



ACT
Government

Environment, Planning and
Sustainable Development

NOTICE OF DECISION

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

I, Matt Davis, delegate of the planning and land authority, pursuant to section 162 of the *Planning and Development Act 2007*, **refuse**, the proposal for **construction of a mixed-use development comprising of one 9-storey and two 11-storey buildings, ground floor commercial tenancies with upper floor residential units, 2 new levels of basement carparking and internal driveways, tiered communal open space and landscaping, waste enclosures, services and utilities, and associated works**, at Blocks 9, 10 & 14 Section 132 Casey, based on the plans, drawings and other documentation applied for in the development application.

DA Number: 202241107
Block(s): 9, 10 & 14
Section: 132
Suburb: Casey
Application lodged: 31 January 2023
Assessment track: Merit

This decision contains the following information:

PART A – conditions of approval
PART B – reasons for the decision
PART C – 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

Matt Davis

Delegate of the Planning
and Land Authority

01 May 2023

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PART A – REASONS FOR THE DECISION

The application was refused because it was found to be inconsistent with the relevant rules, criteria and objectives of the Territory Plan and section 119 and 120 of *the Planning and Development Act 2007* (the Act).

Section 119 of the Act states that:

- (1) Development approval must not be given for a development proposal in the merit track unless the proposal is consistent with—*
- (a) the relevant code; and*
 - (b) if the proposed development relates to land comprised in a rural lease—any land management agreement for the land; and*
 - (c) if the proposed development will affect a registered tree or declared site—the advice of the conservator of flora and fauna in relation to the proposal.*
- (2) Also, development approval must not be given for a development proposal in the merit track if approval would be inconsistent with any advice given by an entity to which the application was referred under section 148 (Some development applications to be referred) unless the person deciding the application is satisfied that—*
- (a) the following have been considered:*
 - (i) any applicable guidelines;*
 - (ii) any realistic alternative to the proposed development, or relevant aspects of it; and*
 - (b) the decision is consistent with the objects of the territory plan.*
- (3) To remove any doubt, if a proposed development will affect a registered tree or declared site—*
- (a) the person deciding the development application for the proposed development must not approve the application unless the approval is consistent with the advice of the conservator of flora and fauna in relation to the proposal; and*
 - (b) subsection (2) does not apply in relation to the conservator's advice.*
- (4) In addition, development approval must not be given for a development proposal in the merit track if the design review panel provided the proponent with design advice about the development proposal under section 138AM and either—*
- (a) the proponent has not responded to the design advice; or*
 - (b) the authority considers the proponent's response to the design advice is unsatisfactory.*

In deciding to refuse the application, each of the matters or issues set out in sections 119(1) - (4) of the Act were considered and a summary of findings are provided below.

Section 119(1)

The proposed development has been assessed as not consistent with the *Commercial Zones Development Code*, the *Multi-Unit Housing Development Code*, and the *Parking and Vehicle Access General Code* with respect to the following provisions.

DEVELOPMENT CODES

COMMERCIAL ZONES DEVELOPMENT CODE (CDZC)

Element 4: Site

4.1 Landscaping: Criteria 14:

The landscaping associated with the proposed development fails to achieve all of the items outlined in Criteria 14. Items a) c) & d) are not achieved. The landscaping proposed fails to respond to the subject sites' attributes.

Through utilising minimal to nil setbacks along the subject sites boundaries the development fails to provide adequate space for planting along these boundaries. This results in a failure

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to integrate with the adjoining parks and public transport corridors, the planting associated with the site does not complement the surrounding locality or streetscape.

The development presents a multiple hard built edges, these require to be softened and integrated with its surrounds through planting. The authority also notes the lack of meaningful deep root planting provided on site, with the extent of the basement limiting the potential for this type of planting. Due to the above the development fails to meet Criteria 14 and subsequently consistency with the *Territory Plan (2008)*.

Element 5: Access

5.2 Traffic generation: Criteria 21:

The provided documentation relating to traffic generation had shortfalls in detail. The provided documentation was not satisfactory in addressing Criteria 21. Refer to TCCS as custodian of the road network and responsible for traffic management commentary below for further detail as TCCS is unable to support the proposal in its current form.

Element 5: Noise

6.1 Potential Noisy uses: Rule 23:

The provided noise management plan was not endorsed by EPA, as such the development failed to meet compliance with a mandatory rule and by extension the *Territory Plan (2008)*. Refer to EPA commentary below for further detail.

Element 13: Use

13.4 Residential use – ground floor: CZ1: Rule 44:

The development proposes residential use at the ground floor level this is prohibited by this mandatory rule. Residential use is provided on both the upper and lower ground levels through the “adaptive commercial” units. This unit type has the capability to be used solely for residential use, with the authority noting the design and siting of these units is more consistent with a residential dwelling than a commercial unit.

The location, access and street frontage are not commercially viable leading to the conclusion these units will all be utilised as residential spaces. The development failed to meet compliance with a mandatory rule and by extension the *Territory Plan (2008)*.

Element 14: Buildings

14.1 Number of storeys: Rule/ Criteria 45:

The number of storeys associated with the proposed development far exceeds the number of storeys outlined in Rule 45, as such the rule is not met, and the development was subject to Criteria 45.

The proposed increase in storeys is not considered consistent with the desired character of the locality. This increase in storeys proposed is not at quantum anticipated by the Territory Plan and fails to achieve the intent of the Criteria. The developments bulk and scale is not consistent with the Territory Plan or the Casey Masterplan.

Through considering all the elements of section 119 (1) & 120 of the *Planning and Development Act 2007* the Authority noted the advice provided by the NCD RP applicable to this proposal. The NCD RP was supportive of an increase in height, however, this support did

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not extend the number of storeys proposed. See NCDRP commentary below. As noted above the development failed to meet both rule and criteria and as such failed to meet the requirements of the *Territory Plan (2008)*.

14.1 Plot Ratio: Rule/ Criteria 46:

The plot ratio associated with the proposed development exceeds the plot ratio outlined in Rule 46, as such the rule is not met, and the development was subject to Criteria 46.

The proposed increase in plot ratio is not considered consistent with the desired character of the locality. This increase is not at a quantum anticipated by the Territory Plan and fails to achieve the intent of the Criteria.

The developments bulk and scale is not consistent with the Territory Plan or the Casey Masterplan, with plot ratio contributing toward this bulk and scale issue. As noted above the development failed to meet both rule and criteria and as such failed to meet the requirements of the *Territory Plan (2008)*.

MULTI-UNIT HOUSING DEVELOPMENT CODE (MUHDC)

Element 3: Building and site controls:

3.22 Front boundary setbacks: Rule/ Criteria 29:

The proposed development failed to achieve the setbacks required by Table A5 of the MUHDC, as such Rule 29 was not met, and the development was subject Criteria 29.

As outlined above the development is not consistent with the Territory Plan or the Casey Masterplan in regard to bulk and scale. Further, the proposed development is not consistent with the desired character of the locality, the lack of setback to the subject sites front boundaries contributes to issues related to bulk, scale and desired character.

Additionally, the development as a whole lacks amenity in regard to landscaping, this shortfall largely occurs due to the lack of planting/ opportunity for planting provided within the developments setbacks. The development fails to meet compliance with Rule or Criteria 29.

3.23 Side and rear boundary setbacks: Rule/ Criteria 30:

The proposed development failed to achieve the setbacks required by Table A7 of the MUHDC, as such Rule 30 was not met, and the development was subject Criteria 30.

As above the development does not meet consistency with the desired character of the locality due to issues pertaining to bulk and scale. Further to this in regard to side boundaries, notably the side boundary to the adjacent block containing a carpark, the development fails to maintain reasonable separation and limits the future development potential of this adjoining block. Given the adjoining block (carpark) is privately owned block consideration must be given to the potential development of this block.

The proposed nil setback to this carpark is considered to not adequately maintain separation or allow for the potential for reasonable privacy and solar access should this block be developed. A level of setback at the upper level should be provided to ensure reasonable interface and solar access is provided should this block be developed. Consideration may be given to a development intentions plan/master plan should a future application be lodged.

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Element 4: Site design:

4.3 Site open space – RZ3, RZ4, RZ5 and commercial zones: Criteria 40

Site wide the development provides a poor planning outcome and lacks amenity in regard to landscaping. The lack of planting within setbacks in conjunction with the majority of planting being provided within internal courtyards impacts the developments ability to contribute to energy efficiency. Further, the development lacks meaningful deep root planting site, with the extend of the basement limiting the potential for this type of planting. The Development is not consistent with Criteria 40.

Element 7: Parking and vehicular access

7.7 Delivery and removalist vans: Rule/ Criteria 85

The development does not provide reasonable provisions for short-stay parking to service delivery and removalist trucks associated with the residential aspect of the development. The commercial short stay space/ waste area is not sufficient in servicing this requirement.

The development is to have at least one short-stay space dedicated for this use. Alternatively, strong justification and evidence supporting that a reasonable provision is serviced could be considered. This was not provided, as such the development failed to meet Rule and Criteria 85.

GENERAL CODES

PARKING AND VEHICULAR ACCESS GENERAL CODE (PVAGC)

3.2.1 Objectives for parking and vehicular access in the commercial zones

The objectives for the provision of parking and vehicular access in commercial zones are to ensure:

- a) *Amenity*
 - i) *no regular overspill of parking occurs in neighbouring residential areas which detracts from the amenity of these areas*
 - ii) *the provision of parking does not detract from creating vibrant, interesting and lively centres*
- b) *Safety*
 - i) *no traffic hazards are created by the provision of access and parking facilities for a development*
 - ii) *the safety of all users, especially pedestrians and cyclists, is considered*
 - iii) *the creation of community surveillance of car parking areas by people using neighbouring areas*
- c) *Efficiency*
 - i) *the efficient use of existing and future public parking provision by the consideration of sharing of facilities, wherever possible*
 - ii) *the effectiveness of travel demand management measures to reduce the overall demand for long stay, commuter parking of private vehicles in the city and town centres*
 - iii) *commercial vehicles delivering or collecting goods are accommodated*
- d) *Access*
 - i) *safe and efficient access to commercial centres by all users of the centre, including business, workers, residents, shoppers and visitors as well as by operational and commercial vehicles*
- e) *Equity*
 - i) *the maintenance of an adequate supply of public parking for the level of development and activity approved in a centre*
- f) *Commercial viability*
 - i) *the commercial viability of a centre is not adversely affected by the inappropriate provision of parking*

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g) Non-commercial use

i) the successful operation of non-commercial uses in centres, especially community uses which will require adequate set-down and pick-up facilities

Code objectives (PVAGC)

The proposed development in its current form does not satisfactorily meet objectives a to e, some of which is also covered in part through the commentary of TCCS non-support below.

In general, the proposal is considered to be overdevelopment of the subject site due to the potential for; future queuing and 'overspill' into the road network as the locality is developed, traffic congestion and the significant vehicle parking demand placed on the surrounding parking spaces. As such the development is not consistent with the above Code objectives.

3.2.5 Schedules of parking provision rates for commercial zones

The proposed development requires 451 parking spaces to comply with the parking provisions of the Parking and Vehicular Access General Code. These parking spaces are to be allocated as follows 397 residential spaces (342 for residents & 55 visitor) and 54 commercial spaces.

According to the architectural plans and supporting documents submitted with this application as part of the DA package, the development has provided 362 parking spaces on site. These spaces are allocated as follows 342 spaces for residents and 22 for a combination of residential visitor spaces and commercial spaces. Leaving the remaining 87 required spaces required for residential visitor and commercial spaces to be serviced within the adjoining carpark (Block 10, Section 132, Casey).

Block 10 section 132 as noted is a private leased block and contains provisions relating to carparking, the lease requires a minimum of 332 car spaces that must be available to the public at all times. No parking report/study was provided to show this requirement has been maintained or even acknowledged in the documentation submitted. While the Authority notes this site has to capacity to service some of the parking requirements of the development, however the reliance on 87 spaces is not supported.

The Authority notes an arrangement with a reduced bulk and scale would require a smaller parking demand which would allow for a better planning outcome in regard to parking. If the development had appropriately responded to the storey provisions outlined above the parking demand would be reduced and this issue would be largely resolved.

Section 119(2)

Transport Canberra and City Services (TCCS), ICON Water and the Environmental Protection Agency (EPA) provided advice stating that the proposal is not supported, entity reasons as outlined in **Part B** of this decision.

All other referral entities either supported the proposed development or supported it subject to conditions.

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Section 119(3)

The proposed development will not affect a registered tree or a declared site.

Section 119(4)

The proposed development was given consideration by National Capital Design Review Panel (NCDRP). The NCDRP were supportive in-principle of an increased density and scale for the subject block, however this was conditional to a number of design outcomes being achieved. These outcomes included, high level amenity, high quality urban design, contributions to the public domain and high-quality landscaping/ canopy trees.

The Authority ultimately considered the proponents response to the design advice as unsatisfactory. Notably the NCDRP considered the issues pertaining to height and number of storeys, through which a quantum was provided in relation to Criteria 45 of the Commercial Zones Development code (expanded on above). The established quantum was of 4 to 8 storeys, the application fails to meet consistency with this determination.

EVIDENCE

The following evidence formed part of the assessment of this application:

Development Application:	202241107
Territory Plan Zones:	CZ1 – Core Zone
Development Codes:	Commercial Zones Development Code & Multi-Unit Housing Development Code
Precinct Code:	Casey Precinct Map and Code
General Codes:	Parking and Vehicular Access General Code, End of Trip Facilities General Code, Crime Prevention Through Environmental Design General Code, Waterways Water Sensitive Urban Design General code, Access and Mobility General Code & Signs General Code
Crown Lease:	Block 9 & 10 Volume 3009 and Folio 886
Legislative requirements:	the <i>Planning and Development Act 2007</i> in particular sections 119 and 120
Representations and Entity advice:	As addressed in PART A and PART B of this Decision

PART A and **PART B** provide further details and considerations informing the reasons for the decision.

In accordance with section 119 of the *Planning and Development Act 2007*, the application was refused because it did not comply with the legislated requirements for merit track applications.

The application was assessed as being inconsistent with:

- the relevant codes, being the *Commercial Zones Development Code (CZDC)*, the *Multi-Unit Housing Development Code*, and the *Parking and Vehicle Access General Code*.

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- the advice given by an entities, the entities being Transport Canberra and City Services Directorate (TCCS), ICON Water and the Environmental Protection Agency (EPA).

Section 120

In deciding to refuse the application, each of the matters or issues set out in sections 120 of the Act were considered and a summary of findings are provided below.

Section 120a

In addition to the above, the application is **refused** having regard to section 120 of the *Planning and Development Act 2007*. In relation to section 120(a), the proposed development does not satisfactorily meet all the relevant Zone Objectives of the *CZ1 Core Zone*.

Zone objectives are one requirement to consider and have been considered for this application. Zone objectives are not Rule or Criteria based and provide a high-level performance overview for the relevant zone, in this instance *CZ1 Core Zone*, and are not intended to be subject to individual assessment for a particular proposal.

While the proposed development is capable of demonstrating consistency with the Zone Objectives, the issues are considered too substantial to be resolved through further information.

The objectives for a zone set out the policy outcomes intended to be achieved by applying the applicable development table and code to a zone which are somewhat imbedded throughout the rules and criteria of the relevant Code/s to ensure the intent of the zone objectives are met and can be satisfied through performance-based measures.

As outlined above in accordance with the Commercial Zones Development Code and the Multi-unit Housing Development Code, the proposal in its current form is inconsistent with these codes.

Section 120b

In relation to section 120(b), the subject land is considered suitable for the proposed development. However, the above commentary relating to the *CZ1 Core Zone* objectives in conjunction with the outlined inconsistencies with the development codes and general codes within the Territory Plan display why this proposal is not considered suitable for the land in its current configuration. The subject site is capable of servicing a mixed-use development, however, further refinement and consideration toward the developments configuration is required in order to address the concerns outlined in the Territory Plan assessment, entity advice, and the inconsistencies with the zone objectives is required.

Section 120c

In relation to section 120(c), it is noted that there is no environmental significance opinion in force for the development proposal.

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Section 120d

In relation to section 120(d), all of the representations received by the planning and land authority in relation to the application were considered. A list of key concerns raised in the representations is provided in **Part B** of this decision.

Section 120e

In relation to section 120(e), it is noted that the proposal was presented to the National Capital Design Review Panel (NCDRP). The design advice provided by the NCDRP was considered. See above for further details pertaining to the NCDRP.

Section 120f

In relation to section 120(f), it is noted that most of the entities that gave advice on the application and provided support for the proposal on a conditional basis. The imposed conditions were imposed to protect or address different kinds of matters. Icon Water issued a “failed to comply” statement, the Environmental Protection Agency & Transport Canberra and City Services provided advice stating that the development is not supported, and further information was required to support the proposal. Advice received from all the relevant entities were considered and a summary of the advice received is included in **Part B** of this Decision.

Section 120g

In relation to section 120(g), it is noted that no public land management plan has been identified for the land.

Section 120h

In relation to section 120(h), the probable impacts, including potential social and environmental impacts of the proposed development were considered. In this regard, the planning and land authority considered the supporting documentation provided by the proponent with the development application, and representations received by the Authority in relation to the application. The authority also considered the advice and responses from relevant entities to which the application was referred.

Other Inconsistencies and Observations

- Multiple stairwells fail to achieve visual permeability requirements.
- A lack of detail is provided in regard to storage cages, a schedule denoting number, allocation and details of proposed dimensions is required.
- The development failed to provide sufficient documentation supporting ventilation requirements were achieved.
- The development and its associated car parking does not adequately service B99 vehicles. While some B99 templates are provided the basement level parking is largely designed to service B85 vehicles. Reconfiguration is recommended, some departure from an arrangement that fully services B99 vehicles may be consider if reasonable justification is provided in addition to reasonable B99 vehicle provisions.
- The front boundary fencing provided for the commercial adaptive units is not supported.

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- The proposal does not meet the Deed requirements by exceeding the maximum number of dwellings and maximum gross floor area for commercial use remaining in the Estate. The consequent lease for this block once granted will not permit any commercial use.
- a public access easement must be provided along the southern edge on Block 10 which are being used for access to the retail/commercial units.
- No evidence on these two matters has been provided, a separate lease variation may be required to permit the proposed development (deed requirements may have the opportunity to be conditioned if matters relating to the proposal are resolved)

Conclusion

The proposal has been assessed as not meeting the Territory Plan requirements, not achieving entity requirements and as being inconsistent with the Zone Objectives relevant to the block. The application does not demonstrate the development is consistent with the desired character of the area.

Given the changes that would be required to the proposal to address the above issues, the view was formed that the proposal as it currently stands, would not be able to meet these requirements. Therefore, in accordance with section 162 of the Act, the planning and land authority refuses this current application.

This current configuration of the development is not supported however should another application for a mixed use commercial and residential development be submitted or reconsidered and meet relevant Code and legislative requirements, the Authority could consider approving such an application.

PART A and **PART B** provide further details and considerations informing the reasons for the decision.

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 20 February 2023 to 14 March 2023. One Hundred and sixty-nine written representations were received during public notification period. One written representation was received after the public notification period.

The main issues raised in representations were as follows:

- Amenity
- Lack of time to provided representation.
- Inadequate public transport to support the development.
- The development departing from Casey masterplan.
- Building height
- Waste
- Traffic and parking
- Inadequate documentation
- Flooding
- Community consultation

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- Lack of schools in the locality to support the development.
- Overshadowing
- Noise
- Plot Ratio

The issues raised in the representations were considered in the assessment and making of the decision for this development application. Please refer to **PART B** – 'Reasons for the Decision' for further clarification.

ENTITY ADVICE and REQUIREMENTS

Pursuant to Division 7.3.3 of the *Planning and Development Act*, the application was referred to the entities below.

A summary of entity comments can be found below.

1. TRANSPORT CANBERRA AND CITY SERVICES (TCCS)

TCCS provided advice stating that the proposal is not supported.

Please see below TCCS advice.

VERGE

Please resubmit updated drawings & LMPP in accordance with TCCS Reference Document 4 (Attached to this Notice of Decision) clearly showing:

LMPP Drawing 201-B:

1. All works on territory land, impacts to territory assets and measures to mitigate any damage.
2. Materials storage, wash down areas, site sheds.
3. All tree removals.
4. All new service connections on territory land.
5. And use of unleased land.
6. Correct tree protection measures.
7. Please include TCCS Ref 04 standard notes.

Drawing 501-F:

8. TCCS does not support the link path design shown.
9. Proposed links to residencies does not match with architectural line work (gates to courtyards). Please show one link per two (2) units, not one (1) for every unit to avoid unnecessary pavement over the verge, and more generous planter areas.
10. There appears to be only 3 trees retained in this area, please justify/ clarify the removal of all trees on territory land.
11. New active travel route/new paths are to match the wider width of the existing path, so please correct path widths.

STREETLIGHTS

12. The proposed development shows streetlights inside the property boundary.
13. However, the site survey provided clearly shows most of the streetlights outside the property boundary.
14. The only one showing a minor encroachment is the one on the SE corner of the site and this might be a misrepresentation because the circle used to show the streetlight might be too big.
15. Our mapping, GIS and previous WAE's show that they are outside the block boundary.

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16. Should the applicant want to relocate the streetlights they'll have to justify as to why the relocation is required for TCCS to consider if the streetlights are already over Unleased Territory Land.

17. If TCCS decides to support a relocation of any streetlights, the applicant will have to do it at their cost, they'll have to submit the detail design for the relocation of the streetlight for Design Review and also submit it to tccs.streetlighting@act.gov.au for approval.

WASTE

18. Section 3 of the WRMP has not been completed.

19. Although the Applicant has correctly calculated the waste generation and hopper requirements (4 x 3,000L waste and 10 x 1,100L recycling hoppers), the calculated number of hoppers are for the Territory's waste contractor to collect, and the contractor does not collect hoppers from under chutes.

20. The Applicant must design so that in addition to the 4 and 10 hoppers that have been calculated, there must be at least one waste and one recycling hopper under the chutes and one backup waste and one backup recycling hopper.

21. The hoppers under chutes and the backup hoppers are in addition to the hoppers calculated for collection.

22. Therefore, a total of 6 x 3,000L waste hoppers and 12 x 1,100L recycling hoppers are required in the main waste enclosure.

23. Territory hoppers must not be placed under chutes.

24. The waste enclosure is non-compliant as it will not fit the mandatory hopper numbers and the shape of the enclosure means that the contractor must seek out hoppers scattered throughout the enclosure, and this is an onerous and inefficient enclosure.

25. The distance between hoppers has been shown at 1.5m and it needs to be changed to 1.7m.

26. A 5m long tube is shown running to the waste hopper and if waste is supposed to fall, slide down that chute extension, it will most likely get stuck in the chute.

27. Residents must not access the chute rooms, there are organic green bins in that room, so will residents access the chute room?

28. Calculations for organic green waste have not been provided.

29. Obstructions exist within the 1m safety clearance of the truck to boundary, fences/garden bed etc.

30. Based on the drawings, the collection vehicles, in particular the front-lift, will park on the hopper pad making collection impossible.

31. Plans imply a kerb. Can these lines be removed so that the pavement is shown as continuous between the truck parking bay and the waste enclosure.

32. Sections, elevations and gradients are missing of the waste enclosure.

33. In regard to commercial waste exceeding 63,000L p/w, it would be practical long term for the developer to adopt compactors.

34. No operations manual has been provided; can this be provided so we can assess how waste will be managed onsite.

35. Plans show a substation, and the truck must be 1.5m from the substation's external wall. At the moment it's only approximately 1m.

TRAFFIC

In regard to traffic TCCS have the following comments below:

Review of Transport Impact Assessment Report for B9 S132 Casey prepared by Northrop, dated 23/01/2023.

36. Section 3.4.2, (pg. 15-19) – It is not clear how well the SIDRA models developed to assess the base year conditions have been calibrated. For example,

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Table 9 shows that the intersection of Kingsland Parade and Clarrie Hermes Drive is operating at LOS A in both the AM and PM peak. However, the commentary outlines delays were observed based on site observations which is not apparent in the SIDRA results. Hence, the proponent is to outline if the base model has been calibrated and validated to reflect observed queue lengths and delays during the AM and PM peak periods.

37. Section 3.4.2, (pg. 15-19) – From the SIDRA outputs in the attachments, it appears that the intersections were modelled as individual sites and not as a network. Given that the intersections of Bentley Place/Kingsland Parade/Dalkin Crescent and Kingsland Parade/Clarrie Hermes Drive are within close proximity to each other, these intersections should be modelled as a network to better model traffic flow-on effects.

38. Section 3.4.2, (pg. 15-19) – Why wasn't the Clarrie Hermes Drive/Overall Avenue/Kelleway Avenue intersection and the Gungahlin Drive/Clarrie Hermes Drive/Horse Park Drive intersection included in the analysis?

39. Section 4.3, pg. 27 – The proponent must undertake a carpark layout compliance check as per the requirements in AS2890.1. This includes a review of ramp grades, aisles widths, carpark dimensions and blind aisles.

40. Section 4.5, (pg.28-31) – What were the traffic distribution assumptions and percentages based on? For example, was ABS Journey to Work data used to derive traffic distribution percentages?

41. Section 4.7.1-Section 4.7.2 (pg.32-37) – To determine if the development and future year model outputs are realistic, the accuracy of the base year models must first be determined. See point above regarding base year model calibration and validation.

42. Section 4.8.2, (pg.38) – TCCS appreciates the parking surveys undertaken as outlined in Section 3.5.3. Although the surveys show that currently, there is capacity to accommodate overflow parking, the reliance of 86 carparks at Block 10, Section 132 is significant. The Gungahlin region has been undergoing rapid expansion with the population expected to increase further. For example, the adjacent Blocks 12 and 13, Section 132 Casey are due for land release and those sites may also require a need for off-site public parking. Hence, the reliance on 86 spaces off-site spaces cannot be supported.

2. ENVIRONMENTAL PROTECTION AUTHORITY (EPA)

EPA provided advice stating that the proposal is not supported subject to conditions.

Please see below EPA advice.

The Environment Protection Authority (EPA) does not support the DA in its current form.

The Noise Management Plan in section 4 states that *"We understand in this instance that the potentially noisy uses of Drinks Establishment and Gym (Indoor Recreation Facility) are not proposed and are intended to be removed from the Crown Lease. As the Crown Lease will then allow for only restaurant use as a noisy use, this is assessed as part of this NMP."*

While the approach outlined in the Noise Management Plan is supported by the EPA, there is no indication in the DA documentation that the crown lease has been proposed to be structured in accordance with the advice provided in the Noise Management Plan. As such, the EPA assumes the Crown Lease will include all uses permitted by the zoning. Further, advice has been provided that the crown lease will include a clause requiring management in accordance with an EPA endorsed Noise Management Plan however this has also not been detailed in the DA documentation.

Following review of a revised Development Application that includes an updated Noise Management Plan that considers all uses permitted in the zoning, or it is demonstrated the Crown Lease will be structured as detailed in the Noise Management Plan, the EPA will be in a position to provide further comment on the Development Application.

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3. ACT EMERGENCY SERVICES AGENCY (ACTESA)

The ACTESA provided advice stating that the proposal is supported subject to conditions.

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

4. ICON WATER

ICON Water provided advice stating that the proposal Fails to Comply with their water and sewerage network protection requirements.

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

5. EVOENERGY (ELECTRICITY)

EvoEnergy (Electricity) provided advice stating that the proposal is supported subject to conditions.

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

6. EVOENERGY (GAS)

EvoEnergy (Gas) provided advice stating that the proposal is supported subject to conditions.

A copy of the EvoEnergy (Gas) advice is attached to this Notice of Decision.

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ATTACHMENT 1

ADMINISTRATIVE INFORMATION RELATING TO NOTICE OF DECISION

Date this approval takes effect – N/A

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-reno/build-buy-or-reno/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.

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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.
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).

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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.
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.

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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
Environment, Planning and Sustainable Development Directorate 480 Northbourne Avenue DICKSON ACT 2602 GPO Box 158, CANBERRA 2601 <ul style="list-style-type: none">• <i>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- Conservation, Planning and Research- threatened species/wildlife management• <i>WorkSafe ACT</i><ul style="list-style-type: none">- asbestos information• <i>ACT Heritage Council</i><ul style="list-style-type: none">- Aboriginal, historic and natural heritage management• Tree Protection Unit<ul style="list-style-type: none">- <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

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Transport Canberra and City Services <ul style="list-style-type: none">• 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 <ul style="list-style-type: none">• Telstra (networks)• TransACT (networks)• Icon Water• Electricity reticulation	02 8576 9799 02 6229 8000 02 6248 3111 02 6293 5749

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-għajjuna 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 telefonirajte:
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	