



**ACT**  
Government

Environment, Planning and  
Sustainable Development

# Notice of decision

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

## Merit track

DA NO: 201630437		DATE LODGED: 12/12/2016
DATE OF DECISION: 15 February 2017		
BLOCK: 7 and part of Block 24	SECTION: 62	SUBURB: CURTIN
STREET NO AND NAME: 46 Curtin Place Curtin		
APPLICANT: Blak Plan Pty Ltd/Trading As Knight Frank Town Planning		
LESSEE: Sophia Haridemos		

### THE DECISION

This application was lodged in the merit track. Pursuant to section 113(2) of the *Planning and Development Act 2007(Act)*, the application must be assessed according to the provisions relevant to merit track applications.

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

- demolition of the existing building on Block 7 Section 62 and demolition of the existing public toilet building on part of Block 24 Section 62;
- construction of a mixed-use building, comprised of: three basement car park levels; ground floor commercial tenancies; replacement of public toilets on the ground floor level; five upper residential levels; on and off site landscaping including upgrading surrounding hard surfaces and the reconfiguration of existing at grade car parking; installation of a new awning above the ground floor over unleased Territory land; lightweight aluminium screen facade for the building extending above unleased Territory land; installation of a new substation in the Strangways Street verge; and
- consolidation of Block 7 Section 62 with part of Block 24 Section 62 Curtin.

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

George Cilliers

Delegate of the planning and land authority

Environment, Planning and Sustainable Development Directorate

15 February 2017

### CONTACT OFFICER

Ray Brown,

phone: (02) 6207 1750, email: [ray.brown@act.gov.au](mailto:ray.brown@act.gov.au)

## PART 1

### REASONS FOR THE DECISION

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

- the matters to be considered under Section 120 of the *Planning and Development Act 2007*;
- the Territory Plan, particularly certain provisions contained in the *Commercial Zones Development Code*.

The reasons for refusal are summarised as follows:

#### **SECTION 120 OF THE PLANNING AND DEVELOPMENT ACT, 2007.**

The proposed development does not comply with Section 120(a) *zone objectives*, (b) *suitability of the land for the development*, and (g) *environmental impacts*, of the *Planning and Development Act 2007*. The planning and land authority also considered Section 120(d) of the *Planning and Development Act 2007*, representations received.

- **Section 120(a): *the objectives for the zone in which the development is proposed to take place***

The relevant zone objectives are:

- Encourage a mix of predominantly commercial land uses that contribute to a diverse and active character*
- Provide for a range of conveniently located retail and service outlets*
- Promote vibrant, interesting and lively street frontages including during evenings and weekends*
- Encourage an attractive, safe pedestrian environment with ready access to public transport*
- Maintain and enhance a high standard of urban design through use of sustainable design and materials and ensure that buildings retain a high level of design consistency and compatibility*
- Provide opportunities for business investment and employment*
- Maintain and enhance environmental amenity*
- Promote the establishment of cultural and community identity that is representative of, and appropriate to, the place*

The proposed development does not comply with zone objectives (e), (g), and (h), and partially only meets objective (c) in the following ways:

- *objective (c): Promote vibrant, interesting and lively street frontages including during evenings and weekends.*

The proposed development will have commercial uses on the ground floor with active facades along all of the blocks boundaries, which will be an improvement since the existing building currently has inactive frontages facing towards the surface car parks and Strangways Street. The commercial frontages will promote vibrancy but will be dependent on the hours of operation of future commercial tenants. Although there will be an increase in active ground floor frontages, activity during the day and especially during winter will be reduced in the community courtyard due to increased overshadowing. The community courtyard is a valued community focal point for the Group Centre.

The proposed development therefore does not fully meet objective (c).

- *objective (e): Maintain and enhance a high standard of urban design through use of sustainable design and materials and ensure that buildings retain a high level of design consistency and compatibility.*

The proposed development does not achieve a level of design that is consistent with the current character of Curtin Group Centre, particularly having regard to building height and the amenity of the existing community courtyard.

The proposed building height of six storeys is not consistent or compatible with existing building heights found in the Curtin Group Centre and surrounds.

The proposed building also increases overshadowing onto the community courtyard, which receives good solar access that is valued by the community. The proposed development cannot be regarded as being sustainable design by compromising solar access to the community courtyard.

The proposed development therefore does not meet objective (e).

- *objective (g) Maintain and enhance environmental amenity*

The proposed building increases overshadowing onto the community courtyard, which currently receives good solar access. The proposed development therefore fails to maintain or enhance the current environmental amenity offered by the courtyard.

Whilst the ground floor will provide active commercial facades along all the boundaries, due to the excessive height of the awning above ground level, the awning will have limited effect in protecting pedestrians from the weather. The encroaching lightweight metal facade does not provide any improvements to the amenity of the Curtin Group Centre, except to exacerbate the inappropriate building height of six storeys. The building height, the awning, and building facades fail to enhance the environmental amenity of the community courtyard and the Curtin Group Centre.

The proposed development therefore does not meet objective (g).

- *objective (h) Promote the establishment of cultural and community identity that is representative of, and appropriate to the place*

The view was formed that the community courtyard functions as a primary gathering place in the group centre, serves to bring people together, and provides community identity to the Curtin community. The Curtin Group Centre appears to display a character of its own derived from the variety of shops and the community courtyard that provides a valued focal point for people of all ages and backgrounds.

The proposed development does not promote the established community identity of the Curtin Group Centre. A large number of representations have been received during public notification of the development application; all but a handful of representations have opposed the development. The representations received are indicative of the substantial community identity linked to the locality. The built form and overshadowing likely to result from the proposed development will impact the use of the community courtyard and is likely to have a detrimental impact on the community identity of the Curtin Group Centre.

The proposed development therefore does not meet objective (h).

- **Section 120(b): *the suitability of the land where the development is proposed to take place for a development of the kind proposed***

The existing building heights within the Curtin Group Centre are predominantly single storey with some double storey elements, with some three storey building heights noticeable in the immediate neighbouring area. The existing three storey buildings are residential and commercial accommodation developments.

The proposed development of Block 7 (and part of Block 24) with six storeys will result in a building height, bulk and scale that is not suitable for the subject land, will not respond appropriately to the height and scale of the existing built form, and will impact the character and amenity of the public domain with Curtin Group Centre.

- **Section 120(d): *each representation received by the authority in relation to the application that has not been withdrawn***

Four hundred and ninety six (496) representations were received during the public notification period.

A consistent issue raised in representations against the proposed development is that the development is of a height considered to be excessive for the locality.

Refer below to PART 2 PUBLIC NOTIFICATION for a summary of key issues raised by representors.

- **Section 120(g): *the probable impact of the proposed development, including the nature, extent and significance of probable environmental impacts.***

The proposed development has an increased overshadowing impact on the community courtyard. The community courtyard is the primary open space area within the Curtin Group Centre.

Refer below to Criterion 45 of the Commercial Zones Development Code.

## **THE TERRITORY PLAN**

### **COMMERCIAL ZONES DEVELOPMENT CODE**

The proposed development is not consistent with the general provisions relating to the number of storeys and plot ratio as contained in the Commercial Zones Development Code.

#### **Rule 45/Criterion 45**

##### ***Rule 45***

*The maximum number of storeys is 2.*

The development has a building height of six storeys, which does not meet the maximum number of two storeys. The proposed development is inconsistent with Rule 45.

##### ***Criteria 45***

*Buildings comply with all of the following:*

*a) are compatible with the desired character*

- b) are appropriate to the scale and function of the use*
- c) minimise detrimental impacts, including overshadowing and excessive scale.*

The term “desired character” is defined in the Territory Plan as “the form of development in terms of siting, building bulk and scale, and the nature of the resulting *streetscape* that is consistent with the relevant zone objectives, and any statement of desired character in a relevant precinct code”.

The Curtin Precinct Map and Code does not currently contain a statement of desired character. However, it is noted that Rule 45 suggests a building height of two storeys. Assessment of the proposed development in terms of its suggested siting, building bulk, scale and the resulting streetscape, as well as an analysis of the zone objectives concluded that the six storey height of the proposed building is not consistent with the desired character of Curtin Group Centre. This view is further supported by a large number of public representations received through the public notification process, raising concerns with excessive height, bulk and scale.

A building layout contained in a building of lesser height and with more articulated upper levels with increased boundary setbacks may still result in a viable development whilst minimising overshadowing impacts on the amenity of the community courtyard space. The proposed six storey development furthermore lacks transition in height from the existing mostly single storey character of the group centre.

The building height and setbacks of the development increases overshadowing onto the public domain, particularly the community courtyard space.

The proposed six storey development therefore does not comply with Criterion 45.

#### **Rule 46/Criterion 46**

##### ***Rule 46***

*The maximum plot ratio is 100%.*

The proposed development has a plot ratio in excess of 450%, which does not meet the maximum plot ratio of 100%. The proposed development does not comply with Rule 46.

##### ***Criteria 46***

*Buildings comply with all of the following:*

- a) are compatible with the desired character*
- b) are appropriate to the scale and function of the use*
- c) minimise detrimental impacts, including overshadowing and excessive scale.*

The term “desired character” is defined in the Territory Plan as “the form of development in terms of siting, building bulk and scale, and the nature of the resulting *streetscape* that is consistent with the relevant zone objectives, and any statement of desired character in a relevant precinct code”.

The Curtin Precinct Map and Code does not currently contain a statement of desired character. However, it is noted that Rule 46 suggests a maximum plot ratio of 100%. Assessment of the proposed development in terms of its proposed siting, building bulk, scale and the resulting streetscape, as well as an analysis of the zone objectives concluded that the plot ratio of the proposed building is excessive and not consistent with the desired character of Curtin Group Centre, particularly having regard to existing built form and the resultant bulk of the proposed building.

The suggested plot ratio of the proposed building is not deemed appropriate to the scale and function of the use.

The built form resulting from the excessive plot ratio increases overshadowing onto the public domain, particularly the community courtyard space.

The excessive plot ratio suggested results in a development that does not comply with Criterion 45.

## **EVIDENCE**

Application No. 201630437

File No. 1-2016/19541/1

Territory Lease File No. 328/62/7 Part 1 & Part 2

The Territory Plan zone – CZ1 Core Zone

The Development Code – Commercial Zones Development Code

The Precinct Code – Curtin Precinct Map and Code

Current Crown Lease – Volume 1550 Folio 78

Representations – 496 representations

Entity advice – Transport Canberra and City Services (TTCS), ActewAGL Electricity Networks Division, Jemena Gas and Icon Water

## **PART 2 PUBLIC NOTIFICATION AND ENTITY ADVICE**

### **PUBLIC NOTIFICATION**

Pursuant to Division 7.3.4 of the Act, the application was publicly notified from 19 December 2016 to 18 January 2017. The public notification was extended until 31 January 2017. Four hundred and ninety six (496) written representations were received during public notification.

The main issues raised are summarised as follows.

- The community is not against redevelopment, however, the redevelopment should be redesigned to be consistent with the draft Curtin Group Centre Master Plan.
- Building height is inconsistent with the draft Curtin Group Centre Master Plan which outlines a building height of 2 storeys facing Curtin Square (community courtyard) and 4 storeys facing Curtin Place. The development of 6 storeys is not supported by the community.
- Building height is inconsistent with the desired character of the Curtin Group Centre. The Curtin Group Centre is valued by the community, which has a 'village' atmosphere. The height of new buildings and the impact on Curtin Square (community courtyard area) in relation to access to sunlight is very important.
- The height of the building will significantly over shadow the community courtyard, which is of high value to the community as a gathering place that currently receives substantial access to sunlight. Any reduction to the current level of sunlight into Curtin Square (community courtyard) is seen as unfavourable.
- Existing parking is in high demand and parking issues will be exacerbated by the increased traffic.
- Accessible public car parking spaces are in high demand by the aging local residents who visit the Curtin Group Centre.
- The unique small businesses in the existing building currently draw in a large number of local visitors and after the building is demolished, businesses that are left will suffer from the down turn in visitor numbers. The mix of the unique businesses that gives Curtin Group Centre its character may end up being lost after the redevelopment.
- The development will demolish the existing public toilet building and the community wants assurances that the new development will provide public toilets.
- Pedestrian safety around the proposed development is an issue since a lot of older people and school children visit the Curtin Group Centre.
- The design of the architectural elements of the building is not sympathetic to the character of the group centre.

The assessment of the proposal considered the above issues as raised through written public representations.

This decision to refuse this proposal responds to some of the issues raised through written representations, but should not necessarily be interpreted to imply the planning and land authority's concurrence with all representations received.

**ENTITY ADVICE**

Pursuant to Division 7.3.3 of the Act, the application was referred to entities and advice was received. The referral entities' comments are as follows. A response to the advice is provided as appropriate.

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

On 6 January 2017 advice was received from TCCS in relation to the proposal. The advice stated that further information is required for assessment to address the following:

- *A Right of Way easement is required through block 24 for the cars / service vehicles entering into and exiting off the site.*
- *The proponent must provide an easement plan showing all services and right of way for the proposed development.*
- *The road verge is not a suitable location for an electrical substation as it will have an impact on the line of sight, future footpaths and required clearances, public liability, service locations etc. The proponent must accommodate a substation within the block boundaries. Any proposed cabling work must avoid adverse impact on trees on unleased Territory land. Adequate protection measures must be provided if cabling work is proposed within tree protection zone of trees located on unleased Territory land.*
- *Commercial and residential waste / recycling enclosure must be separated in accordance with the Development Control Code for Best Practice Waste Management in the ACT (Waste Code) 2014.*

**Jemena Gas**

On 15 December 2016 Jemena Gas issued a statement of Conditional Compliance.

**Icon Water**

On 20 December 2016 Icon Water issued a statement of Conditional Acceptance.

**ActewAGL Electricity Networks Division**

On 4 January 2017 ActewAGL Networks Division issued a statement of Conditional Compliance.



## **PART 3 ADMINISTRATIVE INFORMATION**

### INSPECTION OF THE APPLICATION AND DECISION

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

### RECONSIDERATION OF THE DECISION

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

To submit an application for reconsideration, documents must be provided electrically by email to [epdcustomerservices@act.gov.au](mailto:epdcustomerservices@act.gov.au) or provided at the customer service centre on a CD/DVD. The delegate of the Authority reconsidering the decision must be different from, and senior to, the original decision maker. An application for reconsideration does not prevent an application for a review of the same decision being made to the ACT Civil and Administrative Tribunal. Application forms and further information about reconsideration are available from the planning and land authority's website and Customer Service Centres.

### REVIEW BY THE ACT CIVIL AND ADMINISTRATIVE TRIBUNAL (ACAT)

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

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

# APPENDIX 1

## REVIEW OF THE DECISION

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

### CONTACT DETAILS

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

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

### POWERS OF THE ACAT

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

### APPLICATIONS TO THE ACAT

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

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

### TIME LIMITS FOR APPLICATIONS

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

### FEES

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

### TIME LIMITS FOR REVIEWS OF DECISIONS

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

### FORMS OF LEGAL, FINANCIAL AND OTHER ADVICE AND ASSISTANCE

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

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

### AWARDING OF COSTS

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

### ACCESS TO DOCUMENTS ABOUT THE DECISION

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

### PROCEDURES OF THE ACAT

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

**TRANSLATION AND INTERPRETER SERVICES**

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

ENGLISH	If you need interpreting help, telephone:
ARABIC	: إذا احتجت لمساعدة في الترجمة الشفوية ، إتصل برقم الهاتف :
CHINESE	如果你需要传译员的帮助，请打电话：
CROATIAN	Ako trebate pomoć tumača telefonirajte:
GREEK	Αν χρειάζεστε διερμηνέα τηλεφωνήσετε στο
ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
MALTESE	Jekk għandek bżonn l-għajjnuna t'interpretu, ċempel:
PERSIAN	: اگر به ترجمه شفاهی احتیاج دارید به این شماره تلفن کنید:
PORTUGUESE	Se você precisar da ajuda de um intérprete, telefone:
SERBIAN	Ako vam je potrebna pomoć prevodioca telefoniрајте:
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