

Fairburn, Janine

From: Teasdale, Jonathan
Sent: Tuesday, 9 April 2019 3:38 PM
To: Brookes, Clare
Cc: Law-Jamieson, Katherine
Subject: FW: Notice of Application for Review of Decision-DA 201733198-18/11 Mitchell [SEC=UNCLASSIFIED]
Attachments: AT 14_2019 - Konstantinou Developments Pty Ltd.obr; 20190306-AT 14_2019-Application for Review of Decision.pdf; 20190306-Listing Notice & Directions.pdf;

Here you go Clare

Cheers

Jonathan Teasdale
 Acting Executive Branch Manager
 Development Assessment
 6207 0316

From: Borrett, Samantha
Sent: Wednesday, 6 March 2019 2:35 PM
To: Teasdale, Jonathan <Jonathan.Teasdale@act.gov.au>; Davies, Richard <Richard.Davies@act.gov.au>; Cilliers, George <George.Cilliers@act.gov.au>; EPD Impact <EPDImpact@act.gov.au>; ACTPLA DA Leasing <ACTPLADALEasing@act.gov.au>; Jamaly, Rumana <Rumana.Jamaly@act.gov.au>; Gell, Chris <Chris.Gell@act.gov.au>
Cc: Weller, Craig <Craig.Weller@act.gov.au>; Smith, Rebekah <Rebekah.Smith@act.gov.au>; Gasser, Sonja <Sonja.Gasser@act.gov.au>
Subject: Notice of Application for Review of Decision-DA 201733198-18/11 Mitchell [SEC=UNCLASSIFIED]

Good afternoon,

We have been notified by the ACAT of a new appeal application submitted by Konstantinou Developments Pty Ltd re: 18/11 Mitchell. This is a 1st party appeal re: DA 201733198.

Attached is a reference to the application that was lodged with the ACAT.

Could you please ensure all of the relevant documents relating to the decision have been placed into the Objective file, and have been published. If there are any documents on paper files that are considered to be relevant to the review and are to be included in the T-doc can you forward them to the ACAT Co-ordination Unit so that we can commence preparation of the T-doc.

The ACAT requires that a person who has made a decision that is the subject of review provide "a statement setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision". If this statement has not already been provided as part of the decision could you please provide it as soon as possible so that it can be included in the T-doc.

The T-doc is due at the tribunal by COB 20 March 2019.

If you require the assistance of the Government Solicitors Office, a brief will need to be completed and forwarded to Rebekah Smith as soon as possible. For your information, attached is a sample of a brief that you can adapt to suit your requirements.

Kind Regards,

Samantha | ACAT Coordination Unit

Phone: 02 6207 1923

Customer Coordination | Access Canberra | ACT Government

GPO Box 158, Canberra City ACT 2601 | www.act.gov.au/accessCBR



ACT
Government
Environment, Planning and
Sustainable Development

Notice of decision on Reconsideration

Division 7.3.10 of the *Planning and Development Act 2007*

DA NO: 201733198	DATE RECONSIDERATION LODGED: 15 January 2019	
DATE OF DECISION: 31 January 2019		
BLOCK: 18	SECTION: 11	SUBURB: Mitchell
STREET NO AND NAME: Corner of Heffernan Street and Darling Street		
APPLICANT: Konstantinou Developments Pty Ltd		
Lessees: Konstantinou Developments Pty Ltd		

THE APPLICATION

This application seeks reconsideration of condition A2 applicable to the conditional approval for DA-201733198, as formally corrected by the planning and land authority on 18 September 2018.

Condition A2 reads 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 DECISION

I, Brett Phillips, delegate of the planning and land authority, pursuant to section 193 of the *Planning and Development Act 2007*, hereby confirm the formally corrected decision of the planning and land authority of 18 September 2018.

PUBLIC NOTIFICATION

Pursuant to Division 7.3.10 of the Act, written notice of the reconsideration application was not required as no written representations were received for the original application notified 26 February 2018 to 20 March 2018.

REASONS FOR THE DECISION

The original decision dated 21 May 2018, as formally corrected on 18 September 2018, is confirmed based on advice received from entities, i.e. the Health Protection Service (HPS) and the Environment Protection Authority (EPA).

The reconsideration application was referred to the ACT Health Protection Service and Environment Protection Authority on 15 January 2019 and comments were due 31 January 2019.

On 29 January 2019 the HPS provided comments to advise that they do not support the removal of condition A2. A copy of HPS' advice is attached to this decision (*Attachment A*).

On 29 January 2019 the EPA provided comments to advise that they do not support the removal of condition A2. A copy of EPA's advice is attached to this decision (*Attachment B*).

The planning and land authority considered the advice of the HPS and the EPA and concluded that, by altering or removing condition A2 from the Notice of Decision, there is potential for the matters as identified by the entities to go unmanaged.

Therefore, condition A2 in the formally corrected Notice of Decision dated 18 September 2018 is confirmed.

In making this decision, no planning reasons were identified for this decision. This decision is solely based on entity advice received.

INSPECTION OF THE APPLICATION AND DECISION

A copy of the application and the decision can be inspected between 8:30am and 4:30pm weekdays at the Environment and Planning Dickson Customer Service Centre at 16 Challis Street, Dickson, ACT.

REVIEW BY THE ACT CIVIL AND ADMINISTRATIVE TRIBUNAL (ACAT)

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

EVIDENCE

Application No. - 201733198 & Reconsideration application
The Territory Plan Zone – IZ2 Industrial Mixed Use
The Development Codes – Industrial Zones Development Code
Current Crown Lease – Volume 1831 Folio 29
Representations – Not applicable
Entity advice- ACT Health Protection Service & the Environment Protection Authority

Notice of decision on Reconsideration
DA No. 201733198

DELEGATE



Brett Phillips
Delegate of the planning and land authority
Environment, Planning and Sustainable Development Directorate

31 January 2019

CONTACT
DAEnquiries@act.gov.au

Notice of decision on Reconsideration
DA No. 201733198

APPENDIX 1

REVIEW OF THE DECISION

The following notes are provided in accordance with regulation 7 of the *ACT Civil and Administrative Tribunal Regulation 2008*. Refer to the Review by the ACT Civil and Administrative Tribunal (ACAT) section of the Notice of decision for information about its relevance to this development application.

CONTACT DETAILS

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

Location	Contact details
ACT Civil and Administrative Tribunal Level 4, 1 Moore Street (the Health building) CANBERRA CITY ACT 2601	Website: 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 Document exchange: DX 5691

POWERS OF THE ACAT

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

APPLICATIONS TO THE ACAT

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

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

TIME LIMITS FOR APPLICATIONS

The time limit to make a request for a review is 28 days from receiving this Notice of decision. The time limit can be extended in some circumstances. Check with the ACAT for more details.

FEES

Applications to the ACAT, including an application to be joined as a party to a proceeding, require payment of a fee of not less than \$178 (the Tribunal Registry will advise of the current fee), unless you are receiving legal or financial assistance from the ACT Attorney-General. You can apply to have the fee waived on the grounds of hardship, subject to approval (refer to section 22T of the *ACT Civil and Administrative Tribunal Act 2008*). Decisions to grant assistance are made on the grounds of hardship and that it is reasonable, in all the circumstances, for the assistance to be granted. Write to: The Director General, Justice and Community Safety Directorate, GPO Box 158, CANBERRA ACT 2601. Ask the ACAT for more details.

Notice of decision on Reconsideration
DA No. 201733198

TIME LIMITS FOR REVIEWS OF DECISIONS

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

FORMS OF LEGAL, FINANCIAL AND OTHER ADVICE AND ASSISTANCE

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

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

AWARDING OF COSTS

You will have to pay any costs involved in preparing or presenting your case. The ACAT also has the power to award costs against a party if the party contravenes a direction of the ACAT and the ACAT considers it in the interests of justice to make such an order. This power is in addition to the power of the ACAT to strike out a party and to dismiss an application for failure to comply with the ACAT's directions.

ACCESS TO DOCUMENTS ABOUT THE DECISION

You may apply for access to any documents you consider relevant to this decision under the ACT Freedom of Information Act 1989. Information about Freedom of information requests is available on the planning and land authority's web site or by contacting us by phone on (02) 6207 1923.

PROCEDURES OF THE ACAT

The procedures of the ACAT are outlined on the ACAT's website, including in the Guide to the Land and Planning Division and the Guide to the Hearing. Contact the ACAT for alternative ways to access information about the ACAT's procedures.

Notice of decision on Reconsideration
DA No. 201733198

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 i-għajnuha t'interpretu, oħmpel:
PERSIAN	اگر به ترجمه شفاهی احتیاج دارید به این شماره تلفن کنید:
PORTUGUESE	Se você precisar da ajuda de um intérprete, telefone:
SERBIAN	Ako vam je potrebna pomoć prevodioca telefonirajte:
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



ACT CIVIL AND ADMINISTRATIVE TRIBUNAL RECEIVED
25 FEB 2019 No. 7789737
AUSTRALIAN CAPITAL TERRITORY

Application for Review of a Decision

ACAT File Number:
(ACAT use only)

Is this an application to review a decision about occupational registration, licensing or disciplinary action?

Yes No

Name and section of legislation which gives a right of review of the decision

(Please refer to www.acat.act.gov.au for a list of legislation under which you are able to bring a request to review a decision to the ACAT.)

APPLICANT DETAILS (For multiple applicants attach details on a separate page)

Name:

Postal Address:

Preferred Phone Number:

Alternate Phone Number:

Email:

APPLICANT REPRESENTATIVE DETAILS

(Any representative who is not a lawyer should file an Authority to Act for a Corporation or Power of Attorney)

Name:

Postal Address:

Phone Number:

Email:

DECISION MAKER DETAILS

Who made the decision you
are seeking to review
(name of entity):

ACT Planning and Land Authority

Postal Address:

PO Box 158,
Canberra ACT 2601

Preferred Phone Number:

(02) 6207 1923

Alternate Phone Number:

Email:

brett.phillips@act.gov.au

DETAILS OF THE REVIEWABLE DECISION

Date Reviewable

Decision Made:

18 September 2018 (corrected) and 31 January 2019

Date you received decision:

6 February 2019

was the decision made after an Internal Review was sought?:

- Yes. If yes, please provide details and attach a copy of correspondence relating to the internal review of decision.
- No. If no, the ACAT may not be able to review the decision until after it has been the subject of Internal Review.

Briefly describe the decision and attach a copy (Attach page if insufficient space)

In a Notice of Decision dated 21 May 2018, the Respondent Agency approved Development Application 201733198 subject to a range of conditions per s162 of the Planning and Development Act 2007. Following a request by the Applicant, on 18 September 2018 the Notice of Decision was formally corrected to change the requirements of conditions A1 and A2.

The Applicant seeks a review of the corrected decision dated 18 September 2018.

Interim or emergency orders sought:

(for example, to stay a decision that has been made)

Prior to Directions the parties are directed to mediation a date to be set by the Tribunal.

REASONS FOR APPLYING FOR REVIEW

It is important that you tell us your reasons for seeking a review of the decision and why you think a different decision should be made. (Attach page if insufficient space. Further details can also be provided in an accompanying affidavit or statement)

The inclusion of conditions A1 and A2 are unduly onerous.

The Applicant intends to file a comprehensive Statement of Facts and Contentions prior to the first directions.

ORDERS SOUGHT

Describe the orders you want ACAT to make (attach page if insufficient space) Under section 68 of the *ACT Civil and Administrative Tribunal Act 2008*, the Tribunal may set aside, affirm or vary the reviewable decision. Other orders can also be made under authorising laws.

The Decision of 18 September 2018 is set aside and substituted with a decision to approve Development Application 20173319 subject only to conditions A3, A4 and A5 as contained in the original decision of 21 May 2018.

APPLICATION FOR EXTENSION OF TIME TO LODGE THE APPLICATION FOR REVIEW

You must complete this section if your application is late. Normally only 28 days are allowed between the date of the decision and the date you lodge this application. Explain in detail why your application is late and why an extension of time should be given to lodge the application (Attach page if insufficient space).

The Applicant was awaiting a reconsideration determination from the Respondent which was made on 31 January 2019 and received on 7 February 2019.

The parties have engaged in continuing discourse on the matter since the original Notice of Decision and there was reason to believe the issue could be resolved without a referral to the Tribunal.

Signature of applicant or applicant's representative:



Morgan Aaron Bryant
 Morgan Aaron Bryant
 Barrister and Solicitor #10856

Name of applicant or applicant's representative:

(Any representative who is not a lawyer must be properly authorised by an Authorised Person in accordance with Part 4 of the Act)

Date: 22. 02. 19

Checklist for Applicants

Lodgement of an Application for Review of Decision

- Application for Review of Decision* form (available at www.acat.act.gov.au) has been correctly filled out (including):
 - Applicant's name and full contact details, including email address are completed
 - The nature of the decision and the reasons for review are clearly identified
 - The name of relevant legislation is provided (a list is available at www.acat.act.gov.au).
 - Form is signed and dated by the applicant or the applicant's authorised representative.
- A copy of the decision is attached.
- If applicable, *Power of Attorney or Authority to Act for a Corporation form* has been completed (available at www.acat.act.gov.au) to be filed with the application.
- Correct lodgement fee is ready to be provided with application. The ACAT accepts cash, bank cheque and credit card payments over the counter, and bank cheque or credit card payment via post. Credit card payments are accepted via post using the *Credit Card Payment Authorisation* form. Information on fees payable is available at www.acat.act.gov.au.
- Complete *Request About Payment of Fees form* if you believe that the payment of fees will cause hardship and you wish to apply for a waiver of fees. Information on fee waivers is available at www.acat.act.gov.au. You are eligible for an exemption from paying fees if you are the holder of a Commonwealth-issued health care card, low income health care card or pensioner concession card.



ACT CIVIL AND ADMINISTRATIVE TRIBUNAL

Our Ref: AT 14/2019

Konstantinou Developments Pty Ltd ACN 088 414 742
c/- Morgan Bryant
morganbryant@kgroup.com.au

ACT Planning and Land Authority
epdcustomerservices@act.gov.au

Dear Sir/Madam

RE: Konstantinou Developments Pty Ltd ACN 088 414 742 v ACT Planning and Land Authority

Please find enclosed Orders made by the Tribunal. This matter has been listed as follows:

Date: Monday 25 March 2019
Time: 2:00 PM
Location: ACT Civil & Administrative Tribunal
Level 4, 1 Moore Street
Canberra City ACT 2601

If you have any queries please contact this office on (02) 6207 1740.

Yours faithfully,



Deputy Registrar
6 March 2019

**IN THE AUSTRALIAN CAPITAL TERRITORY
CIVIL AND ADMINISTRATIVE TRIBUNAL**

AT 14/2019

Konstantinou Developments Pty Ltd ACN 088 414 742

Applicant

and

ACT Planning and Land Authority

Respondent

Tribunal: Presidential Member M-T Daniel

Date of Order: 05 March 2019

DIRECTIONS

1. Within 14 days of receiving this notice, the respondent is to file with the Tribunal and serve on all parties the following in relation to the decision:
 - (a) a statement setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reason for decision; and
 - (b) every other document or part of a document that is in the respondent's possession or under its control and considered by it to be relevant to the review of decision by the Tribunal.
2. Two (2) copies of the documents referred to in paragraph 1 are to be filed with the Tribunal registry and one (1) copy is to be served on all parties.
3. The respondent is required as soon as practicable to send to each person who is an interested entity/person for the decision under review:
 - (a) a copy of the application for review of decision; and
 - (b) a copy of these directions.
4. Any person to whom the documents referred to in paragraph 3 have been sent who wishes to be joined as a party to these proceedings must make an application in writing and give a copy to each other party within 14 days of the date of this direction.



Presidential Member M-T Daniel

This document is not released in accordance with the
Freedom of Information Act 1982 section 42 - subject to
legal professional privilege

Fairburn, Janine

From: Brookes, Clare
Sent: Thursday, 11 April 2019 3:55 PM
To: Teasdale, Jonathan
Cc: Law-Jamieson, Katherine
Subject: Mitchell Child Care Centre
Attachments: Signed letter re DA Mitchell.pdf

UNCLASSIFIED

Dear Jonathon

Please find attached letter regarding the proposed education and care service development at Mitchell.

Kind Regards

Clare Brookes
Director Early Childhood Regulation, 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



Mr Jonathon Teasdale
A/g Executive Branch Manager
Development Assessment
Environmental Planning and Sustainable Development Directorate

Email: jonathon.teasdale@act.gov.au

Dear Mr Teasdale

1. Thank you for the opportunity to comment on the Development Application for an education and care service on Block 18 Section 11 Mitchell (the site).
2. The Director-General of the ACT Education Directorate is the Regulatory Authority for education and care services in the Australian Capital Territory, pursuant to section 5 of the *Education and Care Services National Law 2010* (the National Law). Children's Education and Care Assurance (Regulatory Authority) of the ACT Education Directorate performs the Regulatory Authority's functions under the National Law in the ACT.
3. One of the Regulatory Authority's functions under the National Law is the assessment and determination of education and care service approval applications. When exercising its functions under the National Law the Regulatory Authority must consider the Law's objectives and guiding principles.
4. The objectives of the National Quality Framework include ensuring the safety, health and wellbeing of children attending education and care services; improving the educational and developmental outcomes for children attending education and care services; and promoting continuous improvements in the provision of quality education and care services (s 3, National Law).
5. The guiding principles of the National Quality Framework include that the rights and best interests of the child are paramount; that children are successful, competent and capable learners; and that best practice is expected in the provision of education and care services.
6. In performing the Regulatory Authorities functions, where an unacceptable risk to the health, safety or wellbeing of children is identified and there are no effective options for effectively reducing the risk to children, the National Law allows the Regulatory Authority to prevent a service from operating.

7. On receipt of a service approval application, Section 47 ('Determination of application') of the National Law prescribes the matters that the Regulatory Authority must have regard to when determining an application for a service approval. In addition Regulation 27 of the Education and Care Regulations provides additional matters to have regard to in determining an application. Regulation 25 (1) sets out information required about proposed education and care service premises.

The National Law and Regulation

Section 47 Determination of application

- (1) Subject to subsection (3), in determining an application under section 43, the Regulatory Authority must have regard to—
- (a) the National Quality Framework; and
 - (b) except in the case of a family day care residence, the suitability of the education and care service premises and the site and location of those premises for the operation of an education and care service; and
 - (c) the adequacy of the policies and procedures of the service; and
 - (d) whether the applicant has a provider approval; and
 - (e) whether the nominated supervisor for the service is a certified supervisor and whether that person has consented in writing to the nomination; and
 - (f) any other matter the Regulatory Authority thinks fit; and
 - (g) any other prescribed matter.
- (2) In addition, the Regulatory Authority may have regard to—
- (a) whether the applicant is capable of operating the education and care service having regard to its financial capacity and management capability and any other matter the Regulatory Authority considers relevant;
 - (b) the applicant's history of compliance with this law or this Law as applying in any participating jurisdiction, including in relation to any other education and care service it operates.
8. Pursuant section 47(1)(g), in determining an application for service approval under section 43, the Regulatory Authority must also have regard to regulation 27 of the National Regulations.

Regulation 27 Additional matters to have regard to in determining application for service approval

In determining an application for a service approval under section 43 of the [National] Law, the Regulatory Authority must have regard to the following matters—

- (a) any suspension of the applicant's provider approval;
 - (b) any conditions of the applicant's provider approval.
9. Section 49 of the National Law prescribes the grounds on which the Regulatory Authority must and may refuse to grant a service approval:

Section 49 Grounds for refusal

- (1) The Regulatory Authority may refuse to grant a service approval if—
- (a) the Regulatory Authority is satisfied that the service, if permitted to operated, would constitute an unacceptable risk to the safety, health or wellbeing of children who would be educated or cared for by the education and care service; or
 - (b) the applicant does not have a provider approval.
- (2) The Regulatory Authority may refuse to grant a service approval on any other grounds prescribed in the national regulations.

10. Regulation 28 prescribes the other grounds on which the Regulatory Authority may refuse to grant service approval:

Regulation 28 Additional grounds for refusal to grant service approval

The Regulatory Authority may refuse to grant a service approval on the following grounds—

- (a) the Regulatory Authority is not satisfied that the applicant is capable of operating the proposed service in a way that meets the requirements of the Law or these Regulations or the National Quality Standard;

Other sections in of the law and regulations set out the requirements for the protection of children from harm and hazard and environmental conditions.

Section 167 Offence relating to protection of children from harm and hazards

- (1) The approved provider of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury.

Regulation 108 Space requirements—outdoor space

- (2) The approved provider of an education and care service must ensure that, for each child being educated and cared for by the service, the education and care service premises has at least 7 square metres of unencumbered outdoor space.

Regulation 110 Ventilation and natural light

The approved provider of an education and care service must ensure that the indoor spaces used by children at the education and care service premises—

- (a) are well ventilated; and
- (b) have adequate natural light; and
- (c) are maintained at a temperature that ensures the safety and wellbeing of children.

Regulation 113 Outdoor space—natural environment

The approved provider of a centre-based service must ensure that the outdoor spaces provided at the education and care service premises allow children to explore and experience the natural environment.

11. In relation to any service approval application for an education and care service located in an industrial zone, the Regulatory Authority would take particular regard to Section 47 (1) (a) the National Quality Framework; and (b) the suitability of the education and care service premises and the site and location of those premises for the operation of an education and care service.
12. Unlike Fyshwick, which is predominantly occupied by retail outlets and warehouses, Mitchell has a higher proportion of factory, manufacturing, automotive and landscaping operators.
13. In September 2011 there was a large chemical fire at a business (ESI) which operated a facility re-processing contaminated electrical oil. At the time 499,798 litres of oil, 428,111 litres of which contained contaminants were on the site. The process for refining contaminated oil involved the use of sodium metal.
14. In its metallic state, sodium is highly reactive and reacts explosively with water to create flammable hydrogen gas and corrosive sodium hydroxide. This process also creates highly alkaline waste water, of which there were 456,211 litres on site at the time of the fire. The fire caused explosions and produced toxic black smoke across North Canberra. The area was evacuated and road closures were remained in place for three days.
15. The proposed site is in close proximity to an automotive business and an industrial landscape supply business which stores fertilisers and other potentially dangerous substances. These may have an adverse impact on the surrounding environment and pose a risk of contamination of soil at the premises and air pollution. In addition, the education and care service would have no control over the activities of other neighbouring operators and passing industrial traffic.
16. In determining an application for service approval, pursuant to Regulation 27, the Regulatory Authority must have regard for any conditions of the applicant's provider approval. It is a condition on all provider's approvals that the provider must comply with the National Law and Regulations.
17. The Regulatory Authority must therefore consider whether the proposed service would operate in compliance with the National Law and Regulations. In particular, the Regulatory Authority must have regard to the provision of a safe and suitable outdoor area (Regulation 108) which provides children with a natural environment (Regulation 113) and ventilation of the indoor spaces (Regulation 110).

18. The Regulatory Authority would pay particular attention to Section 167 of the National Law, and whether the provider had taken every reasonable precaution to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury. The principals and objectives of the National Quality Framework provide that the best interests of the child are paramount and to ensure the safety, health and wellbeing of children attending education and care services.
19. In assessing the location of the proposed site the Regulatory Authority would have regard to the potential risks posed by the environment in an industrial area. This would include any risk posed by passing traffic and neighbouring business activities. Particular regard would be given to potential soil contamination and air quality as these factors may pose a risk of harm to children, an offence under Section 167 of the National Law. In considering whether these risks could be mitigated the Regulatory Authority would consider whether contaminants could be prevented from penetrating the site.
20. The risk of airborne contaminants would be particularly difficult to control as the activities of neighbouring operators and weather conditions such as strong winds and rain would be beyond the provider's control. Although soil samples could be taken regularly and air quality could be monitored constantly, any evidence of contaminants would only become apparent once the risk of harm to children had already eventuated.
21. The objectives and guiding principles in section 3 of the National Law apply to providers approved under Part 2 of the National Law, by way of section 19(2). The Regulatory Authority expects that providers consider the obligations and requirements of the National Law and best practice when considering the selection of an appropriate site for an early childhood service.
22. The Regulatory Authority is concerned in this case that in selecting the proposed site for an education and service, the provider has not considered the obligations and requirements of the National Law and best practice, as required by the National Law, as well as the principle that the rights and best interest of the child are paramount.
23. Nor has the provider shown any evidence that would meet the objective of the National Law to ensure the health, safety and wellbeing of children that would be attending the proposed education and care service.
24. The location of the proposed education and care service poses particular risks in relation to contamination of soil and air pollution. The proposed multi-story design also poses risk in relation to safe and effective emergency evacuation of babies and young children with limited mobility.
25. The proposed site is not in a residential area and no education and care services have previously been approved this area. In the context of the ACT, there are many appropriate sites available for the provision of education and care services in the ACT, with the Regulatory Authority receiving about two new site proposals for consideration each month.

26. Pursuant to Section 49 of the National Law, The Regulatory Authority may refuse to grant a service approval if the Regulatory Authority is satisfied that the prospective service, if permitted to operated, would constitute an unacceptable risk to the safety, health or wellbeing of children who would be educated or cared for by the education and care service.
27. In addition, Regulation 28 provides that the Regulatory Authority may refuse to grant a service approval if it is not satisfied that the applicant is capable of operating the proposed service in a way that meets the requirements of the Law or these Regulations or the National Quality Standard.
28. The Regulatory Authority has considered the issues identified above and has determined that the site and location of the proposed service is not suitable for the operation of an education and care service (Section 47(1)(b)). The Regulatory Authority considers that the service could not comply with the National Quality Framework (Section 47(1)(a)) as it would pose an unacceptable risk to the health, safety or wellbeing of children (Section 167), due to the potential risk of soil contamination and air pollution, particularly but not limited to the outdoor area.
29. The grounds for refusal would be under Section 49 (1)(a) of the National Law; the Regulatory Authority being satisfied that the service, if permitted to operate, would constitute an unacceptable risk to the safety, health or wellbeing of children who would be educated or cared for by the education and care service. In addition, the Regulatory Authority is not satisfied that any applicant would be capable of operating the proposed service in a way that meets the requirements of the Law or these Regulations or the National Quality Standard (Regulation 28(a)).
30. If the Regulatory Authority received an application for an education and care service approval at the proposed site, irrespective of the specific applicant, in consideration of the concerns set out above, the proper application of the law would prevent the Regulatory Authority from issuing an education and care service approval for this site.

Yours sincerely



Clare Brookes
Director Early Childhood Regulation
Education Directorate

11 April 2019

This document is not released in accordance with the
Freedom of Information Act 1982 section 42 - subject to
legal professional privilege

This document is not released in accordance with the
Freedom of Information Act 1982 section 42 - subject to
legal professional privilege



ACT CIVIL AND ADMINISTRATIVE TRIBUNAL

Our Ref: AT 14/2019

Konstantinou Developments Pty Ltd ACN 088 414 742
By email: morgan.bryant@kgroup.com.au

ACT Government Solicitor
Att: Katherine Law-Jamieson
By email: katherine.jamieson@act.gov.au

Dear Sir/Madam

RE: Konstantinou Developments Pty Ltd ACN 088 414 742 v ACT Planning and Land Authority

Please find enclosed Orders made by the Tribunal.

If you have any queries please contact this office on (02) 6207 1740.

Yours faithfully



**IN THE AUSTRALIAN CAPITAL TERRITORY
CIVIL AND ADMINISTRATIVE TRIBUNAL**

AT 14/2019

Konstantinou Developments Pty Ltd ACN 088 414 742

Applicant

and

ACT Planning and Land Authority

Respondent

Tribunal: **Presidential Member M-T Daniel**

Date of Order: **15 April 2019**

**CONSENT DECISION PURSUANT TO SECTION 55 OF THE ACT CIVIL AND
ADMINISTRATIVE TRIBUNAL 2008 (ACT)**

The parties have reached an agreement as to the terms of a decision of the Tribunal that is acceptable to them;

The terms of the agreement have been reduced to writing, signed by or on behalf of the parties and lodged with the Tribunal;

The Tribunal is satisfied that a decision consistent with those terms would be within the powers of the Tribunal;

By consent, the Tribunal makes the following orders:

1. The decision under review with respect to Development Application number DA 201733189 is confirmed, subject to the amendments to the Notice of Decision as set out at Attachment A.
2. The further directions hearing listed on 28 May 2019 and hearing listed on 5, 6 and 7 June 2019 are vacated.

Presidential Member M-T Daniel



ATTACHMENT A

A. AMENDMENTS TO THE NOTICE OF DECISION

1. The Conditions of Approval, at Part 1 of the Notice of Decision, are varied as follows:

- a. Conditions A1 and A2 (a) are revoked.
- b. Condition A2 is varied to remove the following from the heading “- APPROVAL DOES NOT TAKE EFFECT”.
- c. The following is inserted after Advisory Note item E7:

E8. EDUCATION AND CARE SERVICES

The applicant is advised that an approved provider must obtain service approval in order to operate an education and/or care service on the subject site under the *Education and Care Services National Law 2010* (the National Law). The applicant is advised that any proposed provider should contact the relevant Regulatory Authority for the ACT (Director-General, Education Directorate) as soon as possible.

The applicant is advised that s 49(1)(a) of the National Law provides that “the Regulatory Authority must refuse to grant a service approval if – (a) the Regulatory Authority is satisfied that the service, if permitted to operate, would constitute an unacceptable risk to the safety, health or wellbeing of children who would be educated or cared for by the education and care service.” The statements from the Environment Protection Authority and Health Protection Service mentioned at E6 and E7 appear to raise issues about risks to the safety, health or wellbeing of children.

- d. Condition A5 is varied to remove all references to “A1”.



By email [REDACTED]

cc: [REDACTED]

Dear [REDACTED]

DA 2017333819 - Block 18 Section 11 Mitchell

We write with respect to the above parcel of land and Development Application DA 201733819.

We understand that on 15 April 2019 the ACT Civil and Administrative Tribunal (**Tribunal**) made orders pursuant to section 55 of the *ACT Civil and Administrative Tribunal Act 2008* in [REDACTED] and *ACT Planning and Land Authority* (AT 14/2019). The proceedings concerned Development Application number DA 201733819.

The Orders that were made by the Tribunal on 15 April 2019 were achieved by consent of the parties to the proceedings and contain a notation (identified as E8) concerning 'Education and Care Services'.

Education and Care Services in the ACT

You may be aware that the Director-General of the ACT Education Directorate is the *regulatory authority* (**Regulatory Authority**) for the purposes of the *Education and Care Services National Law 2010* (**National Law**) and is responsible for the regulation of education and care services in the Australian Capital Territory. The Children's Education and Care Assurance unit (**CECA**) of the ACT Education Directorate performs the Regulatory Authority's functions under the National Law.

The National Law establishes a two-step regulatory regime by which an *approved provider* may apply to the Regulatory Authority for a service approval for an education and care service. Any application made for an education and care service under section 43 of the National Law is determined on its merits according to those matters to which the Regulatory Authority must have regard under section 47 ('Determination of application'). Section 47 (1) (b) relates to the suitability of the premises and the site location of those premises for the operation of an education and care service.

On 3 November 2017 the Regulatory Authority wrote to you indicating that it considered Block 18 Section 11 Mitchell to be suitable for the development of an education and care service. Since this time the Regulatory Authority has become aware of concerns from both the Environment Protection Authority and Health Protection Service, regarding potential risks of harm to children relating to this site. As a result the Regulatory Authority does not maintain the view that Block 18 Section 11 Mitchell is a suitable site and location for the development of an education and care service.

We encourage you to have thorough regard to the National Quality Framework (which includes the National law) before proceeding with the proposed development of Block 18 Section 11 Mitchell with a view to it hosting an education and care service.

We further encourage you to contact the Regulatory Authority to discuss these matters.

Sincerely,

A grey rectangular box redacting the signature of Clare Brookes.

Clare Brookes
Director Early Childhood Regulation
Education Directorate

26 July 2019

Notes, Radmila Andrić
17/10/19


Jeff Dau, Brian Talbot.

Andrew Sutherland, Jackson
Knight, Chris Gell.

Mitchell

- 4 key entities need to address
- ~~lead~~ lease variation to add child care centre, DA required
- air emissions was an issue
- applic to meet conditions Evo Energy, Icon Water
- permitted

still need to meet A1 & A2 before approval will be effective.

 offering to provide advice for suitability of child care centre.

Education and Care Services Development Applications Meeting

Minutes of Meeting

Thursday, 17 October 2019, 10-11.30am

Venue: Hedley Beare Centre Teaching and Learning, Stirling

Present: Radmila Andric & Nicola Atherton (Early Childhood Policy & Reg), Jeff Dau & Brian Talbot (Fire & Rescue), [REDACTED] & [REDACTED] (EPA), Andrew Stedman & Jason Kneipp (Health), Chris Gell (EPSDD).



2. Industrial Zones (redacted) and Mitchel)



(redacted) advised that industrial activities are supported by the EPA in industrial zones and that the EPA has licensing arrangements (environmental authorisations) for such activities such as (redacted) to enforce environmental controls. He advised the EPA has a long history of recommending childcare centres not be approved in industrial areas and recently during the interim effect period of a draft Territory Plan Variation, development applications for child care centres in Industrial Zones could not be lodged in merit track. Safety of children and land use sterilisation in industrial zones due to land use compatibility issues were the central issues behind the EPA's concerns that triggered the draft variation. The draft variation ended up not being approved by the Planning Minister and consequently the interim effect ceased (redacted)



The Territory plan amendments are recommended to be revisited in relation to Early Childhood centres to protect sensitive populations from unnecessary risk and also to protect industrial activities from encroachment from unnecessary sensitive activities.

- **Mitchell** – (redacted) DA refused based on DA advice, been to ACAT. ACAT said could build. Next door Corkhill Bros (potty mix, toxins an issue). DA requires that A1 & A2 conditions need to be met before approval will be effective.
- (redacted) advised no EPA records of how the EPA requirements in the Notice of decision were changed to remove the EPA requirements for air emissions to be demonstrated to be safe
Chris Gell will provide further information by email about status and any current DA approvals and ACAT decision.





Fairburn, Janine

From: Gell, Chris
Sent: Monday, 28 October 2019 12:38 PM
To: Stedman, Andrew (Health); [REDACTED], Jeff; Talbot, Brian; Andric, Radmila; Kneipp, Jason (Health)
Cc: Brookes, Clare
Subject: B18 S11 Mitchell Childcare centre Outline of Development Application
Attachments: NOTICE OF DECISION 201733198 SIGNED.pdf; 20180918 S196 Formal Correction Letter signed.pdf; AT14 2019 Mediated decision issued by ACAT.pdf; PLAN 201733198 FIRST 01.pdf; PLAN 201733198 GROUND 01.pdf; PLAN 201733198 SECOND 01.pdf; SECTION 201733198 03.pdf; PERSP 201733198 02.pdf

UNCLASSIFIED

Dear all

As discussed at our meeting on 17 October, below is an outline of the recent history of the application for a childcare centre at 18/11 Michell.

I've also attached recent documents. Sorry for the delay (especially to Jeff !).

- 04/01/16 – Application DA201528763 to vary the lease to permit Community Use limited to Child care facility submitted. Refused 08/03/16 for reasons including advice provided by entities.
- 19/09/16 – Reconsideration application of the decision confirmed refusal.
- 19/05/17 – ACAT orders that the decision for 201528763 be set aside & the lease varied to permit a childcare facility.
- 16/02/18 – Application DA201733198 lodged for a 3 storey child care centre. This was approved with conditions on 21/05/18 (attached). Conditions included that the approval did not take effect until the EPA, HPS, EVO energy & Icon water conditions were met.
- 18/09/18 – Correction notice issued for 201733198 (attached), clarifying the requirements of conditions A1 (EPA) & A2 (HPS).
- 17/12/18 – Reconsideration application lodged to remove condition A2. This was refused 31/01/19.
- 15/04/19 – ACAT orders provided following mediation on DA201733198 (attached). This removes condition A1, modifies the heading to A2 and includes advisory note.
- 05/09/19 – 201733198 S165B – application to satisfy conditions A3 & A4 of the NOD (Icon & Evo) refused due to a lack of information.
- 04/09/19 – S165 C to meet A3 & A4 relodged. No decision yet.

I've also attached a few of the drawings lodged with DA201733198.

Regards.

Chris Gell
 Director Merit Development Assessment
 Planning Delivery Division - Environment Planning and Sustainable Development Directorate
 P. 02 62072642 e. chris.gell@act.gov.au

Fairburn, Janine

From: Stedman, Andrew (Health)
Sent: Monday, 28 October 2019 1:16 PM
To: Gell, Chris; [REDACTED]; Dau, Jeff; Talbot, Brian; Andric, Radmila; Kneipp, Jason (Health)
Cc: Brookes, Clare
Subject: RE: B18 S11 Mitchell - Childcare centre - Outline of Development Application

UNCLASSIFIED

Hi Chris,

Thanks for putting that together. In relation to the below summary:

15/04/19 – ACAT orders provided following mediation on DA201733198 (attached). This removes condition A1, modifies the heading to A2 and includes advisory note.

From my reading the decision it also removes condition A2(a) – which removes the requirement for the approval of the HPS effectively making the whole of A2 nullified.

Thus making the inclusion of the advisory note E8 more relevant to Education considering EPA and Health concerns.

Kind regards

Andrew Stedman | Public Health Officer | Assistant Director Environment
 Health Protection Service | Public Health, Protection and Regulation | ACT Health
 PH 5124 9087 | 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

IMPORTANT: 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: Gell, Chris <Chris.Gell@act.gov.au>
Sent: Monday, 28 October 2019 12:38 PM
To: Stedman, Andrew (Health) <Andrew.Stedman@act.gov.au>; [REDACTED]; [REDACTED]; Dau, Jeff <Jeff.Dau@act.gov.au>; Talbot, Brian <Brian.Talbot@act.gov.au>; Andric, Radmila <Radmila.Andric@act.gov.au>; Kneipp, Jason (Health) <Jason.Kneipp@act.gov.au>
Cc: Brookes, Clare <Clare.Brookes@act.gov.au>
Subject: B18 S11 Mitchell - Childcare centre - Outline of Development Application

UNCLASSIFIED

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- 17/12/18 – Reconsideration application lodged to remove condition A2. This was refused 31/01/19.
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- 04/09/19 – S165 C to meet A3 & A4 relodged. No decision yet.

I've also attached a few of the drawings lodged with DA201733198.

Regards.

Chris Gell
Director Merit Development Assessment
Planning Delivery Division - Environment Planning and Sustainable Development Directorate
P. 02 62072642 e. chris.gell@act.gov.au

Fairburn, Janine

From: Dau, Jeff on behalf of ACTF&R Risk & Planning
Sent: Tuesday, 29 October 2019 2:14 PM
To: Gell, Chris; Stedman, Andrew (Health); [REDACTED]; Talbot, Brian; Andric, Radmila; Kneipp, Jason (Health)
Cc: Brookes, Clare
Subject: RE: B18 S11 Mitchell - Childcare centre - Outline of Development Application

UNCLASSIFIED

Thanks Chris,

I can't find any formal commentary from ESA on this. ACTF&R would be interested in the multistorey nature of this DA and it just sneaks out of the Bushfire Prone Area so no issues there.

Cheers,

Station Officer Jeff Dau



Bushfire and Development Assessment Officer
 ACT Fire & Rescue | Community Safety
 9 Amberley Ave Fairbairn ACT
 m. 0419826282 p. 62078472
 e. actf&rrisk&planning@act.gov.au

From: Gell, Chris <Chris.Gell@act.gov.au>
Sent: Monday, 28 October 2019 12:38 PM
To: Stedman, Andrew (Health) <Andrew.Stedman@act.gov.au> [REDACTED]; Dau, Jeff <Jeff.Dau@act.gov.au>; Talbot, Brian <Brian.Talbot@act.gov.au>; Andric, Radmila <Radmila.Andric@act.gov.au>; Kneipp, Jason (Health) <Jason.Kneipp@act.gov.au>
Cc: Brookes, Clare <Clare.Brookes@act.gov.au>
Subject: B18 S11 Mitchell - Childcare centre - Outline of Development Application

UNCLASSIFIED

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- 18/09/18 – Correction notice issued for 201733198 (attached), clarifying the requirements of conditions A1 (EPA) & A2 (HPS).

- 17/12/18 – Reconsideration application lodged to remove condition A2. This was refused 31/01/19.
- 15/04/19 – ACAT orders provided following mediation on DA201733198 (attached). This removes condition A1, modifies the heading to A2 and includes advisory note.
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I've also attached a few of the drawings lodged with DA201733198.

Regards.

Chris Gell
Director Merit Development Assessment
Planning Delivery Division - Environment Planning and Sustainable Development Directorate
P. 02 62072642 e. chris.gell@act.gov.au

Fairburn, Janine

From: EPAPanningLiaison
Sent: Thursday, 31 October 2019 12:21 PM
To: Gell, Chris; Stedman, Andrew (Health); [REDACTED] Dau, Jeff; Talbot, Brian; Andric, Radmila; Kneipp, Jason (Health)
Cc: Brookes, Clare
Subject: RE: B18 S11 Mitchell - Childcare centre - Outline of Development Application [SEC=UNCLASSIFIED]

Hi Chris,

Thank you for the history. Can you please advise if there are any records detailing the justification for removing and amending conditions A1 and A2 including why they were removed and what if any measures have been or will be put in place to address the risks to human health and environment these conditions were put in place to address. I have no records of this being referred to the relevant technical areas in the EPA for review or comment which is peculiar given the identified potential risks to human health. Can you please also provide a copy of the most recent decision showing what current conditions apply to the development approval.

Regards,

[REDACTED] | Environment Protection Authority Planning Liaison

Phone [REDACTED]

Environmental Quality | Office of the Environment Protection Authority | Access Canberra | **ACT Government**
 470 Northbourne Ave Dickson ACT 2602 | GPO Box 158 Canberra ACT 2601 | www.environment.act.gov.au

From: Gell, Chris
Sent: Monday, 28 October 2019 12:38 PM
To: Stedman, Andrew (Health) <Andrew.Stedman@act.gov.au>; [REDACTED]; [REDACTED]; Dau, Jeff <Jeff.Dau@act.gov.au>; Talbot, Brian <Brian.Talbot@act.gov.au>; Andric, Radmila <Radmila.Andric@act.gov.au>; Kneipp, Jason (Health) <Jason.Kneipp@act.gov.au>
Cc: Brookes, Clare <Clare.Brookes@act.gov.au>
Subject: B18 S11 Mitchell - Childcare centre - Outline of Development Application

UNCLASSIFIED

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- 17/12/18 – Reconsideration application lodged to remove condition A2. This was refused 31/01/19.
- 15/04/19 – ACAT orders provided following mediation on DA201733198 (attached). This removes condition A1, modifies the heading to A2 and includes advisory note.
- 05/09/19 – 201733198-S165B – application to satisfy conditions A3 & A4 of the NOD (Icon & Evo) refused due to a lack of information.
- 04/09/19 – S165 C to meet A3 & A4 relodged. No decision yet.

I've also attached a few of the drawings lodged with DA201733198.

Regards.

Chris Gell
Director Merit Development Assessment
Planning Delivery Division - Environment Planning and Sustainable Development Directorate
P. 02 62072642 e. chris.gell@act.gov.au

Fairburn, Janine

From: EPAPanningLiaison
Sent: Thursday, 14 November 2019 1:49 PM
To: Andric, Radmila; Gell, Chris; Barr, Conrad (Health); Stedman, Andrew (Health); EPAPanningLiaison; Sargent, Narelle; [REDACTED]; Dau, Jeff; Talbot, Brian; Kneipp, Jason (Health); Owens, Paul; ACTF&R Risk & Planning; Gell, Chris
Cc: Brookes, Clare; Sullivan, Susan; King, Meg; Green, Jennifer
Subject: RE: Agenda - Early Childhood Policy and Reg Development Applications Minutes of Meeting 17 Oct [SEC=UNCLASSIFIED]

Hi Radmila,

Thank you for your efforts – was a very productive meeting and was nice to see you at this forum.

Please see attached minutes I've made some tracked changes to.



Minutes -
Childhood Polic...

Thanks again.

Regards,

[REDACTED] Environment Protection Authority Planning Liaison

Phone [REDACTED]

Environmental Quality | Office of the Environment Protection Authority | Access Canberra | **ACT Government**
 470 Northbourne Ave Dickson ACT 2602 | GPO Box 158 Canberra ACT 2601 | www.environment.act.gov.au

From: Andric, Radmila
Sent: Thursday, 14 November 2019 10:06 AM
To: Gell, Chris <Chris.Gell@act.gov.au>; Barr, Conrad (Health) <Conrad.Barr@act.gov.au>; Stedman, Andrew (Health) <Andrew.Stedman@act.gov.au>; EPAPanningLiaison <EPAPanningLiaison@act.gov.au>; Sargent, Narelle <Narelle.Sargent@act.gov.au>; [REDACTED]; Dau, Jeff <Jeff.Dau@act.gov.au>; Talbot, Brian <Brian.Talbot@act.gov.au>; Kneipp, Jason (Health) <Jason.Kneipp@act.gov.au>; Owens, Paul <Paul.Owens@act.gov.au>; ACTF&R Risk & Planning <ACTF-RRisk-Planning@act.gov.au>; Gell, Chris <Chris.Gell@act.gov.au>
Cc: Brookes, Clare <Clare.Brookes@act.gov.au>; Sullivan, Susan <Susan.Sullivan@act.gov.au>; King, Meg <Meg.King@act.gov.au>; Green, Jennifer <Jennifer.Green@act.gov.au>
Subject: Agenda - Early Childhood Policy and Reg Development Applications Minutes of Meeting 17 Oct

UNCLASSIFIED
For-Official-Use-Only

<< File: Minutes - Childhood Policy Reg DA meeting 17Oct.docx >>

Good morning all,

Please find attached the minutes from the Early Childhood Policy & Regulation Development Applications Meeting held on 17 October 2019.

Any further correspondence in relation to these meetings should be directed to Clare Brookes, as she will be back on 19 November 2019.

The next meeting is scheduled for 9 January 2020.

Kind Regards

Radmila Andric
A/g Senior Director, Early Childhood Regulation, Early Childhood Policy and Regulation | Education | ACT Government
P 02 6205 0615

Level 3, Hedley Beare Centre for Teaching and Learning, 51 Fremantle Drive Stirling 2611 |
GPO Box 158 Canberra ACT 2601
www.education.act.gov.au | [Facebook](#) | [Twitter](#) | [Instagram](#) | [LinkedIn](#) | [CECA Facebook](#) | www.det.act.gov.au

From: Andric, Radmila
Sent: Tuesday, 15 October 2019 4:15 PM
To: Gell, Chris <Chris.Gell@act.gov.au>; Barr, Conrad (Health) <Conrad.Barr@act.gov.au>; Stedman, Andrew (Health) <Andrew.Stedman@act.gov.au>; EPAPanningLiaison <EPAPanningLiaison@act.gov.au>; Sargent, Narelle <Narelle.Sargent@act.gov.au>
>; Dau, Jeff <Jeff.Dau@act.gov.au>; Talbot, Brian <Brian.Talbot@act.gov.au>; Kneipp, Jason (Health) <Jason.Kneipp@act.gov.au>; Owens, Paul <Paul.Owens@act.gov.au>; ACTF&R Risk & Planning <ACTF-RRisk-Planning@act.gov.au>; Gell, Chris <Chris.Gell@act.gov.au>
Cc: Brookes, Clare <Clare.Brookes@act.gov.au>; Sullivan, Susan <Susan.Sullivan@act.gov.au>; King, Meg <Meg.King@act.gov.au>; Green, Jennifer <Jennifer.Green@act.gov.au>
Subject: Agenda - Early Childhood Policy and Reg Development Applications Meeting 17 Oct

UNCLASSIFIED
For-Official-Use-Only

<< File: Agenda17Oct19- Childhood Policy Reg Development Applications.docx >>

Dear all,

Please find attached the Agenda for the upcoming Early Childhood Policy and Regulation Development Applications joint meeting on 17 October 2019 at 10am.

As you may be aware, I'm currently acting in Clare Brooke's position and will be attending the meeting.

Feel free to forward this email on to anyone I may have inadvertently missed.

Please let me know if you can't make it, otherwise I will meet you in the foyer at 10am on Thursday 17 October.

Kind Regards

Radmila Andric
A/g Senior Manager, Early Childhood Regulation, Early Childhood Policy and Regulation | Education | ACT Government
P 02 6205 0615

Education and Care Services Development Applications Meeting

Minutes of Meeting

Thursday, 17 October 2019, 10-11.30am

Venue: Hedley Beare Centre Teaching and Learning, Stirling

Present: Radmila Andric & Nicola Atherton (Early Childhood Policy & Reg), Jeff Dau & Brian Talbot (Fire & Rescue), [REDACTED] (EPA), Andrew Stedman & Jason Kneipp (Health).



2. Industrial Zones ([redacted] and Mitchel)

[redacted] advised that industrial activities are supported by the EPA in industrial zones and that the EPA has licensing arrangements (environmental authorisations) for such activities such as [redacted] to enforce environmental controls. He advised the EPA has a long history of recommending ~~had strong opinions about~~ childcare centres not be approved in industrial areas and recently during the interim effect period of a ~~previously for a long time~~ draft Territory Plan Variation, development applications for child care centres in Industrial Zones could not be lodged in merit track. Safety of children and land use sterilisation in industrial zones due to land use compatibility issues ~~were~~ the central ~~an~~ issues behind the EPA's concerns that triggered the draft variation. The draft variation ended up not being approved by the Planning Minister and consequently the interim effect ceased.

The Territory plan amendments ~~are recommended~~ need to be revisited in relation to Early Childhood centres to protect sensitive populations from unnecessary risk and also to protect industrial activities from encroachment from unnecessary sensitive activities.

- **Mitchell** – [redacted] DA refused based on DA advice, been to ACAT. ACAT said could build. Next door Corkhill Bros (potty mix, toxins an issue). DA requires that A1 & A2 conditions need to be met before approval will be effective.
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- Chris Gell** will provide further information by email about status and any current DA approvals and ACAT decision.



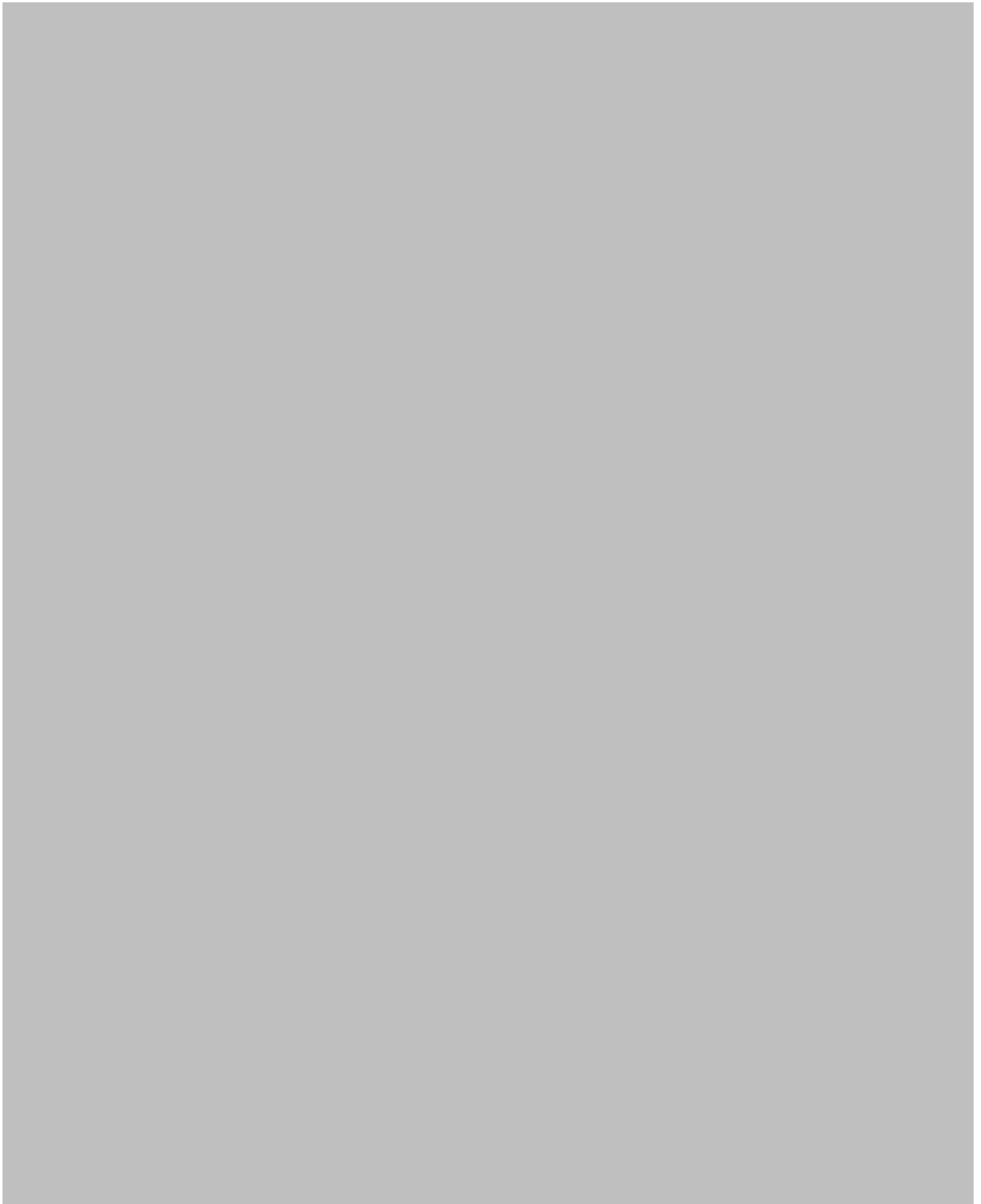
Planning for Early Childhood

Attendees: Paul – Fire & Rescue, Kate – Health protection, Faith, [REDACTED], [REDACTED] Clare, Susan, Meg

Apologies: Mark - health

Mitchell Block 18 Section 7– developers have contacted CECA again. CECA sent same response, multi-storey and environment. [REDACTED] wrote to Chris Gell questioning removing the A1 A2 conditions. No response. Issues are still outstanding. Concerns with the process to remove the conditions. Environments are entity, mandatory for the entity under planning for that agency to be given the opportunity to participate. Also got outstanding environmental and human health concerns.

Faith – Health haven't heard anything since last year. Paul – hasn't heard anymore either. Paul will check if there is anything he may have missed.



Fairburn, Janine

From: Sargent, Narelle
Sent: Tuesday, 30 March 2021 5:47 PM
To: Brookes, Clare
Cc: Stedman, Andrew (Health); Cilliers, George; Moysey, Sean
Subject: RE: Block 18 Section 11 Mitchell - meeting to discuss DA amendment

Hi Clare
Yes that is fine.

Warm regards
Narelle

From: Brookes, Clare <Clare.Brookes@act.gov.au>
Sent: Tuesday, 30 March 2021 5:40 PM
To: Sargent, Narelle <Narelle.Sargent@act.gov.au>
Cc: Stedman, Andrew (Health) <Andrew.Stedman@act.gov.au>; Cilliers, George <George.Cilliers@act.gov.au>; Moysey, Sean <Sean.Moysey@act.gov.au>
Subject: RE: Block 18 Section 11 Mitchell - meeting to discuss DA amendment

OFFICIAL

Hi Narelle

We would like to have a pre-meet as this a particularly sensitive application and some time has passed since the decision to remove the conditions on the DA.

Can I propose 4.00pm on 6 April 2021.

Kind Regards

Clare Brookes
Senior Director, Early Childhood Regulation, 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.education.act.gov.au | [Facebook](#) | [Twitter](#) | [Instagram](#) | [LinkedIn](#) | [CECA Facebook](#) | www.det.act.gov.au

From: Sargent, Narelle <Narelle.Sargent@act.gov.au>
Sent: Tuesday, 30 March 2021 5:37 PM
To: Brookes, Clare <Clare.Brookes@act.gov.au>
Cc: Stedman, Andrew (Health) <Andrew.Stedman@act.gov.au>; Cilliers, George <George.Cilliers@act.gov.au>
Subject: RE: Block 18 Section 11 Mitchell - meeting to discuss DA amendment

Hi Clare
I thought you were referring to eh meeting that [REDACTED] is organising.

I don't think we need a separate meeting.

Warm regards
Narelle

From: Brookes, Clare <Clare.Brookes@act.gov.au>
Sent: Tuesday, 30 March 2021 5:06 PM
To: Sargent, Narelle <Narelle.Sargent@act.gov.au>
Subject: RE: Block 18 Section 11 Mitchell - meeting to discuss DA amendment

OFFICIAL

Thanks Narelle

I'll see if others are available at 4.00pm.

Kind Regards

Clare Brookes
Senior Director, Early Childhood Regulation, Early Childhood Policy and Regulation | Education | ACT Government
P 02 6205 0615 M 0481 003 833

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From: Sargent, Narelle <Narelle.Sargent@act.gov.au>
Sent: Tuesday, 30 March 2021 4:55 PM
To: Brookes, Clare <Clare.Brookes@act.gov.au>
Subject: RE: Block 18 Section 11 Mitchell - meeting to discuss DA amendment

Hi Clare
I have a meeting on Tuesday 6 from midday until 3.30pmish.

Warm regards
Narelle

From: Brookes, Clare <Clare.Brookes@act.gov.au>
Sent: Tuesday, 30 March 2021 4:27 PM
To: Sargent, Narelle <Narelle.Sargent@act.gov.au>
Cc: Stedman, Andrew (Health) <Andrew.Stedman@act.gov.au>
Subject: RE: Block 18 Section 11 Mitchell - meeting to discuss DA amendment

OFFICIAL

Thanks Narelle

I've managed to locate the ACAT decision. Although this removes the conditions A1 and A2 which require the air monitoring, it does make reference to the concerns raised by the Health Protection Service and EPA in the NoD DA 201733198 . So we will still be seeking your advice if the developer goes ahead with the build and we receive an application for service approval. We must refuse an application if we are satisfied that the premises, site or location would pose an unacceptable risk to the health, safety or welfare or children and we would be seeking your advice in this regard. Andrew Stedman and I will be meeting to discuss this next Tuesday afternoon if you are available to join us?

Kind Regards

Clare Brookes
Senior Director, Early Childhood Regulation, Early Childhood Policy and Regulation | Education | ACT Government
P 02 6205 0615 M 0481 003 833

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From: Sargent, Narelle <Narelle.Sargent@act.gov.au>

Sent: Tuesday, 30 March 2021 3:44 PM

To: Brookes, Clare <Clare.Brookes@act.gov.au>

Cc: Stedman, Andrew (Health) <Andrew.Stedman@act.gov.au>; Cilliers, George <George.Cilliers@act.gov.au>

Subject: FW: Block 18 Section 11 Mitchell - meeting to discuss DA amendment

Hi Clare

That's a question for George as he is with the Planning Authority.

Warm regards

Narelle

From: Brookes, Clare <Clare.Brookes@act.gov.au>

Sent: Tuesday, 30 March 2021 3:38 PM

To: Sargent, Narelle <Narelle.Sargent@act.gov.au>

Cc: Cilliers, George <George.Cilliers@act.gov.au>; Stedman, Andrew (Health) <Andrew.Stedman@act.gov.au>

Subject: RE: Block 18 Section 11 Mitchell - meeting to discuss DA amendment

OFFICIAL

Thanks Narelle

Just so that I can check back our records, when was the NoD issued?

Kind Regards

Clare Brookes

Senior Director, Early Childhood Regulation, 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 |
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From: Sargent, Narelle <Narelle.Sargent@act.gov.au>

Sent: Tuesday, 30 March 2021 3:34 PM

To: Brookes, Clare <Clare.Brookes@act.gov.au>

Cc: Cilliers, George <George.Cilliers@act.gov.au>; Stedman, Andrew (Health) <Andrew.Stedman@act.gov.au>

Subject: RE: Block 18 Section 11 Mitchell - meeting to discuss DA amendment

Hi Clare

The Planning Authority issued a correction to the Notice of Decision (NoD), whereby EPA no longer needs to endorse the air quality report required under Condition A2. Under Condition A1 the air quality report only needs to be submitted to the EPA.

As such, the EPA doesn't need to attend.

Warm regards

Narelle

From: Brookes, Clare <Clare.Brookes@act.gov.au>
Sent: Tuesday, 30 March 2021 3:32 PM
To: Sargent, Narelle <Narelle.Sargent@act.gov.au>; Cilliers, George <George.Cilliers@act.gov.au>; Stedman, Andrew (Health) <Andrew.Stedman@act.gov.au>
Subject: FW: Block 18 Section 11 Mitchell - meeting to discuss DA amendment

OFFICIAL

Dear Colleagues

I have just received an invitation for a meeting at 11.00am on 8 April 2021. Could you please let me know if you will be attending? I think it would be useful to have a catchup before the meeting takes place.

Kind Regards

Clare Brookes
Senior Director, Early Childhood Regulation, 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 |
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From: Partridge, Leah <Leah.Partridge@act.gov.au>
Sent: Friday, 26 March 2021 10:33 PM
To: Brookes, Clare <Clare.Brookes@act.gov.au>
Subject: Fw: Block 18 Section 11 Mitchell - meeting to discuss DA amendment

FYI

Leah Partridge | Assistant Director | Early Childhood Regulatory Policy
Phone 02 6207 8083 | Leah.Partridge@act.gov.au
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) <Andrew.Stedman@act.gov.au>
Sent: Friday, 26 March 2021 16:36
To: [REDACTED] Partridge, Leah <Leah.Partridge@act.gov.au>;
Sargent, Narelle <Narelle.Sargent@act.gov.au>; Cilliers, George <George.Cilliers@act.gov.au>; [REDACTED]
Cc: [REDACTED]; Kneipp, Jason (Health) <Jason.Kneipp@act.gov.au>
Subject: RE: Block 18 Section 11 Mitchell - meeting to discuss DA amendment

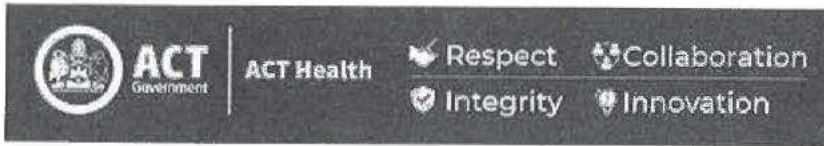
OFFICIAL

Hi [REDACTED]

So I can brief up appropriately, has there been any further work done in relation to the HPS correspondence to [REDACTED] of 11 December 2018?

Kind regards

Andrew Stedman | Public Health Officer | Assistant Director Environmental Health
Ph: 02 5124 9087 | Mobile: 0434 607 429 | Email: Andrew.stedman@act.gov.au
Health Protection Service, Public Health Protection and Regulation | ACT Health Directorate
25 Mulley Street, HOLDER ACT 2611 | Locked Bag 5005 WESTON CREEK ACT 2611
health.act.gov.au



Please note that I do not work Wednesdays

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From: [Redacted]
Sent: Friday, 26 March 2021 3:01 PM
To: Partridge, Leah <Leah.Partridge@act.gov.au>; Stedman, Andrew (Health) <Andrew.Stedman@act.gov.au>; Sargent, Narelle <Narelle.Sargent@act.gov.au>; Cilliers, George <George.Cilliers@act.gov.au>; [Redacted]
Cc: [Redacted]
Subject: Block 18 Section 11 Mitchell - meeting to discuss DA amendment

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Good afternoon

We would like to organise a time to meet to resolve the outstanding issues with block 18 section 11 Mitchell.

The DA in question is DA201733198. The purpose of the meeting is to discuss outstanding matters in relation to agency requirements for the childcare centre proposal.

[Redacted] is available Wednesday 7 April between 12:00noon and 1:30pm or on Thursday 8 April between 11:00am and 1:30pm. Alternatively Friday 9 April between 1:00pm and 3:00pm is also available. Please let me know if any of this time suites you.

Kind regards

