



ACT
Government

NOTICE OF DECISION

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

I, George Cilliers, delegate of the planning and land authority, pursuant to section 162 of the *Planning and Development Act 2007*, hereby **refuse** the proposal for construction of an eight storey building comprising 212 apartments with basement parking, landscaping and associated works, at Block 3 Section 12 Coombs.


DA Number: 201833513
Block: 3
Section: 12
Suburb: Coombs
Address: Cor. John Gorton Drive and Terry Connolly Street
Application lodged: 4 September 2018
Assessment track: Merit

This decision contains the following information:

- Part A – Reasons for the Decision
- Part B– Public Notification and Entity Advice
- Part C – Administrative Information
- Attachment 1 – Review of the Decision

A copy of the development application and this decision may be inspected at the planning and land authority's office from 8.30 am to 4.30 pm, Monday to Friday at 16 Challis Street, Dickson, ACT 2602

Contact:
DA Enquiries
Email: DAenquiries@act.gov.au
Phone: 62071923


George Cilliers
Delegate of the planning and land authority
4 February 2019

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PART A – REASONS FOR THE DECISION

In accordance with section 119 of the Act, the application is refused because it does not comply with the legislated requirements for Merit track applications.

The application was refused because it was found to be inconsistent with section 120 of the *Planning and Development Act 2007* in the following respects:

- Section 120(a) of the *Planning and Development Act 2007* (zone objectives)

The proposal is inconsistent with zone objectives (d) and (g) of the *RZ5 – High density residential zone*.

With respect to zone objective (d), the assessment concluded that the proposed development will not be conducive to a high standard of residential amenity, particularly having regard to the density proposed and the interface between dwellings within the development and dwellings on adjacent or adjoining properties.

The proposed development also fails to make a positive contribution to the neighbourhood and the prevailing landscape character of the area, particularly by virtue of the proposed scale and bulk thereof. The impacts associated with the proposed development, will contribute to unreasonable and unnecessary negative impacts on neighbouring properties such as overshadowing and overlooking.

With respect to zone objective (g), the assessment concluded that the proposed development does not promote good solar access on the subject site, or for adjoining dwellings. Existing solar access for adjoining dwellings will be significantly impeded, and solar access will be restricted for some proposed dwellings within the proposed development.

- Section 120 (b) of the *Planning and Development Act 2007* (suitability of the land)

The proposal failed to demonstrate that the development, in its proposed form, will be a suitable development for the site, having regard to the size, configuration and orientation of the site.

The proposal lacks analysis to demonstrate the suitability of the development site for a development with the proposed density and yield – considering that the subject site was designed and intended for a significantly lower development yield.

The proposal also did not demonstrate the suitability of the land for the proposed development, having regard to the existing neighbourhood amenity, and the potential traffic impact.

- Section 120 (g) of the *Planning and Development Act 2007* (probable impact)

The proposal failed to acknowledge, or to provide any substantial analysis and/or modelling to establish the likely (potentially adverse) impacts of a proposed development on the immediate and surrounding environment – including the potential impact of the proposed yield of this development on remaining urban development within the wider (Molonglo Valley) community.

The proposal lacks analysis of probable environmental impacts, and fails to demonstrate how probable impacts could be mitigated and managed – particularly impacts associated with overshadowing, interface, and the likely traffic to be generated.

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The application was furthermore refused because it was found to be inconsistent with the Territory Plan. Key issues identified through the assessment against the Multi Unit Housing Development Code include non-compliance with the following rules/criteria:

- R 22/C22 (Number of storeys): The proposed development is inconsistent with the rule, for that part of the building within 40m from the boundary of the adjacent *PRZ1 Urban Open Space Zone*, and not considered consistent with the criterion.
- R24 (Height of the buildings): The submitted drawings for the proposal do not demonstrate consistency with the Rule beyond doubt, and lacks information. This is a mandatory rule.
- R 29/C29 (Front Boundary Setback): The proposed development does not comply with the minimum 6m setback requirement. The upper floor levels encroaches significantly into the minimum required setback, and the proposed encroachments are not considered to comply with the criterion.
- R30/C30 (Side boundary setback): The upper levels do not comply with the rule and also does not meet the criterion. There will be significant overshadowing impacts onto the neighbouring block, to the private open spaces, and to living areas during the winter solstice. Reasonable amenity will be restricted between neighbouring blocks.
- R39/C39 (Site open space): The proposed development is not consistent with the rule or the criterion. The scale of the development restricts any opportunities to have reasonable site open space within the block at ground level. Although the podium level swimming pool and roof terrace landscaping will provide amenity and potentially sufficient space for the recreational needs of residents, it is unlikely to support trees with deep root systems, and does not provide any connectivity.
- C40 (Landscape): The potential for tree growth is restricted with virtually no realistic deep root planting opportunities.
- R50/C50 (Building design): The extent of the length of roof for the development does not present an appropriate scale, detailing, or visual interest when viewed from the adjacent public space or from other surrounding blocks. The proposed development is not consistent with the rule or the criterion.
- R54 (Adaptable housing): The plans do not specify the adaptable units in the plans. No post adaptable plan was submitted. The ground floor parking plan or the basement plans do not show any parking space allocated for the adaptable units demonstrating compliance with relevant Australian Standard. The plans and the application form is not consistent in relation to number of units proposed within the development. Documents and plans do not reflect consistency with the requirement of this mandatory rule.
- R55/C55 (Minimum dwelling size): An assessment of dwelling sizes and layouts highlighted an inappropriate and disproportionate reliance on the criterion, particularly having regard to the zoning and setting of the site. Non-compliance with the rule will potentially restrict functional spaces for future residents.
- R56/C56 (Housing Diversity): Units with one bedroom and two bedrooms have been proposed only. Inconsistent with the rule. Compared to the scale of the proposal and the number of units, this is considered that the proposal does not adequately address the criterion.

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- R58/C58 (Solar Access): The proposal does not meet the rule. Reliance on the criterion is inappropriate considering the scale of the development and the number of units.
- R60/C60 (Privacy): The proposed development does not demonstrate compliance with the rule. The proposed balconies on the southern side will directly overlook the private open spaces and living areas of the neighbouring development. This will restrict reasonable amenity between neighbours.
- R61/C61 (Principal Private Open Space): The proposal does not demonstrate that the proposed development will be consistent with the rule. The assessment established that majority of the balconies of the units do not meet the minimum area requirement.
- R95/C95 (Side and rear boundary setback): The proposal does not meet the rule or the criteria. Reasonable amenity of the neighbouring blocks will be restricted. There will be significant overshadowing impact and solar access to Private open space and living areas of neighbouring block will be restricted.
- R96/C96-(Access to lift and straits) does not meet the rule, and it is not evident how the criterion is satisfied.
- C96A- (Stairwell features): The proposal is not consistent with the criterion.

The number of units in the application form and the total number of units shown in the plans are not consistent. The parking calculation as shown in the traffic report is for a lesser number of units than proposed in the plans. This discrepancy does not ensure consistency with parking requirements for the proposal. There is a significant shortfall of parking spaces.

It is furthermore noted that the height of the development, the scale of the proposed development, and a shortfall of parking spaces, will restrict the future amenity of residents on neighbouring blocks and is likely to have a detrimental impact on future residents of the proposed development.

The assessment concluded that a substantial reliance on criteria, and the above mentioned non-compliances are indicative of overdevelopment of the site, making the land not suitable for a development with a scale and density as proposed. This conclusion is further reinforced by the quantum of the proposed development when it is compared to the indicative yield for the site as noted in the preceding estate development approval.

The assessment of the proposal furthermore concluded that the amenity of the future residents within the block and residents on surrounding blocks will be restricted as a result of the proposed layout, scale and siting of the buildings within the block. The density, scale and layout also restricts the possibility of achieving a sufficiently high standard of residential amenity that is generally expected on land zoned *RZ5 High Density Residential*.

In accordance with section 119 of the Act, the application was also refused because it was inconsistent with advice given by an entities. The entities being:

- Evoenergy,
- ICON Water,
- Transport Canberra and City Services (TCCS); and
- the Suburban Land Agency (SLA).

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

Development Application:	201833513
Territory Plan Zones:	RZ5 High Density Residential
Development Codes:	Residential Zones Development Code Multi Unit Housing Development Code
Precinct Code:	Coombs Precinct Map and Code
Crown Lease:	Volume 2378 and Folio 22
Legislative requirements:	Sections 119 and 120 of the <i>Planning and Development Act 2007</i>
Entity advice:	As addressed in Part C of this Decision

PART B – PUBLIC NOTIFICATION AND ENTITY ADVICE

PUBLIC NOTIFICATION

Pursuant to Division 7.3.4 of the Act, the application was publicly notified from 24 September 2018 until 15 October 2018.

One hundred and forty (140) written representations were received during public notification period. Five (5) late representations were also received.

Key issues raised are summarised below:

- Significant increase in number of units compared to maximum proposed yield.
- Building height, bulk and scale is not compatible with the surroundings.
- Significant overshadowing impact to neighbouring block due to the height.
- The proposal does not meet the requirement of parking, there is a shortfall.
- Inconsistency in documentation.
- No pre-lodgement community consultation occurred.
- Housing diversity has not been addressed.
- Non-compliance with side, rear and front boundary setback will impact the neighbouring blocks.
- Does not comply with the maximum allowable height requirement of the Code.
- Traffic impact due to increased number of units.
- The proposed development is not keeping in with the character of the surrounding areas.
- Supports the type of development and design.
- The proposed development will have a visual impact on the surrounding areas.
- Privacy between neighbours will be affected due to noncompliance with setback requirements.

ENTITY ADVICE

Pursuant to Division 7.3.3 of the *Planning and Development Act*, the application was referred to the below entities. Where an entity requested conditions to be imposed on this development, those conditions have been incorporated into Part A of this Decision. A summary of entity comments can be found below.

1. Transport Canberra and City Services (TCCS)
TCCS requested further information and did not support the proposal.

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2. Icon Water
Icon Water did not support the proposal.
3. Evoenergy
Evoenergy did not support the proposal.
4. Environment Protection Authority (EPA)
The EPA supported the proposal with conditions and advice.
5. Emergency Services Agency (ESA)
The ESA supports the proposal.
6. Suburban Land Agency (SLA)
The SLA did not support the proposal.

PART C - ADMINISTRATIVE INFORMATION

INSPECTION OF THE APPLICATION AND DECISION

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

RECONSIDERATION OF THE DECISION

If the applicant is not satisfied with the decision to refuse the application, they are entitled to apply to the planning and land authority for reconsideration within 20 working days of being told of this decision or within any longer period allowed by the planning and land authority.

To submit an application for reconsideration, documents must be provided electrically by email to epdcustomerservices@act.gov.au or provided at the Customer Service Centre on a CD/DVD. The delegate of the Authority reconsidering the decision must be different from, and senior to, the original decision maker. An application for reconsideration does not prevent an application for a review of the same decision being made to the ACT Civil and Administrative Tribunal. Application forms and further information about reconsideration are available from the planning and land authority's website and Customer Service Centres.

REVIEW BY THE ACT CIVIL AND ADMINISTRATIVE TRIBUNAL (ACAT)

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

This Notice of Decision has also been sent to all people who made representations in relation to the proposal.

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CHINESE	如果你需要传译员的帮助，请打电话：
CROATIAN	Ako trebate pomoć tumača telefonirajte:
GREEK	Αν χρειάζεστε διερμηνέα τηλεφωνήστε στο
ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
MALTESE	Jekk għandek bżonn l-għajjnuna 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

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ATTACHMENT 1

REVIEW OF THE DECISION

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

CONTACT DETAILS

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

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

POWERS OF THE ACAT

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

APPLICATIONS TO THE ACAT

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

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

TIME LIMITS FOR APPLICATIONS

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

FEES

Applications to the ACAT, including an application to be joined as a party to a proceeding, require payment of a fee (the Tribunal Registry will advise of the current fee), unless you are receiving legal or financial assistance from the ACT Attorney-General. You can apply to have the fee waived on the grounds of hardship, subject to approval (refer to section 22T of the *ACT Civil and Administrative Tribunal Act 2008*). Decisions to grant assistance are made on the grounds of hardship and that it is reasonable, in all the circumstances, for the assistance to be granted. Write to: The Director General, Justice and Community Safety Directorate, GPO Box 158, CANBERRA ACT 2601. Ask the ACAT for more details.

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TIME LIMITS FOR REVIEWS OF DECISIONS

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

FORMS OF LEGAL, FINANCIAL AND OTHER ADVICE AND ASSISTANCE

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

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

AWARDING OF COSTS

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

ACCESS TO DOCUMENTS ABOUT THE DECISION

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

PROCEDURES OF THE ACAT

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

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