



**ACT**  
Government

Environment, Planning and  
Sustainable Development

# Notice of decision

Under Part 7 of the *Planning and Development Act 2007*

## Merit track

DA NO: 201935428		DATE LODGED: 10/04/2019
DATE OF DECISION: 03/09/2019		
BLOCK: 13	SECTION: 48	SUBURB: TURNER
STREET NO AND NAME: 7 Holder Street		
APPLICANT: Turnkey Creations Pty Ltd – Nickolas Constable		
LESSEE: Chris Bitmead		

### THE DECISION

This application was lodged in the merit track. Pursuant to section 113(2) of the *Planning and Development Act 2007 (Act)*, the application must be assessed according to the provisions relevant to merit track applications.

I, Chris Gell, delegate of the planning and land authority, pursuant to section 162 of the Act, hereby **refuse** the proposal for:

- **the erection of a secondary residence, a detached addition to the existing residence and associated car parking, landscaping, paving and other site works.**

in accordance with the plans, drawings and other documents and items submitted with the application approval.

**PART 1** sets out the Reasons for the Decision.

**PART 2** is Public Notification and Entity Advice.

**PART 3** contains administrative information relating to the determination.

### DELEGATE

Chris Gell  
Delegate of the planning and land authority  
Environment, Planning and Sustainable Development Directorate  
05/09/2019

### CONTACT / ENQUIRIES

Phone: (02) 6207 6383

Online Form: [https://www.accesscanberra.act.gov.au/app/forms/epd\\_feedback](https://www.accesscanberra.act.gov.au/app/forms/epd_feedback)

## **PART 1 REASONS FOR THE DECISION**

In accordance with section 119 of the Act, the application was refused because it did not comply with the legislated requirements for merit track applications. The application was inconsistent with the Territory Plan, particularly certain provisions of the Residential Zones Development Code & Single Dwelling Housing Development Code.

In addition to the above, that application is also refused following consideration under section 120 of the Act, particularly the following:

- (a) the objectives for the zone in which the development is proposed to take place;

The combined impacts of the proposal are not considered to make a positive contribution to the neighbourhood and will result in unreasonable impacts to neighbouring properties; thereby inconsistent with zone objective (d) of the RZ3 Urban Residential Zones.

- (b) the suitability of the land where the development is proposed to take place for a development of the kind proposed.

The nature and design of the proposed detached addition to the existing residence results in a building that can be easily modified into a third occupancy on the block. Coupled with the proposed secondary residence and number of bedrooms proposed (the majority of which contain ensuites) the proposed development could enable commercial accommodation/boarding-house activities to be carried out on site. This is evident due to the inadequate interrelationship between the dwellings/structures and the distinct separation of entry/exit points to each bedroom.

Additionally, the development proposes to increase the total number of bedrooms on the site to at least 9 bedrooms (from the existing 4), with the ability for more to be created subject to some simple internal alterations.

Considering the proposal adds at least 5 bedrooms, the provision of 3 tandem car parking spaces along the secondary driveway in addition to the existing double garage is not considered as an appropriate configuration. The parking space and overall vehicle manoeuvrability on the site is severely limited.

### **Amended Proposal**

On 11/06/2019 & 01/08/2019 the planning and land authority requested further information under section 141 of the Act. The applicant was requested to address a number of issues including plot ratio, accessibility/adaptability requirements, car parking, water sensitive urban design and entity requirements. In response the applicant submitted a revised proposal. The key items included:

- Plot ration calculations including details of the existing dwellings GFA.
- Alterations to parking to address parking generation and accessibility requirements including provision of an accessible path of travel.
- Alterations to the design to address accessibility requirements.
- Solar analysis
- WSUD

Pursuant to section 146(3) of the Act, the requirement to publicly notify an amended DA can be waived, provided, the requirements of 3(a) and 3(b) of section 146 of the Act, that no-one other than the applicant will be adversely affected by the amendment and the environmental impact caused by the approval of the amendment will do no more than minimally increase the environmental impact of the development.

The planning and land authority considered that no-one other than the applicant will be adversely affected by the amendments and the revised proposal would not increase the environmental impact. Consequently, the authority waived the requirement to publicly notify the amended applications.

### **Key inconsistencies**

The following inconsistencies with the relevant rules of the Residential Zones Development Code and the Multi Unit Housing Development Code identified through the assessment process are outlined below:

#### **Residential Zones Development Code (RZDC)**

##### **Element 1: Single dwelling housing development**

Rule 1 (mandatory) – The proposal is inconsistent with the relevant rules/criteria of the Single Dwelling Housing Development Code as identified below.

##### **Element 4: Secondary residences**

Rule 6 (mandatory) – The nature and design of the proposed detached addition to the existing residence results in a building that can be easily modified into a third occupancy on the block. It is provided with separate access and curtilage from the main dwelling. With the addition of a kitchen though DA exempt internal alterations the detached addition could function as a separate dwelling. The proposal failed to demonstrate how this addition was associated with the main residence.

Rule 7 (mandatory) – The secondary residence was assessed as being 99 m<sup>2</sup> as the alfresco deck area was roofed and substantially enclosed and the garden shed was considered part of the secondary residence as it was within the curtilage of the building and under the same roof structure.

Rule 10 (mandatory) – The maximum plot ratio was calculated at 50.4% as the alfresco area associated with the secondary residence was assessed as contributing to GFA. On assessment the existing residences stair void was calculated at 10m<sup>2</sup> not 13.87m<sup>2</sup> as nominated by the applicant.

Rule 11 (mandatory) – The proposal did not comply with some of the rules and criteria contained within Element 1 of the Single Dwelling Housing Development Code. See below for details.

Rule 12 (mandatory) - The nature and design of the proposed detached addition (to the existing residence) results in a building that can be easily modified into a third occupancy on the block. It is provided with separate access and curtilage from the main dwelling and with the addition of a kitchen though exempt internal alterations would function as a separate dwelling.

Rule 13 / Criteria 13 – although plans were provided to demonstrate the proposal could be adapted to meet AS 4299 the submission was not accompanied with a report from an access consultant.

Criteria 14 – The development was not considered consistent with the desired character of the RZ3 zone and associated zone objectives as outlined above.

Rule 19 / Criteria 19 – In the revised submission the additional car parking space for the secondary residence was shown as being within the existing garage of the main dwelling. The overall parking strategy for the site was assessed as unsuitable. The re-allocation of car parking on the site results in three car parking spaces provided in tandem with the garage still likely to house parking for the existing residence. Also due to the number of bedrooms proposed and the possibility of a third residence, parking was not deemed to provide reasonable amenity for neighbouring residential blocks nor consistent with the value of the streetscape.

### **Single Dwelling Housing Development Code**

#### Element 1: Building and site controls:

Rule 1 (mandatory) – Plot ratio was assessed as being greater than 50% see above.

Rule 12 / Criteria 12 – The proposed development encroaches 1.5m into the rear setback on the Eastern rear Boundary and this level of departure was not deemed consistent with the relevant criteria.

#### Element 4: Parking and site access

Rule 32 / Criteria 32 - The proposal includes a detached addition to the existing residence and proposes the reconfiguration of parking on the site. This parking arrangement results in three tandem parking spaces that do not comply with minimum dimensions for single unroofed spaces (not side by side or provided as parallel spaces). On assessment against the criteria convenient and reasonable access to parking is not provided.

#### Other rules/criteria

Further to the matters identified above, the assessment found there are other areas where the proposal does not meet the relevant rule however in these instances it is considered that the corresponding criteria was met and/or these matters could be have been resolved through the imposition of conditions. However, due to the number of non-compliant issues raised above and the cumulative impact of these departures a decision was made to refuse the development application.

### **EVIDENCE**

**Application No.** – 201935428

**File No.** – 1-2019/10468

**The Development Codes** – Residential Zones Development Code & Single Dwelling Housing Development Code.

**The Precinct Codes** – Turner Precinct Map & Code, Inner North Precinct Code.

**Current Crown Lease** – Volume 97 Folio 29.

**Representations** – Five

**Entity advice** – Conservator of Flora and Fauna, Evoenergy, Icon Water, Transport Canberra & City Services.

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## **PART 2 PUBLIC NOTIFICATION AND ENTITY ADVICE**

### **PUBLIC NOTIFICATION**

Pursuant to Division 7.3.4 of the Act, the application was publicly notified from 15/04/2019 to 08/05/2019. Five written representations were received during public notification.

The assessment of the proposal considered the issues raised through written public representations.

This decision to refuse this proposal responds to some of the issues raised through written representations, but should not necessarily be interpreted to imply the planning and land authority's concurrence with all representations received.

### **ENTITY ADVICE**

Pursuant to Division 7.3.3 of the Act, the application was referred to entities and advice was received. The referral entities' comments are as follows. A response to the advice is provided as appropriate.

#### CONSERVATOR OF FLORA AND FAUNA

On 17/04/2019 advice was received from the Conservator of Flora and Fauna in relation to the proposal. The advice states that the application is supported provided there are conditions of approval as follows:

All works are to be in accordance withdrawing Name: Site Plan, Drawing Number 3, dated 29/03/2019.

Note: There is a regulated Prunus sp. not noted on the plan however can be assumed that this tree is to be removed as is within the footprint of the Proposed New Residence. This tree is supported for removal as is a tree of low quality

Matters raised have been incorporated as advice.

#### TRANSPORT CANBERRA AND CITY SERVICES

On 15/04/2019 advice was received from Transport Canberra and City Services in relation to the proposal. The advice states that the application is supported subject to compliance with the following conditions:

#### **VERGE CROSSING**

1. The driveway must be designed and constructed in accordance with TCCS Design Standards.
2. Proposed secondary verge crossing must be kept a minimum of 3m width.
3. The levels on the verge must not be altered as a result of the new constructed driveway.
4. The driveway (domestic) must be inspected at the formwork stage by an officer of Place Coordination - TCCS. This driveway inspection can be organised by completing a smart form available on the TCCS website.
5. Any infrastructure assets such as street lighting, mini-pillars, signage, etc, must be a minimum of 1.5m away from the closest edge of the driveway. In the case of stormwater sumps this minimum distance is 1.2m.

#### PEDESTRIAN NETWORK

6. The pedestrian walkway / footpath must take precedence over the driveway.
7. All verge protective fencing must be placed in a way such that the verge is protected but access to the pedestrian network is provided at all times.

#### VERGE / VERGE TREE

8. The verge must be protected during construction.
9. A Landscape Management and Protection Plan and a dilapidation report for all Govt. Assets adjacent to the site must be submitted to the Place Coordination – TCCS prior to commencement and on completion of the work.

#### STORMWATER

10. A minimum width of 2500mm and a minimum height of 2500mm clearance must be provided over stormwater easement within the block.
11. Any structures in proximity to the stormwater easement or drainage lines must comply with TCCS Guidelines for Construction in the Vicinity of a Stormwater Easement.

Matters raised have been incorporated as advice.

#### EVOENERGY ELECTRICITY

On 15/04/2019 advice was received from Evoenergy Electricity in relation to the proposal. The advice states that the application has been assessed for compliance with Evoenergy's Electricity Network and conditionally complies with their Electricity Networks requirements.

Matters raised have been incorporated as advice.

#### EVOENERGY GAS

On 15/04/2019 advice was received from Evoenergy Gas in relation to the proposal. The advice states that the application has been assessed by Evoenergy and conditionally complies with their Gas Networks requirements

Matters raised have been incorporated as advice.

#### ICON WATER

On 17/04/2019 advice was received from Icon Water in relation to the proposal. The advice states that the application failed to comply with their water and sewerage network protection.

Matters raised have been incorporated as advice.

### **PART 3 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](mailto: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.

## APPENDIX 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: <a href="http://www.acat.act.gov.au">www.acat.act.gov.au</a> Email: <a href="mailto:tribunal@act.gov.au">tribunal@act.gov.au</a> 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*).

### FEEES

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 Chief Executive, Justice and Community Safety Directorate, GPO Box 158, CANBERRA ACT 2601. Ask the ACAT for more details.

### 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 Chief Executive, of 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.

**TRANSLATION AND INTERPRETER SERVICES**

The ACT Government's translation and interpreter service runs 24 hours a day, every day of the week. Telephone 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-għajnuna t'interpretu, çempel:
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 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



**ACT**  
Government  
Environment and Planning

# Notice of decision on Reconsideration

Division 7.3.10 of the *Planning and Development Act 2007*

DA NO: 201630166	DATE RECONSIDERATION LODGED: 9 November 2017	
DATE OF DECISION: 25 October 2018		
BLOCK: 12	SECTION: 119	SUBURB: KALEEN
STREET NO AND NAME: 1 Bulloo Place		
APPLICANT: Linea Verde Design P/L		
Lessees: Altomare Maria & Winters Paul Charles		

## THE APPLICATION

This application seeks reconsideration of the decision by the planning and land authority of 14 March 2017 to refuse the application for:

- Conversion of the existing double garage to a secondary residence (retrospective approval);
- the closure of a hallway between two parts of the existing main dwelling by removing the existing door and sealing up with a wall; and
- new driveway, car parking and other site works,

in accordance with the plans, drawings and other documents and items submitted with the application for approval.

## THE DECISION

I, Chris Gell, delegate of the planning and land authority, pursuant to section 193 of the *Planning and Development Act 2007*, hereby **confirm the original decision** of the planning and land authority of 14 March 2017.

## PUBLIC NOTIFICATION

Pursuant to Division 7.3.10 of the Act, written notice of the reconsideration application was given to anyone who made representation under section 156 about the original application on 9 November 2017 to 27 November 2017. Two written representations were received during the time allowed.

Planning and Land authority received an amendment of the reconsideration proposal on 6 February 2018. A written notice of the amended reconsideration application was given to the representors on 6 February 2018 to 22 February 2018. Three representations were received during the time allowed.

The main issues raised were as follows.

- Not consistent with objectives of RZ1 Zone and relevant Codes of the Territory Plan Rules R6 and R12.*
- The development negatively impacts on the streetscape character and the residential amenity of the neighbourhood.*
- Three individual dwellings are already leased on this block i.e. the property is being used as multi-unit development as there are three letter boxes and utility meters.*
- Demolition work and removal of a mature regulated tree is not identified on the drawings.*

- (e) *Excessive tenants within the block with lack of proper parking facilities. Approximately 9 cars are parked in front of the building line.*
- (f) *Two driveways are not permitted unless vehicle egress is in a forward direction.*
- (g) *The proposal does not demonstrate compliance with the adaptable housing requirements of AS4266.*
- (h) *The garage dwelling fronts Diamantina Crescent with roller doors to the front.*
- (i) *The proposal does not provide adequate principal private open space.*
- (j) *The side boundary fence has almost completely collapsed and needs to be replaced.*
- (k) *Privacy of the adjoining residence is not adequately protected, which needs a 1.8 m high fence.*
- (l) *The stormwater runoff is not properly drained and enters into adjoining property.*
- (m) *There is no rainwater storage for the second and third dwellings.*

## REASONS FOR THE DECISION

The original decision is confirmed for the following reasons.

- a) A review of the information available when the original decision was made disclosed no grounds that would support an approval of the proposal.
- b) Information provided by the applicant in the application for reconsideration provided no grounds for the approval of the proposal. Reasons identified in the decision dated 14 March 2017 are not appropriately addressed and largely remain unresolved.

### Entity Issues

The Conservator of Flora and Fauna and, Transport Canberra and City Services did not support the original Reconsideration application and requested further information which was referred to the applicant.

The applicant submitted an amended proposal which included three car parking spaces on the eastern side with reduced driveway length.

The parking spaces P1 & P2 are within the tree protection zones of an existing regulated tree. The new driveway would also affect the regulated tree and the street trees. Both the Conservator of Flora and Fauna and Transport Canberra and City Services who administer regulated trees and street trees respectively have not supported the amended proposal in its current form.

The applicant has been given ample opportunity to address the issues raised by these entities. However, the issues remain unresolved.

### Documentation and other issues

- The refusal of the original development application (DA) noted one of the reasons for refusal as the existing main dwelling (including the approved addition) capable of being used as two separate dwellings. The documentation provided with the Reconsideration DA does not clearly establish that the existing main dwelling (including the approved addition) is only a single dwelling.

A site inspection revealed that there are three existing letter boxes identified as No.1, 109 and 109B and dividing fences between the yards suggesting there are 3 separate dwellings on the subject block. The applicant claims he has obtained a letter from the new owner of the property that states that the residence is to never be separately rented out and that it will

always be considered one residence. But no evidence has been provided. The documentation does not indicate removal of existing dividing fences or letterboxes.

- Clause 1(g) of the Crown lease for the subject block states as follows.

*That the building erected on the said land will be used only as a single unit private dwelling house and any outbuildings erected on the said land shall not be used as a habitation.*

If the main dwelling is already used and is capable of being used as two separate dwellings, the development would be in breach of the Crown lease for the subject block.

- In response to the representations received, the applicant refers to this addition as an "already approved granny flat" and suggests that this flat is connected to the main residence with a hallway that is enclosed, therefore it is a single dwelling and this would enable the consideration of a secondary residence.

An addition to the main dwelling comprising a rumpus room with a bar sink, guest room and bathroom has been approved at the corner of Diamantina Crescent and Bulloo Place. It is noted that building approval was given to this rumpus room, guest room and bathroom as an "addition to the residence" rather than as a "granny flat". The addition was considered to be exempt development under the *Planning and Development Act 2007* and therefore no planning approval was obtained. Therefore, no planning approval has been obtained for a "granny flat" as claimed by the applicant.

It is noted that this addition is referred to as "existing residence/house" on some of the plans rather than as an "addition to the existing residence".

- The floor plan provided for the secondary residence still shows two rumpus rooms, a sink and a WC (bath on some plans). It does not show any bedroom, cooking or laundry facilities for the amenity of future residents of this dwelling.
- The applicant claims the plans have been amended to ensure the secondary residence is easily convertible for the purposes of access and mobility. But no new additional information has been provided in this regard.

It is noted that the Access Report submitted with the original DA shows the existing gate in the courtyard wall in the wrong location. Therefore, it is not clear how an accessible entry can be achieved to the secondary residence via the side entry door to meet adaptable housing requirements. The location of the associated accessible car parking space and a continuous path of travel from this car space to the secondary residence is not demonstrated either. It is noted that this accessible space will be remote from the secondary residence which is not desirable.

Any future shared area associated with this accessible car space would have further impact on the regulated tree.

The Reconsideration application does not provide a dimensioned post adapted drawing for the secondary residence nor provide additional/revised documentation to demonstrate that it can be easily adapted.

- The canopy of the regulated tree shown in the plans submitted with the Reconsideration application is inconsistent with the survey submitted with the original development application. The survey shows a significantly larger canopy (approx. 15.9m) than shown on the Reconsideration drawings (approx. 10m) except the Area Plan. Dimension of the canopy of this regulated tree is not given and the tree protection zone was not shown on the final set of drawings submitted by the applicant.
- The distance of the proposed driveway from the trunk of the existing street trees is not shown.
- The Site plan refers to “pouring of concrete” and “broom finish” inconsistent with the detailed Driveway plan which shows pavers to the driveway.
- The finish of the proposed parking spaces is not shown which will have an impact on the regulated tree.
- Setback to the proposed car parking spaces is not shown. Car parking space P1 appears to be less than 4m and therefore partially in the front zone.
- Car space P3 abuts an existing sliding door which would have an adverse impact on the privacy of the rumpus room. If a car is parked in P3, it would also restrict access to the yard from this sliding door which may lead to cars being parked on the verge.
- The intended removal of the existing driveway as noted in the applicant’s response to representations is not shown on the plans.
- The applicant has advised that although there are roller doors located on the outside of the proposed residence this has been sealed up from the inside and that the roller doors are no longer in use and therefore not applicable. Considering the existing driveway to this garage is intended to be removed, retention of the roller door is considered to be a poor and undesirable outcome both from a streetscape perspective and the amenity of the residents of the secondary residence.

A better outcome would be to remove the roller doors and provide an entry door which would improve the legibility of access to the residence, allow for an accessible entry and a window to provide outlook and additional light to the room.

- The applicant claims that the private open space for the proposed and existing residence is to be combined as they are to be used by one family and not to be split by any fence. However, the plans do not show all existing fences and clearly identify which ones are to be removed.
- The existing clothesline along Bulloo Place is not shown and it is not clear if it is to be removed or relocated. On the Site Plan, a ‘metal fence’ is annotated on the new driveway and it is not clear if the existing fence is to be removed and to what extent. This may have an impact on screening of the existing clothesline from public view.
- In the response to representations, the applicant states “the rain water tank is to be located in its existing location which is in the gap between the main residence and the proposed secondary residence. This is an existing rain water tank that would be utilised to capture any

rain water from the proposed residence". The capacity of this tank is not given while the calculations provided with the original DA indicate a 4000sqm tank is required for both dwellings (in total).

Contrary to the above, the Site Plan lodged with the Reconsideration application showed the water tank at the rear of the secondary dwelling but did not show the capacity. The final amended Site Plan does not show the water tank at all.

- c) Pursuant to Section 119(2) of the *Planning and Development Act 2007*, a development approval must not be given if the approval would be inconsistent with an entity advice.

The following entities have advised that the amended reconsideration proposal cannot be supported in its current form.

**Conservator of Flora and Fauna**

Conservator of Flora and Fauna has not supported the proposal for reconsideration and provided the following comments.

Site Plan A120, Project number 152, Dated 29 August 2018 does not include a Tree Protection Zone (TPU) for the regulated tree in the back yard. There is also a concern, that the trees on the nature strip, have not been included in the TPZ. A detailed Tree Protection Plan will need to be submitted, to ensure works are carried out in accordance with the Act.

**Transport Canberra and City Services Directorate (TCCS)**

TCCS has advised that the initial comments in relation to the Reconsideration DA still applies as noted below.

**VERGE CROSSING**

1. This proposal does not satisfy the TCCS Criteria of *Engineering Advisory Note EAN 04 for second driveway approval*.
  2. The TCCS does not support second verge crossing for sole purpose of parking.
  3. A second verge crossing must lead to a carport or a garage.
  4. The proposed verge crossing has not shown the horizontal clearance to the street trees.
- d) The Reconsideration application did not demonstrate compliance with the RZ1 Zone Objectives a), b) and d), mandatory rules R6 and R12 of the Residential Zones Development Code as set out under the Reasons for the decision in the original decision.
- e) Matters raised in public representations received.
- f) The proposal does not warrant approval or conditional approval in terms of the consideration required under Section 120 of the *Planning and Development Act 2007* having regard to the matters identified above.

A far better outcome would be to revert the garage for car parking for the main 4 bedroom dwelling (excluding the existing addition) and seek approval for converting the addition to a secondary residence with associated single car space and a new driveway off Bulloo Place. This would provide legible access/identity and appropriate parking to each residence while minimising any impacts including that on the Regulated tree. This would also allow the secondary residence to be easily adaptable with accessible space in close proximity.

### **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 and Planning Dickson Customer Service Centre at 16 Challis Street, Dickson, ACT.

### **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 Regulations 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.

### **EVIDENCE**

Application No. - 201630166 & Reconsideration application  
The Territory Plan Zone – RZ1 Suburban Zone  
The Development Codes – Residential Zone Development Code and Single Dwelling  
Housing Development Code  
Current Crown Lease – Volume 684 Folio 18  
Representations  
Entity advice- TCCS and Conservator of Flora and Fauna

### **DELEGATE**



Chris Gell  
Delegate of the planning and land authority  
Environment, Planning and Sustainable Development Directorate

25 October 2018

### **CONTACT**

**[DAEnquiries@act.gov.au](mailto:DAEnquiries@act.gov.au)**

# APPENDIX 1

## REVIEW OF THE DECISION

The following notes are provided in accordance with regulation 7 of the *ACT Civil and Administrative Tribunal Regulation 2008*. 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 Appeals Tribunal (ACAT).

Location	Contact details
ACT Civil and Administrative Tribunal Level 4, 1 Moore Street (the Health building) CANBERRA CITY ACT 2601	Website: <a href="http://www.acat.act.gov.au">www.acat.act.gov.au</a> Email: <a href="mailto:tribunal@act.gov.au">tribunal@act.gov.au</a> Telephone: (02) 6207 1740 Facsimile: (02) 6205 4855 Post: GPO Box 370, CANBERRA, ACT, 2601 Document exchange: DX 5691

## 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 receiving this Notice of decision. The time limit can be extended in some circumstances. Check with the ACAT for more details.

## FEEES

Applications to the ACAT, including an application to be joined as a party to a proceeding, require payment of a fee of not less than \$178 (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 Chief Executive, Justice and Community Safety Directorate, GPO Box 158, CANBERRA ACT 2601. Ask the ACAT for more details.

**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 Chief Executive, 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.

**TRANSLATION AND INTERPRETER SERVICES**

The ACT Government's translation and interpreter service runs 24 hours a day, every day of the week. Telephone 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-għajnuna 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 telefoniрајте:
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