

18 April 2006
Mr M Gentleman, MLA
Chair
Standing Committee on Planning and Environment
Legislative Assembly of the ACT
GPO Box 1020
CANBERRA ACT 2601

Dear Mr Gentleman

Draft Variation 256 – Kingston Group Centre Part Section 22

We act on behalf of the commercial lessees of Section 22 Kingston (Kingston Traders) which is the subject of the Draft Variation to the Territory Plan number 256. Our clients are disappointed that the amendments to the Territory Plan, including Variation 158, appear to be a reduction in owner rights and will have a detrimental impact on all commercial lessees located within Section 22 Kingston.

Prior to the recommended final version of draft 256 being released, substantial discussions were held between the ACT Planning and Land Authority (ACTPLA) and ourselves. We have attached two formal submissions made to ACTPLA for your information; we have set out below the key points of these submissions.

1. Draft Variation 158 was initially released for public comment in April 2000 and was common to all Group Centres in the ACT. After extensive public consultation with all affected parties (residential and commercial crown lessees) Variation 158 was adopted and commenced on 13 June 2002. Draft Variation 256 is a "spot rezoning"; it sets up site specific and complex rules confined to this site only. This is not good planning practice.
2. The reasons for the proposed variation include reference to two development applications. Both applications involved adding permissible uses to the purpose clause of the Crown Leases. They have subsequently received approvals with conditions imposed by the Administrative Appeals Tribunal to safeguard residents; the perceived problems have been resolved and there is no need for a Plan variation.
3. The residents in nearby developments had every opportunity to acquaint themselves with the planning regime prior to purchasing residential units. The commercial zoning of part of Section 22 has been in place and on the public record since the land was developed as part of the Kingston Centre.

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4. A close mixing of residential and commercial uses occurs in many areas in Canberra (for example Kingston Foreshore, Civic, Manuka and Dickson) and is considered to be highly desirable from a planning perspective. None of these developments include onerous controls on the commercial operators that limit the commercial viability of these premises or the value of the properties.

On behalf of our clients, we request the opportunity to provide an oral submission to your Committee to outline the issues as we see them. We would also be happy to respond to any questions that the Committee may have.

Yours sincerely
CB Richard Ellis (V) Pty Ltd

A handwritten signature in black ink, appearing to read 'Tony Adams', with a stylized flourish at the end.

Tony Adams
Senior Planner – CBRE Consulting

Attachment DVP 256 ACTPLA Submission

cc Mr Peter Jansen, Kingston Traders

21 April 2005

The Manager
Territory Plan Coordination Section
ACT Planning and Land Authority
GPO Box 1908
CANBERRA ACT 2601

Dear Sir

**RE: DRAFT VARIATION TO THE TERRITORY PLAN No. 256
KINGSTON GROUP CENTRE, SECTION 22**

We write to you on behalf of the commercial lessees of Section 22 Kingston. This letter is further to our submission of 24 March 2005 and follows a meeting with yourself and other ACTPLA officers on Thursday 14 April 2005. Following that meeting we have given further consideration to the matter and offer the following for your consideration, in addition to the points raised in our earlier letter.

1. A close mixing of residential and commercial uses occurs in many areas in Canberra and is considered to be highly desirable from a planning perspective. The Kingston Foreshores project for example, rated as an exemplary development includes residential and commercial uses that are deliberately co-located. Other examples include various developments in Civic, the Manuka development and Cape Street in Dickson. None of these developments include onerous controls on the commercial operators that limit the commercial viability of these premises or the value of the properties.
2. Mixed use development in Kingston is desirable as it is elsewhere.
3. It is pertinent to note that the residents in Section 22 had every opportunity to fully inform themselves of possible commercial activities before they moved in (as is the case at Kingston Foreshore and the other examples cited above). 'Drink establishment' has been a long-standing permissible use in this precinct and has always had the potential to generate noise. We are advised that since 1993 (commencement of the Plan) 22 of the 26 units at 6 and 8 Howitt Street have changed hands. All of these owners knew, or with a reasonable minimum level of inquiry could have known, of the likelihood of drink establishments being installed. If these residents' complaints now result in a limitation on reasonable commercial activity then the same principle should also be applied in other mixed uses such as the Foreshore and Cape Street. This is clearly ridiculous.

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4. At the same time a number of the commercial premises have changed hands in recent years and purchasers would have made enquiry and paid for leases on the basis of the uses permitted. To peremptorily remove these rights without compensation and without due cause is unfair.
5. A principal cause of annoyance to the resident is the use of the car parking areas at night by the public. These users are attracted by businesses throughout the Kingston Centre. This will not change whether or not any controls are placed on Section 22.
6. The AAT placed rigorous requirements on the two recently approved restaurants to ensure that noise did not emanate from those premises and we believe that they will be effective in achieving the desired results, the same requirements could be placed on future developments. Should they prove not satisfactory some amendments to those requirements may be needed and we would be happy to engage in further consultation in this regard.
7. We note that the Planning and Land Council in its support for DVP 256 expressed some concerns about DVP 256. These concerns should be reported in full and addressed in ACTPLA's response to consultation. Should ACTPLA require further elaboration on these concerns it should seek that elaboration from the Council rather than place its own interpretation on those concerns.
8. With regard to removal of 'shop', in its widest sense, from the allowed uses we question how a shop could be considered to produce more adverse effects than a restaurant. We understand that the deletion of 'shop' in DVP 256 was an oversight. It was intentionally included in DVP 158 and since its inclusion at least one lease purpose clause change has been made to include 'shop' without any objections at all. We understand that at discussions with the main resident group on 13 April they advised that they had no objection to leaving shop as it was under Variation 158.
9. Drink establishment was included in the Territory Plan of 1993 and we ask that it be retained.
10. Restaurant is proposed in DVP 256 to have limited hours placed upon them. The requirement for closure by 11pm will make them unviable and this limitation should be amended to 12 midnight. The Friday and Saturday 1am limitation although not welcomed can probably be accommodated.
11. With Variation 158 the eastern side of Jardine Street become precinct 'a'. Several years ago, before Variation 158 commenced, the owner of Block 30 Section 22 applied to extend his building however the Commissioner for Land and Planning was unable to finalise the approval as the then precinct 'b' prevented full site coverage of two storeys. This was the case even though all other buildings except that on Block 32 and the Post Office had full site coverage of two storeys. DVP 158 was progressed to finalisation so that the area became precinct 'a' which would thus allow the two storey extension.

RE: Draft Variation to the Territory Plan No. 256

DVP 256 proposes to revert the area in question back to precinct 'b', if this were to have the effect of no longer allowing full site coverage extensions on Blocks 30 and 32 then it is requested that this aspect be altered to allow any extensions. The owners of Block 30 approval for their extension has apparently lapsed for a number of reasons but they are wishing to reinstate it. The owners of Block 32 would also like to be accorded the same ability to extend as all the other property owners have already done so.

As we discussed at our meeting last week the commercial lessees have met with representatives of the residents group to seek a more holistic resolution to this matter. This process has not been able to be progressed further due to the steadfast attitude of a few individuals on the residents side. Further consultation, facilitated by ACTPLA, to assess real community feelings rather than those of a vocal minority would provide useful input to your deliberations. The commercial lessees would be happy to participate in any such process.

Should you have any queries on any of the above or require any further information please call me at any time on 6232 2727.

Yours faithfully

TONY ADAMS

24 March 2005

The Manager
Territory Plan Coordination Section
ACT Planning and Land Authority
GPO Box 1908
CANBERRA ACT 2601

Dear Sir/Madam,

**RE: DRAFT VARIATION TO THE TERRITORY PLAN 256
KINGSTON GROUP CENTRE, SECTION 22**

We have been engaged by the commercial Crown Lessees of Section 22 (Blocks 21, 22, 25 – 32) Kingston to provide a submission to ACTPLA regarding the above Draft Variation to the Territory Plan. We contend that this Draft Variation, in its current form, will have a significant detrimental impact on all commercial lessees located within Section 22 Kingston. We provide the following comments for your consideration:

1. Draft Variation 158 was initially released for public comment in April 2000 and was common to all 17 Group Centres in the ACT. After extensive public consultation with all affected parties (residential and commercial crown lessees) Variation 158 was adopted and commenced on 13 June 2002.

Variation 158 represented a good example of a sound and rigorous town planning approach. It was well researched and publicised. Importantly, it created consistency among the Group Centres with similar provisions applying to all.

Draft Variation 256 is a “spot rezoning”; it sets up site specific and complex rules which will be difficult to administer and are confined to this site only. The introduction of “spot rezonings” to an otherwise robust planning scheme is generally regarded as poor planning practice.

2. Draft Variation 256 commenced interim effect on 3 March 2005. It is apparent from the DVP documents that substantial consultation was undertaken with residential lessees (only) prior to publication of the draft. The commercial lessees have a major interest and are seriously disadvantaged by the variation. The one sided consultation process appears prejudicial to their interests. It is contrary to the requirements of the “ACT Government Consultation Protocol” published by the Chief Minister’s Department for use by ACT Government agencies. The protocol includes the following:

“The first step in determining who needs to be involved in a particular consultation is to identify who will be affected by the outcome of any resulting decisions.”

We request that you meet with us and representatives of the Section 22 Traders at the earliest opportunity. We understand that the residents of Section 22 have had the opportunity of discussing their concerns with the Minister for Planning, Mr Corbell. We will be seeking a meeting with the Minister also.

3. The reasons for the proposed variation include reference to two recent applications. These applications involved adding permissible uses to the purpose clause of the crown leases. Both applications now have approvals in place. In both cases the Administrative Appeals Tribunal has found that, with appropriate conditions imposed, all impacts and issues raised by objectors have been adequately addressed.

Conditions imposed by the Administrative Appeals Tribunal on both decisions will work and similar conditions on future approvals would safeguard residents.

Citing these two applications to support a change to the Plan is illogical (unless one considers that the Administrative Appeals Tribunal decisions were flawed which is not the case). The fact that the cases were controversial is immaterial. In reality the outcome of these two cases should support the status quo. At the very least the Authority should allow some time to elapse to test the effectiveness of the Administrative Appeals Tribunal imposed conditions before making a decision on the need to vary the Plan.

4. Developments to properties in Section 22 should not be singled out for increased car parking and traffic problems in the Kingston precinct. The residents proximity to Kingston means that they are likely to be impacted by any developments in the Kingston precinct and indeed by developments at the Kingston Foreshore. Accordingly the only valid concerns of residents adjacent to Section 22 commercial properties are potential noise impacts from new developments.

5. The suite of permissible uses in Section 22 has remained virtually unchanged for many years (see attached table). Contrary to the residents belief, Variation 158 did not open up an array of new high impact uses. The residential developments in Section 22 are relatively recent. The commercial establishments are long standing. It is reasonable to assume that all of the residents could (and should) have made themselves aware of the range of commercial activity that could occur in the Section when they made a decision to purchase a residential unit adjacent to commercial businesses. For them to now complain about the impacts (if indeed there are any) of the commercial activity and seek to have it constrained is unreasonable. This variation summarily removes long standing development rights from the commercial leases.
6. Extensive improvements (including a current development application) to improve the amenity of Green Square have recently been undertaken at significant public expense. These improvements focus on enlivening both sides of Jardine Street to create a cosmopolitan, lively and safe inner urban environment. This necessarily includes active night time uses on the north side of Jardine Street. The effect of Draft Variation 256 will be to create a “dead” frontage along Jardine Street at night. This is contrary to good urban design and community safety design principles.

The “ACT Crime Prevention and Urban Design Resource Manual” (ACT Government Guideline, adopted formally under the Territory Plan) provides the following objective which is relevant here:

“.....create a mix of uses (such as restaurants, businesses and shops which open at night and after hours) which promote round the clock surveillance and are compatible with neighbouring uses such as residential areas.”

The mix of uses is clearly considered to be beneficial and the potential compatibility of residential and commercial uses is recognised (this was supported by the Administrative Appeals Tribunal decisions discussed above).

7. The proposed limitation on the range of shops (limited to arts, crafts and sculpture dealers and personal services) is difficult to understand. A wide array of shop types could be installed in the Section 22 premises with no possible external impacts. For example, a book shop. This limitation should be removed.
8. The limitation on restaurant opening hours is unnecessarily onerous. Most restaurants do not operate much beyond the stated hours in any case, but the imposition of a requirement that a restaurateur must ask his patrons to leave at a particular time is very bad for business and would make these establishments non competitive. In any case the range of controls under the Environment Protection Act relating to noise impacts and conditions such as those imposed on the existing approvals will ensure that there are no off site impacts from restaurant operations.

In summary, we believe that the Draft Variation does not reflect sound planning practices, will have serious impacts on commercial lessees by constraining the range of uses available to them (and thus reducing their property values), is illogical and unnecessary in light of the recent Administrative Appeals Tribunal decisions, and is inequitable in its impact on the commercial lessees.

We would be happy to discuss the above comments with you and in this regard please contact me on 6232 2727.

Yours faithfully

TONY ADAMS

CC: Mr Simon Corbell, Minister for Planning

Purposes for which land may be used Section 22 Kingston			
Land use	Territory Plan as first published in 1993	Following Variation 158 24/06/2002	Under Draft Variation 256 03/03/2005
Ancillary use		Yes	Yes
Business agency	Yes	Yes*	Yes*
Car park	Yes	Yes	Yes
Child care centre	Yes	Yes**	Yes**
Civic administration		Yes	Yes
Club	Yes	Yes	
Commercial accommodation unit		Yes***	Yes***
Community activity centre		Yes**	Yes**
Community theatre	Yes	Yes**	Yes**
Craft workshop		Yes	Yes
Communications facility		Yes	Yes
Cultural facility	Yes	Yes**	Yes**
Drink establishment	Yes	Yes	
Educational establishment	Yes	Yes**	Yes**
Emergency services facility		Yes	Yes
Financial establishment	Yes	Yes*	Yes*
Funeral parlour		Yes	Yes
Guest house	Yes	Yes***	Yes***
Health facility	Yes	Yes**	Yes**
Hospital		Yes**	Yes**
Hotel	Yes	Yes***	Yes***
Indoor entertainment facility	Yes	Yes	
Indoor recreation facility	Yes	Yes	
Light industry		Yes	Yes
Motel		Yes***	Yes***
Office	Yes	Yes*	Yes*
Outdoor recreation		Yes	Yes
Parkland		Yes	Yes
Pedestrian plaza	Yes	Yes	Yes
Personal services	Yes	Yes (included in Shop)	Yes (included in Shop)
Place of assembly		Yes	Yes
Place of worship		Yes**	Yes**
Public agency	Yes	Yes*	Yes*
Public transport facility		Yes	Yes
Recyclable materials collection		Yes	Yes
Religious associated use		Yes**	Yes**
Residential use	Yes	Yes	Yes
Restaurant		Yes	Yes - subject to limitation on opening hours
Service station		Yes	
Shop	Yes	Yes	Limited to arts, crafts, sculpture dealers and personal services
Temporary use		Yes	Yes
Tourist facility		Yes	
Veterinary hospital		Yes	Yes

*included in Non Retail Commercial Use ** Included in Community Use *** included in commercial accommodation use