



## LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

### SELECT COMMITTEE ON ESTIMATES 2022-2023

Mr James Milligan MLA (Chair), Mr Andrew Braddock MLA (Deputy Chair),  
Dr Marisa Paterson MLA

### ANSWER TO QUESTION ON NOTICE

**Elizabeth Kikkert MLA:** To ask the Minister for Planning and Land Management

Ref: Budget Statement E, p. 18; Output 1.1: Statutory Planning

In relation to: development application for McKellar Shops site (DA-202139349)

1. Given that the government's target was and is to process development applications within 45 working days on average (Budget Statement E, Table 16: Accountability Indicators Output 1.1, p. 18), what specific factors resulted in the DA for the McKellar Shops site requiring more than 180 working days from the time of lodgement till the date of the minister's decision to use his call-in powers to refuse the application?
2. Does the number of residential parking spaces provided for in this DA meet or exceed the number of parking spaces required in the territory's Parking and Vehicular Access General Code (3.1.5 Schedules of Parking Provision Rates for Residential Zones)? If not, how specifically does the DA fail to comply with the Code's parking provision rates?
3. If the answer to the first part of question 2 is yes, on what basis did the minister in his media release state that 'the development application didn't have enough car parking to accommodate the would-be residents of the proposed buildings' (16 Aug. 2022)?
4. Given that this DA does not reduce or alter the number of public car spaces in the existing government car park that has provided the only parking for shops users from when there was a supermarket on site until now, on what basis did the minister in his media release state that 'the development application didn't have enough car parking to ... offer users of the local shops somewhere to park' (16 Aug. 2022)?
5. How did the supermarket that was previously on this site 'offer users of the local shops somewhere to park' in a way that was preferable to the public parking provisions associated with this DA?
6. Given that, in his media release, the minister stated that approval of this DA could make it difficult to attract 'suitable commercial tenants' (16 Aug. 2022), what specific kinds of commercial tenants have been assessed as suitable for this site?
7. What specific kinds of commercial tenants have been assessed as unsuitable for this site?
8. What research, data, or statistics has the minister or directorate used to determine what would be 'suitable commercial tenants' for this site?
9. Does the minister or directorate have any research, data, or statistics to indicate that a supermarket of any size is a financially viable tenant for this site?
10. Does the minister know that the current leaseholder has found it impossible to attract a supermarket of any size to this site in the past?
11. At any point, did directorate staff or anyone else familiar with this DA indicate to the minister, either in writing or verbally, that the DA was likely to meet criteria for approval?
12. Did the minister receive advice of any kind that the proposal in the DA should not go ahead?
13. Did the ACT Government architect give advice to the minister or the directorate in relation the design proposed in this DA?
14. How many McKellar residents expressed concerns to the minister or the directorate their desire for the site to be developed with standard suburban shops?

15. For what reason/s did the minister choose to halt the standard evaluation of this DA instead of allowing the process to continue without his interference, and at what point in the process did this occur?
16. Did the minister fear that the directorate would disagree with him that the DA should be refused? If not, why did he not allow the standard evaluation process to continue?
17. Has a DA ever been referred to the relevant minister for final decision outside of the minister's requesting this, and if so, which DAs were referred in this manner?
18. Given that the minister does not consider each DA submitted for evaluation, what brought this DA to the minister's attention prior to his directing that it be referred to him for consideration?
19. Between the granting of the current lease for this site and the minister's decision to use his call-in powers to refuse the DA, has anyone other than the current leaseholder expressed interest in developing this site, either formally or informally, with the minister and/or with directorate staff?

**Mr Mick Gentleman MLA: The answer to the Member's question is as follows: –**

1. The development application (DA) was subject to further information requests to provide the applicant opportunity to respond to a range of assessment issues raised by the independent Planning and Land Authority and other government entities. Furthermore, on 7 March 2022, the applicant submitted an amendment to the development application which required additional assessment. The effect of this is extensions to the timeframes in accordance with the *Planning and Development Act*.
2. The number of residential parking spaces provided for in the subject DA does not meet the requirements of the Parking and Vehicular Access General Code. Twenty-eight (28) residential spaces were required to be serviced on site as per the parking allocations outlined within the code, the development provided twenty-seven (27). This is a shortfall of one (1).
3. The media release dated 16 August 2022 referenced "not enough parking of residences and shoppers". The parking requirement for the development was eighty-six (86) spaces, the parking provided on site and in the adjacent carpark is seventy-eight (78). This is a shortfall of eight (8) spaces, not including the spaces required to continue to service the existing local centre.
4. As per the Notice of Decision, "*Further issues are noted in terms of convenience with the parking demand for this development being proposed on the adjacent carpark and exceeding its capabilities, i.e. a 50 space car park needing to service 58 space car parking requirement. It is noted this carpark must also service the wider local centre, not just this development. This proposal fails to demonstrate how it will adequately service the access needs of the local residents*".
5. The supermarket previously existing on the subject site placed far less demand on the existing carpark than the proposed development. The parking demand for the supermarket and other existing tenancies was serviced by onsite parking and the existing public carpark.
6. The commercial spaces that were proposed were limited in terms of ability to meet the needs of the McKellar community. The proposal lacked integration with the surrounding local centre and placed residential use over commercial. This had the potential to limit commercial viability for tenants and the opportunity for these tenancies to be used by businesses. The development did not utilise the opportunities the site provides to enhance the current commercial local centre fronting Bennetts Close. Further commercial aspects should have been considered fronting

Bennetts close to allow for a variety of uses that would complement the centre and better service the needs of McKellar.

7. The proposal did not meet the Territory Plan 2008 and was refused. The suitability of the proposed commercial spaces was determined on a range of factors that are outlined in the Notice of Decision.
8. A full assessment against the Territory Plan 2008 was undertaken with specific reference to the CZ4 – Local Centres zone development table which sets out the allowable uses for the zone.
9. A supermarket was not proposed as part of the DA and the determination of potential commercial uses was based on the allowable uses for the zone in the applicable zoning table and ensuring that the suburb has the opportunity for a local shopping centre that can service the suburb and surrounds.
10. A supermarket was not proposed as part of the DA. The lease holder provided a letter to me highlighting issues relating to a supermarket, however the proposed development was refused as it did not meet the requirements of the *Territory Plan 2008*.
11. No, Directorate staff did not notify me if the DA was likely to meet the criteria for approval.
12. In accordance with section 158 of the *Planning and Development Act 2007* (the Act), all information and documents received in relation to the application and any other relevant information and documents the authority holds, must be handed over. I reviewed this information in order to form my decision.
13. No, the ACT Government Architect did not provide advice on the design of the proposal. The most common way in which the ACT Government Architect provides comments on individual development proposals is through the National Capital Design Review Panel (NCDRP).  
  
The Act prescribes particular development types to consult with the NCDRP – these are limited to proposals that are five or more storeys in height or where the gross floor area of an existing shop is substantially increased. A proponent is also able to voluntarily present their proposal to the NCDRP should they choose to. In this instance, the development was not prescribed, nor did they voluntarily present to the NCDRP.
14. As outlined in the Notice of Decision, 12 representations were received during the public notification period. Of these, nine (or 75 per cent) raised concerns regarding the lack of floor space for commercial or shopping uses proposed as part of the application.
15. As noted during the hearing on 1 September 2022, I made the decision to direct the independent Planning and Land Authority to refer the application to me for a decision. This is in line with my statutory obligations under section 159 of the Act. Further details of this are outlined in the Notice of Decision.
16. No. I made the decision to utilise my call-in powers.
17. No.

Under the current provisions of the Act, the Minister can only decide a DA where the Minister decides to utilise their call-in powers. When utilising the call-in powers, the Minister is required to write to the authority to refer the relevant application to them for a decision.

18. Details of my concerns with the proposal are outlined in the Notice of Decision.
19. Since the current lease was registered in 2013, only the current lessee has approached the planning and land authority with interest to redevelop the site. This included a pre-application meeting and subsequent development application (DA-201628902), which was conditionally approved.

It should be noted that any development on private land, such as Block 1 Section 51 McKellar, is required to be authorised by the lessee. In other words, any re-development at the site is ultimately at the lessee's discretion. No other individual or organisation are able to formally propose development on someone else's land.

Approved for circulation to the Select Committee on Estimates 2022-2023

Signature: 

Date: 13/9/2022

By the Minister for Planning and Land Management, Mr Mick Gentleman MLA