

ACPLA Development Application matters

24 August 2004

Mr N Savery
Chief Executive Officer
ACT Planning and Land Authority
GPO Box 1908
CANBERRA ACT 2601

Dear Mr Savery

**RE: BLOCK 22 SECTION 22 KINGSTON
DEVELOPMENT APPLICATION 200400728**

It is with disappointment that we write this letter noting that the Development Application (DA) on the above property has reached the statutory time limit of 6 months on 23 August 2004 without receiving a decision from ACTPLA.

Given the time and effort invested by the applicant in attempting to ensure that ACTPLA was in a position to make a decision on the application it is regrettable that this matter is now in the hands of the ACT Administrative Appeals Tribunal (AAT).

The failure of ACTPLA to make a decision within the statutory timeframe constitutes refusal to fulfil a duty under the *Land (Planning and Environment) Act 1991*, despite the application charge being paid by the applicant when the DA was lodged.

Further to our letter of 19 August 2004 to you we wish to reiterate the steps we took to expedite the process. The following serves as a summary:

- On 23 February 2004 McCann Property & Planning lodged two Development Applications with ACTPLA (Crown Lease term extension and Crown Lease purpose clause variation)
- The DA public notification period was from 3 March to 24 March 2004.
- On 6 April 2004 ACTPLA requested McCann Property & Planning to undertake a parking survey.
- On 7 April 2004 ACTPLA requested McCann Property & Planning to undertake a noise assessment for the proposed use of the land as a restaurant.
- On 30 April 2004 during a meeting with ACTPLA it was agreed that a "conditional approval" could be granted. The condition would be that a noise assessment will be prepared by the Crown Lessee and submitted to ACTPLA for approval prior to the use of the premises as a restaurant at any time in the future.

- On 6 May 2004 notification of the requirements of the parking survey was received from ACTPLA.
- On 13 May 2004 a meeting was held to discuss the Kingston parking plan with ACTPLA. It was agreed at that meeting that the best option would be for a parking survey to be undertaken in accordance with the Guidelines.
- On 23 June 2004 the parking survey report was submitted to ACTPLA.
- McCann Property & Planning were advised on 4 June 2004 that Ken Hungerford had been appointed as the new assessing officer for the DA. Ken Hungerford was advised of the agreement to a conditional approval at the meeting held on 30 April 2004.
- On 22 July 2004 the assessing officer rang to arrange an urgent meeting to discuss a noise assessment for the property.
- On 23 July 2004 a meeting was conducted with Ken Hungerford and Graham Sandeman to discuss the issue of noise.
- On 5 August 2004 a meeting was held with Ken Hungerford and Graham Sandeman to again discuss the noise assessment for restaurant. It was agreed that "conditional approval" could be granted consistent with the meeting held on 30 April 2004. In addition, Mr Hungerford advised that ACTPLA accepted the car parking survey report.
- On 13 August 2004 McCann Property & Planning received a phone call from ACTPLA enquiring about what uses the Crown Lessee had in mind under "Community use".
- On 16 August 2004 McCann Property & Planning lodged an appeal at the AAT to protect the lessees interest in the event that ACTPLA failed to make a decision within the statutory timeframe. McCann Property & Planning advised Ken Hungerford that an appeal was lodged at the AAT.
- On 17 August 2004 ACTPLA advised McCann Property & Planning that Mr Ben Ponton had been appointed as the new assessing officer for the DA.
- On 19 August 2004 McCann Property & Planning wrote a letter to you requesting your intervention to ensure that the application was finalised before the statutory timeframe expired.
- On 20 August 2004 Tony Adams from McCann Property & Planning was phoned by ACTPLA to discuss the matter. ACTPLA gave an assurance that it was on track to make a decision within the statutory timeframe.
- On 23 August 2004 at 4:00pm McCann Property & Planning received a phone message from ACTPLA stating that a decision had been drafted but given their legal advice they could not finalise the decision because an appeal had been lodged at the AAT nor were they able to release the draft decision. The relevant personnel from McCann Property & Planning were not available at the time and this message was not acted upon until the next day. In any case, given the timing of the message, no practical action was possible on 23 August 2004.
- McCann Property & Planning were of the view that the final date for a decision was Tuesday 24 August 2004, based the wording of the Land (Planning and Environment) Act 1991, Clause 230 (3)(b):

"... The authority may approve an application at any time ...until 6 months after the date of the application, ..."

It was McCann Property & Planning's view that, as the application date was 23 February 2004, an approval could be granted at any time up to the expiry of a six month period after that date (i.e. close of business (or midnight) on 24 August 2004).

RE: Block 22 Section 22 Kingston

- On 24 August McCann Property & Planning contacted ACTPLA in an attempt to obtain the draft decision to evaluate whether or not it was in our clients best interest to withdraw the appeal from the AAT. McCann Property & Planning were informed that the statutory time period had expired at midnight on the 23 August 2004 and that the matter was now in the hands of the AAT.

This outcome is regrettable as our client, having already lost considerable time and incurred considerable expense, is now facing a protracted AAT process. Of particular concern is the fact that whilst ACTPLA were aware of the lodgement of the appeal of 16 August 2004, ACTPLA did not advise us until 1 hour before the apparent expiry of the six month period on 23 August 2004, that this (in ACTPLA's view) precluded any decision being made at all. This notification was too late for any practical response.

We are very disappointed with ACTPLA's handling of this relatively simple DA.

Yours faithfully

SIGNED

TONY ADAMS

CC: Mr Andrew Rudnicki

10/12 04 MON 10.00 PM 101 2 0100000

**AUSTRALIAN CAPITAL TERRITORY
ADMINISTRATIVE APPEALS TRIBUNAL**

**CITATION: STRYVER PTY LTD AND ACT PLANNING & LAND
AUTHORITY & ORS [2004] ACTAAT 42 (13 DECEMBER 2004)**

AT04/93

Catchwords: Land and planning – variation of lease purpose clause to include range of permissible uses – application of Territory Plan where no specific proposals for use are available – whether regard should be had to proposed review of planning policy for area - whether a proposed use is a suitable use of the land – consideration of characteristics of the land, the existing building and surrounding area, need for subsequent development application, existence of non-planning controls over a use - likelihood of adverse impact on neighbourhood – adequacy of car-parking, noise attenuation, waste management - conditions of approval to be included in lease.

City Area Leases Act 1936

Environment Protection Act 1997

Land (Planning and Environment) Act 1991, ss. 8, 222, 245

Liquor Act 1975

Albury-Wodonga Development Corporation v Fitzpatrick (1982) VR 165
Canberra Cruises and Tours Pty Ltd and Minister for Urban Services
[1999] ACTAAT 14 (7 June 1999)

Ergas & Bird and ACT Planning & Land Authority & Ors [2004]
ACTAAT 18 (18 May 2004)

Liangis Investments Pty Ltd and Commissioner for Land & Planning
[2002] ACTAAT 3 (31 January 2002)

Re Calardu Pty Ltd (No.1) (1990) 109 FLR 343

Yang and Qiu and Commissioner for Land & Planning & Ors [2003]
ACTAAT 23 (6 May 2003)

Yapeen Holdings Pty Ltd and Calardu Pty Ltd (1992) 36 FCR 478

Tribunal: Ms P O'Neil, Senior Member
Dr E McKenzie, Senior Member
Mr R Nichols, Member

Date: 13 December 2004

13/12 04 MON 10.00 PM 101 2 01000000
AUSTRALIAN CAPITAL TERRITORY
ADMINISTRATIVE APPEALS TRIBUNAL
LAND AND PLANNING DIVISION

)
) NO: AT04/93
)

RE: **STRYVER PTY LTD**
Applicant

AND: **ACT PLANNING &
LAND AUTHORITY**
Respondent

AND: **GILLIAN BIRD
KATHLEEN
TAPERELL & JOHN
TUCKER
ROWAN BASIL-
JONES
CHRISTOPHER JOHN
MOORE
PAMELA M
RUTLAND
DAVID & SUSIE
O'LEARY
JACQUI SEKULESS
WILLIAM BRIAN
LOFTUS
DEBORAH
ROBINSON
EXECUTIVE
COMMITTEE,
OWNERS CORP
(UP585)
PETER & IRENE MAY
SEAN RILEY & JOHN
SIMONS
UNITS PLAN 402
Parties Joined**

DECISION

Tribunal : Ms P O'Neil, Senior Member
Dr E McKenzie, Senior Member
Mr R Nichols, Member

Date : 13 December 2004

Decision :

We set aside the decision under review and remit it to the Authority with a direction that:

13/12 04 MON 11:00 AM 102 2 0100000
AUSTRALIAN CAPITAL TERRITORY
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DECISION

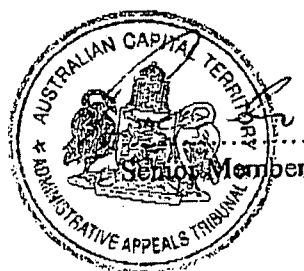
Tribunal : Ms P O'Neil, Senior Member
Dr E McKenzie, Senior Member
Mr R Nichols, Member

Date : 13 December 2004

Decision :

We set aside the decision under review and remit it to the Authority with a direction that:

1. the Crown lease over Block 22 Section 22 Kingston be varied to allow the following uses as defined in the Territory Plan: non-retail commercial uses, restaurant, shop, child care centre, community activity centre, cultural facility and health facility;
2. a condition be included in the lease to restrict shop use to a maximum gross floor area per shop of 100m² or 300m² where the shop or part of the shop is physically contiguous with development on Block 21 of Section 22 Kingston;
3. a condition be included in the lease to ensure appropriate waste management, including limiting the hours for waste collection to those in residential areas;
4. a condition be included in the lease limiting access to the premises, other than by employees, through the rear entrance after 7.00pm;
5. that if a "Change of Use Charge" is payable, the lessee shall pay it within 28 days of being notified of the amount or within such further time as may be approved by the Planning and Land Authority; and
6. that the lessee shall do all that is necessary to ensure that the Instrument of Variation giving effect to this approval is registered at the Registrar-General's Office within 14 days of being notified that the Instrument of Variation is available for registration or within such further time as may be approved by the Planning and Land Authority.



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REASONS FOR DECISION

13 December 2004

Ms P O'Neil, Senior Member
Dr E McKenzie, Senior Member
Mr R Nichols, Member

Block 22 of Section 22 Kingston ("the land") is 910 square metres and its street address is 84 Giles Street. It is flanked by commercial offices and faces the Somerset apartment building. Its rear boundary abuts Block 33 and the public laneway giving rear access to the commercial buildings on the eastern side of Jardine Street, opposite Green Square. Block 33 and the public laneway are accessed from Eyre Street to the south and provide free, long-term parking for 30 vehicles. On the eastern side of the

Block 33 are other apartment buildings, including The Quadrant and Oakleaves, while The Holford is also located nearby along Giles Street to the east.

2. The Commonwealth Bank uses part of the approximately 400 square metre, single storey brick building on the land, but part of the building is now vacant. A driveway along the side of the building leads to the rear where there is parking for about 10 cars. Rear access to the land is also possible from Block 33 and the associated public laneway.

3. The lease is held by Stryver Pty Ltd ("**the applicant**") and its purpose clause is for bank premises. The applicant lodged a development application to expand the purpose clause in the lease to allow a wider range of uses identified as permissible in the Group Centres Land Use Policies Commercial C which comprise Part B2C of the Territory Plan ("**the Plan**"). The ACT Planning and Land Authority ("**the Authority**") did not finalise its decision in the prescribed time so that application was deemed refused. It subsequently provided a Draft Notice of Decision in which it agreed to a limited number of new uses being included in the lease but rejected others. When the matter came to the Tribunal, the applicant sought a more restricted range of uses for inclusion in the lease. These were non-retail commercial use, restaurant, shop and some community uses, namely child care centre, community activity centre, cultural facility, educational establishment, health facility and hospital. The Authority opposed the inclusion of child care centre, educational establishment and hospital while the other parties, being either residents or bodies corporate of the nearby residential apartments, opposed a larger number of uses including restaurant and some types of shop use.

The legal framework

4. Section 8 of the Land (Planning and Environment) Act 1991 ("**the Land Act**") provides that a decision-maker cannot approve a development application that is inconsistent with the Plan. Section 222 of the Land Act defines development to include an application to variation to a lease. While an application to vary a purpose clause in a lease is often accompanied by a specific design and siting proposal for a particular use, it is not necessary that an application to vary a lease purpose clause be accompanied by a detailed proposal for that use. It therefore becomes necessary to identify how the Plan is to be applied in such circumstances.

5. The applicant submitted that there are sound commercial reasons for seeking to include a wide range of possible uses in the lease in order to broaden the range of possible tenants and limit the amount of time during which the premises might be left vacant. As to the application of the Plan, the applicant submitted that the appropriate approach was to identify those uses that would require a further development application to be lodged before the land could be so used. In those cases, detailed assessment against the Plan could be undertaken at the time of the later development application. It submitted that the likelihood of further more detailed planning consideration for these uses at a later time obviated the need for detailed consideration now. Therefore, the applicant contended, only those uses that could possibly be undertaken, albeit at a modest level, in the existing building without major external modifications need be assessed for consistency with the Plan at this time.

6. The parties joined were concerned that they might have no opportunity to comment if and when the time arrived in the future for a development application to be considered. Their major submission was that all possible uses should be assessed against the Plan and that an absence of evidence to support a finding of compliance with all relevant aspects of the Plan, including the Guidelines, should lead to a finding that the use should not be included in the lease. The effect would be to impose an onus on an applicant for a lease purpose variation to prove that a use will be able to be undertaken in a way consistent with the Plan. The difficulty of that approach is that it would make it almost impossible in many circumstances to approve a variation of a lease purpose clause in the absence of a detailed proposal showing how it would work in practice. Yet the Act at section 222 clearly contemplates that the uses permitted in a lease can be varied in the absence of details as to construction for and operation of that use.

7. The respondent submitted that section 8 of the Land Act provides the fundamental requirement for application of the Plan and that is that the decision maker "shall not do any act, or approve the doing of any act, that is inconsistent with the Plan". Further, it is not up to an applicant to demonstrate consistency with the Plan but rather to show there is no inconsistency in the granting of an approval. In ordinary circumstances a development application including a proposal to vary a lease purpose clause that is apparently not inconsistent with the Plan should be approved in the absence of cogent evidence that would militate against the favourable exercise of the decision-maker's discretion. The Plan was not meant to operate in a way that requires an applicant to show positive proof of consistency with all its elements. Given its size and the wording, to do so would be administratively impossible. Rather, attention should be focussed on the issues that are presented by the parties before the Tribunal. Such an approach, the respondent submitted, is consistent with the objectives of the Plan. The Tribunal favours that approach as being sensible and practical in this case.

8. When applied to a proposal to vary a lease purpose clause, it finds support in the decision of the Full Federal Court in Yapeen Holdings Pty Ltd and Calardu Pty Ltd (1992) 36 FCR 478 in considering an appeal from a decision of the ACT Supreme Court (Re Calardu Pty Ltd (No.1) (1990) 109 FLR 343). The case involved a proposal to vary a lease in Fyshwick in the ACT to include a wider range of uses than the retail purpose immediately proposed. The Full Court agreed with the view of Higgins J when he said of the role and function of a lease purpose clause:

It is fundamentally to limit the range of uses to which the land may be put. That limitation, in the interests of flexibility of land use, should not be more restrictive than is required by the application of proper town planning principles.

The Full Court went on to say:

We do not think it would be right, in the absence of compelling reasons to the contrary, to restrict variations of purpose clauses to particular types of retail activity. The respondent gave evidence of its intention to use the land for a particular retail purpose. But to limit it to that purpose would, in our opinion, undesirably restrict the respondent and its successors in title in much too

narrow a fashion. We think purpose clauses in Crown leases need to be expressed in reasonably wide terms to allow adequate use of the land.

9. In that case the Court was considering the application of the City Area Leases Act 1936, rather than the newer Land Act and the Territory Plan to which it gives effect. But we think that the Court's view that lease purpose clauses should not be undesirably restricted remains apposite. Accordingly, we will give consideration to including a permissible use in the lease purpose clause unless it is shown be inconsistent with the Plan.

10. That is not to say that all uses permissible in all Group Centres (17 such centres are identified in the Plan) are suitable for Kingston Group Centre or for this land in particular. As well as considering the Group Centres (Commercial 'C') Land Use Policies, regard must be had to other relevant policies, including careful consideration of the suitability of the site for the intended use as required by clause 9.3(a) of Part A3 of the Plan. Some uses might have little effect on the neighbourhood if undertaken at a modest level, but could be unsuitable if conducted on a larger scale. On the other hand, it is not appropriate simply to refuse a proposal because of the fear of adverse outcomes, however unlikely. The Tribunal considers that it should have regard to the likely outcomes that might be reasonably expected, rather than either the most minimal impact or the worst case scenario.

11. That requires consideration of the definitions of the proposed uses, the size of the land and its surrounding context, whether a use can occur without further planning consideration and whether there is evidence of other legal controls over that type of use to help prevent adverse effect on neighbourhood amenity. Before turning to those details, however, a further matter needs consideration, namely, the effect of past and possible future variations to the Plan affecting this land.

Variations to the Territory Plan

12. Some parties joined were concerned that the variation of the Plan in 2002, consequent upon Draft Variation 158, has had the effect of changing the character of the Kingston Group Centre. In their view, insufficient consideration had been given to buffering some residential areas from the retail and service areas of the Kingston Group Centre so as to minimise adverse impacts on residents. In response to those concerns, the Minister for Planning has recently initiated a review with the object of developing an effective policy approach to protecting residents from noise and disturbance arising from restaurants and drink establishments. That review may lead to a further variation of the Plan. It was submitted by some parties joined that the Tribunal should have regard to that review in reaching its decision in this matter.

13. It is clear that time will elapse before the review is complete. Even if it leads to a draft variation to the Plan, its content is as yet unknown. The proposed Plan variation is at best inchoate. Moreover, the Land Act sets out a detailed procedure for advertising a draft variation to allow public comment and for its consideration by the ACT Legislative Assembly. That process can be expected to take some further time.

14. In the meantime, the Tribunal cannot refuse to make a decision, nor can it defer its decision. It must make a decision having regard to the Plan as it is, not as it may

be at some time in the future. Some authorities were cited dealing with the consideration of government policy in planning matters, including Canberra Cruises and Tours Pty Ltd and Minister for Urban Services [1999] ACTAAT 14 (7 June 1999) and Albury-Wodonga Development Corporation v Fitzpatrick (1982) VR 165. We doubt that the current review initiated by the Minister can be described as a government policy affecting this land. Rather, at this stage it seems to be a proposal that policy be developed. But in any event the authorities are clear that to be considered, a policy must at least deal with a scheme that is seriously entertained and one that has substance. That test is not met in this case.

Restaurant

15. A restaurant is defined in the Plan as follows:

Restaurant means the use of land for the primary purpose of providing food for consumption on the premises whether or not the premises are licensed premises under the Liquor Act 1975 and whether or not entertainment is provided.

16. The proposal for a restaurant is opposed by the parties joined because of possible disturbance from noise, concerns about the adequacy of available parking for patrons, about possible criminal behaviour associated with the use of alcohol and about the risk of inadequate waste disposal arrangements. Mr Anthony Adams, a town planner who gave expert evidence for the applicant, stated that a restaurant is possible in the existing building but Mr Graham Sandeman, a senior officer in the Development Assessment Unit of the Authority who gave evidence for the respondent, said that some external work would be required. We are inclined to think it unlikely that a large licensed restaurant could be conducted in the existing building without a further development application, at which time detailed consideration would be given to possible adverse impacts on nearby residents. There are also other controls over the operations of licensed premises, including under the Liquor Act 1975 and the Environment Protection Act 1997 and in relation to public health, to help ensure that a restaurant operates appropriately.

17. The Authority, on advice from the Environment ACT, had initially not supported restaurant use in the absence of an acoustic report. It later did so on the basis of expert evidence provided by Mr Christopher Kornek, an engineer specialising in the field of acoustics with Bassett Consulting Engineers, which is a member of the Australian Acoustic Society. Mr Kornek prepared two written reports, the second in more detail, and gave oral evidence for the applicant. He concluded that the existing building and services are generally acceptable for restaurant use. He had regard to the double brick construction of the building and the high parapet that shields the existing air conditioning system, which he said met the zone noise emission standards. A dedicated ventilation system would be required for the food preparation area. In his opinion one could be installed in the existing building to the relevant noise standard. If loud music were to be played inside the building, he suggested that the single glazing on the northern façade would need upgrading to double glazing and an airlock constructed at the door. He recognised that a garbage enclosure would need to be provided, and suggested that consideration should be given to limitations on noise

from external dining, waste collection and trade delivery times and access to the rear car park.

18. Mr Robert Neil, Manager, Environment Protection, within the Department of Urban Services, also gave oral evidence for the Authority. He had, prior to the receipt of Mr Kornek's more detailed statement, recommended that a requirement for a detailed acoustic report be imposed as a condition of approval of the lease variation application. Mr Neil described how officers responded to complaints about noise and the mechanisms available to control excessive noise, up to and including prosecution. He agreed that most noise complaints arising from entertainment venues are not from restaurants but from drinking establishments, nightclubs and like businesses. Mr Sandeman gave evidence that assessing officers are guided by the opinion of the Environment Protection officers in respect of possible adverse noise impacts.

19. It was submitted on behalf of some parties joined that Mr Kornek's report did not constitute a Noise Management Plan, although one had originally been requested by the Authority. We accept that a Noise Management Plan is unnecessary in the absence of a specific development proposal. The report of Mr Kornek has been sufficient in our view to enable consideration of potential noise impacts. The Tribunal was asked to draw an adverse inference because neither Mr Neil nor Mr Sandeman was asked directly whether the reports of Mr Kornek were satisfactory to them. We do not do so. We are often reminded that the Tribunal stands in the shoes of the decision-maker. Doing so, we are in a position to assess the evidence ourselves and find on the basis of Mr Kornek's evidence that all noise arising from a restaurant operating from the existing building on the land can be managed satisfactorily. If a new building were to be constructed in the future for restaurant use, then the application of the relevant noise and other standards could be imposed at that time.

20. We now turn to the question of car parking. Mr Graeme Shoobridge, an experienced traffic engineer in the Canberra offices of Hughes Trueman, gave expert evidence for the applicant. In preparing his report Mr Shoobridge had considered the surveys by others of the parking availability in the Kingston area, including a report by McCann Property and Planning incorporating part of an October 2003 Maunsell Parking Impact Assessment. He also undertook his own surveys in the area.

21. Under the ACT Parking and Vehicular Access Guidelines, a restaurant operating in the existing building would impose the highest parking demand of all of the proposed uses in the lease if varied, that is, 40 spaces. That is an overall increase of 20 over the number of spaces required for the existing use, about 10 of which are now provided on the land. It was suggested that one space would need to be sacrificed to provide room for a garbage enclosure. While it is not certain, we are prepared to accept that an additional public parking space may need to be available. Mr Shoobridge's opinion is that there is sufficient short stay (up to three hours) parking available within 100 to 150 metres to meet the parking demand generated by the proposed uses.

22. Some parties suggested that a failure to find the spaces within 100 metres showed that the Guidelines were not met and that the application ought therefore be refused. But Guidelines are not to be interpreted as rules that an application must be shown to satisfy. They are to be carefully considered, having regard among other things to the

context of the development. In Kingston, the major public parking area is located on Block 44 of Section 19 at a distance of more than 100 metres from this land and many of the businesses operating there. Its 255, mostly short-term, car spaces provide the largest proportion of parking spaces available in Kingston. The evidence is that at most times there is adequate parking in the vicinity, including on-street parking available on a competitive basis. At times, such as Friday lunchtime, customers are likely to have to walk a little further, but there was no evidence before the Tribunal that commercial activity will be hindered or nuisance created for nearby residents, matters identified in the Parking Guidelines for consideration. Specific concern was expressed about the spill over into the Kingston residential area of the cars of patrons attending the Sunday markets at the Old Bus Depot. Mr Shoobridge conceded that he had not considered that issue. If there is a problem arising from the Sunday markets, and we received no evidence of it, it ought to be brought to the attention of the parking authorities. It does not provide reason to reject this application.

23. The Kingston Centre Parking Plan, which forms part of the Parking Guidelines, indicates at clause 4.3.1 that a structured car park will be constructed on the existing Block 44 car park site based on developer contributions. The rate of developer contributions is set out at clause 4.3.2, but a parking fund for those contributions has apparently not been established. The following clause 4.3.3 then goes on to say that for some sites, including this one, a minimum of fifty percent of the parking requirement is to be provided on site. Clause 4.3.4 then describes how the car park will be constructed in stages as the contributions are received. It was suggested that, having regard to clause 4.3.3, fifty percent of the car parking for this site, that is 20 spaces, should now be provided on the land. We do not accept that interpretation of the Guidelines. Clearly clause 4.3.3 needs to be read in the context of the other parts of the Kingston Centre Parking Plan - a plan that has not been implemented - outlining the construction of a car park paid for by developer contributions.

24. We find that adequate parking is available for a restaurant in the existing building on the land, having regard to the Parking and Vehicular Access Guidelines, the evidence of Mr Shoobridge and the separate opinion of the Authority's own officers that adequate parking is available.

25. Some residents expressed concern about the possibility of criminal behaviour should other uses be implemented as a result of a lease variation, but there is no evidence that any of the uses proposed will promote criminal behaviour. References, mostly non-specific, were made to the increasing incidence of alcohol-related violence in the vicinity and security problems arising for residents. While it was suggested that the proposal should have been assessed against Guidelines entitled the Crime Prevention Through Urban Design Resource Manual, there is little point in doing so in a vacuum. Indeed those Guidelines tend to suggest that the activity associated with businesses such as restaurants and shops protects against criminal behaviour rather than the opposite.

26. The need for a garbage enclosure was identified and the possibility of noise from the use of metal waste hoppers was raised. The applicant accepts that a waste management plan would be needed for a restaurant, including the provision of a waste enclosure. We are confident that one can be provided at the rear of the premises and that garbage trucks could access it without undue problems. That the land had access

from both Giles Street at the front and the lane at the rear may be a benefit in that regard. Even if it were necessary for a garbage truck to reverse once a day, and no evidence was presented to support such frequency, Mr Kornek's evidence is that it would not provide the level of noise that would constitute a nuisance. Mr Kornek suggested that waste collection could be restricted to between the hours of 9am and 5pm. In our view the hours approved for a proposed development nearby in Ergas & Bird and ACT Planning & Land Authority & Ors [2004] ACTAAT 18 (18 May 2004), that is the normal residential collection times of between 7am and 7pm, are more appropriate. Some parties submitted that rear access should be prohibited to avoid nuisance from garbage trucks and delivery vehicles to residents in the apartments that adjoin Block 33. We do not accept that submission. This land, along with other blocks, has most probably had access to the laneway since it was first constructed, which we believe would have been long before the construction of the Oakleaves and other apartment buildings nearby. Other businesses use the laneway for business related purposes, yet we received evidence of only one complaint over the past two years or more about noise from garbage collection. We do not think that the lessee of this land should be now disadvantaged relative to others because apartments have been constructed adjoining Block 33.

27. Photographs were submitted showing untidy waste hoppers behind other establishments in Kingston and Manuka. This does not constitute evidence that waste management for the subject premises will be of a similar nature. If there is a problem with waste management elsewhere, then it is for the appropriate authority to deal with. It does not provide a reason to refuse this application.

28. We find that a restaurant is a suitable use of the land and can be included as a permitted use in the lease, subject to arrangements being made in relation to waste management. We will return to the imposition of that condition below. We do not consider that there is a need for a condition in relation to noise from restaurant music to be imposed at this time, having regard to the evidence of Mr Kornek, Mr Neil and Mr Sandeman and other legislative controls. Given the location opposite residential dwellings, however, we agree with Mr Kornek that it would be desirable if a restaurant did not extend outside the lease and onto the footpath, at least at night time. That is a matter for the liquor licensing and other authorities, and we request the respondent to draw their attention to it.

Shop

29. A shop is defined in the Plan as follows:

Shop means the use of land for the purpose of selling, exposing or offering the sale by retail or hire, goods and personal services, includes bulky goods retailing, department store, personal service, retail plant nursery, supermarket and take-away food shop.

30. Those uses are further defined as follows:

Bulky goods retailing means a shop which includes a loading dock within the building, and where the goods or materials sold or displayed are of such a size, shape or weight as to require:

- a) a large area for handling, storage or display; and/or
- b) direct vehicular access to the site by members of the public, for the purpose of loading goods or materials into their vehicles after purchase, but does not include any shop used primarily for the sale of food or clothing.

Department store means a shop in which goods are sold by separate departments within the shop and from which a significant amount or proportion of retail sales occur from at least four of the following types of goods: furniture and floor coverings; fabrics and household textiles; clothing; footwear; household appliances; china, glassware and domestic hardware.

Personal service means a shop used primarily for selling services and in which the sale of goods is ancillary to the service provided.

Retail plant nursery means a shop used for the propagation and sale of plants, shrubs, trees and garden supplies.

Supermarket means a large shop selling food and other household item where the selection of goods is organised on a self-service basis.

Take-away food shop means a shop, which is predominantly for the preparation of food and refreshments for consumption elsewhere.

31. The Authority supports the inclusion of a shop in the lease purpose clause. The parties joined did not object to some shop uses but objected to others. They were bulky goods retailing, supermarket and retail plant nursery. Those objections were based on concerns about disturbance to residents of the apartments from heavy trucks and delivery vans, particularly if they were using the rear access. We recognise that some shop uses, for example bulky goods retailing, are more likely than others to require deliveries of larger volume items. The definition of bulky goods retailing indicates that the construction of a loading dock may be necessary since none exists at present. That in turn would require a further development application and any concerns caused by heavy vehicle movement could be explored at that time. Bulky goods retailing could possibly occur without a loading dock, but would be limited by the size of the land and the configuration of the existing building. While a plant nursery could involve the retailing of large trees and garden supplies, once again the size of the block and the existing building would be limiting. The same objection presumably applies to a supermarket and indeed may also apply to a department store, although the latter was not identified as objectionable.

32. The future use of the land for those purposes would help overcome the concerns of some objectors that the Kingston Local Centre is attracting too many restaurants and drinking establishments to the detriment of local residents who benefit from a

diversity of uses. A diversity of uses is an objective of the Group Centre (Commercial 'C') Land Use policies. We recognise the desirability of increasing the range of possible uses for the benefit of both the local residents and the lessee. We have also identified constraints against the use of the land as it is to sell large quantities of heavy goods requiring deliveries that could cause annoyance. Accordingly, we are prepared to approve the full range of shop uses in the lease. If a dedicated shop building were to be constructed on the land in the future, issues such as delivery arrangements could be considered at that time.

33. The Plan restricts shops in this precinct, precinct 'b', to a maximum gross floor area of 100m², or 300m² where the shop or part of the shop is physically contiguous with a development in precinct 'a'. The existing building is less than 400m². Whilst ever the bank continues to operate the remainder of the building is probably not large enough to accommodate a great deal more than 100m². However the land adjoins Block 21 of Section 33, which is within precinct 'a', and the possibility arises in the future of a new contiguous development. Since that would require assessment against the Plan, we do not think the condition originally proposed by the Authority restricting a shop area to 100m² is justified. We accept, in part, the suggested condition of the applicant that the condition as to shop area should require that:

the use of the shop be restricted to a maximum gross floor area per shop of 100m² or 300m² where the shop or part of the shop is physically contiguous with development on Block 21 of Section 22 Kingston.

34. The land is touched at the corner by Block 25 but they are not contiguous in the normal sense of the word and we do not accept the applicant's suggestion that the condition should include Block 25.

Non-retail commercial use

35. Part D of the Plan defines non-retail commercial use as meaning a business agency, financial establishment, office or public agency.

36. Those uses are separately defined as follows:

Business agency means the use of land for the purpose of providing a commercial service directly and regularly to the public.

Financial establishment means the use of land for the primary purpose of providing finance, investing money, and providing services to lenders, borrowers and investors on a direct and regular basis.

Office means the use of land used for the purpose of administration, clerical, technical, professional or like business activities, including a government office, which does not include dealing with members of the public on a direct and regular basis except where this is ancillary to the main purpose of the office.

Public agency means the use of land for the purpose of providing a public service directly and regularly to the public and includes a government agency, which provides a commercial service to the public.

37. The respondent supported a variation of the lease for these purposes and the parties joined did not specifically object. Mr Adams said that some of those uses such as a financial establishment and business agency would be possible without a further development application. Indeed the current use is for a financial establishment. In circumstances where no specific objection has been made, we will accept that the full range of non-retail commercial uses may be included in the lease.

Community Use

38. Community use is defined as follows:

Community use means a child care centre, a community activity centre, a community theatre, a cultural facility, an educational establishment, a health facility, a hospital, a place of worship, and/or a religious associated use.

39. The applicant does not seek to include a community theatre, a place of worship and/or religious associated use in the lease. Some of the other uses were not objected to but both the Authority and the some parties joined opposed the inclusion of child care centre, educational establishment and hospital. In those circumstances we will approve the inclusion of community activity centre, cultural facility and health facility. These are defined as follows:

Community activity centre means the use of land by a public authority or a body of persons associated for the purpose of providing for the social well being of the community.

Cultural facility means the use of land for the purpose of cultural activities to which the public normally has access, but does not include a shop for art, craft or sculpture dealer.

Health facility means the use of land for providing health care services (including diagnosis, preventative care or counselling) or medical or surgical treatment to out-patients only.

Child care centre

40. There is a separate definition of child care centre in Part D of the Plan, where it is defined as follows:

Child care centre means the use of land for the purpose of supervising or caring for children of any age throughout a specified period of time in any one day, which is registered under the Children's Services Act 1986 and which does not include residential care.

41. In giving evidence Mr Adams identified a child care centre as a use that would require a further development application. He referred to the requirements set out in the document 'ACT Centre Based Children's Services Conditions For in Approval in Principle and Licences' dated August 2000. Mr Sandeman agreed that a new development application would most likely be needed. Nevertheless the respondent objected to its inclusion in the lease in the absence of evidence of the intensity of that use.

42. We accept Mr Adam's evidence that a child care centre would require internal and external modifications to the building and that a further development application would need to be approved before the land could be used for that purpose. Any concerns about the health and welfare of the children, including appropriate pick up and delivery arrangements, or more generally the feasibility of that use on the land would be considered at that time. We heard no evidence, or even expressions of concern, about possible adverse effects on the amenity of the neighbourhood. Child care would not involve the consumption of alcohol, the need for numbers of additional parking places in Kingston, the generation of large amounts of noise in the evenings or frequent visits by large waste delivery or other vehicles about which the neighbours have expressed fears. In circumstances where a further development application would be required before the use could be achieved, where there is evidence of other controls governing that use but no evidence of adverse effects on the amenity of neighbours, we believe that a child care centre should be included in the lease purpose clause, thus diversifying the range of possible uses to which the land might be put.

Educational establishment

43. Educational establishment is defined as follows:

Educational establishment means the use of land for the purpose of tuition or training, whether or not for the purposes of gain, and may include associated residential accommodation.

44. A tutorial school, a language school and a computer school were examples given by Mr Adams of possible uses of the existing building that would fall within the definition of educational establishment and that would not require external modification of the existing building on the site. We accept that those types of uses would be unlikely to adversely affect the neighbourhood amenity and could be considered suitable uses of the land. On the other hand some educational uses could be more intrusive. A physics laboratory was given as an example. A dancing or music school are other examples of educational uses that could be thought to have potentially adverse impacts through the emission of noise. We do not know whether those potentially intrusive uses would require a further development application. The definition of educational establishment proposed to be included in the lease is very broad and, in contra-distinction to child care centre use, we have no evidence as to other controls that might operate on educational establishments so as to limit adverse impacts on the neighbours or, indeed, on the users. In the circumstances we are not able to find that an educational establishment, as defined, is a suitable use of the land. Were the lessee in the future to propose a variation to the lease that more closely defined the use to those types of educational establishment identified by Mr Adams,

perhaps in conjunction with a detailed development proposal, it might be more successful.

Hospital

45. A hospital is defined as:

Hospital means the use of land for the medical care (including diagnosis, preventative care and counselling) of in-patients, whether or not out-patients are also provided with care or treatment, and may include associated residential accommodation.

46. It is not the same as a health-care facility, the definition of which is given under the heading Community Use above. Mr Adams suggested that a health facility offering specialist services, for example laser eye surgery, would be a hospital if it chose to offer a small number of beds for the over-night use of people from country areas. We do not think that is so, since the definition refers to "the medical care....of in-patients". It follows, we think, that those hospital in-patients are not simply using it as a convenient motel (which would in any event be unlikely) but are people in need of medical care while they are in-patients. That leads to the possibility of more complex requirements usually associated with a hospital, including ambulance access. The applicant suggested that such fears would be overcome by a condition limiting its use by emergency ambulance, but that raises other difficulties. In light of the broad definition of hospital and the lack of information as to the type of controls external to the planning system that would govern its use, we are not prepared to include hospital in the lease purpose clause. Given the commonly understood characteristics of hospitals, we cannot find it a suitable use of the land. As with an educational institution, it may be that a more precise definition for inclusion in the lease could be devised, perhaps accompanied by a detailed development proposal.

Conditions

47. The appropriate manner in which conditions to approval of a lease variation may be imposed so that they are effective and enforceable has been considered in earlier cases: Liangis Investments Pty Ltd and Commissioner for Land & Planning [2002] ACTAAT 3 (31 January 2002); Yang and Qiu and Commissioner for Land & Planning & Ors [2003] ACTAAT 23 (6 May 2003) and Ergas & Bird and ACT Planning & Land Authority & Ors [2004] ACTAAT 18 (18 May 2004). Although the Authority or its predecessor had proposed in some cases that conditions be included in the Crown lease it was opposed to taking the same course in this matter, because of administrative difficulties that could arise if too much detail were to be included in a lease. It suggested that the matter could be remitted to the Authority so that any conditions imposed could be inserted by it.

48. Some parties joined said any conditions to be imposed should be included in the lease by the Tribunal itself, such as had occurred in those cases. But this case differs from Ergas & Bird and Yang & Qiu in important respects. In both of those cases, a lease variation for a specific purpose was being sought. And both of those proposed uses, drinks establishment and light industry respectively, have a much greater

potential to cause problems for a neighbourhood than do the uses we are approving here.

49. The applicant suggested that some conditions might be imposed as part of the approval of this development application pursuant to section 245 of the Land Act. Matters that the applicant suggested for possible conditions include waste management and collection, an air lock, double glazing, a ventilation system for a food preparation area, an enclosed corridor to provide separate access to the toilets and the restriction of on-site car parking to employees, although this list was described as "overkill". We have found no need to impose conditions concerning noise from music in a restaurant in the current building. We do not think that access to the toilet block is something we need to consider. The Authority saw no need for at least some of the other possible conditions, for example, the restriction of on-site parking to employees. We do not believe it is necessary to limit car parking on the land to employees. It is easy to imagine some uses, for example for a health facility such as doctors' rooms, where some parking for customers might be possible and even desirable.

50. Some parties sought conditions governing rear access and the use of the laneway. Their concern is that the use of the rear access for trade deliveries, garbage collection and customers could cause disturbance to residences in the Oakleaves and other apartments. Although the evidence is that there has been only one complaint about garbage trucks over several years, we do not discount the possibility that problems arising from the use of the laneway might increase as businesses such as banks leave and others take their place. It may well be that the appropriate authorities need to consider how best to manage the laneway and public car park on and adjacent to Block 33 in the future. We do not believe there is justification for preventing this lessee from using a rear entrance, but think that a restriction of access by customers through the rear entrance at night time is justified.

51. All parties supported the imposition of some conditions being imposed in some way to deal with some possible concerns arising from some types of business being conducted on the land, given its location close to residences. We think conditions designed to ensure appropriate waste management, including limiting the hours for waste collection to those in residential areas, and restricting access by customers through the rear entrance at night time, should be imposed. A condition governing the size of shop had also been identified. We recognise the wish of the Authority to limit the amount of detail included in a lease. At the same time the legal effect of conditions imposed as part of a development approval for a lease variation once the Crown lease has been registered is at best uncertain. Accordingly, we conclude that the conditions must be included in the Crown lease. We will therefore remit the matter to the Authority with a direction that the conditions identified be inserted in the Crown lease.

Conclusion

52. Having considered the proposed land uses in the light of the provisions of the Plan, we find that to include certain uses in the lease purpose clause would not be inconsistent with the Plan. Those uses are non-retail commercial uses, restaurant, shop, child care centre, community activity centre, cultural facility and health facility.

We further find that conditions should be included in the lease in respect of shop area and waste management and night time rear access.

I CERTIFY THAT THIS AND THE <u>15</u>	
PRECEDING PAGES ARE A TRUE COPY OF THE	
DECISION AND REASONS FOR DECISION HEREIN	
MS P. O'NEIL, SENIOR MEMBER	
OF <u>DR E. MCKENZIE, SENIOR MEMBER</u>	
<u>MR R. NICHOLS, MEMBER</u>	
Signed:	<u>U. Dore.</u>
Dated: <u>13/12/04.</u>	Member/Assoc./Clerk.

FORM 33**PUBLICATION DETAILS****TO BE PUBLISHED**

To be completed by Member's Staff

PART A**FILE NO:** AT04/93

APPLICANT: STRYVER PTY LTD
RESPONDENT: ACT PLANNING & LAND AUTHORITY
PARTIES JOINED: GILLIAN BIRD; KATHLEEN TAPERELL & JOHN TUCKER; ROWAN BASIL-JONES; CHRISTOPHER JOHN MOORE; PAMELA M RUTLAND; DAVID & SUSIE O'LEARY; JACQUI SEKULESS; WILLIAM BRIAN LOFTUS; DEBORAH ROBINSON; EXECUTIVE COMMITTEE, OWNERS CORP (UP585); PETER & IRENE MAY; SEAN RILEY & JOHN SIMONS; UNITS PLAN 402

COUNSEL APPEARING: **APPLICANT:** MR R ARTHUR
RESPONDENT: MR P WALKER
PARTIES JOINED:

SOLICITORS: **APPLICANT:** BARKER & BARKER
SOLICITORS
RESPONDENT: ACT GOVERNMENT SOLICITOR
PARTIES JOINED:

OTHER: **APPLICANT:**
RESPONDENT:
PARTIES JOINED: MR B LOFTUS (FOR SELF; MS BASIL-JONES; D ROBINSON; DR MOORE; EX CTEE OWNERS CORP (UP585) & G BIRD); MS K TAPERELL (FOR SELF & J TUCKER); MS P RUTLAND (FOR SELF & UP402); MS J SEKULESS (SELF)

TRIBUNAL MEMBERS: MS P O'NEIL, SENIOR MEMBER
DR E MCKENZIE, SENIOR MEMBER
MR R NICHOLS, MEMBER

DATES OF HEARING: 16-19 NOVEMBER 2004 **PLACE:** CANBERRA

DATE OF DECISION: 13 DECEMBER 2004 **PLACE:** CANBERRA

PART B

RECOMMENDATION:

FULL REPORT (X)

CASE NOTE ()

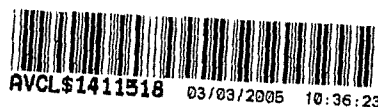
UNREPORTED DECISION ()

COMMENTS:

M'Cann Property & Planning
62322727

A14.

ACT GOVERNMENT
Land Titles Act 192.
Registrar-General's Office



1411518

AVCL
Form 044



APPLICATION TO VARY A CROWN LEASE

PRIVACY COLLECTION STATEMENT (PRIVACY ACT 1988 (C'WLTH)) OVERLEAF

The Minister or the Delegate of the ACT Planning and Land Authority (the Authority) has agreed to vary the lease as described below, subject to the mortgages, encumbrances and other instruments affecting the land including any created by dealings lodged for registration prior to the lodging of this document.

1. LAND

Vol:Fol	District/Division	Section	Block	Unit	Instrument No/ Associated Dealing No
28:2758	KINGSTON	22	22		

2. EXTENSION OF LEASE DATE

N/A

3. FULL NAME OF REGISTERED PROPRIETOR/S

STRYVER PTY LTD A.C.N. 080 142 534

4. POWER TO VARY CROWN LEASE

I, Deborah Willenbrecht being a delegate of the Planning and Land Authority, APPLY to you to register the variation which has been made to the Crown lease of the land described. An approval of Variation of Lease is submitted here within in accordance with Section 72A of the Land Titles Act 1925

5. DETAILS OF VARIATION

SEE ANNEXURE

6. EXECUTION

Signed by the proprietor/s

Signature of proprietor/s

Signed by the person duly authorised by the ACT Planning and Land Authority

DEBORAH WILLENBRECHT

Full name of signatory

Deborah Willenbrecht
18 February 2005
Signature of the delegate of the ACT Planning and Land Authority

Full name of witness

Signed in my presence

Signature of witness

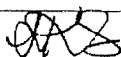
Full name of witness

Rhonda Myers

Signed in my presence

Signature of witness

7. OFFICE USE ONLY

Lodged by		Certificates Lodged	
Data Entered by		Attachments Lodged	
Examined by		Certificate of Title Lodged	PRODUCTION
Registered by		Registration Date	- 8 MAR 2005

PRIVACY STATEMENT

S.43 of the *Land Titles Act 1925 (LTA)* authorises the Registrar-General to collect the information required by this form for the establishment and maintenance of the Land Titles Register. S.65-67 LTA requires that the Register be made available to any person for search, upon payment of a fee. The information is regularly provided to various ACT Government agencies, including the ACT Department of Urban Services, ACT Planning and Land Authority (ACTPLA), ACT Treasury, Canberra Connect and ActewAGL for conveyancing, municipal account, administrative, statistical and valuation purposes. ACTPLA and agencies within the ACT Department of Urban Services may also use the information supplied to prepare and sell property sales reports to commercial organisations concerned with the development, sale or marketing of land.

SCHEDULE OF NOTES

1. Documents must be typed, or completed, in black ink or biro.
 2. Alterations to information entered on the form should be made by crossing out (not erasing or obliterating by painting over) and should be initialled by the parties.
 3. If there is insufficient space in any panel use an annexure sheet.
 4. Volume and Folio references must be given.
 5. Provide details of the extension date or grant date.
 6. Provide full names of all proprietors as identified on the certificate of title.
 7. Provide the authority under which the variation is occurring.
 8. Provide the details of the variation.
 9. Execution by
 - **A Natural Person** – Should be witnessed by an adult person who is not a party to the document.
 - **Attorney** – If this document is executed by an Attorney pursuant to a registered power of attorney, it must set out the full name of the attorney and the form of execution must indicate the source of his/her authority eg. "AB by his/her attorney XY pursuant to Power of Attorney ACT Registration No. of which he/she has no notice of revocation".
 - **Corporation** – Section 127 of the *Corporations Act* provides that a company may now validly execute a document with or without using a Common Seal if the document is signed by:
 - a. Two directors of the company;
 - b. A director and a secretary of the company; or
 - c. Where the company is a proprietary company and has a sole director who is also the sole company secretary, that director.
- NB** The normal witnessing provisions in the *Land Titles Act 1925* do not apply to execution by a corporation as above, but do apply to execution by the attorney of a corporation.



ANN
Form 029

ANNEXURE

1. ANNEXURE TO MEMORANDUM OF

Application to Vary a Crown Lease.

2. DATED

18 February 2005

**AUSTRALIAN CAPITAL TERRITORY
LAND (PLANNING AND ENVIRONMENT) ACT 1991
SECTION 250**

VARIATION OF A LEASE

Under the *Land (Planning and Environment) Act 1991* I, **Deborah Willenbrecht** approve the variation of Crown lease specified hereunder:

Name of Registered Proprietor: **STRYVER PTY LTD A.C.N. 080 142 534**

Register Book Volume **28** Folio **2758**
Short Description of Land Affected:

Block **22** Section **22** Division of **KINGSTON**

PARTICULARS OF VARIATION-

FORMER PROVISION

1 (f) To use the said land for the purposes of erecting bank premises only;

AMENDED PROVISION

1 (f) To use the said land for the purposes of:

- (i) child care centre;
- (ii) community activity centre;
- (iii) cultural facility;
- (iv) health facility;
- (v) non retail commercial uses;
- (vi) restaurant; and
- (vii) shop;

PROVIDED THAT each individual shop is limited to a maximum gross floor area of 100 square metres or 300 square metres where the shop or part of the shop is physically contiguous with development on Block 21 Section 22 Kingston;

ADDED PROVISIONS

Replace the full stop (".") at the end of clause 1 (h) with a semi-colon (";") and insert the following clauses;

- 1 (i) That the Lessee will ensure that:
- (i) the collection of waste from the land will be restricted to the hours of 7.00am and 5.00pm Monday to Friday only with the exception of Christmas Day and Good Friday;
 - (ii) the collection of waste from the land on Christmas Day and Good Friday will be prohibited
- 1 (j) That the Lessee shall, after 7pm, restrict access through the rear entrance of the building (from Block 33 Section 22 Kingston) to employees of the premises only;

Replace the full stop (".") at the end of clause 3 (h) with a semi-colon (";") and insert the following clauses;

- 3 (i) That in this lease the expression "child care centre" means the use of land for the purpose of supervising or caring for children of any age throughout a specified period of time in any one day, which is registered under the *Children and Young People Act 1999* and which does not include residential care;
- 3 (j) That in this lease the expression "community activity centre" means the use of land by a public authority or a body or person associated for the purpose of providing for the social well being of the community;
- 3 (k) That in this lease the expression "cultural facility" means the use of land for the purpose of cultural activities to which to public normally has access, but does not include a *shop* for art, craft or sculpture dealer;
- 3 (l) That in this lease the expression "health facility" means the use of land for providing health care services (including diagnosis, preventative care or counselling) or medical or surgical treatment to out patients only;
- 3(m) That in this lease the expression "non retail commercial" means a *business agency, financial establishment, office or public agency*;
- 3 (n) That in this lease the expression "restaurant" means the use of land for the primary purpose of providing food for consumption on the premises whether or not the premises are licensed premises under the *Liquor Act 1975* and whether or not entertainment is provided.
- 3 (o) That in this lease the expression "shop" means the use of land for the purpose of selling, exposing or offering the sale by retail or hire, goods and personal services, including bulky goods retailing, department store, personal service retail plant nursery supermarket and take-away food shop;

Date 18 February 2005



Deborah Willenbrecht

the person for the time being holding or performing
the duties of the office of Senior Officer Grade C
Position Number 15272
Delegate of the Authority