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	A.C.T. LEGISLATIVE ASSEMBLY COMMITTEE OFFICE
SUBMISSION NUMBER	1
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Dear Mr Stanhope and Mr Corbell,

RE: REVIEW OF PLANNING PROCEDURES/LEGISLATION

We welcome your announcement of a review of ACTPLA's planning procedures and legislation (the planning system) reported in the *Canberra Times* on the 7 May 2005.

As you are aware from on-going criticism of the planning system by developers, architects, town planners, and more recently by the Auditor-General, as well as the substantial number of cases that have been before the Administrative Appeals Tribunal (AAT) the current planning system is over regulated; complex; unfair, inflexible, time consuming and expensive.

Attempts have been made in the past to review and streamline the planning system without success.

As a developer, user and victim of the planning system over the previous three years, I feel that I am well placed to provide the government with advice on achieving a successful review of the planning system.

To be successful, it is important that :-

1. A **TASK FORCE** IS SET UP OF ALL **USERS** OF THE **PLANNING SYSTEM** AND
2. THE REVIEW INCORPORATES **ALL AREAS** OF THE **PLANNING SYSTEM**.

1.0 **TASK FORCE**

It is important that the review is not undertaken by public servants but that a task force of **users** of the planning system is set up that includes developers; architects/building designers; town planners; and solicitors, etc. and interested parties. The task force should write to **users** of the planning system who have lodged development applications for dual occupancy and multi-unit developments and request their advice for improving the current unsatisfactory planning system. Some suggestions on members of the task force who can provide independent advice on **streamlining and bringing all the strands of the planning system** together include Mr Jim Soorley and Mr Ron Gilbert.

As a starting point, I suggest that you write to all the developers of dual occupancy and multi-unit development who have lodged development applications and are well placed to provide advice on improving the unsatisfactory planning system.

Town Planners can provide advice on streamlining Preliminary Assessments; Master Plans; Section Master Plans; Neighbourhood Plans; the Territory Plan and DV 200, etc.

Architects and building designers can provide advice on streamlining ACTPLA development application procedures for design and siting; variation of lease purpose clause, unit titling and *Appendix 111 Residential Design and Siting Code for Multi Dwelling in the ACT*.

Solicitors can also provide advice on streamlining the unsatisfactory system of variation of lease purpose clause; unit titling; ACTPLA and AAT procedures. Some experts in the field include Mr Alfonso del Rio (lease variation and unit title) Mr Archie Tsimokos, Mr Mark Flint, Ms Nicholas and Mr Richard Arthur (ACTPLA planning systems and AAT procedures).

2.0 ENCOMPASS ALL AREAS OF THE PLANNING SYSTEM.

For the review to be successful, it is also important that the review is not piecemeal and **incorporates all areas of the planning system** including ACTPLA s development applications and procedures for design and siting, variation of lease purpose clause and unit titling; the Territory Plan; Draft Variations including DV No. 200; Master Plans; Section Master Plans; Neighbourhood Plans, the Land (Planning and Environment) Act; the Administrative Appeal Tribunal Act , the Unit Title Act and the multitude of regulations and guidelines, etc.

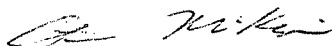
The main areas of concern that need review and reform follows:

1. ACTPLA PLANNING SYSTEM IS OVER REGULATED
2. ACTPLA PLANNING LEGISLATION IS COMPLEX, HARSH AND DISADVANTAGES DEVELOPMENT APPLICATIONS
3. ACTPLA DEVELOPMENT APPLICATION PROCEDURES FOR DESIGN AND SITING; VARIATION OF LEASE PURPOSE CLAUSE AND UNIT TITLING ARE COMPLEX AND TIME TIME CONSUMING.
4. ACTPLA DECISION MAKING IS UNFAIR, INFLEXIBLE, INCONSISTENT AND CONSTRAINED BY LEGISLATION
5. ACTPLA PLANNING SYSTEM IS COSTLY FOR THE DEVELOPER

I have taken the opportunity to enclose my submission.

Please note: the Auditor-Generals claim, reported in the *Canberra Times* on the 7 May 2005, that ACTPLA decision making is *fair* is misconceived. Please refer to the enclosed submission.

Yours sincerely,



Christine McKenzie
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26/5/2005

SUBMISSION

**REVIEW OF ACT PLANNING AND
LAND AUTHORITY S PLANNING SYSTEM**

16 MAY 2005

NOTE: Any reference to *the development* or the *development application* is a reference to Development Application No. 20023438, (DA20023438), block 3, section 46 Watson - lodged on the 26 July 2002.



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1.0 ACTPLA PLANNING SYSTEM IS OVER REGULATED

The ACTPLA planning system is over-regulated - there are too many procedures, legislation, regulations and guidelines that the developer must comply with and ACTPLA must assess the development application against resulting in complexity; duplication and red tape.

1.2 OVERVIEW:

- 1).. ACTPLA s Development Application procedures for design and siting and variation of lease purpose clause, including, pre-development, development application; validation; neighbour & public notification and assessment.
- 2). Procedures for variation of the lease purpose clause
- 3). Procedures for unit titling
- 4). Procedures for Tree Removal
- 5). Master Plans, Section Master Plans and Neighbourhood Plans
- 6). The Territory Plan
- 7). Draft Variations, in particular DV 200
- 8). Residential Design and Siting Code for Multi-Dwellings in the ACT (the Code).
- 9) . Achieving Sustainable Residential Development
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- 11). ACT House Energy Rating Scheme
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- 13). Schedule 2 - Noise Standards and Conditions
- 14). Land (Planning and Environment) Act

- 15). Unit Title Act
- 16). Tree Protection Act
- 17). Environment Protection Act
- 18). Administrative Appeals Tribunal Act
- 19). The Construction Occupations (Licensing) Regulations 2004
- 20). Objectors rights to appeal to the AAT and AAT procedures

2.0 ACTPLA LEGISLATION IS COMPLEX, HARSH, AND DISADVANTAGES DEVELOPMENT APPLICATIONS.

As well as the ACTPLA planning system being over regulated, the legislation , itself is complex; harsh; disadvantages development applications and restricts ACTPLA decision making. An overview follows:

2.1 DRAFT VARIATION No. 192 - THE 5% QUOTA

Draft Variation No.192 (the 5% quota) and the policy *first lodged, first served* was harsh, disadvantaged developers and was flawed:

Developers were required to undertake a pre-development application process, including lodgement of a Design Response Report that had to be endorsed as satisfactory by ACTPLA, before the developers were permitted to lodge a development application.

There was no system in place to ensure potential development applications that were in competition within the quota arrangement were treated fairly.

If two different developers lodged Design Response Reports for different blocks within the same section, there was potential for ACTPLA to unfairly delay the endorsement of one of the Design Response Reports.or ignore one and deal with the other or to apply provisions of the Territory Plan to one but not the other.or endorse one notwithstanding that it may not be consistent with the Territory Plan.

Approval of the development application prevented the other development application from being considered on its merits.

Approval of a development application deprived other leaseholders of the opportunity to undertake a dual occupancy development.

(refer Christine McKenzie and ACTPLA AT02/120 10 March 2003).

2.2 DRAFT VARIATION No. 200

Draft Variation No. 200 had legal affect from August 2003. DV 200 is complex - it requires cross referencing with the *Residential Design and Siting Code for Multi-Dwelling in the ACT* (the Code) and the Territory Plan

DV 200 is also complex; harsh; disadvantages developers; the exclusion clauses are inadequate and it is legally flawed:

DV 200 (3.7) requires a variation of lease purpose clause and payment of change of use charge if a developer did not lodge an Application for Unit Title by the 30th June 2004. The above provision applies for all purpose clauses, including purpose clause that provide for *residential* contrary to the judgement in the Dosen case. Justice Miles held in the Dosen case, that if the purpose clause in the Crown Lease provides for *residential* it is not necessary to vary the lease purpose clause: ... *the purpose clause did not limit the number of residential units that might be permitted ... it was essentially a variation to impose a limit that did not previously exist ... I am bound to say that the whole exercise, commencing with the application for variation of the purpose clause ... appears to have been unnecessary ...* Dosen v Department of Environment, Land and Planning SCA 51 of 1995 @ 1 - 14 June 1996.

Additionally, , the AAT held in the Cecilia Spence case that the Crown Lease did not ... *prevent the construction of more than one dwelling house on the land ... it follows that the variation of the lease to specifically permit that to be done did not increase the value of the land. Accordingly ... no change of use charge is payable* ... Cecilia Spence and Minister for Urban Services AT00/67 24 October 2000.

2.3 RESIDENTIAL DESIGN AND SITING CODE FOR MULTI-DWELLINGS IN THE ACT (THE CODE)

The *Residential Design and Siting Code for Multi-Dwellings in the ACT* is complex because it has too many variable, i.e. *Objectives; Performance Criteria* and *Performance Measures*. The Introduction at the beginning of the Code states: ... *An approval may not be granted to a proposal, which is inconsistent with the objectives and performance criteria stated in a relevant Performance Control. However, the performance measures are considered to satisfy the objectives and relevant performance criterion in most cases, so that normally no further evidence of performance is required ...* Objectors appreciate the Code - they can raise multiple complex issues in AAT proceedings.

2.4 THE LAND (PLANNING AND ENVIRONMENT ACT

The Land (Planning and Environment Act) 1991 (the Land Act) - as well as its complexity, it has so many shortcomings that disadvantage development applications that it should be scrapped, or failing that, the following sections should be deleted:

Section 8 - Effect of plan
 Section 226(8)(b) - notice of alteration of development
 Section 229 - Notice of application
 Section 231 - matters to be considered
 Section 237 - objectors
 Section 243 - notice of approval to objectors
 Section 276 - review - objectors and third parties

Amend to provide ACTPLA delegates with the power to exempt development applications, in some circumstances, from the provisions of the Land Act, Draft Variations and the Territory Plan.

Amend to prevent the revolving door process - decisions remitted to ACTPLA from the Supreme Court and the AAT being subjected to further reviews of decisions by objectors. .

Amend to provide that the Supreme Court has the power to make substitute decisions.

Amend section 284(c) to provide that the AAT and the Supreme Court have the power not only to provide exemptions from a requirement of the Land Act, but also from the requirements of Draft Variations and the Territory Plan.

2.5 ADMINISTRATIVE APPEALS TRIBUNAL ACT

The amendments should include:

Section 28 - Parties to Proceedings before Tribunal: delete section (b) i.e. ... *a person applies for the review of a decision referred to in section 276 of that Act ...*

Section 33A - Mediation: delete ... *the president may, if the president considers it is desirable to do so and the parties consent...* REPLACE WITH ... *the president must direct that the proceedings, or any part of the proceedings be referred to a registered mediator ...*

Section 43B - Power of tribunal: delete (1)(c) i.e.... *the tribunal is satisfied that a decision in those terms or consistent with those terms would be within the powers of the tribunal , the tribunal may, if it is appropriate to do so, act in accordance with subsection (2) or (3), as the case requires...*

Section 49D - Mediation: REPLACE THE WORDS *may* in (1)(b) and (2) with **must**

Section 49E(1) - Costs: delete the words ... *if the party contravenes a tribunal direction* ...

Amend to prevent neighbour and third party appeal rights OR introduce costs orders in the Land and Planning division.

2.6 THE CONSTRUCTION OCCUPATION (LICENSING) REGULATIONS 2004.

The Construction Occupation (Licensing) Regulations 2004 (licensing regulations) are harsh, unwarranted and discriminate against owner builders generally, in particular dual occupancy owner builders.

According to the licensing regulations to obtain an owner builder permit, an applicant must sit and pass an eighty question test. The test is highly technical, and the applicant must have a 70% pass rate. The test is based on knowledge of the Building Act 2004; Building Regulations 2004; Construction Occupation (Licensing) Act 2004, Construction Occupations (Licensing) Regulations 2004; ACT Workcover Handbook the Building Code of Australia and any relevant standards i.e. AS 2870 Residential Slabs and Footing Construction 1996 and AS 3740 Waterproofing of Wet Areas within Residential Buildings - 2004. The test is equivalent to a final year building diploma test.

Furthermore, the licensing regulations discriminates against owner builders of dual occupancy developments (demolish the existing dwelling and build two new dwellings). For example, an owner builder may not obtain an owner builders permit for a dual occupancy development. *Schedule 1 Classes of construction occupation licence Class 5 - owner builder* - states: ... ***building work ... that is to be, the licensee's main home or ancillary to it*** I was advised by BEPCON that an applicant may not obtain an owner builders permit for a dual occupancy development.

In contrast, in NSW, an applicant may obtain an owner builders permit after completing an eight hour owner builders course through NSW TAFE. There is no requirement to sit an exam. The owner builders permit applies to dual occupancy developments.

In the ACT and NSW an owner-builder must own the land on which they are building and are only entitled to one owner-builder permit per five years.

Recommendations: 1). introduce an owner-builder education course or accept the NSW TAFE owner builders course as an alternative to BEPCONs exam and 2). ADD the words ... ***and includes dual occupancy developments*** ... AFTER THE WORDS: ... ***or ancillary to it*** (Schedule 1, Class 5).

3.0 ACTPLAS DEVELOPMENT APPLICATION PROCEDURES FOR DESIGN AND SITING, VARIATION OF LEASE PURPOSE CLAUSE AND UNIT TITLING ARE COMPLEX, TIME CONSUMING AND EXPENSIVE FOR THE DEVELOPER

As well as ACTPLA's planning system being over regulated, the legislation being complex and disadvantages development applications, the Development Application procedures for design and siting, variation of lease purpose clause and unit titling are also complex and time consuming resulting in additional delays and expense for the developer. An over view of a simple development application for a dual occupancy development and variation of lease purpose clause, follows:

3.1 STAGE 1 - THE PRE-DEVELOPMENT APPLICATION STAGE: Survey; Tree Survey; Site Plan; Design Concept Plan; Site Analysis Plan + Report; Meeting with ACTPLA; Neighbour Consultation; Consultation with Government Agencies and Service Providers; Site and Context Plan + Report; Streetscape Character Plan + Report; Opportunities and Constraints Plan + Report; Residential Sustainability Report and Statement Against the Requirements of the Territory Plan.

3.2 STAGE 2 - LODGEMENT OF DEVELOPMENT APPLICATION: Floorplans; Elevations & Sections; Street Elevations; Unit Title Plan; Landscape Plan; Verge Management Plan; Streetscape Assessment; Energy Rating + Report; Stormwater Detection Plan; Waste Management Plan; Neighbour Consultation Report; Government Agencies and Service Providers Consultation Report; valuation + report (for lease variation) and Design Response Report consisting of the following:
 (i) description of development, site and context study (ii) streetscape character (iii) opportunities and constraints study (iv) design concept documents (should address how the concept addresses the issues identified in the opportunities and constraints study) (v) evidence of consultation and response summary (vi) statement of design intent (vi) residential sustainability report

3.3 STAGE 3 - VALIDATION PROCESS ACTPLA check the documentation that have been lodged and invite the developers to lodge their development application with the appropriate fee for lodgement.

13.4 STAGE 4 - NEIGHBOUR AND NOTIFICATION AND PUBLIC

NOTIFICATION: ACTPLA writes to adjacent neighbour. Neighbours can object to the development. ACTPLA advertises the development in the newspapers and places a sign outside the proposed development. Third parties can also object to the development.

13.5 **STAGE 5 - ASSESSMENT:** ACTPLA assesses the development application against the documents provided as per stages 1 and 2, above and the regulations detailed in paragraph 1.1 (6) - (14), above. The statutory period in which ACTPLA are required to make a decision is thirty business days (if no objection) or forty five business days (if there are objections). If ACTPLA do not make a decision within 45 business days the development application is *deemed refused*.

13.6 **STAGE 6 - ADMINISTRATIVE APPEALS TRIBUNAL:** Neighbours and third parties who have lodged objection can appeal the development approval to the AAT. If ACTPLA do not approve the development and the developer appeals the decision to the AAT, the objectors also have the right to be joined as parties to the proceedings. The proceedings in the AAT are complex, time consuming and expensive. Applicants must provide Facts and Contentions and Legal Issues. Expert witnesses are required for all issues raised by objectors. My AAT proceedings were before the AAT for thirteen months. The average cost to developers for a two day hearing is \$21,260.00 (refer 6.3, below)

13.7 **STAGE 7 - DEVELOPMENT APPLICATION FOR LEASE VARIATION -** Under some circumstances, ACTPLA requires a variation of the lease purpose clause and payment of a change of use charge before the developer can unit title their development. In some circumstances, ACTPLA requires a development application for the variation of the lease purpose clause separate from the original development application with public notification. A valuation and report are required. The information from the valuer is sent to the Australian Valuation Office. ACTPLA assess the application and either approve or nor approve the development application for lease variation and change of use charge recommended by the valuer. If ACTPLA do not make a decision within 45 business days the application is *deemed refused*. The developer must surrender their Certificate of Title. The variation of lease purpose clause is registered on the Certificate of Title and Crown Lease at the Register Generals Office. The developer has thirty days in which to vary the lease purpose clause and pay the change of use charge. **The decisions are subject to appeals by objectors and developers.**

3.8 **STAGE 8 - APPLICATION FOR UNIT TITLE** - Application for unit title is usually lodged with ACTPLA after the slab is poured. Valuation is required from a registered valuer. A survey and checklist are required from a surveyor. Set up of body corporate and insurance is also required. Application for unit title can only be approved after the building and landscaping has been completed and a Certificate of Occupancy has been issued. The ACTPLA approval process usually takes 3 - 6 months from date of lodgement of the application for unit title.

3.9 **STAGE 9 - DEVELOPMENT APPLICATION FOR TREE REMOVAL** - An application for tree removal may be required. The developer must lodge an *Application for Approval to Undertake a Tree Damaging Activity* with Environment ACT. The decision is subject to appeals in the AAT by objectors and developers.

3.10. **INTERIM HERITAGE LISTING** - the existing dwelling may receive interim heritage listing after the development application has been lodged. The decision is subject to appeals in the AAT by objectors and developers.

3.11 **MULTIPLE DEVELOPMENT APPLICATIONS LEADING TO MULTIPLE REVIEW OF DECISIONS IN THE AAT - STAGES 1 - 6 MAY HAVE TO BE REPEATED (BUT WITH DIFFERENT DOCUMENTATION)** - As noted above, ACTPLA's complex legislation and procedures may require separate development applications for design and siting; variation of lease purpose clause and tree removal. Therefore, there may be multiple applications for review of decisions in the AAT for design and siting, variation of lease purpose clause, tree removal and interim heritage listing. Two examples are the McKenzie and Pashalidis cases (refer below).

The culture within ACTPLA is the more complex, the more difficult the more red tape the better.

4.0 ACTPLA DECISIONS ARE UNFAIR, UNREASONABLE UNTIMELY AND CONSTRAINED BY REGULATIONS

An overview follows:

4.1 FAILURE TO INCORPORATE AAT AND SUPREME COURT JUDGEMENTS IN DECISIONS AND LEGISLATION

There are a substantial number of Supreme Court and AAT judgements in relation to ACT planning. However, ACTPLA do not incorporate the judgements in its decision making or legislation. Refer DV 200 (3.7) - inconsistent with the Cecilia Spence case and failure of ACTPLA to incorporate my AAT and Supreme Court judgements/reasons for decisions in ACTPLA s *Notice of Decision* and *Reasons for decision* in the T documents provided to the AAT. McKenzie and ACTPLA AT05/09.

4.2 FAILURE TO INSPECT BLOCK BEFORE UNDERTAKING ASSESSMENT OF DEVELOPMENT APPLICATIONS.

ACTPLA do not generally inspect blocks before undertaking assessment of development applications (refer ACTPLA s *Notice of Decision* and *Reasons for Decision* in the T documents provided to the AAT).

4.3 FAILURE TO MAKE DECISIONS WITHIN THE STATUTORY TIMEFRAME

ACTPLA do not always endeavour to make decisions either approving or not approving development applications within the statutory timeframe - 30 business days if no objections or 45 business days if there are objections. If ACTPLA do not make a decision within 45 business days the development application is deemed refused and subject to review of decision in the AAT.

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4.4 DRAFT VARIATION No. 192 - THE 5% QUOTA

ACTPLA's decision to introduce a 5% quota that favoured one leaseholder and disadvantaged other leaseholders was harsh and unreasonable (refer 2.1, above).

ACTPLA's decision making in relation to the application of the 5% quota was also flawed. For example I had been engaged in the pre-development application process with ACTPLA for some time and lodged a Design Response Report (block 3, section 46 Watson). ACTPLA failed to inform me that (i) another developer proposed a development within my section (block 22, section 46 Watson) and (ii) the developer had also lodged a Design Response Report. The developer for block 22 was aware of my proposed development because he was the former architect for my proposed development. ACTPLA endorsed the Design Response Report for block 22, notwithstanding that it was inconsistent with the Territory Plan. I was not aware of the development proposed for block 22 until it was advertised in the *Canberra Times*.

ACTPLA approved the development application for block 22, notwithstanding that it was inconsistent with the Territory Plan and the development application did not have the required Verge Management Plan and Landscape Plan by a qualified landscape architect. ACTPLA's decision to approve the development application for block 22, meant that my development application for block 3 could not be considered on its merits nor approved because the quota in section 46 had been filled by the approval of the development application for block 22.

4.5 DRAFT VARIATION No. 200

ACTPLA's decision to introduce DV 200 with its legal flaws, complexity, cross referencing and inadequate exemption clauses was harsh, unreasonable (refer 2.2, above).

ACTPLA's decisions in relation to the application of DV (3.7) (requirement to vary my lease purpose clause and pay change of use charge) was also unfair and unreasonable. I was advised by ACTPLA before I lodged my development application on the 26 July 2002, that because my purpose clause states *residential* and due to the AAT decision in the Cecilia Spence case, I was not required to vary my lease purpose clause nor pay change of use charge.

Refer ATTACHMENT A - copy of Development Assessment Lease Check dated 31 January 2002 from file DA20023438 and ATTACHMENT B Development Appraisal Panel Meeting - 1 August 2002 also from file DA20023438.

However, Dulce Lander, determined on the 28 June 2004, that due to the provisions of section 3.7, I must vary my lease purpose clause and pay change of use charge, notwithstanding that my purpose clause provides for *residential*, because I did not lodge an acceptable Application for Unit Title by the 30th June 2004 (previous to DV 200, I was not required to vary my lease purpose clause nor pay change of use charge)

Refer ATTACHMENT C - Copy of DV 200 (3.7) and ATTACHMENT D - copy of Dulce Lander s decision dated 28 June 2004.

For further information in relation to ACTPLA s application of 200 (3.7) refer to Part 5, below.

5.0 ACTPLA FAILED TO COMPLY WITH SUPREME COURT ORDERS- UNREASONABLE DELAYS AND FLAWED DECISION MAKING

On the 2 September 2004, the Supreme Court made the following orders:

1. the appeal be allowed 2. the orders of the Administrative Appeals Tribunal be set aside 3. in lieu thereof, the development application be remitted to the ACT Planning and Land Authority for further consideration in the light of the amended plans ... (McKenzie and ACTPLA SCA No. 5 of 2002 - 2 September 2004).

ACTPLA's response was unreasonable delays, flawed decision making and failure to comply with the Supreme Court orders. An overview follows:

5.1 UNREASONABLE DELAYS

The Supreme Court Orders were the 2 September 2004. On the 9 September 2004, I wrote to ACTPLA: ... *my architect and I are waiting for a response ... will it be More information (s233) or amendments to approved plans (s247) ... or conditional approval (s245)... Do you require more information? i.e. working drawings of the amendments ...?* ACTPLA delayed responding - it was only after several telephone calls and a letter to Mr Savery that ACTPLA responded by organising a meeting for the 20th September 2004.

5.2 FAILURE TO APPROVE THE DEVELOPMENT APPLICATION ON THE AVAILABLE INFORMATION

Mr Ray Brown advised at the meeting on the 20 September 2004, that the information was insufficient to make a decision and ACTPLA required a set of plans and revised energy rating for unit 2, notwithstanding that the information was substantial, including Site Plan and Floor Plans & Elevations (to scale), as well as, documentation in relation to the AAT and Supreme Court proceedings. It was open to ACTPLA to approve the development application with conditions, including that a set of plans and revised energy rating be provided within 30 days, in consideration that my development application was lodged on the 26 July 2002 and the proceedings were before the AAT for thirteen months (McKenzie and ACTPLA 02/132 - 24.12.2003).

5.3 REQUIREMENTS TO LODGE ANOTHER DEVELOPMENT APPLICATION

Mr Ray Brown also advised us at the meeting on the 20th September 2004, that ACTPLA would accept the plans under the provisions of *More information* to the original development application lodged on the 26 July 2002 (s233 Land Act) and I was required to lodge another development application. He said that he would provide me with a letter for the *More information* provisions, and I was to attach the letter to the development application. However, I believe that, in consideration of the Supreme Court orders, I would have been entitled to provide the plans to ACTPLA without the necessity of lodging another development application and without the formality of the *More information* provisions.

5.4 ALLOCATING THE DEVELOPMENT APPLICATION LOW PRIORITY

On the 26 October 2004, as per Ray Browns instructions, I lodged a development application and submitted the plans under the provisions of *More information* to the original development application lodged on 26 July 2002. Mr Ray Brown allocated the development application low priority - not from the date of the lodgement of the original development application (26 July 2002) but from the date of the Supreme Court orders (2 September 2004).

5.5 DECLINING TO INCLUDE THE VARIATION OF THE LEASE PURPOSE CLAUSE UNDER THE PROVISIONS OF THE ORIGINAL DEVELOPMENT APPLICATION OR THE SUPREME COURT

I was advised by Dulce Lander that I was required to vary my lease purpose clause and pay the change of use charge (refer 2.2 and 4.6, above). However, Mr Ray Brown determined that the variation of the lease purpose clause could not be considered under the original development application/Supreme Court orders or under the *More information* provisions to the original development application (s233 Land Act) and required a separate development application.*such a proposal cannot be made as part of the provision of further information ... you are advised to complete a DA form as a new application ... The new application will be given a new DA number ...*

Refer ATTACHMENT E copy of Ray Browns decision dated 15 November 2004.

5.6 OBJECTORS RIGHTS

ACTLA were required to provide the objectors with the amended working drawings and request their submissions. ACTPLA were required to take into consideration their submissions. John Goldie and Kathy Walters objected to the amendments that they requested in the first place and that were the subject of the Supreme Court orders!

5.7 FAILURE TO MAKE A DECISION WITHIN THE STATUTORY TIMEFRAME

ACTPLA failed to make a decision on my development application within the statutory timeframe (thirty business days if no objections and 45 business days if there are objections) and my development application was *deemed refused*. On the 18 January 2005, I lodged an application with the AAT for review of ACTLA *deemed refusal* (AT05/09).

5.8 T DOCUMENTS - FAILURE TO INSPECT BLOCK OR INCORPORATE AAT REASONS FOR DECISION

ACTPLA were required to provide the AAT with the T documents. The information in the T documents was inadequate.. Mr Aaron Oshyer, supervising assessor:
 1) Failed to inspect my block before undertaking the assessment 2).Failed to incorporate the AAT or Supreme Courts Reasons for Decision/judgements in the *Reasons for Decision* (T13). and 3) Removed the amended Unit Title Plan (T11).

5.9 OBJECTORS RIGHTS TO OBJECT TO AMENDMENTS THAT THEY REQUESTED AND WERE THE SUBJECT OF THE SUPREME COURT ORDERS

The original objectors had the right to be joined as parties to the AAT proceedings. Mr John Goldie and Ms Kathy Walters objected to the amended plans that they requested in the first place and were subject of the Supreme Court orders! They applied to be joined to the AAT proceedings. The AAT joined John Goldie and Kathy Walters to the proceedings - McKenzie and ACTPLA 05/09

5.10 DECLINING TO MAKE ANY CONCESSION IN RELATION TO VARIATION OF THE LEASE PURPOSE CLAUSE IN THE CONSENT AGREEMENT

In pre-hearing discussions with ACTPLA, Mr Ray Brown declined to make any concessions in relation to the variation of the lease purpose clause in the consent agreement. He determined that the variation of the lease purpose clause had to be a separate development application with full public notification. On the 11 March 2005, my development application (No. 20023438, lodged on the 26 July 2002 was approved by consent order - but excluding the variation of the lease purpose clause. (McKenzie and ACTPLA AT05/09 - 11 March 2005).

Refer ATTACHMENT F draft Consent Agreement 11 March 2005

5.11 PROVIDING MISLEADING INFORMATION IN THE PUBLIC NOTIFICATION FOR THE APPLICATION FOR LEASE VARIATION

On the 8 April 2005, I lodged my application for lease variation. I wrote on the application form: *to provide for not less than one and not more than two dwellings* which accords with the wording of DV 200 (3.7) (b). However, in ACTPLA s public notification in the *Canberra Times* and the sign outside my property ACTPLA changed the wording from: ... *to provide for not less than one and not more than two dwellings* ... to the following: ... *to permit not less than one and not more than two dwellings* ... This is misleading, because there is already approval for two dwelling on my property and for design and siting (refer AT05/09 - 11 March 2005).

Refer ATTACHMENT G - Extract from Application for variation of Lease Purpose Clause - 14 March 2005 and ATTACHMENT H - Copy of ACTPLA s public notification

5.12 INEFFECTIVE COMPLAINTS MECHANISM

When developers complain about decisions or aspects of the planning system to the Minister, Chief Planning Executive or the ombudsman, the responses are prepared by the ACTPLA staff whose decision the developer complained about in the first place. The responses generally take 6 - 8 weeks and always defend ACTPLA s decisions and planning system.

6.0 ACTPLA PLANNING SYSTEM IS COSTLY FOR THE DEVELOPERS.

ACTPLA s over regulation and complex legislation, development application procedures and appeals system is costly for the developer and also puts a strain on ACTPLA, the ACT Government Solicitor and AAT resources. An overview of the financial costs to the developer follows:

6.1 DEVELOPMENT APPLICATION DOCUMENTATION FOR STAGES 1 AND 2

- the average costs of the documentation for stages 1 and 2 is \$20,000.00- \$30,000.00 (architects generally charge 5% of the building costs for a dual occupancy development).

6.2. VARIATION OF LEASE PURPOSE CLAUSE - the cost of the lease variation is \$1300 for the valuation and report; \$1600 for the development application & public notification; ACTPLA average charge for a change of use charge for a dual occupancy is \$6,000.00 - \$30,000.00. The fee for a solicitor to check the documentation and attend the Land Titles Office is \$1,500.00. .

6.3. PROCEEDINGS IN THE ADMINISTRATIVE APPEALS TRIBUNAL (AAT) - The cost of an appeal in the AAT for a two day hearing is approximately \$21,260.00. Solicitors charge \$330.00 per hour including GST. i.e. \$2,210.00 per day. Solicitors allow two days preparation for each hearing day. Therefore the average solicitors fee for a two day hearing is $2,210.00 \times 6 \text{ days} = \$13,260.00$. The cost of an expert witness report is generally \$2,000 and another \$2,000 per day for the expert witness to attend court. Each issue raised by the objector must be addressed by expert witnesses i.e town planner, stormwater engineer, traffic engineer or landscape architect, etc. At least two expert witnesses will be required depending on the number of issues raised by the objectors i.e. $4,000.00 \times 2 = \$8,000.00$. Therefore, the total cost of a two day hearing is $\$13,260.00 + \$8,000.00 = \$21,260.00$.

NOTE: None of the above costs are recoverable by the developer if ACTPLA do not approve the development application or if objectors are successful in their appeal in the AAT. As well as the expense there is also the time factor and the emotional strain on the developer.

Additionally, the above costs may have to be repeated because of ACTPLA's regulations, there may have to be multiple development applications, and hence multiple review of decisions in the AAT (refer to the McKenzie and Pashalidis cases).

6.4 APPEALS THE SUPREME COURT

In some cases, AAT decisions are unfair and legally flawed. However, developers are reluctant to appeal those decisions to the Supreme Court, for the following reasons:

1. RESOURCES - developers have already spent a considerable amount of time and money on ACTPLA's pre-development and development application system and AAT proceedings
2. TIME - 12 - 18 months for the Supreme Court proceedings and decision
3. COST - \$20,000.00 - \$30,000.00
4. OUTCOME - (if successful) referral back to the AAT or ACTPLA (the revolving door); (if not successful) non-recoverable additional time, money and costs orders.

7.0 ACTPLA s UNSATISFACTORY PLANNING SYSTEM IN ACTION - THE MCKENZIE AND PASHALIDIS CASES

The McKenzie and Pashalidis cases are just two examples of the substantial number of victims of ACTPLA s over regulated, complex, unfair; inflexible; time consuming and expensive planning system. For more examples, view the AAT judgements (planning division). An overview of the above-mentioned cases, follows:

7.1 THE MCKENZIE CASE

On the **26 July 2002**, I lodged my Development Application (No. 20023438). The proposal was to demolish my existing dwelling and build two new dwellings with unit title. **My development proposal has not been finalised.**

My development application has been the victim of ACTPLA s DV 192 (the 5% quota); the revolving door system and DV 200 (3.7) (variation of the lease purpose clause and payment of change of use charge).

7.1.1 ACTPLA s DV 192 - the 5% quota and *First lodged, first served* policy:
ACTPLA made unfair decisions in relation to the 5% quota and my proposed development (refer 2.1 and 4.5, above). I lodged two applications in the AAT: (1) review of ACTPLA development approval for block 22, section 46, Watson (AT02/120) and (2) review of ACTPLA s *deemed refusal* of my development application for block 3, section 46 Watson. In August 2003, the 5% quota ceased to have affect. AT02/120 was dismissed and AT02/132 could proceed to a hearing on its merits.

7.1.2 ACTPLA s revolving door system - sections 8, 226(8)(b); 229; 231; 237; 243 and 276 of the Land Act: the AAT set aside ACTPLA s recommended approval and refused my development application (McKenzie and ACTPLA AT02/132 - 24.12.2003). I appealed the decision to the Supreme Court. On the 2 September 2004, the Supreme Court set aside the AAT decision and ordered that my development application be remitted to ACTPLA for further consideration in the light of the amended plans (McKenzie and ACTPLA SC No. 5 of 2004). The original objectors to the development application had a right of appeal to the AAT if ACTPLA approved the development. As it turned out, ACTPLA did not make a decision within the statutory timeframe and my development was *deemed refused*.

On the 18 January 2005, I lodged an application in the AAT for review of ACTPLA's *deemed refusal* (AT05/09). The original objectors to the development application had the right to be joined as parties to the AAT proceedings. Mr John Goldie and Ms Kathy Walters objected to the amendments that they requested in the first place and were the subject of the Supreme Court orders! The AAT joined John Goldie and Kathy Walters to the proceedings.

7.1.3 **ACTPLA's DV 200** - due to the provisions of DV 200 (3.7) which had legal affect from August 2003, ACTPLA required a variation of my lease purpose clause and payment of change of use charge as a prerequisite to unit titling (prior to DV 200, I was not required to vary my lease purpose clause nor pay change of use charge) (refer 2.2 and 4.6, above). Mr Ray Brown declined to include the variation of the lease purpose clause as part of the Supreme Court orders nor would he make any concessions in relation to variation of the lease purpose clause in the consent agreement (AT05/09). He required a separate development application for lease variation and change of use charge with full public notification.

On the 11 March 2005, my development application lodged on 26 July 2002 was approved by consent agreement but excluding the variation of the lease purpose clause. On the 8 April 2005, I lodged an application for variation of the lease purpose clause and payment of change of use charge. At the time of writing, the application is being processed by ACTPLA. The decision may be subject to further proceedings in the AAT. The proceedings to date include:

1. Christine McKenzie and ACTPLA AT02/120
2. Christine McKenzie and ACTPLA AT02/132)
3. Christine McKenzie and ACTPLA Supreme Court No. 5 of 2004
4. Christine McKenzie and ACTPLA AT05/09

ATTENDANCE AT AAT AND SUPREME COURT

Total number of hearing days: 7

Total number of days at mediation: 2.5

Total number of directions hearings: 8

Total number of folios provided in relation to the AAT and Supreme Court proceedings: 2.000.

7.2 THE PASHALIDIS CASE

On the **29 August 2002**, Mr Stephen Pashalidis lodged a development application. The proposal was to retain the existing dwelling on a large 2,000m block, and build a new residence in front of his existing residence. On the **22 February 2005**, **Mr Stephen Pashalidis matter was finalised in the AAT.**

After the development application was lodged the existing dwelling received interim heritage listing.

There were separate protracted review of decision in the AAT for the development application lodged on the 29 August 2002 (AT02/143); Application for Tree Damaging Activity (AT02/100) and interim heritage listing (AT03/52 and AT03/55). The proceedings included:

1. Stephen Pashalidis and ACTPLA 02/143
2. Professor Wagner and Conservator of Flora and Fauna AT02/100
3. Stephen Pashalidis and ACT Heritage Council AT03/52
4. Professor Wagner and ACT Heritage Council AT03/55

8.0 RECOMMENDATIONS

8.1 REVIEW, CONSOLIDATE, CULL, SIMPLIFY AND STREAMLINE THE PROCEDURES, LEGISLATION, REGULATIONS AND GUIDELINES, NOTED AT 1.0 ABOVE.

8.2 INTRODUCE NEW DEVELOPMENT APPLICATION PROCEDURES FOR DESIGN AND SITING, LEASE VARIATION, UNIT TITLING AND TREE REMOVAL.

A model for a simple, cost effective development application process for a dual occupancy development and variation of lease purpose clause follows at A - C, below;

A). **Developers submits a *Notice of Development Application* with ACTPLA and adjoining neighbours.** The Notice of Development Application is *deemed to include design & siting, variation of lease purpose clause; unit title and tree removal*. At this stage the developer provides minimum documentation i.e.(i) a survey (ii) site plan. and (iii) statement of assessment against the Territory Plan

B) **If the development is consistent with the Territory Plan** and receives no objections it is *deemed approved* and the developer lodges a development application with ACTPLA with minimal documentation i.e. site analysis, verge management plan, demolition plan, landscape plan, unit title plan; working drawings and valuation (for lease variation and change of use charge, if required) ACTPLA formally approves the development within five working days.

C) **If the development is not consistent with the Territory Plan** or if neighbours object, to design and siting, lease variation, unit title or tree removal, etc ACTPLA holds a series of meetings with the developer and objectors and the parties work together on amending the plans in order to obtain *deemed approval*. Developer then lodges the development application and ACTPLA formally approves within five working days.

- 8.3 INTRODUCE A NEW DEVELOPMENT APPLICATION FORM WHICH IS DEEMED TO INCLUDE DESIGN AND SITING; VARIATION OF LEASE PURPOSE CLAUSE; UNIT TITLING AND TREE REMOVAL** in order that it is not necessary to lodge separate development applications for the above if circumstances change or if the developer omits to include any of the above or if there are amendments to legislation.
- 8.4 WITHDRAW APPEALS IN THE AAT AND REPLACE WITH A SERIES OF MEETINGS/MEDIATION WITH ACTPLA, DEVELOPERS AND OBJECTORS AT THE INITIAL DEVELOPMENT APPLICATION STAGE**
- 8.5 ALTERNATIVELY, WITHDRAW NEIGHBOUR AND THIRD PARTY APPEAL RIGHTS TO THE ADMINISTRATIVE APPEALS TRIBUNAL OR**
- 8.6 INTRODUCE COSTS ORDERS FOR THE PLANNING DIVISION OF THE ADMINISTRATIVE APPEALS TRIBUNAL**
- 8.7 WITHDRAW REQUIREMENT FOR VARIATION OF LEASE PURPOSE CLAUSE AND CHANGE OF USE CHARGE FOR DUAL OCCUPANCY DEVELOPMENTS AND REPLACE WITH PAYMENT OF A SMALL LEVY FOR EACH UNIT.**
- 8.8 DV 200 - AMEND TO PROVIDE THAT THE PROVISIONS IN DV 200 DO NOT APPLY TO DEVELOPMENT APPLICATIONS LODGED BEFORE AUGUST 2003 (THE DATE THAT DV 200 HAD LEGAL EFFECT).**

8.9 *RESIDENTIAL DESIGN AND SITING CODE FOR MULTI-UNIT DEVELOPMENTS IN THE ACT - DELETE OBJECTIVES AND PERFORMANCE CRITERIAS.*

**8.10 THE LAND (PLANNING AND ENVIRONMENT) ACT 1991
(REFER 2.4, ABOVE).**

**8.11 THE ADMINISTRATIVE APPEALS TRIBUNAL ACT 1989
(REFER 2.5, ABOVE)**

8.12 THE CONSTRUCTION OCCUPATIONS (LICENSING) REGULATIONS 2004 (REFER 2.6, ABOVE)

8.13 INCORPORATE SUPREME COURT AND AAT JUDGEMENTS IN DECISIONS AND LEGISLATION

8.14 ACTPLA DELEGATES INSPECT BLOCKS BEFORE ASSESSING DEVELOPMENT APPLICATIONS AND THE INSPECTIONS ARE NOTED IN THE NOTICE OF DECISION

8.15 A CULTURAL CHANGE WITHIN ACTPLA TO ACCOMMODATE THE ABOVE RECOMMENDATIONS.

A

DEVELOPMENT ASSESSMENT LEASE CHECK

(CLEARLY TICK OR INDICATE WITH A YES OR NO AS APPROPRIATE)

UNIT BLOCK 3 SECTION 46 DIVISION *Watson*

TENURE	LEASE TYPE	GRAN
Lease	☒ Residential	☒ Full charge
Units Plan	☐ Commercial	☐ Concessi
Other:- Sublease, Licence, Agreement	☐ Community	☐ Not clear
Lease not yet issued	☐ Rural	☐ Rental
Unleased Land	☐ Govt Lease (Exec Lease)	☐ Rent abolis
Road verge/reservation	☐ Other	☐ Non-rente

APPLICATION AUTHORISATION

	Type Req'd	Full endorsement still req'd
Lessee (All parties)	☒	☐
Person Authorised by Lessee	☐	☐
Body Corporate	☐	☐
Minister (delegate)	☐	☐

DOES THE PROPOSAL INVOLVE:

An identified encroachment	Compliance Certificate Issued?	Y / N
An existing Building Covenant		
Any Off-site Works		
Staging of Development		

No. checked against recent
IF APPROVED, WILL PROPOSAL REQUIRE A CHANGE TO THE LEASE *decision*

Purpose	<i>LV possibly</i>	<i>deal on</i>	<i>Benjamin</i>
GFA		Other	
Boundary (consolidation/subdivision/realignment)			Change req'd
Schedule of Entitlements (Units Plan):- letter from valuer req'd [			Evidence of Unanimous Resolution req'd
New Schedule of Entitl req'd (Form 2) [			

OTHER POSSIBLE LEASE VARIATIONS/LICENCES LIKELY SUBJECT TO ASSES

Car parking		
Landscaping		
Associated Works (separate services)		Licence (encroachment/use of land)
Development Covenant	Other	
Unit Plan:- Unit Lease (Form 4)	Common Property (Form 5)	Boundary (Forms

WORDING FOR NOTIFICATION

New/re-wording required (See below/attached)

OTHER COMMENTS (Add page if necessary)

are?

CHECKED BY - NAME

Ray Mabe

SIGNED

31-7-02

*clear site; construct 2 new
single story residences &
landscaping*

Development Appraisal Panel Meeting 1 August 2002

000

26

9.

Site:BI: 3 Sec: 46 Watson Irvine Street

Proposal:Demolition-Dual Occupancy demolition of existing residence and construction of 2 single storey residences

Application No:20023438

Applicant:C McKenzie 6242 9895

Date lodged:26/7/2002

Comments:

Land Use Policy:Residential

Area Specific Policy:

Public Notification required?.....YES

Ready for Secretariat to Notify?.NO

Minor Development?NO (assessment made against criteria a-h of Minor Development definition)

Preliminary AssessmentNO

Heritage StatusNO

DAP members present at meeting: Applications Secretariat:-Nadia Chami

PALM: Kevin Polglase, Warwick Trimble, G Thomas, D Willenbrecht

Environment: Maria Mangeruca

Infrastructure: Thamo Tharalingham

Heritage:

ACTEW:

TELSTRA:

COMMENTING AGENCIES: Where indicated with a YES, the application has been referred to that Section from the DAP meeting for comments. These comments, or a request for an extension of time, must be returned to the **APPLICATIONS SECRETARIAT** by 15 August 2002 on fax no 62077762 only.

AGENCY/SECTION	REFERRAL REQUIRED	PLANS TAKEN	COMMENTS RETURNED	PLANS RETURNED	EXTENSION OF TIME &/OR COMMENTS
ENVIRONMENT	YES	1 SET	14/8		
ACT Parks and Conservation Service	NO				
Environment Planning and Legislation	NO				
Environment Protection Authority	NO				
Wildlife, Research and Monitoring	NO				
Conservator	NO				
TREE PROTECTION	NO				
HERITAGE	NO				
CITY MANAGEMENT	YES	1 SET	20/8		
Roads ACT	NO				
CUPP	NO				
Waste NO Waste	NO				
NCA	NO				
DANGEROUS GOODS	NO				
HEALTH PROTECTION SERVICES	NO				
ACCESS AND PLANNING COMMITTEE	NO				
PLANNING POLICY	NO				
LANDSCAPE	NO				

READY FOR FINAL ASSESSMENT:

DAP Issues and Conclusions:-

- ActewAGL - applicant to obtain a plant location advice to avoid any conflict with any existing plant (for clearance - dial before 1100) or electrical easements phone 62935770 for enquires. The applicant will be responsible for the costs associated with the relocation of assets, if necessary.
- Please sent PALM notes 1 & 2 to applicant
- Please note Environment ACT comments
- Response confirmed that they complied with HQSD
- File with Debbie - no lease variation is required (VS 6.8.02)
- Phoned applicant, has been involved in a car accident, would require time to respond to letter, advised her to apply for an EOT (NC 5.8.02)
- Discussed with Debbie - client to respond to comments made by IWB prior to PN

- d) For *dual occupancy housing*, the maximum plot ratio of all development on the block shall be as determined by the following formula:

$$P = (140/B + 0.15)100$$

where:

P is the maximum permissible *plot ratio* expressed as a percentage; and

B is the block area in square metres.

Except that for development applications for *dual occupancy housing* lodged before 30 May 2003, the maximum plot ratio for all development on the land shall be 0.35:1 (35%).

- e) For *supportive housing* on a *standard block* or block resulting from the consolidation of *standard blocks*, the maximum *plot ratio* shall be 0.35:1 (35%).
- f) *Dual occupancy housing* may only be approved where the block has an area greater than 800m².
- g) For a proposal for *dual occupancy housing*, any additional new dwelling that does not directly front a public road from which vehicular access is permitted shall be single storey in scale with no basement car parking.
- h) On *standard blocks*, *attics* or *basement* car parking shall not be approved where in addition to 2 storeys.
- i) The maximum site density of *single dwelling housing* shall depend on provisions in the relevant residential code at Appendix III (eg setbacks from boundaries, building envelope controls, private open space requirements, etc). On a *standard block* it shall not exceed a *plot ratio* of 0.5:1 (50%). On a non-standard block it shall not exceed a *plot ratio* of 0.5:1 (50%) unless provided for in an approved *building envelope plan*.
- j) *Residential redevelopment* on blocks originally used for *multi-unit housing*, including rebuilding up to the height of the existing development where it exceeds 2 storeys may be approved subject to consideration of adverse impacts resulting from any increase in building bulk.

(Note: This clause does not apply to development applications lodged before 1 September 2002.)

3.7 Subdivision or Consolidation of Existing Residential Leases

- a) Subdivision or consolidation of leases used for residential purposes may only be approved where the subdivision or consolidation is part of an integrated housing development and where it is demonstrated that any building on a consequent lease is or can be designed in accordance with the relevant residential code at Appendix III.
- b) A subdivision of a lease under the *Unit Titles Act 2001* may only be approved where the lease expressly provides for the number of units or dwellings provided for in the proposed subdivision.
- c) In this clause, subdivision does not include a minor boundary adjustment that does not provide for the creation of an additional residential lease.

Note: Paragraph (b) does not apply to any development for which an application for subdivision was lodged by 1 July 2004; and

- that had been lawfully constructed; or
- for which a development application had been lodged; or
- for which an acceptable Design Response Report had been submitted as required by "Designing for High Quality & Sustainability" (ACT Planning and Land Management; June 2001);

by 17 December 2002.



D

OFFICER : Phill Bozykowski
 PHONE : 6207 1958
 FAX : 6207 1862
 FILE : TL 126/46/3

Ms Christine McKenzie
 PO Box 243
 DICKSON ACT 2602

Dear Ms McKenzie

Application for Unit Title - Block 3 Section 46 Watson

I refer to your application to subdivide the above block under the *Unit Titles Act 2001* (UTA).

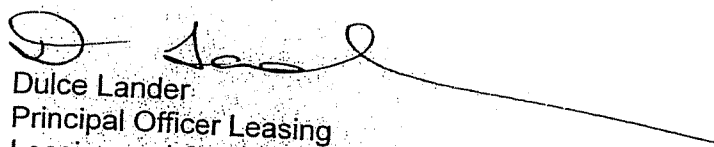
The Territory Plan, through Variation 200, only allows an exemption from lease variation and change of use charge for dual occupancy developments where a development application (DA) or an acceptable Design Response Report under the High Quality Sustainable Design (HQSD) process had been submitted by 17 December 2002 and an application for Unit Title is lodged by COB 30 June 2004. From 1 July 2004, an application to Unit Title can still be lodged but only if the Crown lease states the number of dwellings permitted on the block. If the lease does not already specify the number of dwellings, a DA will need to be lodged to vary the lease. The DA will be subject to a change of use charge.

I note that in your case, both the HQSD and DA were lodged by the required date and therefore you would be entitled to subdivide your development under the UTA without a variation to the lease, provided an acceptable application to unit title is lodged by COB 30 June 2004. However, an application for unit title must contain a proposed units plan that has been prepared by a registered Surveyor together with a certification by a registered Valuer in terms of the Unit Entitlement for the development. The application you have submitted does not meet those requirements as there is no approval for the construction of two dwellings on the block and there are not two dwellings constructed on the premises to enable a registered surveyor to prepare the units plan.

Therefore, you will need to lodge a new application for unit title if your proposal is approved and only when there is sufficient construction undertaken to enable a surveyor to plot the units. However, you will be required to vary your lease to state the number of dwellings permitted on the block and pay any change of use charge that may apply prior to an application being accepted.

If you require any further information please contact Mr Phil Bozykowski on 6207 1958.

Yours sincerely


 Dulce Lander
 Principal Officer Leasing
 Leasing and Compliance

28 June 2004



ACT Planning &
Land Authority

29

E

Ms Christine McKenzie
PO Box 243
DICKSON ACT 2602

Dear Ms McKenzie

Lease Variation – Block 3 Section 46 Watson

I refer to our telephone discussion of 15 November 2004, regarding your proposal for a lease variation on the subject block to allow for no more than two dwellings. As discussed, it is the ACT Planning and Land Authority's (the Authority) view that such an application cannot be made as part of the provision of further information in respect of the former Development Application (DA) No 20023438.

As such, you are advised to complete a DA form as a new application, specifically for the variation of the lease. The new application will be given a new DA number. You should examine the checklist attached to the form to ensure that you have provided all necessary documentation. In this case, you are advised to also include a site plan of the buildings that are proposed as part of the former DA No 20023438, and note that those buildings are the subject of the reconsideration of DA No 20023438.

Your new application will be considered by the Authority as a pre lodgement submission, and if all documentation is complete, you will be invited to formally lodge the DA and pay the necessary application fees. I have returned your previously submitted form and accompanying material with this letter.

A response to your letter of 29 October 2004 to the Chief Planning Executive is being prepared and will be provided in due course, however I can advise that it is in your interest to make a new application in the manner described in the preceding paragraphs.

Yours sincerely

Raymond Brown
Principal Officer North
Development Assessment Section
15 November 2004

DRAFT

F

CONSENT AGREEMENT

- 1). APPROVAL OF THE DEVELOPMENT APPLICATION 20023438
IN ACCORDANCE WITH THE AMENDED PLANS SUBMITTED
TO ACTPLA ON THE 26 OCTOBER 2004, INCLUDING UNIT
TITLE PLANS
- 2) THAT THE TRIBUNAL UNDER THE PROVISIONS OF SECTION
247 OF THE LAND ACT DISPENSE WITH THE REQUIREMENT
TO LODGE AN APPLICATION FOR UNIT TITLE BY THE
30 JUNE 2004
- 3) IN THE ALTERNATIVE TO 2, ABOVE THAT THE TRIBUNAL
DISPENSE WITH THE REQUIREMENTS TO PUBLICLY NOTIFY
THE LEASE VARIATION AND THE LEASE VARIATION IS
INCLUDED AS PART OF DA20023438
- 4) THAT BOUNDARY FENCES BE PROVIDED TO THE SPECIFICATION
AND HEIGHT OF ADJACENT LESSEES.



CHRISTINE MCKENZIE

11/3/2005

.....
ACTPLA/ACT GOVERNMENT
SOLICITOR

Part 4: Lessee (Property Owner) details (continued)

G

2nd Lessee's details

Surname

First Name

Company name

Australian Company Number (ACN)

If a company, Name of Contact Person

Postal Address

Suburb

State/Territory

Postcode

Phone Number (business hours)

Fax Number

Email

Signature(s)

Part 5: Briefly describe your proposal

- Please contact ACTPLA to confirm the wording for all lease variations to avoid possible delays.

LEASE VARIATION - TO PROVIDE FOR NOT LESS THAN ONE AND NOT MORE THAN TWO DWELLINGS.

PLEASE NOTE: (1) THE MERITS OF DESIGN, SITING, PARKING ETC WERE CONSIDERED AND APPROVED (2) THERE IS APPROVAL FOR TWO DWELLINGS ON THE BLOCK (REFER TO DA 20023438, DA 20023438A AND MR RAY BROWN FOR FURTHER INFORMATION)

Part 6: Type of Development

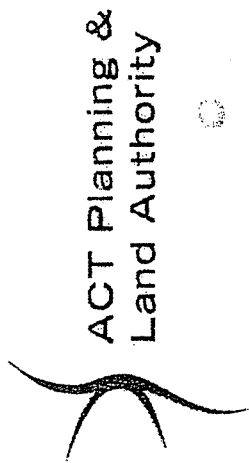
- Please cross all boxes relevant to your proposal.

- Applications involving a variation to the lease may be subject to a change of use charge. You should consider the cost of this charge prior to lodging a development application.

- ☐ Single Dwelling
- ☒ Dual Occupancy
- ☐ Multiple Dwelling
- ☐ Commercial
- ☐ Industrial
- ☐ Rural
- ☐ Signage

- ☒ Lease Variation
- ☐ Consolidation
- ☐ Subdivision
- ☐ Home Business
- ☐ Estate Development Plan
- ☐ Public Works
- ☐ Encroachment

14/3/2005



NOTICE OF DEVELOPMENT APPLICATION

The ACT Planning & Land Authority has received the following application
and you are invited to make written comments

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Development Application 200501082:

LEASE VARIATION - To vary the Crown lease to permit not less than one (1)
and not more than two (2) dwellings

Location: Block: 3 Section: 46 Suburb: WATSON
79 IRVINE STREET

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You can see a copy of the application at the **Applications Secretariat, Dame Pattie Menzies House, Ground Floor South (right hand building), 16 Challis Street Dickson (opposite Motor Vehicle Registry)**. The Secretariat's office is open on weekdays from 8:30am to 4:30pm. (Please record the applicati... number above for referer...).