



in accordance with the plans, drawings and other documents and items submitted with the application and endorsed as forming part of this approval, subject to the following conditions imposed pursuant to section 245 of the Act:

***Commencement of Building Work***

1. that no building work in relation to this Development Application is to commence on the site until the new consolidated Crown lease is registered at the Registrar-General's Office;

***Change of Use Charge***

2. that if a "Change of Use Charge" is payable, the lessee shall pay it within 28 days of being notified of the amount or within such further time as may be approved by the Planning and Land Authority;

***New Block Survey***

3. that the lessee shall arrange for a survey of the consolidated block and lodge the survey plan with the Planning and Land Authority Customer Service Centre for examination and clearance by the ACT Government Survey Office, ACT Land Information Centre, Planning and Land Authority and pay the appropriate examination fee;

***Surrender and Regrant***

4. that the lessee surrender the existing Crown leases over Block 9 Section 12 Division of Deakin – (Volume 1536 : Folio 88) and Block 13 Section 12 Division of Deakin - (Volume 1563 : Folio 99) and accept a new Crown lease substantially in accordance with the form of lease appearing at Attachment 1;

***Commencement and Termination of Lease***

5. that the new Crown lease shall commence on the date of surrender of the existing leases and will terminate on 30 September 2097 or on such further date as may be approved by the Planning and Land Authority under section 172 of the Land Act;

***Lease Registration***

6. that the lessee shall do all that is necessary to ensure that the new Crown lease giving effect to this approval is registered at the Registrar-General's Office within 14 days of being notified that the Crown lease is available for registration or within such further time as may be approved by the Planning and Land Authority;

**Further Information Required**

7. that within 28 days from the date of this decision, or within such further time as may be approved in writing by the Planning and Land Authority, the applicant shall lodge with the Planning and Land Authority for approval:

- (a) a revised site plan, based on the relevant drawings referred to in the previous condition, showing:
  - (i) Level 1 and Level 2 floor plans addressing the service driveway access as submitted as more information under section 233 of the Land Act on 19 March 2008 and supported by the Department of Territory and Municipal Services (TAMS);
  - (ii) one at-grade car space nominated as being a car wash-down bay the design of which shall demonstrate consideration of water sensitive urban design principles;
  - (iii) demonstrated accessible paths of travel in accordance with AS1428.1 from all disabled car spaces and the lifts and other communal use areas and adaptable units;
  - (iv) details of lighting to pedestrian areas, common open space and other common areas, parking areas and building entries;
  - (v) the new location for the substation on site;

**Note:** *The substation must not be prominently addressing Adelaide Avenue*

- (b) a revised landscape plan, based on the relevant drawing referred to in the previous condition, showing:
  - (i) the existing trees (Tree Nos 26 to 31) located to the north of the subject block, on Block 19 (unleased land) adjacent to Adelaide Avenue shall not be removed (and shall be protected during construction) and all other proposed new trees to be planted on Block 19 shall consider the location of these existing trees;
- (c) revised architectural drawings, based on the relevant drawing referred to in the previous condition, showing:
  - (i) the relevant elevation drawings to address Condition 7(a)(i);
  - (ii) the proposed 2m high courtyard wall addressing Hopetoun Circuit and Grose Street shall be reduced in height to 1.5m and articulated to encourage active frontage or a 1.8m high courtyard wall that has transparency to the satisfaction of the Authority;

- (d) details of all proposed signage including: content, dimensions, construction, and a colour representation for each sign;
- (e) a cable reticulation plan, prepared by a suitably qualified person and endorsed by each relevant service provider, showing:
  - (i) underground reticulation of all cables (including electricity, telephone and data);
  - (ii) relevant points of connection (no new poles should be erected);
  - (iii) size and location of associated items (including electrical sub-stations) within the site; and
  - (iv) screening of any electrical sub-station that may be required;

**Note:** *electrical sub-stations are to be located on leased land and screened from public view.*

#### **Surveillance**

- 8. that peepholes or other surveillance devices be installed to the doorway of each apartment to ensure adequate surveillance of the common areas outside the front door of each apartment;

#### **Completion**

- 9. that the approved development shall be completed within 24 months from the date of this approval or within such further time as may be approved in writing by the Planning and Land Authority;

#### **Notes:**

- 1. *Under section 251 of the Land Act this approval will expire if the development is not commenced within two years after the date of approval. There is no provision in the Land Act to extend the period specified for commencement.*
- 2. *Under section 252 the applicant may apply to the Planning and Land Authority for any extension to the period specified for completion, but such an application must be made within the original period specified for completion.*

#### **Contaminated Sites:**

- 10. that prior to new building works commencing at the site -
  - (a) the site and any off-site impacted areas must be assessed and remediated (if required) in accordance with the ACT EPA Contaminated Sites Environment Protection Policy 2000, NSW EPA Guidelines for Assessing Service Station Sites 1994, National Environment Protection (Assessment of Site Contamination)

Measure 1999 and the NSW EPA Guidelines for Consultants Reporting on Contaminated Sites 1997 by a suitably qualified environmental consultant. If gross contamination is detected at the site (or off-site) the site will also need to be independently audited by an EPA approved third party environmental auditor;

- (b) a copy of the environmental site assessment report (or audit statement and report if required) must be provided to the Environment Protection Unit for review and endorsement prior to any new construction works commencing on site;
- (c) any contaminated soil land-farmed on site must be approved by Environment Protection Unit prior to land-farming commencing;
- (d) any soil disposed of from the site must be in accordance with the requirements of the Environment Protection Unit (EPU) as set out in Practice Note 3 (available from the EPU on 02 6207 1819).

**Hazardous Materials:**

- 11. that due to age of the buildings being demolished they are likely to contain hazardous materials which cannot be disposed to landfill except with specific approval. Therefore, the applicant must provide a hazardous materials survey to the Environment Protection Unit, TAMS identifying all potential hazardous materials associated with the demolition of the structure and any residues or wastes remaining within the structure prior to works commencing at the site.

**Notes:**

- 1. *The survey must identify all hazardous material including fuel tanks, asbestos, lead, PCB containing materials, Synthetic Mineral Fibre (SMF). Ozone Depleting Substances etc; and*
- 2. *Appropriately licensed contractors must be engaged for the transport and disposal of all hazardous materials found on the site.*

**Geotechnical Report**

- 12. that all site and building work is to be undertaken only in accordance with the recommendations of a geo-technical report prepared and endorsed by suitably qualified, practising engineer;

**Note:** *This report is to be lodged with the Planning and Land Authority before the commencement of earthworks preparatory to building work;*

**Noise Attenuation**

- 13. that noise attenuation measures shall be implemented in accordance with a noise attenuation report prepared by a suitably qualified acoustics consultant that is a member of the Australia Acoustic Society and has experience in assessing the effects of traffic noise. This report shall

ensure that buildings are constructed in accordance with the Australian Standard 3671: Acoustics - Road Traffic Noise Intrusion, Building Siting and Construction, and Australian Standard 2107: Acoustics - Recommended Design Sound Levels and Reverberation Times for Building Interiors;

### ***Traffic Management***

14. that at all times during construction the site and surrounds shall be managed in accordance with a Temporary Traffic Management Plan, prepared by a suitably qualified person and approved by the Manager, Asset Acceptance, Asset Management Services Group, TAMS and, where traffic control devices are proposed, the Manager, Asset Use, Roads ACT, Asset Acceptance, TAMS under the *Road Transport (Safety and Traffic Management) Act 1999*. This plan is to address, as a minimum, measures to be employed during construction to manage all traffic, including construction traffic, in and around the site, provision of safe pedestrian movement around the site, the provision of parking for construction workers, and associated traffic control devices;

### ***Notice of Commencement of Construction***

15. that a Notice of Commencement of Construction shall be submitted to the Manager Asset Acceptance one week prior to the commencement of works. The Notice shall also include the confirmation of any protective measures installed in accordance with the approved Landscape Management Protection Plan and programmed implementation of the TTM.

### ***Works on Territory Land***

16. that in accordance with the *Roads and Public Places Act 1937* no work is to be undertaken on road verges and other unleased Territory Land without the approval of the Territory;

### ***Driveways***

17. that those sections of the internal driveway that will be traversed by waste collection vehicles operated by or on behalf of the Territory shall be designed and constructed in accordance with *Development Control Code for Best Practice Waste Management in the ACT, ACT Waste, Department of Urban Services 1999*, to accommodate heavy vehicles with loads of 7 tonnes per axle;
18. that vehicular access and all driveway works within the site shall be provided in accordance with the relevant Australian Standards for vehicular access, in particular the Australian Standards for off-street car parking AS2890-2004;

### ***Basement Drainage***

19. that drainage of the basement car park, including any car wash down facility, and the waste compartments are to be connected to sewer, to the satisfaction of ActewAGL and Environment and Recreation ACT, TAMS;

### ***Erosion and Sediment Control***

20. that construction and development shall be in accordance with Environment ACT's 1998 guidelines "Erosion and Sediment Control During Land Development", to the satisfaction of Territory and Municipal Services;.

### ***Unleased Territory Land***

21. that, during construction, all existing vegetation (trees, shrubs and grass) located on the verge and unleased Territory land immediately adjacent to the development shall be managed, protected and maintained in accordance with Landscape Management Plan (LMP) approved by the Manager Asset Acceptance, Asset Management Services Group, TAMS. This plan is to be approved and implemented before the commencement of works, including demolition, on the site and is to be in accordance *City Management Guidelines for the Protection of Public Landscape Assets Adjacent to Development Works-REF-04*.
22. that the new public footpath along Grose Street is to be continuous across the driveway verge crossing, ie. the footpath is to have precedence;
23. that the existing concrete footpath shall be retained or, if it is to be replaced, it is to be reconstructed at the same level in and with a finish and colour as close to the original concrete as possible to the satisfaction of TAMS;
24. that in consultation and approval from the Manager of Asset Acceptance, TAMS, at the cost of the applicant/lessee shall construct nine (9) off-site car park spaces along Hopetoun Circuit and another nine (9) off-site car park spaces along Grose Street as proposed to the satisfaction of TAMS;
25. that the proposed driveway verge crossing shall be constructed at the applicant's expense generally in accordance with TAMS driveway Type HD2 as shown on TAMS Drawing DS5-2, or equivalent to the satisfaction of TAMS;

***Note:*** see *Appendix 1* for more information in relation to other approvals required for work on unleased Territory land.

### **Tree Protection**

26. that the applicant/lessee shall protect and maintain in accordance with Canberra Landscape Guidelines all existing trees and shrubs located on the subject site, on adjoining blocks overhanging the subject site, on the verge and unleased Territory land immediately adjacent, except for those specifically identified for removal in the approved drawings and/or a Tree Management Plan. Tree protection fencing, if required, shall be erected prior to the commencement of any work on the site; and

**Note:** A Tree Management Plan is required where it is proposed to undertake groundwork within the tree protection zone of a protected tree or likely to cause damage to, or remove, any trees defined as protected trees under the Tree Protection Act 2005. Appendix 1 contains relevant advice.

### **ActewAGL**

27. that prior to commencing works on site, the applicant shall obtain all relevant approvals ActewAGL (such as, the External Water Services Plan and the External Sewer Services Plan).

## **2.0 DATE THAT THIS APPROVAL TAKES EFFECT**

Unless a condition of approval provides for otherwise this approval is effective four weeks from the date of this notice. The effective date could be adjusted if the approval is reconsidered by the Planning and Land Authority or if an application for a review of the decision is made to the ACT Administrative Appeals Tribunal.

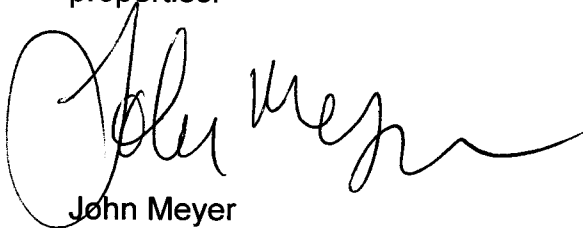
## **3.0 REASONS FOR THE DECISION**

The application was approved because, in the form modified by the imposed conditions, it was considered to be consistent with the Territory Plan. An assessment against the Territory Plan, a list of the evidence relied upon in reaching the decision and other information related to the proposal, and an assessment of the pertinent issues raised in public submissions are included in the Findings on Material Questions of Fact attached to this document.

The key issues identified in the assessment are removal of the existing trees on the unleased land on Block 19 Section 12 Deakin, car park spaces and the amenity of the streetscape in relation to the proposed courtyard wall facing Hopetoun Circuit and Grose Street.

Conditions have been imposed to address the key issues and ensure that the proposal is consistent with the intent of the Territory Plan and the Development Control Plan 171/06/0003.

In particular conditions were imposed to provide additional nine (9) car park spaces along Hopetoun Circuit and Grose Street, reduce the height of the courtyard wall and to provide articulation, and the existing trees on Block 19 (unleased Territory land) are to be retained with the additional trees to be planted to provide visual screening to the nearby by Embassies and adjoining properties.

A handwritten signature in black ink, appearing to read 'John Meyer', with a large, stylized initial 'J'.

John Meyer  
Acting Chief Planning Executive  
ACT Planning and Land Authority

30 April 2008

## **FINDINGS ON MATERIAL QUESTIONS OF FACT**

**APPLICATION NO.: 200302111**

**BLOCKS 9 & 13 SECTION 12 SUBURB DEAKIN**

### **1.0 FINDINGS**

#### **1.1 Statutory Requirements**

The proposal involves:

- (a) the erection, alteration or demolition of a building or structure on or under the land;
- (b) the carrying out of earthworks or other construction work on or under the land; and
- (c) a variation to a lease of the land;

which constitutes "development" as defined by section 222 of the Land Act and which is subject to the provisions of Part 6 of that Act.

Under section 8 of the Land Act, the relevant authority cannot "do any act, or approve the doing of any act" that is inconsistent with the Territory Plan. The Land Act also specifies certain matters that are to be taken into account in an assessment of an application, most of which are contained in the Territory Plan. The relevant provisions of the Territory Plan are addressed in Section 1.6 below.

#### **1.2 Time Frames for Decision**

The application was lodged on 29 November 2007. Under the Land (Planning and Environment) Regulations the prescribed time for a decision is due by 14 April 2008.

The applicant submitted more information on two occasions with the corresponding development applicant numbers, DA No. 200302111A and DA No. 20032111B, to address the concerns raised by TAMS in relation to the regulated trees, traffic noise assessment and waste vehicle movement.

Under section 230(2) of the Land Act the relevant authority is taken to have refused to approve an application if he or she fails to make a decision in relation to the application before the expiration of the prescribed period.

However, pursuant to section 230(3) of the Act the relevant authority may approve an application at any time after the expiration of the prescribed period until the ACT Administrative Appeals Tribunal has finally dealt with an application for review of the "deemed refusal" or until 6 months has elapsed from the date of lodgement.

### 1.3 Description of Proposal

The proposal seeks approval for:

- (a) the consolidation of the Blocks 9 and 13 Section into one block;
- (b) a variation to the Crown lease to permit a maximum of one hundred and fourteen (114) residential units;
- (c) the removal five (5) verge trees on Grose Street located adjacent to the proposed new driveway crossings;
- (d) the construction of nine (9) off-site car park spaces along Grose Street and the construction of nine (9) off-site car park spaces along Hopetoun Circuit;
- (e) the removal of nine (9) (Trees 4, 6, 7, 9, 10, 11, 12, 16 and 18) regulated trees from the site;
- (f) the demolition of existing Deakin Embassy Motel and other outbuildings;
- (g) the erection of four (4) separate apartment buildings and a single storey lobby building with basement parking; and
- (h) associated landscaping, car parking, paving and other site works;

The proposal is described in drawings and supporting documents submitted as part of Development Application Number 200302111, 200302111A and 200302111B.

### 1.4 Site and Surrounds

The combined site area of Blocks 9 and 13 is 8791m<sup>2</sup>. The land falls approximately 4m southwest to northwest. The site is located at the corner of Hopetoun Circuit and Grose Street Deakin, and sits below the adjacent elevated section of Adelaide Avenue to the north.

Block 9 is currently occupied by the Embassy Motel and Block 13 is the narrow strip of land along the western boundary of the motel site accommodating a sealed car park used in association with the motel. To the north of the block is a vacant, unleased, parcel of Territory land (Block 19) which separates the motel site from the Adelaide Avenue vehicle on-ramp.

The Embassy Motel comprises of motel units, restaurant, and function rooms arranged around a central courtyard including swimming pool. The structure is of masonry construction and varies between 2 to 3 storeys. The majority of the site is covered in impermeable surfaces, including a large bitumen car park.

The site is surrounded by lawn and trees consistent with the adjoining residential and local retail centre. The majority of the vegetation on site and on the verge are a mixture of mature Eucalypts and *Betula pendula* trees on