

**CONSULTATION REPORT**

**National Capital Plan Draft Amendment 93 – City and Gateway Urban Design Provisions Technical Changes**

September 2019

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# 1 Introduction

## 1.1 Background

The Australian Government through the National Capital Authority (NCA), and the ACT Government, share planning responsibility in the ACT. The mutual interest and responsibility in the city and gateway corridor, including the Federal Highway, Northbourne Avenue, and the city centre, prompted the need for a revised planning and design framework to guide future design and development.

The Federal Highway and Northbourne Avenue corridor forms a key approach to Canberra’s city centre. The NCA’s interest lies in ensuring that the corridor reflects the significance of Canberra as the National Capital and the high development and landscaping standards are observed along the length of the corridor.

Amendment 91 to the National Capital Plan (the Plan) came into effect on 4 April 2019. The amendment introduced detailed conditions of planning and design for sites flanking the Federal Highway and Northbourne Avenue. The amendment was the outcome of the two year long ‘City and Gateway urban design’ joint project between the NCA and the ACT Government. The City and Gateway project resulted in a planning and design framework to guide urban development in the city centre and along the gateway corridor for the next 25 – 30 years. The outcome provides for greater density, higher quality and more sustainable living and working environments within a landscape setting, appropriate to the National Capital.

The NCA has monitored actions since the finalisation of Amendment 91 so as to understand if implementation of the amendment has enabled the intended development outcomes and to identify any unintended consequences.

The NCA identified a handful of issues requiring immediate attention, including transitional arrangements for development applications, and uncertainty regarding the application of building length provisions and design requirements for balconies and balustrades.

The NCA will continue to monitor outcomes along the city and gateway corridor to ensure that the planning and design provisions are producing the high quality design outcomes expected for this key approach route to the National Capital. Further amendment to the relevant planning and design provisions may also be required at a later date.

## 1.3 Draft Amendment 93

Amendment 93 - City and Gateway Urban Design Provisions Technical Changes was proposed to address a number of technical matters concerning the interpretation and implementation of Amendment 91 to the Plan. The provisions of the amendment have the following effect:

1. introduces transitional provisions to address development applications submitted to the Territory planning authority prior to the commencement of Amendment 91 to the Plan
2. clarifies the term ‘building length’ as it relates to building separation requirements
3. clarifies design provisions concerning balconies and balustrades
4. clarifies in what circumstances building separation provisions are to apply so as not to adversely restrict the development of narrow sites.

DA93 was released for public consultation between 24 July and 4 September 2019. This report summarises the issues raised during the public consultation process undertaken by the NCA on DA93 to the Plan.

# 2 Consultation

## 2.1 Consultation activities

On 24 July 2019, the NCA released DA93 for public consultation. The public consultation period ran for six weeks in accordance with the NCA’s ‘Commitment to Community Engagement (August 2015)’, concluding on 4 September 2019. DA93 was available of the NCA’s website, and hard copies were available on request.

Key activities during the public consultation period included:

* On 24 July 2019, a public notice was published in *The Canberra Times* (Attachment A).
* On 24 July 2019, the NCA wrote to the ACT Government’s Environment, Planning and Sustainable Development Directorate (EPSDD) advising of the release of DA93.
* On 24 July 2019, a notice was published in the *Government Notices Gazette* (Attachment B).
* During the consultation period, social media was utilised to advertise DA93.
* On 7 August 2019, the Office of Best Practice Regulation advised that no Regulation Impact Statement would be required for DA93.
* On 3 September 2019, EPSDD advised the NCA that it had no objection to DA93.

## 2.2 Submissions received

Five submissions were received in response to DA93, with submissions provided by an individual, industry, community groups, and the ACT Government. No objection was received to the changes to the Plan proposed by DA93, however a number of additional changes were suggested to aid in the interpretation of the city and gateway provisions of the Plan. Several submitters also took the opportunity to raise broader concerns with the city and gateway provisions.

The key issues raised during the public consultation period are summarised in section 3 of this report. Details of submissions are available in Attachment C.

# 3 Key Issues

## 3.1 Additional matters requiring clarification

***Comments received***

EPSDD advised that while there was general support across ACT Government directorates for DA93, minor changes to building separation provisions would clarify the sites to which the provisions apply.

Amendment 91 to the Plan introduced minimum separation distances for buildings based on their height, arrangement of rooms within residential dwellings, and provision of windows and balconies. The wording of the relevant building separation provisions imply that the requirements are applicable to all blocks on the Federal Highway, however this results in unintended complications for developing narrow blocks.

EPSDD suggested minor changes to the wording of building separation clauses to clarify that the provisions apply only to blocks with a width greater than 35 metres.

***NCA response***

The NCA supports clarifying building separation requirements as suggested by EPSDD. Variations to building separation requirements for blocks less than 35 metres in width on Northbourne Avenue The relevant building separation clause has been amended to read:

*Minimum separation distances for buildings on blocks with a frontage to Northbourne Avenue or Federal Highway greater than 35m wide are:*

|  |  |  |  |
| --- | --- | --- | --- |
| *Building height* | *Between windows in habitable rooms/unscreened balconies* | *Between windows in habitable and non-habitable rooms* | *Between non-habitable rooms* |
| *Up to 4 storeys* | *12m* | *9m* | *6m* |
| *5 to 8 storeys* | *18m* | *12m* | *9m* |
| *9 storeys and above* | *24m* | *18m* | *12m* |

*Where blocks have a front boundary to Northbourne Avenue or the Federal Highway and are less than 35 metres wide, building separation distances may be reduced provided all of the following are achieved:*

* *reasonable levels of visual and acoustic privacy*
* *suitable areas for soft landscaping and deep root planting.*

## 3.2 Concerns with provisions introduced through Amendment 91

A number of matters raised through the DA93 consultation process concerned other city and gateway provisions introduced into the Plan through Amendment 91. These issues are discussed below.

### 3.2.1 Building heights, including impact on vistas

***Comments received***

Several different issues concerning building height were raised during the public consultation process:

1. Permitted building height limits at the intersection of Macarthur and Wakefield Avenues with Northbourne Avenue will significantly impede the Majura Avenue vista to Black Mountain. The vista derives directly from the Griffin’s 1912 plan and loss of the landscape vista would be a loss to the community. It was suggested that additional provisions could be incorporated into the Plan, for example complex building envelope controls or prescriptive language to ensure that the vista is framed and complemented as viewed from particular vantage points along Majura Avenue.
2. Provisions introduced through Amendment 91 to the Plan state that maximum building height is to be measured from the front boundary adjoining Northbourne Avenue. This is logical where Northbourne Avenue is the high side of a site but results in loss of yield on sites that slope upwards from Northbourne Avenue. It was requested that the provision should read as though the permitted height limit applies anywhere on the site above the relevant datum ground level, or that either approach can be used.
3. Provisions introduced through Amendment 91 to the Plan allow for minor encroachments of roof top plant above the specified 25, 27.5 and 32 metre building height limits. It was requested that the 18 metre height limit also be added to this.

***NCA response***

The NCA’s response to each of the points above is as follows:

1. A variety of building heights were considered and proposed during the development of the City and Gateway Urban Design Framework, including for the Macarthur intersection. The intersection of Macarthur/Wakefield Avenues with Northbourne Avenue has long been recognised in the Plan as a ‘landmark node’. In 1999, provisions were introduced that increased the maximum allowable height limits at this node (as well as the intersection of Antill/Mouat Streets with Northbourne Avenue) from 25 to 32 metres. The City and Gateway Urban Design Framework and subsequently Amendment 91 adopted this concept of nodes, and increased building height at the Macarthur node to provide a greater variety in height limits along the corridor, and reflect the intent to increase height limits as the city centre is reached.

The Plan does not refer explicitly to the importance of Majura Avenue vista, although does include broad policy concerning respect for the key element of the Griffin’s formally adopted plan for Canberra, and protecting vistas to major landscape features. While there will be some impact on the view to Black Mountain from some parts of Majura Avenue (notably the closer someone approaches Northbourne Avenue), this is to be expected with the growth of the city. The vista will also change as sites adjacent to Majura Avenue zoned for higher density development are redeveloped.

The NCA has re-examined the intersection and concluded that the current permitted height limits will not significantly adversely impact the Majura Avenue vista to Black Mountain. The NCA is of the view that development will be not inconsistent with the broader principles and policies of the Plan.

1. The Northbourne Avenue Precinct Code of the Territory Plan already contains provision that for Northbourne Avenue generally (where the maximum permitted building height is 25 metres), the maximum building height is taken from a horizontal place above datum ground level measured at the front boundary of Northbourne Avenue. The provisions introduced through Amendment 91 to the Plan reflect this.

For the intersections of Macarthur/Wakefield Avenues and Antill/Mouat Streets, the provisions introduced through Amendment 91 do not specify where the permitted building heights are to be measured from. The Territory planning authority may seek to provide additional controls concerning this matter.

1. The clause referred to that permits minor encroachments above permitted height limits is relevant to sites along Northbourne Avenue. The Plan does not prescribe a maximum permitted height limit of 18 metres for any site along the avenue. Building height clauses for the Federal Highway also allow for minor encroachments above height permitted height limits, regardless of height.

No changes to building heights at the intersection of Macarthur and Wakefield Avenues with Northbourne Avenue have been made.

### 3.2.2 Building setbacks

***Comments received***

One submitter requested that basements and balconies be permitted to extend into the setback area to Northbourne Avenue, provided that they do not detract from the quality of the landscape treatment. This approach would be similar to building setback requirements prior to Amendment 91 coming into effect, and would provide consistency with what has been approved to date.

***NCA response***

Setback requirements of the Plan reflect the City and Gateway Urban Design Framework endorsed by both the NCA and ACT Government in December 2018.

The requirement for basements to be consolidated under building footprints and not encroach into setback areas is to help ensure that as large a volume of soil as possible is provided to facilitate deep rooted planting and healthy growth. Given balcony and balustrade requirements concerning construction materials, balconies are not considered a minor building element and must therefore not encroach into setback areas. Other minor building elements are still permitted, however the integrity of the building line must be maintained.

No changes to building setback requirements have been made.

### 3.2.3 Building separation

***Comments received***

One submitter suggested that because building separation requirements have been adopted from the NSW Apartment Design Guide, the same flexibility offered by the NSW design guide should also be applied to Northbourne Avenue and the Federal Highway to allow flexibility where good design outcomes can still be offered.

***NCA response***

The building separation distances incorporated into the Plan through Amendment 91 have been in place in NSW for over a decade and have found to be workable and achieve desirable outcomes. The required building separation distances have benefits in improving amenity for building occupants, as well as providing sufficient room for soft landscaping which will contribute to the character of Northbourne Avenue as a green boulevard. The potential for substantial landscaped spaces between buildings is of particular importance in terms of its contribution to the character of Northbourne Avenue.

No changes to building separation distances, other than the change identified in section 3.1 of this report, have been made.

### 3.2.4 Private open space

***Comments received***

One submitter raised several concerns regarding private open space provisions:

1. Minimum sizes for private open space of some dwellings is considered excessive (for example, the requirements to provide 36m² of private open space for three bedroom ground level dwellings). It may make developers less inclined to provide three bedrooms dwellings at ground level given other requirements for minimum dimensions of open space and how far private open space can extend within setback areas.
2. Provisions introduced through Amendment 91 to the Plan state that storage units, or plant and equipment (including air conditioning plant) are not permitted on balconies. A more reasonable approach would be to permit these elements but ensure that they are integrated into the building from and/or screened from public view.
3. Private open spaces must not extend more than four metres into a building setback area, and must not occupy more than 40% of a building frontage. It was advised that while the four metre encroachment is largely supported, there are occasions where more than 40% of the width of the building frontage would be desired as ground floor residential. With controls around courtyard walls and deep soil zones in front setbacks, it should be possible for private open space to occupy a larger percentage of the building frontage. If a restriction is in place, 60-75% would be more appropriate, combined with additional controls to articulate courtyard walls over certain lengths. It is also unclear if the private open space provisions apply to the setback areas of secondary front boundaries of corner blocks.

***NCA response***

Three bedroom dwellings, particularly at ground level, may be attractive to families and larger households requiring greater open space needs. The minimum private open space requirement caters for this demographic. The Plan does not specify where three bedroom dwellings must be located, although the Territory planning authority may elect to provide further requirements concerning this matter, in addition to requirements concerning the mix if dwellings to be provided (such as the percentage of one, two and three or more bedroom dwellings).

Restrictions on storage areas and plant and equipment being located on balconies are intended to ensure the best possible design outcomes. The NCA does not support any variation to criteria that may impact on design quality. The exclusion concerning storage areas and plant and equipment on balconies also creates certainty regarding the matter.

The requirement for private open space to occupy not more than 40% of a building frontage is related to the requirements for courtyard walls. Private open spaces are likely to be enclosed by courtyard walls, and the intent is to ensure that the building setback area is primarily communal open space that contributes to the intended landscape character of Northbourne Avenue.

No changes to private open space requirements have been made.

### 3.2.5 Roof design

***Comments received***

One submitter requested that the restriction on fully enclosed structures on roof tops be lifted, provided that they are set back from the building line and screened from public view (similar to roof top plant). The submitter also noted that an unintended consequence of the current provision is that should a roof top structure be contained wholly within the maximum permitted building height, the current provision would restrict the opportunity to provide enclosed communal spaces.

***NCA response***

Regardless of whether roof top communal spaces are provided above permitted height limits or within height limits, the NCA does not support enclosed spaces. Structures may still be provided for communal use.

Roof top plant must be integrated within the building design, however structures for communal use (such as pergolas) may be separate structures.

No changes to to the provisions concerning roof top structures have been made.

### 3.2.6 Ceiling heights

***Comments received***

One submitter noted that Amendment 91 introduced a mandatory minimum floor-to-ceiling heights for non-residential uses facing Northbourne Avenue, and requested that a more appropriate ceiling height for commercial spaces at ground floor be given. For example, minimum floor-to-ceiling heights could align with those required for other mixed use precincts such as Braddon or Civic.

***NCA response***

Minimum floor-to-ceiling height requirements of the Plan largely reflect the City and Gateway Urban Design Framework endorsed by both the NCA and ACT Government in December 2018.

The NCA has introduced similar floor-to-ceiling height requirements for the Constitution Avenue, City Hill and West Basin Precincts, with successful outcomes being achieved. The NCA considers that the spaces that will provided at ground floor level along Northbourne Avenue as a result of the floor-to-ceiling requirements are appropriate to its status as a Main Avenue and entry to the National Capital.

### 3.2.7 Common circulation space

***Comments received***

Amendment 91 to the Plan introduced a mandatory requirement that the maximum number of dwellings off a circulation core on a single level must be no more than nine. One submitted suggested that clarification is required as to whether the reference should be to a ‘core’ or a ‘lift’. Flexibility concerning this clause was also sought to enable more than nine dwellings to be serviced by a single core or lift, with the potential for good design outcomes to still be achieved.

***NCA response***

The intent of the clause, in combination with the other provisions for common circulation spaces, is to ensure that long, narrow, dark corridors are avoided. The reference to ‘core’ is accurate. The mandatory nature of the requirement was in part in response to commentary received during consultation on Amendment 91 concerned with the need to strengthen requirements through the use of terms such as ‘must’.

### 3.2.8 Residential use and solar access

***Comments received***

One submitter made several comments on the solar access requirements introduced through Amendment 91 to the Plan:

1. It is difficult to achieve the requirement for 70% of apartments to receive a minimum of three hours of direct sunlight on the winter solstice. This is due to a combination of factors such as the orientation of Northbourne Avenue, and the desire for articulation of building form which creates additional shading. Greater flexibility to achieve adequate solar access was requested, for example by requiring 70% of apartments to receive solar access between 8am and 4pm on June 21, or 70% of apartments to received two hours of direct sunlight on June 21. The suggested alternatives are akin to requirements in other jurisdictions.
2. Amendment 91 mandates that courtyards, skylights and high-level windows must not be used as the primary means of providing light and ventilation to habitable rooms. However, due to the privacy provisions of the Territory Plan, in some circumstances this is not possible. Flexibility was requested that the provision apply only to the primary living and bedrooms of a dwelling.
3. Amendment 91 does not allow for the provision of ‘snorkel’ arrangements as a mechanism to provide natural light or ventilation. It was suggested that a ‘snorkel’ arrangement is sometimes the best design solution due to other building design requirements, and that they should be permitted under some circumstances.

***NCA response***

The NCA’s response to each of the three points above is as follows:

1. The NCA is of the view that the prescribed solar access requirements can be achieved through innovative building design, particularly where large sites offer opportunities for alternative building orientation or configuration of multiple buildings.
2. The requirement for each habitable room to have an operable window in an external wall, and for courtyards, skylights and high-level windows to be used only as a secondary light source, is intended to improve the indoor living environment for occupants.
3. The ACT Government explicitly did not support ‘snorkel’ arrangements during the Amendment 91 process. The prohibition on ‘snorkels’ helps improve amenity for building users.

Requirements concerning daylight access and cross-ventilation, introduced into the Plan through Amendment 91, were adopted from policy that has been operating in NSW for almost two decades. The provisions have been recognised across the design professions as contributing significantly to improved residential living environments. DA91 mandates the percentages of apartments that must achieve the criteria, and the NCA believes that this provides suitable flexibility for designers whilst ensuring high levels of amenity. The NCA does not support variations to these requirements that have the potential to reduce indoor amenity and living environments for building occpants.

No change to solar access provisions have been made.

### 3.2.9 Deep soil zones

***Comments received***

One submitter suggested that there was some repetition of provisions for deep soil zones. It was suggested that the requirement for *‘a planting zone, no less than five metres wide, should be provided within the front setback areas and be retained for deep soil planting’* adequately covers other specified requirements concerning deep soil zones.

The same submitted also indicated that the provisions introduced through Amendment 91 to the Plan are not clear enough as to whether the deep soil zone is required on secondary street frontages for corner sites. It was noted that a five metres zone may be difficult to achieve if the required setback is six metres and this setback contains private open space.

***NCA response***

All deep soil provisions are relevant and help ensure that the landscape design for development contributes to the broader objectives for landscape character along the Northbourne Avenue and Federal Highway corridor.

The clause stating that *‘a planting zone, no less than five metres wide, should be provided within the front setback areas and be retained for deep soil planting’* ensures that a deep soil zone of at least five metres wide is provided in the front setback area. The clause stating that *‘front setback areas should be retained for deep soil planting’* suggests that ideally, all front setback areas are used for deep soil planting. The clause stating that *‘a minimum deep soil zone dimension of five metres should be applied where located on site’* relates to all deep soil planting areas provided, not just those within the front setback area. The minimum dimension is a size that will assist with the development of healthy root systems and long term growth, and anchorage and stability for trees.

The front setback areas of secondary frontages are visible from the Northbourne Avenue and Federal Highway corridor and should contain deep root planting in a similar manner to the Northbourne Avenue or Federal Highway frontage. There is no restriction on the deep root zones being part of private open space areas, and would assist in providing shade and amenity to these areas.

# 4 Changes to the draft amendment

One change to DA93 as release for public consultation has been made, concerning building separation requirements. This change is described in section 3.1 of this report and allows for flexibility to be applied in respect of building separation requirements where blocks have a narrow frontage to Northbourne Avenue or the Federal Highway.

# 5 Conclusion

On 24 July 2019, the NCA released DA93 for public consultation. The public consultation period ran for six weeks in accordance with the NCA’s ‘Commitment to Community Engagement (August 2015)’, concluding on 4 September 2019.

Five written submissions were received in response to DA93.

A number of issues raised during the consultation process related to the provisions for the Northbourne Avenue and Federal Highway corridor more broadly. The purpose of DA93 is to introduce transitional arrangements for development applications and address immediate issues with the interpretation of planning and design provisions.

The NCA will continue to monitor outcomes along the city and gateway corridor to ensure that the planning and design provisions are producing the high quality design outcomes expected for this key approach route to the National Capital. Further amendment to the relevant planning and design provisions may also be required at a later date.

# 6 Attachments

1. Notice of release of DA93 for public consultation published in *The Canberra Times*
2. Notice of release of DA93 for public consultation published in the *Commonwealth Notices Gazette*
3. Submissions received

## Attachment A – Public notice in *The Canberra Times*

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## Attachment B – Government Gazette notice



## Attachment C – Submissions received in response to Draft Amendment 93

The text provided below largely reflects the full submission received. Personal details or identifying information (where people have requested anonymity) have been removed. Some minor changes have been made (for example, to correct spelling or to provide consistency of terms used in this report).

As noted in the draft amendment documentation, the NCA seeks and open and transparent draft amendment process. The name of each person has been published, except where requests for confidentiality were made through submissions or in discussions with officers of the National Capital Authority.

|  |  |  |
| --- | --- | --- |
| ***No*** | ***Submitter name*** | ***Submission*** |
| 1 | Master Builders Association | I refer to Draft Amendments No. 93 - City and Gateway Urban Design Provisions Technical Changes dated July 2019. The draft amendment seeks to: * Add transitional arrangements for development applications,
* Make technical changes to the building length provisions, and
* Make technical changes to the balcony and balustrade design provisions

Master Builders Association of the ACT fully supports the proposed amendment. |
| 2 | Rosie Cooney | I am a Hackett resident and drive or cycle along Majura Avenue or nearby streets almost every day. I am writing to express my love. My love of the vistas of Canberra - the way our city is framed by the landforms that give us perspective, a sense of place, a sense of home. The mountains are the elements of nature that remain in their natural state, reminding us all that cities must co-exist with and within a broader ecological landscape, on which we are all dependent. I love Canberra and am happy to see it develop. But that develop should enhance wellbeing and lived experience. It should retain a strong sense of place and interaction with the natural landscape. Amendments 93 and 91 would enable the entire blocking-off of the vista of Black Mountain from Majura Ave, a major suburban gateway to the city. These vistas are an integral part of the original design of Canberra, and part of why it has remained to date such a special place - a place in which we can pursue increasingly sophisticated and diverse studies, business, and all aspects of city life - while remaining firmly anchored to our sense of respect for a special place in the landscape. These amendments would fragment and shatter that sense of place in this part of the world, and contribute to a decline in the wellbeing and happiness of local residents and all who use these avenues, bike paths and walkways of North Canberra. I call for these amendments to be removed or re-framed to lower the heights of allowed building to ensure the integrity of the city plan, and specifically the vista of Black Mountain along Majura Ave, is retained.  |
| 3 | ACT Government Environment, Planning and Sustainable Development Directorate | Thank you for the opportunity for the ACT Government to review and comment on Draft Amendment 93 -City and Gateway Urban Design Provisions Technical Changes (DA93), to the National Capital Plan. The Environment, Planning and Sustainable Development Directorate circulated DA93 to key ACT Government agencies for comment. Comments provided through this process are at Attachment A. There is general support for the proposed changes and comments are essentially limited to seeking minor amendments to provide greater clarity to the provisions in the National Capital Plan in support of the City and Gateway Strategy .***Attachment A***ACT Government Comments on Draft Amendment 93 (DA93} The Environment, Planning and Sustainable Development Directorate (the Directorate) shares the concerns that the NCA has raised about issues with the implementation of Amendment 91, including transitional arrangements for development applications, and uncertainty regarding the application of building length provisions and design requirements for balconies and balustrades. The Directorate supports the proposed changes to the National Capital Plan (NCP) through DA93 to address these issues. In addition to the proposed changes to the NCP in DA93, the Directorate recommends that the NCA uses this opportunity to make technical changes to provisions for 'building separation'. Currently, the NCP provisions read as though building separation distances are mandatory for all buildings along Northbourne Avenue and the Federal Highway, except when located on a block on Northbourne Avenue that has a 35m or less frontage. Consequently, minimum building separation distances apply to all blocks on Federal Highway, regardless of block width. This may have an effect on the smaller blocks in Downer on Federal Highway and could be resolved with the following minor changes (in red): Building Separation Minimum separation distances for buildings on blocks with a frontage to Northbourne Avenue or Federal Highway greater than 35m wide are:

|  |  |  |  |
| --- | --- | --- | --- |
| Building height | Between windows in habitable rooms/unscreened balconies | Between windows in habitable and non-habitable rooms | Between non-habitable rooms |
| Up to 4 storeys | 12m | 9m | 6m |
| 5 to 8 storeys | 18m | 12m | 9m |
| 9 storeys and above | 24m | 18m | 12m |

Where blocks have a front boundary to Northbourne Avenue or Federal Highway and are less than 35 metres wide, building separation distances may be reduced provided all of the following are achieved:* reasonable levels of visual and acoustic privacy
* suitable areas for soft landscaping and deep root planting.
 |
| 4 | Turco and Associates | INTRODUCTIONTurco and Associates for some time have been working on one of the major sites located at the Northbourne/Macarthur/ Wakefield Avenue intersection. We have a good understanding of the current legislation pertaining to the site and we support all amended provisions proposed by Draft Amendment 93. Due to the fact that some of these amendments are to pick up matters of language or unintended consequences we feel it worthwhile to bring to the Authorities’ attention several other concerns we have around the provisions of Amendment 91 which now form part of the National Capital Plan (NCP).As a general concern and as suggested in our submission regarding Draft Amendment 91 at the time, whilst we fully support the implementation of the standards around apartment quality, we strongly believe these should be placed within the Territory Plan to apply to all apartment developments in the ACT. Based on our experience on jobs in other jurisdictions that have introduced similar guidelines, a reduction in potential yield has occurred and it would only be fair to the lessees along Northbourne Avenue not to be competing with other projects to which the guidelines wouldn’t yet apply. Until the guidelines are legislated throughout the ACT many sites on Northbourne may remain not developed as developers concentrate on other projects or wait for a level playing field.It is also worth noting that whilst NSW and Victoria (amongst other jurisdictions) have similar guidelines to those applied through Amendment 91, that these requirements are not mandatory and allow flexibility should the main driver of resident and public amenity both on and off site be maintained. As it is most likely too late to roll back the provisions now part of the NCP we would request generally that many of the provisions be made not mandatory, to allow a level of design resolution to come up with the best outcome for the site specific opportunities and constraints. We would ask generally that developments are allowed to be submitted and assessed against a merit-based argument to deliver the quality around apartment design that is desired whilst not restricting good design outcomes. The following provisions we have brought up below are ones where we believe good design outcomes are being constrained by mandatory provisions as above.BUILDING HEIGHTSAmendment 91 amended height controls along the corridor from originally being based on ‘above datum ground level’ to ‘above datum ground level measured from the front boundary adjoining Northbourne Avenue’. Whilst this may help sites that have Northbourne Avenue at the high side this has led to a significant yield loss on blocks that slope up from Northbourne and will lead to inconsistent height patterns with adjoining buildings at the rear which happen at the corner intersections in particular. We would suggest that the fairest solution would be to return the provision to read that the height limit is applied anywhere on the site above datum ground level or that there is the choice to use either provision.We note that Amendment 91 added the following clause to the National Capital Plan: ‘Where building height limits are 25 metres, 27.5 metres or 32 metres, minor building elements for roof top plant, are permitted where they do not increase the building height as it presents to public street frontages.’ We would request for completeness that 18m gets added to the list of height limits as this height limit is mandated over several sites within the NCP and there would be no perceivable impact to allow roof top plant in this height limit should it not increase the building height as it presents to public street frontages.BUILDING SETBACKSAmendment 91 added a mandatory provision that ‘Basements and balconies must not extend into the setback area adjacent to Northbourne Avenue’. We note that prior to Amendment 91 that both basement and balconies could extend into the setback area and many developments along the Avenue have been able to provide justification against the criteria as to why these should be allowed. We would suggest that basement encroachments are permissible as long as they don’t 'detract from the quality of the landscape treatment' as previously legislated and that balconies be added to the list of minor encroachments where they were listed previously. This will allow consistency along the corridor with what has been approved to date and allow design flexibility should the site constraints deem it necessary.BUILDING SEPERATIONAmendment 91 added mandatory provisions regarding building separation both on and off site. We note that these provisions are copied from NSW legislation although in NSW these provisions are not mandatory. We would suggest that a similar approach be taken in the NCP as building separation can be better controlled better and more responsively through solar access and privacy provisions elsewhere and mandating separation may restrict good design outcomes.LENGTH OF BUILDINGNo commentsBUILDING FACADESNo commentsPRIVATE OPEN SPACEAmendment 91 added a mandatory provision regarding the minimum dimensions and areas for private open space at ground level. For a three-bedroom dwelling at ground the provisions require a minimum dimension of 6m and an area of 36m2. We firstly believe that this is excessive considering both the Territory Plan and NSW Apartment Guidelines only require 24m2 with a minimum dimension of 4m. Secondly it may be less attractive for developers to provide three bedroom dwellings at ground as a later mandatory provision states that private open space can only extend 4m into the setback therefore reducing potential yield by 2m along the length of the facade should the 6m minimum dimension depth be provided. It is also worth noting that the Territory Plan stipulates that 50% of the private open spaces of one dwelling is to be screened from any other dwellings. At 6m deep at the ground level, balconies on upper levels will easily be able to see more than 50% of the private open space below resulting in a noncompliance and therefore further reducing the desire to provide three bedroom apartments on ground.Amendment 91 added a mandatory provision that ‘Storage units, or plant and equipment (including air conditioning plant) are not permitted on balconies’. Whilst we agree that air conditioning plant be screened from public view this mandatory provision restricts the potential to integrate air-conditioning plant with the building and screen it from public view. It is worth noting that with the solid balustrade provisions brought in with Amendment 91 (and clarified under Draft Amendment 93) the chance of having unscreened air-conditioning plan in the first 20m of the building is not likely. We believe that having criteria that stipulates that air conditioning plant must be screened from public view or integrated into the building form is a reasonable approach to provide flexibility without detracting from the intent of the provision.Amendment 91 added a mandatory provision that “Private open spaces must not extend more than four metres into the building setback area, and must not occupy more than 40 per cent of a building frontage.” Whilst we support the maximum four meter encroachment into the setback (noting our concerns about the three bedroom depth requirement above) we believe that there will be occasions where more than 40% of the width of the building frontage would be desired as ground floor residential. With controls around courtyard wall details and deep soil zones in the front setback we would see no reason that private open space couldn’t occupy a larger percentage of the building frontage. If the desire is to restrict the frontage of private open space at ground we would suggest a percentage of 60 – 75% is more appropriate with additional requirements to articulate courtyard walls over certain lengths. It is also unclear if these provisions apply to the front setbacks of the secondary front boundary of corner blocks.ROOF DESIGNAmendment 91 added a mandatory provision that ‘Fully enclosed structures on roof tops are not permitted’. As per the provisions that allow roof top plant should it be setback from the building line and screened from public view we would suggest that the similar provisions are put in place for any enclosed roof top areas as long as the use of the enclosed areas are ancillary and do not contain any residential or commercial use. This will allow developments to offer a higher level of roof top communal amenity whilst not detracting from the intent of the provision. As an unintended consequence it is also worth noting that should the roof top structure be wholly contained within the prescribed height limit this provision would restrict the opportunity to provide enclosed communal spaces.CEILING HEIGHTSAmendment 91 added mandatory provisions around minimum ceiling heights including a mandatory provision that minimum ceiling heights for non-residential uses facing Northbourne Avenue are to be 6m. Generally, we have no issues with the mandating of ceiling heights for residential or commercial levels generally however do not agree that 6m ceiling heights will yield a desirable outcome. In our experience ceiling height provisions such as this will detract lessees from providing commercial space at ground due to yield loss over or if they are provided they will create large cavernous spaces that consume considerable energy to condition (especially considering half of these spaces will face due West). We would request that the Authority consider a more appropriate ceiling height for commercial spaces that is more in alignment with other mixed-use precincts such as Braddon or the City where ceiling heights for commercial uses at ground are between 3.6 - 3.9m.RESIDENTIAL APARTMENT DESIGNNo commentsCOMMON CIRCULATION SPACESAmendment 91 added a mandatory provision that ‘the maximum number of dwellings off a circulation core on a single level must be no more than nine’. If the intent of this rule is that no more than nine dwellings are served off a single lift, we would suggest that ‘core’ be changed to ‘lift’ for clarity. It is our assumption this is the intent of the rule as it aligns with the Territory Plan’s provision that no more than 9 dwellings are served from a single lift. If the intent of this provision is that no more than 9 dwellings are served off a single core then we would request that the Authority considering amending this to a non-mandatory provision as we believe that residential amenity can be dealt with by the provisioning of additional lifts in a core and also by the provisions pertaining to the quality of common circulation spaces brought in by Amendment 91. Early design studies on our site are show that buildings with 10 dwellings per floor are being yielded and the provisioning of a second core would mean a loss of one dwelling therefore not requiring a second core. It is worth noting that in Draft Amendment 91 had the following clause (removed in the final version) if the number of dwellings off a single circulation core could not be achieved; ‘Where this is not achievable, a high level of amenity for common lobbies and corridors should be demonstrated through the provision of access to ample daylight and natural ventilation, common areas for seating and gathering, and generous corridors with greater than minimum ceiling heights’. We would suggest that return this wording will provide more flexibility to provide good design solutions around common circulation spaces.ENVIRONMENTAL PERFORMANCENo commentsRESIDENTIAL USEAmendment 91 added a mandatory provision that;‘Building design must achieve the following:* Living rooms and private open spaces of at least 70% of apartments in a building must receive a minimum of 3 hours direct sunlight between 9am and 3pm on the winter solstice (21 June).
* A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm on the winter solstice (21 June)’.

Whilst we agree with the provision that a maximum of 15% of apartment in a building receive no direct sunlight between 9am to 3pm on 21 June we know from experience that due to the orientation of Northbourne Avenue that to achieve 70% of apartments in a building receiving 3 hours of sunlight on 21 June can be extremely hard due to the solar path during these hours, the fact that approximately 50% of apartments will be sited on facades of the building that don’t receive three hours of direct sunlight during these hours and the desire for articulation to the built form creating additional shading. The other risk of making this rule mandatory will be leading to a higher proportion of 1-bedroom apartments in developments facing the most desirable orientations to meet the 70% provision. As in the Territory Plan we would suggest that compliance with this provision not be mandatory and be based on providing reasonable solar access. Examples of how reasonable solar access could be justified are by providing 70% of apartments receiving solar access between 8am and 4pm on June 21, 70% of apartments receiving 2 hours of direct solar access on June 21 or looking at the autumn/spring equinox (March/September 21) as legislated in other parts of Australia as the benchmark for solar access. Amendment 91 added a mandatory provision that ‘Courtyards, skylights and high-level windows (with sills above 1700mm) may only be used as a secondary light source in habitable rooms’. We would suggest that this apply only to the primary living and bedroom spaces for each dwelling as there are quite often circumstances where to meet the privacy provisions of the Territory Plan that the types of windows listed will be the only light source and ventilation opportunity into a habitable room.Amendment 91 added a mandatory provision that ‘‘Snorkel’ arrangements are not permitted as a mechanism to provide natural light or ventilation’. There are often occasions that snorkel arrangements are the best design solution required due to the building dimensions generated by setback and separation requirements. It is also worth noting that sometimes snorkel arrangements provide an additional level of cross ventilation potential to some apartment layouts. We would suggest rather than prohibiting ‘snorkel’ arrangements that either like in Victoria that there be a maximum depth for any snorkel that is related to the glazed opening width provided or that snorkels are prohibited only for the primary living and bedroom spaces for each dwelling.STREET FRONTAGENo commentsLANDSCAPENo commentsDEEP SOIL ZONESWe note that there seems to be some doubling up of rules in this section. We would suggest for clarity removing the following two provisions: ‘Front setback areas should be retained for deep soil planting’ and ‘A minimum deep soil zone dimension of five metres should be applied where located on site’ as they are both already picked up in the first provision: ‘A planting zone, no less than five metres wide, should be provided within the front setback areas and be retained for deep soil planting’.We note it is also unclear whether or not the deep soil zone is required on secondary street frontages for corner sites. A 5m zone may be hard to achieve within a 6m setback if it contains private open space for residential use at ground.ACCESS AND PARKINGNo commentsLIGHTINGNo commentsSIGNAGENo commentsFENCINGNo commentsCONCLUSIONWe thank you for the opportunity to submit our thoughts on Amendment 91 now that we have been able to assess its impact as it relates to a prominent test case site. We believe that by either looking at our suggestions above or allowing developments to be assessed on a case by case based on their merits will still create a vibrant mixed-use precinct with the high level of apartment quality desired. We would welcome the opportunity to discuss this in person further prior to the finalisation and approval of Draft Amendment 93 or to be involved in the discussions prior to and during any future amendment process regarding these provisions. |
| 5 | National Trust of Australia (Australian Capital Territory) | We refer to our recent meeting about the Draft Amendment and welcome the opportunity to provide comment. The National Trust of Australia (ACT) is a not for profit community organisation with some 1,700 members and is widely respected in the community. The Trust’s role is to foster public knowledge about places and objects that are significant to our heritage, and promote their conservation.**Issue: Conservation of the Black Mountain vista along Majura Avenue** The Trust is supportive of the proposed technical changes to the earlier amendment 91 and proposes that an additional set of words be inserted to address what we believe is an unintended and undesirable consequence of the newly amended building heights at the Northbourne/Macarthur-Wakefield intersection. The two supplementary attachments outline the basis and rationale for our concerns on heritage grounds relating to new and enlarged building envelopes on two of the four corners of this intersection. These sites as you know are centrally located within the Griffins’ original northernmost axis (the axial line spans almost 9 km between the summits of Mt Majura and Black Mountain, traversing the valley diagonally). Unlike many other attractive views, the Majura Avenue vista is framed by a continuous planting of oaks for several kilometres, which complement and form a symmetrical V-shaped opening that gradually opens up as the viewer moves southwest along the corridor. The V shape rises and expands from the centre of the view corridor to the upper flanks and ridge of Black Mountain, is centred on the vertical sculptural element of Telstra Tower, and opens upward and outward to embrace the sky. This dramatic landscape vista constitutes a superb public asset, and derives directly from the Griffins’ original 1912 Plan.Impairing the capacity for future generations to enjoy and appreciate this iconic landscape vista and the legibility it provides in terms of sense of place and the primacy of natural landscape dating back to the Griffin Plan would in our opinion be an unacceptable loss to the community, present and future. We therefore urge the NCA to review the modelling we have provided, and examine practical ways to ensure that any future building envelopes on the Dickson ABC and Turner Mantra sites are designed sympathetically with regard to the Griffins’ landscape vista and the strong axial line that Majura Avenue gives expression to. **Practical solutions** Safeguarding the Majura Avenue vista for future generations depends on either one or two planning interventions. It could be done through a complex set of building envelope controls affecting the two Northbourne sites directly inside the view corridor, or via language contained in the City and Gateway building envelope provisions that picks up the importance of framing and complementing the vista as seen from specified vantage points on Majura Avenue. We would maintain that the Cowper Street intersection with Majura Avenue is an especially important vantage point given its function in the road network, its relationship to the Dickson group centre and Ainslie local centre, and the traffic volumes (both pedestrian and vehicular) that use it daily. There are pros and cons associated with specifying prescriptive building envelope controls. Describing the significant value of the vista from Majura Avenue to Black Mountain in terms of heritage and urban design, and encouraging development proposals to ensure that the essential features of the vista are retained and where possible enhanced requires a set of words that offer flexibility and creative design responses yet have sufficient statutory backing to enforce. We very much appreciate that the NCA is reviewing the modelling. Over the next few weeks we will be examining possible wording, looking at examples being used in other jurisdictions, and preparing a draft. We therefore seek leave to continue this dialogue with the NCA in partnership with North Canberra Community Council. |