


ACT
 Government

 Environment, Planning and
 Sustainable Development

Notice of decision

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

Merit track

DA NO: 201733198		DATE LODGED: 16 February 2018
DATE OF DECISION: 21 May 2018		
BLOCK: 18	SECTION: 11	SUBURB: MITCHELL
STREET NO AND NAME: Corner of Heffernan Street and Darling Street, Mitchell		
APPLICANT: [REDACTED]		
LESSEE: [REDACTED]		

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, George Cilliers, delegate of the planning and land authority, pursuant to section 162 of the Act, hereby **approve subject to conditions** the proposal for:

- **construction of a new 3 storey childcare centre, new driveways, car park and dropoff area, landscaping and associated site works;**

in accordance with the plans, drawings and other documents and items submitted with the application approval and endorsed as forming part of this approval.

This decision is subject to the conditions of approval at **PART 1** being satisfied. Please note that plans will not be dispatched until all conditions are satisfied.

PART 2 sets out the Reasons for the Decision.

PART 3 is Public Notification and Entity Advice.

PART 4 contains administrative information relating to the determination.

DELEGATE

[REDACTED]
 George Cilliers
 Delegate of the planning and land authority
 Environment, Planning and Sustainable Development Directorate
 21 May 2018

CONTACT OFFICER

Hayden Pini
 Phone: 62078728
 Email: Hayden.Pini@act.gov.au

PART 1 CONDITIONS OF APPROVAL

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

A. ADMINISTRATIVE / PROCESS CONDITIONS

A1. ENVIRONMENT PROTECTION AUTHORITY – APPROVAL DOES NOT TAKE EFFECT

- a) The approval **does not take effect** until the lessee/applicant has obtained written endorsement from the Environment Protection Authority and submits such endorsement 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 comply with any conditions imposed by the Environment Protection Authority.

Note: Any substantial changes to the development required for the Environment Protection Authority endorsement will need to be submitted for the approval of the planning and land authority with an application to amend the approval under s197 of the Planning and Development Act 2007.

A2. ACT HEALTH PROTECTION SERVICE – APPROVAL DOES NOT TAKE EFFECT

- a) The approval **does not take effect** until the lessee/applicant has obtained written endorsement from the ACT Health Protection Service and submits such endorsement 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 comply with any conditions imposed by the ACT Health Protection Service.

Note: Any substantial changes to the development required for the ACT Health Protection Service endorsement will need to be submitted for the approval of the planning and land authority with an application to amend the approval under s197 of the Planning and Development Act 2007.

A3. EVOENERGY – APPROVAL DOES NOT TAKE EFFECT

- a) The approval does not take effect until the lessee or land custodian has obtained a Statement of Acceptance from Evoenergy in relation to electricity networks and submits 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 land custodian must comply with any conditions imposed on a Statement of Acceptance by Evoenergy.

Note: any substantial changes to the development required for the Evoenergy Statement of Acceptance will need to be submitted for the approval of the planning and land authority with an application to amend the approval under s197 of the Planning and Development Act 2007.

A4. ICON WATER – APPROVAL DOES NOT TAKE EFFECT

- a) The approval does not take effect until the lessee or land custodian has obtained a Statement of Acceptance from Icon Water in relation to water and sewer networks and submits 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 land custodian must comply with any conditions imposed on a Statement of Acceptance by Icon Water.

Note: any substantial changes to the development required for the Icon Water Statement of Acceptance will need to be submitted for the approval of the planning and land authority with an application to amend the approval under s197 of the Planning and Development Act 2007.

A5. TIMEFRAME TO COMPLY WITH CONDITIONS A1, A2, A3, & A4

The lessee shall comply with conditions A1, A2, A3 & A4 within 24 months of the date of this decision.

- a) This approval will end if the lessee has not complied with Condition A1, A2, A3, & A4 within 24 months of the date of this decision.
- b) The lessee may apply to the planning and land authority in writing for an extension of time to the approved timeframe.

B. PRIOR TO CONSTRUCTION AND/OR DEMOLITION**B1. ACT HEALTH PROTECTION SERVICE**

The development details a kitchen within the ground floor of the childcare facility. If the kitchen is used to produce food to be sold, or is used to prepare food provided to the children, the kitchen will require a food business license. The applicant is advised to submit a food and business registration and fitout application (with suitable details plans) to the Health Protection Service prior to construction.

B2. SEDIMENT AND EROSION CONTROL

That prior to any work on the site commencing, the applicant/lessee must submit two copies of the sediment and erosion control plan to Environment Protection Authority for approval.

B3. TREE PROTECTION

Tree protection fencing, if required, shall be erected prior to the commencement of any work on the site.

B4. VERGE MANAGEMENT

This plan is to be approved and implemented before the commencement of any work on the site, and is to be in accordance with the *City Management Guidelines for the Protection of Public Landscape Assets Adjacent to Development Works-REF-04.1*

B5. TRAFFIC MANAGEMENT

A Temporary Traffic Management (TTM) Plan shall be prepared by a suitably qualified person and approved by the Manager, Traffic Management & Safety, Roads ACT, Roads and Public Transport Division, Transport Canberra and City Services (TCCS) prior to commencement of any work on the site. This plan is to address, as a minimum, measures to be employed during construction to manage all traffic, including construction traffic, in and around the site, provision of safe pedestrian movement around the site, the provision of parking for construction workers, and associated traffic control devices.

C. DURING CONSTRUCTION AND/OR DEMOLITION**C1. TRANSPORT CANBERRA AND CITY SERVICES**

- a) All offsite works including driveway must be constructed in accordance with TCCS Design Standards.
- b) Proposed footpath must be 1.5m wide. A clearance of 0.5m must be maintained between footpath and the block boundary.
- c) The pedestrian walkway / footpath must take precedence over the driveway.
- d) The proposed trees must be located in the middle of the new footpath and the road kerb so that trees are 1.4m from the edge of both.
- e) The official street trees for Heffernan Street are eucalypt species but there is not sufficient space for eucalypts to be planted on the Heffernan Street verge outside the new childcare centre at Block 18 Section 11. The new tree plantings should be that *Melaleuca linariifolia* selected from good quality tree stock and meet Australian Standards 2303: Tree Street Stock for Landscape Use (e.g. single trunked, with good amenity tree form and sufficient calliper to be self-supporting). The new trees will need to be maintained for a minimum of 12 months prior to formal handover to TCCS Development Review and Coordination.
- f) The new trees should also be planted in accordance with the latest TCCS planting specification for street trees to ensure best practice planting methodology (please see Urban Treescapes planting specification attached).

C2. ACT HEALTH PROTECTION SERVICE

The development details that a 24KL rainwater tank will be installed, with retained water being used to flush toilets and urinals. The applicant is advised that any outlets supplied by rainwater are clearly labelled as being provided with non-potable water and should be located in an area inaccessible to children or provided with tamperproof fittings.

C3. SEDIMENT AND EROSION CONTROL

All unsurfaced entry and exit points must be consolidated with crushed aggregate or similar extending from the road kerb to the building line.

Temporary sediment controls – comprising, as a minimum, geotextile silt fencing along the lowest points of the site and hay bale filters as required – are to be installed and maintained at least daily to prevent sediment from reaching the stormwater mains system.

C4. TREE PROTECTION

The applicant/lessee shall protect and maintain all existing trees and shrubs located on the subject site, on adjoining blocks overhanging the subject site, on the verge and unleased Territory land immediately adjacent, except for those specifically identified for removal in the approved drawings and a Tree Management Plan.

C5. VERGE MANAGEMENT

During any work undertaken on the site, all existing vegetation (trees, shrubs and grass) located on the verge and unleased Territory land immediately adjacent to the development shall be managed, protected and maintained in accordance with a Landscape Management Plan approved by the Manager, Asset Acceptance, Operational Support, Directorate Services, Transport Canberra and City Services, TCCS.

C6. TRAFFIC MANAGEMENT

At all times, the site and surrounds shall be managed in accordance with the approved Temporary Traffic Management (TTM) Plan.

C7. WASTE MANAGEMENT

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.

D. **POST CONSTRUCTION AND/OR DEMOLITION**

N/A

E. **ADVISORY NOTES**

This application is approved with the following advisory notes. It is recommended that careful consideration be given to advisory notes prior to commencing work.

E1. ENTITY COMMENTS

The applicant is advised to carefully consider all the relevant advice (in addition to the conditions imposed) from each of the entities stated in **PART 3 PUBLIC NOTIFICATION AND ENTITY ADVICE** of this Notice of Decision throughout the process of development (prior to, during & post construction) as applicable.

E2. EVOENERGY ELECTRICITY NETWORKS

Refer to statement(s) from Evoenergy Electricity Networks at **Attachment A**.

E3. JEMENA GAS NETWORKS

Refer to statement(s) from Jemena at **Attachment B**.

E4. ICON WATER

Refer to statement(s) from Icon Water at **Attachment C**.

E5. ACT EMERGENCY SERVICE AGENCY

Refer to statement(s) from ACT Emergency Service Agency at **Attachment D**.

E6. ENVIRONMENT PROTECTION AUTHORITY

Refer to statement(s) from ACT Emergency Service Agency at **Attachment E, F, and G**.

E7. ACT HEALTH PROTECTION SERVICES

Refer to statement(s) from ACT Emergency Service Agency at **Attachment H**.

Refer to Appendix 1 for information about approvals that may be required for construction.

PART 2 REASONS FOR THE DECISION

In deciding to approve the application with conditions, the Planning and Land Authority (the Authority) firstly considered under section 119 (1) (a) of the Act whether the application meets the relevant codes, including the Industrial Zones Development code and all relevant general codes.

In relation to section 119 (2) (a), the Authority considered the advice given by each entity to which the application was referred, and is satisfied that, with the conditions set out in Part 1, approval of the application would not be inconsistent with the advice received from each entity.

In relation to section 119 (2) (b), the Authority is satisfied that this decision is consistent with the objective of the Territory Plan as in section 48 of the Act in that it is *not inconsistent with the National Capital Plan*, and that the proposal will *provide the people of the ACT with an attractive, safe and efficient environment*, by the construction of a child care centre, whilst not having a detrimental impact on the surrounding environment.

The key issues identified in the assessment are comments received by entities. Conditions have been imposed to address the key issues and ensure that the proposal is consistent with the Territory Plan and the *Planning and Development Act 2007*.

In deciding to approve the application with conditions, the Authority also considered each of the matters or issues set out in section 120 of the Act.

In relation to section 120, the Authority is satisfied that the proposed development meets all applicable objectives of the *IZ2: Industrial Mixed Use zone*;

is satisfied that the subject land is suitable for the proposed development, provided each of the conditions imposed as part of this Decision to approve the application is met;

notes that there is no environmental significance opinion required or in force for the development proposal;

notes that no written representations were received for the development proposal;

have imposed conditions of approval to this Decision pursuant to Section 162(1)(b) of the Act that reflect relevant entity advice;

notes that the subject land is not public land; and

considered the probable impacts that the proposed development may have, and propose conditions to address some of the impacts that might otherwise occur.

With the conditions imposed, and after weighing the competing interests as to whether the application should be approved, the Authority formed the view that the probable impacts that might arise from the development are adequately addressed by the conditions imposed.

EVIDENCE

Application No. 201733198

File No. 1-2017/35837

The Territory Plan zone – IZ2: Industrial Mixed Use Zone

The Development Codes – Industrial Zone Development Code

The Precinct Codes – Mitchell Precinct Map and Code

Current Crown Lease – Volume 1831 Folio 29

Representations – Nil

Entity advice - Transport Canberra and City Services, Evoenergy, Jemena, Icon Water, Emergency Services Agency, the Environment Protection Authority and the ACT Health Protection Service.

PART 3 PUBLIC NOTIFICATION AND ENTITY ADVICE

PUBLIC NOTIFICATION

Pursuant to Division 7.3.4 of the Act, the application was publicly notified from 26 February 2018 to 20 March 2018. No written representations were received during public notification.

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.

TRANSPORT, CANBERRA AND CITY SERVICES

On date 14 March 2018 advice was received from Transport Canberra and City Services in relation to the proposal. The advice states that the proposal is supported subject to compliance with the following conditions.

Conditions:

- *All offsite works including driveway must be constructed in accordance with TCCS Design Standards.*
- *Proposed footpath must be 1.5m wide. A clearance of 0.5m must be maintained between footpath and the block boundary.*
- *The pedestrian walkway / footpath must take precedence over the driveway.*
- *The proposed trees must be located in the middle of the new footpath and the road kerb so that trees are 1.4m from the edge of both.*
- *The official street trees for Heffernan Street are eucalypt species but there is not sufficient space for eucalypts to be planted on the Heffernan Street verge outside the new childcare centre at Block 18 Section 11. The new tree plantings should be that *Melaleuca linariifolia* selected from good quality tree stock and meet Australian Standards 2303: Tree Street Stock for Landscape Use (e.g. single trunked, with good amenity tree form and sufficient calliper to be self-supporting). The new trees will need to be maintained for a minimum of 12 months prior to formal handover to TCCS Development Review and Coordination.*
- *The new trees should also be planted in accordance with the latest TCCS planting specification for street trees to ensure best practice planting methodology (please see Urban Treescapes planting specification attached).*

Standard Conditions:

Following general conditions will apply as appropriate for Works on and Use of Territory Land in addition to the above:

In accordance with the Public Unleased Land Act 2013 no work is to be undertaken on road verges and other unleased Territory Land without the approval of the Territory. Such approval must be obtained from the Senior Manager, Development Review and Coordination, TCCS by the ways of:

- 1. A Letter of Design Review prior to the commencement of any work; and*
- 2. A certificate of Operational Acceptance on completion of all works to be handed over to TCCS.*

Design Review and Operational Acceptance

A Letter of Design Review is required for all off-site works from the Senior Manager, Development Review and Coordination, TCCS, prior to the construction.

In order to obtain the Letter of Design Review, fully detailed drawings (civil, landscape) prepared by suitably qualified persons for all off-site works including roads, driveways, footpaths, street lighting, storm water, landscaping (and any other issues that may be found by audit of the plans) and a design report in accordance with Ref No 06: "Requirements for Design Review Submissions", must be certified by a Chartered Engineer/Landscape Architect and submitted to the Senior Manager, Development Review and Coordination, TCCS.

A Certificate of Operational Acceptance on completion of the works is required from the Senior Manager, Development Review and Coordination, TCCS, prior to the issue of a Certificate of Occupancy.

Similarly a Chartered Engineer/Landscape Architect should certify compliance with TCCS Ref No 08: "Requirements for Works as Executed Quality Records Requirements" when the request for Operational Acceptance is made to the Senior Manager, Development Review and Coordination, TCCS on completion of all off-site works

A Waste Management Plan in accordance with the Development Control Code for Best Practice Waste Management in the ACT should also be included if not approved at the Development Application stage.

Temporary Traffic Management (TTM)

A TTM plan approval from the Manager, Traffic Management & Safety, Roads ACT, TCCS. All times during construction the site and surrounds shall be managed in accordance with a Temporary Traffic Management Plan, prepared by a suitably qualified person and approved by the Manager, Traffic Management & Safety. This plan is to address, as a minimum, measures to be employed during construction to manage all traffic, including construction traffic, in and around the site, provision of safe pedestrian movement around the site, the provision of parking for construction workers, and associated traffic control devices.

Landscape Management & Protection Plan (LMPP)

LMPP approval from the Senior Manager, Development Review and Coordination, TCCS. During construction, all existing vegetation (trees, shrubs and grass) located on the verge and unleased Territory land immediately adjacent to the development shall be managed, protected and maintained in accordance with the Landscape Management Protection Plan (LMPP) approved by the Senior Manager, Development Review and Coordination, TCCS. This plan is to be implemented before the commencement of works, including demolition on the site and is to be in accordance with TCCS Guidelines for the Protection of Public Landscape Assets Adjacent to Development Works-REF-04.

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 carrying out of works, including storage of materials or waste, without prior approval of the Territory. Such approval can be obtained from Licensing and Compliance, City Services, Parks and Territory Services, TCCS.

Repair of Damage to Public Assets

The applicant/lessee is held responsible for all damages to ACT Government assets (including footpaths) caused by the development and they must properly repair any damages to those assets. Before work commences, they should notify TCCS of any existing damage to public facilities.

Notice of Commencement of Construction

Notice of Commencement for the Works in Unleased Territory Land shall be submitted to the Senior Manager, Development Review and Coordination, TCCS one week prior to the commencement of works. The Notice shall also include the confirmation of any protective measures installed in accordance with the approved LMPP and the programmed implementation of TTM.

Matters raised have been incorporated as either conditions of approval or advice.

EVOENERGY

On date 7 March 2018 advice was received from Evoenergy in relation to the proposal. The advice states that the proposal is not supported.

- *A statement of non-compliance was issued (**Attachment A**).*

Response:

Matters raised have been incorporated as conditions of approval – refer to condition A3 in Part 1 of this decision.

JEMENA

On date 1 March 2018 advice was received from Jemena in relation to the proposal. The advice states that the proposal is supported.

- *A statement of conditional compliance was issued (**Attachment B**).*

Response:

Matters raised have been incorporated as either conditions of approval or advice.

ICON WATER

On date 22 February 2018 advice was received from Icon Water in relation to the proposal. The advice states that the proposal is not supported,

- *A statement of non-compliance was issued (**Attachment C**).*

Response:

Matters raised have been incorporated as conditions of approval – refer to condition A4 in Part 1 of this decision.

EMERGENCY SERVICES AGENCY

On date 7 March 2018 advice was received from the Emergency Services Agency in relation to the proposal. The advice states that the proposal is supported.

- *A statement of conditional compliance was issued (**Attachment D**).*

Response:

Matters raised have been incorporated as either conditions of approval or advice.

ENVIRONMENT PROTECTION AUTHORITY

On date 15 March 2018 advice was received from the Environment Protection Authority in relation to the proposal. The advice states that the proposal is not supported.

- *Relevant advice is attached (**Attachment E**).*

On date 18 April 2018 further advice was received from the Environment Protection Authority in relation to the proposal. The advice states that the proposal is not supported and that the proposal should be referred to ACT Health Protection Services for comment.

- *Relevant advice is attached (**Attachment F**).*

On date 27 April 2018 advice was received from the Environment Protection Authority in relation to the proposal. The advice states that further information/amendments are required.

- *Relevant advice is attached (**Attachment G**).*

On date 16 May 2018 advice was received from the Environment Protection Authority in relation to the proposal. The advice states that the proposal is not supported and have provided the following statement:

"To clarify, the Environment Protection Authority does not support the Development Application and recommends the application be refused. Should the Planning Authority choose to approve the application, the applicant should first be required to complete an Environmental Assessment that includes an Air Quality Impact Assessment (AQIA) that assesses permitted uses in the zone and potential sources of pollution impacting the subject site. The report should refer to activities and potential pollutants and odours from neighbouring sites such as the landscape supply business to the north on block 44 section 7 Mitchell and demonstrate that the site is suitable for the proposed activity to ensure human health is not put at unnecessary risk.

The report should also demonstrate that the proposed use will not jeopardise the use of surrounding land for any industrial purposes."

Response:

Matters raised have been incorporated as conditions of approval or advice – refer to condition A1 in Part 1 of this decision.

ACT HEALTH PROTECTION SERVICE

On date 1 May 2018 advice was received from Icon Water in relation to the proposal. The advice states that the proposal is not supported.

- *A statement of non-support was issued (**Attachment H**).*

Response:

Matters raised have been incorporated as conditions of approval or advice – refer to condition A2 in part 1 of this decision

PART 4 ADMINISTRATIVE INFORMATION

DATE THAT THIS APPROVAL TAKES EFFECT

Unless a condition of approval provides for otherwise this approval is effective from the day after the date of this notice. The effective date for development applications approved subject conditions could 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 Act, this approval will expire if:

- the development or any stage of the development is not started within two years after the day the approval takes effect;
- the development is not finished two 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 under section 189 of the Act.

CONDITIONAL APPROVAL

This approval will expire if, in accordance with Section 165(3)(d) of the Act, a condition has deferred the effect of the development approval **and** imposed a time frame during which another approval must be revoked, amended or given, and the time frame has expired.

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 16 Challis Street, Dickson, ACT.

RECONSIDERATION OF THE DECISION

If the applicant is not satisfied with the decision to approve the application subject to conditions, 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 electronically by email to epdcustomerservices@act.gov.au or provided at the customer service centre on a CD/DVD. The delegate of the Authority reconsidering the decision must be different from, and senior to, the original decision maker. An application for reconsideration does not prevent an application for a review of the same decision being made to the ACT Civil and Administrative Tribunal. Application forms and further information about reconsideration are available from the planning and land authority's website and Customer Service Centres.

REVIEW BY THE ACT CIVIL AND ADMINISTRATIVE TRIBUNAL (ACAT)

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

APPENDIX 1

CONTACT DETAILS OF RELEVANT AGENCIES

Health Directorate - health protection	Website: www.health.act.gov.au Telephone: (02) 6205 1700
Environment, Planning and Sustainable Development Directorate <i>Planning and land authority</i> - list of certifiers for building approval - demolition information - asbestos information <i>Environment Protection Authority</i> - environment protection - water resources - asbestos information <i>Conservation, Planning and Research</i> - threatened species/wildlife management	Website: www.planning.act.gov.au Telephone: (02) 6207 1923 Website: www.environment.act.gov.au Telephone: (02) 6207 6251 Website: www.environment.act.gov.au Telephone: (02) 6207 1911
Transport Canberra and City Services - tree damaging activity approval - use of verges or other unleased Territory land - works on unleased Territory land - design acceptance - damage to public assets	Website: www.tccs.act.gov.au Telephone: 132 281 Telephone for asset acceptance: (02) 6207 7480
Utilities - Telstra (networks) - TransACT (networks) - Icon Water - Electricity reticulation	Telephone: (02) 8576 9799 Telephone: (02) 6229 8000 Telephone: (02) 6248 3111 Telephone: (02) 6293 5738

ADVICE TO APPLICANT

SUBMISSION OF REVISED DRAWINGS AND DOCUMENTATION

If a condition of approval requires the applicant to lodge revised drawings and/or documentation with the planning and land authority for approval under section 165 of the *Planning and Development Act 2007* the submission shall be made by:

- Completing an application for S165 Satisfying Conditions of Approval and submitting the documentation online using edevelopment. More information on edevelopment can be found at http://www.planning.act.gov.au/tools_resources/e-services/edevelopment

For further information regarding the lodgement of this information please contact Customer Service Centre by Phone: (02) 6207 1923, Email: epdcustomerservices@act.gov.au or on the planning and land authority website at www.planning.act.gov.au.

FURTHER APPROVALS FOR CONSTRUCTION

The Notice of Decision grants development approval, but does not cover building approval or approvals which may be required during construction, which commonly include the following.

BUILDING APPROVAL

Most building work requires building approval to ensure it complies with building laws such as the Building Code of Australia. If this applies to this proposal, the lessee should engage a private building certifier to assess and approve the building plans before construction begins. A list of licensed certifiers and information about building approval is available from the planning and land authority's website and Customer Service Centres.

PERMITTED VARIATIONS TO APPROVED DEVELOPMENT

Under section 35 of the Planning and Development Regulation 2008 the development as built may vary from the approved development in accordance with section 35 and the permitted construction tolerances and other permitted variations identified in Schedule 1A of that regulation.

Note 1 The development may still need building approval, or further building approval, under the *Building Act 2004*

Note 2 The development must also comply with the lease for the land on which it is carried out.

"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 Transport Canberra and City Services.

USE OF VERGES OR OTHER UNLEASED TERRITORY LAND

In accordance with the *Public Unleased Land Act of 2013*, road verges and other unleased Territory land must not be used for the carrying out of works, including the storage of materials or waste, without prior approval of the Territory. Approval can be obtained from Transport Canberra and City Services.

WORKS ON UNLEASED TERRITORY LAND – DESIGN AND OPERATIONAL ACCEPTANCE

In accordance with the *Public Unleased Land Act of 2013*, no work can be undertaken on unleased Territory land without the approval of the Territory. Such approval must be obtained from the Manager Asset Acceptance, Asset Services Group, TCCS by way of:

1. a certificate of design acceptance prior to the commencement of any work and
2. 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.

A certificate of compliance under s296 of the *Planning and Development Act 2007* may not be issued unless a certificate of design acceptance **AND** a certificate of operational acceptance has both been obtained from TCCS.

CONSTRUCTION REQUIREMENTS

The following information are some key requirements that apply to building work in the Territory. Other requirements may apply to this development.

DEMOLITION AND ASBESTOS MANAGEMENT

Demolition and asbestos management must be undertaken in accordance with the *Building Act 2004* (including the Building Code of Australia) and the *Dangerous Substances Act 2004*. Information about demolition and asbestos management is available from the planning and land authority's web site and Customer Service Centres.

ENVIRONMENT PROTECTION

All building work must be undertaken in accordance with the *Environment Protection Act 1997*, particularly but not exclusively in relation to noise and pollution control. More information is available from the Environment Protection Authority.

REPAIR OF DAMAGE TO PUBLIC ASSETS

The applicant/lessee is held responsible for all damage to ACT Government assets (including footpaths) caused by the development and they must properly repair any damage to those assets. Before work commences, they should notify Transport Canberra and City Services of any existing damage to public facilities.

UTILITY ASSETS RETENTION

The lessee should obtain a plant location advice from ActewAGL to avoid conflict with existing plant or electrical easements. The lessee will be responsible for the costs associated with the relocation of assets, if necessary. The lessee is to ensure that the water service and water meter are retained in position and in good condition. Icon Water's water meters are accountable items and must not be removed from the site or otherwise disposed of.

WATER RESTRICTIONS AND FILLING OF NEW POOLS, PONDS AND FOUNTAINS

Water restrictions or permanent water conservation measures may be in force in the ACT and may prohibit or affect the filling of new pools, ponds and fountains using potable (tap) water drawn from Icon Water's potable water supply system. Applicants wishing to use water drawn from the potable water supply system to fill a new pool, pond or fountain are advised to first contact Icon Water's conservation office on (02) 62483131. Where water restrictions or permanent water conservation measures would otherwise prevent or affect the filling of a new pool, pond or fountain, it might be possible to obtain an exemption to fill the pool, pond or fountain using potable water.

DRAINAGE

The Building Code of Australia contains provisions affecting surface drainage and the height of finished floor levels. These may apply to this proposal.

REVIEW OF THE DECISION

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

CONTACT DETAILS

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

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

POWERS OF THE ACAT

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

APPLICATIONS TO THE ACAT

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

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

TIME LIMITS FOR APPLICATIONS

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

FEES

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

TIME LIMITS FOR REVIEWS OF DECISIONS

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

FORMS OF LEGAL, FINANCIAL AND OTHER ADVICE AND ASSISTANCE

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

- ACT Attorney-General, write to The Chief Executive, Justice and Community Safety Directorate, GPO Box 158, CANBERRA, ACT, 2601;
- the ACT Legal Aid Office, telephone 1300 654314;
- Legal Advice Bureau, telephone (02) 6247 5700;
- ACT Council of the Ageing, telephone (02) 6282 3777;
- Welfare Rights and Legal Centre, telephone (02) 6247 2177; and
- Environmental Defender's Office (ACT), telephone (02) 6247 9420.

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 τηλεφωνήστε στο
ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
MALTESE	Jekk għandek bżonn l-għajjnuna t'interpretu, ċempel:
PERSIAN	: اگر به ترجمه شفاهی احتیاج دارید به این شماره تلفن کنید:
PORTUGUESE	Se você precisar da ajuda de um intérprete, telefone:
SERBIAN	Ако вам је потребна помоћ преводиоца телефонирајте:
SPANISH	Si necesita la asistencia de un intérprete, llame al:
TURKISH	Tercümana 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



Dear [REDACTED]

BLOCK 11 SECTION 18 - MITCHELL
Application Number: 201733198

Lessee: [REDACTED]

I refer to the Notice of Decision dated 21 May 2018 concerning the above application.

Conditions A1 and A2 of the decision needs to be amended to clarify the respective roles and requirements of the Environment Protection Authority and the ACT Health Protection Service in giving effect to the development approval.

Consequently, in accordance with section 196 of the *Planning and Development Act 2007*, the Notice of Decision dated 21 May 2018 is formally corrected as follows.

Condition A1:

Change condition A1 to read as follows:

A1. ENVIRONMENT PROTECTION AUTHORITY – APPROVAL DOES NOT TAKE EFFECT

- a) The approval **does not take effect** until the lessee/applicant has provided the Environment Protection Authority with the air quality report referred to in A2.
- b) The lessee/applicant must comply with any future requests of the Environment Protection Authority to access the site for the purpose of carrying out its own air quality testing from time-to-time.

Note: Evidence of compliance with this condition must be provided to the planning and land authority. Any substantial changes to the development required as a result of Environment Protection Authority requirements will need to be submitted for the approval of the planning and land authority with an application to amend the approval under s197 of the *Planning and Development Act 2007*.

Condition A2:

Change condition A2 to read as follows:

A2. ACT HEALTH PROTECTION SERVICE – APPROVAL DOES NOT TAKE EFFECT

- a) The approval does not take effect until the lessee/applicant has prepared and submitted an air quality report to the satisfaction of the ACT Health Protection

Service. The report must be prepared by a consultant listed on the Clean Air Society of Australia and New Zealand (CASANZ) directory <https://www.casanz.org.au/directory/>.

Such a report shall discuss and demonstrate that the development and subsequent use of the site as a Childcare Centre in the locality will not create an unacceptable risk to the health and safety of children and vulnerable users thereof. The report must discuss the effects of potential expansion of permitted activities by surrounding businesses and of future land uses in the surrounding area on air quality. All previous investigations upon which the report is based must be discussed within the report and copies of these reports must be provided to ACT Health Protection Service. The lessee/applicant must comply with any additional conditions imposed by the ACT Health Protection Service as a result of the findings of this report.

- b) The lessee/applicant must ensure that all water outlets supplied by rainwater are clearly labelled as being provided with non-potable water and must also ensure that they are located in areas inaccessible to children OR provided with tamperproof fittings.
- c) The lessee/applicant must ensure that a food business license is obtained from the Health Protection Service prior to completion of the development.


Note: Evidence of compliance with this condition must be provided to the planning and land authority. Any substantial changes to the development required for the ACT Health Protection Service endorsement will need to be submitted for the approval of the planning and land authority with an application to amend the approval under s197 of the *Planning and Development Act 2007*.

The remaining conditions of approval set out in the Notice of Decision dated 21 May 2018 will continue to apply.

The contact person in the ACT Health Protection Service for the purpose of corrected condition A2 is Mr Andrew Stedman (A/g Manager Environment and Radiation Safety) and can be contacted on 6205 4404 or by email Andrew.Stedman@act.gov.au.

If you wish to discuss this matter further, please contact me on 6207 6804 or by email: George.Cilliers@act.gov.au.

Yours sincerely


George Cilliers
Delegate of the planning and land authority
Environment, Planning & Sustainable Development Directorate
18 September 2018

Fairburn, Janine

From: Brookes, Clare
Sent: Wednesday, 9 January 2019 9:36 AM
To: Partridge, Leah
Cc: King, Meg
Subject: FW: Referral-Health- DEVELOPMENT APPLICATION - Additional documents submission - 201733198 - Block 18 Section 11 MITCHELL [SEC=UNCLASSIFIED]
Attachments: Referral-Health- DEVELOPMENT APPLICATION - Additional documents submission - 201733198 - Block 18 Section 11 MITCHELL .pdf

UNCLASSIFIED

Kind Regards

Clare Brookes
 A/g Branch Manager, Early Childhood Policy and Regulation | Education | ACT Government
 P 02 6205 0615 M 0481 003 833

Level 3, Hedley Beare Centre for Teaching and Learning, 51 Fremantle Drive Stirling 2611 |
 GPO Box 158 Canberra ACT 2601
www.det.act.gov.au

From: Sullivan, Susan
Sent: Thursday, 13 December 2018 9:20 AM
To: Brookes, Clare <Clare.Brookes@act.gov.au>
Subject: FW: Referral-Health- DEVELOPMENT APPLICATION - Additional documents submission - 201733198 - Block 18 Section 11 MITCHELL [SEC=UNCLASSIFIED]

UNCLASSIFIED

Susan Sullivan | Manager, Quality Assurance and Audit | susan.sullivan@act.gov.au
 Phone 02 62071093 | Fax 02 62071128 | 0411291529
 Children's Education and Care Assurance |
 Early Childhood Policy and Regulation | Education | ACT Government
 Level 3, Hedley Beare Centre for Teaching and Learning, Fremantle Drive, Stirling
 GPO Box 158 Canberra ACT 2601 |
www.det.act.gov.au | [Facebook](#) | [Twitter](#) | [Pinterest](#) | [LinkedIn](#) | [Google+](#)

From: Stedman, Andrew (Health)
Sent: Thursday, 13 December 2018 9:16 AM
To: Sullivan, Susan <Susan.Sullivan@act.gov.au>
Subject: FW: Referral-Health- DEVELOPMENT APPLICATION - Additional documents submission - 201733198 - Block 18 Section 11 MITCHELL [SEC=UNCLASSIFIED]

Hi Susan,

It was nice meeting you on Monday.

In keeping with discussion and the goal of sharing information please see HPS comments in relation to the Mitchell childcare development.

These comments were responding to information provided to the HPS by the developer in their attempt to satisfy the Notice of Decision. The HPS is seeking more detailed information in relation to the potential health risks associated with the proposed development prior to endorsing it.

Kind regards

Andrew Stedman | Public Health Officer | A/g Manager Environment and Radiation Safety
Health Protection Service | Public Health, Protection and Regulation | ACT Health
PH 6205 4404 | MOB 0434 607 429 | FAX 6205 1705
25 Mulley Street, Holder ACT 2611 | Locked Bag 5005, Weston Creek, ACT, 2611
Email: andrew.stedman@act.gov.au W health.act.gov.au

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**Referral-Health - DEVELOPMENT APPLICATION – Additional documents
submission- 201733198- Block 18 Section 11 MITCHELL**

Dear Sir/Madam,

Thank you for the submission of additional documentation regarding the proposed construction of a 130 place childcare centre within an IZ2 industrial zone in Mitchell ACT.

The Health Protection Service (HPS) notes that **Condition A2 (a)** of the Notice of Decision (NOD) issued on 18 September 2018 by the Environment Planning and Sustainable Development Directorate in relation to the development states:

Approval does not take effect until the lessee/applicant has prepared and submitted an air quality report to the satisfaction of the ACT Health Protection Service. The report must be prepared by a consultant listed on the Clean Air Society of Australia and New Zealand (CASANZ) directory <http://www.casanz.org.au/directory/>

Such a report shall discuss and demonstrate that the development subsequent use of the site as a childcare centre in the locality will not create an unacceptable risk to the health and safety of children and vulnerable uses thereof.

The report must discuss the effects of potential expansion of permitted activities by surrounding businesses and of future land uses in the surrounding area on air quality. All previous investigations upon which the report is based must be discussed within the report and copies of these reports must be provided to ACT Health Protection Service. The Lessee/applicant must comply with any additional conditions imposed by the ACT Health Protection Service as a result of the findings of this report.

The HPS has reviewed the additional documents submitted and concluded that the documents provided have not met the requirements of the NOD in that they have not demonstrated that an unacceptable risk to the health and safety of and safety of children and vulnerable users thereof will not be created by the use of the use of the site as a childcare centre.

The HPS considers that the air quality sampling undertaken to date has not covered a sufficient period of time to determine seasonal variations and to determine if the results are minimum, average or maximum concentration that would be typically found at this site for a variety of analytes. This has resulted in the Human Health Risk assessment being limited in its insight into any potential health risks posed.

To address this, an air quality sampling program based on the National Environment Protection Measures (NEPMs) should be implemented by a CASANZS listed consultant to measure the following pollutants:

- Carbon Monoxide – 1 month of hourly averages outside of December and January (note this data must be contiguous and include QA data)
- Nitrogen Dioxide – 1 month of hourly averages outside of December and January (note this data must be contiguous and include QA data)
- Ozone – 1 month of hourly averages outside of December and January (note this data must be contiguous and include QA data)
- Particulate Matter less than 10 micron (PM₁₀) – 1 month of hourly averages outside of December and January (note this data must be contiguous and include QA data) or a rolling 1 in 6 day gravimetric sampling program over 1 year
- Particulate Matter less than 2.5 microns (PM_{2.5}) – 1 month of hourly averages outside of December and January (note this data must be contiguous and include QA data) or a rolling 1 in 6 day gravimetric over 1 year
- Air toxics/Volatile Organic Compounds - A rolling 1 in 6 day sampling program over 1 year. This program should cover the common air toxics associated with motor vehicles and the established business in the area.


The results from the above sampling should be incorporated into a revised Human Health Risk Assessment (HHRA).

In addition, whilst the submitted report provides an identification of surrounding block usage and a list of permitted activities within these blocks, it has not met the requirements of the NOD in that it has not adequately discussed the potential expansion of permitted activities which may be enacted on these blocks (without requiring an additional development application) and the impacts such amended land uses may have on air quality at the subject site. The discussion should consider scenarios where the most harmful permitted activities are enacted on surrounding blocks and how this will affect the suitability of the site. The assessment should be incorporated into the revised HHRA and this assessment should be provided to the HPS.

The HPS considers that the protection of vulnerable populations from pollutants from current and future neighbouring industrial uses is of paramount importance and the information requested above is required to demonstrate the use of the site as a child care centre will not create an unacceptable risk to the health and safety of children and vulnerable uses thereof.

Please contact Andrew Stedman, Public Health Officer on (02) 5124 9087 or email andrew.stedman@at.gov.au you require any further information.

Yours Sincerely,


Conrad Barr
Executive Branch Manager
Health Protection Service

11 December 2018