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B R I E F

SUBJECT: ACAT APPEAL NUMBER AT13/25
Block 21 Section 33 Monash

Addressee: Derek Kettle
Manager – Government Law & Litigation
ACT Government Solicitor

BACKGROUND

Development Application (DA) Number 201222272, lodged on 30 October 2012, for Block 21 Section 33 Monash, for **unapproved storage building located to the rear of the existing residence.**

Public Notification

DA 201222272 was publicly notified pursuant to section 153 of the *Planning and Development Act 2007* from 2 November 2012 to 16 November 2012 and three (3) representations were received.

The main issues raised related to:

- Illegal operation of car repair/mechanic business;
- The unapproved storage building would support the operation of the illegal home business, car repair/mechanic business. This type of home business should be moved to outside residential areas;
- Stormwater easement is not accessible;
- The development application does not comply with minimum 50% of the private open space to be retained as planting area requirement, in accordance with the Single Dwelling Housing Development Code;
- The development application does not comply with maximum allowable plot ratio requirement of 50%, in accordance with the Single Dwelling Housing Development Code;
- Inadequate spatial separation between the neighbouring dwellings;

The majority of the submissions were received from residents of properties adjacent to the subject block.

Decision

The proposal was refused on 8 February 2013 because it did not comply with the following rules and criteria of the Single Dwelling Housing Development Code (Code):

Part A of the Code

- Rule 4 – Plot ratio

Part C(1) of the Code

- Rule 31 and Criterion 31 – Side Setback
- Rule 32 and Criterion 32 – Rear boundary Setback
- Rules 47 & 50 and Criteria 47 & 50– Private Open Space

Notwithstanding this, the unapproved storage building is constructed above the stormwater easement, located along the rear boundary. Consequently, TAMSD did not support the development application.

CURRENT STATUS

Representors to the development application were notified of the decision on 11 February 2013 and the period for lodging an appeal expires 28 days after (12 March 2013).

An appeal has been lodged with the ACAT by the applicant of DA201222272.

ISSUES HIGHLIGHT

Issues not apparent from the T documents, reports, correspondence

Previously a home business for the car repair/mechanic business was refused by the planning and land authority (DA200600041). This decision was reviewed by the Administrative Appeals Tribunal (AAT) (AT06-063) and the planning and land authority's decision was affirmed by AAT.

Since then, the lessee has continued to carry out the car repair/mechanic business on the subject site without approval.

The neighbouring residents have lodged a number of complaints with the Land and Lease Regulation Section of ESDD.

Issues that are particularly sensitive

One of the representors who provided written representation during the public notification does not wish to be known to the lessee of the subject block. The planning and land authority has been advised by this representor that the lessee of the subject block has verbally threatened the neighbours for voicing their concerns regarding the illegal home business.

Notwithstanding this, the lessee of the subject site has lodged a development application (DA 201222161) on 31 May 2013 for a home business - car repair/mechanic business for approval.

Currently, DA 201222161 is on public notification and the public notification finishes on 27 June 2013.

It is the intention of the planning and land authority to refuse the home business application.

Legal issues which require legal opinion/advice (evidentiary issues, jurisdictional issues, statutory procedures (eg notifications, consultations with relevant authorities – whether complied with or not)

None

“Sticking point” issues (e.g. which impedes negotiation/settlement)

None

Issues of concern:

- **Evidentiary issues**
None
- **Expert witness(es)**
 - Representative of the planning and land authority
 - Representative of Territory and Municipal Services Directorate regarding location of the stormwater easement to the rear of the block
- **Outcome desired**
The decision of the planning and land authority is upheld.

CONTACT DETAILS

Contacts of each of the other parties and their legal representatives

The Lessee:



The Authority Personnel

Rumana Jamaly
16 Challis Street
Dickson ACT 2602
Phone: (02) 6207 1830
Fax: (02) 6207 1856
E-mail: rumana.jamaly@act.gov.au

Ada Park
16 Challis Street
Dickson ACT 2602
Phone: (02) 6207 1854
Fax: (02) 6207 1856
E-mail: ada.park@act.gov.au

ACAT Applicant



Technical Coordinator ✓
Merit Assessment South
Planning Delivery Division
Environment and Sustainable Development Directorate

19 June 2013

From: [ACTPLA Customer Services](#)
To: [REDACTED]
Subject: CLOSE OF PUBLIC NOTIFICATION-201222272-21/33 MONASH-01
Date: Wednesday, 21 November 2012 10:49:00 AM

Dear Sir/Madam,

CLOSE OF PUBLIC NOTIFICATION PERIOD
BLOCK 21 SECTION 33 SUBURB MONASH
DEVELOPMENT APPLICATION NUMBER 201222272

The public Notification period for DA 201222272 has now closed.

Attached for your information is a copy of all representations received by the Environment and Sustainable Development Directorate during the public notification period.

The assessment of your application will now be finalised taking into consideration the representations that have been received. You will be advised in writing of the decision as soon as the DA has been determined.

If you require any further information please contact (02) 6207 1923.

Kind Regards

Customer Services
Regulation and Services
Environment and Sustainable Development Directorate p 6207 1923 | e actpla_customer_services@act.gov.au
| web www.actpla.act.gov.au

From: [Henriquez, Jose](#)
To: [ACTPLA Customer Services](#)
Cc: [TAMS CIS ASG DA COORD](#); [Rahman, Omar](#)
Subject: COMM: REFERRAL-TAMS-201222272-21/33 MONASH-01
Date: Friday, 16 November 2012 3:24:12 PM
Attachments: [image001.png](#)
[image002.png](#)

Dear App Sec,

DEVELOPMENT APPLICATION NO: 201222272

Project Description:

SINGLE RESIDENTIAL-SEEKING APPRVAL FOR EXISTING WORK. Proposal is seeking approval for existing unapproved work including store room 1, 2, 3 & 5 at the rear of the dwelling.

BLOCK: 21	SECTION: 33	DIVISION: MONASH
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This DA has been assessed in regards to the following:

Traffic	Driveways	
Parking	LMPP/Street Trees	X
Public Transport	Street Lighting	
Waste Management	Pedestrian Footpath	
Stormwater Tie/Sump	Stormwater Easement	X
Noise	EDP	
Further Information	Amendments/Additions/Alteration	X
Acoustics	Capital Works	
Lease Variation	Signage	

X = Areas Assessed.

And our position is:

That It Is Supported	
That It Is Supported With Conditions	
That It Is Not Supported	X
That Further Information Is Required	

Reasons

1. Buildings are not permitted over stormwater easements unless they comply with TAMS' standard for Construction Within the Vicinity of a Stormwater Easement.
2. However, is proposed storeroom does not comply with TAMS' standard for Construction Within the Vicinity of a Stormwater Easement.
3. As a result this DA proposal is not supported.

Additional Comments/Advice (as advice to ACTPLA only, and not to be included in the Notice

of Decision)

4. N/A.

Kind regards,

JOSE HENRIQUEZ

DEVELOPMENT APPLICATION COORDINATOR

ASSET ACCEPTANCE | OPERATIONAL SUPPORT BRANCH | DIRECTORATE SERVICES DIVISION |

[REDACTED]

[REDACTED]

From: ACTPLA Customer Services
Sent: Wednesday, 31 October 2012 3:00 PM
To: TAMS CIS ASG DA
Subject: REFERRAL-TAMS-201222272-21/33 MONASH-01

REFERRAL-TAMS-201222272-21/33 MONASH-01

DEVELOPMENT APPLICATION NO: 201222272
BLOCK: 21 SECTION: 33 DIVISION: MONASH

Description - SINGLE RESIDENTIAL-SEEKING APPRVAL FOR EXISTING WORK.
Proposal is seeking approval for existing unapproved work including store room 1, 2, 3 & 5 at the rear of the dwelling.

Pursuant to Section 148(1) of the Planning and Development Act 2007 the ACT Planning and Land Authority requests that you consider the abovementioned development application and provide any written advice no later than 15 working days after the date of this notice (21/11/2012).

In accordance with Section 150 of the Planning and Development Act 2007 If advice is not received within the prescribed time it will be taken that you have supported the application.

Please forward any written advice via email to Customer Services actpla_customer_services@act.gov.au

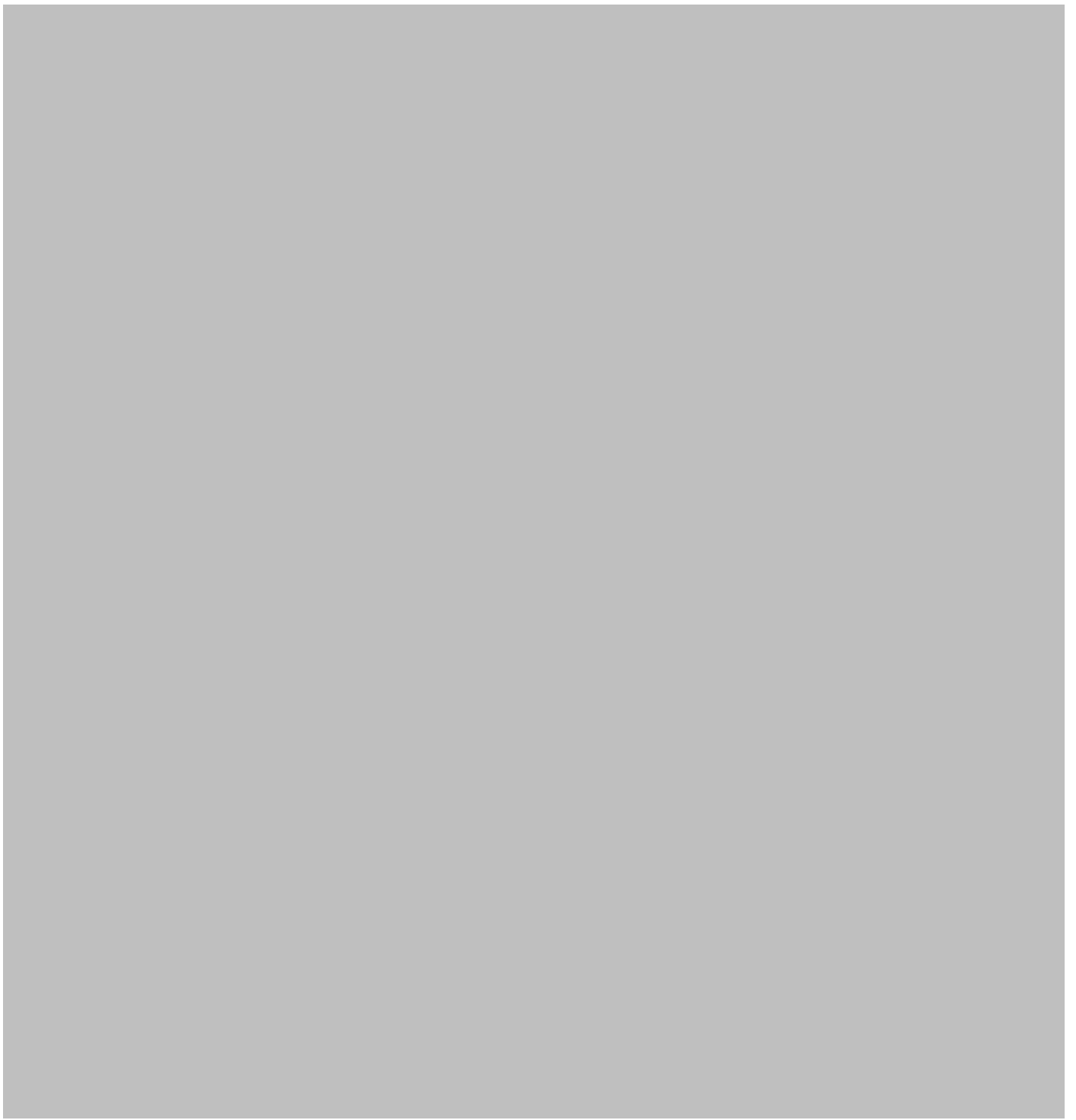
Please use the following format in the subject line of the email when providing advice:

COMM-Agency Name-20080XXXX-Block XX Section XX SuburbXXXXX-01
Example: COMM-Heritage-200801234-Block 10 Section 10 Dickson-01

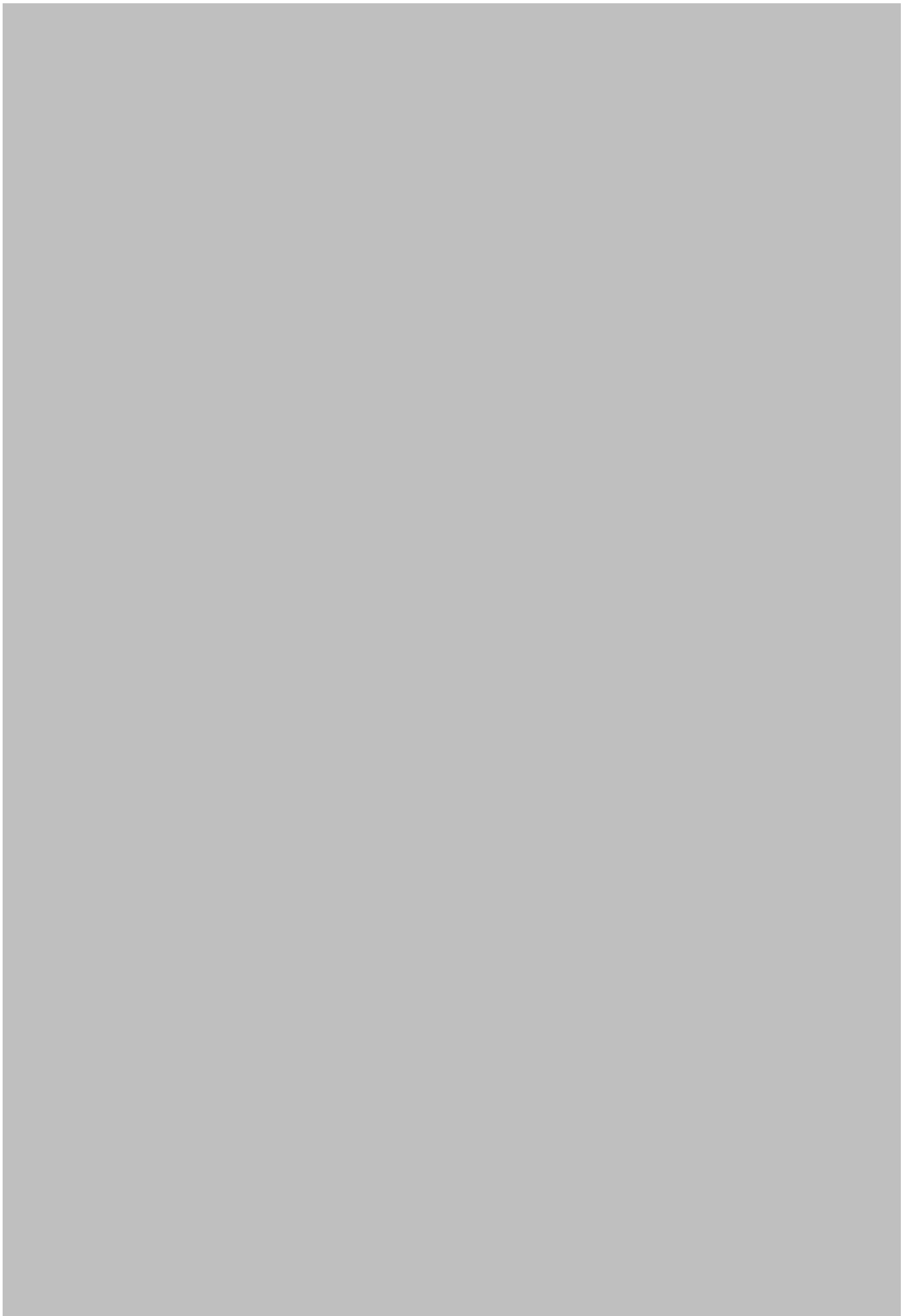
Kind Regards

Customer Services
Environment and Sustainable Development Directorate

p 6207 1923 | e actpla_customer_services@act.gov.au | web
www.actpla.act.gov.au

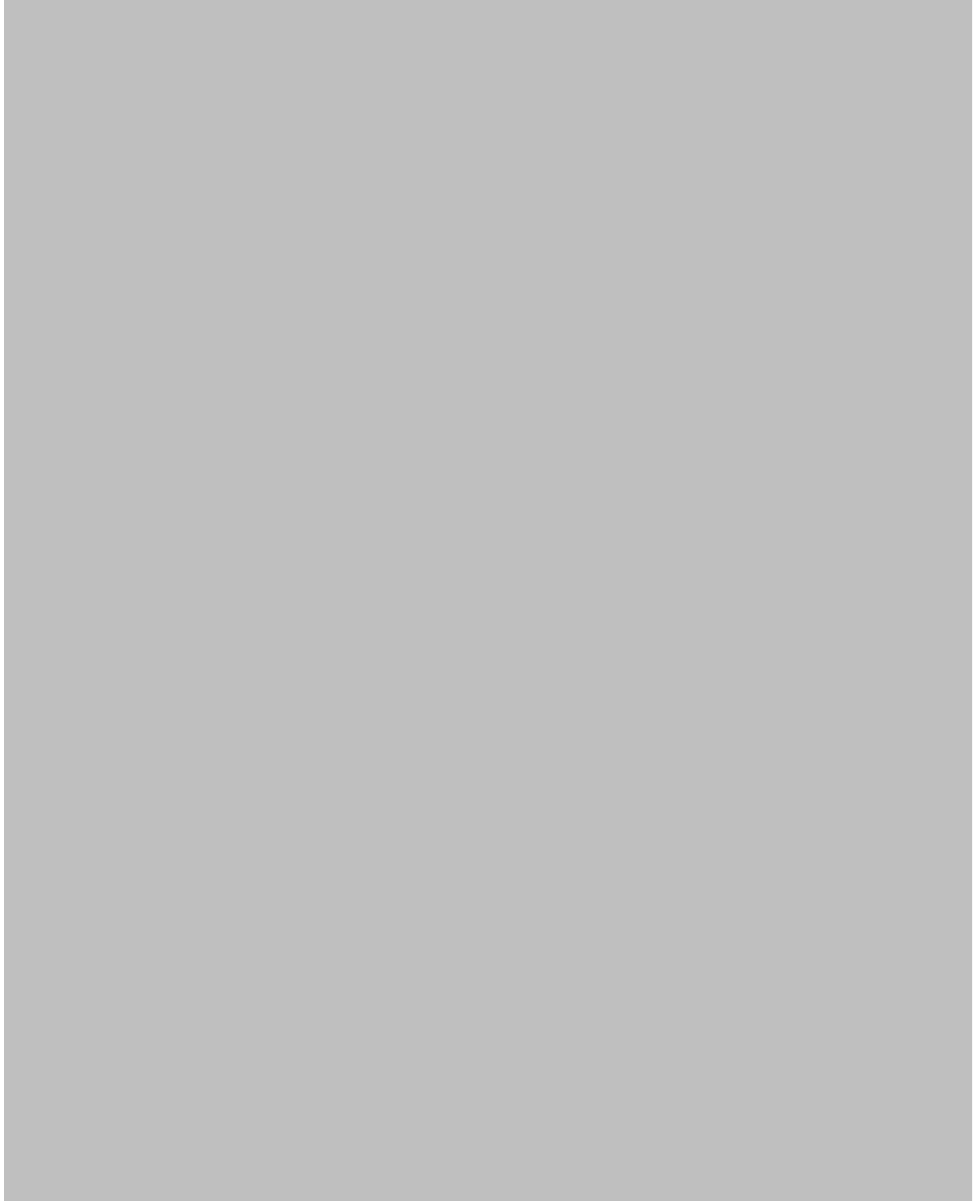












From: [REDACTED]
To: [ACTPLA Customer Services](#)
Subject: DA201222272
Date: Monday, 12 November 2012 3:21:23 PM
Attachments: [image001.jpg](#)

Dear sir/madam

I would like to make a comment on the subject DA.

For a number of years now there have been several requests for approval to operate a service garage from the subject property. [REDACTED] and I appreciate that the business is well run but it degrades the suburban ambience expected from a residential zoned area and depreciates the value of our house. In all previous applications this representation has been supported. We appreciate that ACTPLA has made several attempts to decline the operation of this business, albeit with no success. [REDACTED] and I are concerned that the storage sheds directly support the operation of this business. While we have no objection to the construction of storage sheds for residential purposes, we are hopeful that ACTPLA will not compromise its efforts to have this business move to a more appropriately zoned location.

[REDACTED]

[REDACTED]

[REDACTED]

<p>S119 (1)(b) Any land management agreement for the land (for proposed development relating to land comprised in a rural lease)</p>	<p>The proposal is not for a proposed development relating to land comprised in a rural lease.</p>
<p>S119 (1)(c) the advice of the Conservator of Flora and Fauna in relation to the proposal (if the proposed development will affect a registered tree or declared site)</p> <p>NB: In accordance with Section 119(3)(a), the application must not be approved unless the approval is consistent with the advice of the Conservator of Flora and Fauna in relation to a proposal that will affect a registered tree or declared site.</p>	<p>The proposal is not for a proposed development that will affect a registered tree or declared site.</p>
<p>S119 (2) Consistency with advice given by an entity to which the application was referred under division 7.3.3 of the Act.</p> <p>NB: Under Section 119 (2) of the Act, development approval must not be given for a development proposal in the merit track if approval would be inconsistent with any advice given by an entity to which the application was referred under division 7.3.3 unless the person deciding the application is satisfied that –</p> <p>(a) the following have been considered:</p> <ul style="list-style-type: none"> (i) any applicable guidelines; (ii) any realistic alternative to the proposed development, or relevant aspects of it; and <p>(b) the decision is consistent with the objects of the Territory Plan</p>	<p>The decision is not inconsistent with any advice given by an entity to which the application was referred under division 7.3.3 of the Act.</p>

Planning and Development Act 2007 - Section 120

In deciding a Merit Track development application, a decision maker must consider the following six items numbered S120 (a) to S120 (f).

<p>S120 (a) Zone Objectives</p> <p>Zone Objectives</p> <p>a) Create a wide range of affordable and sustainable housing choices within a low density residential environment to accommodate population growth and meet changing household and community needs</p> <p>b) Ensure development respects and contributes to the neighbourhood and landscape character of residential areas</p> <p>c) Provide opportunities for home based employment consistent with residential amenity</p> <p>d) Provide for a limited range of small-scale facilities to meet local needs consistent with residential amenity</p> <p>e) Promote energy efficiency and conservation and sustainable water use</p>	<p>The development is proposed to take place in the Suburban Zone – RZ1.</p> <p>The proposal is not consistent with objective</p> <p><i>b) Ensure development respects and contributes to the neighbourhood and landscape character of residential areas</i></p> <p>The site inspection carried out indicates that the car mechanical home business is being conducted on the subject site without approval.</p> <p>The application meets all objectives of the zone except</p> <p>b) and d)</p> <p><i>b) Ensure development respects and contributes to the neighbourhood and landscape character of residential areas</i></p> <p><i>d) Provide for a limited range of small-scale facilities to meet local needs consistent with residential amenity</i></p>
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S120 (b) Suitability of the Land	<p>The proposed development seeks approval to use the land or a building or structure of the land for the purpose(s) of STOREROOMS on single dwelling housing</p> <p>The proposed use is listed as an assessable development in the Minimum Assessment Track Merit zone development table, and is therefore determined to be a permissible use for the land</p> <p>The proposed development is in accordance with the provisions of the Crown Lease.</p> <p>The land is suitable for the development proposed.</p>
S120 (c) Representations	<p>Representations received are addressed in the Notice of Decision.</p> <p>Major issues raised include:</p> <ul style="list-style-type: none"> • Refer to the Notice of Decision for the response • 4 written representations were received.
<p>S120 (d) advice given by an entity in accordance with section 149 of the Act</p> <p>NB: Under Section 150 of the Act, if entity advice is not received within 15 working days, the entity is taken to have given advice in support of the application</p>	<p>Entity advice received is addressed in the Notice of Decision.</p> <p>Comments provided by the referral entity / entities include:</p> <ul style="list-style-type: none"> • Actew either supported the proposal with or without conditions. • TAMSD – did not support as the unapproved storeroom is located over the stormwater easement.
S120 (e) the plan of management for the land (if the proposed development relates to land that is Public Land)	The proposal is not for a proposed development relating to land that is public land.
Proposal for development on land reserved under S315 for the purpose of wilderness area, national park, nature reserve, or special purpose reserve.	The proposal does not occur on land that is reserved under S315 of the Act for the purpose of wilderness area, national park, nature reserve, or special purpose reserve. (

<p>NB: If NO ESO has been submitted, request this as further information, or REFUSE the application. It CANNOT be a condition of the approval as the opinion may reject the findings of the applicant and the development will be IMPACT track.</p>	<p>.</p>
<p>S120 (f) the probable impact of the proposed development, including the nature, extent and significance of probable environmental impacts.</p>	<p>Based on the matters to be considered by the relevant Code there are no probable environmental impacts of significance associated with the proposed development. [</p>
<p>Site Inspection (Although not a legislative requirement as such, a site inspection may assist with the assessment of the proposal against the provisions of S120)</p>	<p>A site inspection was conducted</p>

Form

Territory Plan Code Requirements Merit Track

ASSESSMENT REPORT

suburban zone

ASSESSMENT OFFICER:

APPLICATION NUMBER: 201222272

BLOCK: 21 SECTION: 33

DIVISION: MONASH

Territory Plan Code Requirements

This document provides analysis of a development proposal in relation to the relevant codes contained in the Territory Plan. The proposal meets all rules of the code(s) that are relevant to the development with the exception of those either identified in the statement against relevant criteria submitted for the proposal or, listed in the tables below. The statement against relevant criteria demonstrates the proposal meets all relevant criteria that are, either:

- the applicable criterion to a relevant rule that is not met; or,
- the criterion is relevant and there is no applicable rule,

with the exception of those listed in the tables below.

1. Assessment of Compliance with single dwelling development code

The single dwelling development code is a Code relevant to this proposal. The comments for the criterion or rule identified in the tables below are provided where it is considered warranted to clarify why a particular criterion or rule is either met or not met. (

Part A

Sub-Element: 2.3 Plot Ratio	
Rule: R4 - Mandatory	Applicable Criterion: Not Applicable
The proposal does not meet the rule because the total gross floor area (GFA) on the subject site is approximately 52%. The maximum GFA allowable is 50%. Consequently, the development application does not comply with the mandatory rule, Rule 4 of the Code and it cannot be approved.	

Part C(1)

Sub-Element: 2.2 Side Setback	
Rule: R31	Applicable Criterion: C31
Minor service elements encroach the building envelope. However, they meet the relevant criteria. ie, they are located well away from the block boundaries and do not affect the privacy and solar access to adjacent dwellings and their associated private open spaces. The unapproved storage building has a zero setback on both side boundaries. The development application does not comply with Rule (R) 31 where the unapproved storage building is required to be setback 1.5m from the side boundary.	
The survey drawing of the unapproved storage building shows zero side boundary setback from both side fences. ACTMapi shows the north-western corner of the storage building is roofed with zero setback from western side boundary. However, according to one of the floor plans the applicant provided, a small section of approximately 3m x 3m in area, located at the north-western corner is shown as a private open space. This area is not shown to be roofed on this floor plan.	

There is inconsistency in the information provided by the applicant. Consequently, the western side boundary setback assessment is carried out considering the signed survey plan that has been lodged by the applicant.

It is considered the zero side boundary setback on both sides along with the zero rear boundary, the unapproved storage building does not provide sufficient spatial separation between adjoining developments. Consequently, it is inconsistent with the relevant criterion of the Code, C31.

Sub-Element: 2.3 Rear Boundary

Rule: R32

Applicable Criterion: C32

The unapproved storage building has a zero rear boundary setback. The development application does not comply with Rule (R) 32 where the unapproved storage building is required to be setback 3mm from the rear boundary.

Zero rear boundary setback is inconsistent with the relevant criterion of the Code, C32. According to the signed survey plan, the entire length of the rear boundary has the unapproved storage building abutting against it. It is considered that this does not provide sufficient spatial separation to the neighbour to the rear.

Majority of the neighbouring residences in the area have their sheds and storage buildings confined to the corner and/or setback appropriately from the rear boundary, and these structures do not run the entire length of the rear boundary.

Sub-Element: 5.2 Private Open Space

Rule: R47

Applicable Criterion: C47

The development application does not provide 60% of the area of the block, less 50m², as private open space. R47 requires the development application to provide 418m² of the block area to be provided as private open space. The total area provided as private open space is approximately 315m².

The subject block is occupied by a metal workshop, the unapproved storage building, a residence and driveways. The actual useable private open space is approximately 70m² in area, located in the middle of the block. This private open space area is considered to be not appropriate in size to provide the residents with adequate space to fulfil their outdoor recreation needs.

Inspection of the site demonstrated that some section of the abovementioned private open space is being used to store material for the unapproved mechanical workshop home business which is currently under investigation.

The provision of private open space is inconsistent with the relevant criterion of the Code, C47.

Sub-Element: 5.2 Private Open Space

Rule: R50

Applicable Criterion: C50

The development application is inconsistent with R50. R50 requires minimum of 50% of the private open space on the subject block is to be retained as planting area, which is 209m²; only approximately 90m² is retained as planting area.

Consequently, the development application significantly departs from the relevant criterion, C50 of the Code.

[Redacted content]

[Redacted content]

[Redacted content]

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: Jarman, Ron
Sent: Monday, 29 July 2013 5:46 PM
To: Jamaly, Rumana
Cc: Stawski, Leszek
Subject: RE: 20130716 - Applicant's Statement of Facts and Contentions

Hi Rumana,

Please find attached my witness statement regarding the drainage easement on Block 21 Section 33 Monash.

Regards
Ron.

Ron Jarman

Deputy Surveyor-General | Office of the Surveyor-General | Regulation and Services Branch
Environment and Sustainable Development Directorate | ACT Government
[redacted] e [redacted] | web www.environment.act.gov.au

From: Jamaly, Rumana
Sent: Wednesday, 17 July 2013 11:53 AM
To: Jarman, Ron
Cc: Stawski, Leszek
Subject: 20130716 - Applicant's Statement of Facts and Contentions

Ron,

Thanks for agreeing to provide a Witness Statement for this matter. As we discussed, you may not have to provide oral evidence as TAMS will also be providing a written statement and will attend the hearing to give oral evidence. However, if it is absolutely necessary for you to give oral evidence, please note that the hearing will be on **19 August 2013 at 10:00am**. I have attached the applicant's Statement of Facts & Contentions for your information. [Our statements are due on 2 August 2013.](#)

I will also send you an example of a Witness Statement.
Thanks for your help in this matter.

Regards,
Rumana.



Good Afternoon,

Please find attached.

Kind Regards,







From: Park, Ada
To: [REDACTED]
Subject: FW: Notice of Decision - Signed (Unapproved Storage building)
Date: Thursday, 21 March 2013 1:38:00 PM
Attachments: [Notice of Decision - Signed.pdf](#)

Dear [REDACTED]

Please refer to the Notice of Decision attached.

Regards,

Ada Park

Senior Assessment Officer | Merit Assessment - South

Phone 02 62071854 | Fax 02 62071856 |

Planning Delivery Division | Environment and Sustainable Development | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 1908 Canberra ACT 2601 | www.actpla.act.gov.au

From: Park, Ada
Sent: Wednesday, 20 March 2013 9:14 AM
To: [REDACTED]
Subject: Notice of Decision - Signed (Unapproved Storage building)

Dear K [REDACTED]

You need to provide reasons why you were unable to submit an application to review of the planning and authority's decision within 28 days after you received the Notice of Decision to the ACT Civil and Administrative Tribunal (ACAT) for consideration.

Please check pages 8 and 9 of the Notice of Decision (21/33 Monash) which I have attached to this email.

Regards

Ada Park

Senior Assessment Officer | Merit Assessment - South

Phone 02 62071854 | Fax 02 62071856 |

Planning Delivery Division | Environment and Sustainable Development | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 1908 Canberra ACT 2601 | www.actpla.act.gov.au

From: [Gianakis, Anna](#)
To: [Park, Ada](#)
Cc: [Jamaly, Rumana](#); [Oshyer, Aaron](#)
Subject: New ACAT Appeal AT13/25
Date: Tuesday, 11 June 2013 10:21:00 AM

Hi Ada

We have been notified by the ACAT of a new appeal application submitted by [REDACTED] re 21/33 Monash. DARTS indicates that this would be a 1st party appeal re DA20122272.

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 June 2013.

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

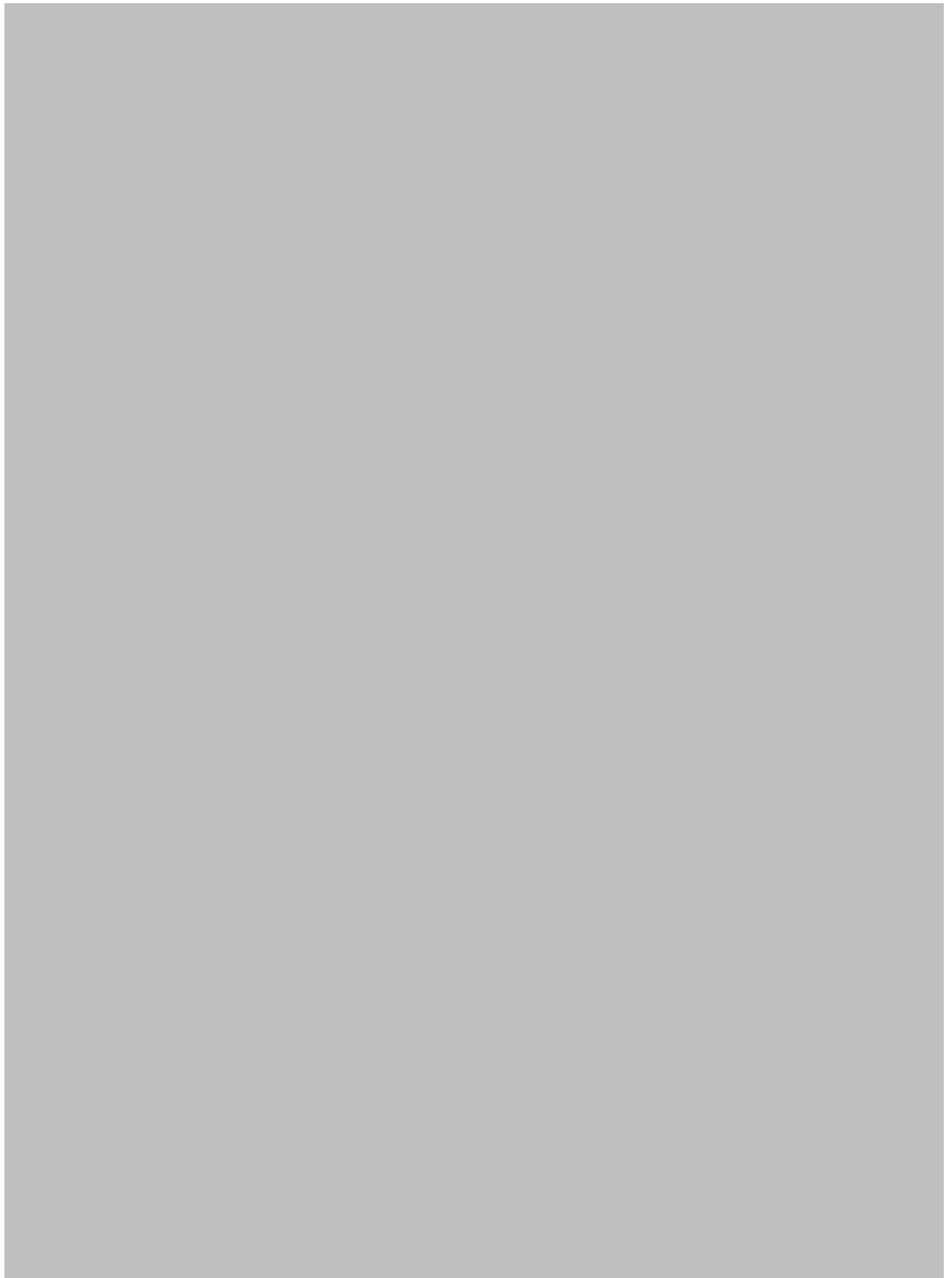
Regards

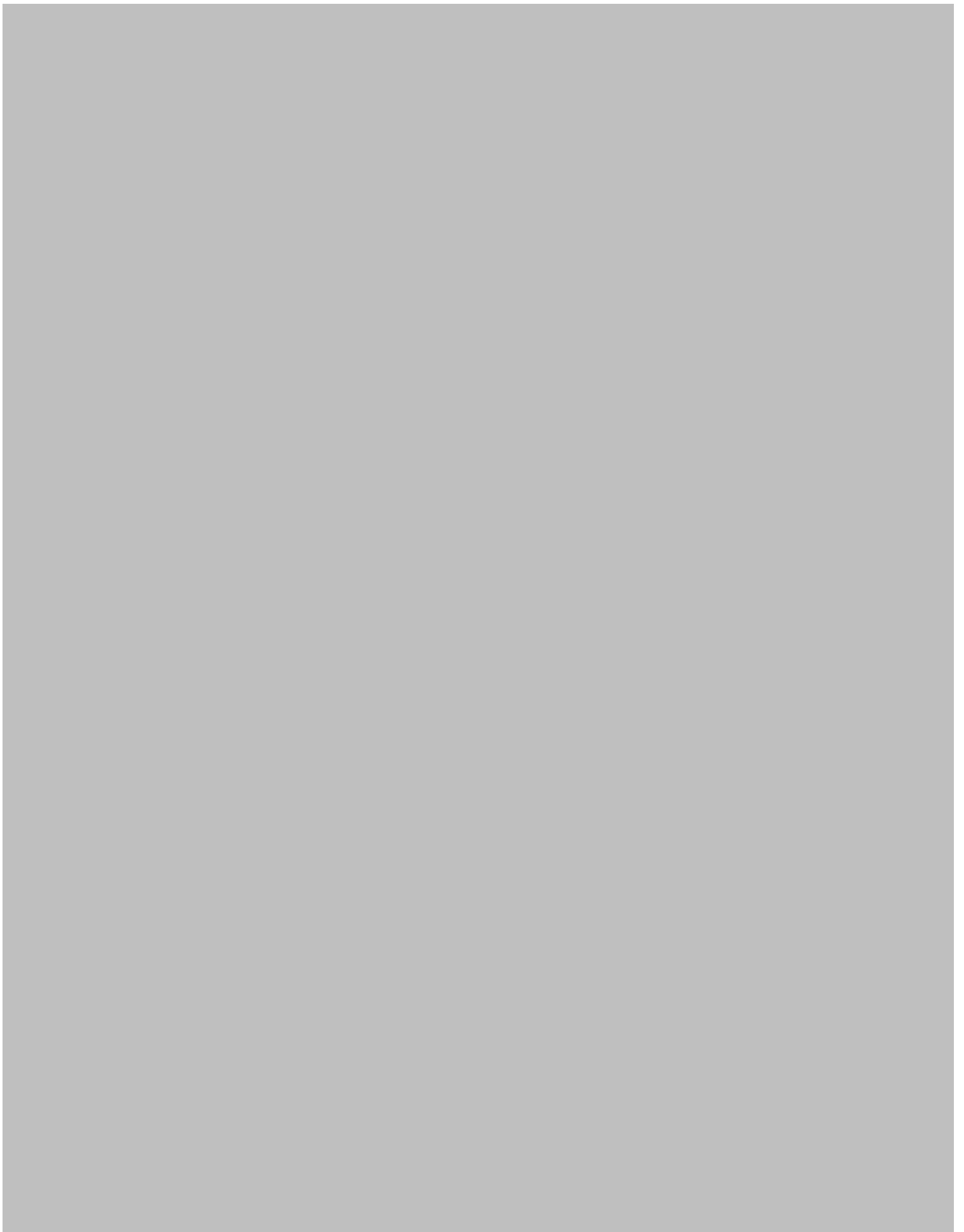
Anna Gianakis | Supervisor

Phone 02 6205 8757 | esddcustomerservices@act.gov.au

Client Services | Environment and Sustainable Development | **ACT Government**

16 Challis Street, Dickson ACT 2602 | GPO Box 1908 Canberra ACT 2601 | www.environment.act.gov.au





From: Park, Ada
To: [REDACTED]
Subject: Notice of Decision - Signed (Unapproved Storage building)
Date: Wednesday, 20 March 2013 9:13:00 AM
Attachments: [Notice of Decision - Signed.pdf](#)

Dear [REDACTED]

You need to provide reasons why you were unable to submit an application to review of the planning and authority's decision within 28 days after you received the Notice of Decision to the ACT Civil and Administrative Tribunal (ACAT) for consideration.

Please check pages 8 and 9 of the Notice of Decision (21/33 Monash) which I have attached to this email.

Regards

Ada Park

Senior Assessment Officer | Merit Assessment - South

Phone 02 62071854 | Fax 02 62071856 |

Planning Delivery Division | Environment and Sustainable Development | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 1908 Canberra ACT 2601 | www.actpla.act.gov.au



ACT
Government

Environment and
Sustainable Development

Notice of decision

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

Merit track

DA NO: 201222272		DATE LODGED: 30/10/2012
DATE OF DECISION: 8 February 2013		
BLOCK: 21	SECTION: 33	SUBURB: MONASH
STREET NO AND NAME: [REDACTED]		
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, Ada Park, delegate of the planning and land authority, pursuant to section 162 of the Act, hereby **refuse** the proposal for:

- **Unapproved storage building located to the rear of the existing residence.**

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

PART 1 sets out the Reasons for the Decision

PART 2 is Public Notification and Entity Advice.

PART 3 contains administrative information relating to the determination.

DELEGATE

[REDACTED]
Ada Park
Delegate of the planning and land authority
Environment and Sustainable Development Directorate
8 February 2013

CONTACT OFFICER

Ada Park
Phone: 62071854
Email: ada.park@act.gov.au

PART 1 REASONS FOR THE DECISION

In accordance with section 119 of the Act, the application has refused because it does not comply with the legislated requirements for merit track applications. The application is inconsistent with:

- the relevant code, being the Single Dwelling Housing Development Code (Code); and
- advice given by an entity, the entity being the Territory and Municipal Services Directorate (TAMSD).

SINGLE DWELLING HOUSING DEVELOPMENT CODE

The development proposal is inconsistent with the rules and criteria of the Single Dwelling Housing Development Code (Code).

- **Plot Ratio**

The total gross floor area (GFA) on the subject site is approximately 52%. The maximum GFA allowable is 50%. Consequently, the development application does not comply with the mandatory rule, Rule 4 of the Code and it cannot be approved.

- **Side Setback**

The unapproved storage building has a zero setback on both side boundaries. The development application does not comply with Rule (R) 31 where the unapproved storage building is required to be setback 1.5m from the side boundary.

The survey drawing of the unapproved storage building shows zero side boundary setback from both side fences. ACTMapi shows the north-western corner of the storage building is roofed with zero setback from western side boundary. However, according to one of the floor plans the applicant provided, a small section of approximately 3m x 3m in area, located at the north-western corner is shown as a private open space. This area is not shown to be roofed on this floor plan.

There is inconsistency in the information provided by the applicant. Consequently, the western side boundary setback assessment is carried out considering the signed survey plan that has been lodged by the applicant.

It is considered the zero side boundary setback on both sides along with the zero rear boundary, the unapproved storage building does not provide sufficient spatial separation between adjoining developments. Consequently, it is inconsistent with the relevant criterion of the Code, C31.

C31

a) Building and other structures are sited and reflect residential (suburban) scale, height and length to ensure:

- i) sufficient spatial separation between adjoining developments*
- ii) the protection of a reasonable amount of privacy and solar access to the dwelling (or adjacent dwellings) and outdoor spaces (or adjacent outdoor spaces)*

- **Rear Setback**

The unapproved storage building has a zero rear boundary setback. The development application does not comply with Rule (R) 32 where the unapproved storage building is required to be setback 3mm from the rear boundary.

Zero rear boundary setback is inconsistent with the relevant criterion of the Code, C32. According to the signed survey plan, the entire length of the rear boundary has the unapproved storage building abutting against it. It is considered that this does not provide sufficient spatial separation to the neighbour to the rear.

Majority of the neighbouring residences in the area have their sheds and storage buildings

confined to the corner and/or setback appropriately from the rear boundary, and these structures do not run the entire length of the rear boundary.

C32

Buildings and other structure are sited and reflected residential (suburban) scale, height and length to ensure:

a) sufficient spatial separation between adjoining developments

- Private Open Space

The development application does not provide 60% of the area of the block, less 50m², as private open space. R47 requires the development application to provide 418m² of the block area to be provided as private open space. The total area provided as private open space is approximately 315m².

The subject block is occupied by a metal workshop, the unapproved storage building, a residence and driveways. The actual useable private open space is approximately 70m² in area, located in the middle of the block. This private open space area is considered to be not appropriate in size to provide the residents with adequate space to fulfil their outdoor recreation needs.

Inspection of the site demonstrated that some section of the abovementioned private open space is being used to store material for the unapproved mechanical workshop home business which is currently under investigation.

The provision of private open space is inconsistent with the relevant criterion of the Code, C48.

C48

Private open space is of dimensions to suit the projected requirements of the dwelling's occupants and to accommodate both outdoor recreation needs as well as providing space for service functions such as clothes drying and domestic storage.

- Private Open Space

The development application is inconsistent with R50. R50 requires minimum of 50% of the private open space on the subject block is to be retained as planting area, which is 209m²; only approximately 90m² is retained as planting area.

Consequently, the development application significantly departs from the relevant criterion, C50 of the Code.

C50

Unpaved or unsealed areas are provided to facilitate on-site infiltration of stormwater run-off and provision of landscaping.

TAMSD

Pursuant to Division 7.3.3 of the Act, the application was referred to TAMSD and advice was received. TAMSD did not support the unapproved storage building because the unapproved storage building is locate over the stormwater easement

EVIDENCE

Application No. 201222272

File No. 1-2012/19403/1

The Territory Plan zone – Suburban Zone RZ1

The Development Codes – Single Dwelling Housing Development Code

Representations

Entity advice

PART 2 PUBLIC NOTIFICATION AND ENTITY ADVICE

PUBLIC NOTIFICATION

Pursuant to Division 7.3.4 of the Act, the application was publicly notified from 2 November 2012 to 16 November 2012. Three (3) written representations were received during public notification.

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

- (a) *Concerned that the storage sheds directly support the operation of the home business. No objection to the construction of storage sheds for residential purpose. This business should move to a more appropriately zoned location.*

Response:

The development application is refused as it is inconsistent with the Territory Plan and TAMSD does not support the structure over the stormwater easement.

The concerns regarding home business is noted and it is currently under investigation by the Regulation and Services Division of the Environment and Sustainable Development Directorate.

- (b) *Stormwater easement not accessible and the implication*

Response:

TAMSD does not support the structure over the stormwater easement.

- (c) *Stormwater overflow / runoff*

Response:

The development application does not comply with minimum 50% of the private open space on to be retained as planting area requirement, in accordance with the Single Dwelling Housing Development Code.

Consequently, the development application is refused.

- (d) *Plot ratio*

Response:

The development application does not comply with the maximum allowable plot ratio requirement 50% of the Single Dwelling Housing Development Code.

Consequently, the development application is refused.

- (e) *Spatial separation between the neighbouring dwellings*

Response:

The development does not comply with the relevant criteria of the side and rear boundary setback requirements of Single Dwelling Housing Development Code.

Consequently, the development application is refused.

(f) *Illegal operation of car repair/mechanic business*

Response:

The concern is noted. This matter is under investigation by the Regulation and Services Division of the Environment and Sustainable Development Directorate.

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.

TERRITORY AND MUNICIPAL SERVICES DIRECTORATE

On 16 November 2012, advice was received from Territory and Municipal Services in relation to the proposal. The advice states that:

The proposal is seeking approval for existing unapproved work including store room 1, 2, 3 & 5 at the rear of the dwelling.

The proposal is not supported and the reasons are as follows:

1. Buildings are not permitted over stormwater easements unless they comply with TAMS' standard for Construction Within the Vicinity of a Stormwater Easement.
2. However, the proposed storeroom does not comply with TAMS' standard for Construction Within the Vicinity of a Stormwater Easement.
3. As a result this DA proposal is not supported.

Consequently, the development application is refused.

ActewAGL

On 2 November 2012 advice was received from the Water Division in relation to the proposal. The advice states that the development application is approved

On 16 November 2012 advice was received from the Gas Networks in relation to the proposal. The advice states that:

The application has been assessed by ActewAGL and conditionally complies with the Gas Networks requirements.

The stamped plans together with a statement of conditional compliance, which indicates ActewAGL's conditions of approval are attached.

Separate compliance statements are required from other utilities (eg: electricity, water and sewerage, stormwater and communications)

The comments are noted.

On 16/11/2012 advice was received from the Electricity Networks Division in relation to the proposal. The advice states that;

The application has been assessed for compliance with ActewAGL's Electricity Network

and conditionally complies with the Electricity Networks requirements.

Please find attached, the stamped plans together with a conditional statement of compliance are attached.

Separate compliance statements may be required from other entities.

The comments are noted.

PART 3 ADMINISTRATIVE INFORMATION

INSPECTION OF THE APPLICATION AND DECISION

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

RECONSIDERATION OF THE DECISION

If the applicant is not satisfied with the decision to refuse the application, they are entitled to apply to the planning and land authority for reconsideration within 20 working days of being told of this decision or within any longer period allowed by the planning and land authority.

Application forms and further information about reconsideration are available from the planning and land authority's website and Customer Service Centres. The delegate of the planning and land 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.

REVIEW BY THE ACT CIVIL AND ADMINISTRATIVE TRIBUNAL (ACAT)

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

This Notice of decision has also been sent to all people who made representations in relation to the proposal.

APPENDIX 1

REVIEW OF THE DECISION

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

CONTACT DETAILS

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

Location	Contact details
ACT Civil and Administrative Tribunal Level 4, 1 Moore Street CANBERRA CITY ACT 2601	Website: 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, of Justice and Community Safety Directorate, GPO Box 158, CANBERRA, ACT, 2601;
- the ACT Legal Aid Office, telephone 1300 654314;
- Legal Advice Bureau, telephone (02) 6247 5700;
- ACT Council of the Ageing, telephone (02) 6282 3777; and
- Welfare Rights and Legal Centre, telephone (02) 6247 2177.

AWARDING OF COSTS

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

ACCESS TO DOCUMENTS ABOUT THE DECISION

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

PROCEDURES OF THE ACAT

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

TRANSLATION AND INTERPRETER SERVICES

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

ENGLISH	If you need interpreting help, telephone:
ARABIC	: إذا احتجت لمساعدة في الترجمة الشفوية ، إتصل برقم الهاتف :
CHINESE	如果你需要传译员的帮助，请打电话：
CROATIAN	Ako trebate pomoć tumača telefonirajte:
GREEK	Αν χρειάζεστε διερμηνέα τηλεφωνήσετε στο
ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
MALTESE	Jekk għandek bżonn l-għajnuna t'interpretu, ċempel:
PERSIAN	: اگر به ترجمه شفاهی احتیاج دارید به این شماره تلفن کنید:
PORTUGUESE	Se você precisar da ajuda de um intérprete, telefone:
SERBIAN	Ако вам је потребна помоћ преводиоца телефонирајте:
SPANISH	Si necesita la asistencia de un intérprete, llame al:
TURKISH	Tercümana ihtiyacınız varsa lütfen telefon ediniz:
VIETNAMESE	Nếu bạn cần một người thông-ngôn hãy gọi điện-thoại:

TRANSLATING AND INTERPRETING SERVICE**131 450**

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



ACT
Government

Environment and
Sustainable Development

31 October 2012

Dear Applicant

Suburb: MONASH Block: 21 Section: 33
Development Application Number: 201222272

The *Planning and Development Act 2007* requires the above-mentioned development application to be notified to adjoining lessees. The notification period for the application commences on **5 November 2012** and end at the close of business on **16 November 2012**.

Representations must be made within the notification period to be considered during the assessment of the application. A copy of any representations received as a result of this process will be forwarded to you.

The prescribed period for making a decision on your application is 30 working days from the date of lodgement. However, if representations are received as a result of the public notification process the time frame for making a decision will be extended by an additional 15 working days.

If the time for deciding the application (the prescribed period) has ended and a decision has not been reached your application will be deemed refused. The Planning and Land Authority (the Authority) will not provide written advice of this decision. It is important to note that the Authority is still able to finalise its consideration of your application and make a decision after the expiration of the prescribed period.

You will be advised when a decision on your application has been made and of any appeal rights that may be applicable.

If you would like any further information in relation to this letter please contact the Customer Service Centre on (02) 6207 1923 or email actpla_customer_services@act.gov.au

Customer Service Centre

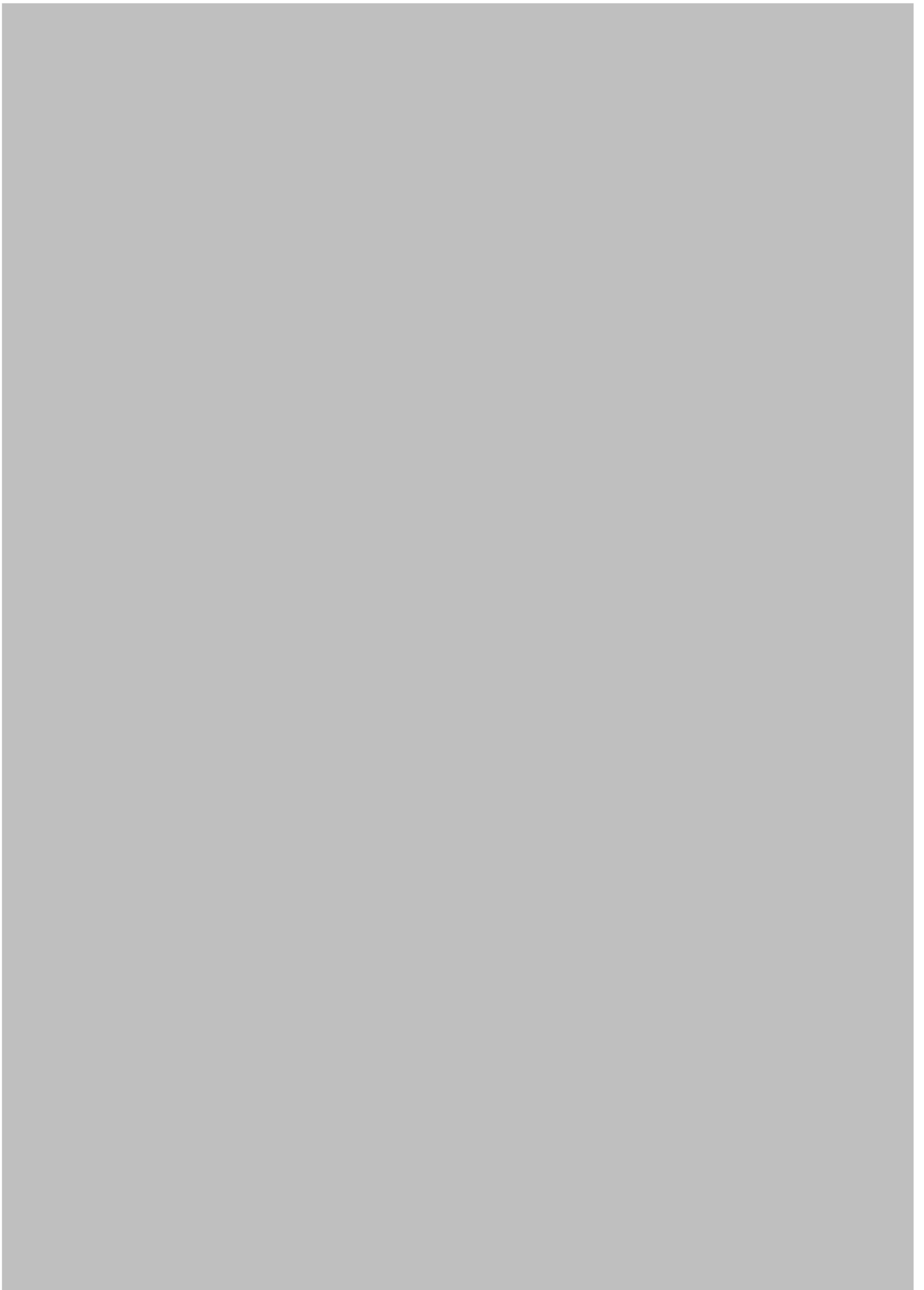
Environment and Sustainable Development Directorate

Customer Service Centre

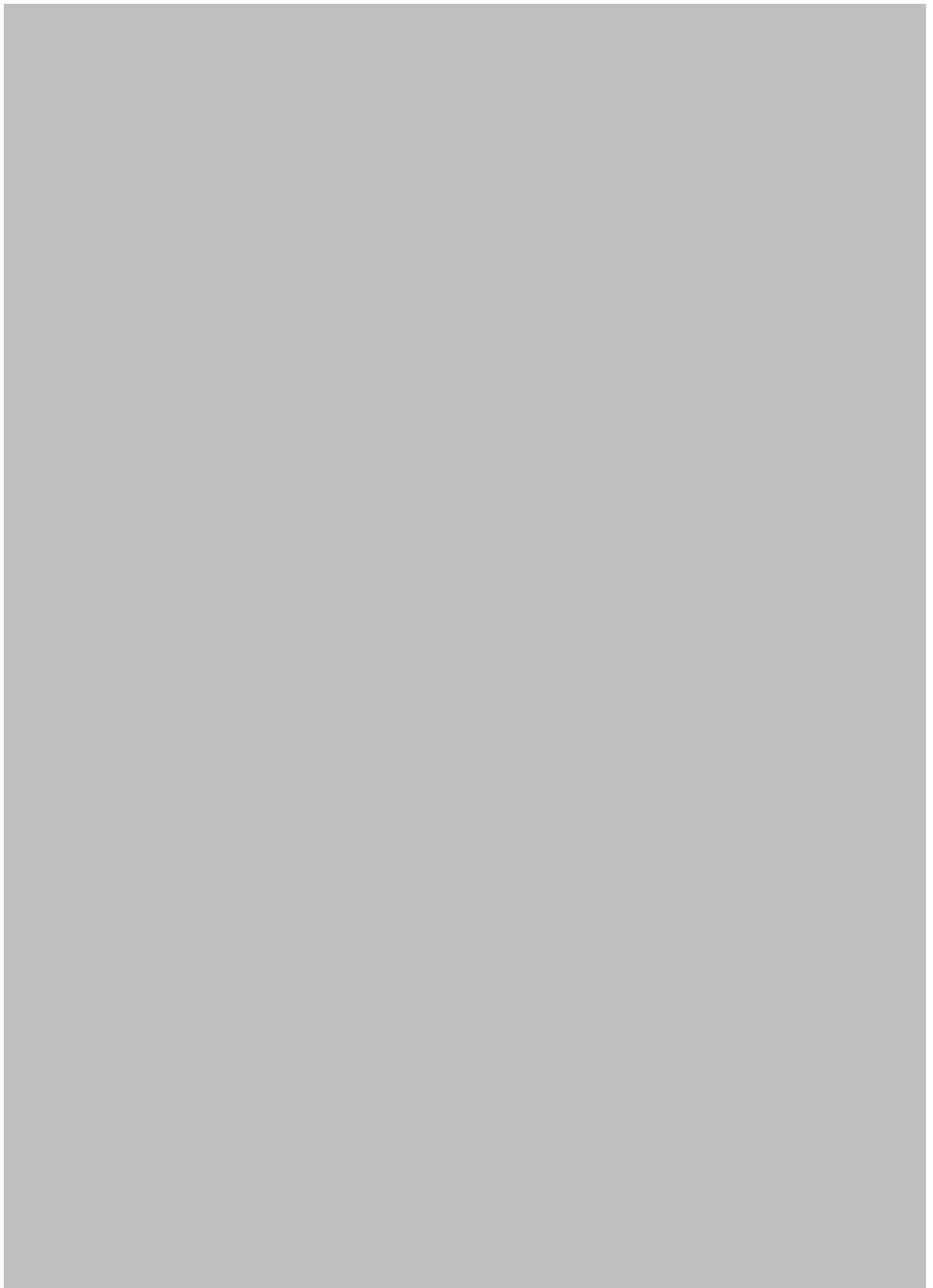
16 Challis Street, Dickson

PO Box 365, Mitchell, ACT 2911 • Telephone: (02) 6207 1923 • Email: actpla_customer_services@act.gov.au

Website: www.actpla.act.gov.au



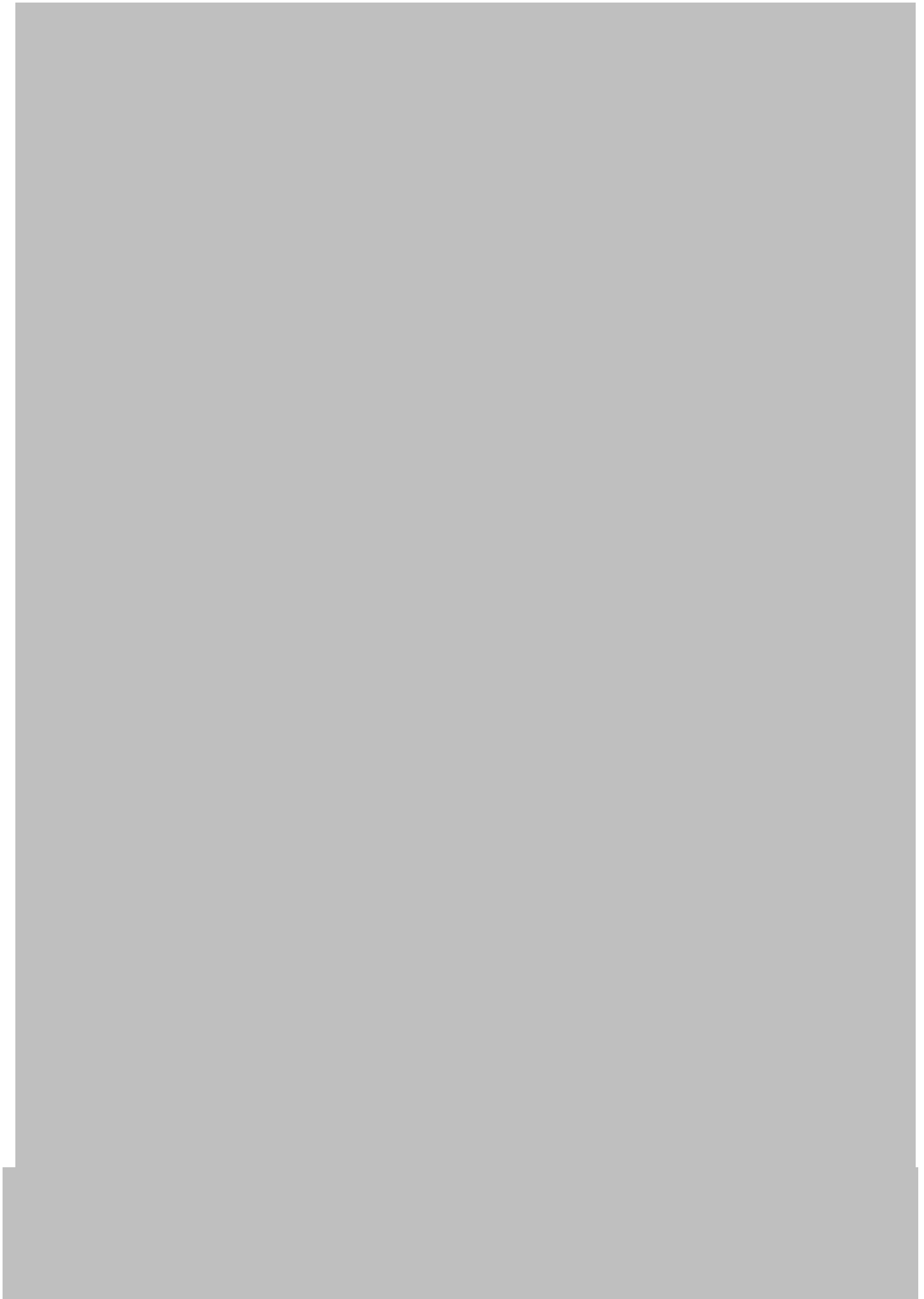




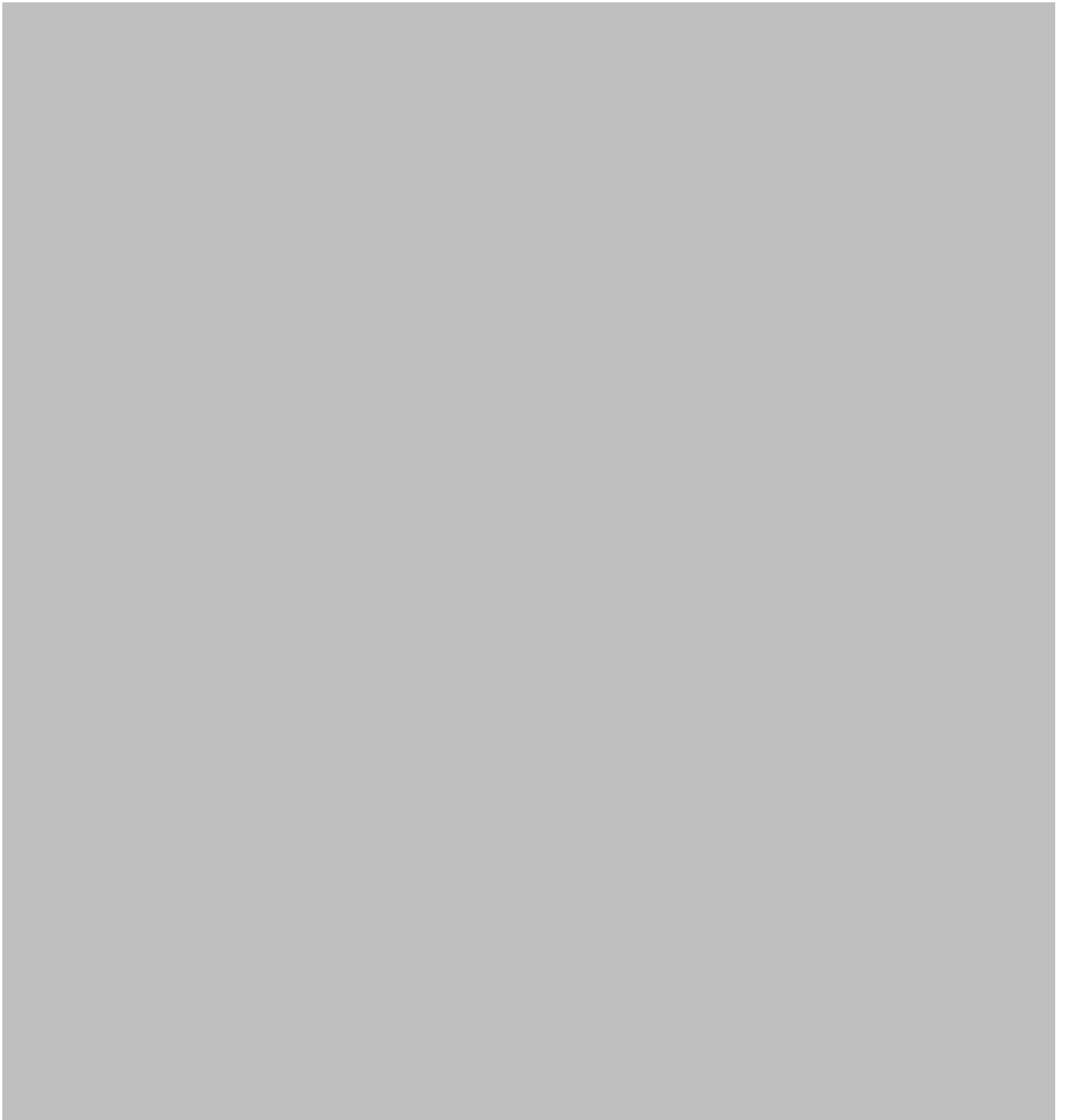






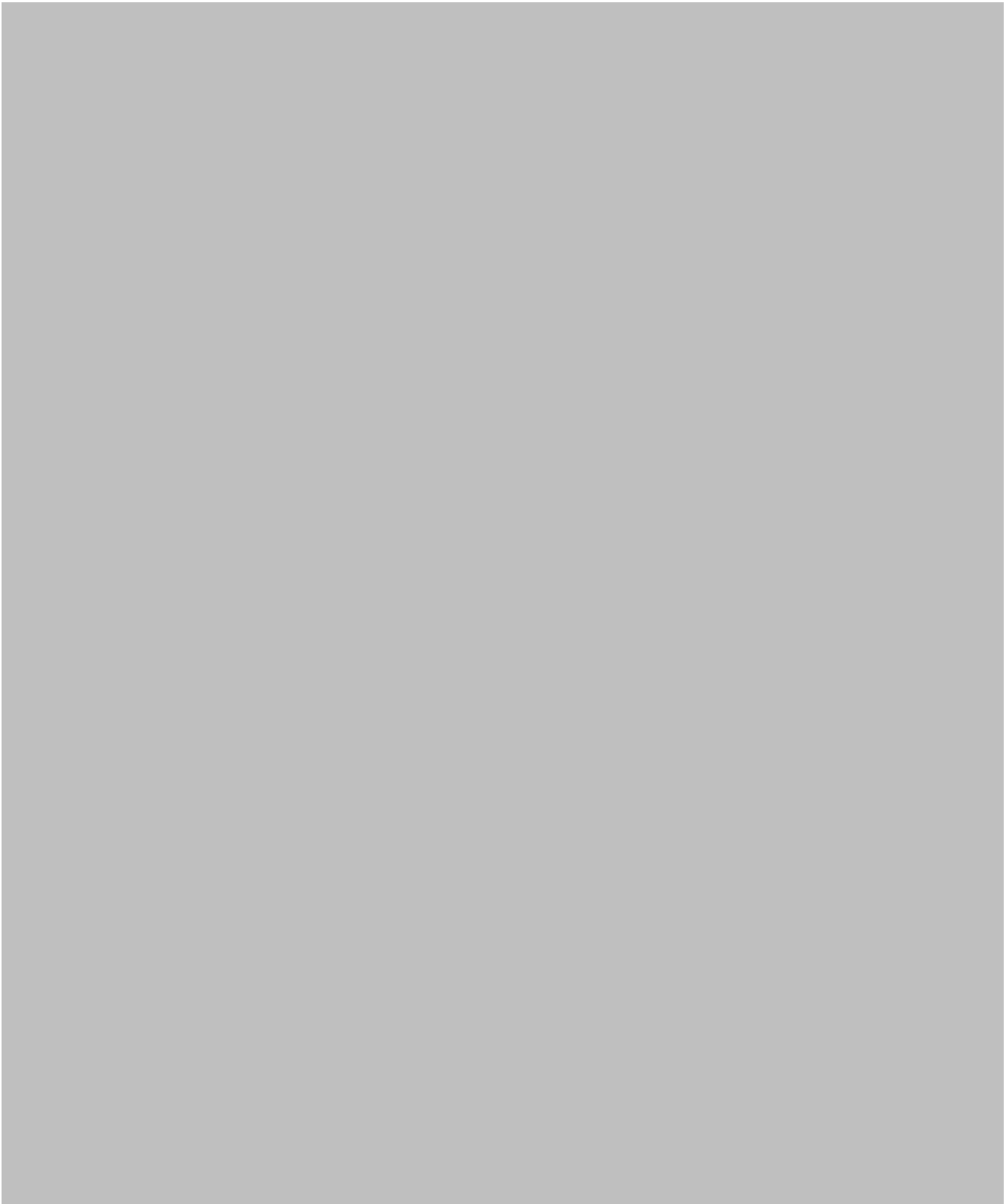






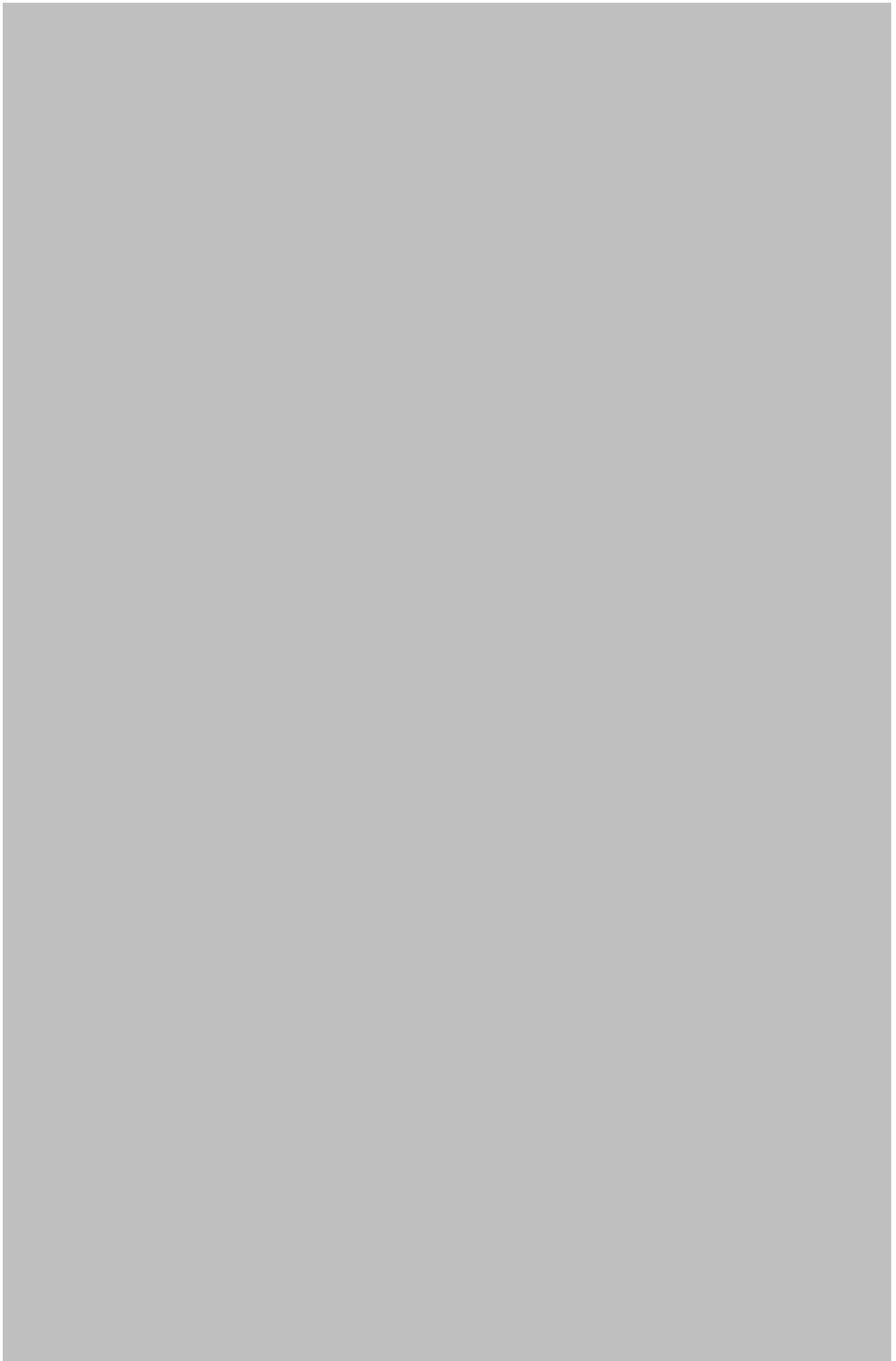


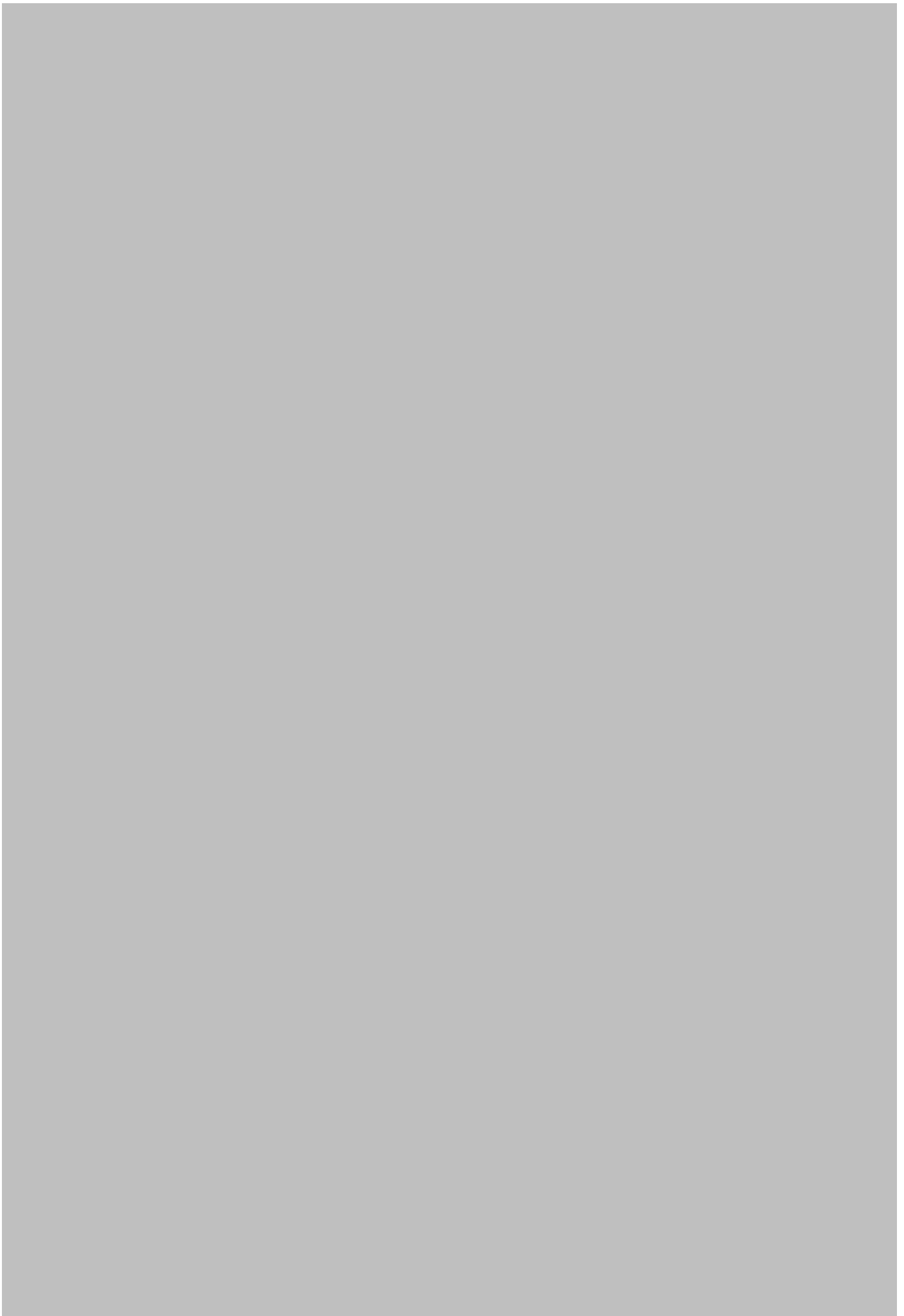


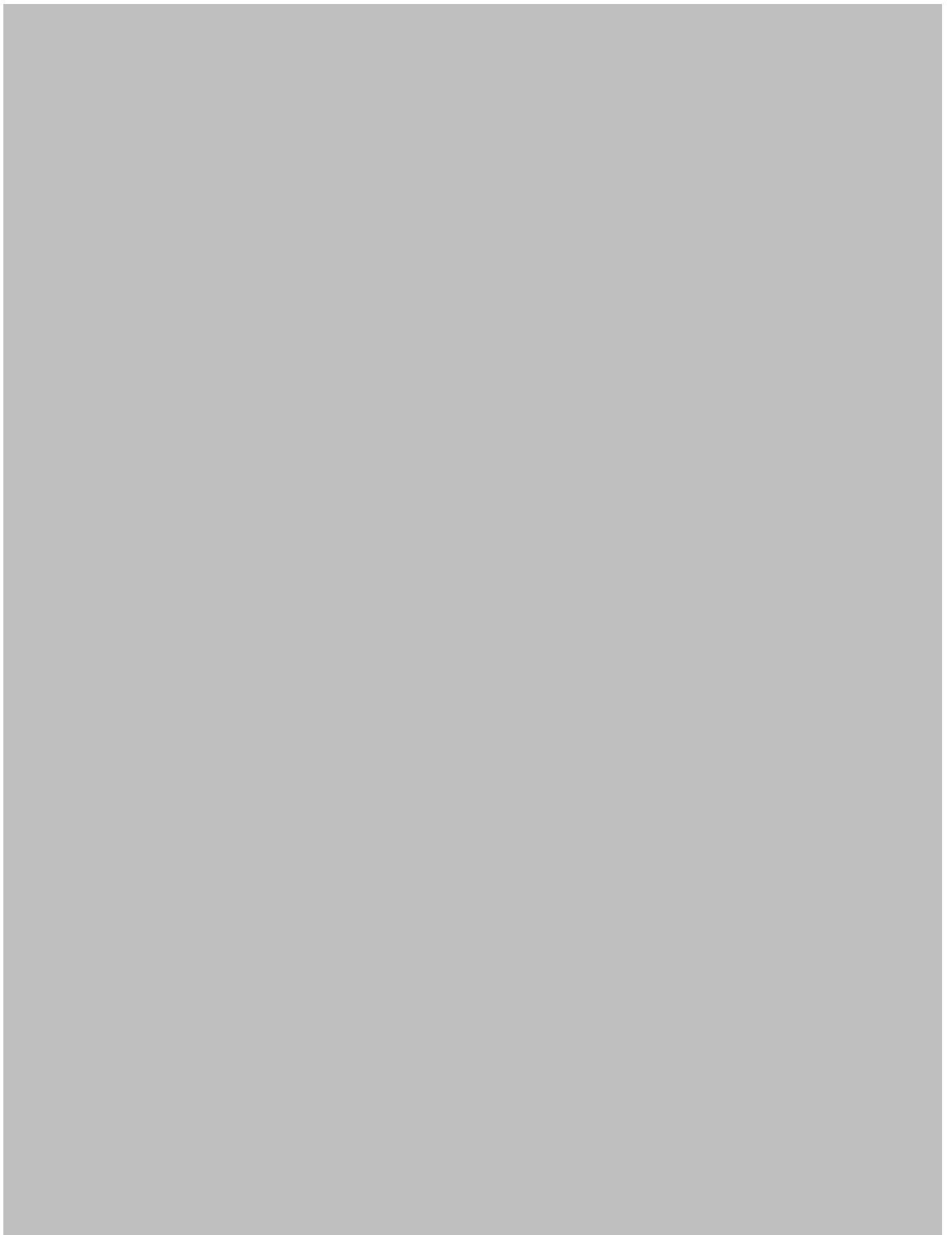












From: [Davis, Matt](#) on behalf of [ACTPLA Customer Services](#)
To: [REDACTED]
Subject: RE: DA201222272
Date: Tuesday, 13 November 2012 11:21:00 AM
Attachments: [image001.jpg](#)

Dear [REDACTED]

ACKNOWLEDGEMENT OF RECEIPT OF REPRESENTATION
BLOCK: 21 SECTION: 33 SUBURB: MONASH
DEVELOPMENT APPLICATION NUMBER: 201222272

Thank you for your representation received 12/11/2012 regarding development application number : 201222272.

The issues raised in your submission will be taken into consideration during the assessment of the development application and you will be notified in writing once a decision has been made.

Please Note - A copy of your representation will be forwarded to the development application applicant and placed on the public register.

If you require any further information please contact Customer Services on (02) 6207 1923.

Kind Regards

Customer Services

p 6207 1923 | e actpla_customer_services@act.gov.au | web www.actpla.act.gov.au

From: [REDACTED]
Sent: Monday, 12 November 2012 3:20 PM
To: ACTPLA Customer Services
Subject: DA201222272

Dear sir/madam

I would like to make a comment on the subject DA.

For a number of years now there have been several requests for approval to operate a service garage from the subject property. [REDACTED] and I appreciate that the business is well run but it degrades the suburban ambience expected from a residential zoned area and depreciates the value of our house. In all previous applications this representation has been supported. We appreciate that ACTPLA has made several attempts to decline the operation of this business, albeit with no success. [REDACTED] and I are concerned that the storage sheds directly support the operation of this business. While we have no objection to the construction of storage sheds for residential purposes, we are hopeful that ACTPLA will not compromise its efforts to have this business move to a more appropriately zoned location.



Statement Against Relevant Criteria

RZ1 – Residential Zone – Single Dwelling Housing Development Code Planning and Development Regulations 2008

RE: Blk: 21 Sec: 33 Address: 

Rule 2.3 Rear Setbacks

R32 The existing work does not comply with rear setbacks for exempt however under

Division 1.3.2 Exempt developments- non habitable buildings and structures.

Subdivision 1.3.2.1 Preliminary

1.41 Class 10 buildings and structures- 2nd exempt building or structure within boundary clearance area

(2) A designated development for a class 10 building or structure (the 2nd thing) in a boundary clearance area of a block if-

(d) the 1st thing and 2nd thing-

(i) are the only class 10 buildings or structures (other than a boundary fence) that are partially or fully within the boundary clearance area;

RZ1 – Residential Zone – Single Housing Development Code

RE: 21 Sec: 33 Address: 138 Clive Steele Avenue Monash

Erosion or sediment Control Plan: Existing works no control plan required