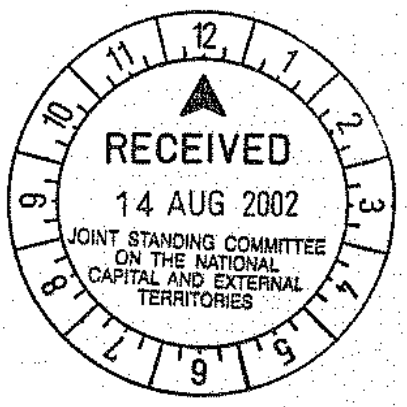
Clements, Quinton (REPS)

From: Calnan, Garrick [Garrick.Calnan@act.gov.au]
Sent: Wednesday, 14 August 2002 6:01 PM
To: 'Clements, Quinton (REPS)'
Subject: RE: No. 15 State Circle

SUBMISSION 16



Quinton

Mr O'Sullivan's statement is not correct. Firstly, the requirements for and process of administering development applications on Territory Land is set out in Part 6 of the Land (Planning and Environment) Act 1991 (the Land Act) and the Land (Planning and Environment) Regulations (the Regulations), not the Territory Plan.

If No 15 State Circle (block 6 section 6 Forrest) had not been in a designated area under the National Capital Plan, the dual occupancy development would have been subjected to the development application process set out in the Land Act. This process would have required the application to be notified for 15 business days (not 10 as stated by Mr O'Sullivan).

However, the Regulations exempt development that is located in a designated area (other than lease variations) from the requirements of Part 6 of the Land Act (the part that sets out the requirements for development applications). The reason for this exemption is that development in these areas is subject to Works Approval by the National Capital Authority under the Commonwealth's ACT(Planning and Land Management) Act 1988. If there was no exemption, development would have to be approved under both the Territory's and the Commonwealth's legislation.

However, if a variation to the lease was required, then a development application would still need to have been lodged under the Land Act as lease variations in designated areas are not exempted by the Regulations. It appears however that no lease variation was required for the dual occupancy proposal at No 15 State Circle and therefore no development application was required to be lodged with the Territory.

The reason no lease variation would have been required is because the lease is likely to be a pre-1970 lease. The purpose clauses in pre-1970 residential leases is usually quite general saying something like: 'to use the land for residential purposes only'. A number of legal decisions have confirmed that dual occupancy is not inconsistent with these purpose clauses - therefore no lease variation is required.

I have had PALM's records searched and no development application has been received for block 6 section 6 Forrest since 1992.

The situtation I have described above is precisely the reason the Territory is arguing that the land should not be a designated area as it means that development on these 86 residential blocks is subject to a totally different legal regime to development on the 121,000 other residential leases throughout the Territory.

Hope this answers your question.

Garrick Calnan
Manager
Territory Plan Co-ordination
ACT Planning and Land Management

-----Original Message-----
From: Clements, Quinton (REPS) [mailto:Quinton.Clements.Reps@aph.gov.au]
Sent: Wednesday, 14 August 2002 10:13
To: 'Calnan, Garrick'
Subject: No. 15 State Circle
Importance: High

Garrick

Could you explain the public notification requirements in relation to the dual occupancy redevelopment at No. 15 State Circle. Mr O'Sullivan (lessee of No. 17 State Circle) states in his submission to the DA39 Inquiry that

"under the Territory Plan development on Territory Land requires public notification. In the case of dual occupancies there is a 10 day period in which adjacent landowners can submit written comments of objections to proposals for development."

How does this apply in relation to No. 15, given that the NCA has works approval authority?

Grateful for your advice.

Many thanks, Quinton

Quinton Clements
Inquiry Secretary
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The Commonwealth Parliament

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