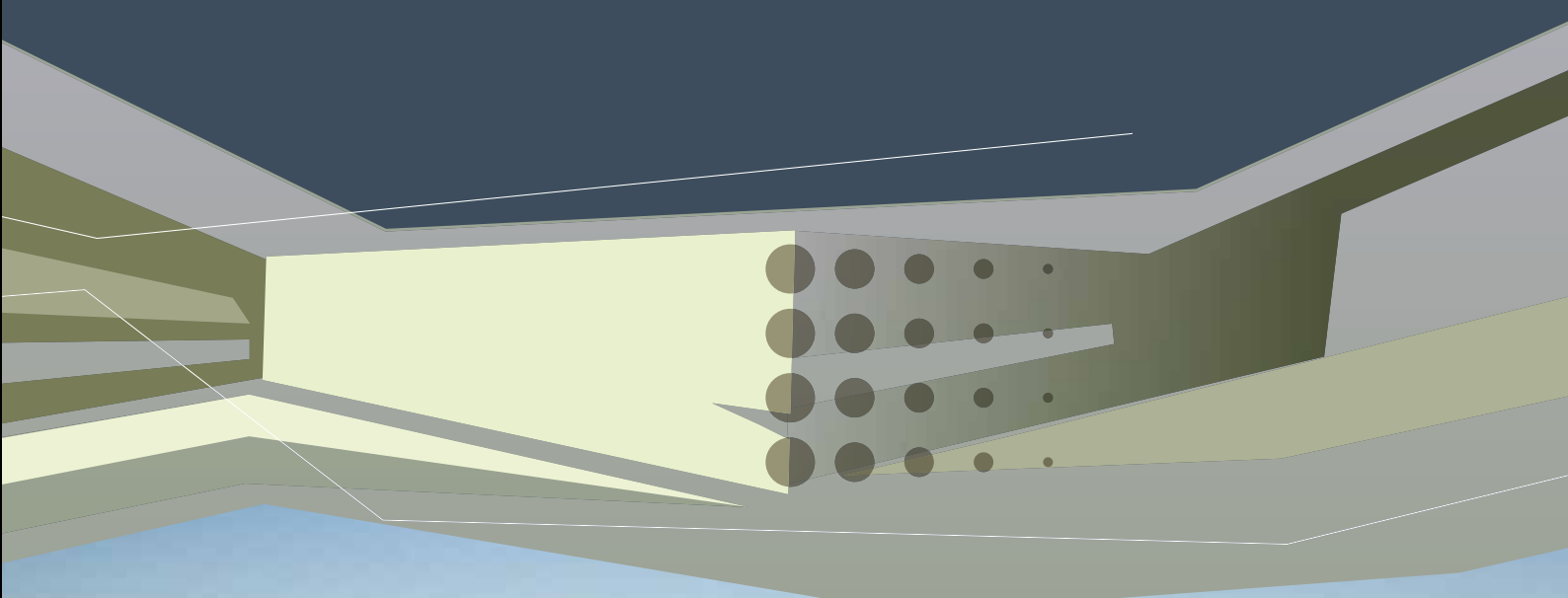


Part Two



PART TWO

Administration and Implementation

Effect of the Approved Plan

This plan takes effect on publication of the notice of approval in the Commonwealth Gazette by the Commonwealth Minister for the Arts, Tourism and Territories.

Upon such notice Section 11 of the *Australian Capital Territory (Planning and Land Management) Act 1988* takes effect. Section 11(2) of the Act states that *“the Commonwealth, a Commonwealth Authority, the Territory or a Territory Authority shall not do any act that is inconsistent with the Plan.”*

Following approval of the Plan by the Minister any works in Designated Areas are to be subject to the Plan and to the approval of the National Capital Planning Authority. The Act defines works as including:

- “(a) the construction, alteration or extension of buildings or structures;*
 - (b) landscaping;*
 - (c) tree-felling; or*
 - (d) excavations;*
- but excludes anything done inside buildings or structures.”*

Relationship to the Territory Plan

The Act requires the ACT Legislative Assembly to make laws to establish a Territory planning authority and confer functions on that authority to prepare and administer a plan in respect of all land other than Designated Areas, in a manner not inconsistent with the National Capital Plan.

The Territory planning authority will therefore be responsible for approving development in all areas of the Territory other than Designated Areas. In the case of areas where special requirements have been set out in the National Capital Plan, the Territory planning authority will be responsible for approving development providing that the proposal is not inconsistent with the requirements as specified in the Plan.

The National Capital Plan therefore provides a framework within which the Territory Plan can be prepared. Section 25(2) of the Act states that the object of the Territory Plan is

“to ensure, in a manner not inconsistent with the National Capital Plan, the planning of the Territory to provide the people of the Territory with an attractive, safe and efficient environment in which to live, work and have their recreation.”

The National Capital Plan has set out the general policies of land use and the planning of national and arterial road systems, to be implemented throughout the Territory. The Territory Plan will provide more detailed planning controls within the context of these general policies.

Development and Management of National Land

Section 27(1) of the Act provides that the Minister may, by notice published in the Commonwealth Gazette, declare specified areas in the Territory to be National Land. However 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 [Section 27(2)].

On 2 March 1989 the Minister published a notice in the Commonwealth Gazette declaring the lands shown on the map forming Appendix D to be National Land.

The Act provides at Section 11(2) that

“The Commonwealth, a Commonwealth authority, the Territory or a Territory authority shall not do any act that is inconsistent with the Plan.”

Except within Designated Areas and areas subject to Special Requirements, the National Capital Plan is necessarily general and provides little effective control over the Commonwealth’s operations.

Given the significant presence of Commonwealth Departments and authorities in the Territory and the extent of their National Land holdings, it is appropriate that procedures be established to assess Commonwealth development proposals and that the provisions of both the National Capital and Territory Plans be observed. Accordingly the National Capital Plan:

- includes large National Land sites within Designated Areas where it is considered that they have the special characteristics of the National Capital to satisfy the requirements of Section 10(1) of the Act
- contains Special Requirements for Development Control Plans to be prepared and agreed by the Authority in respect of the remaining National Land sites which are not included within Designated Areas. Amongst other requirements, the Development Control Plans are to reflect relevant provisions of the Territory Plan
- requires that proposals to develop, subdivide or lease National Land shall be referred to the Authority who will assess consistency with the provisions of the National Capital Plan.

Gazetted Policies of the Former National Capital Development Commission


The Australian Capital Territory (Planning and Land Management) Act 1988 provides that where, before the commencing day of the Act, an NCDC policy was in published form and had been notified in the Commonwealth Gazette, and the policy was in operation immediately before that day, the policy continues in effect (Section 62).

The Act makes provision for any such policy to be varied during the transition period, (effectively the period during which the National Capital Plan is being prepared), and provides also that a policy may be revoked in whole or in part by the Plan.

Section 66 of the Act provides that either House of the Parliament, within 6 sitting days of that House after the end of the transition period, may resolve that a policy still in effect becomes part of the National Capital Plan. After that time, a policy that is still in effect and has not become part of the National Capital Plan, shall be taken to be part of the Territory Plan.

It is therefore incumbent upon the Authority to identify the policies which are still in effect in whole or in part. This requires first that the Plan specify the extent to which it has incorporated the policies, and specify the policies which are revoked.

Appendix C sets out details of policies which are incorporated wholly within the Plan or which are superseded by the Plan, and which are therefore revoked. Details of policies which are only partly



incorporated in the Plan and are therefore partly still in effect are also included. Finally the Appendix makes reference to the residue of policies not affected by the Plan.

Examples of policies revoked by the Plan are the Murrumbidgee River Corridor Policy Plan and the Namadgi Policy Plan. The policies from both these documents are incorporated in the National Capital Plan and in each case it is a Special Requirement of the Plan that the policies continue to apply to development in the respective areas.

A number of other revoked policies are carried forward in the Plan as Detailed Conditions of Planning, Design and Development within Designated Areas. These include the Lake Burley Griffin Canberra Policy Plan, the Jerrabomberra Wetlands Policy Plan, and a range of policies which relate to smaller areas and individual sites.

The Metropolitan Canberra Policy Plan Development Plan July 1984 is an example of a policy which is partly incorporated in the Plan and which is therefore partly revoked. The broad policies of land use and the preferred structure of the MPP have formed the basis of the National Capital Plan, although the policies are expressed differently.

Planning Appeals

The Act makes no provision for appeals against the decisions of the National Capital Planning Authority. Parliament has instead provided that, in terms of the plan-making responsibilities of the Authority, the final say should rest with Parliament itself. The Act provides for either House of Parliament to disallow provisions in the National Capital Plan, or alternatively, to determine that gazetted policies prepared by the National Capital Development Commission and not included in the National Capital Plan, may be included by decision of either House of Parliament.

With respect to the Authority's powers to approve or disallow certain planning and development proposals (the usual area where appeals against the decisions of planning authorities apply), there is no provision for any special appeals process relating to the merits or otherwise of those planning and development proposals. There is the opportunity for recourse under the *Administrative Decisions (Judicial Review) Act 1977* to determine if a decision of the Authority is correctly made, or to normal common law processes (for example, seeking an injunction against the Authority, again generally to ensure that its decisions are taken in accordance with the Act).

Appeals normally could be expected to arise in circumstances where a lessee sought to develop his or her site in a particular way, or to use it for a purpose not consistent with the lease, and the Authority was asked to make a decision on that matter. This could only occur within the Designated Areas of the Plan, and the Authority has been careful to try to exclude leased Territory land from Designated Areas wherever possible, consistent with the intent of designation under the Act, to minimise the possibility of this situation occurring.

The Authority's decisions could generally take two forms:

- The Authority could approve the development proposal, in which case persons other than the applicant may be aggrieved by the decision and may wish to appeal.

- The Authority may refuse to approve the development proposal, or may approve it subject to the applicant meeting specific conditions, in which case the applicant may be aggrieved by the decision and may wish to appeal.

In normal circumstances, the Authority would wish to avoid situations where appropriate solutions could not be achieved through negotiation. However, there may be circumstances where this is not possible, and, legally, in such circumstances the Authority's views on the merits of the proposal would stand.

The Act clearly requires that the National Capital Plan binds the Commonwealth, so that appeals are not an appropriate mechanism where the Authority is dealing with works and development proposals made by Commonwealth agencies. It is only when citizens' rights are affected that an appeals process may be appropriate, and, because of the very small amount of leased land located within Designated Areas the likelihood of large numbers of either development proposals or consequent appeals is very small indeed. The number would certainly not justify the establishment of any special purpose appeals mechanism.

Review Process for Aspects of the Plan

The approved Plan should not be regarded as a one-off end state, static document. The Plan should be seen as the first National Capital Plan and as the start of a dynamic and evolving process. Section 6(b) of the Act requires the Authority

"to keep the Plan under constant review and to propose amendments to it when necessary."

The process of amendment as stipulated in the Act follows the same process as set out for the Plan itself. Consequently any proposed amendment is in the first case to be released as a draft for public comment, and also to be referred to the Territory planning authority for consultation.


The draft amendment is ultimately to be referred to the Minister for approval, together with a written report on the consultations that have been carried out. Following Ministerial approval, the amendment has effect when the notice of approval is published in the Commonwealth Gazette. Parliament may subsequently disallow all or part of the amendments.

Review Programme

Much of the content of the Plan represents a continuation of planning policies established by the NCDC and which have been in force in Canberra for some time. In the time available to produce the first Plan, an exhaustive and rigorous review of existing policies was not possible. Accordingly, while the Authority has in a formal sense complied with the statutory requirements, it has not made a statement in a visionary sense. However, now that the task of producing this Plan is complete, the Authority considers that the necessary review should commence.

The review should basically take two forms.

First a review is needed of the broad land use policies of the Plan relating to future urban development, which in effect requires a comprehensive study aimed at producing a strategy which will guide the future development of metropolitan Canberra. This would be the first significant strategic planning study at the metropolitan scale in Canberra since that carried out in the early 80s which led to the 1984 Metropolitan Policy Plan (NCDC). Such a study could take up to 2 years to complete. It would ultimately lead to a major



amendment to the National Capital Plan and would therefore be primarily concerned with ensuring that Canberra and the Territory are planned and developed in accordance with their national significance.

The study would need to address all the strategic planning issues likely to face planners, administrators, the community and the private sector over the next 10 years or so. Even though the revised strategy may only have a realistic 10 year horizon, it would be done in the context of a long term view of Canberra–Queanbeyan, at say, the 500 000 population level.

Possibilities which the study would need to consider, in terms of land use, economic development, transport and traffic implications, infrastructure costs, environmental and social issues and related concerns, and the impact on Commonwealth and ACT Government finances, include at least the following:

- the maximum possible concentration of future urban development within the boundaries of the Territory, compared with alternatives such as extensive urban development outside the Territory boundaries
- alternative possible scenarios for the location of various types of employment within the Territory and beyond
- strategies which maximise the potential for the use of public transport for major trip purposes
- strategies which minimise the volumes of traffic and hence the need for major road infrastructure in the Central National Area
- strategies which maximise economic returns on capital invested in infrastructure and facilities to date, and/or which minimise Commonwealth and Territory outlays for future urban expansion.

The generation and testing of options would need to be preceded by the assembly and analysis of relevant data, and carried out in the framework of agreed strategic objectives. The study would be carried out in partnership with the Territory planning authority, and the Authority also intends to follow a pro-active, consultative approach so that all interested sections of the community have the opportunity to participate in all stages of the review.

The second form of review of the Plan would involve a review of the more detailed components of the Plan, and would result in the Authority developing initiatives, plans and development proposals for important national areas. Some of the early initiatives which the Authority believes need to be considered, include:

- development proposals for Constitution Avenue
- completion of a policy plan for Barton aimed at identifying remaining development options, parking arrangements, and accessibility constraints, jointly with the Territory planning authority
- completion of a master plan for Russell
- preparation of a master plan for Anzac Parade
- preparation of Development Control Plans and Management Plans for Lake Burley Griffin and its Foreshores. These will involve completion of plans for important parks (eg. Kings Park, Lennox Gardens) and development nodes (Kingston, Acton, Yarralumla)
- preparation of Development Control Plans for City Hill (land inside London Circuit) and Sections 10 and 37 City precincts (Olympic Pool, YMCA area, etc.) jointly with the Territory planning authority
- detailed corridor plans for main avenues and approach routes

- policy plans and management plans for the Inner Hills and other parts of the National Capital Open Space System
- an integrated plan for the Central National Area
- Development Control Plans for key buffer spaces including the North Canberra–Gungahlin area (Racecourse, NATEX [now EPIC]) and North Curtin, jointly with the Territory planning authority
- An outline plan for the airport and associated land, to be prepared by the Authority and the Federal Airports Corporation.

Most of the above studies will result in some form of amendment to the National Capital Plan. Amendments may also be made from time to time in response to major development proposals such as the Very Fast Train or similar projects.

The National Capital Planning Authority and the Territory planning authority will progressively conduct joint planning studies for all leased and leasable Territory Land included within Designated Areas. As the studies are carried out, NCPA will consider recommending amendments to the Plan to provide, where appropriate, for Special Requirements instead of Designation.

