

# Planning and Development (Approval of Application – 201732569 Construction of a six-storey mixed-use building on Block 2 Section 67 Kingston) Notice 2018

Notifiable instrument NI2018– 223

made under the

Planning and Development Act 2007, s 170 (Notice of approval of application)

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## 1 Name of instrument

This instrument is the *Planning and Development (Approval of Application – 201732569 Construction of a six-storey mixed-use building on Block 2 Section 67 Kingston) Notice 2018*.

## 2 Impact track development approval

- (1) On 16 April 2018, pursuant to section 162 of the *Planning and Development Act 2007*, the delegate of the planning and land authority approved, subject to conditions, in the impact track, development application 201732569, for the construction of a six-storey mixed-use building on Block 2 Section 67 Kingston.
- (2) The approval of development application 201732569 is in the schedule.

Ben Ponton  
Chief Planning Executive  
30 April 2018



# Notice of decision

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

## Impact track

DA NO: 201732569		DATE LODGED: 28 September 2017
DATE OF DECISION: 16 April 2018		
BLOCK: 2	SECTION: 67	SUBURB: KINGSTON
STREET NO AND NAME: 45 Honeysett View		
APPLICANT: Canberra Town Planning Pty Ltd		
LESSEE: Estate Pty Ltd		

### THE DECISION

This application was lodged in the impact 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 impact track applications.

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

- **the construction of a six storey building with two levels of basement containing 79 apartments with 197 car parking spaces, landscaping, driveway verge crossing and associated works;**

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

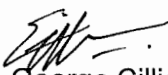
This decision is subject to the conditions of approval at **PART 1** being satisfied. **Please note that plans will not be dispatched until all conditions are satisfied.**

**PART 2** sets out the Reasons for the Decision.

**PART 3** is Public Notification and Entity Advice.

**PART 4** contains administrative information relating to the determination.

### DELEGATE

  
 George Cilliers  
 Delegate of the planning and land authority  
 Environment and Planning Directorate  
 16 April 2018

### CONTACT OFFICER

Minh Pham  
 Phone: (02) 6207 8684  
 Email: minh.pham@act.gov.au

## PART 1

### CONDITIONS OF APPROVAL

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

#### A. ADMINISTRATIVE / PROCESS CONDITIONS

##### A1. FURTHER INFORMATION

Within 28 days from the date of this decision, or within such further time as may be approved in writing by the planning and land authority, the applicant shall lodge with the planning and land authority for approval:

- (a) revised site plan, landscape plan and architectural drawings, based on the relevant drawings submitted as part of the application, showing:
  - (i.) all plans to be consistent with the latest version of the design;
  - (ii.) consistent RL's with the approved Estate Development Plan;
  - (iii.) correct RL height along the main pedestrian route near Honeysett Street;
  - (iv.) proposed bike racks in the central plaza on all relevant plans;
  - (v.) a minimum 3 metre width dimension to the pedestrian easement access;
  - (vi.) details of the doors to enclose the waste and gas room;
  - (vii.) lighting plan to be consistent with the latest floor plans;
  - (viii.) the development will comply with Australian Standard AS4282 and no external lighting is permitted to face the Jerrabomberra Wetlands;
  - (ix.) door width clearances to be compliant with Australian Standard AS4299 for adaptable plans;
  - (x.) lifts to be compliant with Australian Standard AS1735.12;
  - (xi.) details of fencing, screening, balustrades on level 4 (sub-penthouse);
  - (xii.) all glazing facing the Jerrabomberra Wetlands to be low-reflectivity as per the glass specification prepared by Sellick Facades; and
  - (xiii.) typical elevation plan detailing and dimensioning the courtyard walls.

##### A2. ENVIRONMENT PROTECTION AUTHORITY (EPA)

- (a) A revised noise management plan must be endorsed by the Environment Protection Authority prior to the release of plans. The plan lodged with the DA incorrectly describes the worst case scenario for a worst case scenario for noise from commercial activities within the development as being a restaurant and hence uses internal generation levels which are not representative of levels at nearby establishments which the EPA has attended for noise complaints. The plan must be revised to ensure noise issues are appropriately considered at the planning stage.
- (b) All works must be carried out in accordance with Environment Protection Guidelines for Construction and Land Development in the ACT, March 2011, available by calling 132281.

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- (c) All works at the site must be undertaken in accordance with the requirements of the following EPA endorsed documents (or subsequent EPA endorsed revisions of these documents) for the site:
- (i) Site Audit Statement (RJP 030a - ACT) dated 27 January 2016 and Site Audit Report titled "Site 14 Developable Area and Foreshore Land Parcel, Kingston Foreshore Development Precinct, Kingston, ACT" dated 27 January 2016 by Mr Roger Parker of Golder Associates Pty Ltd;
  - (ii) "Development Environmental Management Plan, Site 14, Kingston Foreshore Development Precinct, Kingston, ACT" dated January 2016 by Environmental Resources Management Australia Pty Ltd;
- (d) No soil or water is to be disposed from site without the approval of the EPA.
- (e) Prior to occupancy of the site application for variation of the Crown Lease under the Planning and Development Act 2007 must be requested and approved to include an additional provision which requires compliance with the above SAS and the site's occupancy environmental management plan (OEMP) titled "Site Occupancy Environmental Management Plan, Site 14, Kingston Foreshore Development Precinct, Kingston, ACT" dated January 2016 by Environmental Resources Management Australia Pty Ltd or EPA approved revision of this document.
- (f) A copy of the varied lease must be forwarded to the EPA for its records prior to occupancy of the site.
- (g) As the site is greater than 0.3 hectares the construction is an activity listed in Schedule 1 as a Class B activity under the Environment Protection Act 1997. The contractor/builder developing the site must hold an Environmental Authorisation or enter into an Environment Protection Agreement with the Environment Protection Authority (EPA) in respect of that activity prior to works commencing.
- (h) An erosion and sediment control plan must be submitted to and be endorsed by the EPA prior to works commencing.

A3. DEED OF AGREEMENT

- (a) Approved buildings must not be occupied, and a Certificate of Occupancy and Use must not be applied for, until a consequent Crown lease is granted permitting the approved use of the land.

A4. ENVIRONMENTAL MONITORING

- (a) Implement environmental monitoring in accordance with DEMP Air monitoring for asbestos during excavation work in accordance with ACT Work Safety Code of Practice 2010 as per DEMP. On completion of final excavation, install a separation layer to minimise potential for exposure to any contamination at depth.
- (b) Regularly review and update DEMP and OEMP as required. Updated documentation should be reviewed by an accredited site auditor.
- (c) If significant amounts of asbestos is located during construction, ACT Fire and Rescue should be notified.

**A5. LIGHTING AND GLAZING**

- (a) The development must comply with AS4282 – Control of the Obtrusive Effects of Outdoor Lighting. The overall impact should be designed to keep night time overspill lighting to a minimum and should not compete in prominence with the lighting of the National Triangle.
- (b) No external lighting is permitted to face the Jerrabomberra Wetlands.
- (c) all façade and balustrade glazing facing the Jerrabomberra Wetlands to be low-reflectivity as per the glass specification prepared by Sellick Facades.

**B. PRIOR TO CONSTRUCTION AND/OR DEMOLITION****B1. DESIGN REVIEW AND OPERATIONAL ACCEPTANCE**

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

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

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

**B2. SEDIMENT AND EROSION CONTROL**

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

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

**B3. LANDSCAPE MANAGEMENT & PROTECTION PLAN (LMPP)**

LMPP approval shall be obtained from the Senior Manager, Development Review and Coordination, TCCS. This plan is to be approved and implemented before the commencement of works, including demolition on the site and is to be in accordance with TCCS Guidelines for the *Protection of Public Landscape Assets Adjacent to Development Works-REF-04*.

**B4. TRAFFIC MANAGEMENT**

All times during construction the site and surrounds shall be managed in accordance with a Temporary Traffic Management Plan, prepared by a suitably qualified person and approved by the Manager, Traffic Management & Safety.

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**B5. NOTICE OF COMMENCEMENT OF CONSTRUCTION**

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

**C. DURING AND POST CONSTRUCTION AND/OR DEMOLITION****C1. CONSTRUCTION LIGHTING**

No construction lights are permitted to face the Jerrabomberra Wetlands.

**C2. SEDIMENT AND EROSION CONTROL**

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

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

**C3. VERGE MANAGEMENT**

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

**C4. TRAFFIC MANAGEMENT**

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

**C5. WASTE MANAGEMENT**

All building waste is to be stored on the site in suitable receptacles and collected regularly. The lessee is to take all reasonable steps to ensure that waste, particularly wind borne litter, does not affect adjoining or adjacent properties.

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**D. ADVISORY NOTES**

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

**D1. ENTITY ADVICE**

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

**D2. TRANSPORT CANBERRA AND CITY SERVICES****Use of Verges or other Unleased Territory land**

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

**Repair of Damage to Public Assets**

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

**D3. ENVIRONMENT PROTECTION AUTHORITY (EPA)**

- (a) Refer to Appendix 1 for information about approvals that may be required for construction and/or demolition.
- (b) All rain water that enters the site and pools in excavations during a rain storm event would be considered as a sediment control pond, and must meet the following condition:
  - (i) No discharge from pond unless sediment level is less than 60mg/litre. If sediment level is greater, then prior to discharge, the dam must be dosed with either Alum or Gypsum and allowed to settle until the sediment is less than 60 mg/litre.
- (c) For further information please contact the Environment Protection Authority Planning Liaison on 02 6207 5642.

**D4. CONSERVATOR OF FLORA AND FAUNA**

- (a) It is the proponents responsibility to:
  - (i.) notify the Commonwealth of the development
  - (ii.) ensure they have considered the potential for adversely affecting *Matters of National Environmental Significance (MNES)*, under the *Environment Protection Biodiversity Conservation Act (EPBC Act)*, and to demonstrate their response.

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- D5. JEMENA  
Refer to statement(s) from ActewAGL Electricity Networks Division at **Attachment A**.
- D6. ICON WATER  
Refer to statement(s) from Icon Water at **Attachment B**.
- D7. ACTEWAGL ELECTRICITY NETWORKS DIVISION  
Refer to statement(s) from ActewAGL Electricity Networks Division at **Attachment C**.
- D8. CONSERVATOR OF FLORA AND FAUNA  
Refer to statement(s) from ActewAGL Electricity Networks Division at **Attachment D**.
- D9. EMERGENCY SERVICES AGENCY (ESA)  
Refer to statement(s) from ActewAGL Electricity Networks Division at **Attachment E**.
- D10. ACT HERITAGE COUNCIL  
Refer to statement(s) from ActewAGL Electricity Networks Division at **Attachment F**.
- D11. HEALTH PROTECTION SERVICE  
Refer to statement(s) from Health Protection Service at **Attachment G**.
- D12. AUSTRALIAN STANDARDS  
The proposal should comply with the following Australian Standards as required by relevant codes in the Territory Plan:
- (a) AS4282 – Control of the Obtrusive Effects of Outdoor Lighting;
  - (b) AS4299 – Adaptable Housing;
  - (c) AS1735.12 – Lifts, Escalators and Moving Walks Facilities for Persons with Disabilities; and
- If directional signage is proposed, it should comply with:
- (d) AS1742.10 - Manual of Uniform Traffic Control Devices Pedestrian Control and Protection.

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



## PART 2

### REASONS FOR THE DECISION

This development application (DA) was submitted in the Impact Track as the proposal involved land included on the register of contaminated sites under the *Environment Protection Act 1997*. The application was submitted, concurrently, with an application requesting an exemption from requiring an Environmental Impact Statement, under s211 of the *Planning and Development Act 2007*. On 13 March 2018, the Minister for Planning and Land Management accepted the application. During the process, conditions were identified to ensure impacts on air, surrounding lands, health and compliance are acceptable. Conditions imposed have been incorporated to this decision.

The application satisfactorily meets the requirements for approval. The application was approved because, based on the documentation and in the form modified by the imposed conditions, it was considered to meet the relevant codes, being the:

- Kingston Precinct Map and Code;
- Commercial Zones Development Code;
- Multi-Unit Housing Development Code;
- Access and Mobility General Code;
- Crime Prevention Through Environmental Design General Code;
- Parking and Vehicular Access General Code; and
- Bicycle Parking General Code;

The key issues identified in the assessment are in relation to contaminated sites, entity requirements and inconsistencies between the approved Estate Development Plan and this Development Application.

Conditions have been imposed to address the key issues and ensure that the proposal is consistent with the Territory Plan and the *Planning and Development Act 2007*.

#### DA-201732569 (S141A) Application

Pursuant to section 141 of the Planning and Development Act 2007(Act) as DA-201732569A, the applicant lodged further information and amended drawings to address issues raised by the Planning and Land Authority.

The information and drawings provided relate to the following matters:

- Bicycle parking
- Accessible path through the site
- Dimensions of building elements
- Over-shadowing impact on adjacent blocks to the south
- Removal of vehicular access to the substation
- Lighting plan to address light spill
- Glass specification to address reflectivity

**EVIDENCE**

**Application No. 201732569**

**File No. 1-2017/24570**

**The Territory Plan zone – CZ5**

**The Development Codes:**

- Commercial Zones Development Code
- Multi Unit Housing Development Code

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

**Exemption from EIS Titled:** *Environmental Impact Statement – Mixed Use*

*Development – Blocks 2 and 3 Section 67 Kingston* accepted by the Minister on  
13 March 2018

**Current Crown Lease – Volume 2280 Folio 34**

**Representations – 12 received**

**Entity advice:**

- Jemena
- Icon Water
- ActewAGL Electricity Networks Division
- Conservator of Flora and Fauna
- ACT Emergency Services Agency
- ACT Heritage Council
- Health Protection Service
- Environment Protection Authority
- Transport Canberra and City Services
- National Capital Authority

## **PART 3**

### **PUBLIC NOTIFICATION AND ENTITY ADVICE**

#### **PUBLIC NOTIFICATION**

Pursuant to Division 7.3.4 of the Act, the application was publicly notified from 6 October 2017 to 24 November 2017. Ten written representations were received during public notification and an additional two representations were received after public notification.

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

#### **(a) The proposed six-storey building will reduce the sunlight, sky and views from my unit**

The proposed building height is consistent with other developments in the Kingston Precinct. The height also matches with the recently constructed building directly on the opposite side of Honeysett View. The proposed development will not significantly overshadow adjacent developments during the winter. There is approximately 24 metres separation between buildings. Due to the curved design, the overshadowing is further minimised and likely to partially affect only the ground level of adjacent developments.

The Estate Development Plan (EDP) for section 65 and 66 in Kingston, adjacent to this proposal, was approved in 2011 (development application number 201119861). This EPD shows 'site 14' on the plans and indicates there is land allocated for future development.

The EDP for this site was approved in early 2015 for future commercial mixed-use development. While desirable views are highly sought after, it is worth considering if future developments will have an impact on views. Kingston Foreshore is a relatively new precinct and future development is expected in this area.

#### **(b) Existing road infrastructure is dangerous and should be resolved before this development is approved**

Roads are designed to meet safety standards and is a matter related to Transport Canberra and City Services (TCCS). If you have concerns with any roads and would like to improve safety, please contact TCCS.

#### **(c) Construction noise requires me to close my windows and doors and use the airconditioner**

Construction noise is unavoidable for most types of development. Kingston Foreshore is a relatively new precinct where development is expected. There are restrictions to when construction noise is allowed and is enforced by the Environment Protection Agency. Generally, developments are allowed up to two years to complete construction. To delay the construction would not benefit the developer financially so it would be in their best interest to complete the construction in a timely manner.

#### **(d) Visitor parking is occupied by construction workers**

On-street public parking is available to everyone. The general time restriction of one hour on-street parking would not be a suitable parking space for construction workers as they usually work on site longer.

**(e) Insufficient street parking**

The amount of on-street car parking is planned by Transport Canberra and City Services. Currently there is a substantial amount of on-street parking which increases the amount of hard surfacing in the area. Kingston Foreshore is a highly active area so it is expected that parking demands are not always met.

**(f) The ground floor should be used only for public and commercial purposes**

While activating areas with commercial spaces is great for the public to enjoy, it would not be appropriate for this site. Jerrabomberra Wetlands is inhabited by Latham's Snipe which is a protected migratory bird. The site requires sensitive planning to ensure wildlife in the area will not be significantly impacted. The proposal includes three commercial tenancies that directly face Kingston Harbour while residential units will face the wetlands.

**(g) The development may have an impact on the migratory bird, Latham's Snipe, which inhabit Jerrabomberra Wetlands**

While the conditional approval for this application has considered potential impacts on Latham's Snipe, it is the proponent's responsibility to acquire the relevant approvals from the Commonwealth as required under the Environmental Protection and Biodiversity Conservation Act.

The proponent engaged Sellick Facades for glazing selection to reduce reflectivity. The selected low-emissivity coated glazing is specified to reduce the external reflectivity to less than 15%; this is a reduction of 85%.

All works must be carried out in accordance with the Environment Protection Guidelines for Construction and Land Development in the ACT; this is enforced by The Environment Protection Agency.

The development must comply with any further requirements from the Commonwealth to ensure Latham's Snipe will not be significantly impacted; this includes controls on construction noise, glazing reflectivity, lighting and any other related effects.

**(h) The proposed car park on public land will diminish amenity and views from existing developments**

The proposed carpark on block 3, section 66, in Kingston is not part of development application 201732569 and is not included in this approval.

**(i) Technical amendments and concerns of residents**

The technical amendment for the Kingston Foreshore Arts Precinct and the concerns of some nearby residents has been previously raised. A written response from Minister Gentleman has previously addressed these concerns. However, this is a separate matter to this development application.

The legality of technical amendment 2017-20 is also a separate matter and would not be appropriate to resolve through this development application.

**(j) Limited number of building elements may exceed 4 storeys**

The combined footprint of the building elements exceeding 4 storeys make up for less than 50% of the site area. Therefore, six building elements is considered an acceptable number for this specific site. Criteria is qualitative in nature and is assessed against the design merits. The intention of limiting building elements to a 15m x 20m rectangle is to avoid long and narrow building designs. The proposed building elements respond to the curved site and is well articulated. Strictly enforcing a building to a rectangle shape will limit creative architecture and design.

The criterion regarding screening unsightly elements from the public domain is in relation to utilities such as air conditioners that should be screened.

The footprint of the building elements do not exceed 300m<sup>2</sup> and is correctly calculated by the proponent and also confirmed from the assessment of the footprint calculation.

**(k) Ground level view line and pedestrian access**

Figure 8 of the Kingston Precinct Code is indicative of the desired planning outcomes. The angled boundary line dividing area A and B is not specified in figure 8. Furthermore, the area sizes are not specified. The only specified requirement in figure 8 is the 3 metre wide ground level pedestrian access easement. Although the width of the easement is not specified on the plans, it appears to be compliant; a condition of approval is imposed in the Notice of Decision to ensure this rule is met. No courtyard walls are proposed in front of the commercial tenants or within the pedestrian access easement.

The proposal provides two ground level view lines from the central plaza to Kingston Harbour and Jerrabomberra Creek and meets the desired planning outcome depicted in figure 8. No buildings are located within the pedestrian access and achieves unobstructed views through the site. The majority of the pedestrian access is greater than 3 metres and is considered generous to support pedestrian comfort. The pedestrian access is air-locked with glass doors to provide access to the public during the day. Limited access is provided at night for increased safety and security for associated occupiers.

## 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.

### Jemena

On 4 October 2017 advice was received from Jemena in relation to the proposal. A statement of conditional compliance was issued (Attachment A).

Assessment note: matters raised have been incorporated as advice.

### Icon Water

On 16 October 2017 advice was received from Icon Water in relation to the proposal. A statement of conditional acceptance was issued (Attachment B).

Assessment note: matters raised have been incorporated as advice.

### ActewAGL Electricity Networks Division

On 10 October 2017 advice was received from ActewAGL Electricity Networks Division in relation to the proposal. A statement of conditional compliance was issued (Attachment C).

Assessment note: matters raised have been incorporated as advice.

### Conservator of Flora and Fauna

On 22 November 2017 advice was received from the Conservator of Flora and Fauna in relation to the proposal. The advice states that:

*The proposed development was discussed at a meeting of the Wetlands Advisory Group and the following points were made:*

*It is the proponent's responsibility to ensure they have considered the potential for adversely affecting MNES (Jerra) – under EPBC Act, and to demonstrate their response.*

*We need to alert the proponent to the fact that the number of Latham Snipe at Jerrabomberra Wetlands means that Jerra now qualifies as an MNES, and that the development in its DA needs to show that it has considered this.*

*The Migratory Species Plan is nearing completion and the main species of coverage in the ACT will be Latham's Snipe. The magic number for Snipe is 17 and then the site is regarded as 'significant'. There were 22 Snipe just on the peninsula opposite Kingston Harbour a few weeks ago (inadvertently flushed by the hot air balloons when a bird survey was being undertaken).*

On 8 November 2017 a statement was issued regarding the S. 211 Exemption (Attachment D).

Assessment note: matters raised have been incorporated as conditions of approval and advice. Refer to **Part 1 – Conditions of Approval**.

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ACT Emergency Services Agency

On 18 October 2017 advice was received from ACT Emergency Services Agency in relation to the proposal. A statement of support was issued (Attachment E).

Assessment note: matters raised have been incorporated as advice.

ACT Heritage Council

On 21 November 2017 advice was received from ACT Heritage Council in relation to the proposal. A statement of support was issued (Attachment F).

Assessment note: matters raised have been incorporated as advice.

Health Protection Service

On 24 November 2017 advice was received from Health Protection Service in relation to the proposal (Attachment G).

Assessment note: matters raised have been incorporated as advice.

Transport Canberra and City Services (TCCS)

On 16 April 2017 advice was received from TCCS in relation to the proposal. The advice states that the proposal is supported.

Assessment note: Advice noted.

Environment Protection Authority

On 24 November 2017 advice was received from Environment Protection Authority in relation to the proposal. The advice states the proposal:

***Conditions:***

*All works must be carried out in accordance with Environment Protection Guidelines for Construction and Land Development in the ACT, March 2011, available by calling 132281.*

*All works at the site must be undertaken in accordance with the requirements of the following EPA endorsed documents (or subsequent EPA endorsed revisions of these documents) for the site:*

*1. Site Audit Statement (RJP 030a - ACT) dated 27 January 2016 and Site Audit Report titled "Site 14 Developable Area and Foreshore Land Parcel, Kingston Foreshore Development Precinct, Kingston, ACT" dated 27 January 2016 by Mr Roger Parker of Golder Associates Pty Ltd;*

*2. "Development Environmental Management Plan, Site 14, Kingston Foreshore Development Precinct, Kingston, ACT" dated January 2016 by Environmental Resources Management Australia Pty Ltd;*

*No soil or water is to be disposed from site without the approval of the EPA.*

*Prior to occupancy of the site application for variation of the Crown Lease under the Planning and Development Act 2007 must be requested and approved to include an additional provision which requires compliance with the above SAS and the site's occupancy environmental management plan (OEMP) titled "Site Occupancy Environmental Management Plan, Site 14, Kingston Foreshore Development Precinct, Kingston, ACT" dated January*

2016 by Environmental Resources Management Australia Pty Ltd or EPA approved revision of this document.

A copy of the varied lease must be forwarded to the EPA for its records prior to occupancy of the site.

A revised noise management plan must be endorsed by the Environment Protection Authority prior to the release of plans. The plan lodged with the DA incorrectly describes the worst case scenario for a worst case scenario for noise from commercial activities within the development as being a restaurant and hence uses internal generation levels which are not representative of levels at nearby establishments which the EPA has attended for noise complaints. The plan must be revised to ensure noise issues are appropriately considered at the planning stage.

As the site is greater than 0.3 hectares the construction is an activity listed in Schedule 1 as a Class B activity under the Environment Protection Act 1997. The contractor/builder developing the site must hold an Environmental Authorisation or enter into an Environment Protection Agreement with the Environment Protection Authority (EPA) in respect of that activity prior to works commencing.

An erosion and sediment control plan must be submitted to and be endorsed by the EPA prior to works commencing.

**Advice:**

All rain water that enters the site and pools in excavations during a rain storm event would be considered as a sediment control pond, and must meet the following condition:

- No discharge from pond unless sediment level is less than 60mg/litre. If sediment level is greater, then prior to discharge, the dam must be dosed with either Alum or Gypsum and allowed to settle until the sediment is less than 60 mg/litre.

For further information please contact the Environment Protection Authority Planning Liaison on 02 6207 5642.

Assessment note: matters raised have been incorporated as conditions and advice.  
Refer to **Part 1 – Conditions of Approval**.

National Capital Authority

On 9 January 2018 advice was received from National Capital Authority in relation to the proposal. The advice states that:

- We note that the open space approved under EDP DA20142S921 for Block 3 Section 67 Kingston will permit views from Lake Burley Griffin to the proposed development and pedestrian and cycleway movement through the area.
- The massing of the building is articulated and modulated to present a varied appearance when viewed from the lake
- The colour scheme generally appears to be light in tone when viewed from the lake side.
- The articulation of the top 2 storeys into separately orientated sections visually conveys a variety to the roof forms, materials and colours and offers a unique 'pie' shape within the Kingston foreshore precinct.



- *The building height is staggered with a 4 storey massing followed by 2 further storeys above and set back. The upper 2 storeys appear to not significantly impact on the landscape of the area or detract from the massing of the Kingston Powerhouse building (which is not within the vicinity).*
- *The building material pallet appears to be of a high quality, durable and low maintenance nature. We note that as the building does not front directly on to the Lake edge, the use of 'reflective neutral glazing' is not inconsistent with the 'Aesthetic Principles'.*
- *We note that the External Lighting Plan mentioned in the Statement Against the Planning Criteria was not provided to the NCA with this referral package. We point out that overall lighting impact should be designed to keep night time overspill lighting to a minimum and should not compete in prominence with the lighting of the National Triangle.*

Assessment note: The proposal is not inconsistent with the NCP. Matters raised have been incorporated as conditions and advice. Refer to **Part 1 – Conditions of Approval**.

## **PART 4**

### **ADMINISTRATIVE INFORMATION**

#### DATE THAT THIS APPROVAL TAKES EFFECT

This approval takes effect 20 working days after the day this notice of decision is given to every person who made a representation on the application. The effective date for development applications approved subject conditions could be adjusted if the approval is reconsidered by the planning and land authority or if an application is made to the ACT Civil and Administrative Tribunal.

Pursuant to section 184 of the Act, this approval will expire if:

- the development or any stage of the development is not started within two years after the day the approval takes effect;
- the development is not finished two years after the day the development begins; or
- the development approval relates to land comprised in a lease that requires the development to be completed on a stated date – the date stated in the lease for completion of the development, or the approval is revoked under section 189 of the Act.

#### CONDITONAL APPROVAL

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

Under section 184 of the Act, the applicant may apply to the planning and land authority to extend the prescribed period to finish the development, but such an application must be made within the original period specified for completion.

A development approval, to which section 184 of the Act applies, continues unless the approval ends under sections 184, 185, 186 or 187 of the Act.

#### INSPECTION OF THE APPLICATION AND DECISION

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

#### RECONSIDERATION OF THE DECISION

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

To submit an application for reconsideration, documents must be provided 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**CONTACT DETAILS OF RELEVANT AGENCIES

<b>Health Directorate</b> - health protection	Website: <a href="http://www.health.act.gov.au">www.health.act.gov.au</a> Telephone: (02) 6205 1700
<b>Environment and Planning Directorate</b>  <i>Planning and land authority</i> <ul style="list-style-type: none"> <li>- list of certifiers for building approval</li> <li>- demolition information</li> <li>- asbestos information</li> </ul> <i>Environment Protection Authority</i> <ul style="list-style-type: none"> <li>- environment protection</li> <li>- water resources</li> <li>- asbestos information</li> </ul> <i>Conservation, Planning and Research</i> <ul style="list-style-type: none"> <li>- threatened species/wildlife management</li> </ul>	  Website: <a href="http://www.planning.act.gov.au">www.planning.act.gov.au</a> Telephone: (02) 6207 1923   Website: <a href="http://www.environment.act.gov.au">www.environment.act.gov.au</a> Telephone: (02) 6207 6251   Website: <a href="http://www.environment.act.gov.au">www.environment.act.gov.au</a> Telephone: (02) 6207 1911
<b>Transport Canberra and City Services</b> <ul style="list-style-type: none"> <li>- tree damaging activity approval</li> <li>- use of verges or other unleased Territory land</li> <li>- works on unleased Territory land - design acceptance</li> <li>- damage to public assets</li> </ul>	Website: <a href="http://www.tccs.act.gov.au">www.tccs.act.gov.au</a> Telephone: 132 281 Telephone for asset acceptance: (02) 6207 7480
<b>Utilities</b> <ul style="list-style-type: none"> <li>- Telstra (networks)</li> <li>- TransACT (networks)</li> <li>- IconWater</li> <li>- Electricity reticulation</li> </ul>	Telephone: (02) 8576 9799 Telephone: (02) 6229 8000 Telephone: (02) 6248 3111 Telephone: (02) 6293 5738

**ADVICE TO APPLICANT****SUBMISSION OF REVISED DRAWINGS AND DOCUMENTATION**

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

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

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

**FURTHER APPROVALS FOR CONSTRUCTION**

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

**BUILDING APPROVAL**

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

**PERMITTED VARIATIONS TO APPROVED DEVELOPMENT**

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

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

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

**"TREE DAMAGING ACTIVITY" APPROVAL**

A Tree Management Plan under the *Tree Protection Act 2005* is required for approval where it is proposed to undertake groundwork within the tree protection zone of a protected tree or likely to cause damage to, or remove, any trees defined as protected trees by that Act. More information is available from Transport Canberra and City Services.

**USE OF VERGES OR OTHER UNLEASED TERRITORY LAND**

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

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### WORKS ON UNLEASED TERRITORY LAND – DESIGN AND OPERATIONAL ACCEPTANCE

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

1. a certificate of design acceptance prior to the commencement of any work and
2. a certificate of operational acceptance on completion of all works to be handed over to TCCS

Works on unleased Territory land may include the construction or upgrading of driveway verge crossings, public footpaths, roads, street lighting, stormwater works, waste collection amenities, street signs and line marking, road furniture and landscaping.

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

### **CONSTRUCTION REQUIREMENTS**

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

### DEMOLITION AND ASBESTOS MANAGEMENT

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

### ENVIRONMENT PROTECTION

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

### REPAIR OF DAMAGE TO PUBLIC ASSETS

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

### UTILITY ASSETS RETENTION

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

## WATER RESTRICTIONS AND FILLING OF NEW POOLS, PONDS AND FOUNTAINS

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

## DRAINAGE

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

## **REVIEW OF THE DECISION**

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

## CONTACT DETAILS

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

Location	Contact details
ACT Civil and Administrative Tribunal Level 4, 1 Moore Street CANBERRA CITY ACT 2601	Website: <a href="http://www.courts.act.gov.au">www.courts.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 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 the date of this Notice of decision. The time limit can be extended in some circumstances (refer to sections 10 (2), 10(3), 25(1)(e) and 25(2) of the *ACT Civil & Administrative Tribunal Act 2008*; section 7 of the *ACT Civil and Administrative Tribunal Procedure Rules 2009 (No 2)*; and section 409 of the *Planning and Development Act 2007*).

### FEES

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

### TIME LIMITS FOR REVIEWS OF DECISIONS

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

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

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

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

### AWARDING OF COSTS

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

### ACCESS TO DOCUMENTS ABOUT THE DECISION

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

### PROCEDURES OF THE ACAT

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

TRANSLATION AND INTERPRETER SERVICES

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

ENGLISH	If you need interpreting help, telephone:
ARABIC	: إذا احتجت لمساعدة في الترجمة الشفوية ، إتصل برقم الهاتف :
CHINESE	如果你需要传译员的帮助，请打电话：
CROATIAN	Ako trebate pomoć tumača telefonirajte:
GREEK	Αν χρειάζεστε διερμηνέα τηλεφωνήστε στο
ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
MALTESE	Jekk għandek bżonn l-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	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