



Legislative Assembly for the
Australian Capital Territory

Standing Committee on Environment
and Planning

Submission Cover Sheet

Inquiry into the use of controlled activity orders

Submission number: 002

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Submission to the ACT Legislative Assembly Inquiry into the Use of Controlled Activity Orders

Subject: Manuka Hotel Development – Alignment Between Development Approval, Building Approval and Community Expectations

Background

This submission relates to the Manuka Hotel development in the Inner South and raises broader concerns about the operation of the ACT planning and compliance framework.

The development was originally approved with five cinemas, later reduced to four through minor amendments. Public consultation was undertaken on this basis. Subsequent reporting and evidence presented through Questions on Notice and Estimates hearings indicate that the development may now deliver only one cinema.

At the same time:

- Changes appear to have occurred at the building approval stage rather than through a formal amendment to the development approval.
- It has been indicated that a development application amendment may not be required where class, use and site layout remain unchanged, allowing internal modifications.
- Building approval has been assessed as compliant against approved building plans.
- The relationship between the development approval and the building approval plans remains under investigation to determine whether there is any non-compliance.
- Detailed building plans are not publicly accessible, limiting transparency.

Key Issue

The central issue is the apparent disconnect between:

- what was approved and presented to the community through the development application process, and
- what may ultimately be constructed and delivered through the building approval process.

This creates a situation where material elements of a development can change without further community consultation or clear regulatory intervention.

Relevance to Controlled Activity Orders

Schedule 4 of the Planning Act 2023 identifies as a controlled activity the undertaking of a development other than in accordance with a development approval.

In this context, there is uncertainty as to:

- whether the current construction aligns with the approved development, and
- whether the threshold for a controlled activity has been reached or is enforceable in practice.

The difficulty in establishing this appears to arise from:

- limited public access to building approval documentation and plans
- reliance on internal assessments of compliance
- and the ability to characterise significant changes as internal modifications

Observations

Based on the above, the following observations are made:

1. **Limited Transparency**
The inability to access detailed building plans prevents the community from understanding whether construction aligns with the approved development.
2. **Separation of Approval Processes**
The distinction between development approval and building approval allows changes to occur at a later stage without a clear requirement to revisit the original approval or consultation.
3. **Unclear Enforcement Thresholds**
It is not clear when a deviation becomes significant enough to trigger enforcement action or a controlled activity order.
4. **Potential for Retrospective Regularisation**
There appears to be a pathway for developments to proceed and for compliance issues to be assessed or resolved after construction has progressed.
5. **Impact on Community Confidence**
Where developments differ materially from what was approved and consulted on, confidence in the planning system is reduced.

Recommendations

To address these issues, the following measures are recommended:

1. **Stronger Alignment Requirements**
Require clear and enforceable alignment between development approval outcomes and building approval documentation.
2. **Mandatory Notification of Material Changes**
Introduce a requirement that any material change to key elements of a development must trigger a publicly notified amendment process.
3. **Improved Transparency**
Provide greater public access to relevant building approval information where it is necessary to assess compliance with a development approval.
4. **Clear Compliance and Enforcement Framework**
Clarify the threshold at which a development is considered to be undertaken other than in accordance with its approval, and ensure controlled activity orders can be applied effectively.
5. **Prevention of Retrospective Approval Practices**
Strengthen requirements so that approval for material changes must be obtained prior to implementation, rather than after construction has commenced.

Conclusion

The Manuka Hotel development highlights a gap between planning approvals, construction processes and community expectations. Addressing this gap will improve transparency, strengthen compliance, and support confidence in the ACT planning system.

This submission is provided to assist the Inquiry in identifying practical improvements to the operation of controlled activity orders and the broader planning framework.

I consent to this submission being published.

I would be willing to appear before the Committee if invited.

Todd Lovell

