

Johnston, HeatherG

From: smartforms@act.gov.au
Sent: Thursday, 24 May 2018 3:30 PM
To: EPD, Customer Services
Subject: DA201733142 - REPRESENTATION - [REDACTED]
Attachments: 99125120180524150606.xml; 99125120180524150606.pdf; (signed orig) [REDACTED] response to da 23.5.18.pdf

Representation for Current Development Application

Form data summary

Customer name	[REDACTED]
Reference code	47GGPM

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Representation for Current Development Application - submission confirmation

Your submission has been successful. Please keep a copy of this receipt for your records.

Date and time

24 May 2018 3:28:33 PM

Reference code

47GGPM

Thank you for your representation regarding development application number: DA201733142

The issues raised in your submission will be taken into consideration during the assessment of the development application and you will be notified in writing once a decision has been made.

Section 156(2) of the *Planning and Development Act 2007* states that a representation about a development application must be made during the public consultation period for the application. If your representation was made outside the public consultation period it cannot be considered during the assessment of the application.

Please Note: A copy of your representation will be forwarded to the development application applicant and can be released to the public only on request, unless you have requested and been granted an exemption.

Access Canberra
Environment and Planning Directorate

GPO Box 158
Canberra City ACT 2601

Telephone: (02) 6207 1923

Representor details

Title

Given name *

Family name *

Organisation name

Home phone number

Work phone number

Mobile number

Email address *

Development details

Site details

Development application number *

DA

Suburb/District *

Section *

Block *

Unit

If you require help with suburb/district, section or block details, visit [ACTMAPi](#).

Representation

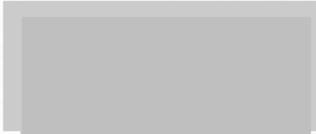
Provide the details of your representation *

Please see attached letter of in support of my objection to DA No. 201733142.

You may upload any additional supporting documentation or photos.

File: (SIGNED ORIG) Response to DA 23.5.18.pdf

[Click here for more information on applying for exemption from the public register.](#)



23 May 2018

The Director,
Environment, Planning and Sustainable Development
Directorate
Customer Service Centre
16 Challis Street,
Dickson, ACT
Via Registered Post

And also to:
Environment, Planning and Sustainable Development
Directorate
PO Box 365
Mitchell, ACT 2911
Email: epdcustomerservices@act.gov.au

**Re: Single Dwelling Development Application 201733142
Proposal for Fence and additions to residence –
Construction of a security office, new security fence located along the
perimeter and in front of the building line, new gate, pergola and associated
works.
Block: 20 Section: 16 Suburb: O'Malley- 12 Bulwarra Close, O'Malley**

I write to you as the owner of , O'Malley. I make objection to the **Single Dwelling Development Application 201733142** submitted in this matter which is open for public comment until COB 25 May 2018.

Firstly, I register my concern and disappointment that as the property owner of the neighbouring battle-axe block which abuts 12 Bulwarra Close, O'Malley your Department failed to inform me, or my Managing Agent that this Development Application was open for public comment.

Your office is already aware of significant concerns registered by home owners of Bulwarra Close, O'Malley regarding the Lessee and the occupants of 12 Bulwarra Close. Complaints from other residents of unapproved structures including non-regulation height front fence located forward of the building line and a security guard post, have been the subject of formal complaint. Moreover, the dangerous traffic conditions, congested parking and rubbish in the street are all issues which have arisen over the last three years due to the expansion of the Lessee's commercial tenant's business activities.

There has been no satisfactory resolution of these issues, despite formal complaints being lodged. It now appears that the Lessee, who undertook works without necessary planning approvals, is being given an opportunity to receive approval in retrospect. There has been no account given for the disruption to other owners, to

the negative impact on their properties, or any protection of their rights by applying relevant laws.

The Lessee now seeks to legitimise the unlawful and unapproved additions — that are for a commercial operation — he has already undertaken with respect to his residential property by seeking retrospective development approval under the Residential Zones Development Code; Single Dwelling Housing Development Code; Residential Boundary Fences General Code and Merit Track Assessment. There are no grounds to approve the Lessee's application under current ACT Government Rules and Regulations.

The additions he seeks are by their very nature, (construction of a security office, new security fence located along the perimeter and in front of the building line, new gate, pergola and associated works) are inconsistent with development for a residential house when its purpose under the Crown Lease is to house a family. Indeed, the Lessee's application indicates that Embassy business is the reason why he seeks these new construction measures for his residential property. The development is inconsistent with the use of purpose of the land. The Lessee has also failed to consider what is permitted under a Crown Lease for the site and, indeed, he has falsely asserted in his Application that the changes "**are**" consistent with the current Crown Lease.

The Lessee has further failed to consider the Planning and Development Act 2007; Planning and Development Regulation 2008; Common Boundaries Act 1981; The Tree Protection Act 2005 and the RZ1-Suburban Zone Objectives in his Application.

The Lessee is in breach of the Crown Lease. The property was neither built, nor approved for use as a Diplomatic residence or chancellery. Use of the property as commercial office accommodation is therefore prohibited. Breach occurs under **Australian Capital Territory Planning and Development Act 2007** Chapter 9, Leases & Licenses: Part 9.2 Grants of Leases Generally Sections 247 and 251.

The Lessee's Development Application No. 201733142 and supporting documentation is inconsistent, deliberately vague and contains false statements.

The Lessee's Development Application for "*proposed fencing with gate, security office and pergola*" is inconsistent with what you describe on your website which states: "*proposal for fence and additions to residence – construction of a security office, new security fence located along the perimeter and in front of the building line, new gate, pergola and associated works*".

1. In the Lessee's Statement Against Relevant Criteria (A) Single Dwelling Code, (page 3), I say as follows:
 - i) the Lessee has failed to answer the question at Element 2: Lease and development conditions Section 2.1 Approved lease and development conditions Rule 22, by stating "**not applicable — not proposed**";
 - ii) there is no mention of a "*security office*" in this document. However,

his Application dated 31 December 2017 states “*proposed fencing with gate, security office and pergola*”;

The “*security office*” appears on the Plans and Elevations attached to his application, however no approval is specifically sought under the **Planning and Development Regulation 2008**. Under this Regulation, the “*security office*” is deemed be a class 10a building under Schedule 1, Part 1.3 Division 1.3.2 Subdivision 1.3.2.2 and as such the Lessee is required to meet the requirements of this Regulation. Subsection 1.45 (3) states:

“...setback requirement, for a building in relation to a block, means (a) if the building has a plan area of not more than 10m² – the building is behind the building line for the block ...”

- iii) the Lessee is also in breach of Rule 3.2 Fencing – large blocks Rule 24 of the **Residential Zones – Single Dwelling Housing Development Code** where it states:

*“... walls or fencing are **not permitted forward** of the building line...”*). Criteria for this rule states that fences are to comply with the Residential Boundaries Fences General Code.

2. In the Lessee’s Statement Against Relevant Criteria (B) Residential Boundary Fences General Code (page 3), I say as follows:

- i) The Lessee is in breach of the **Residential Boundaries Fences General Code** Element 2: Building and Site Controls 2.1 Front Fences – All Blocks Rule 1 e) Item 2.7. He also acknowledges that the “**fencing stands at 2.4m**”;
- ii) The **Residential Boundaries Fences General Code** Part A – General Controls Element 2: Building and Site Controls Rule 2.1 Front Fences – All Blocks Rule 1 the states:

*“Front boundary walls or fencing are **not permitted forward** of the building line except as provided for in ... e) item 2.7 of this Code”.*
“This is a mandatory requirement. There are no merit criteria”

- iii) Item 2.7 Diplomatic Residences and Chancelleries under this Code provides that “*there is no rule applicable*”. Criteria 10 states:

*“where the **lease permits** a diplomatic residence or chancellery, fences can be located at the front boundary for security purposes when:*

- a) *Fences **do not exceed a height of 1.8m** above natural ground level;*
- b) *The selection of fence materials and plants ensure existing streetscape and neighbourhood character and context is retained”;*

- iv) The Lessee makes no provision in his Statement against the relevant criteria under this Code (page 4), Element 6: Environment Item 6.2 Trees Rule 14 to address the issue of the very large mature trees located on the right hand side boundary of his property and the Territory land easement. His supporting Plan-201733142-Fencing Layout-01; Site Plan 201733142-01 and Survey-201733142-Survey-01 provided do not show any trees located on the right hand side of his property's boundary.

I urge the ACT Government to reject the Lessee's Development Application No. 201733142 and take steps to enforce the existing Rules and Regulations based on the following:

- a) The current Crown Lease does not permit use of the property as a diplomatic residence or chancellery and as such this conduct/activity is unlawful;
- b) The fence and gate is unlawfully located forward of the property's building line;
- c) The fence and gate height is unlawful;
- d) The selection of fence materials is not in keeping with the existing streetscape and neighbourhood character. The fence certainly creates an unpleasant visual spectacle within Bulwarra Close. Other fences in Bulwarra Close and O'Malley are not over regulation height and do not contain security spikes that give a compound like feel to the fence and nature of the property;
- e) Any plans to continue the security fencing around the entire perimeter of 12 Bulwarra Close will impact the row of very large mature trees located along the right hand side of the property adjoining a Territory land easement. Under the **Tree Protection Act 2005 (Effective 10/11/17)** Part 2, Section 8 and Section 10(1) a, b, c, and d. These trees are deemed to be regulated trees;
- f) The Lessee has installed the over regulation height security fencing partially along my property's driveway boundary without consultation or my permission.
- g) The plan for continuing the security fencing around the perimeter of 12 Bulwarra Close will also affect the very large mature trees along the rear boundary of my battle-axe property (despite the existence of a perfectly serviceable colourbond fence of regulation) between the two properties. This will give rise to issues under the **Common Boundaries Act 1981 (effective 24/5/17)**;
- h) The security office (already installed) is an unapproved class 10a building located forward of the front building line. For which the Lessee has not sought approval for under the relevant **Planning and Development Regulation 2008 (effective 17/5/18)** in his application;
- i) We have suffered financial loss, due to the unlawful commercial activities being conducted at 12 Bulwarra Close. In 2017 we tried on two different occasions to market our property for sale, with two different Sales Agents

- both were unsuccessful. Adverse feedback was received by both agents about the traffic congestion, parking and unlawful structures.

The residential nature and streetscape has now been changed by the unlawful development and installation of commercial structures – (consistent with business operations) occurring at 12 Bulwarra Close. This is now causing a flow on effect to other owners in Bulwarra Close. Lack of enforcement by your Department of the Crown Lease provisions and other rules and regulations has resulted in this situation.

- j) There is no basis to the Lessee's application in the Merit Track – Development Single Dwelling Housing and the development is inconsistent and non-compliant with the relevant Codes and the Territory Plan. The type of development (which is commercial in nature) indicates and confirms that the property is being used for non-residential purposes. These sort of changes would not be necessary if the property was only being used as a residence. There are no provisions for the unlawful use of the property for commercial office accommodation under the Merit Track provisions.

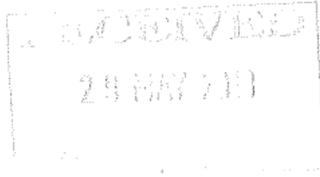
The impact of the commercial operations and activities occurring at the property are adversely affecting other home owners in Bulwarra Close. These are already well documented with Transport Canberra and City Services (TCCS) and other entities. Two parking consultation proposals have been conducted to address the issue of parking and road safety in Bulwarra Close.

Finally, I request that the Lessee of 12 Bulwarra Close be held to account for his flagrant disregard of the relevant ACT rules and regulations. These rules and regulations are in place so that everyone's interests are protected. The unauthorised works and the ongoing commercial activities at 12 Bulwarra Close must be rectified.

I look forward to your acknowledgement of receipt of this letter by return.

Yours faithfully

A large rectangular area of the document is redacted with a solid grey block, obscuring the signature and any text that might have been present below the signature line.



23 May 2018

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Environment, Planning and Sustainable Development
Directorate
Customer Service Centre
16 Challis Street,
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Via Registered Post

And also to:
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Directorate
PO Box 365
Mitchell, ACT 2911
Email: epdcustomerservices@act.gov.au

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Yours faithfully

A large rectangular grey box redacting the signature and name of the sender. Below it are two smaller grey boxes, likely redacting a title or contact information.

Johnston, HeatherG

From: smartforms@act.gov.au
Sent: Friday, 25 May 2018 4:52 PM
To: EPD, Customer Services
Subject: DA201733142 - REPRESENTATION - [REDACTED]
Attachments: 99125120180525161223.xml; 99125120180525161223.pdf; lcid_2198d29cab17f7499e30232b14d3e329@sct-15-20-755-16-msonline-outlook-4e338.png; lcid_bb0d2fe406f7ac47aeb409e3f0160a84@sct-15-20-755-16-msonline-outlook-4e338.png; filename-1.pdf

Representation for Current Development Application

Form data summary

Customer name	[REDACTED]
Reference code	JRTP78

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Date and time

25 May 2018 4:51:01 PM

Reference code

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Access Canberra
Environment and Planning Directorate

GPO Box 158
Canberra City ACT 2601

Telephone: (02) 6207 1923

Representor details

Title

Given name *

Family name *

Organisation name

Home phone number

Work phone number

Mobile number

Email address *

Development details

Site details

Development application number *

DA

Suburb/District *

Section *

Block *

Unit

If you require help with suburb/district, section or block details, visit [ACTMAPi](#).

Representation

Provide the details of your representation *

I am attaching a number of photos to show how the fence and proposed additional development at Number 12 Bulwarra Close O'Malley is NOT in keeping with the streetscape. No other property in our street or in Tinderry Crescent has a compound like structure like the illegal existing one at the property let alone the ridiculous thought to put this all around the property. We are the bush capital not the bush compound. I have also attached a photo of what the property looked like before the landlord installed the fence without DA approval or consultation with the neighbours.

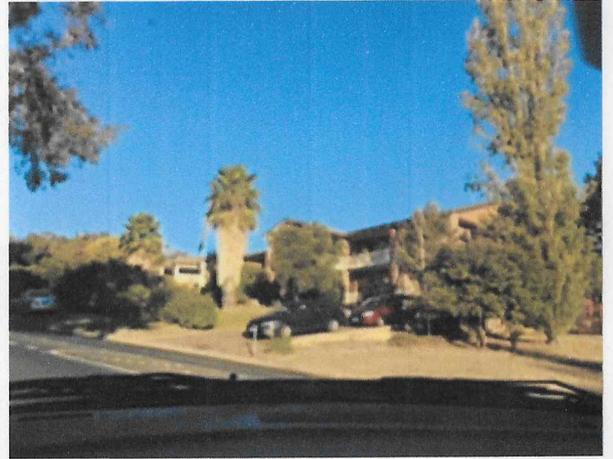
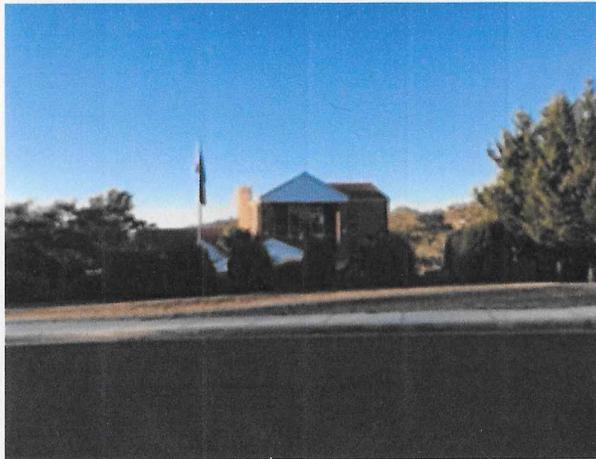
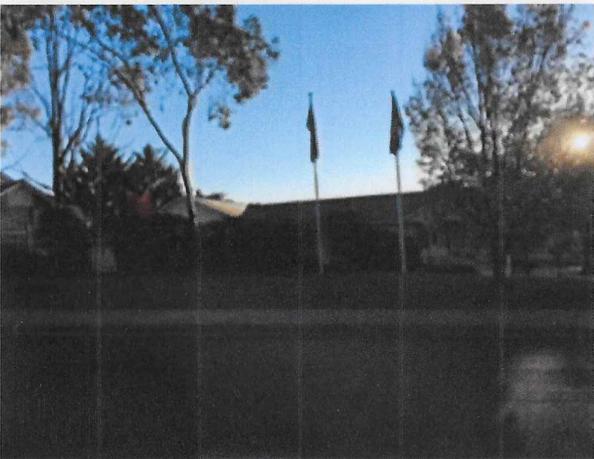
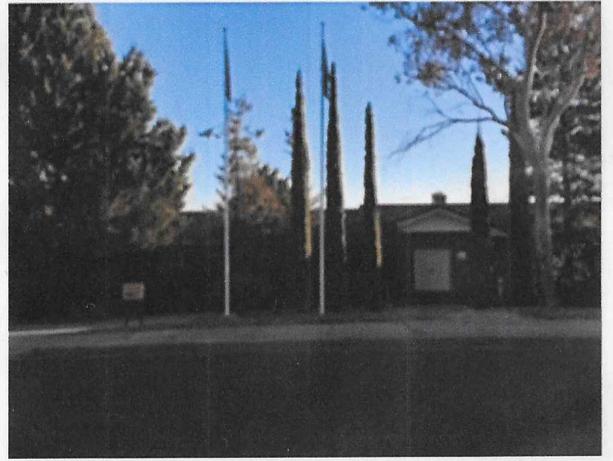
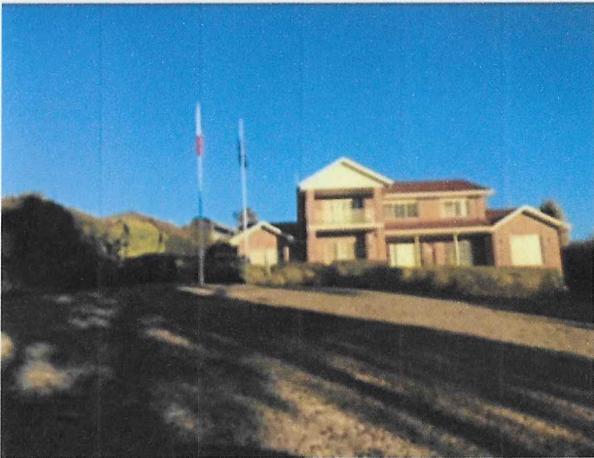
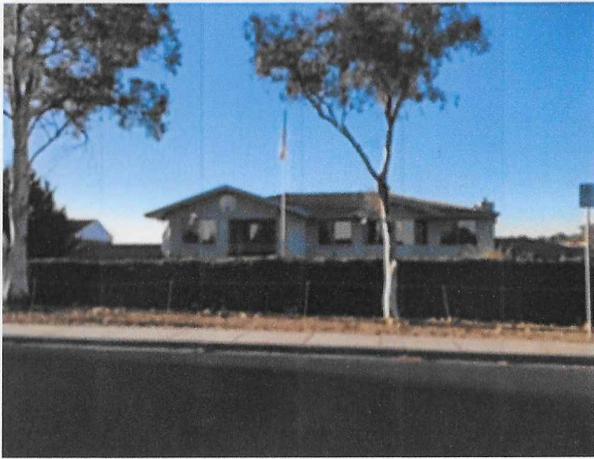
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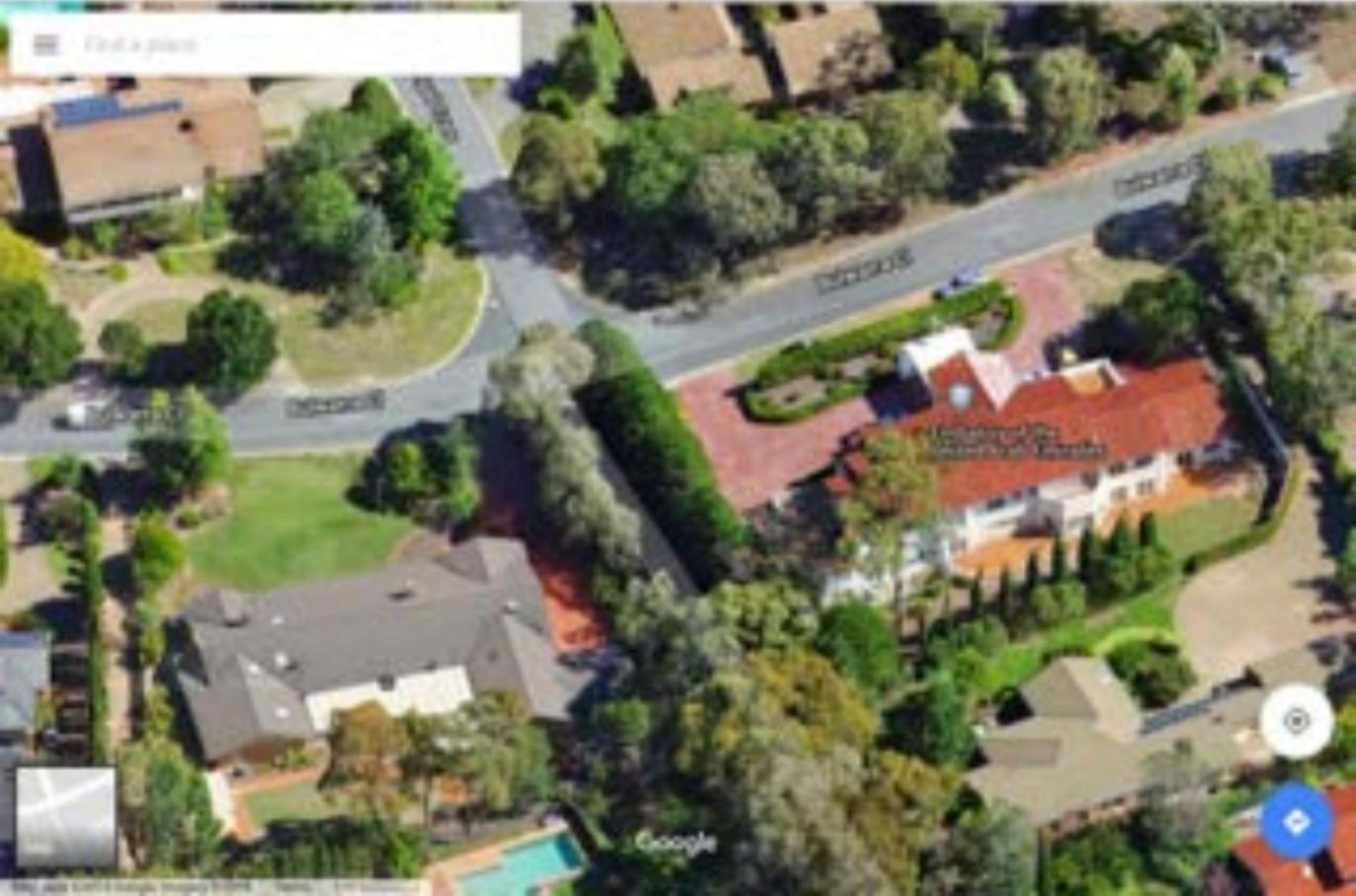
File: !cid_2198D29CAB17F7499E30232B14D3E329@sct-15-20-755-16-msonline-outlook-4e338.png

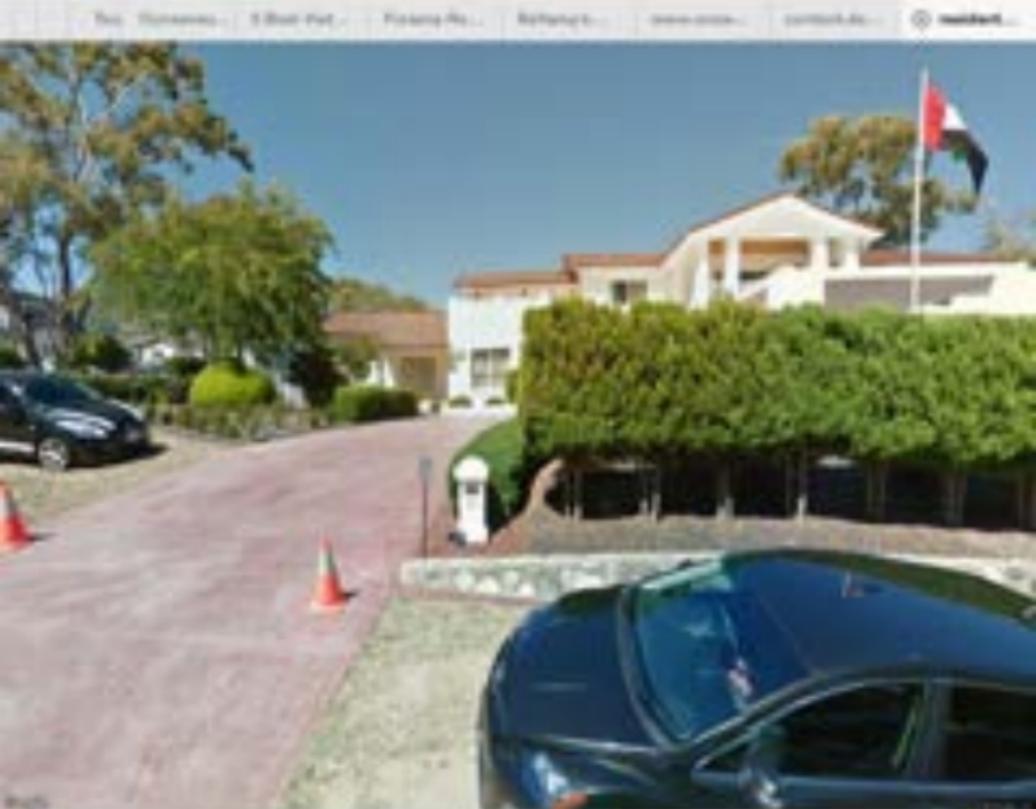
File: !cid_BB0D2FE406F7AC47AEB409E3F0160A84@sct-15-20-755-16-msonline-outlook-4e338.png

File: filename-1.pdf

[Click here for more information on applying for exemption from the public register.](#)







realestateWA



12 Bulwara Close, O'malley, ACT 2606 Sale & Rental History ...

12 Bulwara Close, O'malley Act 2606

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24th May 2018

The Director,
Environment, Planning and Sustainable Development
Directorate
Customer Service Centre
16 Challis Street,
Dickson, ACT

Email: epdcustomerservices@act.gov.au

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There has been no satisfactory resolution of these issues, despite formal complaints being lodged. It now appears that the Lessee, who undertook works without necessary planning approvals, is being given an opportunity to receive approval in retrospect. There has been no account given for the disruption to other owners, to the negative impact on their properties, or any protection of their rights by applying relevant laws.

The Lessee now seeks to legitimise the unlawful and unapproved additions — that are for a commercial operation — he has already undertaken with respect to his residential property by seeking retrospective development approval under the Residential Zones Development Code; Single Dwelling Housing Development Code; Residential Boundary Fences General Code and Merit Track Assessment. There are no grounds to approve the Lessee's application under current ACT Government Rules and Regulations.

The additions he seeks by their very nature, (construction of a security office, new security fence located along the perimeter and in front of the building line, new gate, pergola and associated works) are inconsistent with development for a residential house when its purpose under the Crown Lease is for residential purposes ONLY ie to house a family. Indeed, the Lessee's application indicates that Embassy business is the reason why he seeks these new construction measures for his residential property. The development is inconsistent with the use of purpose of the land. The Lessee has also failed to consider what is permitted under a Crown Lease for the site and, indeed, he has falsely asserted in his Application that the changes "**are**" consistent with the current Crown Lease.

The Lessee has further failed to consider the Planning and Development Act 2007; Planning and Development Regulation 2008; Common Boundaries Act 1981; The Tree Protection Act 2005 and the RZ1-Suburban Zone Objectives in his Application.

The Lessee is in breach of the Crown Lease. The property was neither built, nor approved for use as a Diplomatic residence or chancellery. Use of the property as commercial office accommodation is therefore prohibited. Breach occurs under **A2007-24 Australian Capital Territory Planning and Development Act 2007** (effective 3/4/18) Chapter 9, Leases & Licenses: Part 9.2 Grants of Leases Generally Sections 247 and 251.

The Lessee's Development Application No. 201733142 and supporting documentation is inconsistent, deliberately vague and contains false statements.

The Lessee's Development Application for "*proposed fencing with gate, security office and pergola*" is inconsistent with what you describe in your letter to me dated 9 May 2018 "*proposal for fence and additions to residence – construction of a security office, new security fence located along the perimeter and in front of the building line, new gate, pergola and associated works*".

1. In the Lessee's Statement Against Relevant Criteria (A) Single Dwelling Code, (page 3), I say as follows:
 - i) the Lessee has failed to answer the question at Element 2: Lease and development conditions Section 2.1 Approved lease and development conditions Rule 22, by stating "**not applicable — not proposed**";
 - ii) there is no mention of a "*security office*" in this document. However, his Application dated 31 December 2017 states "*proposed fencing with gate, security office and pergola*";

The “*security office*” appears on the Plans and Elevations attached to his application, however no approval is specifically sought under the **Planning and Development Regulation 2008 (effective 17/5/18)**. Under this Regulation, the “*security office*” is deemed be a class 10a building under Schedule 1, Part 1.3 Division 1.3.2 Subdivision 1.3.2.2 and as such the Lessee is required to meet the requirements of this Regulation. Subsection 1.45 (3) states:

“...setback requirement, for a building in relation to a block, means (a) if the building has a plan area of not more than 10m² – the building is behind the building line for the block ...”

- iii) the Lessee is also in breach of Rule 3.2 Fencing – large blocks Rule 24 of the **Residential Zones – Single Dwelling Housing Development Code (effective 28/10/16)** where it states:

*“... walls or fencing are **not permitted forward** of the building line...”).* Criteria for this rule states that fences are to comply with the Residential Boundaries Fences General Code.

2. In the Lessee’s Statement Against Relevant Criteria (B) Residential Boundary Fences General Code (page 3), I say as follows:

- i) The Lessee is in breach of the **Residential Boundaries Fences General Code (effective 11/7/08)** Element 2: Building and Site Controls 2.1 Front Fences – All Blocks Rule 1 e) Item 2.7. He also acknowledges that the **“fencing stands at 2.4m”**;
- ii) The **Residential Boundaries Fences General Code (effective 11/7/08)** Part A – General Controls Element 2: Building and Site Controls Rule 2.1 Front Fences – All Blocks Rule 1 the states:

*“Front boundary walls or fencing are **not permitted forward** of the building line except as provided for in ... e) item 2.7 of this Code”.
“This is a mandatory requirement. There are no merit criteria”*

- iii) Item 2.7 Diplomatic Residences and Chancelleries under this Code provides that *“there is no rule applicable”*. Criteria 10 states:

*“where the **lease permits** a diplomatic residence or chancellery, fences can be located at the front boundary for security purposes when:*

- a) *Fences **do not exceed a height of 1.8m** above natural ground level;*
- b) *The selection of fence materials and plants ensure existing streetscape and neighbourhood character and context is retained”;*

- iv) The Lessee makes no provision in his Statement against the relevant criteria under this Code (page 4), Element 6: Environment Item 6.2 Trees Rule 14 to address the issue of the very large mature trees located on the right hand side boundary of his property and the Territory land easement. His supporting Plan-201733142-Fencing Layout-01; Site Plan 201733142-01 and Survey-201733142-Survey-01 provided do not show any trees located on the right hand side of his property's boundary.

I urge the ACT Government to reject the Lessee's Development Application No. 201733142 and take steps to enforce the existing Rules and Regulations based on the following:

- a) The current Crown Lease does not permit use of the property as a diplomatic residence or chancellery and as such this conduct/activity is unlawful;
- b) The fence and gate is unlawfully located forward of the property's building line;
- c) The fence and gate height is unlawful;
- d) The selection of fence materials is not in keeping with the existing streetscape and neighbourhood character. The fence certainly creates an unpleasant visual spectacle within Bulwarra Close. Other fences in Bulwarra Close and O'Malley are not over regulation height and do not contain security spikes that give a compound like feel to the fence and nature of the property;
- e) Any plans to continue the security fencing around the entire perimeter of 12 Bulwarra Close will impact the row of approximately 15-20 very large mature trees located along the right hand side of the property adjoining a Territory land easement. Under the **Tree Protection Act 2005 (Effective 10/11/17)** Part 2, Section 8 and Section 10(1) a, b, c, and d. These trees are deemed to be regulated trees;
- f) The plan for continuing the security fencing around the perimeter of 12 Bulwarra Close will also affect the very large mature trees along the rear boundary of the neighbouring battle axe block at 14 Bulwarra Close (despite the existence of a perfectly serviceable colourbond fence of regulation) between the two properties. This will give rise to issues under the **Common Boundaries Act 1981 (effective 24/5/17)**;
- g) The security office (already installed) is an unapproved class 10a building located forward of the front building line. For which the Lessee has not sought approval for under the relevant **Planning and Development Regulation 2008 (effective 17/5/18)** in his application;
- h) There is no basis to the Lessee's application in the Merit Track – Development Single Dwelling Housing and the development is inconsistent and non-compliant with the relevant Codes and the Territory Plan. The type of development (which is commercial in nature) indicates and confirms that the property is being used for non-residential purposes. These sort of changes would not be necessary if the property was only being used as a residence. There are no provisions for the unlawful use of

the property for commercial office accommodation under the Merit Track provisions.

The impact of the commercial operations and activities occurring at the property are adversely affecting other home owners in Bulwarra Close. These are already well documented with Transport Canberra and City Services (TCCS) and other entities. Two parking consultation proposals have been conducted to address the issue of parking and road safety in Bulwarra Close. The parking restrictions which were to be enforced in the street would not be necessary if this commercial business was not being conducted.

These issues do not even take in to account the fact the owner allowed the tenants to put up an unapproved tent structure in the back garden of the property for 2.5 years. Only after another formal complaint has this been taken down. However, this has been "rehoused" elsewhere in O'Malley and the tenants at this property have 4 new marquee structures in the garden again.

The fact the owner has more than 5 security cameras at the property which do not solely face on to their land but on to neighbouring properties would not be necessary if this property was used for its intended purposes as a residential property as per the Crown Lease.

I request that the Lessee of 12 Bulwarra Close be held to account for his flagrant disregard of the relevant ACT rules and regulations. These rules and regulations are in place so that everyone's interests are protected. The unauthorised works and the ongoing commercial activities at 12 Bulwarra Close must be rectified. I also refer you to the article from the front page of the Canberra Times dated 22nd February 2018 where the owner of the property states he would be willing to remove the fence.



From: [EPD, Customer Services](#)
To: araa@araa.com.au
Cc: [REDACTED]
Subject: CLOSE OF PUBLIC NOTIFICATION PERIOD-201733142-01 [SEC=UNCLASSIFIED]
Date: Thursday, 31 May 2018 2:38:00 PM
Attachments: [DA201733142 - REPRESENTATION - \[REDACTED\]](#)
[image001.jpg](#)

CLOSE OF PUBLIC NOTIFICATION

BLOCK **20** SECTION **16** SUBURB **201733142**

The public Notification period for DA **201733142** has now closed.

Attached for your information is a copy of all representations received by the Environment and Planning Directorate during the public notification period.

The assessment of your application will now be finalised taking into consideration the representations that have been received. You will be advised in writing of the decision as soon as the DA has been determined.

If you require any further information please contact (02) 6207 1923.

Regards,

Mitu Roy
Customer Services
Phone 02 6207 1923

Access Canberra | ACT Government

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601

Access Canberra Fyshwick shopfront will close on 30 November 2016. Land titles and Revenue services are moving to Dame Pattie Menzies House, 16 Challis Street, Dickson to be collocated with the Access Canberra Environment, Planning and Land Shopfront. For more information visit www.act.gov.au/accessCBR

Access Canberra is an ACT Government service that brings together customer and regulatory services, including the former Environment and Planning Directorates Customer Services Team. Access Canberra has been set up to make it easier for business, community organisations and individuals to work with ACT Government and deliver a more seamless experience.

www.planning.act.gov.au | EPDcustomerservices@act.gov.au

cid:image009.jpg@01D31C1B.E0820B30



From: [REDACTED]
To: [Cilliers, George](mailto:Cilliers_George)
Subject: Re: DA 201733142 - 12 Bulwarra Close OMalley
Date: Monday, 23 July 2018 4:07:40 PM

George,
Many thanks. Will do.

Regards,
[REDACTED]

Sent from my iPhone

On 23 Jul 2018, at 09:01, Cilliers, George <George.Cilliers@act.gov.au> wrote:

Good morning [REDACTED],

As requested, please accept this time to speak with Mr George Cilliers, Senior Manager or Merit Assessment.

On arrival to DPMH, please ring me on x77247 from the ground floor foyer phone for access to level 1.

Kind regards,

Lindsay Crowe | Executive Assistant to Brett Phillips

Phone 02 6207 7247

Planning Delivery | Environment, Planning and Sustainable Development Directorate | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 |

www.planning.act.gov.au

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<mime-attachment.ics>

From: [REDACTED]
To: [Cilliers, George](#)
Subject: Development Application 201733142 12 Bulwarra Close, O'Malley
Date: Wednesday, 25 July 2018 8:16:44 AM
Attachments: [\(SIGNED ORIG\) \[REDACTED\].Response to DA 23.5.18.pdf](#)

Dear George,

Many thanks for taking the time to see us yesterday.

We

are looking forward to the results of your review of my submission regarding the Lessee's development application made under the Single Dwelling Development Housing Code. Please find attached a copy for ease of reference.

As discussed yesterday, the Lessee has now been afforded the opportunity to amend his development application (under Section 144(b) of the P&D Act 2007) which was lodged on 29 May

(4 days after the closure of the public notification period). The Lessee's amendment seeking to vary the Crown Lease provisions has now been made in the Merit Track, without formal notification to all interested parties. I remind you of your obligations under Chapter 7 Part 7.3 Division 7.3.2 Section 146 (1) (2) and (3)(a) of the Planning and Development Act 2007.

I further draw your attention to the following regulations under the Act:

Chapter 7, Part 7.3 Division 7.3.2 Section 144 Amending development applications

(1) The planning and land authority may, if asked by the applicant, amend a development application.

*(2) However, the planning and land authority **must not amend** the development application unless—*

(a) the authority is satisfied that—

(i) the development applied for after the amendment will be substantially the same as the development applied for originally; and

(ii) the assessment track for the application will not change if the application is amended; and

(b) for land under a land sublease—

(i) if the applicant is not the sublessee—the sublessee consents, in writing, to the amendment; and

(ii) if the applicant is not the Crown lessee—the Crown lessee consents, in writing, to the amendment.

....

In relation to the regulations above, the lessee's original development application lodged under the Single Dwelling

Development Housing Code has now been amended to a Merit track assessment and seeks to vary the provisions of the Crown Lease (with no notification to all interested parties) and as such is not permitted under this Section . Accordingly, I respectfully suggest the amendment should be rejected. I also note that there is no registered sublease, so clause (b) above does not apply to this circumstance.

Statutory time frames have well passed

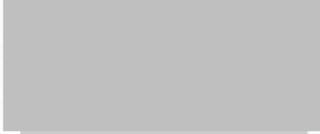
, lack of enforcement of the existing rules and regulations under the various Acts has not occurred and this matter continues to drag on. Three electricity outages last week affecting Bulwarra Close and Culgoa Circuit have pointed to an overloading of the electrical system. The installation of restricted parking on both sides of Bulwarra Close to control dangerous traffic conditions, are further symptoms of the lack of enforcement to remedy the breach of the Crown Lease provisions occurring at 12 Bulwarra Close. In addition, due process has not been followed ,thus placing all interested parties in Bulwarra Close at a disadvantage. I urge your Department to advise the outcome of the Development Application without further delay.

In addition, after further considering your question yesterday, we have decided to request a change of assessment officer in this matter. Grateful of you could confirm the new arrangements.

I look forward to hearing from you,

Sincerely





23 May 2018

The Director,
Environment, Planning and Sustainable Development
Directorate
Customer Service Centre
16 Challis Street,
Dickson, ACT
Via Registered Post

And also to:
Environment, Planning and Sustainable Development
Directorate
PO Box 365
Mitchell, ACT 2911
Email: epdcustomerservices@act.gov.au

**Re: Single Dwelling Development Application 201733142
Proposal for Fence and additions to residence –
Construction of a security office, new security fence located along the
perimeter and in front of the building line, new gate, pergola and associated
works.
Block: 20 Section: 16 Suburb: O'Malley- 12 Bulwarra Close, O'Malley**

I write to you as the owner of , O'Malley. I make objection to the **Single Dwelling Development Application 201733142** submitted in this matter which is open for public comment until COB 25 May 2018.

Firstly, I register my concern and disappointment that as the property owner of the neighbouring battle-axe block which abuts 12 Bulwarra Close, O'Malley your Department failed to inform me, or my Managing Agent that this Development Application was open for public comment.

Your office is already aware of significant concerns registered by home owners of Bulwarra Close, O'Malley regarding the Lessee and the occupants of 12 Bulwarra Close. Complaints from other residents of unapproved structures including non-regulation height front fence located forward of the building line and a security guard post, have been the subject of formal complaint. Moreover, the dangerous traffic conditions, congested parking and rubbish in the street are all issues which have arisen over the last three years due to the expansion of the Lessee's commercial tenant's business activities.

There has been no satisfactory resolution of these issues, despite formal complaints being lodged. It now appears that the Lessee, who undertook works without necessary planning approvals, is being given an opportunity to receive approval in retrospect. There has been no account given for the disruption to other owners, to

the negative impact on their properties, or any protection of their rights by applying relevant laws.

The Lessee now seeks to legitimise the unlawful and unapproved additions — that are for a commercial operation — he has already undertaken with respect to his residential property by seeking retrospective development approval under the Residential Zones Development Code; Single Dwelling Housing Development Code; Residential Boundary Fences General Code and Merit Track Assessment. There are no grounds to approve the Lessee's application under current ACT Government Rules and Regulations.

The additions he seeks are by their very nature, (construction of a security office, new security fence located along the perimeter and in front of the building line, new gate, pergola and associated works) are inconsistent with development for a residential house when its purpose under the Crown Lease is to house a family. Indeed, the Lessee's application indicates that Embassy business is the reason why he seeks these new construction measures for his residential property. The development is inconsistent with the use of purpose of the land. The Lessee has also failed to consider what is permitted under a Crown Lease for the site and, indeed, he has falsely asserted in his Application that the changes "**are**" consistent with the current Crown Lease.

The Lessee has further failed to consider the Planning and Development Act 2007; Planning and Development Regulation 2008; Common Boundaries Act 1981; The Tree Protection Act 2005 and the RZ1-Suburban Zone Objectives in his Application.

The Lessee is in breach of the Crown Lease. The property was neither built, nor approved for use as a Diplomatic residence or chancellery. Use of the property as commercial office accommodation is therefore prohibited. Breach occurs under **Australian Capital Territory Planning and Development Act 2007** Chapter 9, Leases & Licenses: Part 9.2 Grants of Leases Generally Sections 247 and 251.

The Lessee's Development Application No. 201733142 and supporting documentation is inconsistent, deliberately vague and contains false statements.

The Lessee's Development Application for "*proposed fencing with gate, security office and pergola*" is inconsistent with what you describe on your website which states: "*proposal for fence and additions to residence – construction of a security office, new security fence located along the perimeter and in front of the building line, new gate, pergola and associated works*".

1. In the Lessee's Statement Against Relevant Criteria (A) Single Dwelling Code, (page 3), I say as follows:
 - i) the Lessee has failed to answer the question at Element 2: Lease and development conditions Section 2.1 Approved lease and development conditions Rule 22, by stating "**not applicable — not proposed**";
 - ii) there is no mention of a "*security office*" in this document. However,

his Application dated 31 December 2017 states “*proposed fencing with gate, security office and pergola*”;

The “*security office*” appears on the Plans and Elevations attached to his application, however no approval is specifically sought under the **Planning and Development Regulation 2008**. Under this Regulation, the “*security office*” is deemed be a class 10a building under Schedule 1, Part 1.3 Division 1.3.2 Subdivision 1.3.2.2 and as such the Lessee is required to meet the requirements of this Regulation. Subsection 1.45 (3) states:

“...*setback requirement, for a building in relation to a block, means (a) if the building has a plan area of not more than 10m² – the building is behind the building line for the block ...*”

- iii) the Lessee is also in breach of Rule 3.2 Fencing – large blocks Rule 24 of the **Residential Zones – Single Dwelling Housing Development Code** where it states:

“... *walls or fencing are not permitted forward of the building line...*”). Criteria for this rule states that fences are to comply with the Residential Boundaries Fences General Code.

2. In the Lessee’s Statement Against Relevant Criteria (B) Residential Boundary Fences General Code (page 3), I say as follows:

- i) The Lessee is in breach of the **Residential Boundaries Fences General Code** Element 2: Building and Site Controls 2.1 Front Fences – All Blocks Rule 1 e) Item 2.7. He also acknowledges that the “***fencing stands at 2.4m***”;
- ii) The **Residential Boundaries Fences General Code** Part A – General Controls Element 2: Building and Site Controls Rule 2.1 Front Fences – All Blocks Rule 1 the states:

“*Front boundary walls or fencing are not permitted forward of the building line except as provided for in ... e) item 2.7 of this Code*”.
“*This is a mandatory requirement. There are no merit criteria*”

- iii) Item 2.7 Diplomatic Residences and Chancelleries under this Code provides that “*there is no rule applicable*”. Criteria 10 states:

“*where the lease permits a diplomatic residence or chancellery, fences can be located at the front boundary for security purposes when:*

- a) *Fences do not exceed a height of 1.8m above natural ground level;*
- b) *The selection of fence materials and plants ensure existing streetscape and neighbourhood character and context is retained”;*

- iv) The Lessee makes no provision in his Statement against the relevant criteria under this Code (page 4), Element 6: Environment Item 6.2 Trees Rule 14 to address the issue of the very large mature trees located on the right hand side boundary of his property and the Territory land easement. His supporting Plan-201733142-Fencing Layout-01; Site Plan 201733142-01 and Survey-201733142-Survey-01 provided do not show any trees located on the right hand side of his property's boundary.

I urge the ACT Government to reject the Lessee's Development Application No. 201733142 and take steps to enforce the existing Rules and Regulations based on the following:

- a) The current Crown Lease does not permit use of the property as a diplomatic residence or chancellery and as such this conduct/activity is unlawful;
- b) The fence and gate is unlawfully located forward of the property's building line;
- c) The fence and gate height is unlawful;
- d) The selection of fence materials is not in keeping with the existing streetscape and neighbourhood character. The fence certainly creates an unpleasant visual spectacle within Bulwarra Close. Other fences in Bulwarra Close and O'Malley are not over regulation height and do not contain security spikes that give a compound like feel to the fence and nature of the property;
- e) Any plans to continue the security fencing around the entire perimeter of 12 Bulwarra Close will impact the row of very large mature trees located along the right hand side of the property adjoining a Territory land easement. Under the **Tree Protection Act 2005 (Effective 10/11/17)** Part 2, Section 8 and Section 10(1) a, b, c, and d. These trees are deemed to be regulated trees;
- f) The Lessee has installed the over regulation height security fencing partially along my property's driveway boundary without consultation or my permission.
- g) The plan for continuing the security fencing around the perimeter of 12 Bulwarra Close will also affect the very large mature trees along the rear boundary of my battle-axe property (despite the existence of a perfectly serviceable colourbond fence of regulation) between the two properties. This will give rise to issues under the **Common Boundaries Act 1981 (effective 24/5/17)**;
- h) The security office (already installed) is an unapproved class 10a building located forward of the front building line. For which the Lessee has not sought approval for under the relevant **Planning and Development Regulation 2008 (effective 17/5/18)** in his application;
- i) We have suffered financial loss, due to the unlawful commercial activities being conducted at 12 Bulwarra Close. In 2017 we tried on two different occasions to market our property for sale, with two different Sales Agents

- both were unsuccessful. Adverse feedback was received by both agents about the traffic congestion, parking and unlawful structures.

The residential nature and streetscape has now been changed by the unlawful development and installation of commercial structures – (consistent with business operations) occurring at 12 Bulwarra Close. This is now causing a flow on effect to other owners in Bulwarra Close. Lack of enforcement by your Department of the Crown Lease provisions and other rules and regulations has resulted in this situation.

- j) There is no basis to the Lessee's application in the Merit Track – Development Single Dwelling Housing and the development is inconsistent and non-compliant with the relevant Codes and the Territory Plan. The type of development (which is commercial in nature) indicates and confirms that the property is being used for non-residential purposes. These sort of changes would not be necessary if the property was only being used as a residence. There are no provisions for the unlawful use of the property for commercial office accommodation under the Merit Track provisions.

The impact of the commercial operations and activities occurring at the property are adversely affecting other home owners in Bulwarra Close. These are already well documented with Transport Canberra and City Services (TCCS) and other entities. Two parking consultation proposals have been conducted to address the issue of parking and road safety in Bulwarra Close.

Finally, I request that the Lessee of 12 Bulwarra Close be held to account for his flagrant disregard of the relevant ACT rules and regulations. These rules and regulations are in place so that everyone's interests are protected. The unauthorised works and the ongoing commercial activities at 12 Bulwarra Close must be rectified.

I look forward to your acknowledgement of receipt of this letter by return.

Yours faithfully

A large rectangular area of the document is redacted with a solid grey box, obscuring the signature and any text that might have been present below the signature line.

From: [REDACTED]
To: [Cilliers, George](#); [Ponton, Ben](#)
Subject: Block 20 Section 16 O"Malley
Date: Friday, 10 August 2018 8:27:32 AM

Dear George,

It has now been over two weeks since we met with you and you promised to investigate the conduct of this matter. I feel there has been sufficient time for you to have investigated the matter and for you to have made an assessment.

I now have a copy of the Lessee's amended (on 29 May 2018) Merit Track Development Application 20173314S144B. The Lessee seeks to vary the Crown Lease provisions to include Diplomatic and Chancellery use under Section 144B of the Planning and Development Act 2007. In regard to this amendment, I again point out that the amendments have not been formally notified to all interested parties who have registered objections to the original Development Application - accordingly, all interested parties have not had the opportunity to comment of this amendment.

You will by now, know that the Lessee has no grounds under Section 144 for him to request this amendment. The regulations are quite specific.

Chapter 7 Part 7.3 Division 7.3.2 of the Planning and Development Act 2007 states:

Section 144 Amending development applications

*(1) The planning and land authority may, **if asked by the applicant**, amend a development application.*

*(2) However, the planning and land authority **must not amend** the development application unless—*

a) the authority is satisfied that—

(i) the development applied for after the amendment will be substantially the same as the development applied for originally; and

(ii) the assessment track for the application will not change if the application is amended; and

(b) for land under a land sublease—

(i) if the applicant is not the sublessee—the sublessee consents, in writing, to the amendment; and

(ii) if the applicant is not the Crown lessee—the Crown lessee consents, in writing, to the amendment.

(3) The planning and land authority must, not later than 5 working days after the day the applicant asks for the amendment—

- (a) amend the development application; or*
- (b) refuse to amend the development application.*

(4) If the planning and land authority does not tell the applicant that the authority refuses to amend the application within the time given under subsection (3), the authority is taken to have amended the application.

Under this Section 144(1) - I say that the Applicant/lessee was provided with further information and was coached by your office to assist him change the nature of his original development application. A detailed email from your office was forwarded to the Lessee containing options on 24 May 2018. I would say that the Applicant/Lessee only "**asked**" for the specific amendment - after your office provided the information contained in the email.

Under Section 144(2) (a) (i) and (ii) of the Act your office has failed to take into consideration that seeking approval for unlawful structures (the applicant/lessee's original DA) substantially differs from changing the use for purpose of the Crown Lease and further in relation to sub-section (b) I say that there is no **registered sublease** over the property.

I put to you the following:

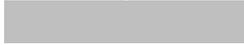
1. Your office has allowed the amendment to the DA (which seeks to substantially change the nature of the original development application). Your office even provided the advice on how this might be achieved to the Lessee, (whilst knowing that the original DA could not be approved under the Residential Boundary Fences General Code), and
2. Your office has failed to advise all interested parties of the amendment, and
3. Your office has not considered the **all** the Rules contained in Section 144; and
4. Your office's continued inaction on a decision (after multiple requests for further information be provided by the Applicant/Lessee) again favours and allows the Lessee more time than would normally be expected in the development application process.
5. Due processes have not been afforded to the all interested parties in this matter and your Department's conduct is inconsistent with the relevant Rules and Regulations governing these matters.
6. Your Department's maladministration continues to allow the Lessee/Applicant to continue his unlawful activities (with impunity) against the Rules and Regulations contained in ACT Legislation. This conduct

inappropriately favours the Lessee/Applicant – with no regard to the rights of other home owners in Bulwarra Close.

In light of the information contained above – I urge you to reject the Lessee's amended Development Application 20173314S144B and take steps to enforce the relevant Rules and Regulations at your disposal.

I look forward to hearing from you.

Sincerely

A grey rectangular box redacting the signature of the sender.

From: [Cilliers, George](#)
To: [REDACTED]
Cc: [Ponton, Ben](#)
Bcc: [Phillips, Brett](#); [Rutledge, Geoffrey](#)
Subject: RE: Block 20 Section 16 O'Malley [SEC=UNCLASSIFIED]
Date: Friday, 10 August 2018 4:08:00 PM

Dear [REDACTED]

Having regard to the seriousness of the issues you've raised at our meeting of 24 July 2018 I have temporarily stopped any further processing of this development application - primarily to allow myself time to properly investigate the matter and, if necessary, to seek advice, and to decide on an appropriate course of action. I am now finalising my findings and should be in a position to provide you with an outcome next week.

Regards

George Cilliers | Snr Manager (Development Assessment)

Phone 02 6207 6804

Planning Delivery | Environment, Planning and Sustainable Development | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 1908 Canberra ACT 2601 | www.actpla.act.gov.au

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From: [REDACTED]

Sent: Friday, 10 August 2018 8:27 AM

To: Cilliers, George <George.Cilliers@act.gov.au>; Ponton, Ben <Ben.Ponton@act.gov.au>

Subject: Block 20 Section 16 O'Malley

Dear George,

It has now been over two weeks since we met with you and you promised to investigate the conduct of this matter. I feel there has been sufficient time for you to have investigated the matter and for you to have made an assessment.

I now have a copy of the Lessee's amended (on 29 May 2018) Merit Track Development Application 20173314S144B. The Lessee seeks to vary the Crown Lease provisions to include Diplomatic and Chancellery use under Section 144B of the Planning and Development Act 2007. In regard to this amendment, I again point out that the amendments have not been formally notified to all interested parties who have registered objections to the original Development Application - accordingly, all interested parties have not had the opportunity to comment of this amendment.

You will by now, know that the Lessee has no grounds under Section 144 for him to request this amendment. The regulations are quite specific.

Chapter 7 Part 7.3 Division 7.3.2 of the Planning and Development Act 2007 states:

Section 144 Amending development applications

(1) *The planning and land authority may, **if asked by the applicant**, amend a development application.*

(2) *However, the planning and land authority **must not amend** the development application unless—*

a) the authority is satisfied that—

(i) the development applied for after the amendment will be substantially the same as the development applied for originally; and

(ii) the assessment track for the application will not change if the application is amended; and

(b) for land under a land sublease—

(i) if the applicant is not the sublessee—the sublessee consents, in writing, to the amendment; and

(ii) if the applicant is not the Crown lessee—the Crown lessee consents, in writing, to the amendment.

(3) *The planning and land authority must, not later than 5 working days after the day the applicant asks for the amendment—*

(a) amend the development application; or

(b) refuse to amend the development application.

(4) *If the planning and land authority does not tell the applicant that the authority refuses to amend the application within the time given under subsection (3), the authority is taken to have amended the application.*

Under this Section 144(1) - I say that the Applicant/lessee was provided with further information and was coached by your office to assist him change the nature of his original development application. A detailed email from your office was forwarded to the Lessee containing options on 24 May 2018. I would say that the Applicant/Lessee only "**asked**" for the specific amendment - after your office provided the information contained in the email.

Under Section 144(2) (a) (i) and (ii) of the Act your office has failed to take into consideration that seeking approval for unlawful structures (the applicant/lessee's original DA) substantially differs from changing the use for purpose of the Crown Lease and further in relation to sub-section (b) I say that there is no **registered sublease** over the property.

I put to you the following:

1. Your office has allowed the amendment to the DA (which seeks to substantially change the nature of the original development application). Your office even provided the advice on how this might be achieved to the Lessee, (whilst knowing that the original DA could not be approved under

the Residential Boundary Fences General Code), and

2. Your office has failed to advise all interested parties of the amendment, and

3. Your office has not considered the **all** the Rules contained in Section 144; and

4. Your office's continued inaction on a decision (after multiple requests for further information be provided by the Applicant/Lessee) again favours and allows the Lessee more time than would normally be expected in the development application process.

5. Due processes have not been afforded to the all interested parties in this matter and your Department's conduct is inconsistent with the relevant Rules and Regulations governing these matters.

6. Your Department's maladministration continues to allow the Lessee/Applicant to continue his unlawful activities (with impunity) against the Rules and Regulations contained in ACT Legislation. This conduct inappropriately favours the Lessee/Applicant – with no regard to the rights of other home owners in Bulwarra Close.

In light of the information contained above – I urge you to reject the Lessee's amended Development Application 20173314S144B and take steps to enforce the relevant Rules and Regulations at your disposal.

I look forward to hearing from you.

Sincerely

