

26 February 2001

CITY OF PHILLIP

Item A6

Geoff Oulton  
Director City Development  
City of Port Phillip  
208 Bank Street  
SOUTH MELBOURNE 3205

DATE RECEIVED

27 FEB 2001

*G. Oulton*

Becton Corporation  
Pty. Ltd.  
A.C.N. 006 031 561  
7/470 St. Kilda Road  
Melbourne VIC 3004  
Telephone 9832 9000  
Facsimile 9822 9090

Dear Geoff,

Re: **Esplanade Hotel**

1840/011

1906/01

I am in receipt of your letter of 5 February 2001, there are a number of matters raised therein which require a response.

In your first paragraph you note "there are different views on how to proceed following the Joint Working Group's report". Our view is that the City of Port Phillip should have felt some compunction to follow the recommendation of its appointed Chairman to the Joint Working Group. The fact that the Council has resolved to ignore the recommendation in favour of a different course of action cannot be dressed up as a difference of interpretation. In essence, Council's request for Becton to provide a design response to your draft Amendment C25 is entirely inconsistent with the recommendation of the Joint Working Group.

As Chairman of the Joint Working Group, Mr John Lawson recommended that Council and Becton prepare their own responses to the Joint Working Group report. Mr Lawson further recommended that an independent planning Panel be appointed to consider these two responses and decide on an ultimate solution to this planning impasse. Becton remains willing to accept Mr Lawson's recommendation and would be happy to prepare a design response to the Joint Working Group report should Council wish to deal with it as recommended by Mr Lawson.

In the third paragraph of your letter you have noted I advised that the Premier and Minister for Planning support the process the Council has adopted with respect to this matter. This is incorrect. I advised at our meeting that we had met with the Premier and Minister for Planning to express our dissatisfaction with the Council's handling of the entire Esplanade Hotel planning process and that we had not yet received a response to that approach. At the date of writing this letter this situation is unchanged.

Following our meeting of 25 January 2001 we have, as promised, undertaken a preliminary review of the Amendment C25 draft forwarded to us. In summary, the document is materially incomplete and, in planning terms, is extremely confusing. Layers of subjective tests result in a document which creates a situation where the reader has no clear direction as to what, if anything, could be constructed on the site. The items missing from the draft Amendment include:

- carparking and traffic measures;
- a quantified view cone;
- a revised statement of significance for the hotel;
- diagram 'x' (referred to in Schedule 12).

Given the status of the draft as described, we do not intend to proceed with any more work on it until Council has provided this information as indicated in its letter dated 21 December 2000.

Further review of your draft Amendment C25 is also hampered by our understanding that the Council supports a trade-off relationship between preserving the culture of the Esplanade Hotel and the development capacity of the balance of the site owned by Becton. Put simply, we need some advice from you as to whether the current draft of Amendment C25 assumes any particular outcome with respect to the management, ownership, presentation etc of the Hotel's culture. In this regard I refer you to the "Esplanade Hotel Management Plan" enclosed with draft Amendment C25 and forwarded to us separately by Mayor, Julian Hill on 21 December 2000.

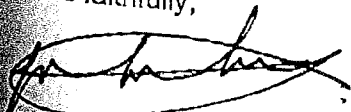
In the fourth paragraph of your letter you provide an opinion regarding the capacity of a planning Panel to make a recommendation which goes beyond the Amendment being considered. For example, with a Panel considering Amendment C25, if Becton made an opposing submission proposing a 25 storey development on the site, it is your assertion that (if suitably convinced by Becton) the Panel could recommend the 25 storey control. We disagree with your opinion. Our legal advice is that if the Panel were to accept and support such a submission, as you put it, "significantly contrary to the intent of the Amendment", the outcome would simply be a recommendation to abandon that Amendment.

While section 168 of the Planning and Environment Act provides that "a Panel may take into account any matter it thinks relevant in making its report and recommendations", the Panel's task is limited to assessing the Amendment. The words in section 168 give it discretion about what it takes into account in making its assessment, but it would be quite improper (and our advice suggests beyond power) for it to consider contrary proposals and make a positive recommendation on them in the guise of assessing the Amendment.

For this reason, I continue to believe that the appointment of an Advisory Committee with wider terms of reference is not only desirable, but necessary, if our proposal for the Esplanade Hotel site and its broader strategic context is to have the opportunity of being formally evaluated.

In closing, I wish to reconfirm Becton's desire to complete a quality redevelopment of the Esplanade Hotel site. Becton has owned this property for almost four years and despite continued effort and expenditure we have been unable to have the planning issues surrounding the site considered by an independent body. The City of Port Phillip has played a central role in frustrating Becton's efforts to have the issues adjudicated. I ask that you do what you can within that your organisation to move us toward a mutually acceptable planning process.

Yours faithfully,



HAMISH MACDONALD

cc John Thwaites

REF: PORT PHILLIP CC