

**IN THE AUSTRALIAN CAPITAL TERRITORY CIVIL and ADMINISTRATIVE
TRIBUNAL (ACAT)**

AT 13/36

OLD NARRABUNDAH COMMUNITY COUNCIL INC

Applicant vs

ACT PLANNING AND LAND AUTHORITY

Respondent, and

DEZIGN TEAM PTY LTD

Party Joined (DA proponent)

WITNESS STATEMENT OF EDWARD ALEXANDER STREATFEILD

I, Edward (Ted) Alexander Streatfeild of 28 Jubilee Street Dubbo, in New South Wales, say as follows:

1. I am a Town Planner, a member of the Planning Institute of Australia (PIA) and accredited by the PIA as a Certified Practising Planner (CCP). I am also a licensed builder in NSW. I have over thirty years' experience in the building and planning industry with over 16 years' experience as a development assessment officer and delegate of the ACT Planning and Land Authority (the Authority). I was employed as a Senior Officer Grade B prior to exiting the Authority at the end of 2008. While working at ACTPLA I covered the broad range of Territory Plan matters and I am a specialist in the application of the Territory Plan to development applications. I am now the Principal Planner of Resolution Planning, a planning consultancy.
2. I have been retained by the applicants for the appeal, the Old Narrabundah Community Council Inc, to provide expert advice and evidence in regard to this appeal. I have been provided a copy of the T Documents.
3. I have read and understood the ACT Civil and Administrative Tribunal Expert Witness Code of Conduct (Notifiable Instrument NI2009-642) and agree to be bound by it.
4. The opinions expressed in this witness statement are my own and are not prescribed by any other agency.

In my opinion the following facts are relevant:

The Block

5. The subject site is Block 13 of Section 28 Narrabundah. 58 Kootara Crescent

The Application

6. The subject Development Application (DA) 201222513 is:
 1. To vary the existing crown lease service station purpose clause to permit 12 residential apartment units. The new purpose clause is to read as below:

“3(c) To use the said land for twelve (12) residential dwelling Units.”
 2. To erect a new two (2) storey multi unit residential dwelling development of no more than twelve (12) apartment units, along with a single level of basement car parking below, an secure undercroft car parking area at ground floor and associated civil and landscaping.
7. The DA was lodged with the ACT Planning and Land Authority (ACTPLA) on 25-10-2012.
8. The proposal was modified by further applications DA 201222513A, lodged 20-02-2013 and DA 201222513B, lodged 10-03-2013.
9. The DA was approved by ACTPLA on 1 May 2013 as noted in the T Document (T12).

The Law

10. The Planning and Development Act 2007 (the Planning Act) applies to the development. Thereby the Territory Plan 2008 applies to the development application.
11. Section 50 of the Planning Act addresses the ‘Effect of Territory Plan’ (the Plan) it states: *The Territory, the executive, a Minister or a Territory authority must not do any act, or approve the doing of any act, that is inconsistent with the plan.*

12. Section 53 of the Planning Act addresses the Objectives for zones it states:
- (1) The objectives for a zone set out the policy outcomes intended to be achieved by applying the applicable development table and code to the zone.*
 - (2) Each objective for a zone must be consistent with the statement of strategic directions.*

13. Section 120 of the Planning Act addresses Merit track—considerations when deciding development approval, stating:

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;*
- (b) the suitability of the land where the development is proposed to take place for a development of the kind proposed;*
- (c) each representation received by the authority in relation to the application that has not been withdrawn;*
- (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;*

Note Advice on an application is given in accordance with section 149 if the advice is given by an entity not later than 15 working days (or shorter prescribed period) after the day the application is given to the entity. If the entity gives no response, the entity is taken to have given advice that supported the application (see s 150).

- (e) if the proposed development relates to land that is public land—the plan of management for the land;*
- (f) the probable impact of the proposed development, including the nature, extent and significance of probable environmental impacts.*

The Territory Plan

14. The land is zoned commercial CZ4: Local Centre Zone.
15. The CZ4 Local Centre Zone Objectives are:

- a) Provide for convenience retailing and other accessible, convenient shopping and community and business services to meet the daily needs of local residents*
- b) Provide opportunities for business investment and local employment*
- c) Ensure the mix of uses is appropriate to this level of the commercial hierarchy and enable centres to adapt to changing social and economic circumstances*
- d) Maintain and enhance local residential and environmental amenity through appropriate and sustainable urban design*
- e) Promote the establishment of a cultural and community identity that is representative of, and appropriate to, the place*

16. Residential Use is permitted by the CZ4 – Local Centre Zone Development Table within the merit assessment track. The development table identifies the Commercial Zones Development Code (the CZDC) as applying to the development. No precinct Codes are identified as applicable. Other general Codes are applicable as identified in the relevant Rules and Criteria of the MU Code.

The Codes

17. The CZDC at table 1 identifies itself and the residential codes as applying to Residential Use, therefore the Multi Unit Housing development Code (MU Code) applies as well as the CZDC. Additionally other general Codes apply as relevant and listed on page 4 of the CZDC.

The CZDC

18. The CZDC states at its introduction (page 1 last paragraph) that:

Proposals in the merit track and impact track must comply with a rule or its associated criterion, unless the rule is mandatory (ie. it has no related criterion). Where a rule is fully met, no reference to the related criterion needs to be made. Where there is a departure from a rule, or where a criterion only applies, the onus is on the applicant to demonstrate that the relevant criterion is satisfied, through supporting drawings and/or written documentation. In addition, the applicant for proposals in the impact track must justify any non-compliance by reference to the Statement of Strategic Directions.

19. The CZDC includes the following Elements, Rules and Criteria relevant to the development proposal:

a) **Element 10: Neighbourhood plans**

10.1 Consideration

There is no applicable rule.

C36- Where a Neighbourhood Plan exists, development demonstrates a response to the key strategies of the relevant Neighbourhood Plan.

b) **Element 15: Use**

15.4 Active frontages

R50

Only the following uses are provided in buildings at ground floor level on frontages to main pedestrian areas and routes:

- a) business agencies*
- b) community activity centres*
- c) financial establishments*
- d) indoor entertainment facilities*
- e) indoor recreation facilities*
- f) public agencies*
- g) restaurants*
- h) shops.*

C50

Buildings fronting main pedestrian areas and routes incorporate uses on the ground floor that generate activity in the public space, in a form that is consistent with the needs of the particular centre.

c) **15.5 Residential use**

R51

a) RESIDENTIAL USE is not located at ground floor level along streets where active frontages are required.

b) Redevelopment proposals retain at least the existing level of gross floor area provided for non-residential uses.

C51

Convenience retailing and other accessible, convenient shopping and community and business services are available to meet the needs of the local population.

The Relevant Plans

20. The relevant plans are those submitted to ACTPLA as noted at paragraph 4 above and identified in the T Document at T93 to T94 and T323 to T327 and T676 to T718.

I have reviewed the proposed development and state the following observations and opinions:

21. In my opinion the proposal does not fully satisfy any or all of the Objectives of the CZ4 Zone particularly Objectives a), b), c), d) and e) noted at Paragraph 15 above:

My opinions regarding CZ4 Zone Objectives

22. **Objective a)** - The proposal is self-evident in that it does not provide for any convenience retailing, shopping or community and business services to meet the daily needs of local residents and does not satisfy this objective.
23. **Objective b)** - The proposal offers no opportunity for business investment or local employment other than the initial construction. There is no opportunity for continuing investment and local employment that will result from this development and it does not satisfy this objective.
24. **Objective c)** - The proposal attempts to compensate for a perceived general decline in want for commercial premises by providing wholly residential development on the site. This is short sighted and does not consider the commercial economic opportunities permanently lost by a lack of provision for commercial use on commercially zoned land. The proposal does not offer any future opportunities for a mix of uses on the site. There is no opportunity for future economic adaptation. It is my opinion that this objective is not satisfied by a development without the possibility of current or future commercial use.
25. **Objective d)** - The loss of current and potential future commercial activity on the site lessens the residential and environmental amenity in the locality. It removes the possibility of extension of the commercial activities of the local centre in a main pedestrian frontage of the CZ4 zone for this suburb. It also does not provide a CZ4 landscape response to the frontage of the block similar to the neighbouring shopping centre frontage as foreseen by the neighbourhood plan (see paragraph 29 below). There will be no creation of commercial activity to provide additional amenity to local residents including those to be housed on the site. In my opinion the objective is not met.

26. **Objective e)** - Narrabundah is an older Canberra Central suburb ripe for residential redevelopment within the reasonably large RZ2 Suburban Core zone. The suburb is increasing in value and has significant local character. The population may considerably increase in the surrounding RZ2 zone over the next twenty years increasing the need for further cultural and community development (shops, galleries, cafes, restaurants) within the area. Removing the opportunity for commercial development on these premises does not promote a cultural and community identity appropriate or representative of the suburb and its people.
27. Three major consolidations and redevelopments have occurred in the RZ2 zone at Block 30 Section 39 Narrabundah, Block 42 Section 36 Narrabundah and Block 43 Section 36 Narrabundah. The local centre is restricted in size by the existing land available in the CZ4 zone to accommodate the commercial needs of future residential redevelopments in the adjacent RZ2 Zone. In my opinion the proposal does not adequately provide for the future of the suburb nor conform to the above objectives.

My opinions regarding the CZDC

28. The applicant contends that the proposal does not satisfy all of the relevant Rules and/or Criteria of the CZDC Code. Specifically the proposal fails to satisfy the following CZDC Rules and/or Criteria:
29. **Element 10. Neighbourhood Plan** (See paragraph 19 a) above for C36 requirements). In my opinion the proposal fails to demonstrate an adequate response to the key strategy of the Narrabundah Neighbourhood Plan for the local centre, extract below:

Key strategies for achieving the vision

Narrabundah Local Centre:

- *Strengthen Narrabundah's ability to offer a strong commercial and community heart in order to provide convenient local shopping and meeting places for the neighbourhood.*

30. The block is part of the local centre identified in the Narrabundah Neighbourhood Plan (Page 35) as potentially useful for proposed professional suites with a wide landscaped verge and a local centre meeting place. It also nominates the block as an active frontage to Kootara Street and the laneway. The replacement with solely residential development does not strengthen but weakens the Narrabundah local centre's ability to offer a strong commercial and community heart. This is inconsistent with the neighbourhood plan intentions for the area and the block. The proposed development design does not respond to this key strategy with any practical community or commercial response and does not satisfy C36 of the CZDC.

31. **Element 15: Use - Active frontages** (See paragraph 19 b) above for C50 requirements). The Kootara Crescent frontage is a main pedestrian route with a public footpath on the main suburban thoroughfare. We contend that the proposal fails to satisfy R50 and C50 in that it fails to incorporate uses on the ground floor that generate activity in the public space consistent with the needs of the centre. Consistent with the objectives of the zone one of the needs of this particular centre is to provide commercial opportunities for the present and future use of the site. We contend that it is not sufficient to completely disregard the Criterion and the wants and needs of the local community with a design that curtails the current and future development of commercial to the ground floor on this frontage.

32. **Element 15: Use – Residential Use** (See paragraph 19c) above for C51 requirements). We contend that the proposal fails to satisfy R51 in that it places residential use at street level where an active frontage is required and fails to provide the existing level of gross floor area for non-residential uses. C51 is also not satisfied in that there are still 'needs' in the local population for more convenience retailing, shopping, business and community services.

33. Missing from the centre are a community meeting place, Medicare offices, bank, dentist, chiropractor, medical imaging, dry cleaners, professional suites, offices, owner occupied businesses and the opportunity for more diversity in gift shops, cafes and restaurants. All of the shops in the Local Centre are occupied and in use (except for the old butchers shop which is not on the market). New fit outs are occurring for new businesses in two shops. There will not be any further opportunity for local commercial expansion to fulfil community needs without the provision of commercial use on this site to the ground floor as required by the Criterion. In my opinion it is not reasonable with regard to the needs of others within the suburb to presume that those needs are met because there are a limited set of existing businesses in existence. I am also of the opinion that removing further opportunities for commercial premises in the suburb curtails the needs of persons within the suburb and the wider Canberra community for the use of those commercial premises in a viable Canberra Central location.

My opinions regarding the Intents for Use in the CZDC

34. As the development is considered for its use against the criteria of the CZDC the Intents to be satisfied by the criteria are relevant to that evaluation and the evaluation of the objectives of the zone. The Intents for use in the CZ4 zone are:

Element 15: Use

Intent:

- a) To encourage shop fronts and similar active frontages at street level and create a lively, vibrant character based around main pedestrian systems*
- b) To ensure that convenience retailing and other services are readily available to the local community and compatible with nearby residential areas*
- c) To provide opportunities for higher density residential development, while protecting existing commercial uses and the amenity of residents living in commercial zones*
- d) To ensure impacts on other commercially viable local centres are considered.*

35. Intent a) - The proposed use as residential only on the ground floor does not encourage shop fronts and similar active frontages at street level reducing the creation of a lively vibrant character based around the main pedestrian system.

36. Intent b) - The proposed use without commercial activity thwarts further commercial expansion and fails to fulfil the need for further commercial opportunities. Once completed there will be no further opportunity to provide any more readily available convenience retailing and other services to the local community.
37. Intent c) - While the development provides for higher density residential development it unnecessarily fails to protect the existing commercial use of the land. A previous application from 2008 by Ring and Associates (T394 to T436) shows a development with commercial tenancies to the ground floor that would preserve some commercial use and provide activation of the frontage.

My opinions regarding the MU Code

38. The Multi Unit Housing Development Code (MU Code) applies as nominated in the CZDC.
39. Part C5 of the MU Code applies to all multi-unit housing in commercial zones (page 75 of the MU Code) the following rules/criteria are considered relevant and addressed below:

Element 3: Built Form

Intent:

a) To promote housing diversity by incorporating a range of apartment types and sizes within developments

R202 - Residential developments contain a combination of dwelling types, including studio or 1-bedroom dwellings, 2-bedroom dwellings, and dwellings with 3+ bedrooms.

C202 - Buildings contain a diversity of apartment types within developments to cater for different household requirements.

40. Plans at T323 and T324 indicate non-compliance with R202 in that all the units are 1 bedroom units. The development does not have a diversity of apartment types to cater for different household requirements therefore neither C202 or the corresponding intent are satisfied.

41. **3.1A Accessibility (mobility)** (replaces 3.4 Accessibility (mobility) in Part C(1))

R205 - 10% of the dwellings of any multi-unit housing development consisting of 10 or more dwellings are designed to meet the relevant Australian Standard for Adaptable Housing and any relevant considerations in the Access and Mobility General Code.

C205 - Residential development is easily adaptable to suit the needs of people with disabilities and to meet the needs of Canberra's ageing population.

42. There are 12 units and therefore a requirement for two adaptable units. The plans only indicate 1 disabled space with a shared area as per the requirements of AS2890.1 and AS2890.6.

43. The Access and Mobility general Code requires at R1 and R2 car parking spaces be provided for people with disabilities that must have vertical clearance for the entire width of the space and the adjacent shared area of not less than 2.5m described in Figure 2.7 of the AS2890.6. There is only one compliant disabled space provided. Without a second space for the other adaptable unit the proposal is non-compliant with a relevant consideration of the Access and Mobility General Code and R205. It is my opinion that C205 is not satisfied because it would need the recovery of another car space to provide another disabled shared area. This would leave the development short on visitor spaces at ground level. This is something that does not appear easily adaptable without being provided for in the initial design.

44. **5.7 Communal Open Space**

There is no applicable rule.

C237 - The centrally located communal open space is:

- a) directly accessible from common entries
- b) readily accessible to all residents
- c) designed to provide for passive surveillance
- d) designed to screen views into adjacent dwellings and their private open space
- e) able to be maintained and managed with minimal impact on the amenity of residents
- f) able to provide for larger plants with deep root systems.

45. C237 requires a portion of centrally located communal open space with the above characteristics. The development has no communal open space that meets the definition in the Territory Plan: '*Communal open space means common outdoor open space for recreation and relaxation of residents of a housing development*'.
46. The proposal has no centrally located communal open space with the characteristics required of C237. While an amount of communal open space is not nominated by C237 (covered by C240 - less than 20 apartments) the requirement for some communal open space to satisfy C237 is not negated. While the amount of communal open space can be reduced to less than 20% by C240 there is no allowance to have no centrally located communal open space.

Conclusion

47. I am of the opinion that the development is inconsistent with the Territory Plan as noted above and that the proposal is also inconsistent with the requirements of the Planning and Development Act 2008 Sections 50, 53 and 120 and is not approvable because of Section 50 of the Act.



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Principal Planner

Resolution Planning

29 June 2013