁶³

This basic directive has been, and continues to be, unachievable under current and recent resourcing. The NCA has been unable to be proactive in any sense and the National Capital Plan does not adequately reflect contemporary planning issues such as environmental sustainability, climate change, healthy lifestyles and rising fuel costs.

The National Capital Plan came into effect in December 1990. Since its gazettal, there has not been a full review of the National Capital Plan where all stakeholders and the community have been able to have their say. Neither the National Capital Plan, nor the PALM Act, has a requirement for the plan to be reviewed in full at a nominated time (for example every five, seven or ten years). Review mechanisms of this nature are a feature of most modern planning systems.

Despite the PALM Act explicitly requiring the Territory Plan to be not inconsistent with the National Capital Plan⁶⁴, and that the Commonwealth or Territory is not to do any act that is inconsistent with the National Capital Plan⁶⁵ there are likely to be areas where the National Capital Plan has not been adhered to. This is not the fault of the NCA, or the Territory, but simply reflects that the National Capital Plan has not kept pace with the issues facing the Territory. It also reflects the Commonwealth's declining level of interest and commitment to the Territory and national capital over the last two decades.

The requirements for amending the National Capital Plan as set out under the PALM Act are somewhat restrictive in what can currently be achieved, particularly as there is no opportunity for what could be considered minor amendments (such as updating references to legislation) to be fast-tracked. All amendments, no matter the complexity, are required to go through the same process. This has been a source of frustration for the NCA, the Territory and the community, where necessary changes have been delayed, or have not proceeded at all due to time and resourcing constraints.

A review of the National Capital Plan would need to be a full policy appraisal and alteration to the current format. Such a review would provide the opportunity to ensure that, where possible, criteria against which proposals will be assessed are more objective. The NCA has previously received criticism that parts of the National Capital Plan are too subjective and ambiguous. A comprehensive review would provide the opportunity to align the National Capital Plan and Territory Plan more closely in terminology and format. It seems axiomatic, given the COAG initiative, that this should be done.

RECOMMENDATION 6

The Government provide one-off funding to enable the NCA to undertake a comprehensive policy and format review of the National Capital Plan, with the view to reflecting contemporary planning themes, more closely aligning the National Capital Plan with the Territory Plan in structure and terminology, and implementing other relevant recommendations of the Review.

63 Section 6(b) PALM Act.

64 Section 26 PALM Act.

65 Section 11(2) PALM Act.

STRATEGIC PLANNING

The ACT Government has recently incorporated into the *ACT Planning and Development Act 2007* a requirement for the Territory to make a planning strategy to promote orderly and sustainable development consistent with the social, environmental and economic aspirations of the people of the ACT.

This planning strategy is not, however, part of the Territory Plan creating the potential for confusion between this “planning strategy for the ACT” and the statutory General Policy Plan – Metropolitan Canberra provisions of the National Capital Plan.

While it is appropriate for the Commonwealth Parliament to retain the highest level of ownership of the vision for the future development and character of the National Capital, there are good arguments that the current content of the General Policy Plan – Metropolitan Canberra within the National Capital Plan does not adequately recognise the division of land management responsibility, community services and infrastructure provision.

After more than 21 years of ACT self-government, it is also time to review the content of the General Policy Plan – Metropolitan Canberra with a view to simplifying the expression of the Commonwealth interest.

Initially, the NCA suggested that the number of topics and prescriptions in the General Policy Plan – Metropolitan Canberra could simply be reduced. Under this proposal, any topic not dealt with in the National Capital Plan would automatically become the purview of the ACT. Independent professional advice on that proposal, counselled that such a simplification would leave the National Capital Plan devoid of any sensible or professional strategic focus, risking uncoordinated and possibly counterproductive land use and infrastructure planning.⁶⁶ This would not be an appropriate outcome for the National Capital or the city.

This led the NCA to revise their reform proposal to include a proposed simplification of land use planning while retaining other existing elements such as infrastructure location. The NCA sought to improve clarity by assigning leadership (or principal) responsibility of different aspects of strategic planning to the NCA and the ACT Government through the General Policy Plan – Metropolitan Canberra.

Under these “Principal Responsibility Areas” the NCA and ACT Government would each take a lead over certain subject areas. The General Policy Plan – Metropolitan Canberra would be jointly reviewed every seven years. If a change needed to be made in the intervening period, the agency with carriage of the relevant Principal Responsibility Area would lead that change.

A revised General Policy Plan would need to be pictorially represented in the National Capital Plan, and supported by written policies and principles.

In essence, this proposal would free the ACT Government to pursue alternate land uses and propose changes to the strategic form of the city within a range of Principal Responsibility Areas in the much the same way that the NCA would itself propose a change. The NCA or ACT Government would prepare an explanatory statement setting out the grounds for any proposed change and assessing it against a revised statement of the Matters of National Significance. All proposed changes would, of course, be required to be consistent with the Matters of National Significance in order to proceed.

If either the NCA or the ACT Government objected to a change proposed by the other, they would retain a right to request referral to the JSC. This would be a reserve power in the hands of each party, only to be used in extenuating circumstances where the NCA and ACT Government could not reach agreement.

While the above proposal formally retains control within the National Capital Plan, it should be possible to give expedient and practical effect to the proposed reform through inter-governmental and inter-agency agreements.

66 GHD, 2011 Report to the National Capital Authority: Planning Advice.

Some of the procedural arrangements could be embedded in the National Capital Plan itself. Doing so would provide the safeguard of enabling these reforms to be reversed in the future if they proved entirely unsatisfactory, but only with sufficient weight-of-evidence to convince a future Australian Parliament of the need for regression.

This proposed reform more reasonably expresses the Commonwealth interest in the national capital and recognises the division of responsibilities between the Commonwealth and the Territory. It can co-exist with the new requirement in the ACT Planning and Development Act 2007 to make a planning strategy for the ACT, but does not abrogate the Commonwealth interest in the National Capital. Importantly, it ensures broad community engagement because the National Capital Plan statutory process is subject to consultation and scrutiny that takes account of both national and local interests. The Review commends the NCA for its proactive and willing approach to develop this proposal and recommends its adoption.

RECOMMENDATION 7

The NCA and ACT Government progress talks around reforming the General Policy Plan to assign “Principal Responsibility Areas” to the relevant jurisdiction and agree on an appropriate Inter-Governmental agreement to give effect to the operation of this approach to strategic planning. This should be done in the context of the comprehensive review of the National Capital plan.

TERMINOLOGY – DESIGNATED AREAS

Areas of Special National Concern were identified by the NCDC and endorsed by Federal Cabinet in 1964. They included the central area, the lakeshore, hills and ridges and the main avenues and approach routes to Canberra. They were first published in 1965 in *The Future Canberra*, were reflected in the NCDC 1967 Design and Siting Policies and were reiterated in the 1970 publication *Tomorrow's Canberra*.⁶⁷

Areas of Special National Concern were originally identified in response to Australian Government and NCDC concerns that growth of the city beyond the bounds of the Griffin Plan should not be at the expense of the symbolic and special characteristics of Canberra as the national capital. Such characteristics were to be valued, protected and enhanced.

The current Designated Areas identified in the National Capital Plan are similar to the 1964 Areas of Special National Concern. Some areas previously identified as Areas of Special National Concern are now subject to Special Requirements (such as parts of Civic and part of the Molonglo River Corridor) and there has been a refinement of the hills providing a backdrop to the city.

The name “Designated Areas” does nothing, however, to help people understand the national significance of these sites. In 2008, the NCA proposed that Designated Areas should be renamed as “Areas of Special National Importance”. This proposition reflects the true meaning of these areas.

RECOMMENDATION 8

Designated Areas be renamed “Areas of Special National Importance.”

ALIGNMENT OF PLANNING AND LAND ADMINISTRATION

Within the Designated Areas the NCA has sole responsibility for works approval regardless of whether the land is administered by the Commonwealth (as National Land) or the Territory (as Territory Land).

Because the Designated Areas cover Territory Land as well as National Land there is a perception of planning duplication in relation to Territory Land.

Ideas have been floated that ideally, all land within the proposed Areas of Special National Importance should be declared National Land required for the special purposes of Canberra as the national capital. Under these proposals, sites within Designated Areas that are currently Territory Land should be gazetted as National Land to ensure alignment of planning and land status. Likewise, all National Land currently outside the Designated Areas should be declared as being required for the special purposes of Canberra as the national capital.

This process would create a situation whereby the ACT Government will have development approval for all Territory Land. The perceived duplication of national planning and local planning interests would dissolve.

One of the key objectives of the JSC in 2008 was to align land administration with planning jurisdiction where possible. This was on the proviso that the objective of ensuring the Commonwealth protect and promote the unique design of Canberra because it represents the intrinsic character of the national capital was managed appropriately.

This Review proposes that the Commonwealth maintain detailed planning control of those areas that have demonstrated national significance – currently the Designated Areas and areas subject to special requirements identified in the National Capital Plan. The Commonwealth will thus protect the intrinsic character of the national capital through this level of detailed planning control.

The PALM Act explicitly states that the Minister shall not declare an area to be National Land unless the land is, or is intended to be, used by or on behalf of the Commonwealth. The phrase “used by or on behalf of the Commonwealth” could reasonably be interpreted to mean that the land would be directly used by the Commonwealth for Government office buildings, national institutions, ceremonial or symbolic purposes, Parliamentary uses, or diplomatic uses.

This Review has established that the current Designated Areas and areas subject to Special Requirements represent those areas that have the special characteristics of the national capital.

On the other hand, there are clearly areas that have the special characteristics of the national capital, but are not used, or intended for use by the Commonwealth in the foreseeable future. The Inner Hills are a key example of this – the hills have a clear historical and aesthetic connection to the Griffin Plan and concept of a city in the landscape, but for the most part are not and will not be used by the Commonwealth.

One of the most contentious issues that arises where planning and land administration does not align is the present arrangement where the ACT Government is required to seek Works Approval from the NCA where works occur on Territory Land in Designated Areas. This would be somewhat less contentious by the application of “track-based” assessment procedures in the National Capital Plan. Minor works (such as those often carried out by the ACT Government) could be exempt from development or self-assessable (thereby negating the need for a works application to the NCA). The application of “track-based” assessment and adoption of the Development Assessment Forum (DAF) leading practice model for development assessment more broadly is discussed later in this chapter.

The Taskforce on the Commonwealth's National Capital Responsibilities directly considered the question of whether the Commonwealth should own areas of national capital significance. The Taskforce did not consider that:

*"... ownership by the Commonwealth of all areas of national capital significance is necessary or appropriate. As a corollary, the Taskforce does not consider that the responsibility for planning control as between the Commonwealth and the ACT should necessarily follow ownership."*⁶⁸

The Taskforce did, however, consider there to be merit – when reviewing the National Capital Plan – in giving consideration to those areas that are assessed as requiring a very high level of prescription in the controls applied, whether there is a need for the Commonwealth to express an interest in resuming land where its previous use is at an end and when budget considerations permit. A recommendation to this effect was given.

Under the current definitions of what constitutes National Land and Designated Areas, it is unavoidable that the two will not align.

SPECIAL REQUIREMENTS

Section 10 of the PALM Act prescribes that the National Capital Plan may specify Special Requirements in the interests of the National Capital.⁶⁹

Special Requirements currently apply to land fronting the Main Avenues and Approach Routes (as defined in the National Capital Plan); National Land outside of Designated Areas; urban areas such as the Kingston Foreshores and Civic; and areas within the open space system such as Namadji National Park and the Murrumbidgee and Molonglo River Corridors.

The difference between Designated Areas and areas where special requirements apply is that in Designated Areas the NCA has the planning responsibility, including works approval, whereas in areas where special requirements apply, a development proposal is administered through the Territory Plan by the ACT Government planning authority in compliance with the special requirements specified in the National Capital Plan.⁷⁰

Development Control Plans were originally proposed as the appropriate mechanism for specifying and applying special requirements, and to ensure the planning system would be as simple as possible.

In most instances, Special Requirements entail the preparation and subsequent approval by the NCA Board of a Development Control Plan⁷¹. In the case of (for example) Special Requirements for Main Avenues, some requirements are stipulated in the National Capital Plan in addition to the requirement for a Development Control Plan. In other cases, the National Capital Plan outlines principles and policies or values against which proposals must be assessed.

The NCA has previously criticised Special Requirements as being a "clumsy" planning tool that adds red tape to the planning process.⁷² The application of Special Requirements is seen by some to be confusing and inefficient, and a duplication of planning process. In particular, there is some confusion over who does what in areas subject to special requirements.

68 Taskforce on the Commonwealth's National Capital Responsibility, page 22.

69 Section 10 PALM Act.

70 Consolidated National Capital Plan, page 16.

71 Development Control Plans were originally proposed as the appropriate mechanism for specifying and applying special requirements, and to ensure the planning system would be as simple as possible. The National Capital Plan states that Development Control Plans may be maps, drawings, photographs, specifications and written statements. They should include sufficient detail for the guidance and management of development in the area, and may include design, siting, scale, purpose, timing and phasing, construction, landscaping and other relevant matters.

72 NCA 2008 JSC Inquiry submission.

The concept of Special Requirements is not necessarily the issue – there are indeed areas where the Commonwealth should maintain a strong interest in planning and design, though not necessarily the same level of interest as is in Designated Areas. The drafting of the PALM Act appears to have anticipated a situation whereby the Commonwealth would need to retain direct planning oversight through the Works Approval role (Designated Areas), and where the Commonwealth may need to set out Special Requirements that would be desirable in the interests of the national capital.

A key issue then is the form that Special Requirements currently take. The PALM Act does not identify how Special Requirements should be prescribed so in some circumstances the National Capital Plan requires a Development Control Plan to be prepared, while in other circumstances principles and policies apply.

Development Control Plans are also developed on an *ad hoc* or site-by-site basis, and are therefore somewhat subject to the whims of NCA's planners and Board of the day. It is particularly concerning that DCPs are not prepared significantly in advance of development proposals, thereby both imposing a time delay, and creating the perception that a development proposal is dealt with twice. In practice, DCPs have become a means to an end – something to facilitate development approval rather than a genuine attempt to represent the interests of both planning agencies in one control document.

The simplest way to express the desired character and design standards for an area is through a set of clear, concise objectives and parameters in the National Capital Plan. There is little difference in the concept of the Commonwealth preparing a Development Control Plan for a site or area, or the Commonwealth preparing a set of principles of policies which form part of the National Capital Plan. In each case, the Territory administers the requirements as part of their development assessment process. The real and worthwhile difference is that principles and policies are agreed upfront, and the Territory and proponents of development can proceed without reference to the NCA.

An arrangement of this nature has been in place for a number of years for Northbourne Avenue, whereby the need for a Development Control Plan was met through the passage of amendments to both the Territory Plan and the National Capital Plan. Continued Commonwealth oversight is maintained by Special Requirements outlined in the National Capital Plan, yet the Territory is able to administer the land either side of the roads without reference to the NCA.

In this model, there is scope for the Territory to adopt the special requirements as a Precinct Code of the Territory Plan. Provided the Special Requirements and the Territory Plan code remained consistent, there would be no obligation for the Territory to even refer to the National Capital Plan. The hierarchy of codes under the Territory Plan is such that a Precinct Code takes precedence over all other codes. In the event that the Precinct Code (reflecting the Special Requirements of the National Capital Plan) were inconsistent with a development or general code on any matter, the Precinct Code (and effectively the Special Requirements) would prevail.

Where an area is subject to Special Requirements and a Development Control Plan is not required, a contemporary examination of the principles and policies that apply is necessary.

Benefits of the model described above include:

- › the Commonwealth maintains a vested interest, and rightly so, in areas subject to special requirements;
- › Special Requirements take a consistent form (of principles and policies) in the National Capital Plan;
- › the Commonwealth maintains effective ownership of the Special Requirements and continued broad oversight of the areas through the National Capital Plan;
- › the ACT Government can undertake its development approval role for land subject to special requirements without reference to the NCA;
- › removal of the requirement for a Development Control Plan results in time efficiencies and reduced red tape for developers; and
- › up-front certainty of what requirements apply to a particular development.

A similar approach was supported by both the NCA and the Territory in 2004 and it followed that the JSC recommended the National Capital Plan be amended to incorporate a set of agreed planning principles for areas of Territory Land subject to special requirements. The Territory would then assume planning responsibility for these areas. The Government at the time did not agree with this recommendation, preferring to retain the Commonwealth's powers in this area.

RECOMMENDATION 9

Special Requirements continue to apply under the National Capital Plan.

RECOMMENDATION 10

All Special Requirements that stipulate the need for a Development Control Plan be removed and a set of detailed principles and policies for the area developed jointly between the National Capital Authority and the ACT Planning and Land Authority.

RECOMMENDATION 11

Special Requirements for other areas be reviewed as part of a comprehensive review of the National Capital Plan.

APPEALS PROCESS

Planning decisions are often controversial, particularly where the decision-maker needs to consider significant trade-offs between different stakeholders. This is particularly pertinent to the NCA, where competing interests often involve balancing the national interest against the interests of the local Canberra community.

Across Australia there are various channels available to applicants, and in some cases third parties, to have a decision reviewed. Under Australian administrative law, any decision made by any level of government is subject to judicial review. A review of the merits of a decision is, however, only available where legislation provides for such a review.

The PALM Act makes no provision for appeals relating to the merits of planning decisions by the NCA. As per administrative law there is opportunity for recourse under the *Administrative Decisions (Judicial Review) Act 1977* to determine whether a decision of the NCA was correctly made according to law and according to procedural fairness.

In the past, the NCA has sought to avoid situations where a solution could not be achieved through negotiation. However, where circumstances have not permitted this to occur, legally the NCA's views on the merits of the proposal have stood.

This contrasts with decisions made by the ACT Planning and Land Authority, where there is the option for merits review by the ACT Civil and Administrative Tribunal (ACAT). An ACAT review deals with the merits of the decision, effectively standing in the shoes of the original decision-maker to determine whether or not the decision is a good one. It can support the existing decision, attach conditions to it, make an entirely new decision, or send it back to the original decision-maker with directions on how to reconsider the matter.

The Commonwealth does have a mechanism for merits review of an administrative decision, through the Commonwealth Administrative Appeals Tribunal (AAT). The AAT, however, does not have a general purview across all decisions made under Commonwealth legislation and it is only available where an Act, regulation or other legislative instrument states a decision may be subject to review by the Tribunal. In a similar manner to ACAT, the AAT will either reaffirm the original decision, set aside the original decision, or vary the decision.

In considering the anomalies between the two planning jurisdictions, in 2008 the JSC recommended that the PALM Act be amended to include a provision for decisions on development applications made under the Act to be subject to review through the AAT. This would assist in aligning the two planning systems and ensure a means by which decisions of the NCA could be reassessed. This recommendation followed a similar call by the JSC in 2004 for the PALM Act to be amended to allow for an independent appeals process.

Appeals could normally be expected to arise in one of two circumstances where a lessee sought to develop their site in a particular way:

- › a person other than the applicant may be aggrieved by the NCA's decision to approve a development and wish to appeal (a third party appeal); or
- › the applicant may be aggrieved by the NCA's decision to refuse development consent and wish to appeal (an applicant appeal).

Third-party appeals may offer some benefits to the planning process. In particular, a third-party appeals mechanism may catch poor decisions by the consent authority, and can enhance community trust in the planning system. There are of course drawbacks to third-party appeals, including delays to developers, vexatious litigants and frivolous or anti-competitive claims.⁷³

The DAF model advocates that opportunities for third-party appeals should not be provided where applications are wholly assessed against objective rules and tests, and that opportunities for third-party appeals should only be provided in limited other circumstances.⁷⁴ Most Australian jurisdictions either exclude or limit third-party appeals, though strict adherence to the DAF model does vary.⁷⁵

There is widespread agreement across Australian jurisdictions that the DAF model is correct in promoting the need for applicant appeals against discretionary decisions (noting that the review should only be against the same policies and objective rules and tests as the original assessment).⁷⁶ The channels available to applicants varies between jurisdictions – some states or territories offer internal or panel reviews, while opportunity for mediation is available across the states and territories (either compulsory or by court order).

The context in which the NCA operates and the nature of the majority of applications for works deserves consideration. For example, works within the Parliamentary Zone are primarily for significant public national works (like the National Portrait Gallery, as a recent illustration). Many of these works have governing councils, boards or steering committees (appointed by Government) overseeing their development. These applications are also subject to separate approval (from that of the NCA) by both Houses of the Parliament (as the representatives of all Australians) under the provisions of the *Parliament Act 1974*. This “belts and braces” approach has worked extremely well to date. Appeal of such works will delay initiatives of the Government and could be protracted and politically motivated. Appeal rights may simply add red tape to a process that is already subject to a high degree of Commonwealth scrutiny.

It is only where citizens' rights are affected that an appeals process may be appropriate. Realistically there is a small amount of leased land located within Designated Areas, and the likelihood of large numbers of either development proposals or consequent appeals is reasonably small. The number would not seem to justify the establishment of any appeals mechanism, particularly where opportunity for amendment to the PALM Act is currently limited.

73 Productivity Commission 2011, *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessment*, Draft Research Report, Canberra, page 73.

74 DAF leading practice model, page 30.

75 Western Australia has no third party appeal rights; at the other end of the spectrum Victoria allows appeals by any party in almost all cases. The ACT is the only jurisdiction to fully follow DAF leading practice in this area.

76 Productivity Commission 2011, *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessment*, Draft Research Report, Canberra, page 71.

Comprehensive review of the National Capital Plan's structure and content has the potential to create more objective rules and criteria against which proposals would be assessed. This approach would not then be subject to merits review if the DAF model were applied.

PUBLIC PARTICIPATION

The NCA's approach to public participation in planning is discussed in Chapter Eight of this report.

THREE-DIMENSIONAL MODELLING

Three-dimensional (3D) modelling allows users to place buildings, development, landscape and other features within a given landscape, town or city. 3D models can be used to:

- › provide a public consultation tool to assist in visualising development and planning – the community will be able to see the impacts of a proposal on the locality more accurately;
- › provide a tool for architects and building designers to develop their proposals in a simulated real environment and refine their proposals;
- › assist in the assessment of development applications for new buildings, enabling accurate overshadowing, overlooking and simulation of how the building will look within the city context; and
- › illustrate the location of heritage sites and other important public facilities and attractions.

The use of 3D modelling in planning is increasing, and major cities around Australia have developed such models to assist in visualising the future of their city. This includes Adelaide City Council's 3D City Model, "Virtual Brisbane", and 3D modelling in development assessment processes by both the City of Sydney and Perth.

Having had the opportunity to view a 3D model in use by the NCA at the time, the JSC concluded in 2008 that 3D digital modelling in the planning context is useful as a tool to aid planners and assist the community in gaining a better understanding of proposed developments during the consultation phase.⁷⁷ The JSC subsequently recommended:

*"... that the Commonwealth provide resources to the National Capital Authority to continue the development of a cost effective three-dimensional integrated plan in digital format which is available online with the purpose of gaining efficiencies in planning and enhancing consultation."*⁷⁸

Government did not accept this recommendation. It did not consider the development of a digital format plan for the ACT was a priority when considered against the JSC's other recommendations. Rather, the Government considered that the NCA should review the need for a digital plan against the proposed changes to the planning framework and the available technology.

It would then be open to the NCA, in the light of that consideration, to seek funding for such a project within the normal Government fiscal and resource allocation processes.

The NCA has already invested in a 3D model, which currently contains around 840 buildings and associated terrain, though parts of the model are more detailed than others (i.e. some buildings are textured while others remain simple blocks). The model in its current format is cumbersome, difficult to distribute to staff within the NCA and not available for public use. The model is therefore not capable of providing a level of service that would be expected of a 3D model in this day and age.

77 2008 JSC Report, page 184.

78 2008 JSC Report, page 184.

The NCA recognises the need for a 3D model to both enhance the public's understanding of the work of the NCA, and to improve its own efficiency. In some cases, public objection arises from an inability to visualise how a development will fit into an area and what impacts a development will have on adjacent buildings or public spaces. The skills planners and designers have are often not as developed in the broader population and it can be difficult to comprehend from two-dimensional plans how a proposal will look *in situ*. The use of 3D models can illustrate how key developments will fit into the city context.

Production of a comprehensive and useful 3D model is an expensive exercise, but a beneficial one. Any 3D model will, however, only reach its full potential if it is available online. In 2011, the importance of having a 3D planning instrument is even more important, particularly as public participation moves online. The Australian Government missed an opportunity in 2008 to fund the NCA adequately to procure a 3D model and bring the NCA's planning processes into line with leading practice.

AN INTEGRATED PLANNING DOCUMENT FOR THE ACT?

The National Capital Plan expresses the national interest in ensuring that Canberra and the Territory are planned and developed in accordance with their national significance. The Territory Plan expresses the ACT Government's local interests in ensuring that the planning and development of the Territory provides residents with an attractive, safe and efficient environment in which to live and work and have their recreation.

The PALM Act makes it clear that the National Capital Plan prevails over the Territory Plan, although the two plans are intended to be complementary. There is general agreement between the NCA and Territory planning authority that both plans should align in format and language and that there should be a clear hierarchy from Matters of National Significance in the National Capital Plan through to the detailed requirements of development in the ACT.

A primary source of confusion under the current regime is that the National Capital Plan and the Territory Plan are structured differently and definitions between the two plans vary. Another point of contention is how and where to access the planning information relevant to a geographic area in question. Information is currently held separately by the two planning agencies, and it is not a straightforward exercise for someone to determine what rules apply and which Government should be approached.

It has been argued that a single, fully integrated planning document could incorporate both the principles and policies of the National Capital Plan and the detailed requirements of the Territory Plan.⁷⁹ It follows that a single document would articulate the pre-eminent national interest and vision, in addition to the local aspirations for Canberra.

Given the current legislative framework, however, the National Capital Plan and the Territory Plan will always remain separate plans administered by different Governments. Nevertheless, and as the JSC noted in 2008, standardisation of definitions and structure is still possible with the retention of two separate plans.

Experience since 2008 has shown that trying to align elements of each plan (such as definitions) is difficult and untimely. Complete alignment of the two plans is therefore unlikely to be feasible.

Although not a formal recommendation, the JSC noted that a simple and practical solution to some of the current problems would be for both planning agencies to host on their respective websites a complete set of planning information, with the relevant jurisdiction noted within the documentation. This arrangement would assist in reducing the frustration of having to source different information from different authorities for the same area of land.

Taking this idea one step further, a feasible option might be to collaborate on a single planning portal allowing online examination of planning regulations. As examined elsewhere in this report, the idealistic notion of aligning

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79 2008 JSC Report, page 179.

planning and land administration is unlikely to be achievable. Therefore the focus should be on the quality of information accessible to the public.

A 3D plan of Canberra with integrated Geographic Information System (GIS) features would enable a user to select a site and be presented with information such as what zoning or land use policy the site is subject to, which agency is responsible for planning and land management, links to the relevant statutory documents applicable to the site with other relevant information.

Establishment of such a planning portal over the short to medium term would then allow for changes to the National Capital Plan and Territory Plan over the longer term to achieve greater alignment of structure and terminology.

DEVELOPMENT ASSESSMENT FORUM LEADING PRACTICE MODEL

Development assessment is crucial to ensuring that development delivers the economic, social and environmental objectives and good planning outcomes that communities seek.⁸⁰ Particularly in the areas for which the NCA has detailed planning responsibility, the community has come to expect (and rightly so) that works will be of a high design standard.

The DAF, comprising government, industry, and the professions, develops and recommends leading practices for planning systems and development assessment in Australia. The Forum was established to recommend ways to streamline development assessment and cut red tape, without sacrificing the quality of decision making or development outcomes.⁸¹

Application of the DAF leading practice model to the National Capital Plan has previously received support from government, professional and industry bodies through the 2008 JSC inquiry, which recommended:

*"... in the interest of improving uniformity between the two planning systems, the Development Assessment Forum model should be assessed by the National Capital Authority for its relevance and application to the National Capital Plan and a report provided to the Joint Standing Committee and Minister within three months from the date of the Government Response to this report."*⁸²

The Government accepted this recommendation in principle, noting it would ask the NCA to make an assessment of the relevance and application of the model in the context of the IGC review into streamlining planning and land management. The IGC never completed its task, so the NCA assessment could not proceed.

From the start, the DAF recognised that further work is required to strengthen elements of the leading practice model and achieve the desired development assessment reforms. A considerable amount of work has since gone into the DAF Benchmarking Program regarding key components of the planning system within participating jurisdictions to identify leading practice principles and options for improvements.⁸³

The DAF leading practice model outlines a simpler and more effective approach to development assessment, articulating ways in which a system can demonstrate that it is efficient and fit for purpose. The original model identified ten leading practices that a development assessment system should exhibit, from effective policy formulation to determination on a proposal and appeal rights, as follows:

80 DAF leading practice model, page 6.

81 DAF leading practice model.

82 JSC 2008 Report, page 73.

83 DAF benchmarking program, page 3.

DAF LEADING PRACTICE MODEL

1 Effective policy development	Elected representatives should be responsible for the development of planning policies. This should be achieved through effective consultation with the community, professional officers and relevant experts.
2 Objective rules and tests	Development assessment requirements and criteria should be written as objective rules and tests that are clearly linked to stated policy objectives. Where such rules and tests are not possible, specific policy objectives and decision guidelines should be provided.
3 Built in improvement mechanisms	Each jurisdiction should systematically and actively review its policies and objective rules and tests to ensure that they remain relevant, effective, efficiently administered, and consistent across the jurisdiction.
4 Track-based assessment	Development applications should be streamed into an assessment "track" that corresponds with the level of assessment required to make an appropriately informed decision. The criteria and content for each track is standard. Adoption of nay track is optional in any jurisdiction, but it should remain consistent with the model if used.
5 A single point of assessment	Only one body should assess an application, using consistent policy and objective rules and tests. Referrals should be limited only to those agencies with a statutory role relevant to the application. Referral should be for advice only. A referral authority should only be able to give direction where this avoids the need for a separate approval process. Referral agencies should specify their requirements in advance and comply with clear response times.
6 Notification	Where assessment involves evaluating a proposal against competing policy objectives, opportunities for third-party involvement may be provided.
7 Private sector involvement	Private sector experts should have a role in development assessment, particularly in: <ul style="list-style-type: none"> › undertaking pre-lodgement certification of applications to improve the quality of applications. › Providing expert advice to applicants and decision makers. › Certifying compliance where the objective rules and tests are clear and essentially technical. › Making decisions under delegation.
8 Professional determination for most applications	Most development applications should be assessed and determined by professional staff or private sector experts. For those that are not, either: Option A – Local government may delegate DA determination power while retaining the ability to call-in any application for determination by council. Option B – An expert panel determines the application. Ministers may have call-in powers for applications of state or territory significance provided criteria are documented and known in advance.
9 Applicant appeals	An applicant should be able to seek a review of a discretionary decision. A review of a decision should only be against the same policies and objective rules and tests as the first assessment.
10 Third-party appeals	Opportunities for third-party appeals should not be provided where applications are wholly assessed against objective rules and tests. Opportunities for third-party appeals may be provided in limited other cases. Where provided a review of a decision should only be against the same policies and objective rules and tests as the first assessment.

An eleventh leading practice, "continuous improvement", was added as a result of a Benchmarking Program. This practice refers to the collection of performance indicators and their usefulness in providing valuable data to indicate the "health" of a planning system by highlighting resourcing issues, blockages or underperformance.⁸⁴

Of key importance to the NCA is the practice that advocates “track-based” assessment. Here development applications are streamlined into an assessment “track” that corresponds with the level of assessment required to make an appropriately informed decision.⁸⁵

The leading practice model identifies six tracks: exempt, prohibited, self assess, code assess, merit assess, and impact assess. The relevant “track” for assessing an application is intended to be directly related to the complexity of the project and its impact on the natural and built environment.

The use of “tracks” is particularly useful in eliminating the need for an approval authority to give consent to low risk, low impact proposals. As an example, the DAF leading practice model states that development that has a low impact beyond the immediate site and does not affect the achievement of any policy objectives should not require development assessment.

The PALM Act is all-encompassing in regard to the work that requires approval from the NCA. This means that in addition to major construction works and buildings within Designated Areas, the NCA is also required to grant approval for minor works. This has been a particular point of contention for the ACT Government because it is required to seek works approval from the NCA where these works occur on Territory Land in a Designated Area.

While it is obviously not desirable to remove the need for the NCA to approve any works within areas such as the Parliamentary Zone, there is a number of areas where the ACT Government (or indeed private entities) could carry out some works without the need for referral to the NCA. This could include minor works within the Inner Hills (such as the construction of fire trails, and provision of seating within Canberra Nature Park), or minor works within the residential areas of Deakin and Forrest. A review of the National Capital Plan and the application of track-based assessment could establish objective rules and/or criteria so that works conforming to the requirements of the National Capital Plan could then in effect be “self-assessable”.

The use of assessment tracks in this way has the potential to reduce the need for low risk applications to go through a full assessment process. The PALM ACT would likely need to be amended to either amend the definition of works, or recognise that only works in certain assessment tracks require approval.

The DAF recognises that full application of the leading practice model may not be appropriate in all circumstances, instead referring to the model as a toolkit that can be adapted by jurisdictions to suit their specific needs. Over time, however, adoption of the model by jurisdictions across Australia will result in harmonisation of development assessment systems. Importantly for the ACT, the two planning jurisdictions and their systems will become increasingly aligned.

Having regard to the above, the Review concurs with the JSC and recommends:

RECOMMENDATION 12

In the interest of improving uniformity between the two planning systems, the DAF Leading Practice Model for Development Assessment be assessed by the NCA for its relevance and application to the National Capital Plan.

85 DAF leading practice model, page 17.

CHAPTER FIVE: DEVELOPING, MAINTAINING AND ENHANCING THE NATIONAL CAPITAL

“The city cannot be dumped down in a day like a tent. First the laying out of a great city – a city not for tomorrow or for next year, but for all time: a city unique in its beauty and utility, with broad avenues intersecting its regular squares with frequent reservations of grass, flowers and fountains, with its trees and parks, substantial business houses, and sightly dwellings, its schools, universities, galleries and museums, its monuments and public buildings, its noble rivers and picturesque landscape... Our federation will live and grow, and with that growth we shall have a Capital expanding with every turn of the prodigious wheel of which it will be the axle.”⁸⁶

CURRENT ARRANGEMENTS

The NCA's vision is “A National Capital which symbolises Australia's heritage, values and aspirations, is internationally recognised, and worthy of pride by all Australians.”⁸⁷

Section 6 of the PALM Act provides for the NCA to, with the Minister's approval and on behalf of the Commonwealth, manage National Land designated in writing by the Minister as land required for the special purposes of Canberra as the national capital.

On National Land managed by the NCA such works include maintenance (to address safety and public amenity), works to enhance or maintain prior Commonwealth investment in national assets (refurbishment of monuments and fountains), core infrastructure and services (roads, parking, pathways and lighting) and development of the landscape setting for new building sites, public parks and places, commemoration and celebration.

CAPITAL WORKS

The Australian Government delivers capital works in the national capital through a variety of agencies and methods. There are some 14 Australian Government agencies responsible for commissioning works within Designated Areas, and seven in the Parliamentary Zone alone.⁸⁸ In the past four years, the Australian Government through these agencies has invested more than \$1 billion in the central areas of the city.

⁸⁶ Austin Chapman MHR, Minister for Trade and Customs, 1908.

⁸⁷ http://www.nationalcapital.gov.au/index.php?option=com_content&view=article&id=131&Itemid=167&limitstart=1.

⁸⁸ National Capital Authority; Department of Parliamentary Services; Department of Finance and Deregulation; National Library of Australia; Department of Innovation, Industry, Science and Research; High Court of Australia; National Gallery of Australia; Department of Sustainability, Environment, Water, Population and Communities; Department of Defence; Australian War Memorial; National Museum of Australia; Department of the Prime Minister and Cabinet; Australian Institute of Aboriginal and Torres Strait Islander Studies; Office of the Governor-General.

The NCA advocates for new national public works to enhance the national capital, and if these are approved, manages their design and construction. The NCA also recommends and manages the protection and replacement of existing national assets as necessary.

For example, the NCA has advocated significant core infrastructure works that it considers essential to accommodate sustainable development in the national capital. A key example is the upgrade of the Kings Avenue/ Parkes Way intersection. Separate funding is received for some of these major works.

The NCA receives a capital injection of approximately \$10 million per annum for the construction of new minor public works and replacement of existing assets. Works carried out by the NCA on National Land include core infrastructure and services, memorials and artworks, and the development of parks, gardens and new public places.

In recent years, the NCA has undertaken, or is currently undertaking, significant capital works projects, including:

- › RG Menzies Walk reconstruction;
- › the Humanities and Science Campus;
- › Parliamentary Zone Kiosks;
- › Australians of the Year Walk;
- › the Kings Avenue overpass;
- › Australian Peacekeeping Memorial;
- › various commemorative works; and
- › public artworks.

The NCA's capital works role is critical to ensuring national public assets continue to be created and maintained to an appropriate standard. This statutory function is intended to meet user's expectations and support appreciation and understanding of the role of the national capital and Australian democracy.

ASSET MANAGEMENT

On behalf of the Australian Government, the NCA develops, manages and maintains assets valued at \$738 million (Administered) at 30 June 2011.⁸⁹

Most of the NCA's assets are maintained under competitively tendered contracts. They represent some of the most nationally and culturally significant landscapes and attractions, including:

- › the Parliamentary Zone (excluding the Parliamentary Precincts);
- › Anzac Parade and its memorials;
- › Lake Burley Griffin and Scrivener Dam;
- › Commonwealth and Kings Parks (including Aspen Island and the National Carillon);
- › Acton Peninsula;
- › Yarramundi Reach⁹⁰;
- › Stirling Ridge; and
- › the Diplomatic Estates in Yarralumla, Deakin and O'Malley.

Associated assets include the Captain Cook Memorial Jet, fountains, national monuments, public artworks, large areas of landscape infrastructure (paths, lighting, signage) and civil infrastructure (roads, bridges and street lighting).

89 Personal communication with the NCA.

90 Although public submissions were not sought for the purposes of this Review, a submission from Friends of Grasslands raised the issue of management of grassy ecosystems on National Land managed by the NCA. This specifically included the management of Yarramundi Reach and Stirling Ridge.

While the NCA controls all development in Designated Areas and can approve or reject individual proposals for works in those areas, it does not have direct responsibility for the construction and maintenance of all the buildings and assets contained in these areas. Generally speaking, the assets for which the NCA has sole responsibility can be described as non-building assets (such as parklands) and non-office buildings (such as the National Carillon and Blundells Cottage).

The national assets for which the NCA is responsible include some of the National Capital's most significant national and cultural landscapes and attractions, including Lake Burley Griffin, Anzac Parade and a large number of memorials. The need for the NCA to develop new national assets (rather than operating and maintaining existing ones) occurs relatively infrequently.

The JSC suggested that the Australian National Audit Office (ANAO) undertake an audit of the *“administration, efficiency and effectiveness of the operation of the National Capital Authority.”*

In 2007-08, the ANAO issued Performance Audit Report No. 33 into the NCA's management of national assets (see Attachment I for the recommendations of this Report). This included examining its asset management systems and the management of selected contracts that the NCA has in place to maintain specific assets.

The Audit found that the NCA:

- › has generally appropriate asset management policies and a documented asset management framework;
- › needed stronger governance arrangements in relation to both asset maintenance and contract management;
- › lacked a functional, computerised asset management system;
- › due to decreased funding, major non-routine maintenance tasks had not been carried out; and
- › needed to ensure that any identified shortcomings in the condition of national assets are brought to attention and addressed in a timely manner.

“The issue of responsibility for management of Lake Burley Griffin was raised in a number of consultations, and discussions are now underway involving the National Capital Authority, ACTEW, and relevant ACT Government Agencies. Given that ACTEW is already responsible for water above the Lake in Googong Dam, as well as below Scrivener Dam including the Lower Molonglo Water Quality Control Centre, it would be sensible for it to be responsible for the Lake as well. One issue that needs to be settled in this context is responsibility for maintenance of Scrivener Dam itself.

*This responsibility would extend to issues including the operation of the Captain Cook Memorial Jet at Regatta Point, the operation of which has been limited in recent years as a result of National Capital Authority funding restrictions.”*⁹¹

As Chief Minister for the ACT, Jon Stanhope was concerned about the operation of the Captain Cook Memorial Jet being confined to two hours daily, from 2.00pm to 4.00pm.⁹² The NCA itself is not satisfied with the current operating hours of the jet, and any future funding proposal will make provision for the jet to operate a minimum of five hours per day.

The water jet and three metre sculptured terrestrial globe depicting Captain Cook's voyages were inaugurated by Queen Elizabeth II in 1970 to commemorate the bicentenary of Captain Cook's discovery of the east coast of Australia.

91 Governing the City State: One ACT Government – One ACT Public Service.

92 Special extended operating hours exist for major public events such as Australia Day and Canberra Day.

In 1988, the permanent Parliament House was opened by Queen Elizabeth II, 61 years to the day after her father the Duke of York (subsequently King George VI) opened the provisional Parliament House in Canberra on 9 May 1927.

THE DIPLOMATIC ESTATE

ANAO Performance Audit Report No. 33 also looked at the NCA's administration of diplomatic leases.

There is a long-standing administrative practice (not endorsed by Government) of offering foreign countries wishing to establish an embassy or high commission in Canberra a choice between paying once, up front for a lease, or paying rent each year.

According to the ANAO, if all missions had been required to pay rent on an annual basis, the Australian Government would have collected some \$385 million more in revenue than it will have over the 99 year terms of the leases.

With the NCA strapped for cash there is potential for rent from diplomatic leases to be reallocated to assist land management. This seems a no brainer, but despite an ANAO recommendation the NCA, Department of Finance and Deregulation and Department of Foreign Affairs and Trade (working together as an Inter-Agency Committee) have not put forward options for consideration by Government to balance both revenue and foreign policy considerations.

RECOMMENDATION 13

Unless the Inter-Agency Committee reaches an alternate conclusion before the end of 2011, the Government adopt a policy position whereby all new embassies and high commissions established in Canberra are required to pay annual rent and that rent.

COORDINATION BETWEEN AUSTRALIAN GOVERNMENT AGENCIES

With 14 separate agencies undertaking capital works within the same general geographic area, and without any formal mechanism to coordinate works, there are bound to be inefficiencies in delivery of, and expectations of quality in, capital works. The NCA has clearly articulated the issues that can arise with the current arrangements:

"... agencies act independently from one another and make separate capital works bids to Government. In the experience of the NCA, frequently the importance of space between the works (the public realm) and the significant implications for the off-site infrastructure (e.g. roads, sewers) is ignored or understated in the presentation of these bids to Government.

The Commonwealth agencies also adopt variable design and construction standards and different delivery mechanism. This lack of coordination and consistency results in patchy outcomes and diminishes the potential for the excellent design.

*Some of these other Commonwealth agencies have (design and construction) professional staff to assist them in the delivery of these projects. Many do not and rely solely on external consultant advice. In the experience of the Authority (in assessing their associated development applications) agency officers do not always understand the details of implications of the advice they are being given. Even with the best intentions by individual agencies, whole of Government opportunities for effective use of resources and excellence in design outcomes can be and are lost."*⁹³

In short, the Commonwealth's management of capital works in Designated Areas is inefficient, does not achieve high quality design outcomes and is not an effective use of Commonwealth resources.

The Taskforce on the Commonwealth's National Capital Responsibilities concluded that there is a role for a single agency to act as a moderator or "expert client" to assist delivery of major capital works in the national capital.⁹⁴ This agency could facilitate better outcomes through the application of consistent design, construction and maintenance standards. Participation on capital works steering committees and working groups would be required.

Importantly, the agency in the "expert client" role would ideally coordinate a prioritised program of capital works.

The Department of Finance and Deregulation has the capacity and professional experience and skills to undertake major capital works projects. This includes both within Canberra and around Australia. With this expertise in major project delivery, the Department of Finance and Deregulation could continue to undertake the delivery of major works, with the NCA as "expert client" acting in the national interest. The NCA would continue to hold responsibility for delivery of specialist works.

Alternatively, it makes sense for the agency responsible for planning also to be responsible for capital works. Potential efficiencies would be created with one agency responsible for planning, maintenance and capital works.

RECOMMENDATION 14

The NCA become the sole Commonwealth agency responsible for capital works within Designated Areas.

94 Taskforce on the Commonwealth's National Capital Responsibilities, page 26.

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CHAPTER SIX: FOSTERING AWARENESS OF THE NATIONAL CAPITAL

“Canberra is the only Australian city in which all Australians share a common interest and which, through its sites and events, can give tangible meaning to our common national experience.

“... national capitals – they confer a broad-based and very public visibility to the great achievements of the country.

“... notion and the sense that Canberra can be true to its name and be a “meeting place”, not just for Parliament but for all Australians.” ⁹⁵

BACKGROUND

In 2008, the JSC recommended that the role of the NCA be clarified to include promotion of the national cultural icons located in the Central National Area.

“The NCA’s role in promoting Canberra (including the national institutions) in a coordinated program with ACT Tourism, should also be considered. The Commonwealth Government has an obligation to fund the delivery of its responsibilities to the national capital not only in relation to municipal maintenance and the operation of national attractions for which it is responsible, but also in funding promotion of Canberra as the national capital.” ⁹⁶

Moreover, the Commonwealth’s National Capital Responsibilities Taskforce recommended that in order to ensure that Australians understand the significance and role of the national capital:

- the agency responsible for protecting the national capital significance through planning, design and construction and estate management also be responsible for “fostering awareness” of the national capital, as the agency with the most direct, up-to-date and practical knowledge of the national capital;
- for the sake of clarity, the definition of “foster awareness” in section 6(e) of the PALM Act (as being the express statement of the Commonwealth’s responsibility in this area) be changed to “to foster awareness of the national capital by informing and educating Australians and visitors about its significance and role” (replacing “to foster an awareness of the national capital”); and
- the responsible agency prepare a five-year plan of information and education activities for the Minister’s agreement.

⁹⁵ Rupert Myer, Australia Forum Launch, 11 April 2011.

⁹⁶ Governing the City State: One ACT Government – One ACT Public Service.

CURRENT ARRANGEMENTS

Section 6 of the PALM ACT prescribes one of the NCA's key functions as to "foster an awareness of Canberra as the national capital." ⁹⁷ Of all the NCA's functions, this role is the least well-defined and most problematic.

The NCA currently considers that its role lies in:

"... promoting awareness, understanding and appreciation of the role of Canberra as the National Capital. This responsibility complements and informs the NCA's other roles of planning, capital works and land management, and provides an excellent balance to the cultural programs of the national institutions.

The NCA takes a strategic approach to fostering an awareness of the capital through research, by encouraging participation, appreciation and celebration in the national capital, by providing information and education about the Capital, and by promoting the attributes of Canberra that are of national significance." ⁹⁸

The NCA's program to foster awareness of Canberra as the national capital currently involves a broad spectrum of promotion strategies, projects and services, including:

- › outreach programs;
- › education kits that provide primary and secondary school students with information about aspects of Canberra's history and the role of the national capital through interactive online activities linked to school curriculums;
- › a library of specialist resources that archives and provides a comprehensive history of the planning and development of the national capital. Unfortunately, the NCA can no longer afford to employ a librarian to manage the collection; and
- › a volunteer program through which the NCA operates interpretive and horticultural volunteer programs. One stream of volunteers act as interpretative guides at the Regatta Point National Capital Exhibition and Blundells Cottage to help visitors understand and appreciate these facilities, as well as providing tours of Anzac Parade, Old Parliament House and the National Carillon at various times over the year. The other stream of volunteers undertakes the maintenance of garden beds at the Old Parliament House Gardens.

OUTREACH

A key aspect of this outreach program is the National Capital Exhibition located at Regatta Point in Parkes.

The National Capital Exhibition:

"... tells the story of Canberra ... through interactive displays, the Exhibition illustrates Canberra's vital role as a symbol of Federation. It features the people, events, history and design which contributed to the development of this unique, modern, fully planned capital city." ⁹⁹

97 Section 6 PALM Act.

98 National Capital Authority.

99 See http://www.nationalcapital.gov.au/index.php?option=com_content&view=article&id=235&Itemid=196

Having regard to the above the Review recommends:

RECOMMENDATION 15

Section 6(e) of the PALM Act be amended to read:

“to foster awareness of the national capital by informing and educating Australians and visitors about its significance and role.”

RECOMMENDATION 16

The NCA prepare a five-year plan of information and education activities for the Minister’s agreement.¹⁰⁰

CAPITAL’S ALLIANCE

The Capital’s Alliance is a group of four contemporary planned national capitals – Ottawa, Washington DC, Brasilia and Canberra – formed in 2002 to provide the opportunity to share visions and ideas for national capitals in the 21st century, and to discuss the challenges unique to national capitals. Issues discussed between the four cities have included urban planning and design, programming for national events, commemoration policies and security.

The NCA’s professional reputation and membership of the Capital’s Alliance has led to invitations to address and advise other nations building federal administrative centres, such as Seoul, Abu Dhabi and Tshwane.

The NCA has been unable to send a representative to Capital’s Alliance meetings since 2008, due to cost implications and work commitments.

The Government might wish to consider funding the NCA to host a Capital’s Alliance meeting in 2013 to coincide with the Centenary of Canberra.

CENTENARY OF CANBERRA

Previous landmark national celebrations have attracted significant Commonwealth support. The Bicentenary of Australia received a total appropriation of \$200 million from Commonwealth sources, including \$136 million allocated to the Australian Bicentennial Authority.

Centenary of Federation celebrations attracted \$58 million in direct funding support from the Commonwealth. In addition, the Commonwealth set up a \$1 billion Federation Fund to provide a lasting legacy. This was divided between three separate programs: major Federation Fund projects \$900 million; federation cultural and heritage projects \$70 million; and federation community projects \$30 million.

The National Commission on the Commemoration of the Anzac Centenary was appointed on Anzac Day 2010 to identify the broad themes, scale, scope and shape of what a commemorative program for the Anzac Centenary period from 2014 to 2018 might look like. The six members of the Commission (including former Prime Ministers Fraser and Hawke) submitted their Report on 28 March 2011.

On 12 March 2013, Canberra will celebrate 100 years since its naming as the national capital of Australia. In 2008, a MOU was signed between the ACT Government and the Commonwealth agreeing to a joint approach to the significant and timely planning of the Centenary celebrations. As of March 2011, the Commonwealth funding commitment stood at \$106,000.

.....
100 The Reviewer believes a seven year cycle is the optimum period.

This year's Budget committed a further \$20 million over four years directly to the ACT Government for the National Arboretum as per the Commonwealth's gift to the ACT for Canberra's centenary in 2013.

An additional \$6 million over three years was committed to a joint national program of activities with the ACT Government.¹⁰¹

By contrast with the abovementioned commemorations, the contribution to the Centenary of Canberra might be perceived as parsimonious, if that was all there was to be.

Although other proposals are under consideration, it might be worthwhile establishing a Commission along the lines of the Anzac Centenary to report to Government on the Centenary of Canberra.

The Commission, could, among other things, consider:

- › a Centenary grant program to provide for selected capital works projects within national cultural institutions to support upgrades to exhibition spaces and foster travelling exhibitions; and
- › digitisation of collections held by national cultural institutions (providing content and profile for the roll out of the National Broadband Network). Access to the national cultural institutions is a critical element in the delivery of content on Australian democracy and Australia's cultural heritage within the new National Curriculum.

In this context, two separate proposals currently on foot seem to be aimed at a very similar outcome.

The first proposal, which received \$300,000 of Commonwealth Government funding in 2010, involves a multi-faith National Institute for Inclusion. This incorporates a Great Space for National Commemoration, a major focus of which would feature atonement and reconciliation with indigenous Australians.

The second proposal, initiated by the Canberra Business Council, involves an "Australia Forum" – establishment of a world-class meeting facility in the national capital.

A joint effort by these two groups would have a better chance of realising their joint dream. Minister Crean might consider brokering an outcome along these lines.

NCA PROMOTIONAL ACTIVITIES

In the past, the NCA has contributed to the operation of a number of successful events in Canberra, including Australia Day Live, Australia Day in the Capital, Tropfest, Summer in the Capital, Winter in the Capital and the Canberra Biennial.¹⁰²

The role of promoting or fostering an awareness of Canberra as the national capital should not, however, be primarily about providing entertainment to local residents.

Over the years, there have been various interpretations and expectations which may lead to duplication with the marketing and education initiatives of other Commonwealth agencies and of ACT Government tourism. By virtue of Schedule 4 of the *Australian Capital Territory (Self-Government) Act 1988*, the ACT Government has responsibility for governing matters relating to tourism. In 2008 the JSC made the important distinction between "promotion" and "tourism".

Significant cuts to promotional events, activities and programs have occurred since 2008. This includes withdrawing funding for key events such as the Australia Day Live concert; reducing promotional publications; reducing visitor services at the National Capital Exhibition; and ceasing the travelling exhibition of the Capital.

101 Budget Paper No. 2 *Expense Measures, Regional Australia, Regional Development and Local Government*
http://www.budget.gov.au/2011-12/content/bp2/html/bp2_expense-19.htm

102 National Capital Authority, 2007, *Annual Report 2006-07*, NCA, Canberra, page 54.

RECOMMENDATION 17

The NCA's role in "promotion" be clarified to identify the Commonwealth's role as informing and educating Australians and visitors about the significance and role of the national capital.

THE EFFICIENCY DIVIDEND

The announcement of the Australian War Memorial (AWM) funding package in this year's budget brought to public attention the resource constraints impacting on national cultural institutions as a result of the efficiency dividend.

The AWM will receive an additional \$33.9 million over four years to allow the institution to maintain its current level of activities and provide supplementation for the anticipated increase in demand for research services, education programs and historical advice in the lead up to, and beyond, the Anzac Centenary.¹⁰³ An additional one-off payment of \$1.7 million has also been allocated to the AWM to be used to commence planning for a new World War I Gallery.

The temporary increase in the efficiency dividend to 1.5% will contribute to the Government's objective of returning the budget to surplus by 2012-13 at which time it is scheduled to revert to 1.25% per annum.

In these circumstances, it may be worthwhile revisiting the vexed question of paid parking throughout the National Triangle.

This might also be accompanied by additional two hour parking spots around the national institutions to facilitate better access to them by visitors, as well as more regular operations by parking inspectors.

NATIONAL CAPITAL EDUCATION PROGRAM¹⁰⁴

After the budget has returned to surplus in 2012-13, Minister Crean with Senator Evans and Minister Garrett might wish to sponsor the following as a proposal for consideration during the 2013-14 Budget deliberations or in the context of the National Cultural Policy.

Over the past eight years there has been a significant increase in the number of school students visiting the national capital to participate in programs at the national cultural institutions. In the year 2000, just over 100,000 students were visiting the national capital; by the end of 2010 this had increased to almost 165,000 students per annum. This increase in visiting students will continue as the teaching of civics, citizenship and Australian history becomes a major focus in school education.

The national capital is the premier excursion destination in Australia. The national cultural institutions have a pivotal role in exposing students to the key elements of Australian democracy and extraordinary cultural heritage. The national institutions assist teachers to deliver curriculum outcomes. This has become evident by the popularity and continual increase of school visitation to the national capital over the last few years.

The largest group of student visitors are predominantly from the final years of primary school, the next largest being secondary year level 9/10.

The focus of a primary excursion is on government, civics and citizenship, with some Australian history. A typical year 9/10 level excursion explores specific parts of Australian history, culture or politics. The national cultural institutions currently offer different programs related to age levels or curriculum requirements and have the ability to tailor to specific educational needs.

103 Budget Paper No. 2, *Expense Measures, Veterans' Affairs*
http://www.budget.gov.au/2011-12/content/bp2/html/bp2_expense-23.htm

104 Based on discussion with an information provided by David Headon.

When a school group visits the national capital the aim is to maximise its experience of as many national institutions as possible. Currently school groups stay on average three days and visit at least eight institutions or attractions.

The national cultural institutions that provide these education programs for visiting students have absorbed the significant increase in student visitors with reduced or no additional funding.

At present, it is extremely difficult to secure education program bookings at the Parliamentary Education Office, Electoral Education Centre and Old Parliament House from July to November each year because of the steady increase in the number of visiting schools. Staffing and space issues are already seriously impacting on the ability to provide these vital civics and citizenship programs. A number of institutions have developed complementary education programs, but the decrease in funding has made it hard for them to deliver the programs effectively.

The proposal is to boost the education capacity of 19 national cultural institutions in the form of a modest supplement of \$1 per student, based on the number of visiting students to each institution.

As an example, if 45,000 students visited and participated in an education program at the National Film and Sound Archive in any given year, the supplementary funding for that institution would be \$45,000 to be used towards further resources for their education program.

Those attractions that currently attract low visitation (under 30,000 students) would receive a flat rate of \$30,000 to encourage growth.

The following table identifies the institutions that would be involved:

TABLE 4: INSTITUTIONS TO BE INVOLVED IN THE NATIONAL CAPITAL EDUCATION PROGRAM

	NATIONAL INSTITUTION	PORTFOLIO
1	Australian Institute of Sport Australian Sports Commission	Department of the Prime Minister and Cabinet
2	Australian National Botanic Gardens	Department of Sustainability, Environment, Water, Population and Communities
3	Australian War Memorial	Department of Veterans' Affairs
4	Electoral Education Centre, Canberra Australian Electoral Commission	Department of Finance and Deregulation
5	CSIRO Discovery Centre CSIRO	Department of Innovation, Industry, Science and Research
6	Geoscience Australia	Department of Energy, Resources and Tourism
7	Government House	Department of the Prime Minister and Cabinet
8	High Court of Australia	Attorney-General's Department
9	National Archives of Australia	Department of the Prime Minister and Cabinet
10	National Capital Exhibition National Capital Authority	Department of the Prime Minister and Cabinet
11	National Film and Sound Archive	Department of the Prime Minister and Cabinet
12	National Gallery of Australia	Department of the Prime Minister and Cabinet
13	National Library of Australia	Department of the Prime Minister and Cabinet
14	National Museum of Australia	Department of the Prime Minister and Cabinet
14	National Museum of Australia	Department of the Prime Minister and Cabinet
16	Old Parliament House	Department of the Prime Minister and Cabinet
17	Parliamentary Education Office	Department of the Senate
18	Royal Australian Mint	The Treasury
19	Questacon – National Science and Technology Centre	Department of Innovation, Industry, Science and Research

Based on the current expectation of student visitor numbers to each of the 19 institutions listed, this proposal would cost no more than \$8 million over four years (\$2 million per annum).

Each institution would provide a formal statement of the number of visiting students and schools participating in their education programs, on a quarterly basis. Additional funding would then be used to supplement marketing, education program development, and training and professional development of educators.

To be eligible for additional funding, each institution would have to agree that this funding be directed to the sections that deliver education programs, and that it not adversely impact on the appropriation already received by the institution (or the education section).

Administration of the funding could be provided by the National Capital Educational Tourism Project (NCETP). The NCETP is a partnership program that promotes the importance of school excursions to the national capital to schools throughout Australia. The NCETP partners with the 19 institutions referred to above in the delivery of program marketing activities.

The NCETP currently administers the Parliament and Civics Education Rebate (PACER) for the Department of Education, Employment and Workplace Relations (DEEWR). PACER provides funding assistance to schools visiting the national capital for civics and citizenship excursions. The NCETP was instrumental in the development of PACER, and has effectively administered the program since July 2006.

The NCETP also monitors the impact of school excursions to the national capital through commissioned research that collects student visitor numbers and customer feedback. The University of Canberra's Centre for Tourism Research currently provide this service for the NCETP.

The NCETP, which is uniquely positioned to assist with the administration of this proposal, would:

- › collect accurate student visitor numbers from each of the 19 national cultural institutions on a monthly basis;
- › based on the collected visitation, recommend the funding amount for each institution to be paid quarterly; and
- › monitor the funding, ensuring that it is spent specifically on the 19 institutions education sections as intended.

A similar model is used in the administration of PACER and this could be applied to this program with the NCETP assessing each institution's visitation and then making payment recommendations to DEEWR.

The national cultural institutions in Canberra provide an outstanding complement to classroom education, particularly in the areas of civics and citizenship, and Australian history and heritage. This is clearly evident in the increase in the number of schools visiting the national capital each year to experience curriculum related programs.

This proposal would demonstrate the Australian Government's recognition and support of the crucial work of the national cultural institutions in helping to provide quality education. Students visiting Canberra can continue to access their cultural heritage, learn first hand how their democracy works and how it has shaped their nation and become better informed Australian citizens of the future.

To some, it seems ironic that the Commonwealth should have contributed \$13 million to the Sydney Museum of Contemporary Art at the very same time it was applying stringent financial discipline to its own national institutions. The hope is that the forthcoming National Cultural Policy will provide at least a medium term strategic vision for the arts and creativity.

CHAPTER SEVEN: GOVERNANCE AND ACCOUNTABILITY

“All subsequent Australian political history will concentrate its searchlight on this spot where we congregate, a magnetic centre of attractions to the eyes of countless generations still unborn, and for ever the visible evidence of Australia’s notional destiny.” ¹⁰⁵

CURRENT ARRANGEMENTS

Section 33 of the PALM Act prescribes the constitution of the NCA Board, which currently consists of a Chairman, Chief Executive and three other members. The Chief Executive is a full-time member, while the other four members serve on a part-time, non-executive basis.¹⁰⁶

The Chief Executive manages the affairs of the NCA under general direction of the Board and has responsibility under the *Financial Management and Accountability Act 1997* (FMA Act) and as head of agency under the *Public Service Act 1999* (Public Service Act).

The Chairman and other Board members do not have any responsibilities under the Public Service Act or the FMA Act and therefore have no corporate responsibility and no responsibility for the management of NCA resources, including staff.

In 2008, the JSC described the current unusual arrangement as follows:

“Under the existing governance arrangements, the Chief Executive is responsible for the day-to-day administrative functions of the organisation and is accountable to the Minister for Home Affairs. Yet, under the Australian Capital Territory (Planning and Land Management) Act 1988 (PALM Act), the Minister cannot direct the NCA Board, which includes the Chief Executive.” ¹⁰⁷

Evidence given at the 2008 JSC inquiry indicated that if the NCA were being set up today it would not be set up the way it was.¹⁰⁸

The 2008 JSC Report recommended changing the governance arrangements of the NCA to give more independence to the NCA Board commensurate with its status as a statutory authority. It went on to argue that persons appointed to the Board should have qualifications or expertise relevant to a field related to the NCA’s functions.

105 King O’Malley, 12 March 1913.

106 Section 33 of the PALM Act describes other constitutions of the board where a Chairperson is appointed on a full-time basis.

107 2008 JSC Report, page 32.

108 2008 JSC Report, page 34.

COMMENTS FROM SUBMISSIONS

The Association of Consulting Architects Australia supports a strong NCA for its ongoing benefits to the Commonwealth, including:

- › the Griffin Legacy for the national capital must be maintained through strategic planning for the whole of the ACT. This is the key reason for maintaining and adequately funding the NCA; and
- › during the last decade the Commonwealth has lost most of its skills in Urban Infrastructure and Urban Design. The NCA is perhaps the last Commonwealth body that exercises and promotes quality of urban design through its key role in the ACT. This expertise may be extended as a design resource for Commonwealth agencies.

The Planning Institute Australia (PIA):

“... believes that the Commonwealth should retain the over-riding responsibility : “to ensure that Canberra and the Territory are planned and developed in accordance with their national significance.”

Other recommendation from the PIA National Office to the 2008 JSC Inquiry are picked up throughout this Report.

Rodney Moss, Professor of Architecture at the University of Canberra argues that Canberra is commencing its third iteration:

1. *“Competition and commencement of construction in 1913.*
2. *Establishment of the NCDC and construction of the lake 50 years later.*
3. *Currently after 100 years of very significant growth and urbanisation of the city funded by the private sector. “There is an important and rare opportunity for the Federal Government to take advantage of the significant private investment in the city and take a strong lead in facilitating the appropriate development of those parts of the city which are of national interest. What is required now is a commitment to the next 100 years of the development of the National Capital to ensure all Australians can continue to see Canberra as their National Capital.*

“It is imperative that an appropriate National Perspective is maintained with respect to the planning and development of The National Capital. As an Architectural Practitioner I have always found the NCA to be professional and to have the quality and well being of The National Capital as their priority. From my point of view it remains imperative that a properly constituted Federal body looks after and funds those parts of the Capital which have national significance.

“It is clear that The National Capital has always flourished when the Prime Minister of the day has taken a special interest in its growth and development. The creation of the NCDC and construction of Lake Burley Griffin under Robert Menzies and the construction of Parliament House under Malcolm Fraser are clear examples. Neither would have occurred without their direct support.

“Canberra is currently in a phase of significant growth and change; however, we do not appear to have a national champion overseeing the national interest in the ACT.”

Other oral and written representations echoed these sentiments, including Tony Powell, the ACT Division of the Property Council of Australia, and the Canberra Business Council and kindred organisations.

Canberra and the NCA should be the examples of how to do it, with the Parliamentary Triangle playing a dominant symbolic role as the heart of the nation. It's the national capital where the quintessential Australian values should be represented in the national interest.

The Centenary of Canberra provides an ideal opportunity for a bipartisan approach to spell out what Australia stands for – parliamentary democracy, the rule of law, etc in this context.

CONSTITUTION OF THE BOARD

Previous inquiries have examined the composition of the NCA Board in terms of its membership, independence and accountability. A consistent theme has been the need to increase numbers from the current five to a maximum of seven (not including the Chairperson). The need for Board Members to be more representative of Australian states and territories, a requirement for appointees to have qualifications directly related to the functions of the NCA, and the status of the Chief Executive have also been contemplated.

In 2004, the JSC recommended that the PALM Act be amended to provide for an increase in the number of Board Members to six (excluding the Chair and Chief Executive), and that three of these members be appointed from other states and territories on a rotational basis. It also recommended that the full-time Chief Executive be appointed in an ex-officio role as a non-voting member of the Board.¹⁰⁹

The Government's response noted that responsible Ministers were to assess their portfolio statutory bodies against the principles and recommendations contained in the Review of the Corporate Governance of Statutory Authorities and Office Holders (the Uhrig report). No changes to the Board have resulted from the Uhrig Review or subsequent assessments of the NCA.

In 2008, the JSC similarly recommended that the PALM Act be amended to include the following provisions:

- › that the National Capital Authority Board consists of a Chairperson and seven members;
- › that a minimum of two National Capital Authority Board members be from the ACT region;
- › that a person appointed as a National Capital Authority Board Member by the Commonwealth Government must have qualifications or expertise relevant to a field related to the Authority's functions as set out in section 6 of the *Australian Capital Territory (Planning and Land Management) Act 1988*;
- › that the Chief Executive no longer have ex-officio status on the National Capital Authority Board; and
- › that the Chief Executive appointment should be made on recommendation of the National Capital Authority Board and be fully accountable to the Board.

The Government accepted the recommendation in part, and agreed in principle to amending the PALM Act to provide for a Board comprising a minimum of five and a maximum of seven members. The Government noted that it would consider the overall structure of the Board in the context of the IGC that would consider how best to align and streamline planning and land management. The IGC has, however, never issued a report.

This Review also believes that the NCA Board should be representative of the nation as well as recognising the needs of the local community.

While there might be some ideal model whereby each of the states and territories are represented on the NCA Board, either at any given point or on a rotational basis, Members' primary responsibilities are to the nation, not to their home state or territory. In addition, it is critical that Board Members be selected on merit, rather than a scenario where highly suitable candidates are restricted on account of geographical association.¹¹⁰

The need for a representative from Canberra is somewhat different. There is merit in requiring a member(s) of the Board to be from the immediate region.

109 2004 JSC Report, page 33.

110 2008 JSC Report, page 41.

Most State and Territory Governments have appointed a Government Architect. The Institute of Architects and the Australian Association of Consulting Architects¹¹¹ have recommended a similar position be established at the Commonwealth level, under the auspices of the Department of the Prime Minister and Cabinet, to:

- › provide the NCA with clear direction and advice in its role for the ACT; and
- › develop and coordinate the role of the NCA providing skills and support as an arm of the Commonwealth.

There is merit in that proposal, but it is essential that the NCA Board include representatives from professions like architecture, engineering and planning.

RECOMMENDATION 18

Board numbers be increased to seven, comprising a Chair, Deputy Chair, Chief Executive and four other members (one nominated by the ACT Government).

RECOMMENDATION 19

ACT Government nominate a member of the Board to represent the interests of the Canberra community.

RECOMMENDATION 20

The NCA Board should recommend the Chief Executive Officer to the Minister, for decision.

STATEMENTS OF EXPECTATION AND INTENT

The 2003 Uhrig Review – tasked with examining the structures for good governance, including the relationship between statutory authorities and the responsible Minister, the Parliament and the public – found that the governance arrangements of statutory authorities are unclear and inadequate.¹¹² In particular, the Uhrig review argued that there was scope for improvement in the authorities’ legislative framework and their relationship with the relevant Minister.

One of the key recommendations of the Uhrig report was that the Government should clarify the expectations of statutory authorities by Ministers issuing Statements of Expectations, authorities responding with Statements of Intent to be approved by the relevant Minister.

The NCA was issued with a Ministerial Statement of Expectations in 2006 and again in 2008, to which the agency responded with a Statement of Intent on each occasion. In 2008 the JSC noted that there was insufficient evidence to draw a conclusion as to whether the respective statements of expectations and intent contributed to improved accountability of the Chief Executive or NCA Board.

The 2008 Ministerial Statement of Expectations and NCA Statement of Intent are reproduced at *Attachment J*. Previous Statements have been reasonably broad, and do not go into a level of detail where there are clear deliverables for each of the NCA’s functions. An improved Statement of Expectations and Statement of Intent could formalise current practices without legislative change (such as referring draft amendments to the JSC for consideration), and require a higher level of accountability from the NCA.

111 Submission by Robert Peck AM, National President of Consulting Architects Australia, 16 May 2011.

112 Uhrig, J., 2003, *Review of the Corporate Governance of Statutory Authorities and Office Holders*, Canberra, page 60.

Minister Crean might turn his attention to this matter in the light of decisions about this Review's recommendations and the other matters drawn to his attention in this Report.

APPEARANCES BEFORE THE JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL AND EXTERNAL TERRITORIES

In 2008, the JSC recommended that the PALM Act be amended to require the Chair of the NCA to appear twice a year before the JSC. This was one measure recommended to enhance the NCA's accountability and introduce measures to allow for greater scrutiny of its operations. The Government accepted this recommendation in principle, noting that an appropriate mechanism to achieve the intent of the recommendation would be an amendment to the JSC's Standing Resolution of Appointment.

The Resolution of Appointment for the current (43rd) Parliament, passed by the House of Representatives and the Senate on 30 September 2010, does not require twice yearly appearances in front of the JSC by the NCA Chair.

The NCA has, however, taken it upon itself to implement the intent of the 2008 recommendation. Since 2009, both the Chief Executive and Chair have voluntarily appeared twice yearly before the JSC. This Review believes that approach to be more apposite.

If the Government wishes to formally recognise these appearances, the JSC Resolution of Appointment might be amended accordingly.

A NATIONAL CAPITAL CONSULTATIVE COUNCIL?

In 2008, the JSC recommended the establishment of a National Capital Consultative Council to provide a mechanism to permit the NCA and ACTPLA to receive input from time to time on a range of planning related matters.¹¹³ This would create a forum for views on planning and related matters to be expressed and conveyed. The Council would include representatives from the Commonwealth and ACT Governments, the community and business, and be co-chaired by the responsible Minister and the ACT Chief Minister.

The JSC further recommended tasks that the National Capital Consultative Council could include in its remit, including the formulation of a domestic and international tourism marketing plan for the national capital, and making recommendations to the Commonwealth Government for a policy to govern future locations of Commonwealth Government agencies in Canberra.

The establishment of a National Capital Consultative Forum, and its remit, should be considered by a reconstituted NCA Board in conjunction with the ACT Government.

113 2008 JSC Inquiry, pg 41.

LOCATION OF THE NCA

Some have argued the case for the NCA to be a statutory authority under the wing of the Department of the Prime Minister and Cabinet.^{114, 115}

Currently, the NCA is a statutory authority located under the Department of Regional Australia, Regional Development and Local Government which is itself located within the Prime Minister's portfolio with the added advantage of the Minister being in Cabinet and also responsible for the Territories and the Arts.

This Review sees no compelling reason to change current arrangements, but it would deserve consideration in future Machinery of Government changes if the current arrangements were to no longer apply.

114 The Association of Consulting Architects.

115 Rodney Moss, Professor of Architecture, University of Canberra.

CHAPTER EIGHT: PUBLIC PARTICIPATION AND TRANSPARENCY

“Am I rightly informed that when I was away the Treasury struck out this item of one million for the initial work on the lake?” The reply was yes... “Well, can I take it that by unanimous consent of Ministers the item is now struck in?”¹¹⁶

CURRENT ARRANGEMENTS

Consulting with the community and stakeholders is widely recognised as an important step in the plan making or plan amending process and when assessing a development application which does not reflect planning policy.¹¹⁷ Public participation provides an opportunity for stakeholders to have a say in decision-making and keeps the community informed about changes to their city or neighbourhood. Public participation facilitates more open and accountable decision-making, particularly where decisions impact directly on citizens.

Allowing for public participation also demonstrates a commitment from decision makers to inform, listen, acknowledge, consider comments and provide feedback on how decisions are made and community feedback dealt with.

All Australians should be given the opportunity to have a say in the planning and development of their national capital. Public participation on proposals by the NCA enables the agency to make informed decisions that more closely reflect the heritage, values and aspirations of the nation, and ensure the city continues to uphold its national significance.

The way in which the NCA undertakes public consultation has attracted significant criticism over the years. For the most part, the public has viewed the NCA's attempts at engaging with the community as unsatisfactory and not a genuine opportunity for the community to have a say about a proposal. In some instances, public consultation has been perceived as simply notifying the community of a proposal in the lead up to its finalisation, rather than actively engaging with the community at all stages of the process.

In 2004, the JSC concluded that the

“... issue of the consultation process employed by the NCA has been of concern to the committee for some time. Despite the committee relaying its concerns to the Authority, on the basis of complaints the committee has received, the situation does not appear to have been rectified ... the committee is particularly concerned that the Authority appears to consider that simply informing stakeholders of its proposal, rather than actively engaging in a two-way process, is sufficient consultation.”¹¹⁸

116 Prime Minister Sir Robert Menzies at a Cabinet Meeting in 1959. Menzies played a crucial role in the making of the national capital. At a time when Canberra's fortunes were arguably at their lowest ebb, he committed his Government to the task of creating a capital worthy of the nation. A courageous and visionary decision, Menzies interest and effectiveness in the development of Canberra was ... “for him a source of special pride.” (From the plaque beside Lake Burley Griffin which marks R.G. Menzies Walk).

117 Development Assessment Forum 2005.

118 2004 JSC Inquiry Report, page 105.

Four years later, the NCA's track record on public participation appeared to have changed little, with continued widespread community dissatisfaction. Perhaps of greater concern at this time was that the NCA's opinion of its consultation was broadly dissimilar to the views expressed by individuals publicly and through various JSC inquiries.¹¹⁹

Concerns about the adequacy of the NCA's consultation processes were again evident in the 2007 JSC inquiry into the Griffin Legacy amendments. To improve the transparency of the NCA's work, the JSC made a recommendation that all submissions to NCA consultation processes be made publicly available (subject to full approval by the submitter and compliance with relevant privacy principles).

The NCA has responded directly to this recommendation by providing a summary of each submission received (along with submitter details if agreed to by the individual or organisation making the submission) in its report on consultation completed at the conclusion of each public consultation period. These reports are available on the NCA's website and in hard copy if so requested.

Albeit, in 2008, the JSC still concluded that the NCA's record on consultation was generally poor. Individuals and community groups expressed concern that the NCA was inflexible and fails to even address the concerns raised through its community consultation processes. The Committee urged the NCA to apply continuous improvement to its consultation process.

AUSTRALIAN CAPITAL TERRITORY (PLANNING AND LAND MANAGEMENT) ACT 1988 AND THE NATIONAL CAPITAL PLAN

The PALM Act prescribes few requirements for public consultation, and then only pertaining to amendments to the National Capital Plan.¹²⁰ The few requirements in the Act do not prescribe the length of the consultation period, or mandate how information should be made available to the public. Inherent in this is the flexibility to set the parameters for consultation depending on the scope and complexity of the amendment.

The National Capital Plan itself also stipulates few requirements for public consultation, and then only for certain proposed works within designated areas.¹²¹ There are no statutory requirements for public consultation on Development Control Plans.

COMMITMENT TO COMMUNITY ENGAGEMENT 2010

With few statutory requirements to guide public consultation, in recent years the NCA has largely relied on non-statutory documents of its own devising to guide the extent and type of public consultation to be undertaken on particular issues. The first of these documents, the *Consultation Protocol*, was introduced in 2007 and was intended to formalise, clarify and provide guidance for the community and stakeholders and to ensure consistency in the application of consultation within legislative requirements.¹²²

119 2008 JSC Report.

120 The PALM Act contains requirements for public consultation on other matters, however these matters pertain to the transitional period between National Capital Development Commission Policies and the establishment of the National Capital Plan and the Territory Plan and are no longer relevant.

121 Public consultation is required under the National Capital Plan for residential development in the Deakin/Forrest residential area, a dual occupancy, for certain telecommunications facilities, and for Section 9 Barton.

122 NCA *Consultation Protocol 2007*, page 5.

The *Consultation Protocol* has since been superseded by the NCA's *Commitment to Community Engagement 2010* (the Commitment). The Commitment goes beyond describing public consultation requirements and aims to serve three purposes:

- › it expresses the NCA's commitment to better connections with the people of Canberra and the nation;
- › it provides an action plan for community engagement programs and activities; and
- › it formalises consultation requirements, the NCA service charter for planning and development approvals, and feedback and complaint handling procedures in one document.¹²³

The NCA intends the document to be an evolving statement about the way in which it communicates with, and relates to, people and organisations with an interest in the national capital. With this in mind, the Commitment is to be reviewed every two years.

The Commitment sets out standard requirements for public consultation on Works Approvals, Development Control Plans and amendments to the National Capital Plan. Such standards are aimed at providing certainty for the community, and ensure consistency in the application of consultation as required by the PALM Act and the National Capital Plan.

The NCA has also committed to trialling new public engagement techniques to reach a broader audience and to provide more open transaction of NCA decisions. Of particular note is the NCA's use of electronic media to engage with the community. Consistent with the E-government strategy that has emerged in recent years, and with Australian Government policy on community engagement,¹²⁴ the NCA in November 2010 launched its "Have Your Say" website – a site dedicated to disseminating information on topics on which the NCA wishes to seek public comment.

Since 2009, the NCA has hosted three public forums, with attendance at each of around 200 people. A variety of topics, nominated by the public, have been discussed, ranging from broad themes of planning and asset management to specific issues and NCA projects such as parking in the Parliamentary Zone, World War I and World War II memorials, the Brodburger caravan and the Bowen Place crossing.

Anyone may attend these public forums in person, however, in keeping with the NCA's commitment to trialling new online engagement mechanisms, the forum is streamed live over the internet and a record of the transcript is posted on the NCA's website after each event.

The NCA has also taken to publishing a public record of Board Meeting proceedings on the NCA website. In addition, each year the NCA intends to identify key issues that will be the subject of separate detailed consultations and help promote dialogue about the national capital.¹²⁵ These "key issue dialogues" will provide a platform for debate and analysis of emerging or challenging issues facing the city.

The NCA should be commended on its efforts to improve public participation and improve the transparency of its decisions. In 2008, the JSC noted that the legislative provisions and the (then) new consultation protocol seemed to provide a sound structure for public consultation. The situation has improved since this time as the NCA has moved towards more publicly accountable protocols for community engagement and public participation.

STATUTORY VERSUS NON-STATUTORY REQUIREMENTS

The NCA operates in perhaps one of a few jurisdictions where public consultation requirements (for the most part) are not embedded within legislation or other statutory documents.

123 NCA *Commitment To Community Engagement 2010*.

124 For further information on whole of government developments, see "Engage: Getting on with Government 2.0" Report of the Government 2.0 Taskforce, December 2009.

125 NCA *Commitment To Community Engagement 2010*.

The JSC initially tried to address this perceived deficiency in the PALM Act in 2002 through their inquiry into National Capital Plan Draft Amendment 39 for the Deakin/Forrest residential area under NCA control. The JSC recommended that the PALM Act be amended to require public consultation by the NCA in relation to works proposals in Designated Areas.¹²⁶

The then Government did not accept this recommendation. While noting that works within the residential area subject to the amendment should be (as far as possible) required to be notified in a similar manner to works in other residential areas of the ACT, the PALM Act did not need to be amended to achieve this.

The Government response noted that many of the applications for works approval in Designated Areas involved works undertaken by the Commonwealth (including national institutions), the Territory Government, the Diplomatic community, and other significant bodies. The JSC considered that where adjoining lessees could be affected then consultation could be undertaken, essentially as part of “good neighbour” relations. Again, no legislative change would be required for this to occur.

Embedding requirements for public consultation within the PALM Act was also considered as part of this Review. This approach would bring the NCA in to line with the other States and Territories, all of which have legislated public notification and consultation requirements. This approach also has the potential to increase the perception of the NCA’s accountability.

The NCA’s *Commitment to Community Engagement 2010* effectively emulates the public notification and consultation requirements of other jurisdictions. The requirements of the Commitment are comparable to other States and Territories, and in some cases are more comprehensive.¹²⁷ The requirements cover each stage of the planning process, from policy formulation and amendments to the National Capital Plan through to individual applications for works.

The NCA has worked hard in recent years to improve its interaction with, and instil confidence in, the community. This Review believes the NCA is unlikely to risk taking a step backwards by not following through with its current commitment to engaging with the community.

Having regard to the Review’s Terms of Reference and limiting legislative change, the NCA’s *Commitment to Community Engagement 2010* is considered sufficient to manage and describe the NCA’s obligations in regard to engaging with the community. Indeed, the NCA’s protocol for community engagement is a commendable initiative.

WORKS APPROVALS

The PALM Act makes no reference to public notification or consultation in respect of works approvals in Designated Areas. The National Capital Plan itself prescribes few occasions where public consultation is required. Where the National Capital Plan outlines the requirement for public consultation or notification, there are limited directions for how this should be carried out.

The JSC has, on several occasions, recommended amendments to the PALM Act to introduce requirements for public consultation on works approvals. Failing legislative reform in this regard following its 2002 recommendation (discussed earlier in this chapter), both the 2004 and 2008 inquiries into the role of the NCA suggested changes to the PALM Act. In 2008, the JSC also recommended that the PALM Act be amended to require all proposals works (with the exception of *de minimis* works) in the Parliamentary Zone be referred to the JSC for consideration.

126 *Striking the Right Balance: Draft Amendment 39, National Capital Plan*, page 44.

127 A comparison of Australian State and Territory public notification and consultation requirements can be found within the Productivity Commission 2011, *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessment*, Draft Research Report.

The Government accepted this recommendation in principle, noting that it was encouraged by the JSC's resolve to review all proposed works and noting that the JSC was willing to accept the increase in responsibilities and additional administration burdens.¹²⁸ The IGC on planning was to consider how best to implement the recommendation as part of its work in streamlining planning and land management responsibilities in the ACT.

As a result of deficiencies in the PALM Act and the National Capital Plan pertaining to public consultation, and in response to concerns of both the JSC and the community, the NCA has devised a public consultation process for works approvals. This process has been incorporated into the *Commitment to Community Engagement 2010*. In addition to those works requiring public consultation under the National Capital Plan, the NCA has adopted a risk based approach to determining which other works approval applications are required to undergo public consultation.

The proposed changes to the PALM Act to require all works within the Parliamentary Zone to be referred to the JSC would give effect to current practice, and would be worth enacting at a convenient time.

NATIONAL CAPITAL PLAN AMENDMENTS AND DEVELOPMENT CONTROL PLANS

The PALM Act requires consultation on all draft amendments to the National Capital Plan. The PALM Act does not, however, provide much guidance on how long consultation on draft amendments should occur, or how information should be disseminated to the public.

The NCA has augmented the requirements of the PALM Act through its *Commitment to Community Engagement 2010*, which specifies timeframes for consultation, and additional public notification means above that required under the PALM Act. Under the *Commitment to Community Engagement 2010*, Development Control Plans are subject to the same community consultation process as draft amendments. The inclusion of such requirements in the Commitment provides certainty to the public, and assists in creating the perception of an open and accountable process.

At present there is no automatic referral of draft amendments to the JSC. Following the JSC's 2007 Review of the Griffin Legacy Amendments, the committee recommended that for all future draft amendments to the National Capital Plan, the Minister provide the JSC with the option of inquiring into every draft amendment.

The Government did not agree to this recommendation, noting that while it had generally been the practice to refer draft amendments to the Committee, the Government preferred that the Minister retain the discretion to do so.

The JSC again attempted to have a referral mechanism formalised through the 2008 inquiry into the NCA. In addition to its recommendation that the PALM Act be amended to require all works within the Parliamentary Zone be referred to the JSC for consideration, the JSC also recommended that draft amendments be subject to a similar legislated referral mechanism.

The JSC noted that where the committee has, in the past, inquired into draft amendments, these inquiries have tended to focus on the processes used by the NCA and the community impact. This has proved to be a constructive and important part of increasing accountability for adherence to consultation requirements.¹²⁹

Again, the proposed changes to the PALM Act to require automatic referral of draft amendments to the JSC for consideration (and inquiry if the committee so decides) would give effect to current practice, and would be worth enacting at a convenient time.

.....
128 Government Response, page 8.

129 2008 JSC Report, page 72.

PUBLIC PARTICIPATION AND “CLOSING THE LOOP”

The divergence of views within the community, and between the community and the NCA, means it is unlikely there will ever be complete agreement on a proposal. In such cases, the NCA's focus should then be on “closing the loop” on any process to ensure that stakeholders and interested parties are informed not only of the outcome, but why the outcome is as it is. The NCA needs to clearly articulate that public views have been considered, but not necessarily incorporated into changes to a proposal and the reasons for that.

Interested people also need to understand how and where they fit into the participation process. Not all public consultation processes are, or necessarily should be, the same. In some instances, garnering feedback from the public on a proposal may be appropriate, whereas in other circumstances a more collaborative approach may be more effective.

There is, in effect, a continuum of public participation processes, from simply informing the public of a proposal, to empowering the community by placing the final decision-making powers in their hands.

The International Association for Public Participation (IAP2) has developed a “Public Participation Spectrum” which identifies that differing levels of participation are legitimate depending on the goals, time frames, resources and levels of concern in the decision to be made. Importantly, the Spectrum also sets out the promise being made to the public at each participation level.¹³⁰

The table on the following page outlines the IAP2 “Public Participation Spectrum”.

TABLE 5: PUBLIC PARTICIPATION SPECTRUM

INCREASING LEVEL OF PUBLIC IMPACT				
INFORM	CONSULT	INVOLVE	COLLABORATE	EMPOWER
Public Participation Goal:	Public Participation Goal:	Public Participation Goal:	Public Participation Goal:	Public Participation Goal:
To provide the public with balanced and objective information to assist them in understanding the problems, alternatives, opportunities and/or solutions.	To obtain public feedback on analysis, alternatives and/or decisions.	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.	To place final decision-making in the hands of the public.
Promise to the Public:	Promise to the Public:	Promise to the Public:	Promise to the Public:	Promise to the Public:
We will keep you informed.	We will keep you informed, listen to and acknowledge concerns and provide feedback on how public input influenced the decision.	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.	We will look to you for direct advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.	We will implement what you decide.
Example Techniques to Consider:	Example Techniques to Consider:	Example Techniques to Consider:	Example Techniques to Consider:	Example Techniques to Consider:
<ul style="list-style-type: none"> › Fact sheets › Web Sites › Open houses 	<ul style="list-style-type: none"> › Public comment › Focus groups › Surveys › Public meetings 	<ul style="list-style-type: none"> › Workshops › Deliberate › polling 	<ul style="list-style-type: none"> › Citizen Advisory › Committees › Consensus building › Participatory decision-making 	<ul style="list-style-type: none"> › Citizen juries › Ballots › Delegated decisions

¹³⁰ Information of the International Association for Public Participations “Public Participation Spectrum” is available at <http://www.iap2.org.au/resources/cid/30/parent/0/t/resources/l/layout>.

Application of the Spectrum allows for a balance between community input and professional judgement. The NCA has gone some way to achieving this in its current *Commitment to Community Engagement 2010*, by requiring different levels of consultation depending on the nature of the project.

The NCA should consider identifying more clearly its promise to the public for different types of projects in the next iteration of its commitment to community engagement.

RECOMMENDATION 21

The NCA consider adopting the International Association for Public Participation’s “Public Participation Spectrum” for use in the Commitment to Community Engagement to clearly identify to the public the respective roles of the NCA and the public in varying public participation processes.

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CHAPTER NINE: DELIVERING THE COMMONWEALTH RESPONSIBILITY

“The obligation is upon us, as representatives of the people of Australia, to visualise the city to come at Canberra and to build there, not for today, but for all time ... we look at Commonwealth matters with broad vision. I hope that we shall all view Canberra in the same way, and will assist to make the Federal Capital, a city worthy of the people of Australia.”¹³¹

In meeting key stakeholders and through submissions, it is evident there is much support for a revitalised, adequately funded NCA. As could reasonably be expected, organisations and individuals had gripes about particular issues and the way the NCA does business, or has done in the past.

In previous inquiries and reviews, there has been no suggestion that the NCA should not continue to exist. In 2008, the JSC explicitly stated its support for retention of the NCA as a statutory authority and that the functions prescribed in the PALM Act are appropriate.¹³²

OPTIONS FOR DELIVERING THE COMMONWEALTH RESPONSIBILITY

This Review therefore considered the fundamental question of whether the NCA should exist at all. The Taskforce on the Commonwealth’s National Capital Responsibilities considered:

“... establishing a new agency rather than retaining the existing NCA. The Taskforce could see no benefit to the Commonwealth in abolishing the NCA if it were simply to establish another agency with identical and/or additional similar functions. The Taskforce acknowledged criticisms that had been made of the NCA in the past about the need for it to focus its resources on those activities that more effectively meet the objective of maintaining and enhancing the national capital, and in improving community consultation. However, the Taskforce also noted the proposed amendments to the PALM Act announced by Government in its response to the Way Forward report, specifically the ability for the Minister to issue binding policy directions to the NCA, would assist in ensuring that the NCA was responsive to national and community interests.

The Taskforce considers that a dedicated, Commonwealth agency is required to focus on the needs and interests of national capital significance, so that these interests are not diluted or lost in the priorities of another agency or jurisdiction. To plan, protect and enhance the national capital, and to inform others of its significance and role must be the focus of such an agency, without competing interests or responsibilities.”

The Taskforce identified three broad delivery mechanisms to deliver the Commonwealth’s responsibilities:

- › retention of the existing scope of functions within a single agency;
- › expansion of the scope of existing functions and their retention within a single agency; and
- › decentralisation of functions across different agencies and portfolios.

131 Charles Marr, MHR, Second Reading *Seat of Government (Administration) Bill 1924*.

132 2008 JSC Report, page 39.

An assessment of each of these options (and variations) are discussed below.

OPTION 1: RETENTION OF EXISTING SCOPE OF FUNCTIONS WITHIN A SINGLE AGENCY

OPTION 1A: MAINTENANCE OF THE STATUS QUO

This option contemplates a single agency (the NCA) retaining its current functions, current funding (and therefore similar staff resources). There would be no budgetary implications for the Government and it meets the objective of having a single body responsible for overseeing and coordinating the planning, design, management and enhancement of the central areas of Canberra.

Chapter Nine of this Report examines the NCA's finances and concludes that the NCA cannot continue to fulfil its statutory responsibilities at current funding levels. Already, maintenance activities have been pared to the bone, while retaining public safety, and planning has become more focussed on the regulatory role of Works Approval.

This option is unlikely to fulfil the Government's interest and commitment to the future of Canberra as a planned national capital on behalf of all Australians¹³³, nor adequately maintain those places and assets that are of national significance. Indeed, the risk of incurring additional costs in backlog maintenance or because of asset performance failure is already apparent.

OPTION 1B: RETENTION OF CURRENT FUNCTIONS WITH ADDITIONAL DEPARTMENTAL RESOURCING TO MEET THE LIFECYCLE COSTS OF ASSETS

For the Commonwealth to exercise its responsibilities requires a structure with the capacity to provide objective and professional advice, free from political pressure, and accountable to the Australian Government and Parliament.

Such a structure is best constituted as a statutory authority with prescribed functions. This guarantees the appropriate degree of professionalism and independence necessary to achieve the long-term goals of the national capital and to maintain and protect those elements which make Canberra a distinctive and respected national capital in Australia and overseas.

Significant progress in planning and developing the national capital has only been achieved under a statutory authority.

OPTION 1C: RETAIN CURRENT FUNCTIONS BUT CHANGE THE FORM OF AGENCY

Considering potential changes to the way the Commonwealth delivers its responsibilities, it is worth analysing the options for savings from changing the form of agency through both “shared-services” arrangements and full integration within a Department. The shared services possibility is considered at Option 3a.

The strongest form of change would be to incorporate the current functions into an existing Department. The departmental division could either act under the direction of the Minister or serve an Independent Board. Either way, there are likely to be significant savings generated and these could be used to offset the lifecycle costs of asset management.

Models which involve statutory bodies (sometimes with statutory appointees who are also departmental officers) being served by departmental administrative units exist in both the Department of Veterans’ Affairs (Repatriation Commission) and the Australian Taxation Office (Tax Practitioners Board).

The integration options require consideration of some threshold questions:

- › are there any existing Commonwealth bodies performing similar or related functions?;
- › how would the National Capital functions integrate with those existing functions?; and
- › how would sensitive matters such as independence in planning decision be dealt with?

The following table summarises some of the options.

TABLE 6: OPTIONS FOR DELIVERING THE COMMONWEALTH RESPONSIBILITY

OPTIONS / ATTRIBUTES	GOVERNANCE MODEL			
	CURRENT	SHARED SERVICES	INTEGRATED WITH STAT OFFICEHOLDER	FULLY INTEGRATED
SAVINGS POTENTIAL	Nil	Minor – approx \$500k pa	Major – approx \$2m pa	Major – approx \$2.5m pa
FUNCTIONAL EFFICIENCY – PLANNING	N/A. NCA is the only Commonwealth planning approval agency.	As for current	As for current	As for current
FUNCTIONAL EFFICIENCY – FOSTERING AN AWARENESS	Weak. Co-ordination of similar activities across agencies is cumbersome.	As for current	Potentially strong – subject to the selected “partner”.	Potentially strong – subject to the selected “partner”.
FUNCTIONAL EFFICIENCY – ASSET MANAGEMENT	Weak. Co-ordination of similar activities across agencies is cumbersome.	As for current	Potentially strong – subject to the selected “partner”.	Potentially strong – subject to the selected “partner”.
PLANNING PROBITY	Strong. Planning decisions made with full statutory independence. Requires strong framework of transparency and accountability to balance the power of statutory independence.	As for current	Medium-Strong. Statutory officeholder has independence – hence potentially as good as current arrangement, but needs a mechanism for interrupting the ability of a Minister to give direction to an officeholder who is also a Departmental employee.	Weak. Responsible Minister would have the power to give direction in relation to a planning proposal and would be expected to take full responsibility for planning decisions.
LEGISLATIVE DIFFICULTY	Nil change	Can be done within existing legislation	Would ideally be done through legislative change but interim arrangement possible within existing legislation via AAO and action of the Chief Executive under the PALM Act.	Would ideally be done through legislative change but interim arrangement possible within existing legislation via AAO and action of the Chief Executive under the PALM Act.
OTHER COMMENTS		There has been only limited success in harvesting real savings from shared services within the Commonwealth	This model currently exists within the Department of Veterans’ Affairs where the Secretary also holds a number of statutory positions in independent commissions within the portfolio.	

POTENTIAL "PARTNER" DEPARTMENT

REGIONAL AUSTRALIA

FINANCE & DEREGULATION

PARLIAMENTARY SERVICES

Policy alignment with Territories and Local Government functions.

Potential major conflict of interest having Ministerial power to grant approval for proposed Commonwealth buildings being developed by DoFD.

Potential minor conflict of interest in respect of DPS own projects

RARDLG – Nil

Other options:

PMC (Arts) – Medium

SEWPaC (Heritage) - Medium

Nil

Medium. DPS currently assist the Depts of HoR and Senate with visitor management and interpretation of the symbolic role and significance of the Parliament.

Other options:

MoAD - Medium

Possible alignment and efficiency in delivery of capital works in some of the external territories eg: Christmas Island.

Potential co-ordination but not necessarily efficiency in development of new assets. DoFD currently manages new building construction (NCA does not). DoFD does not currently have a road, infrastructure or open space maintenance function.

Strong. DPS currently manage a similar range of asset types as the NCA (eg roads, open space, commemorative works) albeit on a different scale.

As for integrated

Medium-Strong. As for Integrated with Stat. Office Holder but reduced perceived conflict as there is no Minister per se. The office holder's accountability as an "employee" is to the Presiding Officers.

As for integrated

One of the Terms of Reference for the Review is to identify at least one option which would enable the NCA to operate within its existing resources. This is a particularly difficult challenge as there is no single change that would meet this requirement. It should be noted, however, that the most aggressive form of organisational change – integration within a Department – does have the potential to yield significant savings.

The Savings Option section of Chapter Ten also discusses this Term of Reference.

Having regard to the options outlined in the table above, if such a bold reform were contemplated, the best options would be integration within either the Department of Regional Australia, Regional development and Local Government or the Department of Finance and Deregulation. Either option would require retention of a statutory board to protect the Secretary and Minister from probity issues associated with planning decisions. This is all achievable within the existing legislation.

Under this model, the person who holds the office of Chief Executive of the NCA would also be appointed to a notional position within the Department to create a reporting line through the Secretary on matters unrelated to their direct statutory powers. This arrangement broadly parallels the existing arrangements for the Repatriation Commission within the Department of Veterans' Affairs, where the Secretary also holds the statutory position of President of the Commission, aside from his direct accountability to the Minister.

OPTION 2: EXPANSION OF THE SCOPE OF EXISTING FUNCTIONS AND THEIR RETENTION WITHIN A SINGLE AGENCY

This option builds on Option 1b, but examines extending the NCA's responsibility to deliver all non-Defence capital works in Designated Areas.¹³⁴ The NCA would also be responsible for the maintenance of all areas external to buildings.¹³⁵ Effectively, the NCA would be responsible for all external aspects (planning, design, construction and management of the public realm) of the Commonwealth's responsibility in the national capital.¹³⁶

The Taskforce on the Commonwealth's National Capital Responsibilities contended, and this Review concurs, that the key advantage with this arrangement would be the ability for a single agency to coordinate planning, design, construction and management of external areas to a consistent standard of quality and design excellence.

No changes to the organisational structure of the NCA would be required. There may be a need to alter the administrative arrangements for delivery of major capital works by the Commonwealth in Canberra, in addition to any legislative change required to alter the responsibility of national institutions for maintenance of land around their buildings.

The NCA would need to acquire or develop additional skills to undertake major projects, and the increased responsibility would have to be accompanied by additional funding. This increase could simply be a transfer of funding from those other agencies currently having responsibilities for capital works.

The Taskforce identified some savings arising from delivery of maintenance through a single agency, though at least some of these benefits would be consumed in additional staff costs associated with managing a larger area.

134 The Department of Finance and Deregulation currently manages the Commonwealth's non-Defence property portfolio which is involved in facilities and asset management.

135 This report has already highlighted the current situation whereby 14 different Commonwealth agencies are responsible for commissioning works within Designated Areas, and seven in the Parliamentary Zone alone.

136 Taskforce on the Commonwealth's National Capital Responsibilities, page 37.

OPTION 3: DECENTRALISATION OF FUNCTIONS ACROSS DIFFERENT AGENCIES AND PORTFOLIOS

OPTION 3A: SHARED CORPORATE SERVICES

This option would involve the NCA retaining its current legislative functions, with corporate services such as Information Technology, payroll and Human Resources, financial services and records management provided by the NCA's portfolio Department (potentially either the Department of Regional Australia, Regional Development and Local Government or Department of the Prime Minister and Cabinet). The NCA has some specialised functions that may be better retained within the agency itself, such as graphic design services and GIS/mapping services.

Based on financial analysis undertaken in 2010, a transfer of corporate responsibilities would not result in any significant cost savings to the portfolio. Analysis suggests that implementation costs of this option would be paid back by the third year after transfer, with annual savings of around \$0.5 million from the fourth year. Some caution needs to be flagged with this approach, as it assumes that all services identified would be consumed by the NCA's portfolio department or elsewhere within the NCA. Functional transfers of this magnitude seldom offer the material financial rewards to warrant the risk.

OPTION 3B: TRANSFERRING THE "FOSTERING AWARENESS" FUNCTION

This option considers transferring the "fostering an awareness" function, either to the ACT Government or to another agency within the Commonwealth. This would result in an NCA focussed on planning, design, construction and maintenance.

The Taskforce examined whether the function could be devolved, concluding that the ACT Government would not be appropriately placed to undertake this role as it is distinctively Commonwealth in nature. The function would likely be subsumed by local interests not to the Commonwealth's advantage. The ACT Government concurs with this view:

"It has been suggested wrongly that it is the role of the ACT Government, through Australian Capital Tourism, to promote the national capital. Tourism's role is solely to market Canberra as a holiday destination. In contrast, the NCA's emphasis in a promotional sense, is to highlight the relevance of Canberra, as a capital for all Australians to take pride in (whether they visit or not)." ¹³⁷

Fostering an awareness of the importance of Canberra as the national capital should be seen as a critical Commonwealth responsibility and decentralising the function is unlikely to have any useful advantage.

In practice, the NCA is one of several Commonwealth agencies who play some role in promoting the national capital. Others include the NCETP, which has as one of its goals to "foster an awareness of the national identity and the educational opportunities for Australian school students in the National Capital Region." National Institutions also tend to have their own promotional activities (and occasionally collaborate on tourism promotions). These programs however, are focussed on either individual aspects/places of the national capital, or are targeted at a narrow demographic.

To perform the function at the highest level, and to foster an awareness of the national capital in all Australians, requires an agency acquainted with the detail and intricacies of the concept of national significance.

To this end, the Taskforce recommended that the agency responsible for protecting national significance through

137 ACT Government submission to JSC 2008 Inquiry, page 16.

planning, design and estate management also be responsible for “fostering an awareness”, as the agency with the most direct and practical knowledge of the national capital.¹³⁸

“Fostering an Awareness” is the most discretionary of the NCA’s functions. Chapter Nine of this report identifies the potential for the NCA to maintain a base delivery of this function by providing information-rich internet resources and ceasing National Capital Exhibition operations at Regatta Point and letting the space to a commercial tenant. The savings this would provide are likely to facilitate sustainable delivery of other functions in the short to medium term, but may be construed as shortsighted and mean-spirited in the lead up to the Centenary of Canberra.

OPTION 3C: THE NCA AS A PLANNING AGENCY ONLY

Planning has always been at the forefront of the NCA’s operations. It is one of the most visible functions, and the one that has received the most attention since inception of the NCA. The Taskforce on the Commonwealth’s National Capital Responsibilities suggested that planning is the NCA’s highest priority function and examined whether the agency could deliver solely this function.

Fostering an awareness could be transferred elsewhere in the Commonwealth, or devolved to the ACT Government as examined in Option 3b. Land management and construction activities could also be transferred elsewhere in the Commonwealth, with the Department of Finance and Deregulation the most likely recipient of these functions.

The biggest risk in transferring the land management and enhancement function is a loss of focus on the national capital as the functions are subsumed into more generalised land and property administration practices of a larger department. Finance and Deregulation is focussed on commercial property management and is unfamiliar with the broad range of assets and landscapes that the NCA manages.

The NCA has developed highly specialised skills (for example in lake ecology and horticultural assets) which are not available in other departments. This may impact on the quality and timeliness of delivery of national capital activities.

Assignment of asset management responsibility to Finance and Deregulation would incur the same or greater costs to the Commonwealth given that it will require the same financial support regardless of where it is performed. Transferring the functions to Finance and Deregulation will also require that department to develop specialist skills in the management of significant national capital assets which it currently does not possess.

The Taskforce rightly considered that this model is not appropriate to discharge the Commonwealth’s responsibilities, as to do this requires the coordination of a number of functions within a specialised agency that understands the significance of the national capital.¹³⁹

Accordingly, the Taskforce recommended:

- › that the land and asset management function be performed by the same Commonwealth body responsible for planning and development approvals in order to ensure a consistent approach to the maintenance and enhancement of the national capital;
- › the estate management function be delivered in close cooperation with the planning, design, construction and awareness functions; and
- › the agency be responsible for the management of all national land (landscapes and hard assets) to the edge of the buildings owned by other agencies (such as the cartilage around buildings or their building footprint).

138 Taskforce on the Commonwealth’s National Capital Responsibilities, page 30.

139 Taskforce on the Commonwealth’s National Capital Responsibilities, page 39.

OPTION 3D: DECENTRALISING FUNCTIONS

This option, which would see the NCA abolished and functions either devolved to the ACT Government or transferred elsewhere in the Commonwealth, is discussed under Savings Options in Chapter Ten.

FUNDING OPTIONS

Three different funding options are canvassed below. The variations on the themes provide the opportunity to select a package of different line items that Minister Crean might wish to select and present for consideration.

The Commonwealth Government's National Urban Policy and COAG Agreement on Capital City Strategic Planning Systems combined with the Centenary of Canberra in 2013 and the Budget returning to surplus represent a combination of factors that support a renewed Commonwealth interest in the National Capital and an undeniable case to fund the NCA to those ends.

OPTION 1: BASED ON NCA BUDGET BID 2011-12

SUMMARY OF OPTION 1:

This option reflects the NCA's budget bid as part of the 2011-12 Budget process, which was put aside pending the outcome of this Review. It focuses on the base financial sustainability of the NCA and its obligations to protect Commonwealth heritage in the National Capital.

FINANCIAL IMPACT (\$ MILLIONS):

	2011-12	2012-13	2013-14	2014-15
Increase in Planning	0.0	0.0	0.0	0.0
Increase in Education and Outreach	0.0	0.0	0.0	0.0
Increase in Base Asset Management	1.9	1.9	1.9	1.9
Increase in Heritage Management Activities	0.4	0.9	1.5	2.0
Total Increase	2.3	2.8	3.4	3.9

Note: The above figures are expressed in 2011 dollars and have not been indexed for the out years.

The ongoing annual cost of this option will equal the 2014-15 impact i.e. \$3.9 million per annum plus indexation in the out years.

FINANCIAL SUSTAINABILITY

The ANAO's audit of the 2009-10 Financial Statements, made a Category B finding that the NCA is at risk of no longer being financially sustainable. In the absence of additional funding, the NCA will have to apply for an approved operating loss in 2011-12 and will run out of cash by mid 2012-13.

This option would resolve financial sustainability issues facing the NCA until 2014-15, provided the current risk-based approach to asset management is maintained.

PLANNING AND EDUCATION/OUTREACH FUNCTIONS

This option does not increase resources applied to planning, education or outreach functions.

ASSET MANAGEMENT AND HERITAGE FUNCTIONS

The \$1.9 million costing follows a detailed, independent assessment of asset management and other statutory functional costs undertaken as part of a Taskforce on the Financial Sustainability of the NCA. The Taskforce undertook its work during 2010 and was chaired by the Attorney-General's Department (while it was the portfolio department responsible for the NCA).

The Taskforce identified a \$2.4 million net deficit between the assessed sustainable cost of delivering core statutory functions and the current funding available. The NCA has identified, and implemented, \$0.5 million of savings, reducing the net funding deficit to \$1.9 million.

Heritage management is one of the NCA's key financial pressures.

The heritage management costs are based on a program of heritage assessments, management plans and implementation plans which are consistent with the NCA's Heritage Strategy. The Heritage Strategy (and subsequent assessments, plans and works) is required under the EPBC Act. The nature of heritage management is such that there is considerable discretion in deciding the volume and nature of heritage management activities. This option assumes a modest level of activity – addressing core elements of its heritage management obligations only.

A staged phase-in ensures this option can be managed within existing governance and internal frameworks, consistent with the need for overall Commonwealth fiscal responsibility. This phase-in period will ensure the NCA can continue to maintain robust systems and processes to maximise the efficiency and effectiveness of works associated with this proposal.

OPTION 2: MODEST IMPROVEMENT TO ALL SERVICE DELIVERY STANDARDS

SUMMARY OF OPTION 2:

This option builds on Option 1, but strengthens the NCA's ability to undertake forward planning in the Areas of Special National Importance, builds the quality and reach of the education programs and enables more care and attention to asset management in the most symbolic areas of the National Capital estate.

FINANCIAL IMPACT (\$ MILLIONS):

	2011-12	2012-13	2013-14	2014-15
Increase in Planning	0.5	0.75	0.75	0.75
Increase in Education and Outreach	0.2	0.25	0.25	0.25
Increase in Base Asset Management	2.4	2.9	3.4	3.4
Increase in Heritage Management Activities	0.4	0.9	1.5	2.0
Total Increase	3.5	4.8	5.9	6.4

Note: The above figures are expressed in 2011 dollars and have not been indexed for the out years.

The ongoing annual cost of this option will equal the 2014-15 impact i.e. \$6.4 million per annum plus indexation in the out years.

FINANCIAL SUSTAINABILITY

This option would resolve all known financial sustainability issues facing the NCA until, at least, 2014-15 and increase service delivery standards across all functions.

PLANNING FUNCTION

Currently, much of the NCA's planning effort is in the role of "regulator" – assessing and approving development plans and applications. Current resourcing does not allow the NCA to engage in an appropriate level of proactive planning in Areas of Special National Importance.

The absence of such forward planning exposes the Commonwealth to potentially poor on-ground outcomes and distracts or inhibits key national institutions in the delivery of functions.

A key example is master planning for future development, traffic management and parking in the Parliamentary Zone. The current plan is almost a decade old and the absence of recent review is presently impeding institutions such as the High Court, Questacon and the National Gallery of Australia. This option restores the NCA's ability to engage in forward planning in key areas of interest to the Commonwealth.

EDUCATION/OUTREACH FUNCTIONS

This option enables expansion of formal education programs at the National Capital Exhibition (NCE) for visiting school groups from across Australia. Currently, the NCE is visited by approximately 200,000 people each year and many of these are students on school trips to the National Capital.

The NCA currently provides formal education materials for teachers to use within their curriculum, but only a small number of students are able to participate in a structured education program as part of their visit to the NCE. This option would enable expansion of that program.

ASSET MANAGEMENT FUNCTIONS

As for Option 1, but with one key improvement. The NCA will be able to reduce its reliance on a tight risk-based allocation of maintenance resources. This option will allow for the appropriate maintenance of all assets, not merely those which relate to public safety. The key beneficiaries will be landscape and open space assets. There will be a tangible improvement in the appearance of the National Capital Estate.

OPTION 3: A NATIONAL CAPITAL TO BE PROUD OF

SUMMARY OF OPTION 3:

This option builds on Option 2 but enables the NCA to engage in forward planning of broader parts of the ACT and the Capital Region as an active partner in planning. It allows the education program to focus on outreach within broader Australia and would link with contemporary curriculum strategies. Asset management would be restored to a level which befits the significance of Canberra as the National Capital. It would enable the Central National Area to showcase sustainable open space and asset management practices and to encourage healthy lifestyles in modern Australian cities.

FINANCIAL IMPACT (\$ MILLIONS):

	2011-12	2012-13	2013-14	2014-15
Increase in Planning	0.5	1.0	1.25	1.25
Increase in Education and Outreach	0.5	0.7	0.75	0.75
Increase in Base Asset Management	2.9	3.4	3.9	3.9
Increase in Heritage Management Activities	0.4	0.9	1.5	2.0
Total Increase	4.3	6.0	7.4	7.9

Note: The above figures are expressed in 2011 dollars and have not been indexed for the out years.

The ongoing annual cost of this option will equal the 2014-15 impact i.e. \$7.9 million per annum plus indexation in the out years.

FINANCIAL SUSTAINABILITY

This option would resolve all known financial sustainability issues facing the NCA until, at least, 2014-15 and increase service delivery standards across all functions.

PLANNING FUNCTION

As for Option 2, but with the NCA engaging as a more active partner in the broader planning of the ACT and surrounding Capital Region.

The NCA's current focus is purely on the direct "national interest". It only involves itself where the national interest is not already adequately protected by the local interest. This can mean that the Commonwealth does not express a view on key regional planning issues such as city infrastructure (water, sewerage, transport) even though failure in these areas would be of critical concern to the Commonwealth.

This option would enable the NCA to engage as a "third jurisdiction" along with the ACT and NSW in Territory and regional planning issues. This option both recognises the Commonwealth's responsibility as a partner in the Capital Region and protects the Commonwealth's inherent interest.

EDUCATION/OUTREACH FUNCTIONS

As for Option 2, but with expanded Outreach programs.

The education programs contemplated by Option 2 would greatly enhance the experience of school students when they visit their National Capital. But, it does nothing for those who do not get a chance to visit.

This option enables expansion of outreach programs – developing and sharing valuable education programs across Australia. Improvements in the uptake of technology such as "smart boards" in Australian schools, along with base infrastructure upgrades such as the National Broadband Network, means there is an opportunity to develop interesting and engaging programs which tell the story of Canberra as the National Capital.

There is scope for the NCA to partner with other key national institutions such as Questacon and the Australian National Botanic Gardens to link this outreach with the core elements of the new national curriculum.

HERITAGE AND ASSET MANAGEMENT FUNCTIONS

As for Option 2, but with further enhancement of asset management standards.

Key advances would include development and application of leading practice asset management techniques. A clear focus on environmental sustainability, climate adaption and healthy lifestyle would both protect the National Capital Estate for future generations and serve as an example for other Australian cities.

Special emphasis would be placed on areas experienced by visitors to the National Capital – reflecting the ownership of this place by all Australians.

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CHAPTER TEN: OTHER MATTERS

“... The seat of Government of the Commonwealth shall be determined by the Parliament. The surveyor will bear in mind that the Federal Capital should be a beautiful city, occupying a commanding position, with extensive views, and embracing distinctive features which will lend themselves to the evolution of a design worthy of the object, not only for the present, but for all time, and also with the object of beautification and expansion.”¹⁴⁰

HERITAGE

In its 2008 report, *The Way Forward – Inquiry into the Role of the National Capital Authority*, the JSC noted:

*“... Canberra’s status as the national capital places an extremely high priority on heritage protection in all areas of Canberra, but perhaps nowhere more so than areas identified as having national significance. Ironically, it is these areas that the processes and guidelines are at best unclear and, at worst, lacking completely.”*¹⁴¹

HERITAGE STRATEGY

An important element of the preservation and appropriate management of Commonwealth places with heritage values is the development of a heritage strategy – a document that integrates heritage conservation and management within the agency’s overall property planning and management framework. Its purpose is to help the agency plan for, manage, and report on its heritage obligations in relation to protecting the Commonwealth’s heritage estate.

A heritage strategy to protect and conserve the Commonwealth heritage values of a place must be prepared by each agency that owns or controls property. An agency has two years from the commencement of the new heritage legislation, or from the time it first owns or controls a place, in which to develop a heritage strategy and provide it to the relevant Minister.

The NCA first prepared a Heritage Strategy in 2005. The Heritage Strategy has now been reviewed and updated in line with *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) requirements.

The Department of Sustainability, Environment, Water, Population and Communities (SEWPaC) has commended the NCA on completing the comprehensive review of its 2005 Heritage Strategy and preparing a new strategy for 2010-2013.

RESOLUTION OF TERRITORY LAND/DESIGNATED AREAS GAPS

Heritage places in the ACT on Territory Land that are in Designated Areas fall into a gap between the ACT and Commonwealth jurisdictions. This is due to the definition of what constitutes a “Commonwealth area” in the EPBC Act. Territory Land in the ACT is specifically excluded as a Commonwealth area.¹⁴²

140 Hugh Mahon, Minister for Home Affairs, Instructions to Charles Scrivener – Surveyor General, 1908.

141 Joint Standing Committee on the National Capital and External Territories, *The Way Forward – Inquiry into the Role of the National Capital Authority (2008)*, page 75.

142 EPBC Act, section 525.

The problem that this creates is connected to the fact that, in accordance with the PALM Act, the NCA controls works in Designated Areas, regardless of whether they are located on Territory or National Land. For places with heritage values located on Territory Land in Designated Areas, the ACT heritage provisions have no effective control, because the NCA is the works approving agency. The issue is compounded by the definition of an action in the EPBC Act, which excludes decisions granted by the NCA such as works approvals.¹⁴³

The only protection for places with heritage significance in Designated Areas on Territory Land through the EPBC Act is whether an action has, will have, or is likely to have a significant impact on matters of national environmental significance. Most places of known heritage significance in Designated Areas are entered in the Register of the National Estate (RNE). However, the RNE is not a comprehensive list of places of heritage significance.

Other than the National Capital Plan, there is no statutory obligation on land managers or lessees to identify and assess places that they own or control for the presence of heritage values. Because any works within Designated Areas are required to be assessed against the provisions of the National Capital Plan (including heritage principles and policies), this instrument becomes the only statutory mechanism able to require the identification, protection, conservation and management of heritage values of places on Territory Land.

The NCA, with agreement from the Department administering the EPBC Act, sets out a process for protecting the heritage values of places on Territory Land in Designated Areas. The NCA will, where appropriate, require the preparation of Conservation Management Plans, and ensure that they are prepared to an appropriate standard. The NCA will apply the principles and requirements of relevant heritage industry references, and the standards set in the EPBC Act Regulations for the preparation of such Management Plans.

In 2008, the JSC recommended that existing relevant Commonwealth and Territory legislation be amended to protect the heritage of all Designated Areas in Canberra. The Government accepted this recommendation in principle, and noted the Australian Government would work with the ACT Government to consider how best to implement the recommendation in the context of aligning and streamlining planning and land management responsibility.

Since this time, the 2009 report on the review into the EPBC Act, *The Australian Environment Act: Report of the Independent Review of the Environment Protection and Biodiversity Act 1999*, recommended that the EPBC Act should be amended to institute comprehensive protection in the Designated Areas identified in the National Capital Plan.

The Taskforce on the Commonwealth's National Capital Responsibilities came to effectively the same conclusion, recommending that the EPBC Act be amended (together with other relevant legislation) so that Designated Areas in the Territory will be considered national land for the purposes of the Act to resolve the heritage "gap".

HARMONISATION AND EFFICIENCY OF EPBC ACT AND PALM ACT REGULATION

The NCA and the heritage section of SEWPaC have discussed the potential duplication that occurs by having two Commonwealth regulatory bodies each making decisions on proposed developments within the National Capital. In examining options for improving the efficiency of the two regulatory regimes, the two agencies agreed that, as the NCA has the current capacity to assess impacts under the EPBC Act, it might be possible to reform the current process to have one decision-maker for both roles.

While there is potential for such a reform to be criticised as placing too much power in the hands of one decision-maker, the consultation, accountability and transparency framework which now supports the work of the NCA is likely to result in a net improvement in both the efficiency and effectiveness of EPBC Act decisions. For example, it would be sensible for the NCA to conduct one public consultation exercise for decisions under both the PALM Act

.....
143 EPBC Act, section 524.

and the EPBC Act. If the NCA applied the most rigorous of either existing formal requirements, the effectiveness of the EPBC Act component is likely to increase by virtue of more expansive notification requirements under the PALM Act and a longer consultation period. Interested parties and stakeholders would only need to make one submission rather than two. A single statement of reasons covering both regulatory decisions would be issued.

It is understood that both SEWPac and the NCA are amenable to the above reform proceeding.

RECOMMENDATION 22

Consideration be given to reforming the current EPBC Act assessment process to require assessment by only one agency (the NCA) as part of the Government's response to the recommendations of the 2009 Report of the EPBC Act Review.

NCA'S FINANCIAL SUSTAINABILITY

The Australian Government requires agencies to measure their intended and actual performance in terms of outcomes. The NCA's outcome, and the programs designed to deliver the outcome (including the objectives and deliverables of these programs), are directly related to the statutory functions of the NCA prescribed under the PALM Act.

The NCA's outcome is to:

*"Manage the strategic planning, promotion and enhancement of Canberra as the National Capital for all Australians through the development and administration of the National Capital Plan, operation of the National Capital Exhibition, delivery of education and awareness programs and works to enhance the character of the National Capital."*¹⁴⁴

To meet this outcome, the NCA receives both departmental and administered funding from Government for delivery of its two program components:

PROGRAM 1.1:

- › Realise the promise of the city plan and the ideals of its founders.
- › Foster Canberra as the National Capital.
- › Develop the special character of the National Capital.

PROGRAM 1.2:

- › Develop and renew the special character of the national capital estate.
- › Mitigate Commonwealth risk associated with management of the national capital estate.¹⁴⁵

Performance against these outputs is assessed and communicated in the NCA's Annual Reports, a fundamental part of its accountability to the Parliament and citizens.

Since 2008 there has been considerable interest, especially within Canberra, in the NCA's financial position as a result of the reduction in its budget. Of key concern has been the NCA's ability to fulfil its statutory responsibilities

144 Portfolio Budget Statements 2011-2012, page 63.

http://www.regional.gov.au/department/statements/2011_2012/files/2011_12_NCA_PBS.pdf

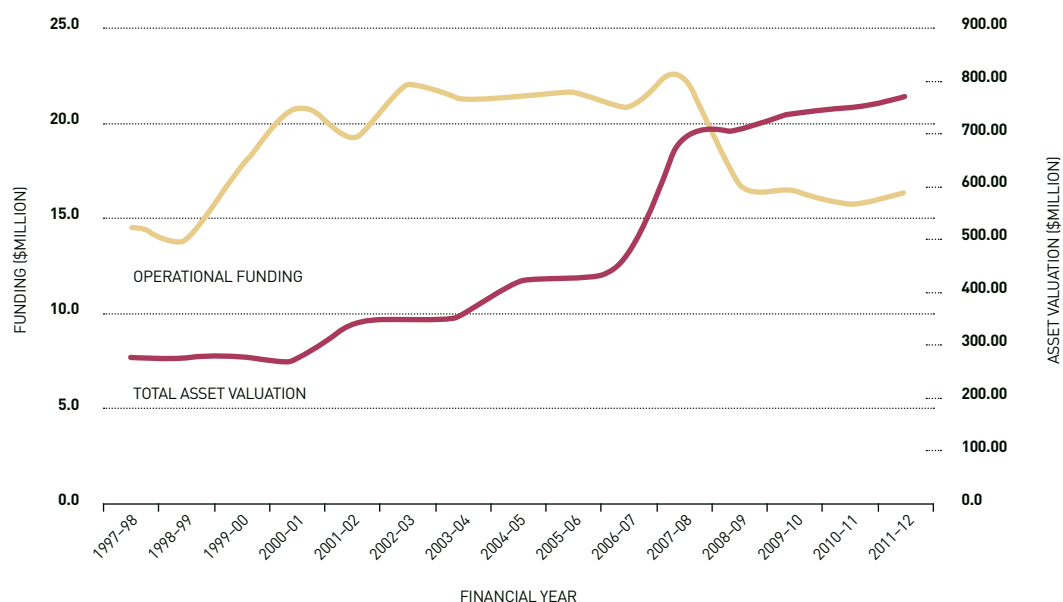
145 Portfolio Budget Statements 2011-2012, pages 65 and 68.

http://www.regional.gov.au/department/statements/2011_2012/files/2011_12_NCA_PBS.pdf

on a reduced operating budget. This has particularly been the case where a reduction in expenditure has manifested itself in a diminution of maintenance operations across the national capital estate.

Asset maintenance is the NCA's biggest expense and is drawn from Departmental funding. The following figure compares annual Departmental operating funding to the administered asset base the NCA maintains.

FIGURE 8: NCA DEPARTMENTAL OPERATING FUNDING



Submissions to the 2008 inquiry, and media reporting at the time, were critical of the operational budget cuts imposed on the NCA. The majority view of submissions and reporting was that the cuts had been imposed prematurely given that they were made before a review of the NCA's role had been completed.¹⁴⁶ In practice, however, the cuts were intended to send a strong signal to the NCA about the need to change the way it worked as well as the focus of its work. Submissions to this Review indicate that the NCA has reformed the way it works and it is now essential to ensure the agency is appropriately resourced to undertake its future responsibilities.

The reduction in the NCA's budget in 2008 is largely attributable to two factors:

- › a 2007 election commitment savings measure which recognised overlapping responsibilities between the NCA and the ACT Government in an environment of fiscal restraint; and
- › the reversal of Griffin Legacy infrastructure maintenance funding for roads transferred from the ACT Government in 2007 (Commonwealth, Kings and Constitution Avenues, State Circle, Dunrossil Drive, sections of Parkes Way and Morshead Drive and all roads in the Russell Offices precinct).¹⁴⁷

The election commitment saving equated to a reduction in the NCA departmental budget of \$1.6 million in 2007-2008, increasing to \$3.7 million in 2008-2009, and \$3.5 million in the two subsequent financial years. This represented total savings of \$12.3 million, equivalent to a 16.5% reduction of the NCA base budget.

The decision to reverse the 2007-2008 measure for upgrading Constitution Avenue as part of the *Griffin Legacy* infrastructure amounted to a total saving of \$46.3 million over four years (including both the capital costs of construction and maintenance).¹⁴⁸ This represented a further 15.3% reduction of the previous NCA base budget.

146 2008 JSC Report, page 49.

147 2008 JSC Report, page 45.

148 National Capital Authority 2007-08 Portfolio Additional Estimates Statement, page 2.

Aside from these specific measures, like all public sector agencies, the NCA was also required to meet both special and ongoing efficiency dividends.

The NCA responded to the funding and savings targets, cutting staff by over 40%¹⁴⁹, together with an attenuation of programs and projects delivered, and a reduced maintenance regime across the national capital estate.

Since this time, the NCA has delivered its core statutory responsibilities and operated within its allocated resources as best it can, through strict containment of variable expenses and reductions in maintenance.

In planning, resources are focussed on day-to-day regulatory activities such as assessing applications for works approval. In managing the national capital estate, priority is given to activities which maintain public safety and protect national assets. Budget constraints mean there is little opportunity to be proactive in these areas.

For example, during the sustained drought conditions, the NCA harvested around \$240,000 per annum in savings as a result of not having to open Scrivener Dam flood gates (this assumes three, three-day high rainfall events a year)¹⁵⁰, some of which was redeployed to other priority areas. This understandable practice at the time, has, of course, rebounded on the NCA's capacity following recent rainfall events, the operation of Scrivener Dam and the associated cleaning up of debris from the Lake.

There is also an interesting anomaly whereby the NCA, despite its delivery of nationally significant functions which mirror those provided in other places by state, territory or local governments, is not eligible to apply for any form of Commonwealth, state or territory disaster relief funding to assist with recovery from natural disasters.

This anomaly, which should be rectified, results in the NCA having to divert funding away from core operations in response to natural disasters.

On five occasions in 2010, rainfall surpassed the discharge capacity of the sluice gates of Scrivener Dam, necessitating release of water from the lake. February 2010 was the first rainfall event in ten years that warranted operation of a flap gate at the dam.¹⁵¹

Expenditure for Scrivener Dam in the past 18 months has far exceeded that expected by the NCA, yet there has been no additional funding provided for either the operational requirements of the dam, or the clean up of Lake Burley Griffin following the major upstream flood events. Consequently, the NCA has had to withdraw funding from other programs for recovery efforts.

This prompted calls from local politicians to restore adequate funding to the NCA and claim that *"only a government that takes Canberra for granted would keep the NCA's budget in this sorry state."*¹⁵²

The NCA is challenged by continuing water quality problems in Lake Burley Griffin. Nutrient-rich water flowing into the lake from the Molonglo River is commonly accepted as being a large part of the problem.

The Queanbeyan sewerage treatment plant is a key contributor to the nutrient levels of water entering Lake Burley Griffin. While the discharge generally meets all environmental requirements, when that discharge enters the lake it provides a food source for toxic blue-green algae. The physical characteristics and hydrology of the lake make it more susceptible to blue-green algae than an active watercourse, such as a river. The Fyshwick sewerage treatment plant, on the other hand, transfers its effluent directly to the Lower Molonglo facility.

.....
149 2008 JSC Inquiry Supplementary Submission No. 3.

http://www.aph.gov.au/House/committee/ncet/natcapauth/subs/sub055_3.pdf

150 Personal communication with the National Capital Authority.

151 NCA Annual Report 2009-2010, page 57.

152 Senator Gary Humphries, 2011, *Local Councils Can't do the NCA's Dirty Work*, <http://www.garyhumphries.com/2011/03/1504>

Accordingly, it would be worthwhile investigating the feasibility of piping treated effluent from the Queanbeyan facility past Lake Burley Griffin and discharging into the Molonglo River at, or below, Scrivener Dam.

Queanbeyan Council is reviewing options to upgrade its 80 year old treatment works and plans to establish a working party including representatives of the NCA, ACT Environment Protection Agency and ACT Territory and Municipal Services to consider options. This group might usefully look at the feasibility of piping sewage to the Scrivener Dam discharge point.

The ACT Commissioner for the Environment has also begun an investigation examining the state of the Lake's water courses and catchments. This will identify the causes of poor water quality and the jurisdictional maze responsible for the Lake. That Report is expected in the middle of next year.

In 2009-10, the NCA reported an operating surplus of \$170,662 against a budgeted break-even result. This variance was primarily due to a delay in undertaking a large number of tree replacements with a forecast cost of \$250,000. Without this deferral, the NCA would have returned an operating loss in the order of \$80,000.¹⁵³

The above figures highlight the continuing budget pressures facing the NCA. The NCA's budget is particularly vulnerable to price increases on maintenance contracts; the ageing landscape requiring more money for maintenance works (including increasing numbers of trees requiring removal and replacement); and the cost of EPBC Act compliance.

More worryingly, the ANAO audit of the 2009-10 Financial Statements, found that the NCA is at risk of no longer being financially sustainable.¹⁵⁴

An independent review of the NCA's financial sustainability, undertaken during the latter half of 2010, concluded that:

*"... the NCA cannot remain financially sustainable ... without either supplemented funding, a reduction in the cost base for service delivery, or a diminution of services provided."*¹⁵⁵

That Review was tasked to examine, fully cost and report on the NCA's financial sustainability under three different scenarios:

- › the NCA maintaining its current functions;
- › the NCA maintaining its current functions but utilising a shared services arrangement with the Attorney General's Department (AGD) for the delivery of administered services (such as corporate, human resource and financial management services); and
- › the NCA maintaining its current functions but incorporated, to the extent consistent with statutory requirements, as an element with AGD.

Since the Administrative Arrangements Orders of September 2010, the NCA has not been under the AGD portfolio. Consideration of the above scenarios could, however, be applicable to the current Department of the Prime Minister and Cabinet portfolio (including the Department of Regional Australia, Regional Development and Local Government), under which the NCA currently sits.

153 NCA Annual Report 2009-2010.

154 The Auditor-General, Audit Report No. 22 2010-11 Financial Statement Audit, *Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2010*, Commonwealth of Australia, page 74.

155 Analytics Group, 2010, *Review of Financial Sustainability of the National Capital Authority*, page 2.

In considering the three scenarios listed above, the review of the NCA's financial sustainability drew the following conclusions¹⁵⁶:

- even if the NCA was to continue activity at its reduced current levels, there would be an annual funding deficit of up to \$4.5 million by the end of 2012-2013. Simply responding to immediate pressures to enhance asset maintenance and management activities to reduce public and parliamentary criticism would cost in the order of an additional \$1.7 million per annum by the end of the forward estimates period. It should be noted that this would not lift the standard of NCA asset maintenance to an appropriate level, nor would it adequately take account of the NCA's heritage management obligations;
- transfer of corporate responsibilities would not result in significant cost savings to the portfolio. Analysis suggests that implementation costs would be paid back by the third year after transfer, with annual savings of around \$0.5 million from the fourth year. This approach assumed that all services identified would be consumed by AGD or elsewhere within the NCA. Functional transfers of this magnitude do not offer the material financial rewards to warrant the risk; and
- transfer of statutory functions to another department would not result in savings over and above that in the shared corporate services scenario – effectively resulting in cost shifting rather than cost savings.

That review also indicated that the NCA has demonstrated through past performance its ability to adjust to different levels of operating activity given sufficient time. However, the cuts in departmental funding to the NCA over the last few years equate to an overall reduction of 23%. Current levels of funding are lower than the agency requires in order to meet the existing and emerging required levels of service and legislative commitments. Time alone in the current circumstances will not resolve the NCA's existing funding issues.¹⁵⁷

Importantly, the review of the NCA's financial sustainability identified that the NCA is a price taker in relation to a substantial portion of its costs. The agency therefore has only the option of consuming fewer resources, rather than identifying efficiencies in the cost of services delivered.

The stark reality is that under existing funding levels the NCA is not a financially viable organisation and cannot meet its current remit.

In an effort to prolong its financial sustainability, the NCA has recently abolished three corporate positions – a Band 1 Senior Executive (head of corporate) and two APS6 positions (corporate support and executive assistant to the Chief Executive). The work previously undertaken by these positions has been absorbed by existing staff and the Chief Executive.

Moreover, the NCA's draft New Policy Proposal (NPP) put forward for consideration as part of the 2011-12 Budget was deferred until completion of this Review.

The financial elements which would have been included in that proposal are, accordingly, dealt with in the following paragraphs, in addition to the discussion under Option 1 of the Funding Options section at the end of Chapter Nine.

On the basis of continuing with broadly the same responsibilities and within the existing legislative framework, the NCA estimates that supplementation in the order of \$3.4m per annum would be required. Phased implementation would allow supplementation to build from \$2.3m in year one to \$3.4m in year four and the out-years (2011-12 outturn costs).

This is considerably less than the aggregate savings achieved in 2007-08. This bid is, however, based on the minimum required to achieve sustainable delivery of the NCA's base statutory obligations. It is therefore unlikely

156 Analytics Group, 2010, *Review of Financial Sustainability of the National Capital Authority*.

157 Review of Financial Sustainability of the National Capital Authority.

that this level of supplementation would alleviate many of the concerns about maintenance standards in the national capital, including in the public realm.

SAVINGS OPTIONS

The Terms of Reference of this Review stress the importance of minimising budgetary implications and require at least one option that involves the tailoring of the NCA's functions to operate within existing resources.

The quantum of the NCA's budget predicament is such that a major change in the form of the agency and/or abolition of an entire function would be required to achieve sustainability within existing resources.

Indeed, one submission¹⁵⁸ to the Review recommended that the NCA be abolished and replaced by:

- › a statutory officer (supported by a small team of specialist staff and consultants) to be responsible for National Capital Planning. The "Planning Role" is a specialist regulatory function which has a real and traditional relationship with the Federal Parliament and warrants an "arm's length" relationship with the executive Minister. If necessary, the new Office of the National Capital Planner could be supported by an expert advisory committee; and
- › the Department of Finance and Deregulation take over the NCA land and lease management functions plus its other responsibilities such as the promotion of Canberra as the National Capital. All of these functions would be placed under direct Ministerial control as they are no longer appropriate in a statutory authority. This would also have the benefit of having a senior Commonwealth Minister being able to negotiate resource sharing arrangements with the ACT where the Commonwealth has an interest in the development of Canberra's non-capital assets and infrastructure.

The most aggressive form of organisational change – integration within a Department – does have the potential to yield significant savings.

If such a bold reform were contemplated, the best combination would be integration within the Department of Finance and Deregulation with retention of a statutory board to protect the Secretary and Minister from probity issues associated with planning decisions. This is all achievable within the existing legislation.

Under this model, the person who holds the office of Chief Executive of the NCA would also be appointed to a position within the Department to create a reporting line through the Secretary on matters unrelated to their direct statutory powers. This arrangement broadly parallels the existing arrangements for the Repatriation Commission within the Department of Veterans' Affairs, where the Secretary also holds the statutory position of President of the Commission aside from his direct accountability to the Minister.

Options for changing the form of the agency are also discussed in Chapter Nine. The two "Integration into Department" models have the potential to generate savings of approximately \$2m per annum if implemented with rigour.

Abolishing the planning function would, however, amount to a significant and unacceptable abrogation of the Commonwealth interest in the Nation Capital.

"Fostering an awareness" is the most subjective and discretionary of the NCA's functions. It would be possible to undertake base delivery of this function by maintaining an information-rich internet resource and to harvest savings by closing the National Capital Exhibition at Regatta Point and letting the space to a commercial tenant. This would save about \$0.7m per annum and may contribute to sustainable delivery of the other functions within existing resources in the short term. The possibility of transferring this function elsewhere was also explored (for example to the Arts and Sports Group of the Department of the Prime Minister and Cabinet). Savings would not be

158 Keith Lyon, who was involved in the formation of the National Capital Authority.

realised and the common sense answer is to leave this function with the NCA.

Transferring asset management and maintenance responsibilities is unlikely to achieve real savings unless the receiving agency or Government is expected to take on the responsibility without supplementary funding. Maintenance of Commonwealth assets was undertaken by the ACT Government under contract in the early days of self-government. This arrangement was terminated after ongoing disputes about cost and quality. Capital upgrade and replacement allowances for major assets such as Scrivener Dam are also likely to be problematic in any such asset transfer.

The difficulty with these courses of action is the conflict with the Commonwealth's regional development approach and the COAG initiatives on national issues in capital city strategic planning. If the Commonwealth is not prepared to take its own backyard seriously, the States might well ask why they should co-operate on the wider COAG agenda in these areas.

GRIFFIN LEGACY INFRASTRUCTURE – CONSTITUTION AVENUE

As announced in the 2011-2012 Budget, \$42 million over four years has been provided for redevelopment of Constitution Avenue. The budget statements recognise that redevelopment of this road will provide for practical and enduring benefits to the Canberra community and complete the final component of the National Triangle.¹⁵⁹

While the money will go directly to the ACT Government, the Commonwealth (through the NCA) will continue to own and manage the road. A productive project delivery arrangement that simplifies the process, fulfils the expectations of each government and delivers high quality, long-term public infrastructure has been agreed with the ACT Government.

NATIONAL MEMORIALS

ENABLING LEGISLATION AND COMPOSITION OF THE CANBERRA NATIONAL MEMORIALS COMMITTEE

One of the most symbolic and special roles of the National Capital is as a place for commemoration, the highest form being through a national memorial.

Under the *National Memorials Ordinance 1928*, the Canberra National Memorials Committee (CNMC) has the power to approve the location and character of national memorials. National memorials can only be located on National Land (land that is, or is intended to be, used by or on behalf of the Commonwealth¹⁶⁰) and are usually located on land within Designated Areas.

Under the Ordinance, membership of the CNMC comprises the Prime Minister, the Minister, the Leader of the Government in the Senate, the Leader of the Opposition in the Senate, the Leader of the Opposition in the House of Representatives, the Secretary of the Department, an officer appointed by the Minister and two other members to be appointed by the Governor General from among those who are residents of the ACT.

¹⁵⁹ Budget Paper No. 2, *Expense Measures, Regional Australia, Regional Development and Local Government*
http://www.budget.gov.au/2011-12/content/bp2/html/bp2_expense-19.htm

¹⁶⁰ PALM Act section 27[2].

THE NATIONAL CAPITAL AUTHORITY'S ROLE

Until 2008, the NCA provided secretariat support to the CNMC and the Chief Executive of the NCA was a full member of the Committee. From 2008 until June 2011, secretariat services were provided by the department responsible for Territories and the NCA has had no official membership on the CNMC. The NCA regained the secretariat role in June 2011. The Chief Executive or officers of the NCA attended some meetings between 2008 and June 2011 as invited advisors, witnesses or observers. The CNMC has not met since the NCA resumed the secretariat role.

While the character of a proposed National Memorial is usually developed through a design competition, the NCA has often been the primary, or sole, advisor to the CNMC on the location of a proposed memorial.

Whether as full member (up to 2008) or an invited advisor (post 2008 until June 2011), the NCA has become the main source of final advice to the CNMC on the appropriateness of the location and character of proposed memorials. In this regard, a practice has emerged whereby the NCA, in advising the CNMC to approve the location and character of the proposed National Memorial, effectively indicates that it is willing to provide works approval under the PALM Act.

This is similar in habit to the advisory role the NCA has with the Australian Parliament for proposed works in the Parliamentary Zone.

GUIDELINES FOR COMMEMORATIVE WORKS

The NCA has developed the *Guidelines to Commemorative Works in the National Capital*¹⁶¹ to establish a cultural, spatial and design framework to inform the siting, quality and character of commemorative projects, including memorials and public artworks, in the Central National Area.

The current Guidelines are approaching ten years old, and the NCA is in the process of revising the document. Having resumed Secretariat responsibility for the CNMC, the NCA will advocate for public consultation on the revised document prior to endorsement by the Committee.

HERITAGE

All works on National land are subject to EPBC Act provisions. While it has been the usual practice to obtain heritage advice at the time a site is selected and design character established, formal assessment against the EPBC Act does not usually occur until after the location and character have officially been approved by the CNMC. This appears to have been driven primarily by the pragmatics of developing character via a design competition. The downside is that it exposes proposals to a higher level of regulatory risk late in the development cycle.

The timing of EPBC assessment for National Memorials contrasts with that for works in the Parliamentary Zone. For these works, the NCA insists that proponents undertake an EPBC assessment/referral prior to the NCA providing advice to the Australian Parliament.

This is a better approach and the Review recommends it be adopted for proposals that require consideration by the CNMC.

161 See <http://downloads.nationalcapital.gov.au/corporate/publications/misc/CommemGuidelines.pdf>

PUBLIC PARTICIPATION

Decisions of the NCA about whether to support a location and character, and decisions of the CNMC to approve the location and character, are currently taken without any community consultation or other public participation.

This also contrasts with the arrangements for works in the Parliamentary Zone. The NCA currently insists that proponents undertake consultation prior to the NCA providing advice to the Australian Parliament.

Again, this is better practice and the Review accordingly recommends its adoption for proposals that require consideration by the CNMC.

FURTHER CONSIDERATION

Preparation of advice for the CNMC, and its subsequent decision-making process, is currently opaque and not particularly systematic. There is merit in clarifying the interaction of the NCA with the CNMC and formalising the process by which the NCA prepares advice to the CNMC.

It is quite proper that the Australian Parliament retain the primary responsibility for National Memorials via the CNMC and in accordance with the *National Memorials Ordinance 1928*. Secretariat support to the CNMC should, however, be provided by the agency most closely responsible for Designated Land in the national capital (presently the NCA).

Membership of the CNMC defined in the *National Memorials Ordinance 1928* reflects an appropriate balance of perspectives. However, 83 years have lapsed since the Ordinance came into effect and the time is well overdue for a re-look at the CNMC Membership or at the very least the requirement that meetings can only be held in person. Minister Crean might wish to seek advice about what might be done in this area. In the meantime, all vacant positions should be filled as soon as possible. The Chief Executive of the NCA should be a member (nominated by the Minister) with the Chief Planner of the NCA acting as Special Advisor to the CNMC.

While it is proper for the Australian Parliament, through the CNMC, to retain sole responsibility for determining the commemorative purpose of a proposed National Memorial, the NCA, as secretariat and advisor, should have an obligation to seek input from the community about the proposed location and character of proposed memorials and to present an analysis of those views as part of their advice to the CNMC.

The NCA, as secretariat, should document a transparent decision making process for national memorials which includes appropriate opportunity for public participation. This process should be embedded within the NCA's *Commitment to Community Engagement*.

The relationship between works approval under the PALM Act and the approvals of the CNMC for location and character, should be clarified and clearly documented. In giving advice to the CNMC, the NCA should explicitly state whether it is willing to provide works approval under the PALM Act and on what basis it has formed that view.

The approval process for National Memorials also needs to clearly and sensibly identify at what point assessment under the EPBC Act will occur.

The following proposed National Memorials currently have some level of endorsement from the CNMC:

TABLE 7: CURRENT PROPOSED NATIONAL MEMORIALS

MEMORIAL	STATUS	SITE RESERVATION
Peacekeeping	Location and character approved	Site on Anzac Parade reserved until 31 December 2012
Boer War	Location approved, design competition held during 2010. Detailed design development underway, prior to CNMC consideration of character	Site on Anzac Parade reserved until 31 December 2013
World War I and World War II	Location and character approved	Site on Rond Terraces reserved until 31 December 2013
Immigration Place	Location approved, design competition to be held prior to CNMC consideration of character	Site adjacent to the National Archives of Australia (East Block) reserved until 31 December 2013
National Workers Memorial	Location approved, design competition to be held prior to CNMC consideration of character	Site in Kings Park reserved until 22 June 2013

These proposed memorials should retain their current approval status for the remainder of their site reservation period but the NCA should immediately establish a page on its website to provide information about the commemorative intent and proposed location and character of these projects.

A clear and robust transition rule is required for the application of any new decision process to these projects. All future CNMC decisions for any of these proposed works should be approached in accordance with the recommended new arrangements.

If any current proposal is unable to meet the requirements of its existing CNMC approvals (including completion before expiration of its current site reservation), the proponents of that project should be required to recommence the approval process in a manner consistent with the recommended new arrangements.

Although public submissions were not sought for the purpose of this Review, unsolicited submissions relating to the CNMC (and the NCA's relationship with the CNMC) and particularly the proposed World War I and World War II Memorials were received.¹⁶²

The Lake War Memorials Forum wants Minister Crean to rescind the previous CNMC decisions and proposes an inquiry by the JSC.

RECOMMENDATION 23

Proponents of proposals that require consideration by the CNMC undertake an EPBC assessment/referral prior to consideration by the Committee.

RECOMMENDATION 24

Proponents of proposals that require consideration by the CNMC undertake public consultation prior to the NCA providing advice to the Committee.

RECOMMENDATION 25

All vacant positions in the CNMC be filled as soon as possible in accordance with the *National Memorials Ordinance 1928*.

¹⁶² Submissions from Walter Burley Griffin Society, the Lake War Memorials Forum, Dr David Stephens, Australia on the Map – a Division of the Australasian Hydrographic Society, and Di Johnstone.

ATTACHMENTS

ATTACHMENT A – SECTION OF REPORT IN WHICH THE JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL AND EXTERNAL TERRITORIES 2004 AND 2008 RECOMMENDATIONS ARE ADDRESSED

JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL AND EXTERNAL TERRITORIES 2004 INQUIRY

RECOMMENDATION	SECTION OF REPORT
1. That the <i>Australian Capital Territory (Planning and Land Management) Act 1988</i> (Cth) be amended to include a requirement for all draft amendments to the National Capital Plan and proposed works in the Parliamentary Zone to be referred to this Committee for its consideration.	Chapter Eight: Public Participation and Transparency identifies that implementing this recommendation would give effect to current practices and would be worth enacting at a convenient time.
2. That an integrated approach be adopted by the Territory and Commonwealth planning authorities for future planning projects affecting both Territory and Commonwealth planning policies.	Enacting the recommendations of the Review would require an integrated approach by the Commonwealth and ACT Governments and give effect to this broad recommendation.
3. That Section 33 of the <i>Australian Capital Territory (Planning and Land Management) Act 1988</i> (Cth) be amended to provide for an increase in the number of members on the National Capital Authority to six (including the Chairperson and the Chief Executive), and that: <ul style="list-style-type: none"> Three of the six members be appointed from other states on a rotational basis; and The full-time Chief Executive be appointed in an ex-officio role as a non-voting member of the Authority. 	This recommendation, and the overall structure of the NCA Board is addressed in Chapter Seven: Governance and Accountability, section titled <i>Constitution of the Board</i> .
4. That the <i>Australian Capital Territory (Planning and Land Management) Act 1988</i> (Cth) be amended to include provision for an independent appeals process against the National Capital Authority decisions regarding works approvals, in addition to the current option for review under the <i>Administrative Decisions (Judicial Review) Act 1977</i> (Cth).	The issue of introducing an appeals mechanism for Works Approvals is discussed in Chapter Four: Planning in the National Capital, section titled <i>Appeals Process</i> .
5. That, in addition to Recommendation 5, the Federal Government negotiate with the ACT Government to initiate reciprocal representation on the respective boards of the National Capital Authority and the ACT Planning and Land Council, and that Section 33(1) of the <i>Australian Capital Territory (Planning and Land Management) Act 1988</i> (Cth) and the relevant Territory legislation be amended to facilitate this.	The ACT Planning and Land Council no longer exists. Chapter Seven: Governance and Accountability, section titled <i>Constitution of the Board</i> highlights the need for a representative of the ACT region to be appointed to the Board on nomination by the ACT Government.
6. That, in collaboration with the Territory Government, the Federal Government initiate an independent and comprehensive review of the National Capital Plan on the basis of the implementation of the recommendations of this report and the need for a more integrated approach by both planning authorities.	Chapter Four: Planning in the National Capital, section titled <i>The National Capital Plan – in Need of Review?</i> discusses the need for a comprehensive review of the structure and content of the National Capital Plan. The need for an integrated approach is discussed throughout the Chapter.
7. That Section 10 (2b) of the <i>Australian Capital Territory (Planning and Land Management) Act 1988</i> (Cth) be amended to remove planning of arterial road systems from the National Capital Plan and that the responsibility for the planning of arterial roads be transferred to the Territory Government.	Under the proposed arrangements outlined in Chapter Four: Planning in the National Capital, section titled <i>The National Capital Plan – Strategic Planning</i> , the planning of arterial roads would likely be identified as a "Principle Responsibility Area" of the ACT Government (an area where the ACT Government would take the lead).
8. That the National Capital Plan be amended so that Designated Area status is uplifted from all Territory Land with the exception of the Deakin/Forrest residential area, the Inner Hills and the main avenues and approach routes; and that in assuming planning responsibility for the areas to be uplifted, the Territory Government uphold the principles articulated in the National Capital Plan.	Chapter Three: The Commonwealth's Role in the National Capital, section titled <i>What is National Significance?</i> identifies that the current Designated Areas and areas subject to "Special Requirement" are those areas which demonstrate national significance and where the Commonwealth should maintain a high level of interest. Chapter Four: Planning in the National Capital, section titled <i>Special Requirements</i> discusses the merits of retaining these requirements in the National Capital Plan as a set of concise, objective criteria which would then be replicated in the Territory Plan and upheld by the ACT Government.

<p>9. That the National Capital Plan be amended to incorporate a set of agreed planning principles for areas of Territory Land subject to special requirements, and that:</p> <ul style="list-style-type: none"> › these principles be developed jointly by the Commonwealth and › Territory planning authorities; › the Territory assume planning responsibility for these areas; and › the Territory act in accordance with these agreed principles. 	<p>This recommendation is discussed in Chapter Four: Planning in the National Capital, section titled Special Requirements.</p>
<p>10. That, for all sites fronting State Circle between Hobart and Adelaide Avenue (Blocks 1-8 Section 6 Forrest and Blocks 5-9 Section 3 Deakin):</p> <ul style="list-style-type: none"> › building height be no more than two storeys and no point more than 8 metres above the natural ground level immediately below (regardless of whether the blocks are amalgamated or not); and › plot ratio for residential development of existing blocks should remain at 0.4, and in the case of amalgamated blocks be up to a maximum of 0.8. 	<p>Addressing this recommendation was considered outside the scope of the Review, as it relates to a specific issue rather than the broader roles and responsibilities of the NCA.</p>
<p>11. That the <i>Australian Capital Territory (Planning and Land Management) Act 1988</i> (Cth) be amended to require public consultation by the National Capital Authority in relation to works proposals in Designated Areas.</p>	<p>Chapter Eight: Public Participation and Transparency discusses the measures the NCA has introduced in respect of this recommendation. The PALM Act has not been amended, however the NCA's <i>Commitment to Community Engagement 2010</i> is a commendable alternative to legislative change.</p>
JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL AND EXTERNAL TERRITORIES 2008 INQUIRY	
<p>1. That the Commonwealth Government affirm its direct and enduring commitment to the future of Canberra as a planned national capital on behalf of all Australians.</p>	<p>The Review whole-heartedly agrees with this recommendation. A pervading theme throughout the report is that the Commonwealth Government needs to reinvest in Canberra as the national capital.</p>
<p>2. That the <i>Australian Capital Territory (Planning and Land Management) Act 1988</i> be amended to include the following provisions:</p> <ul style="list-style-type: none"> › That the National Capital Authority board consists of a Chairperson and seven members. › That a minimum of two National Capital Authority board members be from the ACT region. › That a person appointed as a National Capital Authority board member by the Commonwealth Government must have qualifications or expertise relevant to a field related to the Authority's functions as set out in Section 6 of the <i>Australian Capital Territory (Planning and Land Management) Act 1988</i>. › That the Chief Executive no longer have ex-officio status on the National Capital Authority board. › That the appointment of Chief Executive should be made on recommendation of the National Capital Authority board and the Chief Executive be fully accountable to the board. 	<p>This recommendation, and the overall structure of the NCA Board is addressed in Chapter Seven: Governance and Accountability, section titled <i>Constitution of the Board</i>.</p>
<p>3. That the <i>Australian Capital Territory (Planning and Land Management) Act 1988</i> be amended to require the Chairperson of the National Capital Authority to appear twice a year before the Joint Standing Committee for the National Capital and External Territories.</p>	<p>This recommendation is addressed in Chapter Seven: Governance and Accountability, section titled <i>Appearances before the Joint Standing Committee on the National Capital and External Territories</i>.</p>
<p>4. That a National Capital Consultative Council be established. This Council would have representatives from the Commonwealth Government and the ACT Government, the community and business. The Council would be co-chaired by the responsible Minister and the ACT Chief Minister.</p>	<p>Chapter Seven: Governance and Accountability, section titled <i>A National Capital Consultative Council</i>.</p>
<p>5. That the Commonwealth Government establish the position of Commonwealth Architect within the Department of Prime Minister and Cabinet.</p>	<p>This recommendation is addressed in Chapter Seven: Governance and Accountability, section titled <i>Constitution of the Board</i>.</p>
<p>6. That the <i>Australian Capital Territory (Planning and Land Management) Act 1988</i> be amended to require all draft amendments to the National Capital Plan and all proposed works (with the exception of de-minimus works) in the Parliamentary Zone to be referred to the Joint Standing Committee on the National Capital and External Territories for its consideration and report, if necessary, within three months.</p>	<p>Chapter Eight: Public Participation and Transparency identifies that implementing this recommendation would give effect to current practices and would be worth enacting at a convenient time.</p>
<p>7. In the interest of improving uniformity between the two planning systems, the Development Assessment Forum model should be assessed by the National Capital Authority for its relevance and application to the National Capital Plan and a report provided to the Joint Standing Committee and Minister within three months from the date of the Government Response to this report.</p>	<p>The Review concurs with this recommendation. Chapter Four: Planning in the National Capital, section titled <i>Development Assessment Forum Leading Practice Model</i> provides relevant discussion.</p>

8. That existing relevant Commonwealth and Territory legislation be amended to protect the heritage of all Designated Areas in Canberra.	This recommendation is addressed in Chapter Ten: Other Matters, section titled <i>Heritage</i> .
9. That the role of the National Capital Authority be clarified to include promotion of the national cultural icons located in the Central National Area.	Chapter Six: Fostering Awareness of the National Capital discusses what role the NCA should have in promotion of the ACT. This Chapter concludes that the NCA's role should be clarified to identify the Commonwealth's role as informing and educating Australians and visitors about the significance and role of the national capital.
10. That the National Capital Consultative Council prepare a domestic and international tourism and marketing plan for the national capital for consideration by both the ACT and Commonwealth Governments in their next respective budgets. In addition, the committee recommends that such a plan factor in the Centenary of Canberra celebrations in 2013.	Chapter Six: Fostering Awareness of the National Capital identifies that there is a distinction between the NCA's role in education and informing, as opposed to the ACT Government's role in tourism. Accordingly, the Review recommends that the NCA prepare a plan of information and education activities. This Chapter also discusses the respective roles of the Commonwealth and ACT Government in planning for the Centenary of Canberra in 2013.
11. That the Department of Infrastructure, Transport, Regional Development and Local Government consult with the National Capital Authority to ensure that the Airport Master Plan and the major development plan is in line with the National Capital Plan.	This recommendation is not addressed in the report. Consultation with the NCA on the airport Master Plan already occurs in accordance with the <i>Airports Act 1996</i> .
12. That the National Capital Consultative Council make recommendations to the Commonwealth Government for a policy to govern future locations of Commonwealth Government agencies in Canberra.	The establishment of such a Council and its remit is discussed in Chapter Seven: Governance and Accountability, section titled <i>A National Capital Consultative Council</i> .
13. That the Commonwealth and the ACT Government prepare a joint Sustainable Transport Plan which is recognised in both the National Capital Plan and the Territory Plan.	Under the proposed arrangements outlined in Chapter Four: Planning in the National Capital, section titled <i>The National Capital Plan – Strategic Planning</i> , the planning of arterial roads would likely be identified as a "Principle Responsibility Area" of the ACT Government (an area where the ACT Government would take the lead). It follows that the ACT Government would be responsible for the preparation of sustainable transport policies (as they currently are). The NCA would be involved to the extent that infrastructure within areas controlled by the NCA forms, or needs to for, part of the main transport network. Broad principles pertaining to sustainable transport planning could be incorporated within the National Capital Plan.
14. That, as a possible interim measure to resolve duplication, the Commonwealth consider amendments to the <i>Australian Capital Territory (Planning and Land Management) Act 1988</i> to permit the National Capital Authority and ACT Planning and Land Authority to negotiate a memorandum of understanding to delegate the planning jurisdiction for Territory Land which has designated status under the National Capital Plan from the NCA to ACTPLA Such a delegation would need to be accompanied by the necessary resources to fulfil these functions.	Chapter Four: Planning in the National Capital, section titled <i>Aligning of Planning and Land Jurisdiction</i> identifies that aligning planning and land management responsibilities is not feasible. Adoption of the DAF model (section titled <i>Development Assessment Forum Leading Practice Model</i>) would see minor works within Designated Areas become exempt or self-assessable (including on Territory Land), resolving some frustration around the current arrangements whereby the NCA is required to grant Works Approval for Territory Land. In any case, the proposed JSC arrangements appear cumbersome and require legislative change.
15. That, in the interests of removing unnecessary complexity and red tape: <ul style="list-style-type: none"> ▶ "Special Requirements" be removed from the National Capital Plan; ▶ All areas of National Land previously subject to Special Requirements be converted to Designated Areas; and ▶ Any areas of Territory Land previously subject to "Special Requirements" where the Commonwealth has a significant and enduring planning interest be converted to Designated Areas until a broader review of the National Capital Plan and Territory Plan is undertaken to assess whether such areas should be considered for future gazettal as National Land. 	Chapter Three: The Commonwealth's Role in the National Capital, section titled <i>What is National Significance?</i> identifies that the current Designated Areas and areas subject to "Special Requirement" are those areas which demonstrate national significance and where the Commonwealth should maintain a high level of interest. Chapter Four: Planning in the National Capital, section titled <i>Special Requirements</i> discusses the merits of retaining these requirements in the National Capital Plan as a set of concise, objective criteria which would then be replicated in the Territory Plan and upheld by the ACT Government.
16. The strategic goal of ecologically sustainable development should be embedded as a major principle in the <i>Australian Capital Territory (Planning and Land Management) Act 1988</i> .	Chapter Four: Planning in the National Capital, section titled <i>The National Capital Plan – in Need of Review?</i> identifies that the National Capital Plan does not adequately reflect contemporary planning issues, including sustainability. This section recommends that the NCA be able to undertake a comprehensive review of the National Capital Plan with a view to reflecting contemporary issues. This would include the strategic goal of ecologically sustainable development.

<p>17. That the <i>Australian Capital Territory (Planning and Land Management) Act 1988</i> be amended to enshrine the policies and principles of national significance as described in the proposed National Capital Land Use Plan in a schedule of the Act, and that the proposed Implementation Strategy be included as a disallowable instrument.</p> <p>The Act should also be amended to specify a requirement for the National Capital Land Use Plan and Implementation Strategy to be reviewed every three to five years.</p>	<p>Chapter Three: The Commonwealth's Role in the National Capital, section titled <i>What is National Significance?</i> recommends incorporating five criteria for determining national significance within the National Capital Plan. This approach gives the criteria statutory effect and requires no legislative change.</p> <p>Chapter Four: Planning in the National Capital, section titled <i>The National Capital Plan – Strategic Planning</i> notes that the General Policy Plan – Metropolitan Canberra would be reviewed every seven years.</p>
<p>18. That the National Capital Authority and ACT Planning and Land Authority form a joint working group to achieve a single integrated document which:</p> <ul style="list-style-type: none"> › comprises the two statutory plans, and agrees on clear geographic boundaries between the two plans based on the committee's objective that, where possible, land administration be aligned with planning jurisdiction; › includes a harmonised language, definitions and structure; › provides guidelines for interpretation of the two plans; › provides advice to the Commonwealth Government on enshrining the policies and principles relating to national significance across the Australian Capital Territory in the form of the National Capital Land Use Plan in the <i>Australian Capital Territory (Planning and Land Management) Act 1988</i>; and › provides advice to the Commonwealth and ACT Governments on the key elements of the Implementation Strategy. 	<p>Chapter Four: Planning in the National Capital, section titled <i>An Integrated Planning Document for the ACT</i> discusses the difficulties in achieving a single planning document. This section identifies an alternative approach to a single planning document whereby a 3D model with integrated GIS features would enable users to efficiently navigate the National Capital Plan and the Territory Plan.</p>
<p>19. That the National Capital Authority be resourced to participate in the working parties and reviews as required.</p>	<p>This recommendation is no longer pertinent. The Taksforce completed their work in 2009 and the IGC on planning experienced difficulties in dealing with its remit, did not reach any conclusions and has never issued a report.</p>
<p>20. That any draft amendment(s) to the National Capital Plan proposing uplift of Designated Areas and a formal geographic re-alignment of planning jurisdiction be referred to the Joint Standing Committee on the National Capital and External Territories for inquiry.</p>	<p>Chapter Four: Planning in the National Capital, section titled <i>Aligning of Planning and Land Jurisdiction</i> identifies that aligning planning and land management responsibilities is not feasible. Therefore no such amendment would result. In any case, current practice is for the Minister to refer all draft amendments to the JSC. The JSC can then indicate whether they wish to make an inquiry.</p>
<p>21. That, in the interest of aligning the National Capital Authority's planning system with the ACT's, the <i>Australian Capital Territory (Planning and Land Management) Act 1988</i> be amended to include a provision for decisions on development applications made under the Act to be subject to review through the Commonwealth Administrative Appeals Tribunal.</p>	<p>The issue of introducing an appeals mechanism for Works Approvals is discussed in Chapter Four: Planning in the National Capital, section titled <i>Appeals Process</i>.</p>
<p>22. That the Commonwealth provide resources to the National Capital Authority to continue the development of a cost effective three-dimensional integrated plan in digital format which is available online with the purpose of gaining efficiencies in planning and enhancing consultation.</p>	<p>Chapter Four: Planning in the National Capital, section titled <i>Three-Dimensional Modelling</i> discusses the merits of using such models in the planning process. Section titled <i>An Integrated Planning Document for the ACT</i> of the same Chapter identifies an alternative approach to a single planning document whereby a 3D model with integrated GIS features would enable users to efficiently navigate the National Capital Plan and the Territory Plan.</p>

ATTACHMENT B - SUBMISSIONS TO THE REVIEW

- › AITKEN, Don – current Chair of the NCA
- › Association of Consulting Architects Australia
- › Australia on the Map Division of the Australasian Hydrographic Society
- › Australian Institute of Architects
- › Friends of Grasslands
- › Friends of the Albert Hall Inc.
- › JOHNSTONE, Di
- › Lake War Memorials Forum
- › Law Society of the Australian Capital Territory
- › LYON, Keith
- › MOSS, Rodney – Director, Cox Architecture and Professor of Architecture, University of Canberra
- › National Capital Authority
- › Planning Institute Australia
- › POWELL, Tony
- › SCHULLER, Andrew
- › Walter Burley Griffin Society Inc.

ATTACHMENT C - CONSULTATION MEETINGS

- › ARCHER, Robyn – Creative Director, Centenary of Canberra
- › BALL, Michael – former Chair of the NCA
- › BEAUCHAMP, Glenys – Secretary, Department of Regional Australia, Regional Development and Local Government
- › BRODTMANN, Gai – Member for Canberra
- › CANBERRA BUSINESS COUNCIL
- › CAPPIE-WOOD, Andrew - Head of Service and Director-General; DAVOREN, Pam - Deputy Director-General, Policy and Cabinet Division; and KEFFORD, Andrew - A/g Deputy Director-General, People and Performance Division, ACT Government Chief Minister and Cabinet Directorate
- › COSTIGAN, Paul – Chief Executive Officer, Australian Institute of Landscape Architects
- › CREAN MP, Simon – Minister for Regional Australia, Regional Development and Local Government
- › DENTON – John – Director, Denton Corker Marhsall Pty Ltd
- › ECCLES, Richard – Deputy Secretary (Arts & Sports Group), Department of the Prime Minister and Cabinet
- › EVANS, David – former Chair of the NCA
- › GRIMES, Paul – Secretary; and HOOY, Theo – Assistant Secretary, Historic Heritage, Department of Sustainability, Environment, Water, Population and Communities
- › HEADON, David
- › HELGEBY, Stein – Acting Secretary; SCOTT-MURPHY, Rick – Assistant Secretary; and ROACH, Joe – Branch Manager, Communications, Infrastructure and Regional Development, Budget Group, Department of Finance and Deregulation
- › HUGHES, Sheila; and RUTH, Kylie – Australian Institute of Architects (ACT Division)
- › HUMPHRIES, Gary – Senator for the Australian Capital Territory
- › LEIGH, Andrew – Member for Fraser
- › LUNDY, Kate – Senator for the Australian Capital Territory
- › ODGERS, Brett – Walter Burley Griffin Society Inc.
- › PECK, Robert – Principal, Peckvonhartel Architects
- › PEGRUM, Annabelle – University Architect, University of Canberra
- › POWELL, Tony
- › PRATT, Louise – Senator for Western Australia, Chair Joint Standing Committee on the National Capital and External Territories
- › Property Council of Australia (ACT Division)
- › PUPLICK, Chris – Chair, Board of the National Film and Sound Archive
- › RADFORD, Ron – Director, National Gallery Australia
- › RIMMER, Ben – Deputy Secretary (Strategic Policy and Implementation), Department of the Prime Minister and Cabinet
- › SERVICE, Jim – Executive Chairman, JG Service Pty Ltd
- › SULLIVAN, Mark – Managing Director, ACTEW Corporation

ATTACHMENT D - ANNOUNCEMENT OF THE REVIEW



The Hon Simon Crean MP

Minister for Regional Australia, Regional Development and Local Government

Minister for the Arts

2 March, 2011

Allan Hawke to head review of the National Capital Authority

The Minister for Regional Australia, Regional Development and Local Government, Simon Crean, who is also the Minister responsible for the Territories today announced the engagement of Dr Allan Hawke AC to conduct an independent review of the National Capital Authority (NCA).

Dr Hawke has been appointed to look at the roles and responsibilities of NCA.

"Dr Hawke is the right person for this task and this is the right time to conduct a review. It is essential that we find the correct balance between planning responsibilities between the Commonwealth and the ACT Government in the National Capital," Mr Crean said.

"The Commonwealth will always have a keen interest in the planning of the National Capital as the seat of Government in Australia.

"Dr Hawke has extensive experience in conducting government reviews of this nature and both the ACT Government and the National Capital Authority support his appointment to undertake the review.

"Fresh from his recent review of the ACT public service, and with years of Commonwealth public service under his belt, Dr Hawke is uniquely placed to bring together the Commonwealth's interests and the interests of the ACT Government in the National Capital," Mr Crean said.

The review will draw on work already produced by various taskforces and committees and Dr Hawke will hold targeted consultation with key stakeholders. The review will make recommendations on the future role and responsibilities of the National Capital Authority for consideration by the Australian Government.

Dr Hawke will report back to the Government with recommendations by June 2011.

ATTACHMENT E – JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL AND EXTERNAL TERRITORIES 2004 INQUIRY.

RECOMMENDATION 1

That the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) be amended to include a requirement for all draft amendments to the National Capital Plan and proposed works in the Parliamentary Zone to be referred to this Committee for its consideration.

GOVERNMENT RESPONSE

Disagree.

The Resolution of Appointment is the source of authority for the establishment and operations of the Committee. The current Resolution was passed by the House of Representatives and the Senate on 18 November 2004 and provides that the Minister for Local Government, Territories and Roads (the Minister) may refer draft amendments to the National Capital Plan to the Committee for its consideration. While it has generally been the government's practice to refer draft amendments to the National Capital Plan to the Committee, the government considers that the Minister should retain the discretion to do so.

Works within the Parliamentary Zone require the approval of the NCA as well as the approval of both Houses of Parliament. The current Resolution provides that matters coming within the terms of section 5 of the *Parliament Act 1974* (works in the Parliamentary Zone) may be referred to the Committee by either House of Parliament; the Minister responsible for administering the *Parliament Act 1974*; or the President of the Senate and the Speaker of the House of Representatives. Some works are not referred to Parliament because they are considered to be of a trivial or temporary nature. The practice is for a quarterly report of such works to be referred by the Minister to the Committee for information. The government is of the view that the current arrangements provide the Committee with adequate opportunity to consider works within the Parliamentary Zone.

RECOMMENDATION 2

That an integrated approach be adopted by the Territory and Commonwealth planning authorities for future planning projects affecting both Territory and Commonwealth planning policies.

GOVERNMENT RESPONSE

Agree.

There are currently routine liaison meetings between the NCA and the ACT

Authority. There is also cross representation on a number of committees, advisory panels and/or project working groups with some projects being co-funded. Since August 2004, the ACT Authority has been invited to attend each NCA meeting with a standing agenda item to discuss matters of mutual interest.

The *Australian Capital Territory (Planning and Land Management) Act 1988* (the Act) requires the NCA to consult with the ACT Authority regarding any proposed amendments to the National Capital Plan, to have regard to any views expressed by it and to alter the draft if it thinks fit. The NCA must advise the Minister in writing of the

consultations and views of the ACT Authority. There is also provision in the Act for the Minister to consult with the ACT Government in circumstances where the ACT Authority continues to object to a draft amendment

RECOMMENDATION 3

That Section 33 of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) be amended to provide for an increase in the number of members on the National Capital Authority to six (excluding the Chairperson and Chief Executive), and that:

- › **three of the six members be appointed from other states and territories on a rotational basis; and**
- › **the full-time Chief Executive be appointed in an ex-officio role as a non-voting member of the Authority.**

RECOMMENDATION 4

That the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) be amended to include the provision for an independent appeals process against National Capital Authority decisions regarding works approvals, in addition to the current option for review under the *Administrative Decisions (Judicial Review) Act 1977* (Cth).

RECOMMENDATION 5

That, in addition to Recommendation 5, the Federal Government negotiate with the ACT Government to initiate reciprocal representation on the respective boards of the National Capital Authority and the ACT Planning and Land Council, and that Section 33(1) of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) and the relevant Territory legislation be amended to facilitate this.

GOVERNMENT RESPONSE

Recommendations 3,4 and 5: Noted, pending further consideration.

The government announced in August 2004 that responsible ministers are to assess their portfolio statutory bodies against principles and recommendations contained in the Review of the Corporate Governance of Statutory Authorities and Office Holders (the Uhrig report). The assessment of the NCA is expected to consider its roles and responsibilities, appropriate governance structure and stakeholder relationships. It is appropriate that the Committee's Recommendations 3,4 and 5 are considered in the context of the application of the Uhrig report to the NCA.

RECOMMENDATION 6

That, in collaboration with the Territory Government, the Federal Government initiate an independent and comprehensive review of the National Capital Plan on the basis of the implementation of the recommendations of this report and the need for a more integrated approach by both planning authorities.

RECOMMENDATION 7

That Section 10 (2b) of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) be amended to remove planning of arterial road systems from the National Capital Plan and that the responsibility for the planning of arterial roads be transferred to the Territory Government.

RECOMMENDATION 8

That the National Capital Plan be amended so that Designated Area status is uplifted from all Territory Land with the exception of the Deakin/Forrest residential area, the Inner Hills and the main avenues and approach routes; and that in assuming planning responsibility for the areas to be uplifted, the Territory Government uphold the principles articulated in the National Capital Plan.

RECOMMENDATION 9

That the National Capital Plan be amended to incorporate a set of agreed planning principles for areas of Territory Land subject to special requirements, and that:

- › these principles be developed jointly by the Commonwealth and Territory planning authorities;
- › the Territory assume planning responsibility for these areas; and
- › the Territory act in accordance with these agreed principles.

GOVERNMENT RESPONSE

Recommendations 6,7, 8 and 9: Disagree.

The government considers that it is appropriate to maintain the Australian

Government's powers in relation to the planning and development of Canberra and the Territory in accordance with their national significance.

RECOMMENDATION 10

That, for all sites fronting State Circle between Hobart and Adelaide Avenue (Blocks 1-8 Section 6 Forrest and Blocks 5-9 Section 3 Deakin:

- › building height be no more than two storeys and no point more than 8 metres above the natural ground level immediately below (regardless of whether the blocks are amalgamated or not); and
- › plot ratio for residential development of existing blocks should remain at 0.4, and in the case of amalgamated blocks be up to a maximum of 0.8.

GOVERNMENT RESPONSE

Disagree.

This matter has been the subject of intensive consultation and protracted debate since 2000, including detailed consideration by the Committee in its October 2002 report *Striking the Right Balance: Draft Amendment 39, National Capital Plan*. The government's response to that report, tabled in Parliament on 16 June 2003, agreed that land in the Deakin/Forrest area should continue to be used for residential purposes and that the area between State Circle and National Circuit should retain Designated Area status. The government's response also agreed in principle that development along State Circle between Hobart and Adelaide Avenues should occur in a manner that ensures the design and landscape outcome is appropriate to the setting of Parliament and reflects the role of State Circle as a Main Avenue.

Following the release of the report in July 2004 the NCA conducted a further workshop with residents, lessees and prospective developers to discuss the controls that should apply to properties fronting State Circle. Consensus was not reached at the workshop and further consultative processes were conducted during August 2004. Again, no agreement was able to be reached with residents/lessees.

It is not always possible to accommodate the views and preferences of all interested and affected parties in planning and development processes. The government considers that the design and siting requirements in the February 2004 Draft Amendment 39 have been prepared to achieve balanced, quality urban outcomes and provide appropriate protection to the amenity of residents. These requirements include permission for three storey multi-unit developments on blocks fronting State Circle under certain conditions.

RECOMMENDATION 11

That the *Australian Capital Territory (Planning and Land Management) Act 1988 (Cth)* be amended to require public consultation by the National Capital Authority in relation to works proposals in Designated Areas.

GOVERNMENT RESPONSE

Noted, pending further consideration.

It is appropriate that Recommendation 11 is considered in the context of the application of the Uhrig report to the NCA.

ATTACHMENT F – JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL AND EXTERNAL TERRITORIES 2007 REVIEW OF THE GRIFFIN LEGACY AMENDMENTS

RECOMMENDATION 1

The committee recommends that the Minister for Local Government, Territories and Roads in the future provides the Joint Standing Committee on the National Capital and External Territories with the option of inquiring into every Draft Amendment to the National Capital Plan.

Where the committee requests an inquiry, the Draft Amendment under consideration should not be tabled until after the committee completes its inquiry.

GOVERNMENT RESPONSE

Not agreed.

The Resolution of Appointment is the source of authority for the establishment and operations of the Committee. The current Resolution was passed by the House of Representatives and the Senate on 18 November 2004 and provides that the Minister for Local Government, Territories and Roads (the Minister) may refer draft amendments to the National Capital Plan to the Committee for its consideration. While it has generally been the government's practice to refer draft amendments to the National Capital Plan to the Committee, the government considers that the Minister should retain the discretion to do so.

Currently, as part of the approval process for draft amendments, the Minister provides a copy of draft amendments to the Committee giving them the opportunity to indicate if they wish to conduct an inquiry into the amendments. In addition to this, the Committee is also given the opportunity to be briefed on draft amendments. In the case of the Griffin Legacy Draft Amendments, the Committee was provided with private briefings throughout the development of the Griffin Legacy.

As part of the draft amendment process, there is usually time for the Committee to conduct inquiries, however there can be matters of national significance which may not allow time for full consideration by the Committee.

RECOMMENDATION 2

The committee recommends that the National Capital Authority explore options for ensuring that submissions to all the Authority's consultation processes are made publicly available subject to full approval by the submitter and compliance with relevant privacy principles and advise the committee.

GOVERNMENT RESPONSE

Agreed.

Submissions received during consultation processes will be made publicly available providing approval is obtained by the submitter and all relevant privacy principles are adhered to.

The National Capital Authority (NCA) has already released its Consultation Protocol (the Protocol) which includes the requirement to publicly release submissions. The Protocol also sets out the minimum requirements for consultation which must be carried out:

1. when the Plan is being made or amended;
2. when a Development Control Plan (DCP) is being made;
3. on a development application; and
4. when the NCA informs community and stakeholders on an annual basis.

The Protocol seeks to formalise, clarify and guide the community and stakeholders to ensure consistency in the application of consultation within the legislative requirements, as outlined in the *Australian Capital Territory (Planning and Land Management Act 1988)* and the National Capital Plan.

The Protocol is available on the NCA's website here:

http://www.nationalcapital.gov.au/downloads/planning_and_urban_design/consultation_reports/Consultation_Protocol_July2007.pdf

RECOMMENDATION 3

The committee recommends that before 29 March 2007 the Minister for Local Government, Territories and Roads moves to disallow Amendments 56, 59, 60 and 61 so that the National Capital Authority has the opportunity to further refine the amendments taking into account issues raised in the committee's report.

GOVERNMENT RESPONSE

Not agreed.

After the Committee's report was tabled, the Minister publicly declined to disallow the Amendments.

The disallowance period ended in the House of Representatives on 22 March 2007.

On 29 March 2007 the Australian Greens Senator, Bob Brown moved to disallow the Amendments in the Senate. The debate and vote on the disallowance motion was held on 10 May 2007 and was not supported by the Senate. The Amendments are now incorporated in the National Capital Plan.

ATTACHMENT G – JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL AND EXTERNAL TERRITORIES. 2008 INQUIRY.

RECOMMENDATION 1

That the Commonwealth Government affirm its direct and enduring commitment to the future of Canberra as a planned national capital on behalf of all Australians.

GOVERNMENT RESPONSE

The Government accepts this recommendation.

The Commonwealth has an enduring interest and commitment to the future of

Canberra as a planned national capital on behalf of all Australians. The ACT is vested in the Commonwealth by virtue of section 125 of the *Constitution* for establishing the Seat of Government. Canberra is the home of our democratic institutions such as the Parliament of Australia and the High Court. Canberra is a unique capital city. It is one of only four capital cities in the world that has been planned as a capital city from its inception.

Canberra is also home to the memorials that honour the men and women who

sacrificed their lives to protect the interests and values of the people of Australia. In Canberra, icons of national significance, like the National Museum of Australia,

reflect our national identity, ideals and aspirations.

The Government affirms its direct and enduring commitment to the future of Canberra as a planned national capital on behalf of all Australians.

RECOMMENDATION 2

That the *Australian Capital Territory (Planning and Land Management) Act 1988* be amended to include the following provisions:

- › that the National Capital Authority board consists of a Chairperson and seven members;
- › that a minimum of two National Capital Authority board members be from the ACT region;
- › that a person appointed as a National Capital Authority board member by the Commonwealth Government must have qualifications or expertise relevant to a field related to the Authority's functions as set out in Section 6 of the *Australian Capital Territory (Planning and Land Management) Act 1988*;
- › that the Chief Executive no longer have ex-officio status on the National Capital Authority board; and
- › that the appointment of Chief Executive should be made on recommendation of the National Capital Authority board and the Chief Executive be fully accountable to the board.

GOVERNMENT RESPONSE

The Government accepts this recommendation in part.

The Government agrees in principle to amending the Act to provide for the Authority comprising a minimum of five and a maximum of seven members. However, the Government will consider the overall structure of the Authority in the context of the inter-governmental committee that will consider how to best align and streamline planning and land management (discussed in the Government's response to Recommendation 14).

The Government also agrees that greater engagement of local and national

perspectives is one way of ensuring that the ACT and Commonwealth Government interests in the development of the national capital are properly considered.

The Government does not agree that the Chief Executive should not be a member of the Authority. The Chief Executive will continue to remain on the Authority board, while being responsible for staff of the Authority as an Agency Head for the purposes of the *Public Service Act 1999* and the *Financial Management and Accountability Act 1997*. The Chief Executive will continue to provide operational and advisory support to the Authority in the exercise of its statutory functions.

RECOMMENDATION 3

That the *Australian Capital Territory (Planning and Land Management) Act 1988* be amended to require the Chairperson of the National Capital Authority to appear twice a year before the Joint Standing Committee for the National Capital and External Territories.

GOVERNMENT RESPONSE

The Government accepts this recommendation in principle.

The Government supports increased accountability measures to allow for greater scrutiny of the operations of the Authority. The Chairperson should be accountable for the Authority's performance of its statutory functions. The Government notes that the appropriate mechanism to achieve the objective of this recommendation is an amendment to the Joint Standing Committee's Standing Resolution of Appointment and will refer consideration of the change to the Committee Secretariat.

RECOMMENDATION 4

That a National Capital Consultative Council be established. This Council would have representatives from the Commonwealth Government and the ACT Government, the community and business. The Council would be co-chaired by the responsible Minister and the ACT Chief Minister.

GOVERNMENT RESPONSE

The Government accepts this recommendation in principle.

The Government agrees that consultative mechanisms enabling the Commonwealth to hear from the ACT Government, ACT community and business representatives would provide valuable information and support to the reform process.

The Government notes that the Minister for Home Affairs has an existing Canberra Consultative Forum and will consider whether this forum can form the basis for a National Capital Consultative Council.

The Forum, and its predecessor, the Canberra Region Ministerial Forum, has been a longstanding mechanism

for fostering links between the Commonwealth Government, the ACT Government and the Canberra business community.

The Council will assist the Government in its further consider the planning relationship between the Commonwealth Government and the ACT Government in the context of its review to streamline planning and land management responsibilities in the ACT (discussed in the Government's response to Recommendation 14).

RECOMMENDATION 5

That the Commonwealth Government establish the position of Commonwealth Architect within the Department of Prime Minister and Cabinet.

GOVERNMENT RESPONSE

The Government notes this recommendation.

The Government, including the Authority and the responsible Minister, has the power to obtain any advice it requires in the performance of its functions. This includes obtaining architectural services. Section 44 of the Act allows the Minister, upon recommendation of the Authority, to appoint a committee to give advice to the Authority or to assist in the performance of its functions.

The Government expects that the Authority will continue to seek advice of highly skilled and experienced architects when required. The Government will also retain the ability to obtain architectural advice on its building and/or land management projects through normal departmental procurement mechanisms.

The Government is also concerned that the creation of the position of Commonwealth Architect may only serve to duplicate and complicate the role of the Authority in the exercise of its statutory functions relating to planning and development of areas of land in the ACT.

If the Government is provided with further evidence that the position of Commonwealth Architect is desirable, and will not duplicate the functions of the Authority, then it may be considered further.

RECOMMENDATION 6

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

GOVERNMENT RESPONSE

The Government accepts this recommendation in principle.

The Government values the important role the Joint Standing Committee plays in scrutinising and reporting on draft amendments to the Plan. Since its inception, the Joint Standing Committee has undertaken several reviews of the Authority and its operations.

However, the Joint Standing Committee is established by resolution of appointment of both Houses of Parliament. The Speaker of the House of Representatives and the President of the Senate must introduce amendments to the resolution. Both Houses of Parliament must agree to any amendment to the resolution of appointment of the Joint Standing Committee.

The Government is encouraged by the Joint Standing Committee's resolve to review all draft amendments to the Plan and all proposed works (with the exception of *de-minimus* works) in the Parliamentary Zone.

The Government notes that any expansion of the Joint Standing Committee will likely involve an increase in responsibilities and administrative burdens to the Joint Standing Committee. The Joint Standing Committee has indicated that it is willing to accept this eventuality.

The Government will consider how best to implement this recommendation in the context of its review to streamline planning and land management responsibilities in the ACT (discussed in the Government's response to Recommendation 14).

RECOMMENDATION 7

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

GOVERNMENT RESPONSE

The Government accepts this recommendation in principle.

The Government will ask the Authority to make an assessment of the relevance and application of the Development Assessment Forum model in the context of its review to streamline planning and land management responsibilities in the ACT (discussed in the Government's response to Recommendation 14).

RECOMMENDATION 8

That existing relevant Commonwealth and Territory legislation be amended to protect the heritage of all Designated Areas in Canberra.

GOVERNMENT RESPONSE

The Government accepts this recommendation in principle.

The Government understands that, although the ACT can list heritage places in Territory Land that is Designated Area, the usual statutory systems of the ACT and Commonwealth governments to protect the places do not generally apply. The Government will work with the ACT Government to consider how best to implement this recommendation in the context of aligning and streamlining planning and land management responsibility (discussed in the Government's response to Recommendation 14).

RECOMMENDATION 9

That the role of the National Capital Authority be clarified to include promotion of the national cultural icons located in the Central National Area.

GOVERNMENT RESPONSE

The Government accepts this recommendation in principle.

The Authority's current promotion function under section 6(e) of the Act is to foster an awareness of Canberra as the national capital. The Government accepts that greater clarity may be given to this particular function to provide certainty as to the scope and purpose of the Commonwealth's role in this area.

RECOMMENDATION 10

That the National Capital Consultative Council prepare a domestic and international tourism and marketing plan for the national capital for consideration by both the ACT and Commonwealth Governments in their next respective budgets. In addition, the committee recommends that such a plan factor in the Centenary of Canberra celebrations in 2013.

GOVERNMENT RESPONSE

The Government does not accept this recommendation.

Under Schedule 4 of the *Australian Capital Territory (Self-Government) Act 1988*, the ACT Government has responsibility for governing matters relating to tourism. The Government recognises that the Commonwealth has a responsibility to promote the national capital for its national significance. However, the Government considers that the preparation of a joint tourism and marketing plan would enmesh the Commonwealth Government in areas of traditional responsibility of the ACT Government.

The Government agrees that the Centenary of Canberra in 2013 is an opportunity to celebrate the role of Canberra as a national capital to Australia. Australians should be afforded an opportunity to experience and learn more about Canberra as a national capital.

The Government is committed to celebrating and commemorating Canberra's centenary and will work with the ACT Government to ensure that there is a national celebration of the capital as a place of national significance and meaning that represents our national identity, heritage, culture and democratic values.

The Government is canvassing options for how best to celebrate and commemorate Canberra's centenary in consultation with the ACT Government.

RECOMMENDATION 11

That the Department of Infrastructure, Transport, Regional Development and Local Government consult with the National Capital Authority to ensure that the Airport Master Plan and the major development plan is in line with the National Capital Plan.

GOVERNMENT RESPONSE

The Government, notes this recommendation.

The *Airports Act 1996* ("the Airports Act") and associated regulations provide a comprehensive regulatory regime to ensure orderly land use planning and development of the leased Commonwealth airports. The Airports Act requires the airport lessee companies prepare key planning documents such as master plans, major development plans and environmental management strategies. Airport lessee companies must provide a 60 business day public consultation period prior to lodgement of the plan/strategy with the Minister for Infrastructure, Transport, Local Government and Regional Development. This provides the community with the opportunity to scrutinise an airport's planning intentions and proposed developments, including environmental and other impacts.

Airport lessee companies must also advise in writing State, Territory and Local Government planning authorities of their intention to submit a draft major development plan to the Infrastructure Minister. In deciding whether or not to approve the plan, the Infrastructure Minister must have regard to the outcome of the consultations undertaken by the airports lessee company.

On 10 April 2008, the Infrastructure Minister announced the Government's commitment to the development of a National Aviation Policy Statement.

The Government recognises that a key challenge at major airports is integrating planning for the development of airport sites with consideration of the impacts of development outside airports. The National Aviation Policy Statement is a more appropriate forum to consider the planning issues for Canberra International Airport, within a whole-of-Government framework.

The National Aviation Policy Green Paper will outline possible policy directions, settings and reforms for the Australian aviation industry and will be released for public comment in the latter half of 2008. A Government White Paper will be finalised in mid-2009 addressing each of the key short, medium and long term challenges identified.

RECOMMENDATION 12

That the National Capital Consultative Council make recommendations to the Commonwealth Government for a policy to govern future locations of Commonwealth Government agencies in Canberra.

GOVERNMENT RESPONSE

The Government does not accept this recommendation.

The Government considers that the proposed National Capital Consultative Council, or the existing Minister's Canberra Consultative Forum, should not have specific decision or recommendatory powers but should remain a consultative forum.

However, the Government acknowledges the impact of the Commonwealth's accommodation decisions on the ACT and the ACT's town centres. The Government commits to working with the ACT Government to ensure that it is consulted on matters that are relevant to the holistic development of Canberra as the national capital.

RECOMMENDATION 13

That the Commonwealth and the ACT Government prepare a joint Sustainable Transport Plan which is recognised in both the National Capital Plan and the Territory Plan.

GOVERNMENT RESPONSE

The Government notes this recommendation.

The Government acknowledges that there should be close consultation between the Commonwealth and ACT Governments in developing a sustainable approach to Canberra's transport needs and that planning needs to take account of transport implications.

The Government does not agree that the transport issue should be considered solely within the planning framework. The Government will work with the ACT Government to canvass options for how this recommendation may be implemented.

RECOMMENDATION 14

That, as a possible interim measure to resolve duplication, the Commonwealth consider amendments to the *Australian Capital Territory (Planning and Land Management) Act 1988* to permit the National Capital Authority and ACT Planning and Land Authority to negotiate a memorandum of understanding to delegate the planning jurisdiction for Territory Land which has designated status under the National Capital Plan from the NCA to ACTPLA. Such a delegation would need to be accompanied by the necessary resources to fulfil these functions.

GOVERNMENT RESPONSE

The Government does not accept this recommendation.

The multi-layered framework for planning and land management in the ACT creates a significant amount of confusion for stakeholders wishing to develop, maintain or enhance areas of the national capital.

The Government does not consider that a Memorandum of Understanding, permitting the ACT Planning and Land Authority to be a delegate under the Act, would achieve a reduction in the complexities associated with planning and land management responsibilities.

However, the Government is seeking to reduce duplication in responsibilities between the Commonwealth and ACT planning authorities. The Government will establish an inter-governmental committee comprised of representatives of Commonwealth departments, the ACT Government and other stakeholders.

The inter-governmental committee will determine options for how best to simplify the planning and land management responsibilities that are divided amongst several stakeholders in the ACT. The inter-governmental committee will report to the Government with options for implementation as soon as practicable.

RECOMMENDATION 15

That, in the interests of removing unnecessary complexity and red tape:

- › **“Special Requirements” be removed from the National Capital Plan;**
- › **all areas of National Land previously subject to Special Requirements be converted to Designated Areas; and**
- › **any areas of Territory Land previously subject to “Special Requirements” where the Commonwealth has a significant and enduring planning interest be converted to Designated Areas until a broader review of the National Capital Plan and Territory Plan is undertaken to assess whether such areas should be considered for future gazettal as National Land.**

GOVERNMENT RESPONSE

The Government accepts this recommendation in principle.

The Government will consider how best to implement this recommendation through the options prepared by the inter-governmental committee for simplification of planning and land management responsibilities in the ACT.

RECOMMENDATION 16

The strategic goal of ecologically sustainable development should be embedded as a major principle in the *Australian Capital Territory (Planning and Land Management) Act 1988*.

The Government accepts this recommendation in principle.

The Government considers that the United Nations Environmental Program *Melbourne Principles for Sustainable Cities* provide a comprehensive and integrated understanding of sustainable development principles for cities which should inform any changes to the simplification of the planning system in ACT. The Melbourne Principles are accessible at: <http://www.cidb.org.za/Documents/KnowledgeCentre/melbourne.principles.pdf>

The Government is committed to encouraging ecologically sustainable development. The Government will consider the best ways to encourage ecologically sustainable development in Canberra through the options prepared by the inter-governmental committee for simplifying the planning and land management responsibilities in the ACT and the review of the Commonwealth's national capital responsibilities.

RECOMMENDATION 17

That the *Australian Capital Territory (Planning and Land Management) Act 1988* be amended to enshrine the policies and principles of national significance as described in the proposed National Capital Land Use Plan in a schedule of the Act, and that the proposed Implementation Strategy be included as a disallowable instrument.

The Act should also be amended to specify a requirement for the National Capital Land Use Plan and Implementation Strategy to be reviewed every three to five years.

GOVERNMENT RESPONSE

The Government accepts this recommendation in principle.

The Government acknowledges that the meaning of national significance in the Plan should be clarified and established within the legislation establishing the ACT's planning system.

The Government will consider how best to implement this recommendation through the options prepared by the inter-governmental committee for simplification of planning and land management responsibilities.

RECOMMENDATION 18

That the National Capital Authority and ACT Planning and Land Authority form a joint working group to achieve a single integrated document which:

- › comprises the two statutory plans, and agrees on clear geographic boundaries between the two plans based on the committee's objective that, where possible, land administration be aligned with planning jurisdiction;
- › includes a harmonised language, definitions and structure;
- › provides guidelines for interpretation of the two plans;
- › provides advice to the Commonwealth Government on enshrining the policies and principles relating to national significance across the Australian Capital Territory in the form of the National Capital Land Use Plan in the *Australian Capital Territory (Planning and Land Management) Act 1988*; and
- › provides advice to the Commonwealth and ACT Governments on the key elements of the Implementation Strategy.

GOVERNMENT RESPONSE

The Government accepts this recommendation in principle.

The Government intends to simplify complexities and ambiguities, particularly relating to definitions, used in both the National Capital Plan and the Territory Plan. The Government recognises that the development of a single integrated framework and the simplification of terms and guidelines has positive benefits for individuals and businesses seeking to develop areas of land in the ACT.

The Government will, work closely with the ACT Government to establish the best ways to implement this recommendation. This will be achieved through the options prepared by the inter-governmental committee for simplification of planning and land management responsibilities.

RECOMMENDATION 19

That the National Capital Authority be resourced to participate in the working parties and reviews as required.

GOVERNMENT RESPONSE

The Government notes this recommendation.

The Government will work with the Authority to ensure its full participation and engagement in the inter-governmental review of planning and land management responsibilities in the ACT.

RECOMMENDATION 20

That any draft amendment(s) to the National Capital Plan proposing uplift of Designated Areas and a formal geographic re-alignment of planning jurisdiction be referred to the Joint Standing Committee on the National Capital and External Territories for inquiry.

GOVERNMENT RESPONSE

The Government accepts this recommendation in principle.

The Government agrees that significant changes to the planning system and the Plan should be subject to the scrutiny of the Joint Standing Committee. However, the framework for the inter-governmental committee establishing options for simplification of the planning system in the ACT is yet to be determined. The Government does not wish to pre-empt any decision it may take about the future use of Designated Areas and/or the geographic realignment of planning and land management responsibilities in the ACT.

The Government will consider how best to implement this recommendation in the context of aligning and streamlining planning and land management responsibilities in the ACT.

RECOMMENDATION 21

That, in the interest of aligning the National Capital Authority's planning system with the ACT's, the *Australian Capital Territory (Planning and Land Management) Act 1988* be amended to include a provision for decisions on development applications made under the Act to be subject to review through the Commonwealth Administrative Appeals Tribunal.

GOVERNMENT RESPONSE

The Government notes this recommendation.

The Government is committed to balancing the concerns of ACT residents about planning and development decisions with protecting the Commonwealth's interests in the development of the national capital. The Government will consider this recommendation through the options prepared by the inter governmental committee for simplification of planning and land management responsibilities in the ACT.

RECOMMENDATION 22

That the Commonwealth provide resources to the National Capital Authority to continue the development of a cost effective three-dimensional integrated plan in digital format which is available online with the purpose of gaining efficiencies in planning and enhancing consultation.

The Government does not accept this recommendation.

The Government does not consider that the development of a digital format plan for the ACT is a priority when considered against the recommendations already proposed by the Joint Standing Committee. The Government further considers that the Authority should review the need for a digital plan against proposed changes to the planning framework and the available technology.

It will be open to the Authority, should it consider it appropriate, to seek funding for such a project within the normal Government fiscal and resource allocation processes.

GOVERNMENT RESPONSE – OTHER ACTIONS

In addition to implementing the Joint Standing Committee's recommendations, the Government has also decided to enhance the available powers of the responsible Minister.

The Government considers it appropriate for the responsible Minister, on behalf of the Commonwealth, to intervene directly in a matter that is in the national interest. The determinative power will be a reserve power, of last resort, accompanied by safeguards that require the responsible Minister to make a direction in writing and to table the direction and the reasons for the making of the direction before the Parliament.

The Act provides for the Authority to prepare and administer the Plan and to suggest amendments to the responsible Minister for his or her approval. The Minister may approve the proposed amendments or direct the Authority to consider a particular matter or make suggestions for the Authority's consideration. However, there is no provision in the Act that allows for the breaking of a "deadlock" situation, should the Authority decline to change a proposed amendment that the Minister is not prepared to approve.

The Government will amend the Act to allow the responsible Minister to issue binding policy directions to the Authority about its operating model, including consultation and best practice business planning.

The Auditor-General recently criticised the Authority's management of diplomatic leases. The Government has already formed an inter-departmental committee in response to a recommendation from the Auditor-General relating to the development of a whole-of-Government approach to administering diplomatic leases.

ATTACHMENT H – 2009 TASKFORCE ON THE COMMONWEALTH'S NATIONAL CAPITAL RESPONSIBILITIES

RECOMMENDATION 1

The Taskforce recommends that, for discussions with the ACT in the context of the Inter-Governmental Committee on planning, the current Designated Areas and “special requirements” areas should be accepted as describing areas of *national capital significance* and therefore the focus of the Commonwealth's responsibilities.

RECOMMENDATION 2

The Taskforce recommends that:

- › the National Capital Plan be comprehensively and regularly reviewed to ensure its accuracy and (subject to adoption of the recommendations contained in this report) consistency with the assessments undertaken by the Taskforce; and
- › the criteria for determining *national capital significance* to determine the Commonwealth's responsibility for elements of the national capital be adopted and incorporated into the National Capital Plan as part of its comprehensive review.

RECOMMENDATION 3

The Taskforce recommends that:

- › consistent with its commitment to the whole Territory, the Commonwealth's current strategic planning role for the Territory should be retained; and
- › in reviewing the National Capital Plan, the current approaches to planning controls should reflect the levels of prescriptive control according to the loss or diminution of *national capital significance* consistent with the approach set out in Table 3 below.

RECOMMENDATION 4

In reviewing the National Capital Plan, the Commonwealth should give consideration to the merits of resuming areas requiring a “very high” level of prescription in controls where its previous use is at an end, taking into account the cost of acquisition and ongoing maintenance required.

RECOMMENDATION 5

Development approvals functions over areas of *national capital significance* requiring a very high or high level of prescriptive control should be performed by a single Commonwealth body unless those areas are subject to existing legislative protections.

RECOMMENDATION 6

The Taskforce recommends that:

- › the Commonwealth should develop a comprehensive asset management strategy which adopts the methodology to assess the potential for the loss or diminution of *national capital significance* set out in Section 3.3 to assess the relative priority of maintenance works to land and assets (other than where maintenance is required for public safety or amenity);
- › the land and asset management function be performed by the same Commonwealth body responsible for planning and development approvals in order to ensure a consistent approach to the maintenance and enhancement of the national capital;
- › the estate management function is delivered in close cooperation with the planning, design, construction and awareness functions; and
- › the agency be responsible for the management of all national land (landscapes and hard assets) to the edge of the buildings owned by other agencies (such as the curtilage around buildings or their building footprint).

RECOMMENDATION 7

The Taskforce recommends that the Commonwealth agency responsible for planning also assume a role as “expert client” for the development of major works in the national capital and deliver minor specialist works in order to achieve consistent design and siting standards within the national capital.

RECOMMENDATION 8

The Taskforce recommends that:

- › the Commonwealth body responsible for planning and development approvals and *DoFD* give consideration to the formalisation of the role of DEWHA in the design stages of major projects; and
- › the EPBC Act be amended, (together with any other legislation to ensure consistency) so that Designated Areas in the Territory will be considered national land for the purposes of the Act to resolve the “heritage gap”, where heritage values on designated Territory land are not seen to be adequately protected by either Commonwealth or Territory legislation.

RECOMMENDATION 9

To ensure that Australians understand the significance and role of the national capital, the Taskforce recommends that:

- › the agency responsible for protecting the *national capital significance* through planning, design and construction and estate management also be responsible for “fostering awareness” of the national capital, as the agency with the most direct, up-to-date and practical knowledge of the national capital;
- › for the sake of clarity, the definition of “foster awareness” in section 6(e) of the PALM Act (as being the express statement of the Commonwealth’s responsibility in this area) be changed to “to foster awareness of the national capital by informing and educating Australians and visitors about its significance and role” (replacing “to foster an awareness of the national capital”); and
- › the responsible agency prepares a five-year plan of information and education activities for the Minister’s agreement.

RECOMMENDATION 10

The Taskforce recommends that:

- › the functions necessary for the discharge of the Commonwealth's responsibilities to the national capital set out in Recommendations 5 to 8 should be undertaken by a single Commonwealth statutory agency;
- › the National Capital Authority should be retained;
- › a staged approach should be adopted to the provision of additional funding to the NCA to undertake a comprehensive review of the National Capital Plan and to support the lifecycle cost of the maintenance of its asset portfolio as the opportunity arises; and
- › consideration could be given to the NCA's portfolio Department (currently the Attorney-General's Department) providing corporate services support to the NCA.

ATTACHMENT I – AUSTRALIAN NATIONAL AUDIT OFFICE 2007-08 PERFORMANCE AUDIT OF THE NATIONAL CAPITAL AUTHORITY'S MANAGEMENT OF NATIONAL ASSETS

RECOMMENDATION 1

The ANAO recommends that the NCA take steps to bring its asset management framework up to date.

AGENCY RESPONSE

Agreed with qualification.

RECOMMENDATION 2

The ANAO recommends that the NCA support its documented asset management framework by taking steps to implement a system that enables it to effectively manage the operation and maintenance of the national assets.

AGENCY RESPONSE

Agreed.

RECOMMENDATION 3

The ANAO recommends that the NCA improve its contractual arrangements for maintenance of national assets by:

- a. adopting more rigorous and consistent practices for monitoring contractor performance and addressing any shortcomings;
- b. emphasising to contract managers the importance of following procedures for contract completion as set out in contracts; and
- c. implementing stronger controls over the checking and certification of contractor invoices.

AGENCY RESPONSE

Agreed.

RECOMMENDATION 4

The ANAO recommends that the NCA pursue avenues to accelerate the timeframe in which action will be taken to fund priority asset maintenance works identified by its expert consultants and accepted by the NCA as being necessary.

AGENCY RESPONSE

Agreed with qualification.

RECOMMENDATION 5

The ANAO recommends that the NCA, in consultation with the Department of Finance and Deregulation and the Department of Foreign Affairs and Trade, develop options for consideration by government in relation to diplomatic leases that balance both revenue and foreign policy considerations.

AGENCY RESPONSE

NCA and Finance agreed to the recommendation and DFAT agreed with qualification.

ATTACHMENT J – 2008 MINISTERIAL STATEMENT OF EXPECTATIONS AND NATIONAL CAPITAL AUTHORITY STATEMENT OF INTENT

STATEMENT OF EXPECTATIONS FOR THE NATIONAL CAPITAL AUTHORITY

This Statement of Expectations outlines my expectations concerning the operations and performance of the National Capital Authority.

The Government's vision for the National Capital Authority is that of a high performing agency operating in accordance with its legislative framework and government policy to support the Commonwealth's interest in Canberra as the national capital.

I expect that the Authority will:

- › fulfil its responsibilities to:
 - › administer the National Capital Plan;
 - › review and propose amendments, as required, to the National Capital Plan;
 - › commission works, as required, in designated areas in accordance with the National Capital Plan;
 - › recommend works desirable to maintain the character of the national capital;
 - › foster an awareness of Canberra as the national capital;
 - › perform planning services; and
 - › manage National Land

in accordance with the *Australian Capital Territory (Planning and Land Management) Act 1988*;

- › meet all of its statutory obligations, including those in respect of broad public
- › sector governance requirements as outlined in the *Public Service Act 1999*, the *Financial Management and Accountability Act 1999* and any regulations, orders, policies and guidelines under those Acts, and operate the National Capital Authority in accordance with Commonwealth guidelines and policies;
- › maintain a high level of corporate governance in relation to Authority operations, including through the development of effective strategic planning documents containing relevant and measurable performance indicators, risk management strategies and a performance monitoring framework;
- › in setting priorities, have regard to the interests of the citizens of Canberra as well as the "national interest" to ensure a balance between those interests;
- › consider the interests of relevant stakeholders, including the ACT Government and ACTPLA and Commonwealth agencies operating within the National Capital in fulfilling its statutory functions and decision making processes, and provide briefings to me on all projects where intra or inter-governmental consultation is anticipated, or where there is policy or strategic importance for the national capital and/or the Australian Government;
- › continue to keep me and the Attorney-General's Department (the Department) fully informed of relevant issues in relation to the Authority's activities and operations, and alert me, in a timely manner, to any event or decision of the Authority, that will or may impact on the reputation of the Authority;

- › in advising me, provide options supported by detailed analysis to support me in my role as the Minister with responsibility for the *Australian Capital Territory (Planning and Land Management) Act 1988*;
- › deliver the Government's budget commitments and other initiatives according to agreed implementation schedules; and
- › respond to requests from my office and the Department in a timely manner.

I expect that each member of the Authority will:

- › discharge his or her duties with a high degree of diligence, care and skill; and
- › act ethically and impartially, and at all times act in a manner that promotes the highest level of corporate governance in Authority operations.

It is my expectation that the Chief Executive Officer of the Authority will:

- › ensure that all Authority briefings and reports are provided to the Department before they are provided to me;
- › maintain effective working relationships with the Department, including keeping the Department advised of issues arising from the work of the Authority and provided with all relevant information in a timely manner, to enable the Department to advise me as required;
- › manage dispute resolution proactively, keeping the Department advised of
- › disputes and the proposed process by which disputes will be resolved; and
- › support organisational and workforce capabilities to meet current and future
- › demands and expectations.

STATEMENT OF INTENT FROM THE NATIONAL CAPITAL AUTHORITY

The following Statement of Intent outlines how the National Capital Authority will meet the expectations concerning the operations and performance of the Authority as set out in the Statement of Expectations from the Minister for Home Affairs, the Hon Bob Debus MP.

The Authority will:

- › fulfill its statutory responsibility in accordance with the *Australian Capital Territory (Planning and Land Management) Act 1988* (PALM Act).

The Authority has the appropriate organisational framework in place which enables it to fulfil its statutory obligations under the PALM Act.

The Authority's outcome, as stated in the Portfolio Budget Statement, is to achieve a *National Capital which symbolises Australia's heritage, values and aspiration, is internationally recognised, and worthy of pride by Australians.*

The Authority's three outputs, which are closely aligned with to the Authority's statutory functions, are:

- Output 1** Canberra and the Australian Capital Territory are planned and developed in accordance with their national significance.
 - Output 2** Promotion and awareness of the significance of Canberra as the National Capital.
 - Output 3** Advocacy, enhancement and management of the national capital estate.
- › meet all of its other statutory obligations.

The Authority has a comprehensive governance framework to ensure it operates in accordance with all relevant Commonwealth guidelines and policies. The Authority has the appropriate mechanisms in place in order for it to meet all its statutory obligations under the *Financial Management and Accountability Act 1997* (FMA Act), the *Public Service Act 1999* and any regulations, orders, policies and guidelines under those Acts.

With regard to the FMA Act, the mechanisms include an active Audit Committee and comprehensive Chief Executive's Instructions which assist the Authority in maintaining effective financial management practices.

- › maintain a high level of corporate governance.

The Authority will maintain its governance structure and will continue to provide evidence of the appropriateness of its operations by keeping the Government informed of its functions and operations by providing:

- a. A Corporate Plan every three years;
 - b. An annual Business Plan which addresses specific activities to achieve the outcomes identified in the Portfolio Budget Statement and in accordance with budget parameters;
 - c. An Annual Report tabled in Parliament; and
 - d. Reporting, as appropriate, on incidents and investigations, and other issues that arise.
- › have regard to the interests of the citizens of Canberra while maintaining the "national interest".

The citizens of Canberra are important stakeholders of the Authority. In setting priorities, the Authority will ensure it strikes an appropriate balance between the "national interest" and the interests of the citizens of Canberra.

- › consider the interests of relevant stakeholders.

The Authority will continue to provide briefings to you on all key policy or strategic issues and on projects where intra or inter-departmental consultation is anticipated.

The Authority will continue to build on the established good working relationship with Commonwealth and ACT Government departments and agencies. In particular, the Authority is committed to enhancing its working relationship with the ACT Planning and Land Authority (ACTPLA). As an example of the ongoing cooperation between the two planning agencies, the Authority and ACTPLA are currently negotiating a Deed of Agreement for the exchange of Computer Aided Design (CAD) and Geospatial Information Systems (GIS) data. Once finalised, it is anticipated that this agreement will facilitate improved communication, reduce data duplication and reduce costs associated with creating, maintaining and purchasing data.

The NCA will continue to hold monthly liaison meetings with ACTPLA and the standing agenda item for ACTPLA briefings at each Authority meeting will be maintained. This has proved to be a very effective way to ensure good communication between the two agencies.

To strengthen this cooperative relationship, the Authority will also continue, where appropriate, to participate on relevant ACT Government Task Forces and to invite ACTPLA and other relevant ACT Government Agencies to participate on similar Authority working groups.

- › continue to keep you and the Attorney-General's Department (the Department) informed of all relevant issues in relation to the Authority's activities and operations. This advice will be supported by appropriate analysis to assist you in your role as the Minister responsible for the PALM Act.
- › implement the Government's budget commitments and any associated savings and continue to deliver Government initiatives to the best of its ability.
- › continue to respond to requests for information from your office and the Department in a timely manner.

With regard to Authority members, the Authority has developed Protocols to be followed by Authority members. The protocols, which should be read in conjunctions with the PALM Act, cover the following topics:

- › Establishment of the Authority
- › Functions and powers of the Authority
- › Members Appointment
- › Members Remuneration and Allowances
- › Official Travel
- › Leave of absence
- › Outside employment
- › Resignation of members
- › Termination of appointment
- › Disclosure of interests
- › Duties as a Member
- › Duties of Chairman
- › Confidentiality
- › Public statements by Members
- › Liaison with NCA staff
- › Access to Outside specialist advice
- › Use of Internal Resources
- › Meetings
- › Induction Training for New Members
- › Members Right and Duty to Raise Matters of Concern
- › Chief Executive

Section 12.3 of the Protocols, sets the minimum standard of conduct for Authority members:

A Member must discharge his or her duties in good faith in the best interests of the Authority, and for a proper purpose. In other words, he or she will:

- a. behave honestly and with integrity;*
- b. act with care and diligence;*
- c. treat everyone with respect and courtesy, and without harassment;*
- d. comply with all applicable Australian laws;*
- e. maintain appropriate confidentiality about Authority business;*
- f. disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with their appointment as a Member of the Authority; (refer section 42 of the Act Disclosure of interests);*
- g. not make improper use of:*
- h. inside information, or*
- i. the Member's duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for the Member or for any other person; and*
- j. at all times behave in a way that upholds the integrity and good reputation of the Authority.*

All Authority members are required to accept and abide by these protocols. For additional transparency, the Protocols are also published on the Authority's website.

As Interim Chief Executive, I will:

- › ensure that Authority briefings and reports, not associated with independent statutory decisions or directions, are provided to the Department's Territories and Native Title Division before they are provided to you. The same will apply to responses to ministerial correspondence.

Current practice is to provide all final documents to the Native Title and Territories Division, via email, at the same time as the original hardcopies are provided to Ministerial and Parliamentary Services within the Department for delivery to your office.

- › maintain effective working relationships with the Department.
- › continue to manage resolutions to disputes in a proactive and professional manner and keep the Department fully informed of the progress and outcomes of these issues.
- › maintain organisational and workforce capabilities in order to meet current and future demands and expectations.
- › I am confident that with its current resources and organisational capabilities, the Authority will be able to meet its statutory responsibilities.

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“

... WITH THE MOUNTAINS TO THE SOUTH AND TO THE EAST
AND THE SHIMMER FROM THE RIVER,
THE SCENE INVOKED A MENTAL, IF NOT A VOCAL, EXCLAMATION:
WHAT A MAGNIFICENT SITE FOR ONE OF AUSTRALIA'S FUTURE CITIES.

”

JOHN GALE, ARGUABLY THE “FATHER OF CANBERRA”, HAD THIS PROPHETIC VISION ON CHRISTMAS DAY 1855
WHEN RIDING ACROSS THE LIMESTONE PLAINS TO CAPITAL HILL.

CANBERRA A CAPITAL PLACE

REPORT OF THE INDEPENDENT REVIEW
OF THE NATIONAL CAPITAL AUTHORITY