



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 demolition of existing carpark facilities, construction of a new 4-storey commercial building consisting of three levels of office space, ground floor lobby area, retail shops, two levels of basement car parking, tree removal, landscaping and associated works, at Block 12 Section 45 Belconnen, based on the plans, drawings and other documentation applied for in the development application.

DA Number: 202342368
Block: 12
Section: 45
Suburb: Belconnen
Application lodged: 15 March 2024
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

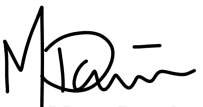
A copy of the development application and this approval may be inspected at the planning and land authority's office from 9:00 am to 4.00 pm, Monday to Friday at 480 Northbourne Avenue, Dickson, ACT 2602

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

9 April 2025

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PART A – 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)*.

This Development Application (DA) was made prior to 27 November 2023 and was subject to the Planning and Development Act 2007. This Act has now been repealed however, the new Planning Act 2023 provides transitional provisions that apply to such DAs made under the 'old legislation' of significance for this DA, Section 613 limits the making of S144 applications to 6 months after the new Act commenced i.e. on or before 28 May 2024.

No further application was made by the May 28, 2024, deadline, therefore the Authority cannot accept a 144 amendment application for this proposal thus resulting in a refusal.

Note the Authority provided communications/emails to all applicants advising of the legislation change some time before the May deadline and of the potential implications for such legislation.

To obtain approval, the application in its current form requires information and amendments particularly to satisfy Territory Plan (2008) requirements (CZDC). The DA is not currently considered to meet the Territory Plan however it appears the changes to address the 141 advice need to be addressed to enable the application/development to be fully assessed against the Territory Plan. A revised application addressing entities may be considered through the reconsideration application process and it is recommended to discuss with the Authority and entities before beginning this process. Alternatively, a new DA under the new Planning Act 2023/Territory plan 2023 can also be considered.

In addition to the above, the application is **refused** with regard to section 120 of the *Planning and Development Act 2007*, particularly as the proposal is not considered to meet the zone Objective c) of the CZ2 Business Zone.

KEY INCONSISTENCIES WITH RELEVANT DEVELOPMENT AND GENERAL CODES

The following inconsistencies of the proposed development the subject of this development application with the relevant rules of the *Commercial Zones Development Code (CZDC)* identified through the assessment process are outlined below:

COMMERCIAL ZONES DEVELOPMENT CODE (CZDC)

Element 7: Environment

7.3 Tree protection:

The proposed development includes the removal of protected trees.

The authority referred the development application to the Conservator of Flora and Fauna (the Conservator) who provided advice stating the following:

Trees 58, 60, 69, 70, 77, 78, 81, 82, 83, 86 and 93 meet the size and species requirements under the Tree Protection Act 2005. The trees currently do not meet criteria for removal under the "Tree Protection (Approval Criteria) Determination 2006 (No 2)". The removal of these will need to be considered under planning consideration by the LRP landscape Review Panel.

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The Conservator further stated that:

Whilst the trees do not meet any criteria, the conservator will not oppose the removal of these medium quality trees if a high-quality landscape outcome is included as part of the final proposal. This must include the planting of a significant number of trees. TCCS recommends that "Pyrus" species is not included as they have been found not to perform well in multi-unit complexes primarily due to poor branch structure.

Further information was requested on 2 May 2024 which included the Conservator's advice and the requirement for planting a significant number of trees in favour of removing the existing protected trees. However, further information has still not been received at the time of this decision, and this mandatory requirement has not been satisfied.

Element 21: Waste management

21.2 Post occupancy waste management

Transport Canberra and City Services (TCCS) did not support the post occupancy waste management facility for the proposed development and this mandatory requirement has not been satisfied.

ZONE OBJECTIVES

Following assessment against the relevant Codes the view was formed the proposal could not be considered consistent with Objectives c) of the CZ2 Business Zone:

Objective c): Encourage provision of convenient outlets for goods, services and facilities to meet the needs of the workforce.

The proposed development is not considered to satisfy TCCS' post occupancy waste management facility requirements to meet the needs of the proposed commercial office and retail shops and its associated workforce.

Conclusion

Given the changes that would be required to the proposal to address the above issues and as noted in Part B below (141), 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.

EVIDENCE

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

Development Application:	202342368
Territory Plan Zones:	CZ2: Business Zone
Development Codes:	Commercial Zones Development Code
Precinct Code:	Belconnen Precinct Code and Map
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.

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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 21 March 2024 to 12 April 2024. No written representation was received during public notification period.

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, and that further information is required in relation to traffic, parking and waste.

2. ICON WATER

Icon Water provided advice stating that the proposal fails to comply with their water and sewerage network protection.

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

3. 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.

4. 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.

5. CONSERVATOR OF FLORA AND FAUNA (The Conservator)

The Conservator provided advice stating the following:

The DA has been assessed and the following Conservators Advice in accordance with Section 82 Tree Protection Act 2005 is provided:

<i>No regulated tree/s on the site (nor on neighbouring block/s)</i>	
<i>Supported with Conditions</i>	
<i>Advice for the Applicant</i>	
<i>Not Supported</i>	X
<i>Further Information/Amendments Required</i>	

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Conditions/Comments/Advice:

The Tree Protection Unit has undertaken a site inspection and reviewed the attached Development Application and can provide the following advice.

- *Trees 59, 61, 62, 71, 72, 73, 74, 75, 76, 79, 84, 87, 88 and 89 do not the size requirements of a regulated tree and are not covered by the Tree Protection Act 2005 and therefore do not require approval to remove.*
- *Trees 58, 60, 69, 70, 77, 78, 81, 82, 83, 86 and 93 meet the size and species requirements under the Tree Protection Act 2005. The trees currently do not meet criteria for removal under the “Tree Protection (Approval Criteria) Determination 2006 (No 2)”. The removal of these will need to be considered under planning consideration by the LRP landscape Review Panel.*

Landscape review panel advice:

- *Tree 53: Eucalyptus melliodora, is a medium quality, agree with original tree assessment report regarding quality classification.*
- *Tree 58: Eucalyptus melliodora, is a medium quality tree not poor as suggested in tree assessment report..*
- *Tree 60: Eucalyptus melliodora, is a medium quality tree not poor as suggested in tree assessment report..*
- *Tree 69: Eucalyptus polyanthemus, is a medium quality tree not poor as suggested in tree assessment report.*
- *Tree 70: Eucalyptus nicholii, is a medium quality tree not poor as suggested in tree assessment report.*
- *Tree 77: Eucalyptus sideroxylon, is medium quality, agree with original tree assessment report regarding quality classification.*
- *Tree 81: Eucalyptus sideroxylon, is medium quality, agree with original tree assessment report regarding quality classification.*
- *Tree 82: Eucalyptus sideroxylon, is medium quality tree not poor as suggested in tree assessment report.*
- *Tree 83: Eucalyptus sideroxylon, is medium quality, agree with original tree assessment report regarding quality classification.*
- *Tree 86: Eucalyptus sideroxylon, is medium quality, agree with original tree assessment report regarding quality classification.*
- *Tree 93: Eucalyptus nicholii, is medium quality, agree with original tree assessment report regarding quality classification.*

Whilst the trees do not meet any criteria, the conservator will not oppose the removal of these medium quality trees if a high-quality landscape outcome is included as part of the final proposal. This must include the planting of a significant number of trees. TCCS recommends that “Pyrus” species is not included as they

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have been found not to perform well in multi-unit complexes primarily due to poor branch structure.

The proponent proposes to retain the following tree: 53 Eucalyptus melliodora.

Plan/s:

1. *Redbox design group, Belconnen Commercial, 40 Cameron Avenue, Block 12, section 45 Belconnen, project no. 1771, sheet no. 100 issue A, 20/10/23*
2. *Redbox design group, Belconnen Commercial, 40 Cameron Avenue, Block 12, section 45 Belconnen, project no. 1771, sheet no. 101 issue A, 20/10/23*
3. *Redbox design group, Belconnen Commercial, 40 Cameron Avenue, Block 12, section 45 Belconnen, project no. 1771, sheet no. 130 issue A, 20/10/23*
4. *Redbox design group, Belconnen Commercial, 40 Cameron Avenue, Block 12, section 45 Belconnen, project no. 1771, sheet no. 131 issue A, 20/10/23*

6. ENVIRONMENT PROTECTION AUTHORITY (EPA)

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

7. ACT EMERGENCY SERVICES AUTHORITY (ACTESA)

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

A copy of the ACTESA 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 – NA

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-renoate/build-buy-or-renoate/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-renoate/build-buy-or-renoate/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 • <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

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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

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	