



Australian Government
National Capital Authority

REPORT ON CONSULTATION

NCA REVISED CONSULTATION PROTOCOL

“COMMITMENT TO COMMUNITY ENGAGEMENT”

July 2010

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PART 1 - INTRODUCTION

The National Capital Authority (NCA) is established under the *Australian Capital Territory (Planning and Land Management) Act 1998* (the PALM Act).

The NCA manages the continuing interests of the Commonwealth in the National Capital, including the range of functions required to plan, promote, enhance and maintain the national characteristics and qualities of the capital.

In July 2007, the NCA introduced a formal 'Consultation Protocol'. At the NCA Public Forum in November 2009, several community members called for the Consultation Protocol to be reviewed.

An exposure draft of a new document, called 'Commitment to Community Engagement' was released for public comment on 29 April 2010. This report deals with the feedback provided by Stakeholders in response to that exposure draft.

PART 2 – SUMMARY OF PUBLIC CONSULTATION

2.1 The Public Consultation Process

The consultation process included:

- launching the Exposure Draft at the NCA Public Forum on 29 April 2010;
- sending letters to the mailing list of previous public forum attendees;
- listing the Commitment to Community Engagement on the NCA Website;
- a media release dated 26 April 2010;
- a public information session held on 20 May 2010; and
- private stakeholder meetings held with Friends of the Albert Hall, representatives of the ACT Government and the Museum of Australian Democracy (each of these parties had been invited to the public information session, but were unable to attend).

2.2 Submissions Received, Comments and Response

The NCA received eight (8) written submissions. The NCA also took note of issues raised during the public information session. All eight submissions supported part, or all, of the draft document. Five (5) submissions raised issues about, or made suggestions for improving, elements of the draft.

Letters or emails of acknowledgment were sent to all of the submitters advising them that their submissions will be taken into consideration before a decision is made on the final form of the document.

Fourteen (14) key issues were raised in submissions. Some sought specific amendment to the draft document, while others merely sought clarification.

For ten (10) of those key issues, the NCA has agreed to amend the draft document, or provided an answer or clarification, largely in favour of the position suggested in the submission(s). These are key issues 1, 4, 5, 7, 8, 9, 10, 11, 13 & 14.

In one (1) case (key issue 3), the NCA considers the key issue outside the scope of the draft document and has provided an explanation of the rationale for forming such a view.

There are three (3) key issues where the NCA has not agreed to amend the draft document, or has provided an answer or clarification which is not largely in favour of the position put in the submission. These are key issues 2, 6 and 12.

A summary of the key issues, and the response from the NCA, is provided below.

2.3 Key issues

A number of submitters raised similar issues and these are listed below. The NCA has also made comment on these key issues. The key issues were:

- 1. Key Stakeholders**
- 2. Works Approval Consultation Period**
- 3. Appeals**
- 4. December/January Consultation Exclusion**
- 5. Approval ‘In-Principle’**
- 6. Exemptions From Consultation**
- 7. Consultation Reports**
- 8. Matters Related to the Joint Standing Committee ‘The Way Forward’ Report**
- 9. Transparency of Submissions**
- 10. Resident Representation on Stakeholder Advisory Groups**
- 11. Public Forum**
- 12. Transitional Arrangements**
- 13. Clarification of Consultation Period for NCA Projects**
- 14. Application to Commemorative Works**

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| 1. Key Stakeholders |
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Submitter’s issues

The Key Stakeholder register should be ‘transparent’ and appear on the NCA Website.

Stakeholders must be genuinely represented, with the stakeholder register amended as new groups form around specific issues.

Engagement of Stakeholders should be triggered by all draft amendments; development control plans, works approvals processes and projects rated “medium” or “high”.

Tourism was identified as a major industry in the ACT which can potentially be affected by planning and development decisions. Tourism industry stakeholders need to be provided with the opportunity to present priorities for tourism development to the NCA.

NCA response

Agreed.

It is important for the register of key stakeholders to be transparent and inclusive. The draft document will be amended to note that a register of key stakeholders will be published on the NCA website, and to confirm that the range of ‘interests’ of key stakeholders is not limited, with new registrations accepted at any time.

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| 2. Works Approval Consultation Period |
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Submitter’s issues

The consultation period for works approvals be extended to longer than 15 business days.

The consultation period for medium or high impact works approvals should be extended from 15 business days to 30 business days.

NCA response

Noted, but not agreed.

In preparing the exposure draft of the document, careful consideration was given to the time period required for each of the different consultation periods. The preferred approach was to allow additional time for public participation in the making of planning rules while maintaining an efficient time period (with further opportunity for public participation) for the assessment of applications against those rules.

The consultation period for planning instruments (Draft Amendments to the National Capital Plan and Development Control Plans) was standardised at the longest of the previous periods (30 business days – six weeks). This reflects the importance of allowing enough time to allow public participation in the making of planning rules.

The NCA also considered benchmarks from other relevant planning frameworks.

Nationally, the Development Assessment Forum (DAF) Leading Practice Model recommends that the level of public participation, at the development assessment stage, be based on the level of objectivity in the planning rules. DAF states that where clear and objective rules exist, development applications should not be subject to public consultation. But consultation should be undertaken in relation to development applications where there is a need to balance a range of interests and requirements or where the planning framework is otherwise subjective.

The NCA maintains the view that the provisions of the National Capital Plan are necessarily subjective and, in accordingly, there must remain a requirement for formal consultation on relevant works approval applications.

Within the ACT, the ACT Planning and Land Authority (ACTPLA) has two notification time periods for development applications – 10 business days for minor notifications and 15 business days for major notifications. In this regard, the 15 business day period proposed for works approval application in designated areas is consistent with the ACTPLA’s ‘major notification’ period.

The NCA has resolved to retain the 15 business day consultation period for works approval applications. The Chief Executive may require a longer consultation period where there is a particularly high national interest.

3. Appeals

Submitter’s issues

Allow stakeholders to appeal to the Commonwealth Administrative Appeals Tribunal on planning decisions, after Board approval and before submission to the Minister.

Is the issue of appeals being addressed by the intergovernmental committee?

NCA response

Noted.

Access to an appeals mechanism was one of the recommendations of ‘The Way Forward’ report. This is a matter for Government and would need to be reflected in legislative change.

A voluntary consultation process is not the appropriate administrative or legislative vehicle for introducing a formal and binding review process.

4. December/January Consultation Exclusion

Submitter’s issues

There should be a longer exclusion period on consultation processes over Christmas/New Year.

The exclusion period should run from 24 December to 15 January.

NCA response

Agreed.

The draft document will be amended accordingly.

5. Approvals ‘In-Principle’

Submitter’s issues

The public consultation requirements should be applied before the NCA provides any future ‘in-principle’ works approval.

NCA response

Agreed. The draft document will be amended to specifically include ‘in-principle’ works approval.

6. Exemptions from Consultation

Submitter’s issues

There is still too much potential for inappropriate exemption from consultation.

NCA response

Noted, but not agreed.

In the context of the National Capital, there will always be some potential for exemption – whether by decision of the NCA, or by over-riding external legislative provision.

The NCA has committed to minimise the number of exemptions, to seek opportunities for limited consultation in preference to no consultation and to provide public explanations of the basis for any partial or full exemption.

This additional transparency in relation to exemptions will also add a large degree of public accountability to the discretion exercise by the NCA.

The NCA has resolved to retain the current draft exemptions provisions.

7. Consultation Reports

Submitter’s issues

The public release of consultation reports should also be mandatory.

NCA response

Agreed. The draft document will be amended accordingly.

8. Matters Related to the Joint Standing Committee ‘The Way Forward’ Report

Submitter’s issues

There are a number of matters identified in ‘The Way Forward’ report, such as alignment of planning and land management arrangements, which may be relevant to the new approach to community engagement.

Is the NCA bringing pressure to bear on Government for restoration of funding?

NCA response

Noted.

In its response to ‘The Way Forward’ report, Government commissioned a Taskforce to review the extent of commonwealth responsibility in the National Capital and formed an Inter-Governmental Committee (IGC) with the ACT Government to review and refine the planning arrangements in the ACT. Those processes are not yet complete.

If an outcome of either process, or other administrative change within the Commonwealth, impacts on the role of the NCA, its area of responsibilities or the way it engages with the community, the NCA will again review the document ‘Commitment to Community Engagement’ to take account to of that change.

The draft document will be amended accordingly.

NCA funding is outside the scope of the document ‘Commitment to Community Engagement’.

9. Transparency of Submissions

Submitter’s issues

Providing they do not withhold permission, authors of submissions on Development Applications should be identified.

NCA response

Agreed.

The NCA resolved that there should also be a requirement for authors of submissions to justify any request for anonymity, and that the justification be published in the register of submissions.

The draft document will be amended accordingly.

10. Resident Representation on Stakeholder Advisory Groups

Submitter's issues

A single local resident may not be able to represent the whole range of citizens concerns.

NCA response

Noted.

The intention of the resident representative is not to replace open consultation with residents, but to bring a resident's perspective to the advisory group on key projects such as a review of the National Capital Plan.

In this regard, it is not essential that the representative be able to raise the whole range of views that residents might hold, but rather to be able to identify those issues on which residents are likely to have views. The obligation would then fall back to the NCA to ensure that the broadest group of residents had a chance to express their views (eg through open public consultation).

The resident representative is an additional mechanism for residents to have a say, but it does not replace any other mechanism. To be credible, the resident representative on Stakeholder Advisory Groups need be genuinely representative, and able to bring a range of widely held ideas forward. There would be merit in have such representatives nominated by the community and the NCA should be prepared to assist the community in making such a nomination (eg: by convening a meeting of local residents' groups for the purposes of selecting a party to speak their behalf).

The draft document will be amended to better explain the role of the resident representative on Stakeholder Advisory Groups.

11. Public Forum

Submitter's issues

There needs to be more stringent management of the Public Forum agenda, with time balanced between individual and strategic issues. The emphasis should be on strategic issues.

Perhaps other means could be used to deal with single issues.

NCA response

Noted.

This needs to be managed carefully. The NCA has deliberately not stifled discussion or debate at either of the first two public forums but clearly there was not enough time on either occasion to fully deal with all of the topics on the agenda.

The NCA will continue to hold an annual public forum, and will examine additional mechanisms to better manage time at these events.

The draft document will be amended to emphasise the need for a balanced agenda at the Public Forum.

12. Transitional Arrangements

Submitter's issues

Where the NCA has already provided 'in-principle' works approval for a major project (such as the new ASIO Building), the new consultation requirements should be applied to any staged formal works approval applications lodged during the remainder of the construction phases of such projects.

NCA response

Noted, but not agreed. The NCA has already provided 'in principle' works approval for some major projects. The new consultation requirements will apply to new projects only.

Refer to Item 5 for information on the future approach to consultation prior to issuing 'in principle' works approval.

13. Clarification of Consultation Period for NCA Projects

Submitter's issues

Provide clarification on consultation period for NCA capital works projects

NCA response

The consultation period for relevant NCA projects will be 30 working days.

For construction projects, consultation will occur at the concept design stage. This is to ensure early engagement with the community.

NCA construction projects which have been through a 30 business day consultation will be exempt from an additional 15 day consultation process at works approval stage, unless there has been a material change to the project.

The draft document will be amended accordingly.

14. Application to Commemorative Works

Submitter's issues

Clarify whether commemorative works would be subject to the same process as other works approvals.

NCA response

'National Memorials', which have had their character and location approved by the Canberra National Memorials Committee, will be exempt from consultation on the grounds that such approval is granted under legislation for which the NCA is not responsible, and the national interest in such memorials will be considered inalienable.

Commemorative works within the Parliamentary Zone will be subject to the usual consultation and planning requirements for proposed works in the Parliamentary Zone.

All other commemorative works will be subject to the standard works approval consultation provisions. Where a proposed commemorative work carries a level of risk which triggers consultation, the board of the NCA will issue a statement with the consultation material stating that it has considered the commemorative intent of the proposal and indicating whether or not the NCA has approved the commemorative intent.

The draft document will be amended accordingly.

CONCLUSION

- Copies of all submissions were provided to the members of the Authority board.
- The Authority agreed to amend the draft document as recommended by this report.
- The Authority agreed to release this report and to bring into effect the new 'Commitment to Community Engagement' on 1 July 2010.