



Notice of decision on Reconsideration

Division 7.3.10 of the *Planning and Development Act 2007*

DA NO: 201120958		DATE RECONSIDERATION LODGED: 4 July 2012	
DATE OF DECISION: 16 August 2012			
BLOCK: 6	SECTION: 25	SUBURB: GRIFFITH	
STREET NO AND NAME: 66 Leichhardt Street Griffith			
APPLICANT: Colin Stewart Architects			
Lessee: BMD Pty Limited			

THE APPLICATION

This application seeks reconsideration of the decision by the planning and land authority of 14 June 2012 to refuse the application as set out in the Notice of Decision.

THE DECISION

I, Aaron Oshyer, delegate of the planning and land authority, pursuant to section 193 of the *Planning and Development Act 2007*(Act), hereby **substitute the decision at Attachment A** for the original decision of the planning and land authority dated 14 June 2012.

PUBLIC NOTIFICATION

Pursuant to Division 7.3.10 of the Act, written notice of the reconsideration application was given to anyone who made representation under section 156 about the original application on 11 July 2012 to 25 July 2012. No written representations were received during the time allowed.

REASONS FOR THE DECISION

The original decision is substituted by the decision at **Attachment A** because further information provided by the applicant for reconsideration demonstrated that the proposal is not inconsistent with the Territory Plan.

The decision has been revised as a result of an application for reconsideration in accordance with Section 191 of the *Planning and Development Act 2007*.

This reconsideration sought to demonstrate that the proposal could be modified to address the departures identified in the Notice of Decision to refuse the application dated 14 June 2012. The planning and land authority supports the revisions to the previous Notice of Decision because the application for reconsideration demonstrated that the proposed development would comply with the Territory Plan.

In particular the supporting documentation demonstrates that the proposal would not be inconsistent with the requirements of the Territory Plan, the Multi Unit Housing Development Code and the Parking and Vehicular Access General Code.

Notwithstanding this, the supporting documentation demonstrates that the proposal would not be inconsistent with Development Control Plan (DCP) No. 11/01.

In remaking the decision the following matters were reconsidered that form part of the revisions to the original decision.

DCP

- All articulation elements are consistent with the requirements of the DCP.
- Surface car parking has been minimised and more landscaping are proposed addressing Canberra Avenue.

Multi Unit Housing Development Code (Code)

- Circulation - R212 and C212

The internal circulation has improved by increasing the width of the 19m long corridor from 1.5m to 2m.

- Solar Access - R222 and C222

The proposal complies with Rule 222 of the Code. 70% of the total number of apartments now receive 3 hours of direct sunlight onto the internal living areas and sections of the associated private open spaces between the hours of 9.00am to 3.00pm on 21 June (Winter Solstice)

- Private Open Space - R232 and C232 and Clothes Drying – C245

The private open spaces of the ground floor apartments comply with Rule 232. The proposal also provides areas for clothes drying.

An open-air communal clothes drying area is provided on the ground floor level that is easily accessible for all residents and visually screened from public areas, for those apartments that do not have sufficient spaces in their private open spaces.

- Communal Open Space – C240.

The revised proposal has removed two ground floor units and provides additional communal open space that consists of a large lobby area and outdoor terrace with BBQ facilities.

Together with the swimming pool, the revised proposal provides more than 20% of communal open space of the site area.

Parking and Vehicular Access General Code

- The revised proposal fully complies with the study classification. The proposal is required to provide 105 car parking spaces. The proposal provides 107 car parking spaces on site. The proposal now fully complies with the Parking and Vehicular Access General Code.

INSPECTION OF THE APPLICATION AND DECISION

A copy of the application and the decision can be inspected between 8:30am and 4:30pm weekdays at the Environment and Sustainable Development Directorate Dickson Customer Service Centre at 16 Challis Street, Dickson, ACT.

REVIEW BY THE ACT CIVIL AND ADMINISTRATIVE TRIBUNAL (ACAT)

Decisions that are reviewable by the ACAT are identified in Schedule 1 of the *Planning and Development Act 2007*, except for those precluded under Schedule 3 of the *Planning and Development Regulations 2008* – Matters exempt from third-party ACAT review.

EVIDENCE

Application No. 201120958

File No. 1-2011/21743/1

The Territory Plan zone – CZ2 Business Zone

The Codes of the Territory Plan –

CZ2 Office Areas Outside Centres Development Code;

Multi Unit Housing Development Code; and

Parking and Vehicular Access General Code

Current Crown Lease – Volume 1535 Folio 67

Other – Development Control Plan (DCP) No. 11/01

Entity advice

DELEGATE



Aaron Oshyer

Delegate of the planning and land authority

Environment and Sustainable Development Directorate

16 August 2012

CONTACT OFFICER

Ada Park

Phone: 62071854

Email: ada.park@act.gov.au

APPENDIX 1

REVIEW OF THE DECISION

The following notes are provided in accordance with regulation 7 of the *ACT Civil and Administrative Tribunal Regulation 2008*. Refer to the Review by the ACT Civil and Administrative Tribunal (ACAT) section of the Notice of decision for information about its relevance to this development application.

CONTACT DETAILS

The review authority is the ACT Civil and Administrative Appeals Tribunal (ACAT).

Location	Contact details
ACT Civil and Administrative Tribunal Level 4, 1 Moore Street (the Health building) CANBERRA CITY ACT 2601	Website: www.acat.act.gov.au Email: tribunal@act.gov.au Telephone: (02) 6207 1740 Facsimile: (02) 6205 4855 Post: GPO Box 370, CANBERRA, ACT, 2601 Document exchange: DX 5691

POWERS OF THE ACAT

The ACAT is an independent body. It can review on their merits a large number of decisions made by ACT Government ministers, officials and statutory authorities. The ACAT can agree with, change or reject the original decision, substitute its own decision or send the matter back to the decision maker for reconsideration in accordance with ACAT recommendations.

APPLICATIONS TO THE ACAT

To apply for a review, obtain an application form from the ACAT. You can also download the form from the ACT Legislation Register <http://www.legislation.act.gov.au/af/2009-278/current/pdf/2009-278.pdf>.

If you are applying on behalf of an organisation or association of persons, whether incorporated or not, the Tribunal in deciding whether to support this application will consider the effect of the decision being reviewed on the interests of the organisation or association in terms of its objects or purposes. A copy of the relevant documents will be required to be lodged with the Tribunal.

TIME LIMITS FOR APPLICATIONS

The time limit to make a request for a review is 28 days from receiving this Notice of decision. The time limit can be extended in some circumstances. Check with the ACAT for more details.

FEES

Applications to the ACAT, including an application to be joined as a party to a proceeding, require payment of a fee of not less than \$178 (the Tribunal Registry will advise of the current fee), unless you are receiving legal or financial assistance from the ACT Attorney-General. You can apply to have the fee waived on the grounds of hardship, subject to approval (refer to section 22T of the *ACT Civil and Administrative Tribunal Act 2008*). Decisions to grant assistance are made on the grounds of hardship and that it is reasonable, in all the circumstances, for the assistance to be granted. Write to: The Chief Executive, Justice and Community Safety Directorate, GPO Box 158, CANBERRA ACT 2601. Ask the ACAT for more details.

TIME LIMITS FOR REVIEWS OF DECISIONS

The ACAT is required to decide appeals in land and planning and tree protection cases within 120 days after the lodging of the appeal, unless that period is extended by the ACAT upon it being satisfied that it is in the interests of justice to do so.

FORMS OF LEGAL, FINANCIAL AND OTHER ADVICE AND ASSISTANCE

The following organisations can provide advice and assistance if you are eligible:

- ACT Attorney-General, write to The Chief Executive, Justice and Community Safety Directorate, GPO Box 158, CANBERRA, ACT, 2601;
- the ACT Legal Aid Office, telephone 1300 654314;
- Legal Advice Bureau, telephone (02) 6247 5700;
- ACT Council of the Ageing, telephone (02) 6282 3777; and
- Welfare Rights and Legal Centre, telephone (02) 6247 2177.

AWARDING OF COSTS

You will have to pay any costs involved in preparing or presenting your case. The ACAT also has the power to award costs against a party if the party contravenes a direction of the ACAT and the ACAT considers it in the interests of justice to make such an order. This power is in addition to the power of the ACAT to strike out a party and to dismiss an application for failure to comply with the ACAT's directions.

ACCESS TO DOCUMENTS ABOUT THE DECISION

You may apply for access to any documents you consider relevant to this decision under the ACT Freedom of Information Act 1989. Information about Freedom of information requests is available on the planning and land authority's web site or by contacting us by phone on (02) 6207 1923.

PROCEDURES OF THE ACAT

The procedures of the ACAT are outlined on the ACAT's website, including in the Guide to the Land and Planning Division and the Guide to the Hearing. Contact the ACAT for alternative ways to access information about the ACAT's procedures.

TRANSLATION AND INTERPRETER SERVICES

The ACT Government's translation and interpreter service runs 24 hours a day, every day of the week. Telephone 131 450.

ENGLISH	If you need interpreting help, telephone:
ARABIC	إذا احتجت لمساعدة في الترجمة الشفوية، إتصل برقم الهاتف :
CHINESE	如果你需要传译员的帮助，请打电话：
CROATIAN	Ako trebate pomoć tumača telefonirajte:
GREEK	Αν χρειάζεστε διερμηνέα τηλεφωνήσετε στο
ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
MALTESE	Jekk għandek bżonn l-għajnuna t'interpretu, ċempel:
PERSIAN	اگر به ترجمه شفاهی احتیاج دارید به این شماره تلفن کنید:
PORTUGUESE	Se você precisar da ajuda de um intérprete, telefone:
SERBIAN	Ако вам је потребна помоћ преводиоца телефонирајте:
SPANISH	Si necesita la asistencia de un intérprete, llame al:
TURKISH	Tercümana ihtiyacınız varsa lütfen telefon ediniz:
VIETNAMESE	Nếu bạn cần một người thông-ngôn-hãy gọi điện-thoại:

TRANSLATING AND INTERPRETING SERVICE

131 450

Canberra and District - 24 hours a day, seven days a week



ACT
Government

Environment and
Sustainable Development

Notice of decision

Under Part 7 of the *Planning and Development Act 2007*

Merit track

DA NO: 201120958		DATE LODGED: 13/12/2011
DATE OF DECISION: 16 August 2012		
BLOCK: 6	SECTION: 25	SUBURB: GRIFFITH
STREET NO AND NAME: 66 Leichhardt Street		
APPLICANT: Colin Stewart Architects		
LESSEE: BMD Pty Limited		

THE DECISION

This application was lodged in the merit track. Pursuant to section 113(2) of the *Planning and Development Act 2007* (Act), the application must be assessed according to the provisions relevant to merit track applications.

I, Aaron Oshyer, delegate of the planning and land authority, pursuant to section 162 of the Act, hereby **approve subject to conditions** the proposal for:

- **demolition of an existing two storey building;**
- **construction of a six storey residential building containing 74 units with two levels of basement car parking and surface parking; and**
- **associated landscaping, paving and other site works;**

in accordance with the plans, drawings and other documents and items submitted with the application and endorsed as forming part of this approval.

This decision is subject to the conditions of approval at **PART 1** being satisfied.

PART 2 sets out the Reasons for the Decision

PART 3 is Public Notification and Entity Advice.

PART 4 contains administrative information relating to the determination.

DELEGATE

Aaron Oshyer
Delegate of the planning and land authority
Environment and Sustainable Development Directorate

16 August 2012

CONTACT OFFICER

Ada Park
Phone: 62071854
Email: ada.park@act.gov.au

PART 1

CONDITIONS OF APPROVAL

This application is approved subject to the following conditions being satisfied. Some conditions of approval will require attention before the approved drawings will be released, others before work commences or before the completion of building work.

A. ADMINISTRATIVE / PROCESS CONDITIONS

A1. APPROVAL DOES NOT TAKE EFFECT

This approval does not take effect until the Crown lease is varied to permit the approved development and is registered at the Office of Regulatory Services.

A2. FURTHER INFORMATION

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 authority for approval:

(a) The following architectural drawings based on the relevant drawings submitted as part of the application for reconsideration, -

(i) North East and North West Elevations;

(ii) Site Plan;

(iii) Roof Plan; and

(iv) Colour Material Sample Board;

(b) a revised landscape plan based on the relevant drawings submitted as part of the application for reconsideration, showing:

(i) plant schedule and other relevant landscaping details;

B. PRIOR TO CONSTRUCTION AND/OR DEMOLITION

B1. NOISE MANAGEMENT PLAN

A Noise Management Plan (NMP) prepared and endorsed by a suitably qualified acoustics consultant that is a member of the Australian Acoustic Society and has experience in assessing noise effects, must be submitted for approval by the Environment Protection Authority. The NMP shall address how the design and construction of the building will comply with the relevant sections of:

a) AS/NZS 3671 *Acoustics – Road traffic Noise Intrusion, Building Siting and Construction*

b) AS/NZS 2107 *Acoustics – Recommended design sound levels and reverberation terms for building interiors*

c) ACT *Environment Protection Regulation 2005*.

Note: Any changes to architectural drawings, if required, as part of recommendations of the NMP, must be approved by the planning and land authority

B2. CONTAMINATED SITES

Prior to the commencement of excavation and new construction works, the environmental site assessment report in relation to the approved remediation of the tank site and disposal of contaminated materials - DA 201120296 must be reviewed and endorsed by the Environment Protection Authority (EPA).

Note: No soil is to be removed from the site without EPA approval.

B3. NOTICE OF COMMENCEMENT OF CONSTRUCTION

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 and Protection Plan and programmed implementation of the Temporary Traffic Management (TTM) Plan.

B4. REPAIR OF DAMAGE TO PUBLIC ASSETS

The applicant/lessee is held responsible for all damages to ACT Government assets (including footpaths) caused by the development and they must properly repair any damages to those assets. Before work commences, they should notify the Department of Territory and Municipal Services Directorate of any existing damage to public facilities.

B5. SEDIMENT AND EROSION CONTROL

That prior to any work on the site commencing, the applicant/lessee must submit two copies of the sediment and erosion control plan to Environment Protection Authority for approval;

B6. TREE PROTECTION

Tree protection fencing, if required, shall be erected prior to the commencement of any work on the site.

B7. VERGE MANAGEMENT

A Landscape Management and Protection Plan is to be approved and implemented before the commencement of any work on the site, and is to be in accordance with the *City Management Guidelines for the Protection of Public Landscape Assets Adjacent to Development Works-REF-04*.

B8. TRAFFIC MANAGEMENT

A Temporary Traffic Management (TTM) Plan shall be prepared by a suitably qualified person and approved by the Manager, Asset Acceptance, Operational Support, Directorate Services, Territory and Municipal Services Directorate (TAMSD) prior to commencement of any work on the site. 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;

C. DURING CONSTRUCTION AND/OR DEMOLITION**C1. TAMSD CONDITIONS – DA 201120958**

- (a) The footpath connection is to be along the property boundary, and not along the road (this will be assessed during the design acceptance stage). While designing the footpath, other existing relative footpath locations must be considered.
- (b) Light pole relocation (if required) is to be further away from the existing tree. The location shown in the various plans is not supported (this will be assessed during design acceptance stage).
- (c) An arborist shall be engaged to maintain the balance of the tree while pruning the lower branches along the Leichhardt Street driveway.

C2. SEDIMENT AND EROSION CONTROL

All unsurfaced entry and exit points must be consolidated with crushed aggregate or similar extending from the road kerb to the building line.

Temporary sediment controls – comprising, as a minimum, geotextile silt fencing along the lowest points of the site and hay bale filters as required – are to be installed and maintained at least daily to prevent sediment from reaching the stormwater mains system.

C3. TREE PROTECTION

The applicant/lessee shall protect and maintain 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 a Tree Management Plan.

C4. VERGE MANAGEMENT

During any work undertaken on the site, 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 a Landscape Management and Protection Plan approved by the Manager, Asset Acceptance, Operational Support, Directorate Services, Territory and Municipal Services Directorate, TAMSD.

C5. TRAFFIC MANAGEMENT

At all times, the site and surrounds shall be managed in accordance with the approved Temporary Traffic Management (TTM) Plan.

C6. WASTE MANAGEMENT

All building waste is to be stored on the site in suitable receptacles and collected regularly. The lessee is to take all reasonable steps to ensure that waste, particularly wind borne litter, does not affect adjoining or adjacent properties.

D. ADVISORY NOTES

This application is approved with the following advisory notes. It is recommended that careful consideration be given to advisory notes prior to commencing work.

D1. ENVIRONMENT PROTECTION AUTHORITY (EPA)**(a) Hazardous materials**

The EPA endorses the hazardous materials survey submitted as part of this development application.

(b) Erosion and Sediment Control for sites UNDER 0.3ha

Construction and development works should be in accordance with the "*Environment Protection Guidelines for Construction and Land Development in the ACT, 2011*." It is recognised that building activities can contribute significant pollution to Canberra's lakes & waterways, increasing turbidity and the frequency of blue-green algae blooms. Under the *Environment Protection Act 1997* it is an offence to allow soil and other building materials to enter the stormwater system.

The Erosion and Sediment Control Plan submitted is acceptable for the purposes of development approval. Prior to works commencing the site contractor will need to submit two copies of their own plan as part of their Environment Protection Agreement.

(c) Noise

For noise during construction that will take longer than 2 weeks, building work is permitted above the zone noise standard during the following hours: Monday to Saturday 7am to 6pm, excluding Sundays and Public Holidays

D2. ActewAGL

Refer to the conditions imposed by ActewAGL. The written conditions are attached to this Notice of Decision. The proposal must comply with these conditions.

Refer to Appendix 1 for information about approvals that may be required for construction.

PART 2

REASONS FOR THE DECISION

The application satisfactorily meets the requirements for approval. The application was approved because, based on the documentation and in the form modified by the imposed conditions, it was considered to meet the relevant code, being the;

- CZ2 – Office Areas Outside Centres Development Code
- Multi Unit Housing Development Code; and
- Parking and Vehicular Access General Code

Conditions have been imposed to ensure that the proposal addresses the requirements of the entities who have supported the proposal with conditions.

The subject site has an Overlay: Main Avenues and Approach Routes. Consequently, Development Control Plan (DCP) No. 11/01, prepared and approved by NCA, applies.

The proposal was assessed against the DCP and it is not inconsistent

The proposal is considered to be not inconsistent with the Territory Plan and the *Planning and Development Act 2007*.

EVIDENCE

Application No. 201120958

File No. 1-2011/21743/1

The Territory Plan zone – CZ2 Business Zone

The Codes of the Territory Plan –

CZ2 Office Areas Outside Centres Development Code;

Multi Unit Housing Development Code; and

Parking and Vehicular Access General Code

Current Crown Lease – Volume 1535 Folio 67

Entity advice

Other – Development Control Plan (DCP) No. 11/01

PART 3

PUBLIC NOTIFICATION AND ENTITY ADVICE

PUBLIC NOTIFICATION

Pursuant to Division 7.3.10 of the Act, the application for reconsideration was notified to anyone who made representation under section 156 about the original application from 11 July 2012 to 25 July 2012. No written representations were received.

Pursuant to Division 7.3.4 of the Act, the original application was publicly notified from 19 December 2011 to 1 February 2012. One written representation was received during public notification.

The main issues raised were as follows. Comments are provided as appropriate.

- *Height- The development is higher than any other in the area*

Response: The proposal is consistent with the Development Control Plan.

- *Wind turbines on the development for noise*

Response: The proposal was referred to EPA, no concerns were raised regarding noise from wind turbines. The proposal must comply with the *Environment Protection Act 1997* and *Environment Protection Regulation 2005*.

- *Traffic congestion/parking issues on Canberra Avenue during school hours and on the other streets adjacent*

Response: TAMSD and the Transport Planning Unit did not raise any concerns in relation to traffic congestion or parking. The revised development now complies with the Parking and Vehicular Access General Code and there is no shortfall of car parking spaces.

- *Privacy issues for residents at 107 Canberra Avenue (Block 5 Section 25 Griffith)*

Response: The proposal has provided adequate spatial separation between the proposed building and the existing multi unit development building on Block 5. Further the windows and balconies are strategically located to eliminate direct overlooking.

ENTITY ADVICE

Pursuant to Division 7.3.3 of the Act, the application was referred to entities and advice was received. The referral entities' comments are as follows. A response to the advice is provided as appropriate.

TERRITORY AND MUNICIPAL SERVICES DIRECTORATE

On 25 July 2012 advice was received from Territory and Municipal Services Directorate in relation to the proposal. The advice states that:

Asset Acceptance, TAMS have previously supported this DA with conditions. Previous comments will still apply and the reconsideration is supported.

Conditions:

1. Footpath connection to be along the property boundary, and not along the road, which will be assessed during design acceptance stage. While designing the footpath, other existing relative location must be considered.
2. Light pole relocation (if required) to be further away from the existing tree. The location shown in the various plans is not supported. This will be assessed during design acceptance stage.
3. Arborist to maintain the balance of the tree while pruning the lower branches along Leichhardt Street driveway.

In addition, following will apply for Works on Territory Land:

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. Such approval must be obtained from Senior Manager, Asset Acceptance, Land Management and Planning Division (LMP), TAMS by the ways of:

1. A certificate of design acceptance prior to the commencement of any work and
2. A certificate of Operational Acceptance on completion of all works to be handed over to TAMS.

Design Acceptance and Operational Acceptance

A Certificate of Design Acceptance is required from the Senior Manager, Asset Acceptance, Land Management and Planning, TAMS, prior to the construction. The Certificate of Design acceptance will be issued for all off-site works or its updated version approved by ACTPLA.

In order to obtain the Certificate of Design Acceptance, fully detailed drawings (civil, landscape) prepared by suitably qualified persons for all off-site works including roads, driveways, footpaths, street lighting, storm water, landscaping (and any other issues that may be found by audit of the plans) and a design report in accordance with Ref No 06: "Requirements for Design Acceptance Submissions", must be certified by a Chartered Engineer/Landscape Architect and submitted to the Senior Manager, Asset Acceptance.

A Certificate of Operational Acceptance on completion of the works is required from the Senior Manager, Asset Acceptance, Land Management and Planning, TAMS, prior to the issue of a Certificate of Occupancy.

Similarly a Chartered Engineer/Landscape Architect should certify compliance with TAMS Ref No 08: "Requirements for Works as Executed Quality Records Requirements" when the request for Operational Acceptance is made to the Senior Manager, Asset Acceptance on completion of all off-site works.

A Waste Management Plan in accordance with the Development Control Code for Best Practice Waste Management in the ACT should also be included if not approved at the Development Application stage.

Temporary Traffic Management (TTM)

A TTM plan approval from the Manager, Traffic Management & Safety, Roads ACT, Transport and Infrastructure Division, TAMS. 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, Traffic Management & Safety. 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.

Landscape Management & Protection Plan (LMPP)

LMPP approval from the Manager, Asset Acceptance, Land Management and Planning, TAMS. 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 the Landscape Management Protection Plan (LMPP) approved by the Manager, Asset Acceptance. This plan is to be implemented before the commencement of works, including demolition on the site and is to be in accordance with City Management Guidelines for the Protection of Public Landscape Assets Adjacent to Development Works-REF-04.

Use of Verges or other Unleased Territory land

In accordance with the Roads and Public Places Act 1937, road verges and other unleased Territory land must not be used for carrying out of works, including storage of materials or waste, without prior approval of the Territory. Approval can be obtained from the Department of Territory and municipal Services.

Repair of Damage to Public Assets

The applicant/lessee is held responsible for all damages to ACT Government assets (including footpaths) caused by the development and they must properly repair any damages to those assets. Before work commences, they should notify the Department of Territory and municipal Services of any existing damage to public facilities.

Notice of Commencement of Construction

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 LMPP and programmed implementation of the TTM.

Matters raised have been incorporated as either conditions of approval or advice.

ENVIRONMENT PROTECTION AUTHORITY (EPA)

On 7 August 2012 advice was received from EPA in relation to the proposal. The advice states that:

CONDITIONS OF SUPPORT:**Contaminated Sites:**

The EPA would support demolition of structures at the site, however, prior to the commencement of excavation and new construction works the environmental site assessment report required under DA201120296 must be reviewed and endorsed by the EPU.

No soil is to be removed from the site without EPU approval.

ADVICE ONLY:**Hazardous materials:**

The EPA endorses the hazardous materials survey submitted as part of this development application.

Erosion and Sediment Control for sites UNDER 0.3ha:

Construction and development works should be in accordance with the "*Environment Protection Guidelines for Construction and Land Development in the ACT, 2011*." It is recognised that building activities can contribute significant pollution to Canberra's lakes & waterways, increasing turbidity and the frequency of blue-green algae blooms. Under the *Environment Protection Act 1997* it is an offence to allow soil and other building materials to enter the stormwater system.

The Erosion and sediment control plan submitted is acceptable for the purposes of development approval. Prior to works commencing the site contractor will need to submit two copies of their own plan as part of their Environment Protection Agreement.

Noise:

For noise during construction that will take longer than 2 weeks, building work is permitted above the zone noise standard during the following hours: Monday to Saturday 7am to 6pm, excluding Sundays and Public Holidays.

Noise Management Plan:

A noise management plan prepared by a suitably qualified person must be submitted for approval to Environment Protection.

Matters raised have been incorporated as either conditions of approval or advice.

ActewAGL

- On 12 July 2012 advice was received from the Water Division in relation to the proposal. The advice states that:

The application has been assessed by ActewAGL against ACTEW water and sewerage network access and asset protection requirements.

The ActewAGL DECISION STATEMENT together with the stamped plans are attached

A failure to comply with decision statement conditions will invalidate the approval and will expose the land-holder to prosecution under the *Utilities Act 2000*.

Non-compliant submissions must be rectified and resubmitted to ActewAGL for approval prior to construction commencing. A decision to proceed with construction using unapproved drawings will expose the land-holder to prosecution under the *Utilities Act 2000*.

Please note: Separate decision statements are required from other utilities (eg: electricity, gas, stormwater and communications)

Future applications

ActewAGL has introduced an online planning application process for obtaining utility clearances prior to submitting a development application or seeking building approval.

This revised application process consists of an electronic form. By using the online form applicants will no longer need to complete the respective Water/Sewerage and Electricity/Gas application forms.

When an application is submitted it will be assessed against the water, sewerage, electricity and gas networks.

ActewAGL requests that organisations register their details if they regularly submit applications. Registration will reduce the time it takes to lodge an application. To register, send a return email including the organisation's name, a contact name, phone number and email address.

- On 13 July 2012 advice was received from the Gas Networks in relation to the proposal. The advice states that:

The application has been assessed by ActewAGL and conditionally complies with the Gas Networks requirements.

The stamped plans together with a statement of compliance are attached.

Separate compliance statements are required from other utilities (eg: electricity, water and sewerage, stormwater and communications).

- On 31 July 2012 advice was received from the Electricity Networks Division in relation to the proposal. The advice states that:

The application has been assessed for compliance with ActewAGL's Electricity Network and conditionally complies with the Electricity Networks requirements.

The stamped plans together with a conditional statement of compliance are attached.

Separate compliance statements may be required from other entities.

Matters raised have been incorporated as advice.

NATIONAL CAPITAL AUTHORITY

On 11 July 2012 the DA was referred to the National Capital Authority (NCA).

A Development Control Plan (DCP No.11/01) is applicable.

The original application was assessed as being inconsistent with the approved Development Control Plan (DCP) for the site. It was inconsistent in terms of articulation and visibility of car parking. It was also inconsistent with many of the ACT's own development codes.

Articulation

The original plans showed the articulation zone starting at RL 575.95. Also, 69% of the articulation zone was occupied when the DCP only allows for 25%. In response the design has lifted the entry way canopy above RL 579 and articulation elements have been significantly reduced.

Landscape Design & Vehicular Access and Car Parking

The original application was assessed to be not consistent with Clauses 9.4 and 10.1. This was due to the visual impact of visitor car parks that were located in the Canberra Avenue landscape setback area. Recent DCPs have not allowed any parking to be located in the 10m setback area on the basis that the area is to present as a part of Canberra Avenue and reinforce the prestige of the Main Avenue. DCP 11/01 does not include this restriction and parking in this area is completely allowable provided its visual impact is minimised.

The method that the amended plans have employed to mitigate this visual impact is through planting a hedge. The details, species or even height are not described in the documentation. It should be noted that the visual impact of car parking will be markedly different between a 1m high or 3m high hedge.

The ACT Government will assess the amended documentation against the approved DCP.

Comments provided have been noted.

PART 4 ADMINISTRATIVE INFORMATION

DATE THAT THIS APPROVAL TAKES EFFECT

Unless a condition of approval provides for otherwise this approval is effective from the day after the date of this notice. The effective date for development applications approved subject conditions could also be adjusted if an application is made to the ACT Civil and Administrative Tribunal.

Pursuant to section 184 of the Act, this approval will expire if:

- the development or any stage of the development is not started within two years after the day the approval takes effect;
- the development is not finished two years after the day the development begins; or
- the development approval relates to land comprised in a lease that requires the development to be completed on a stated date – the date stated in the lease for completion of the development, or the approval is revoked under section 189 of the Act.

Under section 184 of the Act, the applicant may apply to the ACT Planning and Land Authority to extend the prescribed period to finish the development, but such an application must be made within the original period specified for completion.

A development approval, to which section 184 of the Act applies, continues unless the approval ends under sections 184, 185, 186 or 187 of the Act.

INSPECTION OF THE APPLICATION AND DECISION

A copy of the application and the decision can be inspected between 8:30am and 4:30pm weekdays at the Environment and Sustainable Development Directorate Dickson Customer Service Centre at 16 Challis Street, Dickson, ACT.

REVIEW BY THE ACT CIVIL AND ADMINISTRATIVE TRIBUNAL (ACAT)

Decisions that are reviewable by the ACAT are identified in Schedule 1 of the *Planning and Development Act 2007*, except for those precluded under Schedule 3 of the *Planning and Development Regulation 2008* – Matters exempt from third-party ACAT review.

APPENDIX 1

CONTACT DETAILS OF RELEVANT AGENCIES

Health Directorate - health protection	Website: www.health.act.gov.au Telephone: (02) 6205 1700
Environment and Sustainable Development Directorate <i>ACT Planning and Land Authority</i> <ul style="list-style-type: none"> - list of certifiers for building approval - demolition information - asbestos information <i>Environment Protection Authority</i> <ul style="list-style-type: none"> - environment protection - water resources - asbestos information <i>Conservation, Planning and Research</i> <ul style="list-style-type: none"> - threatened species/wildlife management 	Website: www.actpla.act.gov.au Telephone: (02) 6207 1923 Website: www.environment.act.gov.au Telephone: (02) 6207 6251 Website: www.environment.act.gov.au Telephone: (02) 6207 1911
Territory and Municipal Services Directorate <ul style="list-style-type: none"> - tree damaging activity approval - use of verges or other unleased Territory land - works on unleased Territory land - design acceptance - damage to public assets 	Website: www.tams.act.gov.au Telephone: 132 281 Telephone for asset acceptance: (02) 6207 7480
Utilities <ul style="list-style-type: none"> - Telstra (networks) - TransACT (networks) - ActewAGL - Electricity reticulation 	Telephone: (02) 9397 2090 Telephone: (02) 6229 8000 Telephone: 1100 Telephone: (02) 6293 5738

ADVICE TO APPLICANT

SUBMISSION OF REVISED DRAWINGS AND DOCUMENTATION

If a condition of approval requires the applicant to lodge revised drawings and/or documentation with the ACT Planning and Land Authority for approval under section 165 of the *Planning and Development Act 2007* the submission shall be made:

- With a completed application Form 1I for Section 144 & 197 Amendments and Satisfying Conditions of Approval (S.165) or Form 1E Development application – estate development plan, Satisfying Conditions of Approval (S.165) for Estate Development Plans; or
- Submitting the documentation online using edevelopment. More information on edevelopment can be found at http://www.actpla.act.gov.au/tools_resources/e-services/edevelopment

For further information regarding the lodgement of this information please contact Customer Service Centre by Phone: (02) 6207 1923, Fax: (02) 6207 1925 TTY: (02) 6207 2622, Email: actpla.customer.services@act.gov.au or on the ACT Planning and Land Authority website at www.actpla.act.gov.au.

FURTHER APPROVALS FOR CONSTRUCTION

The Notice of Decision grants development approval, but does not cover building approval or approvals which may be required during construction, which commonly include the following.

BUILDING APPROVAL

Most building work requires building approval to ensure it complies with building laws such as the Building Code of Australia. If this applies to this proposal, the lessee should engage a private building certifier to assess and approve the building plans before construction begins. A list of licensed certifiers and information about building approval is available from the ACT Planning and Land Authority's website and Customer Service Centres.

PERMITTED VARIATIONS TO APPROVED DEVELOPMENT

Under section 35 of the Planning and Development Regulation 2008 the development as built may vary from the approved development in accordance with section 35 and the permitted construction tolerances and other permitted variations identified in Schedule 1A of that regulation.

Note 1 The development may still need building approval, or further building approval, under the *Building Act 2004*

Note 2 The development must also comply with the lease for the land on which it is carried out.

"TREE DAMAGING ACTIVITY" APPROVAL

A Tree Management Plan under the *Tree Protection Act 2005* is required for approval 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 by that Act. More information is available from the Territory and Municipal Services Directorate.

USE OF VERGES OR OTHER UNLEASED TERRITORY LAND

In accordance with the *Roads and Public Places Act 1937*, road verges and other unleased Territory land must not be used for the carrying out of works, including the storage of materials or waste, without prior approval of the Territory. Approval can be obtained from the Territory and Municipal Services Directorate.

WORKS ON UNLEASED TERRITORY LAND – DESIGN AND OPERATIONAL ACCEPTANCE

In accordance with the *Roads and Public Places Act 1937*, no work can be undertaken on unleased Territory land without the approval of the Territory. Such approval must be obtained from the Manager Asset Acceptance, Asset Services Group, TAMSD by way of:

1. a certificate of design acceptance prior to the commencement of any work and
2. a certificate of operational acceptance on completion of all works to be handed over to TAMSD

Works on unleased Territory land may include the construction or upgrading of driveway verge crossings, public footpaths, roads, street lighting, stormwater works, waste collection amenities, street signs and line marking, road furniture and landscaping.

A certificate of compliance under s296 of the *Planning and Development Act 2007* may not be issued unless a certificate of design acceptance **AND** a certificate of operational acceptance has both been obtained from TAMSD.

CONSTRUCTION REQUIREMENTS

The following information are some key requirements that apply to building work in the Territory. Other requirements may apply to this development.

DEMOLITION AND ASBESTOS MANAGEMENT

Demolition and asbestos management must be undertaken in accordance with the *Building Act 2004* (including the Building Code of Australia) and the *Dangerous Substances Act 2004*. Information about demolition and asbestos management is available from the ACT Planning and Land Authority's web site and Customer Service Centres.

ENVIRONMENT PROTECTION

All building work must be undertaken in accordance with the *Environment Protection Act 1997*, particularly but not exclusively in relation to noise and pollution control. More information is available from the Environment Protection Authority.

REPAIR OF DAMAGE TO PUBLIC ASSETS

The applicant/lessee is held responsible for all damage to ACT Government assets (including footpaths) caused by the development and they must properly repair any damage to those assets. Before work commences, they should notify the Territory and Municipal Services Directorate of any existing damage to public facilities.

UTILITY ASSETS RETENTION

The lessee should obtain a plant location advice from ActewAGL to avoid conflict with existing plant or electrical easements. The lessee will be responsible for the costs associated with the relocation of assets, if necessary. The lessee is to ensure that the water service and water meter are retained in position and in good condition. ActewAGL water meters are accountable items and must not be removed from the site or otherwise disposed of.

WATER RESTRICTIONS AND FILLING OF NEW POOLS, PONDS AND FOUNTAINS

Water restrictions or permanent water conservation measures may be in force in the ACT and may prohibit or affect the filling of new pools, ponds and fountains using potable (tap) water drawn from ACTEW Corporation Limited's potable water supply system. Applicants wishing to use water drawn from the potable water supply system to fill a new pool, pond or fountain are advised to first contact ACTEW's Water conservation office on (02) 62483131. Where water restrictions or permanent water conservation measures would otherwise prevent or affect the filling of a new pool, pond or fountain, it might be possible to obtain an exemption to fill the pool, pond or fountain using potable water.

DRAINAGE

The Building Code of Australia contains provisions affecting surface drainage and the height of finished floor levels. These may apply to this proposal.

REVIEW OF THE DECISION

The following notes are provided in accordance with regulation 7 of the *ACT Civil and Administrative Tribunal Regulation 2009*. Refer to the Review by the ACT Civil and Administrative Tribunal (ACAT) section of the Notice of Decision for information about its relevance to this development application.

CONTACT DETAILS

The review authority is the ACT Civil and Administrative Tribunal (ACAT).

Location	Contact details
ACT Civil and Administrative Tribunal Level 4, 1 Moore Street CANBERRA CITY ACT 2601	Website: www.acat.act.gov.au Email: tribunal@act.gov.au Telephone: (02) 6207 1740 Facsimile: (02) 6205 4855 Post: GPO Box 370, CANBERRA, ACT, 2601

POWERS OF THE ACAT

The ACAT is an independent body. It can review on their merits a large number of decisions made by ACT Government ministers, officials and statutory authorities. The ACAT can agree with, change or reject the original decision, substitute its own decision or send the matter back to the decision maker for reconsideration in accordance with ACAT recommendations.

APPLICATIONS TO THE ACAT

To apply for a review, obtain an application form from the ACAT. You can also download the form from the ACT Legislation Register <http://www.legislation.act.gov.au/af/2009-278/current/pdf/2009-278.pdf>.

If you are applying on behalf of an organisation or association of persons, whether incorporated or not, the Tribunal in deciding whether to support this application will consider the effect of the decision being reviewed on the interests of the organisation or association in terms of its objects or purposes. A copy of the relevant documents will be required to be lodged with the Tribunal.

TIME LIMITS FOR APPLICATIONS

The time limit to make a request for a review is 28 days from the date of this Notice of decision. The time limit can be extended in some circumstances (refer to sections 10 (2), 10(3), 25(1)(e) and 25(2) of the *ACT Civil & Administrative Tribunal Act 2008*; section 7 of the *ACT Civil and Administrative Tribunal Procedure Rules 2009 (No 2)*; and section 409 of the *Planning and Development Act 2007*).

FEES

Applications to the ACAT, including an application to be joined as a party to a proceeding, require payment of a fee of not less than \$184 (the Tribunal Registry will advise of the current fee), unless you are receiving legal or financial assistance from the ACT Attorney-General. You can apply to have the fee waived on the grounds of hardship, subject to approval (refer to section 22T of the *ACT Civil and Administrative Tribunal Act 2008*). Decisions to grant assistance are made on the grounds of hardship and that it is reasonable, in all the circumstances, for the assistance to be granted. Write to: The Chief Executive, Justice and Community Safety Directorate, GPO Box 158, CANBERRA ACT 2601. Ask the ACAT for more details.

TIME LIMITS FOR REVIEWS OF DECISIONS

The ACAT is required to decide appeals in land and planning and tree protection cases within 120 days after the lodging of the appeal, unless that period is extended by the ACAT upon it being satisfied that it is in the interests of justice to do so.

FORMS OF LEGAL, FINANCIAL AND OTHER ADVICE AND ASSISTANCE

The following organisations can provide advice and assistance if you are eligible:

- ACT Attorney-General, write to The Chief Executive, Justice and Community Safety Directorate, GPO Box 158, CANBERRA, ACT, 2601;
- the ACT Legal Aid Office, telephone 1300 654314;
- Legal Advice Bureau, telephone (02) 6247 5700;
- ACT Council of the Ageing, telephone (02) 6282 3777;
- Welfare Rights and Legal Centre, telephone (02) 6247 2177; and
- Environmental Defender's Office (ACT), telephone (02) 6247 9420.

AWARDING OF COSTS

You will have to pay any costs involved in preparing or presenting your case. The ACAT also has the power to award costs against a party if the party contravenes a direction of the ACAT and the ACAT considers it in the interests of justice to make such an order. This power is in addition to the power of the ACAT to strike out a party and to dismiss an application for failure to comply with the ACAT's directions.

ACCESS TO DOCUMENTS ABOUT THE DECISION

You may apply for access to any documents you consider relevant to this decision under the ACT Freedom of Information Act 1989. Information about Freedom of information requests is available on the ACT Planning and Land Authority's web site or by contacting us by phone on (02) 6207 1923.

PROCEDURES OF THE ACAT

The procedures of the ACAT are outlined on the ACAT's website, including in the Guide to the Land and Planning Division and the Guide to the Hearing. Contact the ACAT for alternative ways to access information about the ACAT's procedures.

TRANSLATION AND INTERPRETER SERVICES

The ACT Government's translation and interpreter service runs 24 hours a day, every day of the week. Telephone 131 450.

ENGLISH	If you need interpreting help, telephone:
ARABIC	إذا احتجت لمساعدة في الترجمة الشفوية ، إتصل برقم الهاتف :
CHINESE	如果你需要传译员的帮助，请打电话：
CROATIAN	Ako trebate pomoć tumača telefonirajte:
GREEK	Αν χρειάζεστε διερμηνέα τηλεφωνήστε στο
ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
MALTESE	Jekk għandek bżonn l-għajnuna t'interpretu, ċempel:
PERSIAN	اگر به ترجمه شفاهی احتیاج دارید به این شماره تلفن کنید:
PORTUGUESE	Se você precisar da ajuda de um intérprete, telefone:
SERBIAN	Ако вам је потребна помоћ преводиоца телефонирајте:
SPANISH	Si necesita la asistencia de un intérprete, llame al:
TURKISH	Tercümana ihtiyacınız varsa lütfen telefon ediniz:
VIETNAMESE	Nếu bạn cần một người thông-ngôn-hãy gọi điện-thoại:

TRANSLATING AND INTERPRETING SERVICE**131 450**

Canberra and District - 24 hours a day, seven days a week