

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**RESIDENTIAL / SUBURBAN FENCES**

**REPORT NO. 5 OF THE STANDING COMMITTEE ON  
PLANNING, DEVELOPMENT AND INFRASTRUCTURE**

**NOVEMBER 1990**

## **TERMS OF REFERENCE**

On 27 July 1989 the Legislative Assembly passed the following resolution :

That the following matter be referred to the Standing Committee on Planning, Development and Infrastructure for inquiry and report –

- (1) whether changes should occur in relation to the current policy concerning fences on suburban/residential building blocks including –
  - (a) whether restrictions on front and side fences should be eased; and
  - (b) whether restrictions on the material from which such fences are made should be eased; and
- (2) the Committee to report by the first day of sitting in April 1990.

On 29 March 1990, by resolution in the Legislative Assembly, the reporting date was amended to become 11 September 1990. On 11 September 1990 a resolution was passed in the Legislative Assembly which amended the reporting date to 16 October 1990 and on 16 October a further resolution was passed in the Assembly amending the reporting date to 20 November 1990.



## **COMMITTEE MEMBERSHIP**

Mr Norm Jensen (Chairman)

Mrs Robyn Nolan

Mr Wayne Berry

Secretary : Greg McIntosh

Inquiry Staff : David James

Keyboard/Clerical : Kim Blackburn



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## RECOMMENDATIONS

The Committee recommends that :

1. any policy on residential/suburban fences in the ACT should be enforced including :
  - (a) an extensive promotional campaign which outlines the policy, particularly the options available to the householder;
  - (b) the provision of adequate resources to administer that policy, including the processing and assessing of applications;
  - (c) appropriate procedures for objections and appeals; and
  - (d) the introduction of a provision within that policy which ensures that before any residential properties are sold, approval must be obtained for all external structures including fences/walls.

(Paragraph 4.6)

2. the proposed new measures aimed at bringing the dog problem under control be introduced as a matter of urgency;
  - . adequate resources, including staff, are provided to ensure that the new policies are fully enforced; and
  - . the implementation of these new control measures be subject to on-going review.

(Paragraph 5.7)

3. the list of screening plants in the policy on front fences be reviewed to ensure that plants identified as causing problems in the indigenous ecosystems of the ACT, including the Canberra Nature Park, are removed from the list.

(Paragraph 6.2)

4. the ACT government initiate action via its membership of the Australian and New Zealand Environment Council (ANZEC) to examine the effects of the use of Melaleuca uncinata as a fencing material on the environment in New South Wales, Victoria and South Australia.

(Paragraph 6.6)

5. the current policy on residential/suburban fences in the ACT be changed to include the following provisions :

an amendment which allows for the construction of approved front fences in accordance with the following :

- (a) the maximum height of such structures does not exceed 1.2 metres in height;
- (b) the materials used for the construction of such fences and/or walls should be the same or similar to those of the main building;
- (c) the fences/walls be constructed as an integrated part of the development and suburban/residential building blocks;
- (d) such constructions meet specified standards of workmanship and materials;
- (e) such constructions shall be at least partially screened and softened in appearance by landscape planting;
- (f) appropriate procedures for neighbours objections and appeals machinery available to all parties are established; and
- (g) permission has been granted in writing from the appropriate authorities (or the ACT Heritage Committee where appropriate) to construct such a fence/wall.

(Paragraph 7.1)

6. landscaping advice be made available to householders who choose to grow a hedge or other plantings/moundings for corner blocks and areas beside walkways rather than construct a fence or wall of non-plant material. Provision should also be made for temporary structures to be used to protect such plantings during the establishment stage.

(Paragraph 7.2)

7. the government ensures that low level log barriers are placed on the side and corner boundaries of blocks that abut walkways.

(Paragraph 7.3)

## 1. INTRODUCTION

### Background

- 1.1 The Standing Committee on Planning, Development and Infrastructure was formed on 23 May 1989 and its general terms of reference are to inquire and report on matters :
- (a) referred to it by the Assembly
  - (b) considered by the Committee to be of concern to the community; and
  - (c) public works proposals that may be referred to it by the Assembly.
- 1.2 The issue of whether Canberra residents should or should not be allowed to have front fences has been around for many years and the Committee believes that it is timely, particularly since the advent of self-government in the ACT, that a review be undertaken of the existing policy on residential/suburban fences. It should be noted that the terms of reference for the inquiry refer specifically to residential/suburban building blocks and as such the Committee did not examine the policy options and issues related to fencing in areas and allotments other than the typical household dwelling.
- 1.3 The issue of residential fences not only raises questions in terms of the aesthetic character of Canberra and civil liberties for its citizens but it also raises the question of whether the power of resolution of such an issue is properly left with the Commonwealth or whether it should be a Territory matter.
- 1.4 Given that the Commonwealth has certain powers over the development and growth of Canberra as the national capital this inquiry had to deal with the question of just where the line should be drawn between what are properly matters of national concern and therefore controlled by the Commonwealth and what are properly local or regional concerns that should be controlled by the ACT government.
- 1.5 The issue of residential fences is also a sensitive issue. According to the Chief Planner (Interim Territory Planning Authority) "the reason why it is so sensitive is of course it is the interface between what can be seen to be the public domain and the private domain and that interface is valuable to both parties... it is valuable from the point of view of the public area (and) it is also valuable from the point of view of the private citizen in terms of the use of their front yard and in terms of their block of land and what rights they have to carry out structures on it".<sup>1</sup>

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<sup>1</sup> Evidence page 3.

- 1.6 The Committee was also aware that the leasehold system which characterises land ownership in the ACT provides for certain rights but at the same time has imposed certain restrictions on residents, including a no front fence policy.

#### Method of Inquiry

- 1.7 The Committee called for written public submissions on the fences issue by advertising in the Canberra Times on 16 June 1990 and in the main ACT suburban newspapers in the week following 16 June 1990. The advertisement stated that submissions should be received by the Committee by 20 July 1990. Thirty-seven written submissions were received – twenty-seven of which were from ACT householders. Despite the inquiry receiving some electronic and print media coverage the Committee was disappointed with the number of written submissions received from local residents. A list of those people and organisations who made submissions to the Committee is at Appendix 2.
- 1.8 The Committee held two half-days of public hearings – 4 September and 5 September 1990 – at which ACT and Commonwealth government officials, representatives from community organisations and six Canberra householders were questioned on issues relating to the inquiry. The details of witnesses appearing before the Committee is at Appendix 3.

#### Acknowledgement

- 1.9 The Committee appreciates the cooperation and assistance provided to it by both Commonwealth, ACT government officials and officials from other jurisdictions as well as members of the community during the inquiry.

## 2. BRIEF HISTORY OF THE "NO FENCE" POLICY

- 2.1 The reasons and background as to why Canberra has, since its inception, had a restrictive policy on residential fences are identified in a 1984 National Capital Development Commission publication...

"This [the restrictions on residential fences] is a long standing policy which had its origins in the early development of the city based on the 1918 Walter Burley Griffin plan. The Federal Capital Advisory Committee (1920–24) established by the Government to advise on methods of implementing Griffin's plan, recommended that a 'soft' enclosure and demarcation of lease areas by hedges was compatible with the 'garden city' concept. These recommendations were applied to government housing built after 1921 and were incorporated in the original Canberra Building Regulations (1924) thereby prohibiting front fences, although there was scope for dwarf walls and similar treatment subject to approval by the Proper Authority.

"In 1926, the Federal Capital Advisory Committee, in its final report, referred to this approach being taken in the development of its first four residential areas.

"It was arranged that garden treatment be an essential feature of the residential development, and that portion of the roadway in front of residences be planted as a parkway, front fences and dividing fences as far back as the building line being prohibited, and their place being taken by hedges planted on the roadside of the frontage line or at the division line of lots. This treatment was successfully applied at Ainslie, Eastlake (Kingston), Blandfordia (Forrest), and at Westridge (Yarralumla) and it was found that, in addition to the great improvement in appearance a stimulus was thereby given to the occupants of cottages to maintain suitable gardens within their allotments".<sup>2</sup>

- 2.2 The 'garden city' concept was continued through the 1930s and 1940s and was reaffirmed by the National Capital Development Commission, and its successor the National Capital Planning Authority, from the 1950s to the present.
- 2.3 The NCDC included the policy in its first set of residential development controls which were enacted in the late 1950s. The policy was reaffirmed in 1964 with the introduction of the Building (Design and Siting) Ordinance and the first Design and Siting Policies. The policy was again confirmed in 1973 with the publication of revised Design and Siting Policies.<sup>3</sup> Modifications to the policy, following public discussion, were introduced in 1983 when courtyard walls were permitted forward of the building line providing certain criteria, both quantitative and qualitative were met (see Appendix 1). The policy has not changed since 1983.

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<sup>2</sup> National Capital Development Commission – Policy on Front Fences, Canberra September 1984, pages 2, 3.

<sup>3</sup> National Capital Development Commission 'Design and Siting Policies 1973'.

2.4 The only detailed survey of structures in front of the building line of residential/suburban blocks was conducted by the NCDC in 1982. The survey was undertaken as part of a review of the front fence policy following a request made to the NCDC by the then Minister for the Capital Territory. Some 63,000 housing blocks were surveyed and the main findings of the report are summarised :

"The survey identified some 3700 instances of structures in front of the building line, of which 3600 structures (including 1884 fences) were coded and photographed for subsequent analysis. The distribution of structures throughout Canberra was as follows :

Belconnen	686	19%
Canberra Central	2264	63%
Tuggeranong	182	5%
Weston Creek	178	5%
Woden	305	8%
	3615	100%"

"In terms of the height of fences, the survey found that 85% of all fences observed were below 1200mm. Some 30% of fences were less than 600mm high and could only provide a rudimentary security barrier and a further 14% were less than 300mm high and were too low to be other than a boundary marker or landscape element. Approximately 50% of the fences were located on the front boundary".

"Most fences were of masonry construction (40%) with timber (26%) and metal (20%) as the next most common materials. Many were well built although a significant number were very poorly constructed".

"The survey indicated that 39% of all fences were erected on blocks fronting roads of collector or higher status which suggests that the need to provide a safety barrier or noise insulation may have influenced their construction".

... "the principal conclusion which seems to emerge fairly clearly is that the main purpose of a high proportion (90%) of existing fences or structures is to define property boundaries. Significantly, less than half (39%) of the structures were capable of providing privacy, security or safety for the residents".<sup>4</sup>

2.5 The Committee was advised that since 1982 no further surveys on structures of this kind have been undertaken and that there were 30,000 fewer housing blocks than there are today.<sup>5</sup> The lack of any similar surveys since 1982 meant that the Committee was unable to identify the current percentage of structures on the

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<sup>4</sup> Ibid pages 5, 6.

<sup>5</sup> The NCDC identified 63,000 housing blocks in 1982 (see 2.4) and according to an Interim Territory Planning Authority document – "Towards a New Territory Plan for the ACT – Housing Issues" (1990): page 12 – there are 93,000 housing blocks today.

front or building line as related to the total number of residential/suburban blocks in the ACT in 1990. The 1982 NCDC survey appeared to show that a majority of residents who have built front fences have not done so primarily to keep out dogs or to keep children in. However, the Committee is also aware that many law abiding residents may not have constructed fences simply because they knew they were illegal.



3. PREVIOUS INQUIRIES, REPORTS AND MOTIONS RELATING TO RESIDENTIAL FENCES IN THE ACT.

3.1 The issue of whether the long standing policy on residential fences should be changed has been raised on several previous occasions and on each occasion there has been support for an easing of the existing policy.

3.2 On 11 November 1975 the ACT House of Assembly passed the following motion:

"(1) That, in view of the provisions of the Dog Ordinance, this Assembly is of the opinion that the Buildings (Design and Siting) Ordinance 1964–1973 should be amended to allow the construction of front fences on residential land, the need for such fences to be determined by application to the NCDC and the design of such fences to reflect the concept of Canberra as a garden city, and

(2) That the terms of this resolution be communicated, by message, to the Minister."<sup>6</sup>

3.3 The then Commonwealth Minister with responsibility for the ACT, Mr Staley, stated on 18 May 1976 that the NCDC was reviewing its policy in relation to residential front fences. This review of policy did not result in any changes to the existing restrictions on fences. The NCDC's annual report of 1976–77 said ...

"It is the Commission's view that the construction of front fences should not be encouraged in Canberra, and that there was no marked pressure for a change to this view in the public comments received on this matter."<sup>7</sup>

3.4 However, the National Capital Planning Committee, the main ministerial advisory body of the time, had a contrary view to the NCDC. In a message to the ACT House of Assembly on 30 November 1976 Minister Staley said ...

"The question [of front fences] was also referred to the National Capital Planning Committee which did not share the Commission's views. The Committee was of the opinion that the garden city character did not necessarily depend on the prohibition of front fences. They also expressed the view that residents should be given the opportunity of making more effective and private use of the space between the buildings and the property line."<sup>8</sup>

3.5 On 7 February 1977 the House of Assembly voted on and agreed to a number of recommendations made by the Standing Committee on Lands, Planning and Environment in its report on Front Fences In Residential Areas. The four recommendations contained in the report were :

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<sup>6</sup> ACT House of Assembly Hansard 11 November 1975, page 32.

<sup>7</sup> As quoted in the ACT House of Assembly Hansard 31 May 1983, page 3021.

<sup>8</sup> *ibid.* page 3021.

- "1. That the Buildings (Design and Siting) Ordinance 1973 be amended to permit without further approval the enclosure of up to 50% of the area of the lease in front of the house; the enclosure of an area up to 100% of the front should be negotiable with the NCDC.
2. That lessees of corner blocks be permitted to enclose up to 100% of the front.
3. That the fencing requirements be uniform over Canberra.
4. That the recommendations and report be transmitted by message to the Minister."<sup>9</sup>

3.6 In May 1983 the House of Assembly's Standing Committee on City Management completed a report on Front Fences in the ACT. The Committee made six recommendations as follows :

- "(1) That the Assembly agree to the NCDC's proposals for the addition of courtyards to the front of a house subject to the specified constraints and conditions;
- (2) That the Assembly reject the continuation of the "no front fence" policy as proposed by the NCDC;
- (3) That, instead, the Assembly support a policy permitting the erection of approved front fences which do not exceed 800mm in height, which met specified standards with respect to materials and workmanship, and which provides for the establishment of appropriate procedures for neighbours objections, and appeals machinery available to all parties;
- (4) That existing front fences which do not comply with such conditions and standards be "amnestied";
- (5) That the Government reintroduce the free issue of trees and shrubs to purchasers of new blocks; and
- (6) That the Report and its recommendations be transmitted by Message to the Minister."<sup>10</sup>

3.7 On 31 May 1983 the House of Assembly debated the six recommendations listed in 4.6 and the Assembly agreed with all recommendations but for two amendments – that the words "which do not exceed 800mm" be deleted from recommendation (3) and that in recommendation (4) the word "amnestied" be deleted and be replaced with "individually considered for amnesty."

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<sup>9</sup> Standing Committee on Lands, Planning and Environment – Report No. 35 – Front Fences In Residential Areas (February 1970) pages 2,3.

<sup>10</sup> Standing Committee on City Management – Report No. 3 – Front Fences – May 1983 pages 4,5.

3.8 In September 1984 the NCDC released a revised set of Design and Siting Policies, the main feature of which was the inclusion of the right of residential landowners to erect courtyards subject to certain conditions (see 4.1). Since September 1984 no inquiries, reports or changes to policy have been undertaken.



#### 4. EXISTING POLICY RESTRICTIONS ON RESIDENTIAL/SUBURBAN FENCES

4.1 The full details of the current policy on residential fences in the ACT is at Appendix 1. The policy can be summarised as follows :

- . Except for courtyards (see below), lighting posts, letter boxes and retaining walls no structures are permitted between a minimum building line and a front property boundary.
- . Fences or walls are allowed on blocks where a pedestrian walkway abuts the side boundary. They are not to exceed 1.2 metres in height. The same policy applies for fences or walls erected on front boundaries that abut pedestrian walkways.
- . Fences or walls not exceeding 1.2 metres in height may be permitted on front boundaries that abut a designated open space.
- . Courtyards, including gates, may be built in front of the minimum building line provided that the structure traverses no more than one half of the block and is a minimum distance of 3.0 metres from the front boundary. As well the walls and gates must not exceed 1.8 metres in height; the materials shall be the same or similar to those of the main building and the walls and gates should be screened and softened with appropriate landscaping. For corner blocks such a courtyard may be built for each property frontage.
- . Gates may be permitted on front boundaries if they are part of an existing hedge. These gates must not exceed 1.8 metres in height.

#### Enforcement of existing policy

4.2 The Committee was advised that the existing policy restrictions on residential fences have not been effectively enforced. According to the Chief Territory Planner the main reason as to why the policy has not been effectively enforced is because...

"It is very difficult for a minister of the day to then order that a front fence be bulldozed. It is not perhaps the most popular action he can take, and it is seen to be a very heavy bureaucratic action because that one small fence is seen to be outside the concerns of a minister. But it is also true that the continual questioning of the front fence policy over years in the public arena and ... in the political arena makes it very difficult for administrators to actually then order... some action with respect to a fence."<sup>11</sup>

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<sup>11</sup> Evidence page 6.

- 4.3 The ACT Building Controller informed the Committee that statistics on the enforcement of the fences policy were only available for the last three years. The Committee was further informed that of the thirteen cases of "illegal" fences examined over the past three years, seven notices (pursuant to the Building Act 1972) have been issued resulting in three fences being removed and one fence being subsequently approved by the Interim Territory Planning Authority. Eleven of the thirteen cases had been referred to the Building Controller by the ITPA and of the other two, one was a neighbourhood complaint and the other resulted from an inspection.<sup>12</sup> The ITPA advised the Committee that 'in all but one of the cases the Interim Authority and its predecessor, the NCDC, responded to action or reports by third parties in requesting action against front fences.'<sup>13</sup>
- 4.4 The ACT Building Controller said that his section responded to complaints about fences rather than actively going out into the field to track down illegal structures. While the Building Controller was unable to provide any detailed information on the cost of any increased enforcement action, his opinion was that the likely cost of implementation and enforcement could be between \$100,000 and \$1.5m depending on the extent and level of the enforcement action required.<sup>14</sup>
- 4.5 The Committee is of the view that it is unfair and discriminatory to allow some residents to construct illegal structures, including fences, whilst at the same time maintaining an official policy that restricts such constructions. If any policy is to have widespread credibility it must be enforced.
- 4.6 **The Committee recommends that any policy on residential/suburban fences in the ACT should be enforced including :**
- (a) an extensive promotional campaign which outlines the policy, particularly the options available to the householder;**
  - (b) the provision of adequate resources to administer that policy, including the processing and assessing of applications;**
  - (c) appropriate procedures for objections and appeals; and**
  - (d) the introduction of a provision within that policy which ensures that before any residential properties are sold, approval must be obtained for all external structures including fences/walls.**

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<sup>12</sup> Submission to the Committee – ACT Building Controller 12 September 1990 page 1.

<sup>13</sup> Submission to the Committee – ITPA – 5 September 1990 – page 2.

<sup>14</sup> Evidence page 50.

## 5. ARGUMENTS FOR AND AGAINST RESIDENTIAL FENCES

### ARGUMENTS IN FAVOUR OF CHANGES TO EXISTING POLICY

- 5.1 The arguments in favour of an easing of the current restrictions on residential fences can conveniently be put under two headings – arguments related to civil liberties and arguments related to the rights of privacy and protection. With respect to civil liberties it is argued that in a modern democratic society people should have the right to decide what types of boundaries they erect on their own property as long as these boundaries do not infringe on the rights of others. Related to this point is the right to have reasonable privacy and protection from other people, animals, litter and noise.
- 5.2 The Committee received thirty-seven written submissions from householders and organisations in the ACT – twenty of those written submissions, all from householders, favoured an easing of the current fencing restrictions. The arguments in favour of front fences were summed up in the following detailed submission to the Committee:

"I register my support for front fences and comment as follows,

Not to allow front fences is a restriction of basic human rights preventing the assistance front fences offer in protection of persons and property in an ever deteriorating society unable to control for example, burglary, theft, vandalism, violence, dogs and litter.

A few advantages of front fences are :

- slow down or stop out of control motor vehicles entering front yards
- deter burglars, vandals, thieves, assailants and voyeurs
- keep dog faeces off front yards
- assist in keeping litter from front yards
- improved security for motor vehicles
- keep children within front yards and off dangerous streets
- stop dogs attacking children in their front yards
- provide extra employment...

I expect allowance of front fences to cause little change in general street appearance, many would cover fences with hedges and vines etc and although almost all would prefer to fully fence their property many would tend to postpone installing front fences".<sup>15</sup>

- 5.3 The dog problem was mentioned by many residents who favoured a change to the current policy. The Committee heard anecdotal evidence that there had been an increase in the dog problem. However, no firm figures were provided to justify these statements. The 1982 NCDC survey on front fences (see 2.4) did indicate that many illegal fences were not in fact effective in combating roaming dogs.

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<sup>15</sup> Submission from Mr T Armstrong.

- 5.4 The Committee was informed by the Registrar of Dogs that there are currently 16,500 registered dogs in the ACT out of an estimated total dog population of 50,000 to 80,000. Prior to September 1989 there were approximately 2000 public complaints lodged about dogs each month and following the "Your dog your responsibility" campaign the number of complaints dropped to 1300/1400 per month. The Committee was further advised that in August this year the number of complaints had risen to 1900, although this was probably due to warmer weather and the onset of spring. The Registrar further informed the Committee that the Dog Control Unit consisted of four Dog Inspectors (Dog catchers with vans) – two northside and two southside – as well as four office personnel.<sup>16</sup>
- 5.5 The lack of detailed statistics on the dog problem makes it difficult for firm conclusions to be reached but it would appear that four Dog Inspectors is not sufficient to deal with the large number of dogs in Canberra. However, the Dog Control Unit is currently reviewing its procedures and in future the statistics available on dog control and enforcement will be much more comprehensive.
- 5.6 The Committee notes that the Government has recently foreshadowed in a statement to the Legislative Assembly on 23 October 1990 that a series of new measures will be introduced next year in an attempt to control the dog problem by amending the Dog Control Act 1975. The Committee strongly endorses these proposed new measures.
- 5.7 **The Committee recommends that :**
- **the proposed new measures aimed at bringing the dog problem under control be introduced as a matter of urgency;**
  - **adequate resources, including staff, are provided to ensure that the new policies are fully enforced; and**
  - **the implementation of these new control measures be subject to on-going review.**

#### ARGUMENTS AGAINST CHANGES TO EXISTING POLICY

- 5.8 The main argument against a change to the current policy on fencing is that changes to the policy will adversely affect the garden city character of the ACT – a garden city character that has made Canberra a unique and distinctive city.
- 5.9 All community organisations and government agencies that made written submissions to the Committee or appeared at public hearings argued for a retention of the current policy.

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<sup>16</sup> Submission from Mr Roger Pink : ACT Registrar of Dogs.

- 5.10 The National Capital Planning Authority informed the Committee that it proposed to retain the current NCDC Design and Siting Policy on front fences in designated areas as set out in the National Capital Plan. This policy affects approximately 90 residential blocks in parts of Deakin and Forrest, some of which have "illegal" fences/walls. The NCPA further informed the Committee that decisions on planning matters outside the designated areas were more properly dealt with by the ACT government. The NCPA, whilst acknowledging that the decision is a territory one, argued that the existing policy on fences should be maintained throughout Canberra. NCPA officials informed the Committee that they did not have enforcement powers with respect to fences but could refer any problems in this area to the ACT Building Controller. The NCPA was of the view that the modifications to the policy introduced by the NCDC in the early 1980s, most particularly the provision allowing for courtyards, appear to have satisfied most of the advocates for a change in policy.<sup>17</sup>
- 5.11 The Interim Territory Planning Authority informed the Committee that any change in the fences policy would seriously interrupt the orderliness of the Canberra streetscape because the design of front fences could not be satisfactorily controlled through specification of building materials or fence heights. The ITPA believed that the demand for front fences in the community was not particularly widespread or persistent and that the overwhelming majority of householders had no serious functional reason to erect a front fence. The ITPA further argued that there were really only two choices available – either a no front fences policy or a policy permitting fences but without any design control.
- 5.12 Both the NCPA and the ITPA advised the Committee that other cities in Australia had similar fencing policies to Canberra in very limited areas, for example, West Lakes in South Australia and Albury/Wodonga in New South Wales.
- 5.13 In West Lakes (a recent housing development in Woodville, Adelaide) fences are controlled by encumbrance guidelines that householders must abide by. For example, the encumbrance guidelines for courtyard housing in Lockside Drive (Lots 1 to 17) West Lakes<sup>18</sup> includes the following setback provisions :
- . no part of any building is permitted closer than 8 metres to the street boundary of an allotment
  - . no part of any building (excluding unroofed pergolas) are permitted closer than 3 metres to the rear boundary of an allotment
  - . buildings are permitted adjacent to, or abutting one side boundary. However, no part of any building (excluding unroofed pergolas) are permitted closer than 1.8 metres to any other side boundary or 3 metres to the rear boundary.

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<sup>17</sup> Submission from NCPA page 5.

<sup>18</sup> Information provided to the Committee by the NCPA.

- 5.14 ACT Electricity and Water submitted to the Committee that a change in property fencing in the ACT could add to the cost of meter reading and therefore to the costs of the provision of electricity and water services as a whole.<sup>19</sup> However, the Committee was not convinced that this was a major factor and believed that it should not be seen as a valid reason for maintaining the current policy.
- 5.15 The ACT Heritage Committee argued that it was essential the current restrictions on residential fences be maintained so as to ensure the continuity of Canberra's planning ideas. The Heritage Committee stressed the need to pay particular attention to maintaining the policy in heritage areas, where the value of these areas is attributed in part to the absence of front fences. The Committee noted that the 1982 NCDC survey found that the majority (63%) of "illegal" fences are found in the inner suburban areas of Canberra where much of the significant heritage stock in the ACT is located.
- 5.16 The National Trust of Australia (ACT) expressed the opinion that no significant grounds have been offered to suggest the current policy be discontinued and the historic tradition of no front fences be not maintained. The National Trust informed the Committee that the concept of no front fences was an integral part of Canberra's planning and historic integrity and should not be seen as an isolated component of the planning system in Canberra.

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<sup>19</sup> Evidence page 52.

## 6. ENVIRONMENTAL ISSUES

### SCREENING PLANTS

6.1 The Committee also considered environmental issues relating to the list of plants recommended for hedges in the 1984 policy document.<sup>20</sup> Three of the plants recommended have been identified by the Conservation Council of the South East Region and Canberra (Inc) as causing problems for Canberra's indigenous ecosystems.<sup>21</sup> The ACT Parks and Conservation Service also expressed similar concerns about some of the plants identified in the list causing problems in the Canberra Nature Park.<sup>22</sup>

6.2 **The Committee recommends that :**

**the list of screening plants in the policy on front fences be reviewed to ensure that plants identified as causing problems in the indigenous ecosystems of the ACT, including the Canberra Nature Park, are removed from the list.**

### BRUSH FENCING

6.3 The Committee was advised that the majority of material for brush fences in the ACT comes from the West Wyalong and Mount Hope districts of NSW where parts of the tea-tree (*Melaleuca uncinata*) are harvested. Information was also received from the Conservation Council of the South East Region and Canberra (Inc) on a report prepared for the Victorian Conservation Council on the brush fence industry in Victoria and South Australia which recommended that the industry, as it presently exists in those states, be phased out.<sup>23</sup>

6.4 The Committee was also advised that while carefully managed harvesting operations in NSW posed little threat to established plants,..."the environmental impacts of the harvesting industry however, need to be considered in a wider context...both from the point of view of the target species and the overall biotic communities within which harvesting takes place".<sup>24</sup>

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<sup>20</sup> NCDC, "Policy On Front Fences", September 1984, page 16.

<sup>21</sup> Submission dated 23 October 1990 page 3.

<sup>22</sup> Submission from the ACT Director of Environment and Conservation (8/11/90).

<sup>23</sup> Conservation Council of the South East and Canberra (Inc). The report referred to is by J. C. Z. Woinarski, Broombrush in the Victorian Mallee, 1989.

<sup>24</sup> National Parks and Wildlife Service – letter submitted to Committee (5 October 1990.).

6.5 The Committee noted current moves by state and federal ministers to consider the possible effects of actions authorised by them on environments in other states. While there is some evidence to suggest that the continued use of brush fencing in the ACT may be having an effect on the environment from where the plants that are harvested in other states, there is insufficient evidence available to prove that this operation in New South Wales is causing similar problems to those identified in South Australia and Victoria.

6.6 **The Committee recommends that :**

- . the ACT government initiate action via its membership of the Australian and New Zealand Environment Council (ANZEC) to examine the effects of the use of Melaleuca uncinata as a fencing material on the environment in New South Wales, Victoria and South Australia.**

## 7. CONCLUSION

- 7.1 The Committee carefully considered the alternative views on the current "no front fence" policy in the ACT put forward by residents, representatives of the ACT Administration and community organisations. While acknowledging the validity of many of the points of view put forward, the Committee considered it was not appropriate to allow total de-regulation of the current policy, however, the Committee believes that changes are necessary. The following recommendations are provided to assist government agencies in preparing these changes to the current policy on residential/suburban fences.



## **8. MAIN RECOMMENDATIONS**

**The Committee recommends that :**

**8.1 the current policy on residential/suburban fences in the ACT be changed to include the following provisions :**

**an amendment which allows for the construction of approved front fences in accordance with the following :**

- (a) the maximum height of such structures does not exceed 1.2 metres in height;**
- (b) the materials used for the construction of such fences and/or walls should be the same or similar to those of the main building;**
- (c) the fences/walls be constructed as an integrated part of the development and suburban/residential building blocks;**
- (d) such constructions meet specified standards of workmanship and materials;**
- (e) such constructions shall be at least partially screened and softened in appearance by landscape planting;**
- (f) appropriate procedures for neighbours objections and appeals machinery available to all parties are established; and**
- (g) permission has been granted in writing from the appropriate authorities (or the ACT Heritage Committee where appropriate) to construct such a fence/wall.**

**8.2 Landscaping advice be made available to householders who choose to grow a hedge or other plantings/moundings for corner blocks and areas beside walkways rather than construct a fence or wall of non-plant material. Provision should also be made for temporary structures to be used to protect such plantings during the establishment stage.**

**8.3 The government ensures that low level log barriers are placed on the side and corner boundaries of blocks that abut walkways and that such barriers are placed outside residential/suburban leasehold boundaries.**

**Norm Jensen**

**Presiding Member**

**20 November 1990**



## APPENDIX 1

### CURRENT POLICY ON RESIDENTIAL FENCES IN THE ACT

The NCDC Design and Siting Policies 1973, Part II Policy 2.6 "Structures in Front of Buildings, incorporates the front fence policy.

#### 2.6 Structures in front of buildings

- (a) Except where provided for below, no structure, including fences, car shelters or clothes hoists, but excluding lighting posts, letter boxes and retaining walls of a reasonable height shall be permitted between a minimum building line and a front property boundary.
- (b) Where a pedestrian walkway abuts a block along the side boundary, a fence or wall not exceeding 1.2 metres in height may be permitted.
- (c) Except where provided for in sub-paragraph (e) below, walls and/or fences erected along frontage boundaries abutting pedestrian walkways shall not exceed 1.2m in height.
- (d) Except where provided for in sub-paragraph (e) below, walls and/or fences not exceeding 1.2 metres in height may be permitted between the building line and a frontage boundary abutting a designated open space, where in the Commission's opinion, the proposed fence or wall will create no adverse affect on the landscape character of the open space.
- (e) Walls including gates may be erected to enclose or partly enclose a courtyard in front of the minimum building line provided that :
  - . The courtyard so formed shall not at any point traverse more than one half of the width of the block measured at the same point and shall be a minimum distance of 3.0 metres from the front property boundary.
  - . The walls and gates shall not exceed a height of 1.8 metres above natural ground level.
  - . Materials shall be the same as or similar to those of the main building.
  - . The walls and gates shall be at least partially screened and softened in appearance by landscape planting to the satisfaction of the Commission.
  - . For corner blocks a courtyard may be provided in respect of each property frontage.

- (f) Gates may be permitted abutting front property boundaries, provided they are incorporated in existing hedges. Gates in hedges shall not exceed 1.8 metres in height or such lesser height as the Commission may determine in a particular case having consideration for the nature of the hedge. For the purpose of this policy, a hedge must be well established and vigorous at the time of lodgement of an application for a gate.

Policy 6.5 also refers to structures in front of buildings viz;

"Walls adjacent to side boundaries forward of the front building line may be permitted in accordance with the provisions of Policy 2.6 herein".

## APPENDIX 2

### WRITTEN SUBMISSIONS RECEIVED

ACT Electricity and Water

ACT Heritage Committee

Armstrong, T

Barnier, W.R.B and B

Brandon, Tony and Shirley–Anne

Burrell, Mr and Mrs I

Butler, J and Miller, J

Carty, Richard

Cohen, Paul

Coleman, John

Conservation Council of the South East Region and Canberra (Inc)

Crutchett, F.F

Edmunds, Shirley

Fraser, Greg – Director Environment and Conservation Bureau (Department of Environment, Land and Planning)

Gair, Mr and Mrs B

Goss, John

Haswell, Mr and Mrs David

Hill, Frederich

Holland, Mr and Mrs R.W

Horton, W.M

Interim Territory Planning Authority

King, H.F

Lindemann, Eric

Lloyd, Moira

MacDonald, B and D

MacNiven, Gordon

Marshall, Jack, Helen, Jon and Sarah-Jane

National Capital Planning Authority

National Trust of Australia (ACT)

O'Malley, Phillip

Richards, Micheal J

Real Estate Institute of the ACT Ltd

Smith, Richard

Snashall, A.F and A.G

Southwell, Rex Arthur

Stone, R

Willsher, E and J

## APPENDIX 3

### LIST OF WITNESSES AT PUBLIC HEARINGS

Brandon, S – Householder

Campbell, G – Chief Territory Planner (ITPA)

Cohen, P – Program Manager – Special Projects (ITPA)

Crutchett, F – Householder

Edmunds, S – Householder

Hill, W – Householder

Horton, W – Householder

Martin, E – Chairman – ACT Heritage Committee

Michelson, P – Administrator – National Trust (ACT)

Palmer, L – ACT Building Controller

Smith, M – Chief Planner (NCPA)

Smith, R – Householder

Taylor, Associate Professor Ken – President National Trust (ACT)

White, G – Manager – Revenue (ACTEW)

Wright, D – Director – Development Planning (NCPA)



**ADDITIONAL STATEMENT BY MR WAYNE BERRY MLA  
CONCERNING COMMITTEE PARTICIPATION  
BY AUSTRALIAN LABOR PARTY MEMBERS**

On 27 March 1990 (Hansard page 879) the Leader of the Opposition, Ms Follett, said in relation to the Government's restructure of committees:

"Ms Follett: ... I have said many times before that we stand ready to participate fully in the life and the work of Assembly committees. But committees must be an arm of the Assembly and not simply a rubber stamp for Government decisions ... It is extremely important that there is a clear separation of powers between the Executive Government and the Assembly and this separation must not only occur in fact but it must be seen to occur – even to the casual observer ... The Labor Party will not be seen as part of a committee which appears to be an Executive Committee ... we will not serve on a committee which is chaired by an Executive Deputy who has portfolio responsibilities in that committee's area of responsibility."

I agree that there must be and must be seen to be a clear separation between Assembly committees and the Executive if these committees are to have a credible independence from the Executive Government. In my view, there is no logic in Mr Jensen's continuing as chair of the Standing Committee on Planning, Development and Infrastructure if there is a wish by Government to preserve this important concept of parliamentary government. In other words, it is reprehensible for the ACT Government to persist with a mechanism of parliamentary democracy which so arrogantly ignores the requirement to preserve the independence of standing committees of this Assembly and to be seen so to do.

On the other hand, the Government is apparently keen to ensure that executive deputies are given something as important to do as the recently invented title suggests. It is also apparent that as part of forming the alliance, it had to be attractive to new members to accept their new role – though not as ministers – and personal preference as well as party political interests formed the basis for the allocation of Executive Deputy assignments and the chairs of committees.

It is this later assignment where the Government and its members, in the Labor Party's view, failed to give due consideration to the need to properly separate the Executive role from that of the Assembly. Unfortunately it also appears that the Government, having made its decision, has no process available to it whereby its attitude to this important issue might change.

On 15 May 1990 at a meeting of the Standing Committee on Planning, Development and Infrastructure, I drew the above mentioned position to the attention of Mr Jensen, the Liberal, Residents Rally and Independents Group ACT Government Executive Deputy responsible for planning.

I then requested that because of Mr Jensen's Executive Deputy responsibilities for planning, that he stand down as chair of the committee. Mr Jensen declined.

I note that the Labor Opposition is not alone in the Assembly in its concerns about the future functioning of Assembly committees. It is a matter of record that Mrs Nolan made statements to the Standing Committee on Planning, Development and Infrastructure expressing her concern that the composition of the committee, consisting of two Government members only, might be seen as improper.

I also requested that Mr Stefaniak not make himself available for the position of presiding member of the Standing Committee on Legal Affairs on the grounds of bias. He refused, though at the same time, acknowledged that there would be instances where the question of conflict of interest between his Executive Deputy duties and his position as presiding member of the committee would cause him to stand down.

On the issue of bias, one needs only to turn to the courts for guidance and while the attention of the courts is directed at those who might carry out a judicial function, it is nevertheless the case in my view that the same rules should apply in determining the propriety of executive deputies performing the duties of presiding member on committees where there is an overlap between the respective executive deputies and the committees on which they serve.

The courts have made clear the point and as Lord Denning said in *Metropolitan Properties Co. v Lannon* 1969:

"The court looks at the impression which would be given to other people. Even if he was an impartial as could be, nevertheless if right minded persons would think that in the circumstances, there was a real likelihood of bias on his part then he should not sit ..."

I repeat that the Labor Opposition is keen to participate fully in an Assembly committee system which is not under a cloud regarding its independence. In my view it is an issue for the parties to the ACT Government whether or not they too wish to have the Assembly committee system seen to be independent by the ACT community.

W Berry MLA