



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*, **refuse**, the proposal for a variation to the Crown lease for Block 4 Section 39 Coombs to permit a maximum of 123 dwellings; and for the proposed construction of three buildings (five, six and seven storeys) containing 123 residential units, two levels basement car parking, landscaping and associated works, at Block 4 Section 39 Coombs.


DA Number: 201834811
Block: 4
Section: 39
Suburb: Coombs
Address: Cor. Arthur Blakeley Way and Colbung Street
Application lodged: 8 November 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
31 January 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 boundaries of the adjacent *PRZ1 Urban Open Space Zone*, and not considered consistent with the criterion.
- R 29/C29 (Front Boundary Setback): The proposed development does not comply with the minimum 6m setback requirement along western side, and is not considered to comply with the criterion.
- 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. Roof top landscaping is not a preferred outcome for this location and for the density proposed.
- 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 both Buildings 2 and 3 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.
- 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.
- R59/C59 (Privacy): The proposed development does not demonstrate compliance with the rule and the proposed building separation and design does not ensure consistency with the criterion.
- R61/C61 (Principal Private Open Space): The proposal does not demonstrate that units in Building 3 are consistent with the criterion. The assessment established that the proposed development does not receive reasonable solar access to all principal private open spaces during the winter solstice.
- R65/C65 (Storage): Some units do not meet the minimum area requirements. This potentially further restricts accommodation of storage within the units. The proposal is not considered consistent with the criterion.
- R73/C73 (Internal driveway): The internal driveway does not have reasonable separation from the southern boundary. The width of the area between the boundary and the driveway is not considered to be an adequate area to have proper landscaping. This outcome is not appropriate, compared to the scale of the development proposed.

In addition, it is noted with reference to R58/C58 (Solar access) of the Multi Unit Housing Development Code that the proposal appears meets the rule. However, the overshadowing impact into the units of Building 3 appears inevitable, but is self-imposed due to the proposed design. Units in Building 3 will not receive solar access in winter solstice. Skylights are deemed as an inferior design response to achieve compliance with this requirement.

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It is furthermore noted that the height of the building, and the scale of the proposed development 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 the 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 lease variation when it is compared to the indicative yield for the land as noted in the preceding estate development approval, and the maximum number of units (40 units) specified in the Crown lease for the site.

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*.

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

Development Application:	201834811
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 2276 and Folio 5
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

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PART B – PUBLIC NOTIFICATION AND ENTITY ADVICE

PUBLIC NOTIFICATION

Pursuant to Division 7.3.4 of the Act, the development application was publicly notified from 14 November 2018 until 5 December 2018. One hundred and one (101) written representations were received during the public notification period.

Key issues raised are summarised below:

- Height, bulk and scale is not compatible with the surrounding development.
- Increased number of units from 40 (allowable in the current Crown lease) to 123 is a significant lease variation and will have a negative impact on local infrastructure, and traffic.
- The proposal is not consistent with existing and desired character of the surrounding area.
- The proposed development will have negative impact on neighbourhood and landscape character.
- The proposal is inconsistent with the height requirement of the Code.
- Lack of open space within the development at ground level.
- The proposal failed to meet the minimum floor area requirement for apartments as per the Code.
- Roof articulation is not consistent with the requirements of the Code.
- The proposal is not consistent with the objectives of the Zone.
- There is no sufficient space within the block for deep root planting due to the extent of the building footprint.
- The proposal exceed 3 storeys but do not directly face John Gorton Drive.
- The "Master Plan" is not reflected because several blocks applied for bigger development.
- Overshadowing impact on neighbouring blocks.
- Amenity of the surrounding blocks affected.
- Lease variation is not in the public interest and, if approved, will undermine community trust in planning for this suburb.
- This building does no align itself with current buildings in immediate vicinity.
- Unnecessarily huge development will overshadow surrounding homes and because apartments are so small will create a "ghetto".
- Noise levels and "particulate matter" that will arise from such a build for years.
- If it was a smaller build it would encroach far less and for a shorter time on the neighbourhood.
- The proposed development is not in keeping with either the original planned design of the neighbourhood, nor in keeping with any construction undertaken in the area.
- The development would stand out alarmingly within Coombs, and will be an overall detraction both from the aesthetics of the neighbourhood, and likely also from the value of existing property.

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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 supported the proposal with conditions.
2. Icon Water
Icon Water supported the proposal with conditions.
3. Jemena
Jemena supported the proposal with conditions.
4. Evoenergy
Evoenergy supported the proposal with conditions.
5. Emergency Services Agency (ESA)
ESA supported the proposal with conditions.

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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.

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.

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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 τηλεφωνήστε 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

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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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