



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 existing buildings and structures, construction of a two-storey 550-seat place of assembly and three-storey hotel comprising of 57 rooms, basement, undercroft and surface carparking, retention of heritage hall with proposed attached pavilion, internal driveway, landscaping and associated works; and**
- **Lease Variation to vary the crown lease to allow the proposed uses for hotel and place of assembly and deletion of gross floor area limiting clause 3(e),**

at Block 8 Section 2 Nicholls, based on the plans, drawings and other documentation applied for in the development application.

DA Number: 202342382 / S144B
Block: 8
Section: 2
Suburb: NICHOLLS
Application lodged: 17 November 2023 / 28 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 decision may be inspected from 9:00 am to 4.00 pm, Monday to Friday at 8 Darling Street, Mitchell, ACT 2911

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

15 August 2024

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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 *Nicholls Precinct Map and Code*, the *Commercial Zones Development Code (CZDC)*, the *Parking and Vehicular Access General Code* and the *Lease Variation General Code*.
- the advice given by an entity, the entities being ACT Heritage Council and Transport Canberra and City Services (TCCS).

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 Objectives e) and f) of the CZ6 Leisure and Accommodation zone, the advice given by entities and representations which have not been withdrawn.

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 *Nicholls Precinct Map and Code*, the *Commercial Zones Development Code (CZDC)*, the *Parking and Vehicular Access General Code* and the *Lease Variation General Code*; identified through the assessment process are outlined below:

PRECINCT AND DEVELOPMENT CODE/S

NICHOLLS PRECINCT MAP AND CODE

Element 1: Buildings

1.1 Materials and form: Criteria 1

The proposal is not currently supported by the ACT Heritage Council who have advised design amendments are needed to ensure the development will not diminish the heritage significance of the Ginninderra Village Precinct. (refer to advice of ACT Heritage Council dated 22 July 2024 attached to this decision).

The application is not able to be further amended as the provisions under s144 of the *Planning and Development Act 2007* to address outstanding matters is no longer available following the end of the transitional arrangements of the *Planning Act 2023*.

COMMERCIAL ZONES DEVELOPMENT CODE (CZDC)

PART A – General Controls

Element 3: Buildings

3.1 Building design and materials: Criteria 3

The ACT Heritage Council have advised the extent of demolition proposed in the western wall of the Roman Catholic Church building is not supported, indicating there are opportunities to minimise demolition of the original significant fabric while still achieving functional use of the space. The ACT Heritage Council has also indicated a reduction in surface car parking and the driveway to the south and west of the Church building is required with additional soft landscaping to be provided.

As discussed above the application can no longer be amended.

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3.2 Plant and structures: Criteria 5

Proposed substation is not integrated with the building design. It is separate to the building located on the eastern side of the driveway. Screen fencing of FC wall cladding or similar is proposed 2.8 metres from the front boundary.

Element 4: Site

4.1 Landscaping: Criteria 14

The ACT Heritage Council has advised additional soft landscaping is required to provide an improved landscape setting to the former Roman Catholic Church building included in the heritage listed Ginninderra Village Complex entry to the ACT Heritage Register.

As discussed above the application can no longer be amended.

Element 5: Access

5.2 Traffic Generation: Criteria 21

TCCS reviewed updated Traffic report in s144B submission and are requesting further information with respect to parking demand calculations.

Should any additional information require changes to the proposal they can no longer be made as discussed above.

5.3 Service access and delivery: Rule 22 / Criteria 22

The ACT Heritage Council have advised further design amendments to the proposal are required to reduce parking and the related driveway to the south and west of the Church building and provide additional soft landscaping. The resulting changes to this area may restrict the loading/unloading service areas and the ability for service vehicles to enter and leave the site in a forward direction.

As discussed above the application can no longer be amended.

Element 7: Environment

7.2 Earthworks: Criteria 29

Earthworks are not minimised. Extensive site cut is proposed to provide for a lower floor level function room and related facilities, waste collection area, basement parking and undercroft parking.

7.4 Heritage: Mandatory Rule 32

The application is not currently supported by the ACT Heritage Council. Refer to the advice of the ACT Heritage Council attached to this decision.

As noted above the application can no longer be amended.

PART E – Additional controls for CZ6

Element 18: Buildings -CZ6

18.2 Setbacks: Rule 58 / Criteria 58

The proposed development does not comply with the minimum boundary setback of 6 metres from all boundaries, proposing the following encroachments:

- Front boundary to O'Hanlon Place – setback approx 1.2 metres (Note approx length of front boundary to O'Hanlon Place is 14.5 metres as measured from eastern side boundary. Remainder of the northern boundary is a side boundary adjoining Block 7)
- Side setback (northern boundary) – 210mm to staircases and 3.2m to main building.
- Side setback (eastern boundary) – approx 2 metres to substation.
- Side setback (western boundary) – minimum 2.883m

The proposal is not considered to be compatible with the desired character having regard to the large building footprint with minimal separation to a number of boundaries.

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PART G – Endorsement by government agencies (entities)

Element 21: Waste management

21.1 Management of construction waste: Mandatory Rule 63

The application is not currently supported by TCCS. As noted above the application can no longer be amended under s144 of the *Planning and Development Act 2007* to address outstanding matters following the end of the transitional arrangements of the *Planning Act 2023*.

Refer to the entity advice in Part B below.

21.2 Post occupancy waste management: Mandatory Rule 64

The application is not currently supported by TCCS. As noted above the application can no longer be amended. Refer to the entity advice in Part B below.

Element 23: Environmental management

23.1 Erosion and sediment control: Mandatory Rule 70

The Environment Protection Authority (EPA) have advised the submitted Erosion and Sediment Control Plan does not comply with EPA guidelines and will not be endorsed by EPA in its current form. Refer to the entity advice in Part B below.

23.2 Contamination: Mandatory Rule 71

The EPA have advised an environmental assessment is to be submitted to and endorsed by the EPA. Refer to the entity advice in Part B below.

GENERAL CODES

PARKING AND VEHICULAR ACCESS GENERAL CODE (PVAGC)

Place of Assembly – 1 space/4 seats

<i>Proposed</i>	<i>Required</i>
101	138 for 550 seats

Hotel

25 spaces plus

0.3 spaces/guest room or unit for establishments of more than 36 units plus = $17.1 = 18$
10 space/100m² of GFA of bars and function rooms plus = considered to be met by car parking for Place of Assembly

1 space/10 restaurant seats plus = N/A

3 spaces/100m² of retail space = N/A

<i>Proposed</i>	<i>Required</i>
3 spaces for employees	43 spaces as per above calculations

The proposal is for a 550 seat Place of Assembly and ancillary 57 room hotel with provision on site for a total of 104 car spaces. The authority does not consider the hotel component to be ancillary to the Place of Assembly and has calculated the car parking requirements above accordingly.

While the above calculations identify an onsite shortfall of 77 car spaces, there are no details in relation to the potential for the church and associated pavilion to be used separately to the function rooms which may have further car parking implications. In addition, the provision of on-site car parking may be further reduced in response to the requirements of the ACT Heritage Council. It is also acknowledged TCCS are not currently supporting the proposal identifying they require further information with respect to parking demand. Refer entity advice below.

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It is also noted only 7 accessible spaces are shown and not 8 as referred to in the Traffic Impact Assessment Report. Further the removal of the central lift in the proposed hotel results in the proposed accessible car parking spaces being located further away from the available lift and supporting information is required to confirm an accessible path of travel to/from these spaces into the building.

LEASE VARIATION GENERAL CODE

Element 1: Variations – general

1.1 Varying leases – general: Criteria 1

The proposed lease variation is not considered to be consistent with the Territory Plan and all relevant codes as noted in the document above. The proposed hotel is not considered to be an ancillary use to the proposed Place of Assembly.

Element 2: Variations to increase rights

2.1 Increasing rights: Criteria 2

The application seeks to remove the current gross floor area provisions in the Crown lease. The application has not demonstrated there is sufficient car parking provided on site or is available off site in accordance with the Parking and Vehicular Access General Code in relation to the increased rights.

TCCS are not currently supporting the application requesting further information on parking demand and waste management. It is also noted the ACT Heritage Council are requiring changes to the driveway and parking areas leading to the waste collection area which may in turn affect waste collection from the site.

Element 3: Variations to add uses – general

3.1 Adding uses generally: Criteria 3

The application seeks to add additional uses. The application has not demonstrated there is sufficient car parking provided on site or is available off site in accordance with the Parking and Vehicular Access General Code in relation to the additional uses. As per the car parking calculations above there is a larger shortfall of on-site car parking than the applicant has identified. It also appears that the applicant has relied upon car parking spaces that are allocated to other leased parcels.

As also noted above TCCS are not currently supporting the proposal.

While the EPA have advised the proposal is supported subject to conditions it is noted an environmental assessment is to be submitted to and endorsed by the EPA in accordance with EPA endorsed guidelines to determine whether past activities have impacted the site from a contamination perspective and to determine whether the site is suitable for the proposed uses.

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ZONE OBJECTIVES

Following assessment against the relevant Codes the view was formed the proposal could not be considered consistent with Objectives e) and f) of the CZ6 Leisure and Accommodation zone:

Objective e): Ensure the location of facilities, and their design and landscaping is compatible with environmental values.

Objective f): Ensure that the bulk, scale, size, design and landscaping of development is compatible with the surrounding landscape.

The proposal is not considered to be compatible with the environmental values for the locality, particularly the proposed tree removals and extent of landscaping having regard to the heritage significance of the Ginninderra Village Precinct

The bulk, scale, size design and landscaping is not considered to be compatible with the surrounding landscape with respect to the large building footprint with minimal separation to a number of boundaries, the extent of excavation proposed to include the lower ground and basement parking, the proposed removal of a large number of regulated trees and the landscape setting for the Roman Catholic Church building included in the heritage listed Ginninderra Village Complex entry to the ACT Heritage Register.

Other Inconsistencies and Observations

- The proposed pavilion adjacent the Roman Catholic Church building is to support the use of the church building for weddings etc. The seating capacity of the pavilion has not been provided and it is not known if ceremonies will occur independent to hiring/holding functions. As such there may be additional car parking implications if the function rooms are occupied and a separate ceremony/celebration is being held in the church and pavilion.
- The development application form identifies hotel use as ancillary to the proposed Place of Assembly however the lease variation documentation does not make this distinction. The proposed Hotel use appears to be a standalone use.
- The s144B submission does not appear to respond to TCCS' original request for further information with respect to the operation of the hotel i.e. is it proposed to operate continuously, separately to any event demands. The applicant's response defers to the Traffic Impact Assessment Report which does not appear to respond to this issue.
- Car parking is only proposed to be provided for the Place of Assembly.
- Location of underground OSD/OSR water tank may conflict with tree protection zone of regulated trees.

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Conclusion

The application has not demonstrated the scale and use of the proposed development are appropriate for the site consistent with the Territory Plan and zone objectives as discussed above.

The application is not currently supported by the ACT Heritage Council or Transport Canberra and City Services as identified above and discussed further in Part B below.

In addition, the hotel is not considered to be an ancillary use to the proposed Place of Assembly. There are no details to confirm hours of operation or that the hotel will only operate in conjunction with functions being held in the Place of Assembly.

Also as identified above, the provisions to enable the application to be further amended under s144 of the *Planning and Development Act 2007* to address outstanding matters is no longer available following the end of the transitional arrangements of the *Planning Act 2023*.

The assessment issues are not considered suitable to condition by way of approval. Considering the changes required to address the above issues, and the inability to do so (i.e. via the s144 amendment process) under the *Planning and Development Act 2007*, the planning and land authority refuses the current application under s162 of the Act.

EVIDENCE

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

Development Application:	202342382 / S144B
Territory Plan Zones:	CZ6 Leisure and Accommodation zone with Main Avenue and Approach Routes Overlay
Development Codes:	Commercial Zones Development Code
Precinct Code:	Nicholls Precinct Map and Code
General Codes:	Access and Mobility General Code Crime Prevention through Environmental Design Waterways: Water Sensitive Urban Design General Code Parking and Vehicular Access General Code End-of-Trip-Facilities General Code Lease Variation General Code
Crown Lease:	Volume 868 and Folio 15
Legislative requirements:	the <i>Planning Act 2023</i> including the transitional arrangements for DAs such as this made before its commencement 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 23 November 2023 to 13 December 2023. Three (3) written representations were received during the public notification period.

An amendment to the proposal was lodged with the authority on 28 June 2024. The key changes included:

- No longer proposing removal of two verge trees on O’Hanlon Place;
- Revising provision of surface carparking adjacent front boundary to Barton Highway;
- Providing new staircase;
- Amending foyer access;
- Providing airlocks to function rooms;
- Removing centrally located stairs and second lift in proposed hotel;
- Extending basement to increase car parking capacity;
- Increasing setback of development from front boundary to Barton Highway from minimum 12.714 metres to 25.066 metres to comply with Development Control Plan 14/01;
- Reducing overall height of buildings by revising floor levels and amending roof pitch to satisfy Development Control Plan 14/01;
- Revising external materials to satisfy Development Control Plan 14/01; and
- Reducing the number of hotel rooms from 60 to 57.

Pursuant to Division 7.3.4 of the Act, the amended application was publicly notified from 4 July 2024 to 24 July 2024. No written representations were received during this public notification period.

The issues raised in the original representations, including inconsistent with tourist precinct purpose of Ginninderra Village, inconsistent with heritage values, traffic and parking, density and scale, pedestrian safety, impact during construction etc. were considered in the assessment and making of the decision for this development application.

Please refer to **PART A** – ‘Reasons for the Decision’ for further clarification.

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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. ACT HERITAGE COUNCIL

The ACT Heritage Council provided advice in response to the initial referral stating further information is needed to determine whether the development will diminish the heritage significance of the Ginninderra Village Precinct.

In response to the referral of the S144B submission the Delegate of the ACT Heritage Council advised that while the amended proposal addresses some of the matters raised in previous Council advice, it still contains elements that would diminish the heritage significance of the Precinct, further advising reasonable measures to avoid and minimise heritage impacts are available, and that the following design amendments are required to comply with *Heritage Act 2004* requirements:

- a) Design amendments to minimise the demolition of original significant fabric within the Church building, to reduce the size of the opening within its west wall; and
- b) Design amendments to relocate some/all of the parking proposed between the Barton Highway boundary and the Church building to the eastern block boundary; and increase the soft landscaping to the south of the Church; and
- c) Design amendments to reduce the service driveway to the west of the Church, and increase the soft landscaping between the Church and the School, by exploring possibilities of direct access from the east.

This advice is provided following the detailed assessment of the application, with key comments set out in Attachment A to the Heritage advice of 22 July 2024 attached to this decision.

2. CONSERVATOR OF FLORA AND FAUNA (TREE PROTECTION UNIT)

The Delegate of the Conservator of Flora and Fauna provided advice after the entity referral period and accordingly under s150 of the *Planning and Development Act 2007* (the Act) they are taken to support the proposal.

Whilst they are taken to support the proposal for the purposes of the Act, their advice which was received albeit late stated:

The Delegate of the Conservator of Flora and Fauna (Tree Protection Unit) provided advice in response to the initial referral stating the proposal is not supported as follows:

- a) The Tree Protection Unit would oppose the removal of the medium and high quality regulated trees.
- b) The block and section are under a Heritage district and the applicant will need to satisfy the Heritage Act.

In response to the referral of the s144B submission the Delegate of the Conservator of Flora and Fauna (Tree Protection Unit) provided advice stating the proposed amendment gives no change in impact to the trees within and surrounding the site. The previous advice from Tree Protection is still valid and should be considered the current advice.

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Comment:

The advice of the Conservator of Flora and Fauna would need to be addressed in any application for Reconsideration or review by the ACT Civil and Administrative Tribunal (ACAT)

Refer to Tree Assessment Overall Site, Drawing Number TA1 dated 20.09.2023 and Tree Schedule Sheets 1 and 2 Drawing Number TA2 dated 20.09.2023 which identifies the medium and high quality trees and Tree Removal Plan Overall Site Drawing Number TMP1 Rev B dated 19.03.2024 which identifies proposed tree removal.

3. TRANSPORT CANBERRA AND CITY SERVICES (TCCS)

TCCS provided advice in response to the initial referral stating the proposal is not supported requiring further information with respect to the Verge protection and street trees, Traffic and Parking and Waste:

In response to the referral of the s144B submission TCCS provided advice stating the proposal is not supported and the following further information is required for assessment:

TRAFFIC AND PARKING

- a) TCCS requires further information as follows:
 - i) Under 4.1 Overall Car Parking (p34), the proponent determines the car parking requirements based on the Parking and Vehicular Access General Code.
 - ii) Under 3.1 Traffic and Parking Demands (p24), the proponent adopted a typical capacity of 75% of maximum capacity to calculate the parking demand. The proponent needs to articulate the basis for this assumption and how they arrive at this percentage.

WASTE

- b) TCCS does not collect any commercial / industrial waste; however, a WRMP is still required as part of the DA documentation as per the Waste Code 2019.
- c) As shown in Image 1 in Appendix A, the applicant proposed waste hopper sizes 3000L and 1100L. Please correct this and submit a revised plan for TCCS assessment.

4. ENVIRONMENT PROTECTION AUTHORITY (EPA)

The EPA provided advice in response to the initial referral stating the proposal is not supported and further information is required in relation to Hazardous Materials, Contaminated Sites and Noise.

In response to the referral of the s144B submission EPA provided advice stating the proposal is supported subject to the following conditions and advice:

CONSTRUCTION

- a) All works must be carried out in accordance with "Environment Protection Guidelines for Construction and Land Development in the ACT, August 2022", available at Environment protection guidelines (act.gov.au) or by calling 132281.
- b) As the site is greater than 0.3 hectares the construction is an activity listed in Schedule 1 as a Class B activity under the *Environment Protection Act, 1997*. The contractor/builder developing the site must hold an Environmental Authorisation or enter into an Environmental Protection Agreement with the Environment Protection Authority (EPA) in respect of that activity **prior to works commencing** (including demolition works).

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- c) An Erosion and Sediment Control Plan (ESCP) must be submitted to and be endorsed by the EPA **prior to works commencing** on site. Any subsequent changes to the ESCP must be endorsed by EPA prior to implementation.
- a. The submitted ESCP does not comply with EPA guidelines and will not be endorsed by EPA in its current form.
- d) All sediment and erosion control measures must be in place prior to commencing works and shall be maintained until development completion.
- e) Adjacent roads shall be swept clean at all times.

CONTAMINATION

The Environment Protection Authority has reviewed the document titled “Response to Entity Comments – DA202342382 – Block 8, Section 2 Nicholls”, dated 29 May 23. The document refers to a Hazardous Materials Survey & Management plan by Robson Environmental Pty Ltd. The document has not been prepared in accordance with EPA endorsed guidelines to provide an assessment on whether past activities have impacted the site from a contamination perspective. Subsequently, the following request for information still applies:

EPA records indicate that the site is occupied by commercial units and part of the site has potentially been used as an orchard. Other potentially contaminating activities may have also been undertaken at the site associated with current and past uses.

- f) An environmental assessment, in accordance with EPA endorsed guidelines, must be undertaken by a suitably qualified environmental consultant to determine whether past activities have impacted the site from a contamination perspective and to determine whether the site is suitable for the proposed uses.
- g) The consultant's assessment report into the site's suitability for the proposed and permitted uses from a contamination perspective and a letter of introduction from the land custodian and/or person/company responsible for commissioning the report detailing the purpose of the report and the action being requested from the EPA must be submitted to the EPA for review and endorsement by the EPA prior to works commencing.

HAZARDOUS MATERIALS

The Office of the Environment Protection Authority (OEPA) has reviewed the hazardous materials survey and report “HAZARDOUS MATERIALS SURVEY AND MANAGEMENT PLAN Block 8 Section 2 Nicholls ACT 2913” by Robson Environmental Pty Ltd dated 22 May 2024 and found it to be compliant with AO21.12 of the Planning (Commercial Zones) Technical Specifications 2023 and Section 9 of the Hazardous Materials Environmental Protection Policy.

The OEPA supports the consultant's actions/recommendations as detailed in the above report and the proposed methodologies for the removal, handling, transport and disposal of hazardous materials as identified subject to the following requirements:

- h) 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 found on the site.
- i) All hazardous materials found on the site must be disposed of at a facility lawfully authorised/licensed to accept the waste.

NOISE

- j) The Noise Management Plan titled “Noise Management Plan for DA Gold Creek Events Facility Block 8 Section 2 Nicholls”, revision 1, dated 23 May 2024, prepared by Paradigm 42 is endorsed by the EPA on the basis all assumptions and recommendations included in the report must be incorporated into the final building construction and design.

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- k) The above Noise Management Plan must be included in the approved plans stamped by the ACT Planning & Land Authority to ensure all recommendations and assumptions included in the document are confirmed and signed off by the building certifier prior to a certificate of occupancy and use being issued.
- l) The applicant/lessee must register a MISCELLANEOUS APPLICATION ENCUMBRANCE (MAE) at Access Canberra Land Titles against the Crown Lease of Block 8 Section 2 Division Nicholls. At a minimum, The MAE shall include a copy of the EPA endorsed Noise Management Plan.

ADVICE:

- 1) Building work, by its nature, is noisy. In this area and when the building work will take longer than two weeks, any noisy activities, which include material deliveries and work site preparation, are only permitted between the following hours:
 - i. 7:00am to 6:00pm, Monday to Saturday
 - ii. at all other times noise emissions must not exceed the zone noise standard of 45 dB daytime and 35 dB nighttime.
- 2) Noise from equipment which may be installed or used at the site, including air conditioning units, pumps etc, must comply with the noise standard at the block boundary at all times as per the Environment Protection Regulation 2005. Please consider the type and location of noise generating equipment prior to installation. Written assurance should be sought from the supplier/installer of the equipment that it complies with the Noise Zone Standard as per the Environment Protection Regulation, 2005.
- 3) All excavations that collect rain water during a rain storm event would be considered as a sediment control pond, and must meet the following condition:
- 4) No discharge from pond unless sediment level is less than 60mg/litre. If sediment level is greater, then prior to discharge, the pond must be dosed with either Alum or Gypsum and allowed to settle until the sediment is less than 60 mg/litre.

5. ACT EMERGENCY SERVICES AGENCY (ACTESA)

The EPA provided advice in response to the initial referral stating the proposal is supported subject to conditions.

In response to the referral of the s144B submission EPA provided advice stating the proposal is supported subject to conditions.

A copy of the ACTESA advice dated 19//07/2024 is attached to this Notice of Decision.

6. NATIONAL CAPITAL AUTHORITY (NCA)

The NCA provided advice in response to the initial referral stating the proposed development has multiple inconsistencies with the Development Control Plan (DCP) and the NCA does not believe that the proposal can be approved in its current form. Inconsistencies with DCP 14/01 included Building Height and Design, Building Setback, Colours and Materials, Landscape Design, Fencing, Vehicular Access and Car Parking and Service Areas.

In response to the referral of the s144B submission NCA provided advice stating they are satisfied with the applicant's response to the previous issues raised and comments regarding DCP 14/01. Further advising the architectural plans sent to the NCA for in principle support on 14 March 2024 showed a larger space of porous paving proposed within the car park adjacent to the Barton Highway. While the NCA is supportive of the currently proposed car park design in the amendment, the NCA encourages the proponent to explore opportunities to increase porous paving where the driveway is proposed in the Barton Highway setback.

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7. HEALTH PROTECTION SERVICES (HPS)

HPS provided advice in response to the initial referral stating:

- (a) all taps and outlets utilising storm or rainwater water are clearly labelled as being provided with non-potable water.
- (b) all reasonable and practicable measures are taken to suppress dust.
- (c) if cooling towers are to be installed, cooling tower registration application will be required to be submitted to the HPS prior to construction. The applicant is advised to contact the HPS for further information.
- (d) the applicant is required to submit food business registrations and fit-out applications (with suitably detailed plans) to the HPS for any food business prior to construction. the business will need to comply with the Food Act 2001 and the ACT Food Business Fit-Out Guide. The applicant is advised to contact the HPS for further information.

In response to the referral of the s144B submission HPS provided the following additional advice to be read in conjunction with the initial advice:

- (e) all practicable measures are taken to prevent potential airborne contaminants from reaching neighbouring properties. Risk mitigation measures proposed, but not limited to, those provided in the Hazardous Materials Report should be considered throughout the demolition and construction of this development.

8. ICON WATER

Icon Water provided advice in response to the initial referral stating the proposal is not supported, issuing a Failed To Comply Notice dated 30 November 2023.

In response to the referral of the s144B submission Icon Water provided advice stating the proposal is supported subject to conditions.

A copy of the Icon Water advice dated 16 July 2024 is attached to this Notice of Decision.

9. EVOENERGY (ELECTRICITY)

Evoenergy (Electricity) provided advice in response to the initial referral stating the proposal is supported subject to conditions.

In response to the referral of the s144B submission Evoenergy provided advice stating the proposal is supported subject to conditions.

A copy of the Evoenergy advice dated 5 July 2024 is attached to this Notice of Decision.

10. EVOENERGY (GAS)

Evoenergy (Gas) did not respond to the initial referral and as such is taken to support the proposal.

In response to the referral of the s144B submission Evoenergy Gas provided advice stating no objection to the proposal subject to conditions.

A copy of the Evoenergy (Gas) advice dated 2 July 2024 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 Mitchell Customer Service Centre at 8 Darling Street, Mitchell, ACT 2911.

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 191(5)(b) 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](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](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

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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).
2. Under the ADJR Act, an *eligible person* may make an application for review of a decision.

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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

<p>ACT Civil and Administrative Tribunal Level 4, 1 Moore Street CANBERRA CITY ACT 2601 GPO Box 370, CANBERRA, ACT 2601</p>	<p>www.acat.act.gov.au tribunal@act.gov.au 02 6207 1740 02 6205 4855 (Fax)</p>
<p>ACT Supreme Court 4-6 Knowles Place, CANBERRA CITY ACT 2601 GPO Box 1548, CANBERRA CITY, ACT 2601</p>	<p>www.courts.act.gov.au 02 6205 0000</p>
<p>Environment, Planning and Sustainable Development Directorate 480 Northbourne Avenue DICKSON ACT 2602 GPO Box 158, CANBERRA 2601</p> <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 • <i>Tree Protection Unit</i> <ul style="list-style-type: none"> - <i>Development Applications (DA) issue:</i> 	<p>www.planning.act.gov.au 02 6207 1923</p> <p>EPAPanningLiaison@act.gov.au 6207 5642</p> <p>worksafe@worksafe.act.gov.au 132 281</p> <p>www.environment.act.gov.au 132 281</p> <p>TCCS.TreeProtectionACTPLARef@act.gov.au TCCS.TreeProtection@Act.gov.au</p>

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- <i>Tree Damaging Activity Applications (TDAA) issue:</i>	
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	Ако вам је потребна помоћ преводиоца телефонирајте:
SPANISH	Si necesita la asistencia de un intérprete, llame al:
TURKISH	Tercümana ihtiyacımız 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	