

URen, Rachel

From: AC, EPD Customer Services
Sent: Friday, 9 December 2022 2:44 PM
To: purdons@purdon.com.au
Subject: NOTICE OF DECISION-202139248-02-13/22 KINGSTON-01
Attachments: NOTICE OF DECISION-202139248-02-DECISION AFTER ACAT REMITTED DA BACK TO AUTHORITY-SIGNED.pdf; ACTESA Response -to be attached to noD alias.pdf; Icon Water Application Decision. Application - 201082. Kingston - 13/22 (Email 1 of 5); Icon Water Application Decision. Application - 196324. Kingston - 13/22 (Email 1 of 4); COMM Jemena - Block 13 Section 22 Kingston; HERITAGE- Advice - DA202139248 - to be attached to NoD alias.pdf; TCCS Standard Conditions copy alias.pdf

OFFICIAL

Good afternoon,

Please see attached Notice of Decision and Entity Advice for Block **13** Section **22** Suburb **KINGSTON** Development Application No: **202139248**

For further information please contact: 6207 6383.

Online Form: https://www.accesscanberra.act.gov.au/app/forms/epd_feedback

Kind Regards,

Jenny Lee | DA Notification | Environment, Land and Planning shopfront

Phone: 02 6207 1923 | Email: acepdcustomerservices@act.gov.au

Access Canberra | Chief Minister Treasury and Economic Development Directorate | ACT Government

8 Darling Street, Mitchell 2911 | GPO BOX 158, Canberra City ACT 2601 | www.act.gov.au/accessCBR





ACT

Government

Environment, Planning and
Sustainable Development

NOTICE OF DECISION

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

I, Richard Davies, delegate of the planning and land authority, pursuant to section 162 of the *Planning and Development Act 2007*, **approve subject to conditions** the proposal for

- demolition of on-site buildings, pavements and structures;
- construction of a new four-storey commercial building with basement carparking, end of trip facilities,
- landscaping, surface car parking and off-site works for verge crossing removal and new vehicle access to the rear (southern) laneway; and
- associated works,

in accordance with the plans, drawings and other documentation approved and endorsed as forming part of this approval.

DA Number: 202139248
Block: 13 and 22
Section: 22
Suburb: KINGSTON
Assessment track: Merit

This decision contains the following information:

PART A – conditions of approval
PART B – reasons for the Decision
PART C – public notification & entity advice
Attachment 1 – administrative information
Copies of Entity advice – as attached

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

CONTACT / ENQUIRIES

Phone: (02) 620 52888

Online Form:

https://www.accesscanberra.act.gov.au/app/forms/epd_feedback

Richard Davies

Delegate of the ACT
planning and land authority
2 December 2022

This Notice of Decision of the planning and land authority substitutes the previous 22 June 2022 decision.

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PART A – CONDITIONS OF APPROVAL

Please note that this approval includes leasing requirements.

This application is approved subject to the following conditions being satisfied. Some conditions of the approval require attention before work commences or before approved drawings will be released.

GENERAL CONDITIONS

1. APPROVAL DOES NOT TO TAKE EFFECT

This approval **does not take effect** until the provisions of the Crown leases for Blocks 13 and 22 Section 22 Division of Kingston are varied to permit the approved development.

Note: The proposed development does not accord with the Planning and Development Act 2007 access requirements for Crown leases, a variation to each lease is required to include reciprocal access arrangements.

2. APPROVAL NOT TO TAKE EFFECT - EASEMENTS

That the approval does not take effect, until the applicant/lessee has prepared and registered, with Access Canberra Land Titles, an Instrument granting an encumbering Transfer and Grant of Easements (TGE) against the Crown lease of block 13 Section 22 Division of Kingston in coordination with Transport Canberra City Services, for the relocated services.

At a minimum, the TGEs shall address the location and access requirements for services on the site.

3. TIME TO COMPLY WITH CONDITION 1 AND 2 AND TO COMMENCE CONSTRUCTION

In accordance with Section 184(2)(a) of the *Planning and Development Act 2007*, this approval will end if the lessee has not varied the Crown leases and commenced the approved construction and/or demolition on the site within 36 months of the date of this decision.

Note: The date of the decision and therefore the date the approval will end, may change if reviewed by the ACAT.

*Prior to commencement, including any demolition, the some conditions below must be satisfied:
Eg. Compliance with EPA and ACT Heritage requirements,*

4. COMPLETION OF DEVELOPMENT

This development must be finished (completed) within **three years** from the date when it started, or within such further time as approved in writing by the planning and land authority.

Note: The planning and land authority may only extend the time to finish the development if an application, to extend the time to finish the development, is made prior to when the development has to be finished – refer to section 184(3) of the Planning and Development Act 2007.

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CONDITIONS RELATING TO DESIGN AND SITING and ENTITY REQUIREMENTS

5. ENVIRONMENT PROTECTION AUTHORITY (EPA)

The development shall comply with the following conditions to the satisfaction of the EPA:

- a) The building at Block 13 Section 22 Kingston was built in May 1951. The building is zoned for commercial use. In line with the EPP there is a requirement that a Hazardous Materials Survey and report accompany any demolition of such a building constructed before 1985.
- b) PRIOR TO COMMENCEMENT OF ANY WORKS under this approval, a Hazardous Materials Survey and Report conducted by a suitably qualified consultant must be submitted to and approved/endorsed by the EPA.
- c) All works must be carried out in accordance with *Environment Protection Guidelines for Construction and Land Development in the ACT, March 2011*, available by calling 13 22 81. This includes restrictions on building times, site management and certain activities associated with development works. Note: as the site is larger than 0.3h, an environmental agreement must be obtained for the works.

6. EVOENERGY (Electricity) – WORKS NOT TO COMMENCE

- a) No construction works, with the exception of demolition and excavation, in relation to this development approval is to commence until the lessee/applicant has obtained a Statement of Acceptance from EvoEnergy (Electricity) in relation to networks and submit the Statement of Acceptance to the planning and land authority as satisfying this condition of approval under s165 of the Planning and Development Act 2007.
- b) The lessee/applicant must address and comply with any additional conditions imposed by EvoEnergy (Electricity).

Note: Any substantial changes to the development required for utility services compliance will need to be submitted for the consideration of the planning and land authority with an application to amend the approval under Section 197 of the Planning and Development Act 2007.

7. TRANSPORT CANBERRA AND CITY SERVICES (TCCS)

The development shall comply with the following conditions to the satisfaction of TCCS:

VERGE CROSSING

- a) The new industrial verge crossing must be constructed in accordance with TCCS Design Standards.
- b) The levels on the verge must not be altered as a result of the new constructed verge crossing.
- c) Stormwater sumps must be a minimum distance must be 1.2m.
- d) Any infrastructure assets such as street signage, lighting, mini-pillars, etc must be a minimum of 1.5m away from the closest edge of the verge crossing.

VERGE

- e) A Landscape Management and Protection Plan and a dilapidation report for all Government Assets adjacent to the site must be submitted to the Development Review and Coordination, TCCS, prior to commencement and on completion of the work.

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URBAN TREESCAPES

The following items still need to be addressed at the Design Review stage:

- f) Notation for the removal of the Water Tie in front of B13, should read make redundant/grout/close off and not 'remove'.
- g) Also, the heavily shaded canopy is in excess of an allowable amount of pruning, however, I believe that these trees don't in fact overhang to the extent that they appear to in this plan.

PEDESTRIAN NETWORK

- h) The pedestrian footpath must take precedence over the verge crossing.
- i) Since pedestrian access will not be provided in front of the site pedestrians will need to be redirected to get around as shown by the TTM and resubmitted at the Design Review stage.

STORMWATER

The proposal is supported in principle; however, the following conditions will still need to be addressed/considered:

- j) All new stormwater assets including SW manholes and pipes must be designed and constructed in accordance with TCCS requirements and resubmitted at the Design Review stage.
- k) As per our previous comments attached the depth of the ground cover over to the existing stormwater pipe within the easement must not be less than 600mm.
- l) The 4.3m access corridor to the stormwater easement and pipes is accessible from both the front and the rear of the block.
- m) The four storey commercial building in close proximity to the stormwater easement must be constructed in accordance with TCCS Guidelines for Construction in the Vicinity of a Stormwater Easement.
- n) Structural certification signed by a chartered structural engineer must be provided, stating that building foundations will not impose adverse loads on the stormwater pipe and that possible future trench excavations required to expose the pipes will not adversely affect the stability of the structure and/or other utilities but especially TCCS' stormwater pipe.

WASTE

- o) The waste is supported as per Pre-DA Endorsement through the use of rear loading trucks for both waste and recycling.
- p) All waste must be stored, transferred and collected onsite for all commercial developments by a private contractor.
- q) All waste vehicles must enter and exit the site in a forward direction as shown by the Truck Turning Templates (TTT) and resubmitted at the Design Review stage.
- r) The waste must be collected outside peak times and business hours as much as possible so that the entry and egress of the truck is not conflicting with other vehicles coming to work or going home.
- s) As this is a commercial development smaller (than the standard 10.5m for waste and 10.4m for recycling) rear loading trucks may be used if considered more convenient.

TRAFFIC & PARKING

- t) TCCS conditionally supports this development given that the proponent provides a desktop review of parking utilisation within 400m of the site based aerial images. This is noting that

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there are 99 spaces provided onsite (94 in the basement levels and 5 on the ground floor) and 140 spaces are required as per the ACT Parking and Vehicular Access General Code.

- u) TCCS also supports the entry/egress arrangements from a traffic perspective and is also satisfied with the SIDRA traffic analysis undertaken.

TRAFFIC CONTROL DEVICE PLAN

- v) A Traffic Control Device (TCD) Plan must be prepared incorporating the line marking and parking sign changes as the first front parking bay needs to be removed in order to accommodate the new verge crossing off Giles Street and it must be submitted at the Design Review stage.
- w) Furthermore, if the removed parking bay can be replaced elsewhere in the vicinity this must be explored.

TCCS Standard Conditions also are also attached to this Notice of Decision and as applicable are to be complied with. See attached.

8. ACT HERITAGE COUNCIL (THE COUNCIL)

The development shall comply with the following conditions to the satisfaction of the Council:

- a) An engineering assessment of proposed excavation works within Blocks 13 and 22 Section 22 Kingston, and their potential effects on the Kingston Post Office, is to be submitted to the Council. This assessment must also set out:
- i. Engineering controls to be adopted during excavation works to ensure the structural stability of the Kingston Post Office; and
 - ii. The appropriate vibration monitoring regime to be implemented during excavation and construction works.
- b) The above report is to be endorsed by the Council prior to the commencement of any Blocks 13 and 22 Section 22 Kingston.

A copy of the Heritage advice is attached for assistance.

9. COMPLIANCE WITH ENTITY REQUIREMENTS

The development must satisfy the requirements of the following entities as stated in each of their advice.

- Icon Water;
- Jemena (Gas);
- Emergency Services Authority (ESA);

Copies of advice from the relevant entities are attached to the Notice of Decision and are relevant to this condition.

Note: Other entity advice have specific conditions imposed in this Notice of Decision.

10. ACCESSIBILITY

The recommendations and commitments made within the Access report prepared by "Accessed." dated 06/09/21 shall be implemented during the building approval and construction stages unless updated through subsequent detailed approvals.

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11. PRIVACY

Privacy screening shall proceed as per the "Privacy Detail Section" plan, DA310 dated September 2021 or as otherwise approved by the planning and land authority. The screen dimensions shall be the minimum measurement for the screen as measured from the finished floor level. The vertical distance shall be provided to ensure sight lines minimising privacy impacts (to adjacent residential uses) are achieved as per this approved plan.

12. SIGHTLINE

The mature height of plants and any structures within a right triangle formed on each side of the driveway, with dimensions of 2m along the front boundary and 2.5m from the front boundary along the edge of the driveway, shall not exceed 700mm (to comply with AS 2890.1).

13. WASTE MANAGEMENT – DURING CONSTRUCTION PHASE

All building waste is to be stored on the site in suitable receptacles and collected regularly. The lessee is to take all reasonable steps to ensure that waste, particularly wind-borne litter, does not affect adjoining or adjacent properties.

ADVISORY NOTES

1. SIGNAGE

- a) This development application does not include an assessment of any proposed signage. Any proposed signage (that does not meet the DA exemption requirements – refer to Schedule 1 of the *Planning & Development Regulations 2008*) at the site must be the subject of a separate DA for approval by planning and land authority.
- b) Any temporary (and exempt) signage installed at the site, including advertising signage and hoarding, should comply with the Australian Association of National Advertisers (AANA) Code of Ethics and the ACT Government's Hoarding Signage Advertising Guidelines available online at <https://www.planning.act.gov.au/build-buy-renovate/for-industry/industry-resources/hoarding-signage-guidelines>

2. ENVIRONMENT PROTECTION AUTHORITY ADVICE

Noise from equipment which may be installed or used at the site, including air conditioning units, 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*.

For further information please contact the Environment Protection Authority Planning Liaison at EPAPLanningLiaison@act.gov.au or on 02 6207 5642.

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PART B – REASONS FOR THE DECISION

EVIDENCE

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

Development Application:	202139248 incorporating S144B/C.
Territory Plan Zones:	CZ2 Business zone
Development Codes:	Commercial Zones Development Code
Precinct Code:	Kingston Precinct Map and Code
General Codes:	Parking and Vehicle Access, Bicycle Parking, Access and Mobility, Crime Prevention through Environmental Design, Access and Mobility General Codes.
Crown Lease:	Block 13 Section 22 Kingston Vol 2426 : Fol 14 Block 22 Section 22 Kingston Vol 1734: Fol 83
Legislative requirements:	the <i>Planning and Development Act 2007</i> in particular sections 119 and 120
Representations and Entity advice:	As addressed in PART C of this Decision

PART A and PART C provide further details and considerations informing the reasons for the decision.

REASONS

The application was approved because based on the documentation and in the form modified by the imposed conditions it was considered to meet the relevant rules and criteria of the Territory Plan and section 120 of the *Planning and Development Act 2007 (Act)*.

The main issues identified during the assessment were:

- The development meeting the Territory Plan requirements, in particular the *Kingston Precinct Map and Code*, the *Commercial Zones Development Code* and relevant *General Codes*;
- Entity advice. Conditions have been imposed generally consistent with the advice from Entities who provided advice in response to referrals from the Authority. See conditions and further commentary in regard to entity advice below in Part C.
- Issue raised in representations – Refer to further comments below in PART C.

A request for further information was sent to the applicant requesting further details for Territory Plan requirements in particular the *Kingston Precinct Map and Code*, the *Commercial Zones Development Code*, the *Parking and Vehicle Access General Code* as well as entity advice. The applicant provided an application under section 144 of the Act in response, amending the proposed development. This decision is based on the amended proposal. Note further commentary below in PART C.

The objectives of the *CZ2 Business* zone have been considered. In general, the assessment found the development was not inconsistent with the zone objectives and the proposed commercial development and use is considered an anticipated development for the site.

Significantly, this development occurs at the zone boundary ie the site is zoned CZ2 and in part, the site adjoins the *RZ5 High Density Residential* zone. While the adjacent residential land and its objectives have been considered, the zone objectives of the *CZ2 Business* zone are considered to be given more weight as the relevant zone for the subject development site.

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While a thorough Territory Plan assessment was undertaken, the issues of bulk and scale, building height, overshadowing, use and impacts to the development's surrounds in particular were considered against the Territory Plan and Section 120 of the Act. Impacts will occur to the surrounds but are of a scale and nature reasonably expected for the zone, the site and the locality.

Consideration was given to a condition to reduce the 'rear' and upper floors which would have minimised the overshadowing from the development, however noting the zonings and Territory Plan provisions, this was not considered required.

Where required, conditions have been imposed in regards the issues identified during assessment to ensure the development satisfies the Territory Plan, addresses assessment issues including relevant entity advice and generally follows standard process and practices.

In summary, the development is a permissible development with impacts at a scale commensurate for the zone, site and surrounds.

DA 202139248 & ACAT

Development application 202139248 was approved by the Authority on 22 June 2022. The Authority's decision was subject of 'third party' applications (AT 51, 52, 53, 54, 56 and 57/2022) for review. On 21 September 2022, the ACT Civil and Administrative Tribunal (ACAT) set aside the Authority's 22 June 2022 decision and remitted the application to the Authority for reconsideration according to law.

The DA was not amended, nor was a S141 information application received by the Authority since the Authority's 22 June 2022 decision. The DA was reassessed in particular how the previous conditions and development would be consistent with the Commercial Zones Development Code. New conditions in regards to the Crown Lease and easements have been imposed compared to the 22 June 2022 decision. Consideration against the and Lease Variation General Code was included in making this new decision. No Territory Plan provisions have been identified which would prohibit this development of being capable of achieving compliance with the LVGC in a future application as required in conditions of this decision.

As advised on the front page, this Notice of Decision is the Authority's decision of DA 202139248 and substitutes the previous Authority's 22 June 2022 decision.

PART C – PUBLIC NOTIFICATION AND ENTITY ADVICE

PUBLIC NOTIFICATION

Pursuant to Division 7.3.4 of the Act, the application was initially publicly notified from 14 October 2021 to 3 November 2022. This was changed to commence from 25 October 2021 to 12 November 2021. 105 written representations were received during combined public notification period. It is noted an additional 4 late representations were also received. One representation was subsequently withdrawn.

The issues raised in the representations were considered in the assessment and making of the decision for this development application. In summary, the main issues raised were as follows:

- Building height, desired character, suitability, appearance/visual impacts, building setbacks;
- Impacts on the surrounding residential developments and occupants;
- Noise;
- Overshadowing and solar access;
- Privacy impacts;
- Heritage issues;
- Compliance with zoning, objectives and Territory Plan requirements;

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- Overdevelopment, Plot ratio, setting future development precedent,
- Ministerial interest;
- Easements;
- Landscaping;
- Environmental impact; trees; Air pollution;
- Smoking impacts;
- Encroachment
- DA information errors/misrepresentation;
- Traffic impacts and parking issues;
- Contribution to community/social amenity;
- Wind assessments/issues;
- Waste and delivery access issues;
- Commercial need;
- Consultation insufficient; and
- DA process including conflict of interest issues.

The nature of the representations can be summarised further into three main groups and commented as follows:

DA process.

The DA has been lodged and assessed consistent with the *Planning and Development Act 2007*. There have not been any procedural issues or deficiencies identified to prevent this DA proceeding to decision.

Zoning/permissibility and general concern for the new use.

The subject site is zoned *CZ2 Business Zone* and many of the issues raised are considered potential forward planning issues which may eventuate with any permissible commercial activity or with the re-development of the site and more generally for such uses.

While the zoning does not provide unlimited development opportunities of such uses, the specifics of this DA/development have been assessed as capable of approval. Objection to the impacts for a permissible use (separate to that of scale or similar) are broader planning issues which for the most part have been established through the zones and permissible uses of the Territory Plan.

Territory Plan and assessment elements.

As noted above, the DA has been assessed as meeting the Territory Plan requirements. Similarly other legislative assessment requirements have been undertaken and concluded the development can be approved (subject to conditions).

Note in particular the paragraph of Part B above in regard to the representations. Entity advice has also been carefully considered in regard to some of the representation issues.

S144A Further Information / Amendment:

In response to the Authority's request for further information, an amendment to the proposal was lodged with the authority on 20 April 2022. The S144 included clarification of the uses, some internal amendments and further information including responses to Territory Plan assessment items and entity advice. The amended application was not publicly notified.

Pursuant to section 146(3) of the Act, 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 application.

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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. 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. ENVIRONMENTAL PROTECTION AUTHORITY (EPA)

EPA provided advice stating that the proposal was not supported but also advised the development could be supported with recommended conditions. The recommended conditions and advice have been imposed in this decision consistent with the EPA advice.

Please refer to PART A for conditions and advisory notes consistent with the EPA advice.

2. TRANSPORT CANBERRA AND CITY SERVICES (TCCS)

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

Please refer to Part A for conditions consistent with the TCCS advice.

3. CONSERVATOR OF FLORA AND FAUNA (TREE PROTECTION UNIT) (the Conservator)

The Conservator provided advice stating that the development was not supported. The advice further advised:

*The development application is not supported as the proposal stipulates the removal of a Regulated Tree (**Quercus robur**) that is located in the carpark of a neighbouring block – Block 33 Section 22 Kingston. This tree has a proposed basement cut to the base of the trunk. This tree is a tree of medium/high quality and meets no removal criteria under the Tree Protection ACT 2005. This tree's future will need to be considered by the Design Review Panel on developmental grounds. Tree Protection preference would be basement reconfiguration to allow for the retainment of this tree.*

*There is also a Regulated (**Eucalyptus elata**) located on Block 19 Section 22 Kingston however this tree does not appear to be affected by the proposal. The remainder of this proposal poses no tree issue.*

The advice of the Conservator has been considered. In particular it is noted that the tree causing the non-support is located on unleased land (Block 33, Section 22) with TCCS as the land custodian. As such the subject tree is not considered to be subject to the provisions of the *Tree Protection Act 2005*. Rather TCCS is considered to be the appropriate entity to advise on the particular tree. It would therefore appear the above advice in relation to Block 33 Section 22 is made in error. It is also noted this has not been raised by TCCS as an issue.

While noting the above, this decision could be considered inconsistent with advice from an entity and therefore Section 119 of the *Planning and Development Act 2007* has been considered for departing from the Conservator's advice for the tree removal on 'developmental grounds'. This includes that the tree is located in the middle of the block's connection point to the rear lane and a likely vehicle path for any re-development connecting to the rear lane, and also required for service access, including for waste removal for services access. The tree removal is considered reasonable and is supported noting the Conservator's advice.

This development approval has been given having regard to the relevant considerations under Section 119(2) of the *Planning and Development Act 2007*.

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4. ACT HERITAGE COUNCIL (the Council)

The Council provided advice stating that the proposal is supported. A condition has been imposed consistent with the advice from the Council.

A copy of the Council's advice is attached to this Notice of Decision.

Refer to PART A for conditions regarding compliance with entity advice.

5. ACT EMERGENCY SERVICES AGENCY (ACTESA)

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

A condition requiring the development to satisfy relevant entity requirements has been imposed in PART A.

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

6. ICON WATER

Icon Water provided advice for the DA stating that the proposal is not supported. The applicant's S144 application was also referred to Icon Water who advised the amended DA information was supported.

A condition requiring the development to satisfy relevant entity requirements has been imposed in PART A.

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

7. EVOENERGY (ELECTRICITY)

EvoEnergy (Electricity) provided advice stating that the proposal is not supported. A condition requiring the developer to obtain endorsement from EvoEnergy prior to commencement of construction works has been imposed in this decision. The development will therefore proceed consistent with the Evoenergy (Electricity) requirements as conditioned.

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

8. EVOENERGY (GAS)

EvoEnergy (Gas) provided advice stating that the proposal is supported subject to conditions.

A condition requiring the development to satisfy relevant entity requirements has been imposed in PART A.

A copy of the EvoEnergy (Gas) advice is attached to this Notice of Decision.

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ATTACHMENT 1

ADMINISTRATIVE INFORMATION RELATING TO NOTICE OF DECISION

DATE THAT THIS APPROVAL TAKES EFFECT

Unless a condition of approval provides for otherwise, this approval takes effect 20 working days after the day this notice of decision is given to every person who made a representation on the application. The effective date for development applications approved subject to conditions may also be adjusted if the approval is reconsidered by the planning and land authority or if an application is made to the ACT Civil and Administrative Tribunal.

Pursuant to section 184 of the *Planning and Development Act 2007* ([Act](#)), this approval will expire if:

- the development or any stage of the development is not started within three years after the day the approval takes effect;
- the development is not finished three years after the day the development begins; or
- the development approval relates to land comprised in a lease that requires the development to be completed on a stated date – the date stated in the lease for completion of the development, or the approval is revoked pursuant to section 189 of the Act.

Under section 184 of the Act, the applicant may apply to the planning and land authority to extend the prescribed period to finish the development, but such an application must be made within the original period specified for completion.

A development approval, to which section 184 of the Act applies, continues unless the approval ends under sections 184, 185, 186 or 187 of the Act.

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 480 Northbourne Avenue, Dickson, ACT.

Submission of revised drawings or documentation

If a condition of approval requires the applicant to lodge revised drawings and / or documentation with the planning and land authority for approval pursuant to section 165 of the Act, the submission must be made by completing an application in e-development.

Reconsideration of the Decision

If the DA applicant is not satisfied with the decision made by the planning and land authority, they are entitled to apply to the planning and land authority for reconsideration within 20 working days of being told of this decision pursuant to section 191 of the Act. A longer timeframe may apply only if granted in writing by the planning and land authority pursuant to section 184 of the Act.

More information is available online at <https://www.planning.act.gov.au/build-buy-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.

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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>.
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 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.

NOTICE OF DECISION

DA 202139248

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.
14. AT 51, 52, 53, 54, 56 and 57/2022 for review of the Authority's previous decision dated 22 June 2022 are considered by the Authority to have been concluded with the ACAT's orders dated 21 September 2022. Whilst a matter for the ACAT, it appears that any review of this decision dated 30 November 2022 will require a new application for review to be made to the ACAT.

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.
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

NOTICE OF DECISION

DA 202139248

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.

NOTICE OF DECISION

DA 202139248

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> - <i>Tree Damaging Activity Applications (TDAA) 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</p> <p>TCCS.TreeProtection@Act.gov.au</p>
<p>Transport Canberra and City Services</p> <ul style="list-style-type: none"> • landscape management and protection plan 	<p>www.tccs.act.gov.au 132 281</p>

NOTICE OF DECISION

DA 202139248

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	02 6207 0019 (development coordination) tccs.dcdevelopmentcoordination@act.gov.au
Health Directorate	www.health.act.gov.au hps@act.gov.au 02 5124 9700
Education Directorate	www.education.act.gov.au 02 6205 5429
Utilities • Telstra (networks) • TransACT (networks) • Icon Water • Electricity reticulation	02 8576 9799 02 6229 8000 02 6248 3111 02 6293 5749

Translation and interpretation services

The ACT Government's translation and interpreter service runs 24 hours a day, every day of the week by calling 131 450.

ENGLISH	If you need interpreting help, telephone:
ARABIC	: إذا احتجت لمساعدة في الترجمة الشفوية ، إتصل برقم الهاتف :
CHINESE	如果你需要传译员的帮助，请打电话：
CROATIAN	Ako trebate pomoć tumača telefonirajte:
GREEK	Αν χρειάζεστε διερμηνέα τηλεφωνήσετε στο
ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
MALTESE	Jekk għandek bżonn l-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 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

URen, Rachel

From: AC, EPD Customer Services
Sent: Friday, 9 December 2022 10:38 AM
To: EPSDD_LVC; devapp@actewagl.com.au; Basubmission_watersewer@iconwater.com.au; BASubmission_Electricity; evoenergyconnections@jemena.com.au; 'stephen.angel@jemena.com.au'; TCCS_PC DA; ConservatorFloraFauna; EmergencyManagement; EPAPlanningLiaison; HeritageReferrals
Subject: NOTICE OF DECISION-202139248-02-13/22 KINGSTON-01
Attachments: NOTICE OF DECISION-202139248-02-DECISION AFTER ACAT REMITTED DA BACK TO AUTHORITY-SIGNED.pdf; DISPATCHADVICECHECKLIST-202139248-for new decisin after being remitted back to Authority.doc; DISPATCHADVICECHECKLIST-202139248-for new decisin after being remitted back to Authority.obr; NOTICE OF DECISION-202139248-02-DECISION AFTER ACAT REMITTED DA BACK TO AUTHORITY-SIGNED.obr

OFFICIAL

Good morning,

Please see attached Notice of Decision for Block **13** Section **22** Suburb **KINGSTON** Development Application No: **202139248**

For further information please contact: 6207 6383.

Online Form: https://www.accesscanberra.act.gov.au/app/forms/epd_feedback

Kind Regards,

Jenny Lee | DA Notification | Environment, Land and Planning shopfront

Phone: 02 6207 1923 | Email: acepdcustomerservices@act.gov.au

Access Canberra | Chief Minister Treasury and Economic Development Directorate | ACT Government

8 Darling Street, Mitchell 2911 | GPO BOX 158, Canberra City ACT 2601 | www.act.gov.au/accessCBR



URen, Rachel

From: AC, EPD Customer Services
Sent: Friday, 9 December 2022 10:35 AM
Subject: NOTICE OF DECISION-202139248-02-13/22 KINGSTON-01
Attachments: NOTICE OF DECISION-202139248-02-DECISION AFTER ACAT REMITTED DA BACK TO AUTHORITY-SIGNED.pdf

OFFICIAL

ADVICE TO REPRESENTOR AFTER DECISION

Good morning,

BLOCK: 13 SECTION: 22 SUBURB: KINGSTON
DEVELOPMENT APPLICATION NUMBER: 202139248

Development Application Number 202139248 has been approved subject to conditions. Note this decision of the planning and land authority follows ACAT Order remitting the DA to the Authority. As explained in the decision, this new decision substitutes the previous decision of the Authority.

As you lodged a representation in relation to this Development Application please find attached a copy of the Notice of Decision in accordance with the requirements of Section 170 of the Planning and Development Act 2007.

A copy of the application and the decision are also available for inspection on the Public Register. The register can be inspected between 8:30am and 4:30pm weekdays at Access Canberra Customer Service Centre, 8 Darling Street Mitchell, ACT.

If you wish to seek a review of the decision with the ACT Civil and Administrative Appeals Tribunal (ACAT), you must lodge an application form together with the required fee within 28 days from the date of this letter to:

ACT Civil and Administrative Tribunal
Allara House, 15 Constitution Avenue, CANBERRA CITY, ACT, 2601

An application form can be obtained from Allara House, 15 Constitution Avenue Canberra City. Alternatively you can access the form from the ACAT website www.acat.act.gov.au under approved forms. If you require further information about the ACAT's requirements or the review process, their office can be contacted on (02) 6207 1740.

If you apply for a review of the decision, the Authority will at the direction of the ACAT, give written notice to the applicant, and any interested parties that:

- You have applied to the ACAT for a review of the decision; and
- They are entitled to apply to be made a party to the proceedings for the review.

The applicant's name and postal address can be obtained from the Public Register.

As this application has been (approved subject to conditions), the applicant may also apply to the ACAT for a review of the decision. If this occurs you will be advised, and have a right to the Tribunal to be made a party to the proceedings (i.e. you can apply to the Tribunal to attend the review hearings where you will have the opportunity to present your case).

For further information please contact: 6207 6383 Online Form:
https://www.accesscanberra.act.gov.au/app/forms/epd_feedback

Kind Regards,

Jenny Lee | DA Notification | Environment, Land and Planning shopfront

Phone: 02 6207 1923 | Email: acepdcustomerservices@act.gov.au

Access Canberra | Chief Minister Treasury and Economic Development Directorate | ACT Government

8 Darling Street, Mitchell 2911 | GPO BOX 158, Canberra City ACT 2601 | www.act.gov.au/accessCBR



From: [Davies, Richard](#)
To: [Bradley Yates](#)
Cc: [Weller, Craig](#)
Subject: RE: NOTICE OF DECISION-202139248-02-13/22 KINGSTON-01
Date: Tuesday, 13 December 2022 8:50:00 AM
Attachments: [image001.png](#)
[image002.png](#)

Hi Bradley,

As you may be aware, the taking effect and review period are handled under various parts of legislation.

My understanding is from Section 409 of the *Planning and Development Act 2007* where 20 working days is allowed for 3rd party reviews from when final notice was given. As advised all relevant parties are understood to have been given the notice on Friday 9th December 2022. Working days are defined in the *ACT Legislation Act 2001* dictionary as:

working day means a day that is not— (a) a Saturday or Sunday; or (b) a public holiday in the ACT.

Noting the definition doesn't appear to cover the 'shut down' period, by my count this means a 3rd party review application would need to be made to ACAT by 11 January 2023.

As with many such and similar matters, any application to ACAT will need to be tested in regards to all relevant legislation noting there are exceptions to the above within the P&D Act and some differences in the *ACT Civil and Administrative Tribunal Act 2008*. ACAT (and potentially the Supreme Court) will decide on such matters as any application is made, typically at the initial Directions Hearing.

Hope this helps, it may be interesting to see where this one goes.

Regards

Richard

Richard Davies

Phone 02 6207 1923

Director – Merit and EDP Assessments

Environment, Planning and Sustainable Development Directorate | ACT Government

480 Northbourne Avenue, Dickson | GPO Box 158 Canberra ACT 2601 | www.planning.act.gov.au

From: Bradley Yates <bradley.yates@purdon.com.au>
Sent: Monday, 12 December 2022 1:31 PM
To: Davies, Richard <Richard.Davies@act.gov.au>
Subject: RE: NOTICE OF DECISION-202139248-02-13/22 KINGSTON-01

Caution: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe. [Learn why this is important](#)

Thanks Richard,

Regards,

BRADLEY YATES
Urban Planning Practitioner
purdon.com.au | [LinkedIn](#)

02 6257 1511
243 Northbourne
Avenue, Lyneham ACT
2602



Dhawura nguna, dhawura Ngunnawal.

Any representation, statement, opinion or advice expressed or implied in this email is made in good faith but on the basis that Purdon Planning, its agents and employees are not liable to any person for any damage or loss whatsoever which has occurred or may occur, in relation to that person taking or not taking (as the case may be) action, in respect of any representation, statement or advice referred to in this email.

From: Davies, Richard <Richard.Davies@act.gov.au>
Sent: Monday, 12 December 2022 12:32 PM
To: Bradley Yates <bradley.yates@purdon.com.au>; EPSD DACoordinator <DAcoordinator@act.gov.au>
Subject: RE: NOTICE OF DECISION-202139248-02-13/22 KINGSTON-01

Hi Bradley,

Thanks for the email and enquiry. Representors were advised on Friday 9th December 2022 so the 20 working days should commence from that date.

I will need to look into the Christmas shut down period in regards to the decision taking effect as I am not clear whether the shut down period should count as working days or not.

Back to you when I learn more

Regards
Richard

Richard Davies
Phone 02 6207 1923
Director – Merit and EDP Assessments
Environment, Planning and Sustainable Development Directorate | ACT Government
480 Northbourne Avenue, Dickson | GPO Box 158 Canberra ACT 2601 | www.planning.act.gov.au

From: Bradley Yates <bradley.yates@purdon.com.au>
Sent: Monday, 12 December 2022 12:11 PM
To: EPSD DACoordinator <DAcoordinator@act.gov.au>
Cc: Davies, Richard <Richard.Davies@act.gov.au>
Subject: FW: NOTICE OF DECISION-202139248-02-13/22 KINGSTON-01

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Good morning,

In reference to the below/attached, are you able to confirm when the Authority considers when

the 20 working days after the day this notice of decision is given to every person who made a representation on the application is up? Noting the Christmas shutdown, and the delay between the date the decision is signed and the date when the applicant received the notice, we aren't sure when this date will be expired?

Regards,

BRADLEY YATES
Urban Planning Practitioner
purdon.com.au | [LinkedIn](#)

02 6257 1511
243 Northbourne
Avenue, Lyneham ACT
2602



Dhawura nguna, dhawura Ngunnawal.

Any representation, statement, opinion or advice expressed or implied in this email is made in good faith but on the basis that Purdon Planning, its agents and employees are not liable to any person for any damage or loss whatsoever which has occurred or may occur, in relation to that person taking or not taking (as the case may be) action, in respect of any representation, statement or advice referred to in this email.

From: AC, EPD Customer Services <ACEPDCustomerServices@act.gov.au>
Sent: Friday, 9 December 2022 2:44 PM
To: Purdon Reception <purdons@purdon.com.au>
Subject: NOTICE OF DECISION-202139248-02-13/22 KINGSTON-01

OFFICIAL

Good afternoon,

Please see attached Notice of Decision and Entity Advice for Block **13** Section **22** Suburb **KINGSTON**

Development Application No: **202139248**

For further information please contact: 6207 6383.

Online Form: https://www.accesscanberra.act.gov.au/app/forms/epd_feedback

Kind Regards,

Jenny Lee | DA Notification | Environment, Land and Planning shopfront

Phone: 02 6207 1923 | Email: acepdcustomerservices@act.gov.au

Access Canberra | Chief Minister Treasury and Economic Development Directorate | ACT Government

8 Darling Street, Mitchell 2911 | GPO BOX 158, Canberra City ACT 2601 | www.act.gov.au/accessCBR



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From: [Davies, Richard](#)
To: [REDACTED]
Cc: [Weller, Craig](#)
Subject: FW: NOTICE OF DECISION-202139248-02-13/22 KINGSTON-01
Date: Tuesday, 13 December 2022 9:04:00 AM
Attachments: [image001.png](#)
[NOTICE OF DECISION-202139248-02-DECISION AFTER ACAT REMITTED DA BACK TO AUTHORITY-SIGNED.pdf](#)

[REDACTED]

As you may be aware, the taking effect and review period for a DA decision are handled under various parts of legislation.

My understanding is from Section 409 of the *Planning and Development Act 2007* where 20 working days is allowed for 3rd party reviews from when final notice was given. I understand all relevant parties have been given the notice of the Authority's decision on Friday 9th December 2022.

Working days are defined in the *ACT Legislation Act 2001* dictionary as:

working day means a day that is not— (a) a Saturday or Sunday; or (b) a public holiday in the ACT.

Noting the definition doesn't appear to cover the Christmas 'shut down' period, by my count this means a 3rd party review application would need to be made to ACAT by 11 January 2023.

As with many such and similar matters, any application to ACAT will need to be suitably made in regards to all relevant legislation including the above mentioned P&D Act and the *ACT Civil and Administrative Tribunal Act 2008*. ACAT will decide on such matters as any application is made, typically at the initial Directions Hearing.

Regards

Richard

Richard Davies

Phone 02 6207 1923

Director – Merit and EDP Assessments

Environment, Planning and Sustainable Development Directorate | ACT Government

480 Northbourne Avenue, Dickson | GPO Box 158 Canberra ACT 2601 | www.planning.act.gov.au

From: [REDACTED]
Sent: Monday, 12 December 2022 4:33 PM
To: Davies, Richard <Richard.Davies@act.gov.au>
Cc: Weller, Craig <Craig.Weller@act.gov.au>; AC, EPD Customer Services <ACEPDCustomerServices@act.gov.au>
Subject: Re: NOTICE OF DECISION-202139248-02-13/22 KINGSTON-01




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Thanks Richard. I definitely didn't get it (checked my Junk Email).

Can you advise please what you would consider would be the last day for us to lodge fresh appeals (if necessary), taking account of public service holidays?



On 12 Dec 2022, at 9:37 am, Davies, Richard <Richard.Davies@act.gov.au> wrote:


I have received a copy of your email advising that you have not received a copy of the Authority's new Notice of Decision. I have checked the dispatch advice and can advise that the Authority's records show that you were provided/sent a copy of the decisions on Friday 9 December 2022. This was send to your email address  which I note accords with address the representation  was sent.

I attach a further copy of the decision for your records.

Regards

Richard

Richard Davies

Phone 02 6207 1923

Director – Merit and EDP Assessments

Environment, Planning and Sustainable Development Directorate | ACT Government

480 Northbourne Avenue, Dickson | GPO Box 158 Canberra ACT 2601 |

www.planning.act.gov.au

From: AC, EPD Customer Services

Sent: Friday, 9 December 2022 10:35 AM

Subject: NOTICE OF DECISION-202139248-02-13/22 KINGSTON-01

OFFICIAL

ADVICE TO REPRESENTOR AFTER DECISION

Good morning,

BLOCK: **13** SECTION: **22** SUBURB: **KINGSTON**

DEVELOPMENT APPLICATION NUMBER: **202139248**

Development Application Number 202139248 has been approved subject to conditions. Note this decision of the planning and land authority follows ACAT Order remitting the DA to the Authority. As explained in the decision, this new decision substitutes the previous decision of the Authority.

As you lodged a representation in relation to this Development Application please find attached a copy of the Notice of Decision in accordance with the requirements of Section 170 of the Planning and Development Act 2007.

A copy of the application and the decision are also available for inspection on the Public Register. The register can be inspected between 8:30am and 4:30pm weekdays at Access Canberra Customer Service Centre, 8 Darling Street Mitchell, ACT.

If you wish to seek a review of the decision with the ACT Civil and Administrative Appeals Tribunal (ACAT), you must lodge an application form together with the required fee within 28 days from the date of this letter to:

ACT Civil and Administrative Tribunal
Allara House, 15 Constitution Avenue, CANBERRA CITY, ACT, 2601

An application form can be obtained from Allara House, 15 Constitution Avenue Canberra City. Alternatively you can access the form from the ACAT website www.acat.act.gov.au under approved forms. If you require further information about the ACAT's requirements or the review process, their office can be contacted on (02) 6207 1740.

If you apply for a review of the decision, the Authority will at the direction of the ACAT, give written notice to the applicant, and any interested parties that:

- You have applied to the ACAT for a review of the decision; and
- They are entitled to apply to be made a party to the proceedings for the review.

The applicant's name and postal address can be obtained from the Public Register.

As this application has been (approved subject to conditions), the applicant may also apply to the ACAT for a review of the decision. If this occurs you will be advised, and have a right to the Tribunal to be made a party to the proceedings (i.e. you can apply to the Tribunal to attend the review hearings where you will have the opportunity to present your case).

For further information please contact: 6207 6383 Online Form:
https://www.accesscanberra.act.gov.au/app/forms/epd_feedback

Kind Regards,

Jenny Lee | DA Notification | Environment, Land and Planning shopfront

Phone: 02 6207 1923 | Email: acepdcustomerservices@act.gov.au

**Access Canberra | Chief Minister Treasury and Economic Development Directorate | ACT
Government**

8 Darling Street, Mitchell 2911 | GPO BOX 158, Canberra City ACT 2601 | www.act.gov.au/accessCBR

This email, and any attachments, may be confidential and also privileged. If you are not the intended recipient, please notify the sender and delete all copies of this transmission along with any attachments immediately. You should not copy or use it for any purpose, nor disclose its contents to any other person.

From: [Davies, Richard](#)
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: DA202139248 - substitute Notice of Decision of 2/12/2022 sent 9/12/2022
Date: Tuesday, 13 December 2022 12:17:00 PM
Attachments: [NOTICE OF DECISION-202139248-02-DECISION AFTER ACAT REMITTED DA BACK TO AUTHORITY-SIGNED.pdf](#)

[REDACTED]

I reviewed the 9/12/22 email notice to representors and agree I could not find a copy of your email address in the advice. I therefore provide you with this further copy of the decision (attached) which it appears you have already obtained. A copy of the 9/12/22 advice to representors is also copied below.

In regards to timing, I have explained the process as I understand it. It is evidently complicated when different parts of legislation apply. You are welcome to form another view to my advice how this works which will be considered if making such an application to ACAT. As described in my advice, it will be ACAT who considers such an application including whether the application is made within time (or not).

Regards,

Richard

Richard Davies

Phone 02 6207 1923

Director – Merit and EDP Assessments

Environment, Planning and Sustainable Development Directorate | ACT Government

480 Northbourne Avenue, Dickson | GPO Box 158 Canberra ACT 2601 | www.planning.act.gov.au

From: AC, EPD Customer Services

Sent: Friday, 9 December 2022 10:35 AM

Subject: NOTICE OF DECISION-202139248-02-13/22 KINGSTON-01

OFFICIAL

ADVICE TO REPRESENTOR AFTER DECISION

Good morning,

BLOCK: **13** SECTION: **22** SUBURB: **KINGSTON**

DEVELOPMENT APPLICATION NUMBER: **202139248**

Development Application Number 202139248 has been approved subject to conditions. Note this decision of the planning and land authority follows ACAT Order remitting the DA to the Authority. As explained in the decision, this new decision substitutes the previous decision of the Authority.

As you lodged a representation in relation to this Development Application please find attached

a copy of the Notice of Decision in accordance with the requirements of Section 170 of the Planning and Development Act 2007.

A copy of the application and the decision are also available for inspection on the Public Register. The register can be inspected between 8:30am and 4:30pm weekdays at Access Canberra Customer Service Centre, 8 Darling Street Mitchell, ACT.

If you wish to seek a review of the decision with the ACT Civil and Administrative Appeals Tribunal (ACAT), you must lodge an application form together with the required fee within 28 days from the date of this letter to:

ACT Civil and Administrative Tribunal
Allara House, 15 Constitution Avenue, CANBERRA CITY, ACT, 2601

An application form can be obtained from Allara House, 15 Constitution Avenue Canberra City. Alternatively you can access the form from the ACAT website www.acat.act.gov.au under approved forms. If you require further information about the ACAT's requirements or the review process, their office can be contacted on (02) 6207 1740.

If you apply for a review of the decision, the Authority will at the direction of the ACAT, give written notice to the applicant, and any interested parties that:

- You have applied to the ACAT for a review of the decision; and
- They are entitled to apply to be made a party to the proceedings for the review.

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For further information please contact: 6207 6383 Online Form:
https://www.accesscanberra.act.gov.au/app/forms/epd_feedback

From: [REDACTED]
Sent: Tuesday, 13 December 2022 10:50 AM
To: Davies, Richard <Richard.Davies@act.gov.au>
Cc: Weller, Craig <Craig.Weller@act.gov.au>; [REDACTED]

Subject: RE: DA202139248 - substitute Notice of Decision of 2/12/2022 sent 9/12/2022

Caution: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe. [Learn why this is important](#)

Hi Richard

Thank you for your response. The term “working days” would usually exclude public holidays and government stand down between Christmas and New Year so does your Notice of Decision for DA202139248 - substitute Notice of Decision of 2/12/2022 equate to the 20 working days or 28 days (1 month) from the date of email out for appeal to ACAT?

I have not received your NOD to my only email address, [REDACTED] or this decision. In my email below I explained this has occurred with the original NOD as well and I had to request it after time also. Your advice that all relevant parties have been given the notice of the Authority’s decision on Friday 9th December 2022 is incorrect in my case.

Please attend to my request to be provided the Authority’s decision in a timely manner. Greatly appreciated.

From: Davies, Richard <Richard.Davies@act.gov.au>

Sent: Tuesday, 13 December 2022 9:06 AM

To: [REDACTED]

Cc: Weller, Craig <Craig.Weller@act.gov.au>

Subject: RE: DA202139248 - substitute Notice of Decision of 2/12/2022 sent 9/12/2022

[REDACTED]

As you may be aware, the taking effect and review period for a DA decision are handled under various parts of legislation.

My understanding is from Section 409 of the *Planning and Development Act 2007* where 20 working days is allowed for 3rd party reviews from when final notice was given. I understand all relevant parties have been given the notice of the Authority’s decision on Friday 9th December 2022.

Working days are defined in the *ACT Legislation Act 2001* dictionary as:

working day means a day that is not— (a) a Saturday or Sunday; or (b) a public holiday in the ACT.

Noting the definition doesn’t appear to cover the Christmas ‘shut down’ period, by my count this means a 3rd party review application would need to be made to ACAT by 11 January 2023.

As with many such and similar matters, any application to ACAT will need to be suitably made in regards to all relevant legislation including the above mentioned P&D Act and the *ACT Civil and Administrative Tribunal Act 2008*. ACAT will decide on such matters as any application is made, typically at the initial Directions Hearing.

Regards

Richard

Richard Davies

Phone 02 6207 1923

Director – Merit and EDP Assessments

Environment, Planning and Sustainable Development Directorate | ACT Government

480 Northbourne Avenue, Dickson | GPO Box 158 Canberra ACT 2601 | www.planning.act.gov.au

From: [REDACTED]

Sent: Monday, 12 December 2022 6:16 PM

To: Davies, Richard <Richard.Davies@act.gov.au>

Subject: RE: DA202139248 - substitute Notice of Decision of 2/12/2022 sent 9/12/2022

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Dear Richard

Thank you for your response and clarifying what appeared to require correction. There seems to be some misunderstanding. I have not received this latest NOD under your signature. I previously had to request after time the original NOD as it was not sent to me until I did so. In the ACTPLA documents provided to ACAT my email is again omitted. Thus I assume there is a problem in whatever list of representors' emails is being used. My email below is simply a request that I be provided the DA202139248 - substitute Notice of Decision of 2/12/2022 sent 9/12/2022 because it was not sent to me. I am a different email from [REDACTED] and my email is [REDACTED]

Could you please advise taking into account standdown and the public holidays of the festive season, the actual final date for appeal to ACAT. Many thanks.

From: Davies, Richard <Richard.Davies@act.gov.au>

Sent: Monday, 12 December 2022 5:33 PM

To: [REDACTED]

Subject: RE: DA202139248 - substitute Notice of Decision of 2/12/2022 sent 9/12/2022

Thanks for the follow up email below in regards to the new decision for this DA. I can advise that the page 8 'typo' you have identified should have removed the "and" rather than is missing another additional consideration topic. I will consider the correction request but at this stage consider the nature of the issue to be minor and have limited effect. If a correction is determined to be needed, relevant parties will be advised with the correction advice.

The new notice of decision addresses the representations on pages 8 and 9 and while specific representations were not identified, the topics raised were summarised and discussed the

Authority's dealings with the representations. I note the issues raised in your representation of the Commercial Zones Development Code, Zone Objectives and Parking and Vehicular impacts and more generally of the Territory Plan requirements and DA process are mentioned in the Notice of Decision. The decision has been issued and is not proposed to be corrected to expand upon representations.

I hope this assists with your understanding of the decision.

Regards

Richard

Richard Davies

Phone 02 6207 1923

Director – Merit and EDP Assessments

Environment, Planning and Sustainable Development Directorate | ACT Government

480 Northbourne Avenue, Dickson | GPO Box 158 Canberra ACT 2601 | www.planning.act.gov.au

From: [REDACTED]

Sent: Friday, 9 December 2022 4:19 PM

To: Davies, Richard <Richard.Davies@act.gov.au>

Subject: DA202139248 - substitute Notice of Decision of 2/12/2022 sent 9/12/2022

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Dear Mr Davies

I was a representor to the original DA2021 39248 for blocks 13 and 22 Kingston for which you have now become the delegate in the substitute Notice of Decision dated 2 December 2022 which has now been emailed on 9 December 2022, thus reducing time to appeal to ACAT.


My complaint with this reassessment is that along with all EPD and ACAT information I have yet again not been provided with any advice or decisions as has every other representor, neither in this instance nor in all other communication concerning this DA and my representation. I have had to request the communication and do so once again. I have very little confidence that my representation was ever considered although it is confirmed it was received.

Furthermore with reference to para 6 on page 8 of 17 of your decision I request you provide the correction required at;

Consideration against the [?] and Lease Variation General Code was included in making this decision.

I look forward to your timely response.





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