



ACT
Government

Environment and
Sustainable Development

Notice of decision

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

Merit track

DA NO: 201323208		DATE LODGED: 20/02/2013
DATE OF DECISION: 17 May 2013		
BLOCK: 12	SECTION: 37	SUBURB: PAGE
STREET NO AND NAME: 1 Petterd Street Page		
APPLICANT: Peter Peppas		
LESSEE: Peter Micalos Maria Patricia Papallo Fiore Pellegrino Peter Peppas		

THE DECISION

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

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

- **The demolition of a building containing two dwellings and the erection of a new two storey building containing 6 dwellings with basement car parking and associated landscaping, paving and other site works**

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

Aaron Oshyer
Delegate of the planning and land authority
Environment and Sustainable Development Directorate
17/05/2013

CONTACT OFFICER

Ms Gabrielle Caddy
Phone: (02) 6207 1799
Email: gabrielle.caddy@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 Planning and Development Act 2007* ("the Act");
- the relevant codes, being the Multi Unit Housing Development Code (MUHDC) and applicable general codes;
- advice given by an entity, the entity being Territory and Municipal Services Directorate.

Inconsistency with the *Planning and Development Act 2007* ("the Act")

The development proposal is inconsistent with the provisions of the Act in that it is inconsistent with *Section 120 Merit track – considerations when deciding development approval*, specifically Items (a), (b), (c), (d), and (f).

120 Merit track—considerations when deciding development approval

In deciding a development application for a development proposal in the merit track, the decision-maker must consider the following:

(a) the objectives for the zone in which the development is proposed to take place;

The proposal is considered to be inconsistent with item b) of the zone objectives for the RZ2 Suburban Core Zone:

b) Ensure that development addresses the street and the existing neighbourhood characteristics in scale, form and site development.

The proposal is a high level of development with a plot ratio which would be more in keeping with the density permitted in RZ3 or RZ4 zones.

The applicant has asserted that the block is not a standard block and is therefore free from the plot ratio constraints of the relevant rules in the code, however there is still a responsibility to achieve consistency with the characteristics of the relevant zone and the proposal does not achieve this consistency.

The proposal has a plot ratio of 71%, well in excess of the maximum permissible ratio for the zone for a standard block (50%). This is expressed in a two storey building with length of slightly over 23m along both the Belconnen Way and Petterd St frontages. The dominant form in both streets is single storey bungalow, either on a low plinth, or on a higher plinth with incorporated garaging. The proposal presents as terrace housing.

(b) the suitability of the land where the development is proposed to take place for a development of the kind proposed;

The proposal is considered to be unsuitable for the block as it is apparent that the degree of proposed development cannot be accommodated on the site without the use of a non standard basement entry ramp, and inadequate private open space for the units.

(c) each representation received by the authority in relation to the application that has not been withdrawn;

The proposal attracted four representations, which have not been formally withdrawn. These raised issues of traffic, overland flow of rainwater, degree and form of the development, and impact on neighbours in the form of light overspill and fence changes.

(d) if an entity gave advice on the application in accordance with section 149 (Requirement to give advice in relation to development applications)—the entity's advice;

The proposal was referred to TAMSD, ActewAGL and the Tree Protection Unit. TAMSD did not support the proposal because the basement ramp is steeper than is permitted by the Australian Standard (AS/NZS 2980.1:2004 Parking facilities Part 1 Off-street car parking).

(f) the probable impact of the proposed development, including the nature, extent and significance of probable environmental impacts.

It is considered that the proposal if approved would have a detrimental impact on the neighbourhood, through overdevelopment, by creating poor amenity for the residents of the block and reducing the amenity of the surrounding blocks, and through inadequate attention to safe vehicle egress and crime prevention measures.

Inconsistency with the Relevant Codes

The proposal is inconsistent with the MUHDC with regard to the degree of development on the block, the provision of adequate and useful private open space, and the assessed impact of the proposal on the amenity of both the surrounding blocks and the future residents of the subject block. The number of units and the amount of gross floor area (GFA) proposed for the block are well above the norm for this zone, and this has been achieved by creating dwellings with a low amenity.

The numerical minimum for private open space (POS) set at rule 88 of the MUHDC has been met, however the space provided does not meet R89 as clothes drying and other service areas have been included in the 6m by 6m space provided for four of the units (1,3,4 &6), and this space does not relate well to the internal living areas for two of the units (3&5) . The proposal does not meet R90 as the POS for Unit 6 is located forward of the building line, on the intersection of two busy streets.

The proposal is inconsistent with the relevant provisions of the Crime Prevention through Environmental Design General Code because the access to the basement car park is not controlled, and this creates spaces which represent a crime risk to residents and passersby.

The proposal is not consistent with all of the relevant provisions of the Parking and Vehicular Access General Code. The numerical requirement for spaces has been provided, however the space itself is not secure, and it is reached by a ramp which is not approvable (see below).

Advice from referral entity

The proposal is not supported by a referral agency, Territory and Municipal Services Directorate, as the access ramp to the basement car park is not consistent with the gradient provisions set out in the relevant standard, AS/NZS 2890.1:2004. The standard states:

3.3 GRADIENTS OF ACCESS DRIVEWAYS

At entry and exit points, the access driveway should be graded to minimize problems associated with crossing the footpath and entering the traffic in the frontage road.

Maximum gradients on and near access driveways other than at domestic properties (see Clause 2.6), shall be as follows:

- (a) *Property line/building alignment/ pedestrian path*-max. 1 in 20 (%5) between edge of frontage road and the property, building alignment or pedestrian path (except as provided in Item (d)), and for at least the first 6 m into the car park (except as provided below).
 - (i) The grade is a downgrade for traffic leaving the property and entering the frontage road.

- (ii) The user class is Class 1, 1A or 2 only.
- (iii) The maximum car park size is –
 - (1) for entry into an arterial road – 25 spaces , or
 - (2) for entry onto a local road – 100 car spaces.

The maximum grade across the property line shall remain at 1 in 20 (5%).

The entry ramp proposed has a section within the first 6m with a gradient of 12.5%, however the ramp does not comply with clause (a) (i) above, and for this reason TAMSD have not supported this element of the proposal. Their position is accepted.

The position of TAMSD has been reported back to the applicant twice, however there has been no demonstration of intent to redesign the proposal to comply with their requirement. On further assessment it is apparent that the ramp requirement cannot be met without a substantial redesign of the proposal.

Conclusion

The proposal as submitted in the original application and in subsequent further information submissions is not approvable. A substantial redesign would be required to achieve an approvable proposal. Accordingly, a refusal is the only possible outcome consistent with the Planning and Development Act.

EVIDENCE

Application No. 201323208, with S141A, S141B, S141D and S141E (S144C withdrawn)

Territory Lease File No. TL561/37/12

The Territory Plan zone – RZ2 Suburban Core Zone

The Development Codes – Multi Unit Housing Development Code, Crime Prevention Through Environmental Design General Code; Parking and Vehicular Access General Code.

Current Crown Lease – Volume 1931 Folio 31

Representations – Four

Entity advice – Territory Municipal Services Directorate, Tree Protection Unit, ActewAGL

PART 2 PUBLIC NOTIFICATION AND ENTITY ADVICE

PUBLIC NOTIFICATION

Pursuant to Division 7.3.4 of the Act, the application was publicly notified from 1 March 2013 to 25 March 2013. Four written representations were received during public notification.

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

(a) *Possible impact of the development on existing stormwater arrangements/ drainage and flooding near site*

The proposal has been referred to TAMSD for stormwater and no particular issues were raised. The issue of overland flow is not one dealt with at Development Approval stage, and if the application were otherwise approvable then this matter would be referred on to the certification stage.

(b) *Traffic*

The impact of increased traffic from the site was discussed with agencies, and in the context of the existing flow the expected extra car movements from this site would not be a problem. However where the proposal may create traffic issues is in the lack of provision for deliveries and pickup from the site (such as moving and garbage trucks); and in the gradient of the access ramp, which will affect the sightlines of vehicles leaving the site. This was one of the grounds for refusal of the proposal.

(c) *Soil creep in area*

Ground suitability is not strictly a development issue, but is dealt with at building certification stage if development approval is given.

(d) *Creation of "terrace House" slums/ no space for playing children*

It is considered that the degree of development proposed will result in dwellings of poor amenity and this is reflected in the grounds for refusal.

(e) *Does not blend with existing houses/ more intrusive than nearby higher density development*

It is considered that the proposal is not consistent with the local neighbourhood character and this is reflected in the grounds for refusal.

(f) *Impact of proposed plantings on rear block/Replacement of existing fences /Impact of rear lighting on block, especially with removal of existing vegetation along boundary.*

It is understood that the applicant has approached the author of this particular representation with proposed changes which would address these issues.

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.

CONSERVATOR OF FLORA AND FAUNA

On 20 March 2013 advice was received from the Conservator of Flora and Fauna in relation to the proposal. The advice states that while the tree marked as "6" on the tree survey has been approved for removal, the development is not supported as no tree management plan was submitted for work within the tree canopy of trees "41", "42", and "43" on the adjacent block. This advice was referred to the applicant who supplied a tree protection plan.

TERRITORY AND MUNICIPAL SERVICES DIRECTORATE

On 20 March 2013 advice was received from Territory and Municipal Services in relation to the proposal. The advice stated that the waste pickup pads in the verge and the gradient of the entry ramp to the car park were not supported; that the verge management and landscape protection plans required further information; and that the replacement of existing verge trees could be endorsed with conditions. This advice was relayed to the applicant on 5 April 2013 and on 9 April 2013 the applicant lodged further information submission S141 D addressing some of the issues raised and including a statement that the driveway met the requirements of AS/NZS 2890.1:2004. This was referred to TAMSD.

On 2 May 2013 further advice was received from Territory and Municipal Services in relation to the proposal. The advice states that the proposal is still not supported due to the unchanged driveway gradient, as the further information is not accepted. After further discussion with TAMSD this position is accepted and the matter has been included in the reasons for refusal of the DA.

ActewAGL

On 4 March 2013 advice was received from ActewAGL water and sewage networks in relation to the proposal. The advice states that the proposal conditionally complies with their requirements.

On 4 March 2013 advice was received from ActewAGL Jemena Gas Networks in relation to the proposal. The advice states that the proposal conditionally complies with their requirements.

On 19 March 2013 initial advice was received from ActewAGL Electricity Networks stating that the proposal was not approved as it did not comply with their requirements. On 9 April 2013 further advice was received from ActewAGL Electricity Networks Division in relation to the proposal. The advice states that the proposal conditionally complies with their requirements.