

Customer Service Centre
Environment and Planning Directorate
PO Box 365
Mitchell ACT 2911

OBJECTIONS TO AND SUBMISSIONS IN RELATION TO DEVELOPMENT APPLICATION 201630073 – BLOCK 9 OF SECTION 19 FORREST

The following objections and submission in respect of this DA have, for ease of referencing in decision documentation, been grouped into Parts A and B.

- I recognise that the Part A submissions may need to be addressed through a pathway that falls outside the current DA assessment process. However, given the relevance and importance of the matters these submissions address with regard to this DA, I ask that Environment and Planning nonetheless responds substantively to my Part A submissions and provides me with the reasoning that underlies that response. I also request that the formal EPD decision document in respect of this DA public submissions process does not ignore but specifically refers to how EPD has dealt with my Part A submissions.
- Irrespective of EPD's consideration of Part A, I wish my Part B objections and submissions set out below to be considered through the usual public consultation process. That is, the Part B objections and submissions are not made contingent on the consideration or outcome of the Part A submissions.

Part A

Submission A1

I submit that consideration of DA 201630073 be suspended pending the conduct of another community consultation process by the applicant. The consultations that were undertaken were both limited and misleading and thereby flawed. These failures were of a magnitude that constitutes a denial of procedural fairness to those Forrest residents who would be adversely impacted by the subject development application.

Submission A2

I submit that if the EPD does not suspend consideration of this DA, the time allowed for representations to be made in respect of DA 201630073 be extended and that the required public consultation notices be reissued providing a new submission date. The public notification period should only commence when technical difficulties in the operation of the EPD website have been resolved as its current functionality is flawed to such a degree as to constitute a denial of procedural fairness to those wishing to make substantive submissions in respect of this development application.

In support of these submissions, I draw your attention to the following.

Inadequate letterbox drop coverage

The applicant's submitted community consultation written notice has ticked the letter box drop and the applicant's Planning Report (5.2) also refers to a letterbox drop 'of the surrounding neighbourhood'. On 30 August 2016 I attended the inaugural meeting of the Forrest Residents Group held at the Italian Cultural Centre (located adjacent to the proposed development) at which I raised this DA. Of the 80 (eighty) meeting attendees, only 2 (two) of us had received the letter box drop. Residents in the same Section as the proposed development had not receive the note.

In light of this totally inadequate level of pre-development consultation, the inaugural meeting carried a motion without dissent, to call on EPD to suspend consideration of this DA until a credible pre-lodgement consultation process is conducted. However, given the time constraints of this DA process and the fact that the inaugural meeting has as yet nominated only a steering committee to formally establish the Forrest Residents Group, this new body may not be able to support my submission in the allowed time.

I advised the inaugural meeting that in any event I would reference the motion it carried in my own submission.

Misleading and incomplete information

The letterbox note from Elton Consulting states that the '*proposed hotel building is consistent with the relevant Territory rules and criteria.*' Clearly it is not. Most notably, it fails to meet CZ6 rule 18.1 with regard to building height and rule 18.2 in regard to setback. Further, the building will only meet the relevant criteria to allow a departure from those rules if EPD agrees with the arguments in support of this contention made by the applicant.

The letterbox drop note claims the development would have a minimal impact on adjoining properties but does not reveal that the proposal is in fact for a development consisting of 227 rooms, a 100 seat restaurant, a 500 seat function room and a 297 space car park (as detailed in the Traffic Engineering Assessment document).

The applicant's community consultation written notice has ticked the community meeting box (noted as having been held 11 August 2016) and the Planning Report (5.2) states that '*a meeting was also held with a number of residents of adjacent and nearby properties at which the draft plans were presented, reviewed and discussed*'. For the applicant to represent this meeting at my home as community consultation is to mislead EPD.

The only reason the 11 August meeting was held was because, on my own initiative, I had approached the Capital Hotel Group in April seeking discussions prior to any formal community consultations. The only attendees at the 11 August meeting with Elton Consulting were myself and my neighbour. The only outcome of the meeting was that we were shown (but not allowed to keep) plans for the proposed development in the form that they were to be submitted.

This was not consultation and it is misleading to claim it was. It was simply notification. It is important to note that Elton Consulting told me in writing that agreeing to meet with us was '*an optional extra exercise*' and also told me that '*We are not obliged to meet with you, I am undertaking it as an extra exercise.*'

This cursory approach was also evident in the letterbox drop flyer which did not make any reference to a proposed meeting – quite the opposite. The flyer stated that *'This notification to you meets the EPD's requirements for pre-DA community consultation.'*

EPD website failure

On receipt of the EPD notification of this DA I searched for and could not locate it on the EPD website. I subsequently emailed EPD customer services on 30 August and by return email was advised of the website problems EPD was experiencing and was sent a link to the temporary web location where I could view this DA. At this temporary web location the applications are not listed in suburb order.

I discovered that the subject DA is spread over five (5) zipped files that need to be opened individually. The DA itself consists of a total of seventy seven (77) individual documents which are not presented in any sort of logical order that I can ascertain.

In order to construct a complete and relevant submission, I went to the Challis St customer service centre on 2 September and sought assistance from staff to make some sense of the 77 documents and their hierarchy. The staff were very helpful and copied a number of these 77 documents onto a disc for me to assist in making my submission.

During this process I learned that the submitted Planning Report in zipped folder 4 is not an essential document but that the attachments to it (Statements Against Criteria) that the Report refers to are essential. However, these attachments are not in fact included with the Planning Report document in zipped folder 4 but are located as separate documents in zipped folder 3. Further, the pivotal Statement Against Criteria that relates to the Commercial Zones Development Code is, on the second page of that document, incorrectly titled Forrest Precinct Code.

As of 5 September, the EPD technical website problems remain unresolved. I submit it is currently extremely challenging for anyone wishing to comment on this DA to make reasonable sense of it from the EPD website. This amounts to a significant impediment to the fair and proper conduct of the public notification process for a substantial DA that is likely to impact a large number of residents.

Summary

Even if it can be demonstrated that the applicant has technically complied with the prescribed pre-application process, they have not fulfilled its intent, they have made serious omissions of relevant information and made misleading statements in regard to this DA.

This is a large DA adjoining a residential area (including aged persons units directly facing the site). The omissions and failings I have outlined above are of a magnitude sufficient to render the process invalid to such an extent that it needs to be restarted to ensure procedural fairness for potentially impacted residents.

The significant on-going technical problems with the EPD website as detailed above are so bad as to invalidate the current public notification process. That these technical problems coincide with a deeply flawed pre-DA lodgement process as also detailed above is unfortunate and disturbing.

Prudence suggests that both the pre DA consultation process and the post lodgement comments process should both start again.

Part B

In response to the notice of Development Application dated 26 August 2016 sent to me I make the following objections and submissions based on the relevant zone objectives rules and criteria against which this application will be assessed.

Please note that my comments are not made by way of simply providing an academic assessment for its own sake of the strength of this DA. Whilst referencing rules, criteria and other documentation in a detailed way, I have done so because this DA impacts directly and detrimentally on me, my immediate neighbours and other Forrest residents.

Objection B1 – failure to meet CZ6 Zone Objective (d)

In this location, a seven storey 227 room development incorporating a 500 seat function room, 100 seat restaurant and a 297 space car park cannot protect the amenity of nearby residences with regard to noise, traffic, parking and privacy.

These residences start immediately across the street (Dominion Cct) from the development site. They are already suffering extreme parking pressure with Dominion Cct and adjacent streets being used heavily for business hours parking by public service staff and other employees. The traffic loads in Dominion Cct are already such that for road safety considerations, during business hours parking is restricted to one side of the road. To add exit traffic from a 297 space car park onto Dominion Cct is to unacceptably compromise the amenity of residents because of the noise and traffic load that would be generated.

Not all visitors to the hotel facilities such as the 100 seat restaurant and 500 seat function room will be willing to pay for on-site parking and this will thus increase street parking pressure and traffic movements. During business hours, visitors to our home already have great difficulty parking if our driveway is already occupied. In summary, our street parking amenity has already been severely compromised and should be protected from any further adverse impact that the proposed development would inevitably cause.

A hotel of 227 rooms cannot but generate noise. The 500 seat function room is located on the ground floor and directly faces Dominion Cct residences with no built form barrier to limit noise. The proposed car park exit driveway onto Dominion Cct is directly opposite an aged persons complex restricted to residents who are over the age of sixty. Vehicle headlights from cars leaving the hotel will shine directly into the lounge rooms of these residents with unacceptable privacy and noise impact.

Objection B2 – failure to meet CZ6 Zone Objective (f)

The surrounding landscape is predominantly low rise (no more than two storey), low bulk and of a modest scale and size. It includes a mixture of single and two storey housing, an aged persons complex, a modest cultural centre building, motel, a small church, tennis courts and a bowling club. The applicant's Design Report clearly illustrates this building context. A seven storey building in that setting cannot by any stretch of the imagination be considered compatible with these surrounds. Compatibility with the surrounding landscape overwhelmingly suggests a two storey building which CZ6 Rule57 prescribes.

In commenting on the surrounding landscape, the applicant has, in his Statement Against Criteria, referenced the four storey Doris Blackburn building, the rear of which is on Franklin St opposite the development site and with frontage to Canberra Ave. To make a reference to this building in support of the proposed development is not appropriate. Buildings with frontage to Canberra Ave

are subject to NCA planning requirements and the specific NCA policies that relate to major approach routes to the capital, of which Canberra Ave is one. The building policies of the NCA are specifically targeted and should not be used to inform building outcomes in areas that are outside its control – such as this DA.

Objection B3 – failure to comply with CZ6 Rule57 and to meet associated Criteria57 (a)

Rule 57 specifies the maximum number of stories is 2. The proposal is for 7 storeys plus additional height for mechanical services and other equipment. While this is not counted as a storey, it nonetheless would exist and visibly amount to an 8th storey.

The associated criteria that would allow for a relaxation of the rules is also not met by this proposal. Criteria C57 (a) which requires the proposed development to be consistent with the defined term ‘*desired character*’ translates into it having to be consistent with the relevant zone objectives.

My submissions above under the Objection B1 and B2 headings detail how the proposed development fails to achieve consistency with desired character because it fails to meet CZ6 Zone Objectives (d) and (f). I refer EPD to these submissions.

As this proposed development is in a Section that includes residences and also faces residences directly across the street from it, I further submit that it is not sufficient for the proposal to meet most zone objectives but not meet (d) and (f). In a residential setting such as the one here, it is critical that (d) and (f) are met. This is not a proposed development in a group centre we are talking about here. As already pointed out, there are aged persons units and other private residences directly across the street from the development site and residences in the same Section.

In seeking to demonstrate that the proposed development meets C57 (a), the applicant in his statement against criteria responses makes a number of statements that do not support that contention for the following reasons.

- The applicant references the *Forrest Neighbourhood Plan* (and provides more detail on this reference at 4.3 of the Planning Report). The applicant endorses the neighbourhood plan’s vision of respecting Forrest’s rich garden suburb legacy and the conservation and enhancement of its ‘garden suburb’ streetscape character. It would take considerable mental gymnastics to argue convincingly that a seven storey hotel (with either curved or linear facades) would be consistent with a rich garden suburb legacy.
- The applicant states that the generous street setbacks are consistent with the garden suburb character of the area but fails to mention that in a number of places impacting on residences directly opposite the site, the proposed development in fact breaches the six meter minimum setback. This is clearly illustrated in the submitted non-compliance diagrams. These breaches are not consistent with the surrounding landscape and do not protect the amenity of nearby residential areas.
- The applicant references the height of buildings facing Canberra Ave in support of its own seven storey proposal, which is both mischievous and unprofessional. As outlined under the B2 heading above, it is not appropriate to use NCA approach route policies as justification for the height of buildings in areas outside NCA planning controls.

Objection B3 – failure to comply with CZ6 Rule57 and to meet associated Criteria57 (b)

This DA has a totally unacceptable detrimental impact on the solar access currently available to my residence at 22 Dominion Cct and to the aged persons units at 20 Dominion Cct. This impact relates to both the dwellings and the associated private open space.

The shadow diagrams for afternoon solar access on 21 June show overshadowing to my enclosed private courtyard at the side of our house (22 Dominion) at the very time of day and time of year when we would want sunlight to reach our private open space.

These same shadow diagrams show the same loss of sunlight to the front enclosed courtyards of the aged persons units at 20 Dominion. The configuration of these units is such that all their private open space is located only at the front of the dwellings. As a consequence residents would lose solar access at the very time of day and time of year when they would want sunlight to reach their only available private open space.

These impacts arise as a result of the proposed development not meeting Rule57 and Rule58. There is no rationale based on site constraints or other factors that would justify any overshadowing impact on residences in Dominion Cct. The shadowing is a direct result of a proposed building of seven stories when the rule sets a maximum height of two and also of an encroachment of the building setback to three meters when the rule specifies a minimum of six. The applicant has in their statement against criteria failed to advance any reasonable argument to justify overshadowing.

Objection B4 – failure to comply with CZ6 Rule58 and to meet associated Criteria58 (a)

The submitted building non-compliance plan shows two setback encroachments to Dominion Cct each of three meters. One wing of the seven storey building encroaches the required setback directly in front of my residence at 22 Dominion and the 500 seat function room encroaches the setback directly opposite the residence at 24 Dominion.

This proposal does not meet the desired character criteria C58 (a) by virtue of the fact that it fails to comply with CZ6 zone objectives (d) and (f). My comments above under the Objection B1 and B2 headings provide further detail on why the proposal fails to meet the desired character objectives.

Objection B5 – failure to comply with CZ6 Rule58 and to meet associated Criteria58 (b)

The proposed hotel is of a scale that is totally inappropriate adjacent to residences and it is not in keeping with the garden character of the suburb and the surrounding streetscape. I refer EPD to my detailed comments in this regard under the Objection B3 heading.

The primary function for which the building will be used is accommodation and this does not in any way justify encroaching on the prescribed minimum setback, such as might be the case in another setting e.g. in a group centre where street access was sought for a restaurant or the like.

Similarly, the encroachment of the 500 seat function room on the minimum setback is totally unacceptable. If anything, logic would dictate that in terms of building function and use, the proposed location of a function room directly opposite residences, mandates a greater minimum setback than provide for in rule58, not an encroachment on that minimum setback.

Objection B6 – failure to comply with CZ6 Rule58 and to meet associated Criteria58 (c)

The proposal fails to meet criteria (c) as it creates unacceptable overshadowing as detailed under Objection B3 above and is of an excessive scale as outlined in Objections B1, B2 and B3. Seven storeys, 227 rooms and 297 car spaces in a garden suburb setting is clearly a building of excessive scale and thus the proposal fails to satisfy criteria58 (c).

The applicant has both in its statement against criteria responses to C58 and also at 6.6.2 of its Planning Report submitted that the building's curved façades make it consistent with the desired character and compatible with the existing streetscape. I submit that a seven storey building with curved walls is just as high as a straight walled seven storey building. Curved walls do not make the proposed building compatible with a garden setting or the existing streetscape.

The applicant also suggests that generous setbacks for parts of the building compensate for the proposed boundary encroachments. However, these generous setbacks are to enhance the views from hotel rooms as detailed in the submitted Design Report. Residents in Dominion Cct would not receive the benefit of these enhanced vistas but would suffer detriment and loss of amenity by the setback encroachments.

Objection B7 – failure to comply with 3.4.1 (a) and (b) of the Parking and Vehicular Access General Code

Elton Consulting originally advised me that vehicle ingress and egress for the hotel development was proposed to be located on Franklin St which I agreed was the best outcome. Elton subsequently advise me that TaMS required the design to incorporate the car park exit onto Dominion Cct (as per the lodged plans) which I consider illogical and unsafe.

I submit that TaMS should revisit this requirement as it constitutes an error of judgement that has both amenity and safety impacts, both for road users and pedestrians. Dominion Cct runs between two schools – Forrest Primary and Telopea Park School which generate school related pedestrian traffic at school times in this vicinity. Increased vehicle loads in Dominion Cct would raise the risk for pedestrians including children crossing this street.

All vehicles exiting the hotel car park would be doing so directly opposite the aged persons residences at 20 Dominion Cct. Apart from the noise throughout the day and evening, the impact of this arrangement this would have car headlights panoramically shining into the living rooms of aged residents as vehicles exit the hotel basement. If this is not an unacceptable impact on the amenity currently enjoyed by these residents as per 3.4.1 (a) I don't know what is.

As a resident of Dominion Cct for in excess of 20 years I am familiar with the reality of traffic movements in the street at all times of day and night. The street parking pressure during business hours generated by new office developments led to parking being restricted to one side of the street. This was done to mitigate the collision risks of residents having impeded views of traffic when exiting their driveways. While mitigating that problem, the parking restriction to one side of Dominion has made it a clearway (and all too often a speedway) for vehicles travelling between Canberra Ave, Hobart and Melbourne Avenues and beyond.

As vehicles in Dominion Cct travel at some considerable speed in both directions, to add hotel car park departure movements to this stream is unsafe and unwise. . Whatever the underlying thinking of TaMS was, directing hotel exit traffic onto Dominion Cct would create an unacceptable safety hazard as defined in 3.4.1 (b) of the Code.

Objection B8 - failure to comply with C1 (i) and (ii) of the Lease Variation General Code

The application to vary the lease purpose to include a hotel is inextricably linked to this specific DA which proposes a seven storey hotel. It is not a request for a lease variation made in general terms. The application has failed to comply with the rules and criteria of the Commercial Zones Development Code as detailed above and therefore failed to establish a case for a lease variation to be granted in support of this specific proposal as per C1 (i).

The land must be suitable for the proposed varied use in accordance with section 120 of the *Planning and Development Act 2007*. While the subject land is suitable for a development that complies with Rules 18.1 and 18.2 of the Commercial Zones Development Code, it is not, for the reasons outlined throughout this submission, suitable for a seven storey hotel and therefore the requirements of C1 (ii) of the variation code are not met.

Submission B9 – landscaping in front of ground floor function room

The landscape plans for this development show only low plantings in front of the 500 seat function room. As this room is on the ground floor and directly faces houses across the street there is a serious issue of loss of amenity and privacy for residents. The submitted landscape plans also show stair access and a pathway to the function room doors on the Dominion Cct boundary with no screening.

I submit that the approved landscape plan should be altered so as to mandate dense vegetation plantings of sufficient height to screen the function room from residences directly across the road from it.

Submission B10 – noise management plan

The noise management plan accompanying the DA refers to noise emanating from entertainment areas of the hotel and methods to reduce that noise to acceptable levels through the use of appropriate glazing and the proper installation of that glazing (3.3.1 and 3.3.2). However, the report goes on to canvass at 3.3.3 alternative approaches that rely on hotel personnel to manage music noise levels so as to allow less effective glazing to be used. This is an unacceptable and unreliable approach to a problem which is inherent to a function room that will be used for years to come for balls, weddings and the like.

I submit that the approved building design specifically requires the use of sound reducing glazing as the means of ensuring prescribed noise emission levels are met. I also submit that plant room noise discussed at 3.3.4 be subject to the detailed review foreshadowed in that section of the report to ensure it complies with ACT zone noise standards.

Submission B11 – Traffic Engineering Assessment

The submitted traffic report, whilst comprehensive, raises a number of issues that are not satisfactorily resolved.

Despite statements to the contrary in 3.1, there are no posted 50km speed limit signs in either Franklin St or Dominion Cct. Despite a contrary claim in 3.1, business hours parking in Dominion is limited to one side of the street to mitigate already existing hazards for residents exiting their properties.

Section 4.1.3 of the report notes the unsatisfactory operation of the nearby Canberra Ave and Franklin St intersection during the AM peak and at 9 (b) states that this will continue under post-development conditions. The unsound logic appears to be that in the morning peak, this intersection is already bad so it doesn't really matter if we add to the load.

At Section 5.2 the report states that there are expected to be no impacts for on-street parking as the hotel basement car parks can accommodate the expected extra vehicles generated by the facilities in use. This is to totally ignore the reality that not all hotel users will be prepared to pay for on-site parking and will seek to use free street parking where possible – as happens already

with office employees in the immediate area. For the report to fail to address this actuality is significant.

The report also fails to make any reference to the safety implications of directing hotel exit traffic onto Dominion Cct in circumstances where during business hours the hotel side of the street is fully parked out.

I submit that the above deficiencies in the traffic report and the previously detailed (in Objection B7) hazards and adverse amenity impact of locating the hotel vehicular exit on Dominion Cct are significant. As a consequence, this DA should be again referred to TaMS to review and determine a more acceptable traffic movement solution as part of any redevelopment on this site.

Summary

The proposed hotel is of proportions that are totally out of keeping with its setting that would result in a severe and inexcusably detrimental impact on nearby residents. Put simply, it's the wrong development in the wrong place.

The design of this proposed development may in principle be attractive to EPD on architectural or other grounds, but as I think any reasonable person would conclude after considering the above objections and submissions, this DA is not suited to the location in which it is proposed.

Apart from failing to satisfy both the rules and criteria of a number of codes, it fails the overarching requirement of suitability of the land for a development of the kind proposed (as set out in Section 120 of the *Planning and Development Act 2007*). Its bulk, scale and height do not fit into a garden suburb setting.

The Commercial Zone Development Code has rules which are there for a reason. I suggest that a Development Application that adhered to those rules would in all probability withstand scrutiny. As it is, the proposal is for a development that might suit a group or town centre, but is totally unsuitable in the current location. A seven storey 227 room hotel in a garden suburb, located directly across the street from aged persons units and other private residences is not good land use management. It would result in a gross detrimental impact on amenity for nearby residents.

A curved-wall building of seven storeys is as tall as a straight-walled one. It does not somehow disappear into the landscape. To propose such a building is an unjustifiable and unsupportable attempt to depart from the rule that stipulates two storeys. This DA fails to meet the criteria for any relaxation of the rule limiting the number of storeys to two.

This DA also inappropriately seeks to employ the principle that building heights for developments facing Canberra Ave (where NCA planning rules are applicable), can be used as a benchmark for the same heights to apply to development in areas not subject to NCA controls. As already pointed out above, this approach is mischievous and unprofessional.

Alex Morozow
5 September 2016
22 Dominion Cirt.
Forrest ACT 2603