



ACT
Government

Environment, Planning and
Sustainable Development

NOTICE OF DECISION

Made under part 7 of the *Planning and Development Act 2007*

I, Chris Gell, delegate of the planning and land authority, pursuant to section 162 of the *Planning and Development Act 2007*, **refuse** the proposal for demolition of the existing buildings and structures on blocks 2, 7 and 8, construction of one 14 and one 15 storey building with ground and mezzanine level commercial units, upper level residential units, a 5 level basement car park, landscaping, site servicing, new driveway verge crossings, and associated works. Also a Lease variation to include multi-unit housing use to blocks 2 & 7, removal of gross floor area restrictions and clause changes, at Blocks 2,7 & 8 Section 5, City, in accordance with the plans and other documentation provided.

DA Number: 202241098 / S144D
Block: 2, 7 & 8
Section: 5
Suburb: City
Application lodged: 12 December 2023 / S144D 19 June 2024
Assessment track: Merit

This decision contains the following information:

PART A – reasons for the decision
PART B – public notification & entity advice
Attachment 1 – administrative information
Copies of entity advice – as attached

A copy of the development application and this approval may be inspected at the planning and land authority's office from 9:00 am to 4.00 pm, Monday to Friday at 480 Northbourne Avenue, Dickson, ACT 2602

CONTACT / ENQUIRIES

Phone: (02) 6207 6383

Online Form:

https://www.accesscanberra.act.gov.au/app/forms/epd_feedback

Chris Gell

Delegate of the Planning
and Land Authority
5 December 2024

NOTICE OF DECISION

DA 202241098

PART A – REASONS FOR THE DECISION

In accordance with section 119 of the Act, the application was **refused** because it failed to comply with the legislated requirements for merit track applications. The application was considered inconsistent with:

- Zone Objectives for CZ1 Core Zone;
- The relevant code, being the City Precinct Map and Code, Commercial Zone Development Code and the Multi-Unit Housing Development Code (MUHDC); and
- advice given by entities, being the National Capital Authority (NCA), City Renewal Authority (CRA), Transport Canberra and City services (TCCS), Evo Energy Electricity, Icon Water, the Environment Protection Authority (EPA), and The Conservator of Flora and Fauna.

S144C and S144E Amendments to the DA

Further information was requested on 19 December 2023 to address the issues raised in the Territory Plan assessment of this development application (S144B). Another further information was requested on 16 April 2024, to address outstanding issues of Territory Plan assessment and issues raised by entities, including the National Capital Authority (NCA), City Renewal Authority (CRA), Transport Canberra and City services (TCCS), Evo Energy Electricity, Icon Water and Environment Protection Authority (EPA), and The Conservator of Flora and Fauna. The applicant provided additional information pursuant to section 144.

However, following further assessment of the proposal, in consideration of section 120 of the Act, the application has been refused as it was still considered inconsistent with the relevant codes and was determined not to meet the zone objectives for CZ1 Core Zone.

The following key inconsistencies have been identified throughout the assessment process:

Zone objectives

Following assessment against the relevant code the view was formed that the proposal could not be considered consistent with the following zone objectives for the CZ1 Core Zone:

Objective

Maintain and enhance a high standard of urban design through use of sustainable design and materials and ensure that buildings retain a high level of design consistency and compatibility.

In its current form, the proposed development is not consistent with the objective of maintaining and enhancing a high standard of urban design or design consistency and compatibility.

The planning of Darwin and Hobart Places, together with Knowles Place opposite was carefully considered by the NCDL, resulting in a built form that is generally uniform, symmetrical and gives prominence to the significance of the law courts, University Avenue and views to the bush and sky beyond. This group of 1960's and 70's modernist buildings are recognised for their cohesiveness and simple forms while being individually distinctive. In particular, the strong horizontal elements and consistent heights of buildings fronting University Avenue, including the CML Building, and heritage listed ANZ Bank Building set a high standard of urban design that the proposed development fails to maintain or enhance. It is considered the height of the building proposed to replace the CML building fails to acknowledge the symmetry of the precinct and diminishes the quality of University Avenue.

NOTICE OF DECISION

DA 202241098

The National Capital Design Review Panel recognised the importance of this site and recommended further analysis of the surrounding urban fabric to inform a sympathetic architectural response. The supporting design report indicates the design inspiration was instead drawn from Canberra bus shelters rather than the surrounding context. This has resulted in what is considered to be a confusing architectural response that does not respond to the development's immediate surroundings.

Objective

Promote the establishment of cultural and community identity that is representative of, and appropriate to, the place.

As detailed above, the symmetry of this particular area of Canberra City reflects the importance of the law courts and the strong connection to the Australian National University. It is considered the proposal fails to properly acknowledge the important cultural and community identity of this location for Canberra through both the proposed building height and architectural treatment.

Inconsistencies with the Relevant Codes

The development proposal was found to be inconsistent with the provisions of the Territory Plan. In particular, sections of the City Precinct Map and Code, the Commercial Zone Development Code and the Multi-Unit Housing Development Code (MUHDC);

City Precinct Map and Code

Criterion / C6 – Building Height

This criterion requires building height to be compatible with the existing or desired future character of adjacent development and to not cause detrimental impacts, including excessive scale. The proposed development has not sufficiently demonstrated how the proposed building heights align with the existing or desired future character of adjacent developments, particularly in relation to the adjacent buildings on University Avenue. The current design fails to demonstrate that the building heights are compatible with the surrounding area and is considered to create a disproportionate visual impact that is not in harmony with the existing streetscape. Without adequate evidence to demonstrate that these heights are appropriate for the location, the project does not satisfy the requirements of C6.

Criterion / C9 – Front Boundary Setbacks

The proposed development is not consistent with C9, which requires that buildings either abut the front property boundary or, if alternative setbacks are established by existing adjacent development, maintain consistency with the intended design themes of the area. In this case, the upper floor levels of the building encroach into the front setback, disrupting the established rhythm of the streetscape and failing to align with the design themes of the surrounding area. No justification has been provided to explain how this encroachment is appropriate or necessary for the development. As a result, the project does not comply with C9, and further clarification is required to address how the design will harmonize with the adjacent developments and the intended character of the area.

Rule 10/ Criterion 10 – Pedestrian Shelters

The proposed development is not consistent with R10 and C10, which require the provision of continuous awnings or colonnaded walkways at ground floor level abutting the street frontage to provide sheltered and convenient pedestrian access. Specifically, the development does not incorporate a colonnaded walkway along University Avenue, as required by the code. This omission fails to align with the intended design themes for the area, where pedestrian-friendly spaces and shelter at street level are essential for enhancing accessibility and public experience. Without the

NOTICE OF DECISION

DA 202241098

inclusion of these features, the project does not provide adequate protection for pedestrians from the elements, nor does it contribute to the cohesive design envisioned for this area.

Criterion 38 – City Sections

The proposed development is not consistent with C38, which requires that new buildings within an intensive inner-city redevelopment be consistent with a comprehensive design for the whole section, as identified in a Planning Report under section 97 of the Planning and Development Act 2007. Additionally, existing low-rise buildings or building elements that are integral to the comprehensive design may be required to retain their existing heights. In this case, no justification has been provided to explain how the proposed development integrates with or is complementary to the existing low-rise buildings or building elements in the area. Without such justification, the proposal appears disconnected from the surrounding built form, failing to demonstrate that it is part of a cohesive design strategy for the section as a whole. Therefore, the development does not comply with C38, and further clarification is needed to address how it aligns with the existing context and the intended design objectives.

Commercial Zone Development Code (CZDC)

Criterion / C3 – Building design and materials

The proposed development is not consistent with C3, which requires buildings to contribute to the amenity and character of adjacent public spaces, provide functional facades and enhance the streetscape and pedestrian experience. No justification has been provided to demonstrate how the proposed development contributes to the overall amenity and character of the section. It is noted the Heritage Council requested consideration of character of the Darwin Place and Hobart Place precinct, which includes buildings of matching height and scale. The existing buildings in this area have a strong emphasis on simple forms and horizontal façade elements, which reinforce the axial importance of University Avenue, connecting the Supreme Court to the ANU. The design of the proposed buildings, which include references to bus shelters and a complicated mix of materials and colours, do not contribute to the character of this area.

Criterion / C14 – Landscaping

The proposed development is not consistent with C14, particularly regarding the provision of deep root planting, which is critical for contributing to the landscape and streetscape. While landscaping is expected to complement the streetscape and provide adequate shade and energy efficiency, the lack of appropriate deep root planting raises concerns about long-term sustainability and compatibility with site attributes. The lack of deep-rooted vegetation may also adversely affect the integration with public spaces, parks, and transport corridors, and it does not support amenity of the proposed and adjoining buildings. Without a suitable level of such landscaping, the development may fail to offer substantial shade in summer. Justification is needed to demonstrate how the landscaping plan addresses these concerns, particularly in relation to C14's focus on the impact of deep-root planting on energy efficiency, safety, and the surrounding environment.

Multi-Unit Housing Development Code

Rule 29/ Criterion 29 – Front boundary setbacks

The proposed development is not consistent with R29 and C29, particularly in relation to the upper floor airspace encroachments into the front boundary setback. While the front boundary setbacks are intended to ensure consistency with the desired character of the area and provide reasonable amenity

NOTICE OF DECISION

DA 202241098

for residents, the upper-level encroachments reduce the space available for these objectives to be met. Specifically, the encroachments limit the area for street trees to grow to maturity. The encroachments are not considered to be consistent with the desired character of the area, increasing the apparent scale and bulk of the development, making it inconsistent with adjacent buildings and the University Avenue streetscape. There was insufficient justification provided to explain how these upper floor encroachments comply with the requirements of criterion 29.

Criterion 43 – External Facilities

The proposed development is not consistent with C43, as no details have been provided regarding the screening or adequate separation of external facilities, particularly for clothes drying areas and air conditioning units. The criterion requires that these elements are either screened or adequately separated from public areas to ensure they do not detract from the visual amenity of the development or surrounding public spaces. Without the required details, it is unclear how the development addresses this requirement, and further information or justification is necessary to demonstrate compliance with C43, particularly in terms of maintaining the aesthetic and functional integrity of the external spaces.

Rule 58/ Criterion 58 – Solar Access

The proposed development is not consistent with R58 and C58, as the plans provided do not adequately demonstrate that at least 70% of the apartments' daytime living areas receive the required 3 hours of direct sunlight between 9am and 3pm on the winter solstice. Instead, the current plans show solar access primarily reaching the principal private open space or winter garden areas, rather than the internal living areas. To demonstrate compliance with the requirements, a detailed solar diagram focusing on the internal layout should have been provided. Without this, the application fails to ensure reasonable sunlight access to apartment living spaces.

Parking and Vehicular Access General code

The proposed development is not consistent with the parking code, as it fails to provide adequate visitor car parking spaces within the site boundary. The absence of designated parking areas for visitors compromises accessibility and convenience for residents and their guests. There is no clear justification provided for the lack of visitor parking.

Inconsistencies with Entity Advice:

Transport Canberra and City services (TCCS)

Transport Canberra and City Services did not support the proposed development, as outlined in the advice provided:

The proposed development is not supported as there are still key items missing or yet to be addressed, including the Waste Management and Trees.

LMPP / STREET TREES

I have looked over all the documents but unfortunately there is information missing relating to our previous comments on Tree Management and soil volumes.

Can you please request the 'Tree Survey' document to be sent through again. The current one uploaded is just a cover page, not the full document. Perhaps it failed to upload or be saved properly as PDF by applicant. For TCCS to provide appropriate advice, the missing Tree Survey and Management document is required.

NOTICE OF DECISION

DA 202241098

TRAFFIC AND PARKING:

Based on review of the updated traffic report prepared by SALT dated 23/05/24, all previous traffic and parking comments have been adequately addressed. Following is a condition:

Queuing analysis shows minimal queuing at the entrance to the site. However, this is based on existing arrangements and does not account for future light rail. Hence, the proponent shall implement keep clear road marking along University Avenue, at the Darwin Place entrance/exit, to minimise queuing, particularly onto the light rail tracks.

WASTE

Provided the development is currently unclear, TCCS will only give basic advice assuming that this is to be one block (consolidated). Firstly, the proposal is currently not endorsed.

Further comments:

Are buildings A and B on one block or are they two separate developments?

Section 2 of the report states: (see image 1)...This statement is incorrect. Why is the applicant requesting a Territory waste collection service in section 1 but then states that they don't need it in section 2?

The applicant claims that waste will be divided in the general waste, recycling, food organics, hard waste, charity and e-waste. The Territory only collects general waste, recycling, green waste, bulky waste and food organics (FOGO) in selected areas.

Under section 8.2.5, the applicant has miscalculated green bin space required at the kerb. As per the DCC, every bin requires a minimum of 0.2m between them. Therefore, if one were to use SALT's calculations of 0.8m per bin, the space required would be 3.8m (and not 3.2m) plus 1m on each side of the outside bins from objects. Detailed drawings showing bins on the kerb as required under the DCC are not submitted. The carting distances are not nominated. Section 10.1 then describes green bins collected onsite (image 3). Is the yellow highlighted line the property boundary? Where are the truck turning templates? Where are the detailed drawings.

8.2.3 states: (see image 2)... Only those hoppers collected by the Territory must be stored in the waste enclosure. Bulky waste and services must not be located in the enclosure.

The statement in image 3 is incorrect. All heavy rigid vehicles must be depicted as 12.5m vehicles. The sizes of each truck listed in the Waste Code are for information only. All front-load, rear-load, side-load and roll-on roll-off (RORO) collection vehicles are heavy rigid vehicles (HRV). Table 2.1 of Australian Standard AS2890.2 requires HRVs to be depicted as 12.5m long vehicles. Austroads also require HRVs to be depicted as 12.5m long vehicles in turning templates. Section A7.2 of the Waste Code states: "Swept vehicle software may not be accurate and does not account for driver error. To compensate for inaccuracies and driver error, the distances between wheels and kerb when navigating bends must show a minimum of 1.0m by using a vehicle length of 12.5m." When designing a site, one needs to consider the largest possible vehicle in its class and not the smallest. The Territory cannot restrict vehicles entering this site to only 10.5m or smaller. The Territory's waste contractor has a range of vehicles of varying shapes and sizes which change over time as their fleet is refreshed. Therefore, all sites where a HRV will access the site on behalf of the Territory, must be able to accommodate the largest possible vehicle in its class which is 12.5m.

The report has superfluous material and often refers to Victorian WHS requirements. Please have the applicant refer to ACT WHS requirements.

As commercial waste will not be collected by the Territory, it should not be in the residential waste application. Please remove it.

According to Image 5 (SALT-22304-SK-029), green bins will be collected at the disabled car park. The rear end of the truck would protrude onto Darwin Place. This is not permitted. Parking restrictions would have to be introduced in Darwin Place all day for waste, recycling and green bin collections. What if FOGO is introduced or residents want bulky waste collection. What about commercial trucks? Based on

NOTICE OF DECISION

DA 202241098

this, the application will need to apply for all parking on Darwin Place to be removed (No parking 24/7, 365 days a year).

No waste enclosure plans, sections or elevations have been provided no operations management plan, no proper turning templates etc.

There are multiple documents missing. The applicant must familiarise themselves with the DCC and Territory relevant legislation, codes and standards and not refer to other jurisdictional materials.

The applicant needs to cut down on the irrelevant materials and remove the commercial waste plan and submit a separate document. For example, the Sustainability Action Plan and Initiatives etc. is not required to assess a Territory waste collection service. Remove such superfluous materials. Why are superfluous items (table 22), such as "Vehicle operators would be trained to make sure the tailgate is closed...". Or, "Vehicles should meet relevant Australian design rules...." Or, "Maintain sufficient or frequent communication between driver and runner...." There is only one person in the truck. Or, "Ensure collection is to only occur off-peak...." The Territory does not collect off-peak!

So, why propose these items in this application? None of the items noted above, or many of the other items, are relevant to compliance with the DCC, legislation, codes and standards. The applicant must submit all required documents as noted in the DCC and stick to that. Also, see EAN24.

As per the DCC, every site must be designed and constructed to allow a waste collection service. This requirement is for residential and commercial waste. It is not for the Territory to approve an unrealistic, dangerous and non-compliant sites and to find bespoke waste collection services. The site's design must accommodate a Territory waste collection service.

Even if the site cannot accommodate residential waste collection, the same requirements apply to commercial contractors. At the end of the day, regardless of the site's limitations, it needs to be designed and constructed to accommodate a waste collection.

Environment Protection Authority (EPA)

EPA did not support the proposed development for the following reasons.

The Environment Protection Authority (EPA) does not support the DA in its current form. Rule 35 of the Commercial Zones Development Code specifies the demolition of commercial or industrial premises for which a certificate of occupancy was issued before 2005 is undertaken in accordance with hazardous materials survey. No hazardous materials survey report is found in these application documents. As a result, the applicant should provide a hazardous materials survey report (within 5 years) and get EPA endorsement before the DA could be supported by EPA.

Rule 23 of the Commercial Zones Development Code specifies that certain developments must comply with a noise management plan prepared by a suitably qualified person and endorsed by the Environment Protection Authority. The lease for Block 7 Section 5 City includes Tavern as a permitted use which is considered to be a drink establishment. A noise management plan should be provided for EPA endorsement before the DA could be supported by the EPA.

We request further information be submitted prior to approval of the DA. Please provide a hazardous materials survey report dated within the last 5 years. The following recommended preliminary conditions and advice are provided for the applicant's information noting further conditions of approval will be required following review of the required reports.

Preliminary Conditions

Contaminated Sites

EPA would support the development subject to the following conditions:

The site must be assessed and remediated, if necessary, in accordance with the guidelines endorsed by the EPA by a suitably qualified environmental consultant.

NOTICE OF DECISION

DA 202241098

All spoil identified at the site must be managed in accordance with EPA Information Sheet – Spoil Management in the ACT ;

All soil subject to disposal from the site must be assessed in accordance with EPA Information Sheet 4 - Requirements for the reuse and disposal of contaminated soil in the ACT;

No soil is to be disposed from site without approval from the Office of the Environment Protection Authority.

Hazardous Materials

Appropriately ACT licensed contractors and consultants able to perform the full range of licensable duties in the ACT must be engaged for the assessment, removal, transport and disposal of all hazardous materials present at the site; and

All hazardous materials found on the site must be disposed of to a facility lawfully licenced/ authorised to accept the waste.

The Conservator of Flora and Fauna.

The Conservator of Flora and Fauna did not support the proposed development for the following reasons.

The proposed tree removals are not supported. The proponent proposes removing three very large trees which were planted as part of the original landscape in Farrell Place.

- ***The proponent proposes removing three mature regulated *Styphnolobium japonicum* noted as (Trees 9, 10, and 11) and one unregulated *Ulmus* species noted as Tree 8.***
- *The Tree Assessment Plan, page 9_TP_02, dated October 20, 2023, noted tree 9 as being in average condition and Trees 10 and 11 as poor condition. **The Tree Protection Unit would rate the condition of the three trees to be good**, however they form, and habit would be fair given the location of the trees and the effect of growing next to large buildings.*
- *Tree 9 would be considered a medium to high quality tree given its size and stature and good health and large canopy.*
- *Trees 10 and 11 would be medium quality trees. The trees and are in fair to good health, are large specimens, and are significant within the landscape.*
- *Trees 10 and 11 are causing some lifting of the pavement however, this issue could be alleviated with landscape improvements within the tree protection zone (primarily relieving some of the surface to better accommodate the trees future growth).*
- *The trees currently don't meet criteria for removal under the Tree Protection (Approval Criteria) Determination 2006 (No 2).*
- *The Tree Protection Unit recommends the trees be retained and incorporated into any new landscape proposed for the zone.*
 - *The trees currently don't meet criteria for removal under the Tree Protection (Approval Criteria) Determination 2006 (No 2).*
 - *The trees are large mature specimen approximately 60 years old in good condition.*
 - *The trees provide a high landscape and aesthetic component within the landscape.*
 - *Replacing the trees and reaching the same extent of canopy contribution would take a significant time.*
 - *The proposed landscape should consider the landscape and aesthetic qualities of the trees before considering their removals to simply renew the landscape with new tree plantings.*

NOTICE OF DECISION

DA 202241098

National Capital Authority (NCA)

The NCA did not support the proposed development for the following reasons.

The City Centre Special Requirements in Section 4.25 of the National Capital Plan (the Plan) states the following for urban design:

The height of buildings in City Centre may be less than but not more than nine storeys provided that plant rooms and other service elements may be allowed above this height subject to being set back from the building edges and screened from street level view.

One or more taller building(s) per section up to a maximum height of RL617 will be considered only in accordance with an approved comprehensive design for the whole section. Comprehensive section designs should seek to use building height to emphasise and reinforce the geometry of the Griffin Plan and the symbolic Main Avenues radiating out from City Hill.

The Plan envisions various building heights in the City Centre to emphasise the Griffin Plan, with RL617 reserved primarily for sites adjacent to Main Avenues as the key elements of the Griffin Plan, such as University Avenue. The NCA has no objections with RL617 proposed for Building A as it is located on the corner of a Main Avenue. The NCA is not supportive of buildings near RL617 where Building B is located as the site is not directly adjacent to a Main Avenue and appears as a separate building above ground. The Plan generally advises the maximum building height is to be nine storeys, with the exception of sites where taller buildings may be permitted to emphasize key elements of the Griffin Plan.

The revised design of Building B shows rooftop plant directly on the building edge of the eastern elevation. The Plan section above states that rooftop plant and service elements for buildings above nine storeys need to be setback from building edges.

The NCA is not supportive of the proposed building encroachments for internal GFA over Marcus Clarke Street, Darwin Place and Block 8 Section 5 City. Encroachments for balconies, architectural features or similar minor matters would be supported if the encroachment matches the size and scale of any existing building encroachments over public space.

The unit layout for 'typical unit 0.2 and 0.3' shows bedrooms with windows directly facing an internal open space, adjacent to an external corridor in Building A. The NCA would like to understand what amenity is provided to these bedrooms.

Note:

The City Centre Special Requirements Section 4.25 of the National Capital Plan (NCP) are applicable to the proposal and particularly the following provision:

The height of buildings in City Centre may be less than but not more than nine storeys provided that

- *one or more taller building(s) per section up to a maximum height of RL617 will be considered only in accordance with an approved comprehensive design for the whole section. Comprehensive section designs should seek to use building height to emphasise and reinforce the geometry of the Griffin Plan and the symbolic Main Avenues radiating out from City Hill.*

The arrangement of buildings on Sections 3 and 5 City is highly symmetrical, with heights on both sections generally identical. This emphasises the geometry of the Griffin Plan as associated with University Avenue.

The "ANZ bank building" (former ES&A Bank) located on Block 1 Section 3 at the corner of University Ave & London Circuit is heritage listed and matches the building height opposite (Block 1 Section 5). These are expected both to remain at the current height.

With respect to the proposed development of Tower A to RL617 on Block 2 Section 5, it is noted that there is currently no building or development approval on Block 22 Section 3 of a similar height to match the proposed height of Tower A.

NOTICE OF DECISION

DA 202241098

City Renewal Authority (CRA)

The CRA did not support the proposed development for the following reasons.

The Authority does not support this development application noting several outstanding comments that have yet to be addressed from the previous submission (refer below and previous). The City Renewal Authority is available to meet with the proponent and development assessment officer to discuss the below comments.

The Authority notes the amendments to Tower B has received a slight reduction in height to RL 613.50 and Tower A remains at RL 617.00. However, several issues borne out of the tower heights remain unaddressed (see overshadowing, solar access etc below).

As per previous comments on Dec 2023 the Authority notes this amendment does not address building projections beyond the site boundaries (including habitable GFA) which the Authority does not support.

The Authority reiterates previous concerns on the potential to create CPTED issues in and around the central green space and kiosks. Further detail is required to fully mitigate these concerns. The Authority notes improvement to circulation through this green space, but strongly encourages the proponent to explore opportunities to provide equitable access (particularly noting the provision of DDA parking spots nearby).

The Authority notes the proponent's intention to add more greenery to the street however the Authority's expectation is that any proposed off site works within the streetscape would align with the established city palette found in the Canberra Central Design Manual. As such, the proposed off-site works require amending to match the city palette for the Authority to provide support.

The Authority notes the change in tree species from Chinese Elm to Gleditsia 'Continental.' The Authority raises question around this species suitability due to shade intolerance. Refer to TCCS comments.

As previously mentioned in comments in December 2023, the Authority requests calculations of canopy cover and permeable surfaces in the landscaped open space to make a full assessment against this principle.

The Authority notes the updated Purdon response to the Authorities previous comments, however the items mentioned are not easily found in the plans. Could the sustainability items be made more visible on the plans and forwarded back for review please.

As mentioned under the landscape principle, the Authority notes the amended landscape plans show a new stepped connection between the kiosk courtyard to Darwin Place and into Block B building. The proponent is encouraged to make this important site link universally accessible, to ensure improved safety and legibility of the public realm is achieved.

To demonstrate the above is achieved, the Authority requests additional information in the form of a plan showing the accessible routes and pedestrian paths around the site. In addition, further clarification on how the level changes along Marcus Clarke Street are handled to provide access from the footpath to the proposed colonnades of both buildings. The proponent could provide this via architectural sections that illustrate the functionality of the design such as a section through the road, footpath and colonnade which should provide a better understanding of the way pedestrians move through these spaces.

With consideration of pedestrians moving along Marcus Clarke Street, the Authority encourages a review of colonnade alignment and any imposed impediments to this circulation path (landscape elements interrupt this path). It is important to provide weather protection that follows an intuitive route on Marcus Clarke.

The Authority notes the amendment to Tower B, with a modest height reduction to RL613.50. Noting the modest nature of this reduction, the Authority refers to previous comments on appropriate heights for this site and their impact on solar access, overshadowing to public spaces.

Solar access diagrams provided are unclear and do not illustrate key times of year (eg winter solstice) to provide an accurate assessment this information is required.

NOTICE OF DECISION

DA 202241098

The Authority reiterates previous comments that building projections beyond the boundary line (including habitable GFA) are not supported.

The Authority notes the amended plans now reflect all internal connections to bedrooms now and the removal of internal spiral staircases adjacent to a balcony removed.

As per previous comments in Dec 2023 we still have concerns that the external circulation corridor remains for two apartments on each level of Tower A. This is not a desirable outcome and should be re-examined please.

The Authority also requests to see where the air conditioning units are represented on the plans. These need to be identified and located in a position that has minimal detrimental impact on quality of life for residents.

The Authority notes the new amendment of the previous landscape design; however, we ask the proponent to consider a better way to link Darwin Place to the Marcus Clarke place to ensure safe and equitable access through the space.

As per previous comments in Dec. 2023 there are legibility and safety concerns in relation to the public realm plans in this application. Refer to new comments in Principles 2 and 4.

As per previous comments Dec 2023, the Authority notes there has been no design development with the two items below which should be addressed for safety and functionality.

i. The storage lockers along/behind the basement carpark ramps present a CPTED issue – a long, narrow access path with no surveillance or means to escape would cause an entrapment issue.

ii. The general basement configuration for circulation, parking and access to waste and storage needs to be reconsidered from a functionality and safety perspective.

As per the previous comments Dec 2023, the Authority notes the dwelling mix should have no more than 40% of each type of dwelling to ensure a diversity of housing choices within the city centre.

As per the previous comments Dec 2023, the proponents proposed designs negatively influence the connectivity, safety and legibility of the public domain. Refer to the authority's new comments in Principles 2, 4 and 7 in relation to public realm and community benefit.

As per the previous comments Dec 2023, It was acknowledged that the proponents have taken on the Authority's previous advice regarding the design of two unique buildings with separate architectural expression. However, the current proposal reflects a design outcome which is somewhat too literal in trying to create an architectural expression that reflects the Canberra context. A more refined and material-focused expression of façade articulation would help to create a higher quality design outcome for these buildings.

Note:

Comments from other entities are addressed in **PART B** of this decision.

Other Inconsistencies

Design Review Panel Requirements

This development proposal was presented twice to the National Capital Design Review Panel, with the last advice provided in December 2021. This development application was lodged 14 December 2023, so is not consistent with the requirements of the *Planning and Development Act 2007*, as it was not submitted within 18 months following the provision of design advice. Consequently, the Panel's Advice issued for this proposal at Blocks 2, 7, 8 Section 5 City has expired. Further, it is noted the development application is substantially different from that presented to the Panel and the proposal fails to adequately respond to a range of issues raised in the panel advice, including demonstrating an appropriate response to the location of the site.

NOTICE OF DECISION

DA 202241098

Note:

Given the nature of the changes to the design that would be required to address the issues outlined above, it is considered that the proposal as it currently stands, is unable to meet these requirements. In accordance with section 162 of the Act, the planning and land authority **refuses** the application.

PART B – PUBLIC NOTIFICATION AND ENTITY ADVICE

PUBLIC NOTIFICATION

Pursuant to Division 7.3.4 of the *Planning and Development Act 2007* (the Act), the application was publicly notified from 18 December 2023 to 31 January 2024. Eight written representations were received during public notification period.

The issues raised in the representations were considered in the assessment and making of the decision for this development application. The issues raised included:

- A lack of consultation with surrounding neighbours
- The CML building, proposed to be demolished, is of architectural significance and is on the Australian Institute of Architects Register of Significant Architecture.
- The height of RL 617m is inappropriate in this location.
- A detailed submission on the planning significance of the Hobart and Darwin Place precinct, together with an analysis of the architectural significance of the CML building.
- Inconsistency with the recommendations of the Design Review Panel.
- Concerns with the privatisation of public open space and upper level encroachments.
- The building is in breach of the RL 617m maximum height limit.
- Incomplete documentation. The design report is inadequate to justify an RL 617m building.
- Concerns with built form and scale.

ENTITY ADVICE and REQUIREMENTS

Pursuant to Division 7.3.3 of the *Planning and Development Act*, the application was referred to the entities below. Note that a summary of other entity comments are outlined in **PART A** of this Decision.

1. EVO ENERGY (ELECTRICITY)

Evo Energy provided advice stating that the proposal is NOT supported.

A copy of Evo Energy advice is attached to this notice of decision.

2. ICON WATER

Icon Water provided advice stating that the proposal is NOT supported.

A copy of Icon Water advice is attached to this notice of decision.

3. TRANSPORT CANBERRA AND CITY SERVICES (TCCS)

TCCS provided advice stating that the proposal is NOT supported.

A copy of Evo Energy advice is attached to this notice of decision.

NOTICE OF DECISION

DA 202241098

4. JEMENA (GAS)

A copy of the Jemena advice is attached to this Notice of Decision.

5. ACT HERITAGE COUNCIL – The Council

The Council provided advice including that:

- *The Former CML Building is unlikely to be of heritage significance under Section 10 of the Heritage Act 2004.*
- *As such, its demolition is unlikely to diminish heritage significance values, and Heritage Act 2004 provisions would not apply to any new development.*
- *However, the ACT planning and land authority is encouraged to consider local context and character in its decision, including the potential heritage values of the Darwin Place and Hobart Place precinct.*

A copy of the Council's advice is attached to this Notice of Decision.

6. ACT EMERGENCY SERVICES AGENCY (ACTESA)

The ACTESA provided advice stating that the proposal is supported.

A copy of the ESA advice is attached to this Notice of Decision.

NOTICE OF DECISION

DA 202241098

ATTACHMENT 1

ADMINISTRATIVE INFORMATION RELATING TO NOTICE OF DECISION

Inspection of the Application and Decision

A copy of the application and the decision can be inspected between 9.00am and 4:00pm weekdays at the Environment, Planning and Sustainable Development Directorate Dickson Customer Service Centre at 480 Northbourne Avenue, Dickson, ACT.

Submission of revised drawings or documentation

If a condition of approval requires the applicant to lodge revised drawings and / or documentation with the planning and land authority for approval pursuant to section 165 of the Act, the submission must be made by completing an application in e-development.

Reconsideration of the Decision

If the DA applicant is not satisfied with the decision made by the planning and land authority, they are entitled to apply to the planning and land authority for reconsideration within 20 working days of being told of this decision pursuant to section 191 of the Act. A longer timeframe may apply only if granted in writing by the planning and land authority pursuant to section 184 of the Act.

More information is available online at <https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/development-applications/appeal-a-da-decision>.

Please contact Access Canberra Customer Services if you wish to lodge a reconsideration application.

Review by the ACT Civil and Administrative Tribunal (ACAT)

1. Decisions that are reviewable (sometimes referred to as appeals) by the ACAT are identified in Schedule 1 of the [Act](#), except for matters that are exempted under Schedule 3 of the [Planning and Development Regulation 2008](#) (matters exempt from third party review).
2. The notice of decision and this advice have been sent to all people who made a representation in relation to the application.
3. The ACAT is an independent body. It can review a large number of decisions made by ACT Government ministers, officials and statutory authorities on their merits. 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.
4. More information on appeal rights is available online at <https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/development-applications/appeal-a-da-decision>.
5. The ability to review the Authority's decision is a matter of law. **If** you think you have a right of review, you may apply to the ACAT for a review of the decision. Application forms can be obtained from the ACAT at the website listed below. You can also download the form from the ACT Legislation Register. It is recommended you seek independent advice in regards to such reviews eg a legal practitioner.
6. If you are applying on behalf of an organisation or association, 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.

NOTICE OF DECISION

DA 202241098

7. 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*; and rule 38 of the *ACT Civil and Administrative Tribunal Procedures Rules 2020*.
8. Applications to the ACAT, including an application to be joined as a party to a proceeding, require payment of a fee (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. Applications should be made in writing to: the Director General, Justice and Community Safety Directorate, GPO Box 158, CANBERRA ACT 2601. You can ask the ACAT for more details.
9. 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.
10. The following organisations may be able to provide you with advice and assistance if you are eligible:
 - ACT Law Society, telephone 6274 0300ACT
 - Legal Aid Office, telephone 1300 654 314
 - ACT Council of the Ageing, telephone 02 6154 9740
 - Welfare Rights Centre, telephone 1800 226 028
 - Environmental Defender's Office (ACT), telephone 02 6243 3460.
11. 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 in the circumstances specified in s 48 of the *ACT Civil and Administrative Tribunal Act 2008*. 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.
12. You may apply for access to any documents you consider relevant to this decision under the *ACT Freedom of Information Act 2016*. Information about Freedom of information requests is available on the planning and land authority's web site at <https://www.environment.act.gov.au/about/access-government-information> or by contacting us by phone on 02 6207 1923.
13. 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.

Review by the ACT Supreme Court

1. The Authority's decision may also be subject to judicial review by the ACT Supreme Court under the *Administrative Decisions (Judicial Review) Act 1989* (ADJR Act).
2. Under the ADJR Act, an *eligible person* may make an application for review of a decision.
3. An *eligible person* must demonstrate that their interests are adversely affected by the decision and that the application raises a significant issue of public importance.
4. Section 5 of the ADJR Act sets out the grounds on which a decision can be reviewed.
5. The time limit to make an application for review is 28 days from the date the Notice of Decision is provided to the applicant and those people who made a representation.
6. The ACT Supreme Court is a costs jurisdiction where costs generally follow the event. This means that the unsuccessful party is required to pay the costs of the successful party.

NOTICE OF DECISION

DA 202241098

7. For more information on ACT Supreme Court processes and fees, please visit <https://courts.act.gov.au/home>.

Other approvals

A notice of decision under the *Planning and Development Act 2007* grants development approval only. Other approvals may be required, including:

1. **Building Approval**

Most building work requires building approval under the *Building Act 2004* to ensure it complies with building laws such as the *Building Code of Australia*. The lessee should engage a private building certifier to determine whether building approval is required and assess and approve the building plans before construction commences. A list of certifiers can be obtained from the [Environment, Planning and Sustainable Development Directorate](#).

2. **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 Transport Canberra and City Services Directorate at <https://www.tccs.act.gov.au/city-living/trees>.

3. **Use of verges or other unleased Territory Land**

In accordance with the *Public Unleased Land Act 2013*, 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. More information is available from the Transport Canberra and City Services Directorate at https://www.tccs.act.gov.au/city-living/public_land_use.

4. **Works on unleased Territory Land**

In accordance with the *Public Unleased Land Act 2013*, no work can be undertaken on unleased Territory land without the approval of the Territory. Such approval must be obtained from the Senior Manager, Place Coordination and Planning, Transport Canberra and City Services Directorate by way of:

- (a) a certificate of design acceptance prior to the commencement of any work; and
- (b) a certificate of operational acceptance on completion of all works to be handed over to TCCS.

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.

Contact details for relevant agencies

ACT Civil and Administrative Tribunal Level 4, 1 Moore Street CANBERRA CITY ACT 2601 GPO Box 370, CANBERRA, ACT 2601	www.acat.act.gov.au tribunal@act.gov.au 02 6207 1740 02 6205 4855 (Fax)
ACT Supreme Court 4-6 Knowles Place, CANBERRA CITY ACT 2601 GPO Box 1548, CANBERRA CITY, ACT 2601	www.courts.act.gov.au 02 6205 0000

NOTICE OF DECISION

DA 202241098

Environment, Planning and Sustainable Development Directorate 480 Northbourne Avenue DICKSON ACT 2602 GPO Box 158, CANBERRA 2601 • <i>Planning and land authority</i> - list of certifiers for building approval - demolition information - asbestos information • <i>Environment Protection Authority</i> - environment protection - water resources - Conservation, Planning and Research - threatened species/wildlife management • <i>WorkSafe ACT</i> - asbestos information • <i>ACT Heritage Council</i> - Aboriginal, historic and natural heritage management • Tree Protection Unit - <i>Development Applications (DA) issue:</i> - <i>Tree Damaging Activity Applications (TDAA) issue:</i>	www.planning.act.gov.au 02 6207 1923 EPAPanningLiaison@act.gov.au 6207 5642 worksafe@worksafe.act.gov.au 132 281 www.environment.act.gov.au 132 281 TCCS.TreeProtectionACTPLARef@act.gov.au TCCS.TreeProtection@Act.gov.au
Transport Canberra and City Services • landscape management and protection plan approval • use of verges or other unleased Territory land • works on unleased Territory land - design acceptance • driveway inspections or building applications • damage to public assets	www.tccs.act.gov.au 132 281 02 6207 0019 (development coordination) tccs.dcdevelopmentcoordination@act.gov.au
Health Directorate	www.health.act.gov.au hps@act.gov.au 02 5124 9700
Education Directorate	www.education.act.gov.au 02 6205 5429
Utilities • Telstra (networks) • TransACT (networks) • Icon Water • Electricity reticulation	02 8576 9799 02 6229 8000 02 6248 3111 02 6293 5749

NOTICE OF DECISION

DA 202241098

Translation and interpretation services

The ACT Government's translation and interpreter service runs 24 hours a day, every day of the week by calling 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	Ako vam je potrebna pomoć prevodioca telefoniрајте:
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