



**ACT**  
Government

Environment, Planning and  
Sustainable Development

# Notice of decision

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

## Merit track

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DA NO: 201833473		DATE LODGED: 16 April 2018
DATE OF DECISION: 17 April 2019		
BLOCK: 7 and 8	SECTION: 66	SUBURB: DEAKIN
STREET NO AND NAME: 117 Kent Street Deakin		
APPLICANT: Purdon Planning Pty Ltd		
LESSEE: Deakin 66 Pty Ltd		

### 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, Monica Saad, delegate of the planning and land authority, pursuant to section 162 of the Act, hereby **refuse** the proposal for a variation to the Crown lease to:

- **increase the gross floor area permitted to 20,500 square metres; and**
- **update the definition of store in accordance with the current Territory Plan definition.**

**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

Monica Saad  
Delegate of the planning and land authority  
Environment, Planning and Sustainable Development Directorate

17 April 2019

### CONTACT OFFICER

Karen Walker  
Phone: (02) 6207 7257  
Email: karen.walker@act.gov.au

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

In accordance with section 114 of the Act, the application is refused because it did not comply with the requirements for assessment in the merit track applying to development applications.

The development application was submitted as a merit track application and proposed to increase the development potential of the site. Upon referral to the Conservator of Flora and Fauna it was determined that development of this size is likely to have a significant adverse environmental impact on an endangered ecological community and therefore requires an Environmental Impact Statement (EIS). In this instance the correct track for this proposal is the impact track. Further information received from the applicant was reviewed by the Conservator and it is still considered that this proposal requires an EIS, which is inconsistent with the scope and scale of development that can be applied for in the merit track.

The application correctly lies within the impact track.

Section 114 of the Planning and Development Act states:

*"if the authority assesses a development application made in an assessment track other than the track for the proposal, the authority must refuse the application."*

In accordance with Section 114 of the Act this development application is refused.

In addition to not meeting S114, it is considered that S119 is also not met.

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 and the relevant codes being the Transport and Services Development Code, the Parking and Vehicular Access General Code and the Lease Variation General Code.

The development proposal is inconsistent with the Territory Plan for the following reasons:

### OBJECTIVES OF TSZ2 ZONE

It has not been demonstrated that a potential increase in gross floor area (GFA) of 20,000sqm can be achieved on site while taking into account the environmental significance of the area and the surrounding landscape and developments. Consequently the proposal, to increase the GFA potential of the site, is considered inconsistent with objectives b) and d) of the TSZ2 Services Zone objectives.

*b) Ensure that development is carried out in an economic, safe, environmentally sensitive manner and does not unacceptably affect the health and safety of any nearby residents.*

The application did not demonstrate that construction of a development with a GFA as proposed could be achieved on the site without clearing a large portion of the site. Together with the comments provided by the Conservator, noting the matters of national environmental significance, it is considered that a development of this size could not be carried out in an environmentally sensitive manner.

*d) Ensure that development is compatible with the surrounding landscape, especially in areas of high visibility, and that appropriate measures are taken to soften the impact of development on the landscape.*

The application did not demonstrate that a development of this size could be developed in a manner that is compatible with the surrounding area. The surrounding area is predominantly

woodland, the indicative plans show large expanses of concrete and container shaped structures.

#### TRANSPORT AND SERVICES ZONE DEVELOPMENT CODE

An ecological report was submitted with the application and referred to the relevant entity for comment. It has not been demonstrated that the information in the report adequately addresses criteria 22 (a) and (f). Comments from the Conservator suggest that a potential development of the size proposed will have an adverse impact on the site and surrounding environment.

*a) appropriate measures to soften the impact of development on the landscape.*

The land surrounding the site is largely undeveloped woodland. The indicative plans submitted with the application showed large concrete expanses over the majority of the site with no softening measures.

*f) any significant short or long-term effect, that the relevant authority considers the use or development may have on the environment, including social and economic effects and potential cumulative effects*

Comments from the Conservator suggest that a development of this size would likely have a detrimental effect on the nationally significant environmental features of the site. These effects have not been suitably addressed and would require assessment under the impact track in accordance the Act.

#### PARKING AND VEHICULAR ACCESS GENERAL CODE (PVAGC)

The site lies within a Transport Services Zone. The PVAGC suggests the appropriate parking ratio for a storage facility in this zone would be 2 car parking spaces per 100 square metres of gross floor area. The indicative plans provided with the application show 117 car parking spaces for visitors to the site. This is a shortfall of 293 spaces.

While it may be possible to comply with the objectives of the code, this has not been demonstrated as part of this application.

#### LEASE VARIATION GENERAL CODE

The proposal is inconsistent with Criteria C1 and C2 of the Lease Variation general Code.

*C1 A lease is varied only where all of the following are achieved:*

- i) the varied lease is consistent with the Territory Plan including all relevant codes*
- ii) the land to which the lease applies is suitable for the development or use authorised by the varied lease.*

The proposal is considered inconsistent with the relevant Territory Plan codes as mentioned above and therefore inconsistent with C1(i).

The proposal includes an increase in potential GFA to 20,500sqm. Comments received from the Conservator suggest that building of that scale on the site may have detrimental effects on the nationally significant environmental features on the site. The land is therefore considered 'not suitable' for the proposal.

*C2 i) sufficient car parking is provided on site or is available off site in accordance with the Parking and Vehicular Access General Code*

See comments above regarding the Parking and Vehicular Access General Code.

## EVIDENCE

**Application No.** 201833473

**File No.** 1-2018/05627

**The Territory Plan zone** – TSZ2 Services Zone

**The Development Codes** – Transport Services Zone

**The Precinct Codes** – Deakin Precinct Map and Code

**The General Codes** – Lease Variation General Code

**Current Crown Lease** – Volume 1684 Folio 79

**Representations** - 205

**Entity advice**

## PART 2

### PUBLIC NOTIFICATION AND ENTITY ADVICE

#### PUBLIC NOTIFICATION

Pursuant to Division 7.3.4 of the Act, the application was publicly notified from 27 April 2018 to 25 May 2018. Two hundred and five (205) written representations were received during public notification.

The main issues raised were as follows. Comments are provided as appropriate.

- (a) *Traffic and safety issues.*
- (b) *Sensitive flora and fauna.*
- (c) *Integrated plan should be completed first.*
- (d) *Application has been lodged in the wrong track.*
- (e) *Inappropriate scale of development proposed.*
- (f) *Compatibility with existing surroundings and effects on suburb character of the area.*

See Reasons for Decision above.

- (g) *Contamination from an unused landfill.*

The application was referred to the Environment Protection Authority who have provided comments in Part 2 Entity Advice.

- (h) *Lack of community consultation – misleading documentation.*

The development application was lodged and notified in accordance with the *Planning and Development Act 2007*.

#### 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 2 July 2018 advice was received from the Conservator of Flora and Fauna in relation to the proposal. The advice recommended that the application be referred to the Commonwealth for assessment under the *Environment Protection and Biodiversity Conservation Act (1999)* and that the proposal meets the requirements for Impact track assessment under the *ACT Planning and Development Act 2007*.

As a result further information was submitted by the applicant and referred to the Conservator of Flora and Fauna for further comments.

On 5 April 2019 advice was received from the Conservator of Flora and Fauna in relation the further information submitted by the applicant. The advice states:

*"The information and conclusions provided by the proponent do not change the original recommendation that the proposal be referred to the Commonwealth for assessment under the EPBC Act and that it meets the requirements for Impact Track assessment under the ACT Planning and Development Act 2007. The submitted plans indicate that almost all woodland on site would be removed, reducing the extent of one of Australia's largest remnants of Yellow Box - Blakey's Red Gum woodland, a critically endangered ecological community."*

Matters raised have been incorporated in this decision.

#### TRANSPORT CANBERRA AND CITY SERVICES (TCCS)

On 15 May 2018 advice was received from Transport Canberra and City Services in relation to the proposal. The advice stated that the proposal was not supported noting inadequacies in the Traffic Impact Study.

As a result further information was submitted by the applicant and referred to TCCS for further comments.

On 5 April 2019 advice was received from TCCS supporting the proposal noting:

*"The proposed land use in the current report (from SMEC) is totally different from the previous (OPUS) report.*

*If the land uses proposed in the current report are still valid, then we support the proposal as this has non-residential/ retail land uses (Storage & Caravan carports) with an expected low traffic generation (55-60 vph).*

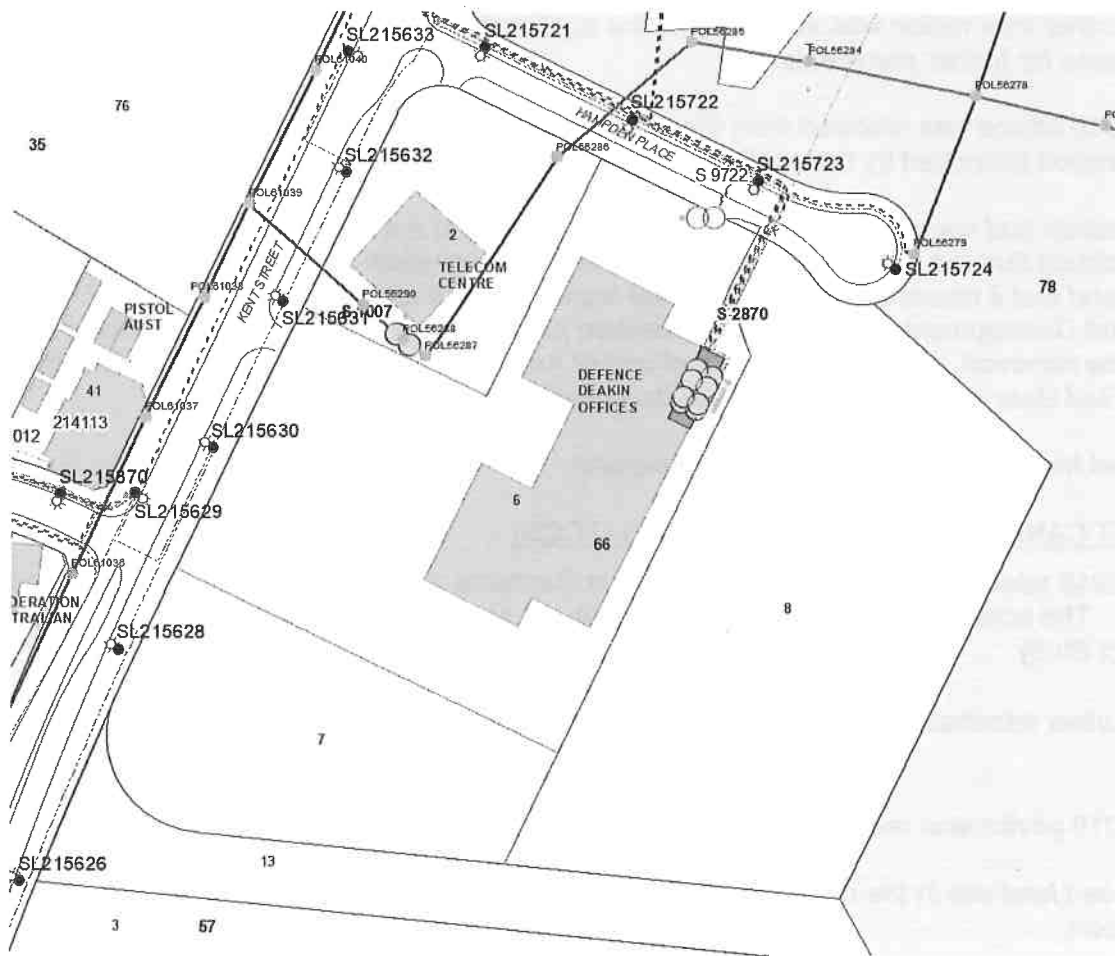
*The outstanding elements that will require addressing (outside the lease variation DA) includes development access arrangements, internal circulation, waste collection points, active travel arrangements, etc.*

Matters raised have been incorporated here as advice.

#### EVOENERGY

On 23 April 2018 advice was received from Evoenergy in relation to the proposal. The advice states that:

*"Evoenergy do support the proposed lease variation at B7 & 8 S66 Deakin. Please note that there are no Evoenergy assets located at the block. Proponent to submit an application for "request for preliminary network advice" prior to any development on site, thankyou"*



Matters raised have been incorporated here as advice.

ICON WATER (FORMERLY ACTEWAGL WATER)

On 26 April 2018 advice was received from Icon Water in relation to the proposal. The advice states that:

*“Changes to the lease for use of the land and further development of the block may require augmentation to the utilities water or sewer networks. Augmentation of the networks associated with further development of the block are to be funded by the developer. If multiple blocks are created, separate ties to sewer and water are required for each block. This may require changes to the network/s, Separate access to Icon’s networks will be required through each block containing the asset.”*

Matters raised have been incorporated here as advice.

ENVIRONMENT PROTECTION AUTHORITY (EPA)

On 15 May 2018 advice was received from EPA in relation to the proposal. The advice states:

*“Contamination advice:*

*The site is currently occupied by a commercial complex. Commercial complexes, prior to the introduction of natural gas to the ACT in the 1980’s, utilised boiler heating or similar systems.*

*These systems were generally fuelled by diesel or heating oil which was mainly stored in underground fuel storage tanks.*

*EPA records indicate that there is a historical municipal landfill largely located within the adjacent block, Block 15 Section 78 Deakin which extended into Block 8 Section 66 Deakin.*

*The Environment Protection Authority (EPA) would support the Development Application subject to the following conditions:*

*Conditions:*

*Prior to the site being used for other purposes an environmental assessment in accordance with EPA endorsed guidelines must be undertaken by a suitably qualified environmental consultant to determine whether past activities have impacted the site from a contamination perspective and to determine whether remediation is required to make the site suitable for the proposed uses.*

*The consultant's assessment report into the site's suitability for the proposed and permitted uses from a contamination perspective must be reviewed and endorsed by the EPA prior to the site being used for other purposes."*

As the proposal has been refused, matters raised have been incorporated here 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*).

### FEES

Applications to the ACAT, including an application to be joined as a party to a proceeding, require payment of a fee (the Tribunal Registry will advise of the current fee), unless you are receiving legal or financial assistance from the ACT Attorney-General. You can apply to have the fee waived on the grounds of hardship, subject to approval (refer to section 22T of the *ACT Civil and Administrative Tribunal Act 2008*). Decisions to grant assistance are made on the grounds of hardship and that it is reasonable, in all the circumstances, for the assistance to be granted. Write to: The 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 Director General, 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, ċempel:
PERSIAN	: اگر به ترجمه شفاهی احتیاج دارید به این شماره تلفن کنید:
PORTUGUESE	Se você precisar da ajuda de um intérprete, telefone:
SERBIAN	Ако вам је потребна помоћ преводиоца телефонирајте:
SPANISH	Si necesita la asistencia de un intérprete, llame al:
TURKISH	Tercümana ihtiyacımız varsa lütfen telefon ediniz:
VIETNAMESE	Nếu bạn cần một người thông-ngôn hãy gọi điện-thoại:

**TRANSLATING AND INTERPRETING SERVICE****131 450**

Canberra and District - 24 hours a day, seven days a week