



Mick Gentleman MLA
Manager of Government Business
Minister for Planning and Land Management
Minister for Police and Emergency Services
Minister for Corrections
Minister for Industrial Relations and Workplace Safety

Member for Brindabella

Mr Ben Ponton
Chief Planning Executive
480 Northbourne Avenue
DICKSON ACT 2602

Dear Mr Ponton *Ben*

I refer to development application no 202139349 for a proposed development at Block 1 Section 51 McKellar, lodged with the planning and land authority on 28 October 2021.

The development application seek approval for demolition of the existing concrete pad and removal of trees; and construction of a two-storey mixed-use (commercial /residential) development comprised of 14 commercially adaptable residential units and one commercial unit, car parking, landscaping, and internal driveway and associated landscaping.


In accordance with Section 158 of the *Planning and Development Act 2007*, I direct the planning and land authority to refer to me the abovementioned development application.

When complying with this direction, the planning and land authority must provide:

- the information and documents received by the Authority in relation to the application; and
- any other relevant information and documents held by the Authority.

As a consequence of this direction, the planning and land authority must take no further action that would lead to a decision by the authority on the application.

Yours sincerely


Mick Gentleman MLA
Minister for Planning and Land Management

14/10/2022

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22/48496

Fred Kasperek
Director
Kasperek Architects
Fred@kasperek.com.au

Dear Mr Kasperek

I write in relation to the development application you have lodged for Block 1 Section 51 McKellar (DA202139349).

On 14 April 2022, I wrote to the independent planning and land authority and directed them to refer the development application to me for consideration. Under the *Planning and Development Act 2007* (the Act), I must be of the opinion that this is a type of application that I can consider, before I then proceed to make a decision of the application.

As your application for redevelopment of the McKellar shops engages with the ACT Government's formal planning policy for local centres and the CZ4 Local Centre zone objectives, I am considering whether the application is of a type which can be considered under the Minister call-in process.

I am writing to you to provide you with an opportunity to make a submission to me on sections 158A and 159 of the Act and how they might apply to the present application. I also invite you to consider the advice I have received from the planning and land authority and respond to it.

Advice from the planning and land authority:

1. The application involves the redevelopment of the McKellar shops (Block 1 Section 51 McKellar) which is zoned CZ4 Local Centre.
2. Relevant zone objectives for CZ4 Local Centre include:
 - a. Provide for convenience retailing and other accessible, convenient shopping and community and business services to meet the daily needs of local residents,

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- particularly those with mobility issues.
- b. Provide opportunities for business investment and local employment.
 - c. Ensure the mix of uses is appropriate to this level of the commercial hierarchy and enable centres to adapt to changing social and economic circumstances.
3. The application is for a mixed-use development and proposes residential and 'commercial adaptable units'.
4. *Application raises a major policy issue:*
- a. The retention of appropriate commercial and retail space at local centres across the Territory is an important element of the Territory's planning policy, as reflected in the 2018 Planning Strategy and the Territory Plan.
 - b. The Planning Strategy also acknowledges that the role of our centres is changing and many local centres are 'transitioning to activity centres that provide lifestyle services, niche shopping and social connection, such as informal community meeting spaces' (p 32).
 - c. The continued provision of commercial/retail space in local centres is an important issue to the Canberra community and this is reflected in several of the comments received during the public notification period for the DA.
5. *Application seeks approval for a development that may have a substantial effect on the achievement of the territory plan/objectives for the zone:*
- a. As noted above, the zone objectives for the CZ4 Local Centre zone are primarily focused on the delivery of commercial and retail opportunities for the benefit of the local community and local employment.
 - b. While mixed-use developments with residential components are also encouraged, the retention and protection of appropriate levels of commercial space is essential.
 - c. Given this is a redevelopment of a prominent site at the McKellar local centre, the proposal is considered to have a substantial effect on being able to achieve the zone objectives for the local centre. For example, if the proposal is considered to not provide enough commercial/retail space, this will have a substantial negative effect on being able to achieve the zone objectives.
6. *Sufficient community consultation:*
- a. The application was publicly notified between 8 and 26 November 2021. Twelve representations were received.
 - b. The application was not required to undertake pre-DA community consultation.

Please provide a response to these matters within 14 days of receiving this letter.

Yours sincerely


Mick Gentleman MLA
12/12/2022

28 June 2022

Mick Gentleman MLA
GPO Box 1020,
Canberra, ACT 2601

DA202139349 – Block 1 Section 51 McKellar

Dear Mr Minister,

We refer to your letter dated the 14th of June 2022 in relation to Block 1 Section 51 McKellar.

Kindly see below our response to your correspondence, providing information to assist you in making a decision on the proposed development.

Overview and background: Block 1 Section 51 McKellar

The site was previously developed with the McKellar Shops which comprised a supermarket and supporting small retail/service type uses. It is our understanding that the retail and supporting functions ceased some time ago and over a substantial period of time it was not able to be re-leased and retail/service uses attracted to the site.

We suggest that this was likely due to the proximity of major supermarkets nearby to the proposed development and the convenience in accessing these shops. We note that The Kaleen group centre which contained a Supabarn (now a full line Coles supermarket) is approximately 4.3km away from the site. The Belconnen Shopping Centre with Woolworths, Coles, Aldi, and many other stores, is only 4.7km distant and the Evatt shops (with an IGA store) is located 1.3km away from the site.

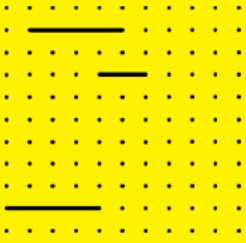
We note that some of these shops have been subject to major renovations and refurbishments that now offer a larger and more modern offering in close proximity to our site. The newly established Casey shopping complex (now operating for a few years but not operating at the time of the McKellar tenancy being vacant) houses one of the biggest Supabarn's in Australia alongside Aldi and are a comfortable car trip away from the site at 9km distance.

The above demonstrate that there are a multitude of supermarket offerings available in close proximity to the site and in formats more modern and larger, with a broader range of offering than what can be delivered at the site. Residents in the area have become accustomed to visiting these outlets and have voiced in notification to prior development proposals that included supermarket uses that the subject location is not needed for supermarket use.

In history we consider that a Development Application (DA20107887) was approved on the 19th of April 2011 that included demolition of the existing building and construction of a new 3 Storey commercial mixed use building with 22 upper floor residential units accompanied with a change to the Crown Lease purpose clause to permit shops and non-retail commercial limited to 1105 square metres on the ground floor and residential units limited to first and second floor.

The proponent progressed the demolition works around middle to late 2012 but were not able to progress the approved DA with a larger commercial offering due to lack of ability to secure tenants and achieve project viability. A further development application (DA201628902) was presented and approved in August 2016 that re-casted the proposal as a mixed use proposal of three storeys with the ground floor consisting of six commercial tenancies and upper floors comprising of 22 residential units.

Again, this approval did not result in a proposition that resulted in securing any interest from tenants to securing the commercial tenancies and in turn were not able to be progressed.



In the able contest it is apparent that neither the original development or two more recent (approved) development proposals were able to attract the required interest and commitments from commercial tenants to facilitate the re-development of the site. The current proposal is an attempt to engage with the site in an innovative manner to facilitate its redevelopment, provide opportunities for small scale commercial use to be facilitate at the site in a typology that has proven highly successful elsewhere in Canberra and deliver a product and choice of commercial/residential product to the Canberra market that is not available in this locality. The opportunity to facilitate work/live tenancies are in short supply in the Canberra context and where delivered, has proven highly desirable.

If successful it will also deal with a site that has been vacant for an extended period of time and put it to use to the Canberra Community in a meaningful manner.

The Proposed Development

DA202139349 was submitted for the design and siting for 14 commercial / residential adaptable units and 1 commercial unit on Block 1 Section 51 McKellar.

Of the proposed units, 14 units front onto Dumas Street presenting a commercial (residential adaptable) interface at ground level with living areas at upper levels and access to the individual garages for parking via the laneway from Bennetts Close. One Commercial unit front eastwards onto the adjacent (existing) public parking area that is located at the end of Bennetts Close lot.

Parking for the commercial unit is provided within the structure for the commercial units.

Visitor parking is provided on-site on site next to the commercial unit to the east of the driveway and further visitor parking is available in the existing public carpark adjacent to the site to the east

The proposed commercial (residentially adaptable) units present a ground level commercial interface to Dumas St with courtyard programming that allow easy adaptability to a full commercial interface if needed. The upper levels of these units present as 3 bedroom residential homes thus providing true shop-top living opportunities.

The residential component of the development enjoys private open space at balcony level and a shared courtyard space with the commercial interface.

Garaging provides owner's parking at grade that is accessible to both the commercial and residential components of the development.

The development provides common open space to the east of the driveway (next to the waste enclosure and commercial unit).

The waste management strategy sees all units provided with wheelie bins within their curtilage as well as a central waste enclosure that collectively allow for on-site management of waste with wheelie bins being presented to the street for kerbside collection on delivery date.

The Crown Lease for Block 1 Section 51 McKellar permits nonretail commercial uses to a GFA limitation of 1,105 square meters, but this is an artefact of the more recent Lease Variation. Whilst building plans are not available for the previous (historical) shops has an estimation of the GFA (extrapolated from the ACTMAPi 2012 February – April Imagery) of circa 500m².

As indicated in plan A330 – AREAS, the proposed development opportunity for Commercial areas of up to 909.6m², of which 250 m² is a standalone area facing the carpark.

In this context the proposal is compliant with Criteria 49 of the Commercial Zones Development Code considering both the Crown Lease size provisions as well as the GFA of the historical shops. The proposed development is increasing the commercial spaces with a more effective and viable approach to commercial uses within the area and retains more than 50% of the historical commercial centre GFA.

The proposed development received 12 representations during the notification period; 2 of the representations supported the removal of the supermarket and 1 representation queried the decrease in commercial space. Representations welcomed the proposed development in order to have the site development as a deterrent for vandalism and squatters living on the vacant land. Importantly, the previous development applications to date have objected to a supermarket on the proposed site as it is not required.

Previous development application also highlighted the community's view that a supermarket is not desirable at this location.

Performance against the Territory Plan as per the Statement Against Criteria

The proposed uses presented in this proposal are permitted uses in terms of the Territory Plan and the Crown Lease. As evident by the Statement Against Relevant Criteria submitted with the DA, the development performs well against the McKellar Precinct Map and Code, the CZ4 Zone Objectives, Commercial Zones Development Code and the Multi-Unit Housing Development Code. It is also designed to meet key planning controls in relation to the use of the site for commercial use as explained above.

The proposed development continues to perform well against the Parking and Vehicular Access general Code, Bicycle Parking General Code, Access and Mobility General Code, Crime prevention Through Environmental Design General Code as well as the Waterways: Water Sensitive urban Design General Code, all applicable to the site.

Outlined below is a description of the proposed development against the CZ4 – Local Centre zone objectives under the Territory Plan.

Objective	Response
a) Provide for convenience retailing and other accessible, convenient shopping and community and business services to meet the daily needs of local residents, particularly those with mobility issues.	<p>14 commercially adaptable residential units are proposed for the units to be used for opportunities for business investment and local employment that would be able to serve the surrounding neighbourhood.</p> <p>The integration of the commercial use in the development typologies ensure that convenience commercial and service offerings can and will be delivered at this key site in a format that is highly desired and successful in Canberra but in short supply.</p>
b) Provide opportunities for business investment and local employment	<p>14 commercially adaptable residential units are proposed for the units to be used for opportunities for business investment and local employment. The one commercial only offering further complement this opportunity.</p>
c) Ensure the mix of uses is appropriate to this level of the commercial hierarchy and enable centres to adapt to changing social and economic circumstances.	<p>14 commercially adaptable residential units and 1 commercial unit are proposed</p>
d) Maintain and enhance local residential and environmental amenity through appropriate and sustainable urban design	<p>The proposed development makes a positive contribution to the neighbourhood and provide surveillance over the public realm, especially when considering the recent history of the site being vacant buildings and/or a vacant site.</p> <p>The design and siting of buildings has been considered to mitigate unreasonable negative impacts on surrounding areas, and the proposed commercial adaptable dwellings will not impose unreasonable adverse impacts on the surrounding neighbourhood and uses.</p>
e) Promote the establishment of a cultural and community identity that is representative of, and appropriate to, the place	<p>The proposed development makes a positive contribution to the neighbourhood and provide surveillance over the public realm and deliver a typology that would be unique to this locality and context and support the establishment of a special offering to this place that will thrive over time.</p>
f) Promote active living and active travel	<p>The site has immediate access to open space nature reserves, cycle networks and pedestrian paths that will promote active living and travel, with storage provided for bicycles and other active transport equipment. Being centrally located and integrates with surrounding transport networks ensures its accessibility for users and patrons from surrounding areas.</p>



g) Provide a high quality public realm by facilitating active uses on ground floor level that connects with the wider open space, pedestrian and cycle networks to promote active travel and active living.	The proposed development is accessible and provides connectivity to adjoining urban open space. The block is in close proximity to public transport routes. The design provides for on-site areas available to both tenants and patrons to the commercial tenancy at the rear of the site.
h) Encourage an attractive, safe, well-lit and connected pedestrian environment with convenient access to public transport.	The proposed development is accessible and provides connectivity to adjoining urban open space. The block is in close proximity to public transport routes and designed in a manner that active and passive surveillance is provided to the public path network and especially the adjoining underpass at Dumas Street.

Commercial Viability and Commercial Offering

With regards to the commercial zones development code, the following considerations are relevant in relation to the requirement for a commercial offering.

We note that the proponent made a concerted effort to provide the opportunity for substantial commercial opportunities onsite and kept these available over a substantial period of time in the context of multiple (Approved) development schemes.

The proposed development application is for design and siting of 14 commercially adaptable residential units and 1 commercial unit. All of the units are proposed to be commercially adaptable with the ground floor being designed specifically to support commercial activity with street frontage and an opportunity to open up to the street frontage to provide street presence.

Of the proposed units, 14 units front onto Dumas Street presenting a commercial (residential adaptable) interface at ground level with living areas at upper levels and access to the individual garages for parking via the laneway from Bennetts Close. The upper levels of these units present as 3 bedroom residential homes thus providing true shop-top living opportunities.

One dedicated commercial unit fronting eastwards onto the adjacent (existing) public parking area that is located at the end of Bennetts Close parking lot.


As indicated in plan A330 – AREAS, the proposed development opportunity for Commercial areas of up to 909.6m². The Crown Lease permits a GFA for commercial use of 1,105m². The proposal details a reduction of only 17.6% commercial use in the context of the crown lease and no reduction to the historical commercial offering that used to be located at the site. In fact – the dedicated commercial unit facing the public carpark meets in itself the provision to retain 50% of the original commercial use at the site.

The areas allocated for commercial uses include the dedicated commercial unit as well as the separately accessible and operable ground floor commercial spaces in the commercial/residential units facing Dumas Street; the latter that presents as a typology that allows domestically compatible commercial use such as e.g. home offices and services as described above.

The proponent also considered an alternative building typology where a smaller scale convenience commercial offerings such as a shop, non-retail commercial (office) use, and/or take-away could potentially operate in the purpose build unit facing east. The ground floor commercially adaptable spaces within the residential units, coupled with their street facing courtyards allow for an interface that can either be domestic or commercial in nature. The site caters for both eventualities.

We note the correspondence from the lessee presented separately and concurrently with this submission motivating the journey to date, change in development typology, history and lack of feasibility over a range of development commercial mixed use proposals and the change in commercial uses presented in this DA (when compared to previously approved Das and the original; scheme). The advice notes that the previous lessee, post DA approval, went into liquidation as he was unable to secure tenants and interest in the approved development proposal at the site and to deliver and run a commercial operation it due to the lack of business demand and foot traffic to the area.

As stated above, there are several local commercial/supermarket offerings located in close proximity to the site the community at previous DA's indicated that another supermarket in this location was not desirable. The proponent is presenting a different commercial/residential typology that we believe will service the locality well and is able to adapt and change in response to market conditions and local needs over time.



Home based employment such as professional services (office, IT, accounting), arts and craft, personal services and the like could be pursued by the unit owner from this space if of interest while living in the upper levels; as context that is now more prevalent than ever when considering the way we adapted our work life during the COVID-19 pandemic. We believe that the interest and need for these innovative and flexible work/life spaces will grow over time.

It is worthwhile to turn our mind to places in Canberra where commercial/shop-top living typologies have been successfully implemented. These units represent a unique typology in the market that cannot be delivered on residentially zoned land and is a great benefit to the site and locality. This results in further benefits to the local community in a new housing typology offering.

Places such as the units on the northern side of Anthony Rolfe Avenue in Gungahlin facing the town centre, Developments in Kingston, and in Gungahlin near the district park all demonstrates that shop-top living as a typology can be successfully implemented in Canberra and deliver the commercial uses proposed in their footprint. Designing tenancies that allow commercial use at ground level in a typology such as this demonstrably allow an opportunity to adapt and respond over time to the commercial needs of a community while not sitting idle in times of low commercial demand.

We can and would happily provide you with specific examples in Canberra and around Australia where commercial/residential units such as these have been successfully built, are popular and meets the changing demands for commercial and living opportunities to the local community – feel free to ask us for more detail on this.

Strategic Policies and Initiatives

We note that this proposal also addresses a number of key Government policies and initiatives and wishes to briefly highlight some key considerations.

The ACT Planning Strategy 2018

The ACT Planning Strategy is intended to direct the development of Canberra to be a sustainable, competitive and equitable city that respects Canberra's unique legacy as a city in the landscape and the National Capital, while being responsive to the future and resilient to change.

The Planning Strategy reinforces the focus of the earlier Canberra Spatial Plan and will assist in achieving strategic objectives for Canberra. The five key strategic themes of the Strategy include:


- Compact and efficient city
- Diverse Canberra
- Sustainable and resilient Territory
- Liveable Canberra
- Accessible Canberra.

The Strategy advocates a community desire to pursue a more compact city that provides more diversity in where and how people live and work, including a balance and mix of greenfield development and urban intensification, particularly in the City Centre and along transport corridors.

Key aspects of the ACT Planning Strategy relevant to the development of the site include:

- Support sustainable urban growth by working towards delivery up to 70% of new housing within our existing urban footprint, and by concentrating development in areas located close to the city centre.
- Transitioning to a net zero emissions city through the uptake of a renewable energy, improved building design and transport initiatives

The proposed development will help meet the ACT Planning Strategy in relation to these considerations, specifically because the type of development presents an urban infill development opportunity with the establishment of a live/work typology that is not common but highly desirable and popular in Canberra. We anticipate that this will be especially true due to the changes in work/live arrangements we faced in the last 2 years with the impacts experienced with the pandemic.



The development of the block would assist and compliment the strategy by allowing for a more modern use of the site, including attracting a greater number and variety of potential tenants within the existing under-utilised block and allow for employment in place thus reducing the need to travel from the site to employment centres for these residents but further to potentially bring services offerings to the McKellar community on a site that has been vacant or un-used for some time.

The ACT Climate Change Strategy 2019-2025

This strategy outlines the next stage of the ACT Government's climate change response and identifies actions to meet the above targets and prepare for climate change. The actions have been developed with the community and stakeholders and are focused on:

- meeting the 2025 target
- building resilience to climate change impacts
- ensuring we don't 'lock in' future emissions
- laying the foundations for achieving net zero emissions.

This strategy is aligned with the ACT Planning Strategy 2018, the ACT Housing Strategy (2018) and the draft Moving Canberra: Integrated Transport Strategy. It is also aligned with the goals of other related Government policies including in health, waste management and nature conservation. Together, these documents provide the framework for achieving a smart, sustainable and net zero emissions Territory by 2045.

The subject site could assist to achieve the ACT Climate Change Strategy 2019-2025 given its location along and in close proximity to major bus routes that feeds to the Belconnen Town Centres and Local Centres and its positioning in the public pathway network. Establishing of commercial opportunities at this location provides employment in place opportunities as well as opportunities for the establishment of commercial services and offerings at this site to serve the local community.

Housing Choices Project

We refer to the ACT Government's 2019 Housing Choices project which canvassed how best we can better meet the housing needs of the Canberra Community and sought innovative thinking in relation to housing typologies that can meet the need for housing for Canberrans into the future. The project aimed to bring together a broad range of ideas and opinions to reach a consensus that would guide the future planning of our city and inform how we live.

We understand that as part of the outcome from this project than the ACT Government is looking more strategically at the city and future housing needs for all Canberrans and will deliver opportunities for a range of more diverse housing options as part of the ACT Planning System Review and Reform project currently underway.

This site provides a unique opportunity to establish a housing choice that have proved highly popular and successful elsewhere in Canberra, a housing option that is in short supply. This can be delivered without a need to vary the Territory Plan and can bring a housing choice to the McKellar community in a relatively short period. Delivering this proposal will broaden choice of housing and commercial option in the community.

Information Provided

We submit the following supporting information:

- Statement Against Relevant Criteria
- Supporting Letter from Lessee

We trust that the above response satisfactorily addresses the matters raised in the further information request. Should you have any questions in relation to this response, please contact me [REDACTED].

Yours Sincerely,



Per Pieter van der Walt

Director – Senior Town Planner

This letter is for the use only of the party to whom it is addressed and for no other parties. No responsibility is accepted to any third party who may use or rely on the whole or any part of the content of this letter.

To whom it may concern

We write this letter in regard to block 1 section 51 McKellar ('The Property'). The issue we wish to address is concerning the ACT government's request to include a supermarket in the design and our aspiration to develop this site.

[REDACTED] The project was originally approved as a 22 unit development (DA#201017887) with an attached supermarket and space for 5 small shops in April 2010. This project was put on the market for many years without any interest from prospective buyers regarding the supermarket space and the small units.

[REDACTED]

[REDACTED]

[REDACTED]

With some adjustments in the 2010 scheme a, Development application was again lodged in 2016 (DA#201628902) and progressed to approval.

The project still included a space for a supermarket and once again was put on the market, this time as a package targeting developers and builders and eventually ceased to gain any interest.

We were excited that there was a policy change to allow for supermarkets to increase from 1,000m² to 1,500m² announced by the Government more recently. We reached out through our consultants to some of the major supermarket retaining entities with a high expectation that there may be interested in operating a supermarket at the site in the approved form or with amendments if required. We were explicitly informed that these operators have no interest in establishing a supermarket in this location. Reasons given included proximity to other larger supermarket offerings and the impact of and perception of impact from supermarket truck delivery on the local community. McKellar, we were told, are "buried" too deep into the suburb and is difficult to access and service.

[REDACTED]

[REDACTED] we were referred to a different architect who completely revamped the project to suit the needs of the surrounding community and brought a fresh approach to development of the site.

This proposal has more commercial space than the original commercial centre building that was demolished had and the proposal presented has been accepted in the market favourably.

Based on the community interest and our proposal filling a market need we confirm that construction could start within a couple of months of this DA being approved.

[REDACTED]

[REDACTED] We have always tried to service and provide for the community by our presence, efforts and labour – this project is no different; We would love to bring this development opportunity to the Mackellar community.

[REDACTED]

[REDACTED] From our experience since 2010 there is no interest in this use, and should this be demanded the sire will not be able to be developed for some time and the community will miss out on the opportunities the proposed development brings.

Thank you for your time,

Kind Regards

[REDACTED]