

tabled 18/7/12

Our Reference
618364

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9 September 2010

By email: [REDACTED]



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Dear Mr [REDACTED]

**Walkington and Others v ACTPLA and Weetangera Holdings Pty Ltd –
AT10/37, 38 & 39**

I refer to the above matters.

In light of the decision of the Tribunal in *BDH Projects v ACTPLA and Others* [2010] ACAT 37, particularly paragraphs [65] and [66], ACTPLA has changed its position in relation to the appropriate level of development in the RZ2 zone. ACTPLA considers itself bound by this decision, and accordingly has heightened its consideration of the zone objectives in its assessment of the appropriate level of development in the RZ2 zone.

The decision under review in these proceedings was made prior to the Tribunal giving its decision in the *BDH Projects* case. The approval granted by ACTPLA reflects its previous interpretation of the rules and requirements applying to the RZ2 zone.

As these proceedings involve a review *de novo*, ACTPLA considers that it must assist the Tribunal in reaching the correct and preferable decision at the time it makes its decision.

Accordingly, ACTPLA can no longer support the decision under review. The development proposal is considered by ACTPLA to be overdevelopment, and unresponsive to some of the zone objectives of the RZ2 zone.

In particular, ACTPLA now considers that development on the subject consolidated blocks should involve a maximum of 4 dwellings. For that reason, ACTPLA will not be leading any evidence, and so will not be serving any witness statements, because it no longer supports the decision under review.

In this circumstance, I suggest that the initiative rests with the developer. Several options appear to be open to it:

- i. Maintain that the decision under review should be confirmed.

- ii. Provide revised proposed plans for 4 dwellings, as part of a witness statement from an appropriate witness, and submit that the decision under review should be varied to approve those plans in substitution for the plans approved as part of the decision.
- iii. Consent to an order that the decision under review should be set aside.

If the developer pursues option (i), ACTPLA will submit that the decision should be set aside for the reasons set out above. ACTPLA considers that if the Tribunal sets aside the decision, the consequence would be that the development application is refused and the developer's only recourse would then be to lodge a new, fresh DA for development on the subject land.

If the developer pursues option (ii), ACTPLA will consider the proposed plans as promptly as it practicably can, and inform you and the applicants of its position immediately after doing so. ACTPLA appreciates that this option is likely to involve extensive re-working of the existing plans to optimise use of the land with only 4 dwellings. It may also give the developer scope to address the applicants' concerns. Option (ii) also gives scope for the proceedings to be resolved by agreement either before the hearing or by mediation. Much would depend upon how quickly the developer could prepare and provide revised plans. ACTPLA would support use of the hearing time, or some of it, for the purpose of mediating or narrowing the issues in dispute if that appeared to be a productive way to proceed.

If the developer pursues option (iii), the consequence would be as set out in option (i), assuming the Tribunal accepted ACTPLA's submission that the decision should be set aside.

If you wish to discuss this matter, please do not hesitate to contact me.

You will see I have copied my letter to the Tribunal and to the applicants so they are aware of ACTPLA's position and can respond as they so choose. I suggest, however, that they too will consider the initiative is with you.

Yours sincerely

ACT Government Solicitor


Lisa Tomlins
Solicitor

Cc Registrar, ACAT
The Applicants