



ACT
Government

Environment, Planning and
Sustainable Development

NOTICE OF DECISION

Made under part 7 of the *Planning and Development Act 2007*

I, Richard Davies, delegate of the planning and land authority, pursuant to section 162 of the *Planning and Development Act 2007*, **refuse** the proposal for the

construction of Riverside Pavilion comprising of a single storey building,

construction of the access and vehicular circulation routes,

construction of a surface carpark,

site servicing, landscaping including an amphitheatre, children's play area, fencing, lighting, signage and other associated site works

at **Block 1640 Division of Belconnen, blocks 2 & 5 section 37 Strathnairn** and **block 1 section 3, Macnamara**, based on the plans, drawings and other documentation applied for in the development application.

DA Number: 202341697
Site 1: Block 1640, Belconnen,
Site 2: Blocks 2 and 5, Section 37, Strathnairn
(now Block 7 Section 37, Strathnairn),
Site 3: Block 1 Section 3, Macnamara
(now Block 5 Section 3, Macnamara)
Application lodged: 26 June 2023
Assessment track: Impact

This decision contains the following information:

PART A – reasons for the Decision
PART B – public notification & entity advice
Attachment 1 – administrative information
Appendix A – Entity advice

A copy of the development application and this refusal may be inspected at the planning and land authority's office from 9:00 am to 4:00 pm, Monday to Friday at 8 Darling Street, Mitchell, ACT 2911

CONTACT / ENQUIRIES

Phone: (02) 6207 6383

Online Form:

https://www.accesscanberra.act.gov.au/app/forms/epd_feedback

Richard Davies
Delegate of the Planning
and Land Authority
4 July 2024

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PART A – REASONS FOR THE DECISION

In accordance with section 128 of the *Planning and Development Act 2007* (the Act), the application failed to comply with the legislated requirements for impact track applications and therefore is **refused**. The application was considered inconsistent with:

- the conditions of the Ginninderry Stage 2 Environment Impact Statement Exemption (EIS Exemption) and the Ginninderry Conservation Corridor Management Plan 2018-2023 (GCCMP), particularly relating to the scale and impact on ecological values.
- the Act.
- the Territory Plan 2008 including –
 - the definition and interpretation of the proposed uses and
 - the relevant codes, being the Non-Urban Zones Development Code (NUZDC); and general codes.
- Advice given by entities, being the Conservator of Flora and Fauna (the Conservator), Environment Protection Authority (EPA), Emergency Services Agency (ESA) and ICON Water.

KEY INCONSISTENCIES:

The following key inconsistencies have been identified through the assessment process undertaken by the planning and land authority (Authority):

A1. Scale of the proposed development and impacts on natural conservation and ecological values of the site

Potential impacts:

The proposed pavilion, car parking, the amphitheatre, playground and the associated access road are to impact the natural ecological values of the Ginninderry Conservation Corridor (GCC). The Ecological Impact Assessment (EIA) (prepared by Capital Ecology, dated 1 May 2023), identifies the additional direct and unavoidable residual impacts to Matters of National Environmental Significance (MNES) in the GCC, including impacts on Box Gum Woodland (BGW), Natural Temperate Grassland (NTG) and Pink-tailed Worm-lizard (PTWL) habitat which are listed as threatened under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The development would also impact BGW listed as threatened under the *Nature Conservation Act 2014* (NC Act) and areas of native vegetation.

In accordance with the EPBC Act approval conditions, impacts on MNES caused by the development's construction are required to be offset to achieve no net loss of habitat. To achieve this the applicant has identified the use of offsets considered under the EIS Exemption or alternatively that the impacts will be managed by implementing restoration mitigation measures / targeted rehabilitation of areas in the GCC. During the site visit undertaken on 13 March 2024, the proponent advised that the offset management is being negotiated with the Commonwealth and was able to demonstrate this by providing information to the Authority. It is to be noted that the conditions of the EIS Exemption require compliance with the mitigation measures of the EPBC Act.

The Conservator has identified significant concerns relating to inconsistencies with the objectives of the ACT Native Grassland Conservation Strategy and the NTG and PTWL action plans. The Conservator recommended that alternate designs be explored to avoid impacts to these threatened values. However, the applicant's response to the further information request did not include any changes to the proposal in terms of reducing the impacts and in the Authority's assessment, did not sufficiently justify the size and siting of the proposed development.

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The Conservator also raised concerns regarding the management of Asset Protection Zones (APZ) which have not been adequately addressed in the proposal. The Emergency Services Agency (ESA) have confirmed the development will be treated as a Sensitive Use Development which requires a significant APZ (in the order of 93m wide). Therefore, applying the APZ to the primary edges of the building footprint will extend the APZ into the river corridor which is well outside of the development area. Establishment and management of the APZ would likely involve vegetation removal and management that may decrease connectivity in the river corridor, reduce the population of a rare plant, and reduce the area of Black Cypress Pine-Brittle Gum dry open forest in the ACT.

In addition to the above it is also noted that there are further likely direct, indirect and cumulative impacts that may affect ecological values within the GCC. These include increased noise, vibration, changes to hydrology and increased sedimentation during construction, weed introduction and increase in pest animal populations as a result of increased human access and activity to previously undeveloped areas. These impacts are likely to occur through all stages of the development including ongoing impacts.

Furthermore, works associated with servicing the site (water, electricity, sewerage etc), may also potentially impact the ecological values of the site.

It is also proposed to develop the site in two stages. The timing of the staged development was not clearly identified. A staged development has the potential to result in additional impacts on ecological values due to extended timeframes for construction and associated activities.

The proposed development of Riverside Park for a pavilion, amphitheatre, playground and 69-space carpark and will have direct and unavoidable impacts as well as many indirect impacts on critically endangered ecological values and will significantly impact on the ecological values of the GCC.

Location and scale of the development:

The GCC area is approximately 600 hectares, while the proposed pavilion building is 984m² in area with an amphitheatre, children's play area, landscaped gardens and 69 parking spaces surrounding it. The development is located within an area that contains significant ecological and cultural heritage values. The DA Statement Against Criteria noted, *'Upon completion of the Riverside Pavilion, the Ginninderry Conservation Trust envisages ancillary use of the structure to accommodate conferences, function, weddings and the like. To this end, a liquor licence will be sought in future to facilitate such events. These events are to be held for the sole purpose of generating income for conservation and education programs, thereby improving the economic sustainability of the development proposed'*. Further to this, it is also noted *'It is intended that Riverside Pavilion will generate income for the Ginninderry Conservation Trust to continue rehabilitation activities within the Ginninderry Conservation Corridor, and this income from Stage 1 development can then support Stage 2 construction of this Pavilion'*. While the response to the request for further information stated, *'the Riverside Park Pavilion, needs to meet a range of functions as highlighted in this FIR, to deliver these uses properly the building needs to be able to adequately cater for these uses. The kiosk proposed is a result of a feasibility analysis the GCT undertook to understand revenue generation and the operation size to generate profits to support the GCT activities'*.

It is acknowledged that the development of *'recreation and tourist facilities including buildings, picnic areas, car parking and access roads and walking and cycling tracks'* is included in 's3.1 Summary of Actions' of the EPBC endorsed Urban Development at West Belconnen - Program Report (prepared by A T Adams Consulting (2017)). Similarly, the GCCMP envisages a riverside park to be used for functions, learning and group activities (earnings to be used for conservation purposes) and the 'parkland' use to include a pavilion/kiosk. The EIS Exemption also included approval of the proposed activities for *'recreation and tourist facilities including buildings, picnic areas, car parking and access roads and walking and cycling tracks'*. It is noted that the proposed location of the pavilion and the access road is approximately where they were originally envisaged within the GCCMP.

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The Program Report states that “*Conservation will be the primary use of the proposed conservation corridor and other uses, such as recreation will only be allowed where they are compatible or have no significant adverse impact on conservation*”. However, the scale of the proposed development will potentially significantly impact on the conservation values of the GCC as noted above.

The West Belconnen Strategic Assessment (WB Strategic Assessment) identifies that the values of the GCC will be protected and managed as an International Union for Conservation of Nature (IUCN) Category IV reserve and requires protection and restoration of the biodiversity and ecosystem function along with provision of quality recreation and active learning. The applicant has stated that the proposed development complies with the IUCN objectives.

Section 2.6.2.1 of the WB Strategic Assessment states, ‘*The detailed design for this development is yet to occur as it is likely to change over the life of the WBCC...In the event that the design for this infrastructure substantially changes, the Defined Process Strategy (Section 2.6.3) will be implemented to assess additional impacts to MNES within the WBCC.*’ The applicant was requested to provide further clarification on this, however the Authority was advised that it was a matter for Commonwealth consideration. This is not considered a suitable response to address all relevant issues or support approval at this time. Upon receiving further information post a site inspection in March 2024, it was noted that the additional impacts from the development were being considered by the Commonwealth.

The proposed pavilion is 984m² in size which is significantly larger than what was expected/envisaged for the location. The facility would be provided with 69 car parking spaces close to the building and additional parking along the access road. The proposed access road and allowances for services along the road appear to require significant civil works due to the topography of the site. The proposed road also cuts through NTG and PTWL habitat which would result in fragmentation. The proposed amphitheatre would also impact on NTG and PTWL habitat.

The above identified potential impacts of the proposed development on the ecological values of the site and surrounds, appear to be of a far more significant scale than what was considered/assessed within the WB Strategic Assessment. The size of the proposed building combined with the proposed activities requires substantial infrastructure which may create impacts to threatened species and communities that were not anticipated in the Program Report. The EIS Exemption (refer below) requires that the proposal is consistent with the Program Report.

It has been concluded that the scale and the resultant impact of the proposed development on the ecological values of the reserve are not considered acceptable when the main objective should be preservation of the Ginninderry Conservation Corridor.

As discussed further below, the Authority also has concerns whether the scale of the development and DA information have appropriately defined the development.

A2. Ginninderry Stage 2 Environment Impact Statement Exemption (EIS Exemption)

The Statement Against Relevant Criteria (SAC) document provided with the development application (DA) does not demonstrate full compliance with the following conditions of the EIS Exemption Consideration Report for Ginninderry Stage 2 Urban Development, September 2018 (the Report), noted under Table 5 of the Report:

- Condition 1: Program Report – *All works must be in accordance with the Urban Development Program Report, prepared by AT Adams Consulting (18 April, 2017)*
 - The proposal is not considered fully consistent with the Report as the development is likely to have significant adverse ecological impact. The Conservator does not support the DA and ACT Heritage does not support the proposal at this stage.
- Condition 5: Bushfire Mitigation – *All works must be consistent with the ACT Strategic Bushfire Management Plan 2014- 2019, or its successor.*
 - The ESA does not support the proposal as it does not comply with the *Strategic Bushfire Management Plan 2019-2024*.

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Please refer to ESA comments under PART B – PUBLIC NOTIFICATION and ENTITY ADVICE – Entry Advice and Requirements.

- The Conservator has also raised concerns about potential impacts from APZ requirements.
- Condition 6: All works – *All works in the Project area must be consistent with the mitigation measures provided in the EIS exemption application.*
 - The DA does not include a document that demonstrates compliance with all relevant mitigation measures identified in Appendix 4 of the Report, including mitigation measures relating to impacts to significant heritage matters, impacts to MNES and development within the reserve (infrastructure/vehicle track design).
- Condition 13: DA Documentation – *As part of any subsequent development applications relying on this EIS exemption application, information must be provided detailing how the recommended mitigation measures and conditions in this report have been met.*
 - The documentation provided does not clearly demonstrate compliance with this condition. The supporting documents include responses to some mitigation measures however, details have not been provided to demonstrate how each mitigation measure has been met.

A3. Ginninderry Conservation Corridor Management Plan 2018-2023 (GCCMP)

The interim GCCMP was endorsed in 2018 and included the concept of multiple visitor nodes within the Ginninderry estate. The node originally identified for the Murrumbidgee River, which is the subject proposal, is described as:

“The Murrumbidgee River Visitor Node will be in the ACT portion of the Corridor where the slopes above the river level out to form a small plain above the drop to the river. This visitor node will be the first visitor node to be developed in the Corridor and will provide for picnicking, group activities, nature activities, access to the river and trails. Access will be by a road from near the Strathnairn Arts Centre.”

The GCCMP notes that ‘the Conservation Corridor will be managed to high standards of biodiversity conservation, cultural heritage conservation and sustainable recreational use’.

The SAC provided states that the proposal is compliant with the GCCMP. However, adequate details were not provided on how the proposal complies with the relevant parts of the GCCMP and its strategies.

GCCMP Appendix B identifies relevant Approval Conditions and Commitments from the ACT West Belconnen Structure Plan and West Belconnen Concept Plan for the GCC and where these are addressed in the GCCMP strategies.

The proposal is not considered fully consistent with the GCCMP strategies and the relevant objectives and strategies including: Corridor-wide strategies Objective A (4.1 Ecological restoration and conservation of biodiversity) Objective B (4.2 Conservation and celebration of heritage and culture) Objective E (4.4 Providing enriching visitor experiences) and Objective G & H (Special Management Areas - 5.1 Nationally Significant Threatened Habitats), 5.5 Visitor Nodes – Murrumbidgee River Visitor Node and 6.2 Utilities. Following is a summary of the main inconsistencies:

- The proposal does not demonstrate compliance with the conservation of cultural heritage values of the corridor. The ACT Heritage Council has not fully supported the proposal at this stage.
- The GCC notes that to achieve sustainable visitor recreational use, *‘avoidance of high intensity or environmentally damaging visitor uses and activities...visitor uses in the Corridor will be low intensity activities conducted with minimal environmental impact or activities whose environmental impact is controlled by their location in suitable facilities in the visitor nodes, and limitation of motor vehicle access by visitors to the roads to the visitor nodes’* However, the proposal has the potential to damage the environmental values, both directly and as a result of

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the significant visitor numbers. It is currently estimated at approximately 90,000 a year.

- The provision of the proposed parkland and associated landscaping, access road, construction activities etc. have the potential to further impact on ecological values including EPBC and NC Act protected NTG and PTWL habitat in the GCC.
- A commitment, made under the EPBC Act Approval Program Report in relation to conservation outcomes sought for GCC and included in the GCCMP, requires that *'the vehicle track widths be a maximum of six metres, other tracks and trails a maximum of 2.5 metres wide with further design considerations that can further reduce the width of roads, for example, passing bays'*. However, the proposed access road width is over 6m, which will be a continuation of the existing sealed McClymont Way and will have two 3.1m wide travel lanes; 0.5m sealed shoulders and 0.5m verge for services on either side. In addition, drains, culverts, gabion walls, and unsealed parking bays are also proposed along the road to allow additional parking for the proposed development. The applicant's response stated that compliance with this requirement sits with the Commonwealth Department of Climate Change Energy, the Environment, and Water (DCCEEW). However, it should be noted that approval of the access road is part of the DA and is required to comply with the relevant conditions. The Conservator does not support the proposed access road due to the potential significant impact on NTG and PTWL habitat.
- The proposal also does not clearly identify how the impacts on other native flora and fauna will be managed and how connectivity across the entire GCC will be maintained.
- Due to the scale and nature of the proposed building, the development is considered a 'Sensitive Use Development' which would require a 93m wide APZ. Therefore, applying the APZ to the primary edges of the building footprint will extend the APZ into the river corridor and is not supported under the GCCMP.
- The proposed pavilion is within the 2.45km Lower Molonglo water Quality Control Centre clearance Zone and the EPA has not supported the proposal due to potential odour impacts.

The resultant potential impacts due to the proposed development on the overall GCC are considered significant in terms of long-term conservation management of the corridor. The current scale, scope and impacts of the subject proposal on the GCC appear to be much greater than that were originally described and considered within the GCCMP.

The proposal is not considered to demonstrate consistency with GCCMP and its relevant commitments.

A4. Ginninderry Development Offset Management Plan and Ecological Impact Assessment (EIA)

The EIA (prepared by Capital Ecology, dated 1 May 2023) identifies the following unavoidable residual impacts to MNES in the GCC:

- 0.18 ha of EPBC Act BGW.
- 1.03 ha of NTG-SEH.
- 0.55 ha of PTWL habitat.

The EIA also identifies the following unavoidable residual impacts to NC Act matters:

- 0.48 ha of NC Act BGW.
- 3.93 ha of NC Act native vegetation.

As noted above, the DA did not provide adequate information on what offset area proposed as part of the WB Strategic Assessment and EIS Exemption will be used to offset the impacts of this proposal, or how the restoration mitigation measures will be applied and managed. However, the proponent has advised that the matter is currently in discussion with the Commonwealth.

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A5. Planning and Development Act 2007 (the Act)

The proposed development is considered not to comply with the following sections:

- S128 (1)(b)(iv) - Consistency with the requirements of any condition made in a conditional EIS exemption granted under s.211H(4) – The proposed development does not demonstrate full compliance with the conditions of the EIS Exemption as identified above.
- S128 (1)(b)(vi) - Consistency with advice of the Conservator (if the proposed development is likely to have a significant adverse environmental impact on a protected matter. Protected matters are defined in s111A) – the Conservator does not support the proposal due to the potential impacts on threatened ecological values. Please refer to the Conservator's comments included in Appendix A - Attachment 1.
- S129 (a) Zone Objectives - The proposal is not considered to comply with Objectives a), c), d) and e) of the NUZ4 River Corridor Zone due to the scale and location of the development and its potential impacts on the ecological values of the Ginninderry Conservation Corridor.
- S129 (h) The probable impact of the proposed development, including the nature, extent and significance of probable environmental impacts - the subject development may potentially have significant adverse environmental impact. Refer to Conservator's advice in Appendix A - Attachment 1.
- S129 (i) the ACT Environmental Offsets Policy – The subject proposal fails to demonstrate if the offset calculation previously approved can accommodate additional direct and unavoidable residual impacts to the MNES. Refer to Conservator's advice in Appendix A - Attachment 1.

A6. Territory Plan 2008

1) Definitions

Proposed Use

The proposed use of the site as noted in the Application Form is for the purpose of 'Parkland', 'Minor Use', 'Minor Road' and 'Ancillary Use'.

As per the Territory Plan 2008 definition, 'parkland' means *'the use of land for recreation, conservation or amenity purposes and includes facilities for the enjoyment and convenience of the public, such as kiosks, car parks, shelters, pavilions, public toilets and the like. The term also includes the use of the land for the management of stormwater drainage, for community paths and landscape buffers, and for other minor utility purposes where such uses can be integrated into the open space system. It has unrestricted public access'*.

The DA Design statement notes the primary function of the pavilion is to support the various Riverside Parkland amenities and act as a central hub for information, education, park support and sustenance. Additionally, the proposed building would be used for conferences and weddings as an 'ancillary use' to the primary use of the land for parkland recreation and conservation activities.

The total GFA of the subject pavilion as shown on the plans is 984m² and includes areas dedicated to learning (283m²) and a kiosk + kitchen facility (335m²). The proposed area shown on the plans for educational/learning purposes is far larger than the area allocated for a visitor/information hub (124m²). Similarly, the area for the kiosk, kitchen and associated seating area appears greater than the anticipated size of a kiosk for public recreation in the GCCMP. The response to further information states, *'The kiosk proposed is a result of a feasibility analysis the GCT undertook to understand revenue generation and the operation size to generate profits to support the GCT activities' and '...the scale of the kitchen is designed to cope with the level of visitation during busy periods'*. The pavilion floor plan does not clearly identify any area that is dedicated for conservation purposes – such as display areas or office space for conservation staff.

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The proposed size of the building and its area allocations for learning and dining purposes is not considered fitting in the context of 'parkland' use but would appear to more appropriately fall under an 'educational establishment (community use)' and a 'restaurant' use respectively. It is also noted in the application that the facility will include a Ginninderry Conservation Trust (GCT) management office, which is an 'office' development under the umbrella term of 'non-retail commercial use'.

All the above three uses are prohibited developments in NUZ4 zone and therefore the proposed development is not considered to fully comply with the definition of 'parkland' use.

The Territory Plan defines 'ancillary use' as *'the use of land for a purpose that is ancillary to the primary use of the land'*. Where 'ancillary' means associated with and directly related to, but incidental and subordinate to the predominant use.

The anticipated operational use states that upon completion of the pavilion, it is envisaged the structure would accommodate conferences, function, weddings etc. as an 'ancillary use'. This is for the purpose of generating income for conservation and education programs, thereby improving the economic sustainability of the development proposed. In addition, the intended hours of operation for the Riverside Pavilion are 7:00am to 11:00pm, 7 days a week, with expected visitation rates of up to 90,000 visitors per year and 300 vehicles per day.

The applicant's FIR response states that the use of the pavilion for occasional functions is an ancillary activity to support the primary conservation activities of the Trust and allow the enjoyment of the parkland and that this is consistent with the GCC Management Plan.

However, the proposed size of the Pavilion and its intended use for large functions such as weddings and conferences is more likely considered as a development under 'place of assembly', which is also a prohibited development in NUZ4 zone.

The proposed use of the pavilion for large functions is not considered to comply with the definition of 'ancillary use'.

2) Strategic Directions

The development is not considered to demonstrate compliance with the following principles:

1.6 *The pattern of development is to reflect land capability constraints resulting from topography, soils, geotechnical factors, drainage, natural hazards, microclimate and the sensitivity of ecosystems. Particular attention will be given to the need to conserve soil, water and vegetation; maintain biological diversity; safeguard important ecosystems and ecological processes; and provide and protect wildlife corridors.*

- The Conservator and the ESA do not support the proposal.

1.25 *Heritage and cultural values will be safeguarded, including in particular those of the Territory's Aboriginal peoples and those derived from both its rural history and urban development as the National Capital. The distinctive qualities of residential areas and other places, as well as elements of community heritage, will also be recognised and their conservation promoted.*

- The ACT Heritage Council does not support the proposal at this stage.

1.26 *Identified places of heritage significance will be protected in accordance with requirements for their conservation contained in the Heritage Register and any relevant heritage guidelines under the Heritage Act 2004. Special provisions are included in the Heritage Act for the recognition, registration and conservation of Aboriginal heritage.*

- The ACT Heritage Council does not support the proposal at this stage.

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2.11 Planning policies will protect the landscape and environmental qualities of the hills and ridges surrounding urban areas, the Murrumbidgee and other river corridors, the mountains and forests west of the Murrumbidgee River, and productive rural landscapes.

- The Conservator does not support the proposal.

3) **West Belconnen Concept Plan (WBCP)**

A minor proportion of the subject works (part of access road) is located within the area delineated as being subject to the West Belconnen Concept Plan (BWCP).

- **Part A – Land use: Land Use Plan: Rule 13/ Criteria 13**

Part of the proposed access road and the proposed pavilion is within the 2.45km clearance zone from the Lower Molonglo water Quality Control Centre (LMQCC), as identified in figure 3 – Clearance zone Map C of the BWCP. Although the access road is not a community use, it is for the proposed pavilion intended for community gatherings, which has been identified as 'sensitive use development' due to its substantial size and location within the GCC.

EPA does not support the proposal location due to the potential odour impacts.

- **Part B – Subdivision: Rule 22 (mandatory)**

The proposed development has not fully demonstrated compliance with this rule as the development may have significant impacts on the existing ecological values including NTG and PTWL habitat. The Conservator does not support the proposal at this stage.

- **Part B – Subdivision: Rule 23 (mandatory)**

The proposal has not demonstrated that it complies with the WB Strategic Assessment particularly in relation to the increased impacts triggering possible defined process strategy and also in relation to the adequacy of the existing offsets or need for additional offsets as noted under point A4.

- **Part B – Subdivision: Rule 24 (mandatory)**

The ACT Heritage Council does not currently support the proposed development.

- **Part B – Subdivision: Rule 40/ Criteria 40**

The proposed development is within the 2.45km clearance zone from the LMQCC and EPA and ICON water do not support the proposal at this stage.

4) **Zone Objectives – NUZ4 – River Corridor Zone**

The proposal is considered inconsistent with the following objectives of NUZ4.

a) Conserve the ecological and cultural values of the ACT's major river corridors

- The proposed development may potentially significantly impact on the ecological and cultural heritage values of the area. The Conservator and the ACT Heritage Council have not supported the proposal.

c) Ensure that the type and intensity of development is sustainable

- The proposed pavilion is intended to be used for conservation and gathering purposes. Intended hours of operation are 7:00am to 11:00pm, 7 days a week and it is expected to receive over 90,000 visitors over a year. It was clarified at the site visit that it is expected the facility will be busy within the warmer months but will likely receive much fewer during the cooler months. If this eventuates the building may open only on the weekends and may be mostly used for research/educational purposes during quiet periods. The proposed pavilion is located away from the suburbs and is not easily visible or accessible from the main road which may impact on the economic viability of the facility. The possible limitations on the use of the building throughout the year, ease of access and the

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anticipated impacts on the ecological values of the proposal may not result in a sustainable development.

- d) Provide opportunities for a range of ecologically sensitive water and land based recreational activities –
- The development will encourage land based recreational activities, but there are potential impacts on the ecological values.

5) Development Code/s

i) Non-Urban Zones Development Code (NUZDC)

The proposal is considered inconsistent with the NUZDC for the following reasons:

Part A (4) – NUZ4 - River Corridor Zone

- Element 1: Restrictions on Use

Intent:

- (b) To ensure development is kept to a minimum required to service the visiting public and is confined to the perimeter of environmentally sensitive areas

- the proposed development is of a significantly large scale (984m²) and will considerably impact on environmentally sensitive areas.

- Sub-Element: 1.1 - Recreational Development

- No Rule / Criterion 9

The proposal will provide opportunities for recreation and proposes a pavilion / kiosk. However, the scale of the development is significant (984m²) and has the potential to adversely impact upon the environment as noted above.

Part B – General Development Controls

- Element 1: Restrictions on Use

Intent:

- (b) To ensure development does not result in degradation of vegetation or soils or have another unacceptable environmental impact on the locality or adjacent water bodies –

- the proposed development will significantly impact on the environmental values of the area. The Conservator does not support the proposed development.

- Sub-Element: 1.3 – Plans of Management

- No Rule / Criterion 18

The Murrumbidgee River Corridor Management Plan (January 1998) applies to the river corridor. The proposal is not considered to be consistent with the following overall relevant management objectives for the Murrumbidgee River Corridor:

- *to conserve the endemic aquatic, riparian and riverine ecosystems* – the proposed development may indirectly impact upon the aquatic ecosystem due to extensive earthworks, disturbance to local flora and fauna, impacts from visitors etc.
- *to conserve and enhance habitat links through the regional landscape* – the development will significantly impact upon the existing habitat links and ecological values.

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- *to conserve the cultural heritage landscapes, areas and sites* – the development may impact on the existing cultural heritage places/objects. The ACT Heritage Council has not supported the proposal.

- Element 3: Built form

Intent:

- (b) To protect the amenity of users with regard to safety, access and security measures –

- It is intended to have the area accessible after dark for functions which may pose safety issues as outdoor lighting at night will be restricted to avoid impacts on native fauna. Additionally, the facility is located a significant distance from the nearest residential area with limited ability for surveillance of the facility and no direct public transport service.

- Sub-Element: 3.1 – Building Design and Materials

- No Rule / Criterion 22

The proposed building form and materials can be considered acceptable. However, the placement of the proposed pavilion building, the amphitheatre and access road is not considered to be appropriate. The proposal is located within the conservation corridor and the development is not considered compatible with the surrounding landscape in terms of impacts on the ecological values of the corridor.

- Element 6: Environment

Intent:

- (a) To protect woodlands, native grasslands, forests and waterways

- The Conservator has advised that the proposed development will significantly impact on NTG and BGW. The Conservator has identified significant concerns relating to inconsistencies with the objectives of the *ACT Native Grassland Conservation Strategy* and the NTG and PTWL action plans.

- Sub-Element: 6.1 – Heritage

- Rule 32 / Mandatory

Heritage places/objects are located within the development area. The ACT Heritage Council has not supported the proposal.

- Sub-Element: 6.7 – Bushfire Risk Mitigation

- No Rule / C39

The proposed development is within a bushfire prone area. ESA and the Conservator have raised concerns over the requirement and provision for appropriate APZs. The applicant did not provide an updated Bushfire Management Plan to fully demonstrate compliance with the provisions for 'Sensitive Use Development' detailed within the 2023 ACT Bushfire Management Standards (commensurate to Planning for Bushfire Protection 2019). Please refer to [Appendix A - Attachment 4](#) for more details.

- Element 7: Site Services

- Sub-Element: 7.3 – Utilities

- Rule 42 / Criteria 42

ICON Water does not support the proposal. Refer to [Appendix A - Attachment 6](#) for ICON Water 'Failed to Comply' notice.

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ii) **Crime Prevention through Environmental Design General Code (CPTED)**

The proposal is considered not fully consistent with the CPTED, particularly due potential lack of feasible natural surveillance, as it is located significantly away from the main road and the nearby residential areas of Strathnairn and Macnamara. Also there appear to be places in and around the development (e.g. children's play area, amphitheatre) that may become potential entrapment areas, particularly at night with limited lighting.

iii) **Signs General Code (SGC)**

- A Signage Plan provided, identifying the proposed signs, is not considered sufficient as it did not clearly classify the signage as per the SGC and correct identification of proposed signs on the plan.
- The SAC, the design report and response to further information did not provide clear information on exact number of all proposed signs needing development approval, their details and assessment against the relevant rule/criteria.

The applicant has responded to a number of criteria stating the signs comply with criteria C4. However, the ACT Heritage Council has not supported the proposal at this stage and therefore the proposal is not considered to comply with C4 c).

iv) **Community and Recreation Facilities Location Guidelines General Code**

The proposal is considered to satisfy this general code, particularly with the General Location Guidelines, as

- There is no direct access to the local public transport bus routes or taxi ranks close by and it is not considered easily accessible for all users.

The facility is not located close to any other recreational, community or commercial facility or near a main road to maximise natural/informal surveillance of public areas to allow for community safety. Particularly concerning when it is proposed to be used until late at night (11pm).

- The proposed development is considerably away from the main street and may not be considered within a feasible walking distance from any public transport bus stops located on the main road.
- The facility is proposed to be used until late at night, the areas such as the children's play area, amphitheatre and surrounding landscaped areas appear to be accessible after hours and additional lighting would be required. However, night lighting may potentially impact on native fauna and is therefore not supported.

The scale of the development appears to support larger public demand and therefore greater weight to this general code. A smaller development which does not attract such demands and/or has additional management strategies may be more suitable.

v) **Planning for Bushfire Mitigation General Code**

The proposal is considered inconsistent with the code as:

- The subject development is within a bushfire prone area.
- ESA does not support the proposal. Due to the size and proposed uses of the development, it is deemed as 'Sensitive-use Development' as detailed in Section 11 of the Strategic Bushfire Management Plan 2019-2024. As such, ACT Fire and Rescue required provisions within Planning for Bushfire Protection 2019 to be met, specifically Section 6 - Special Fire Protection Purpose Developments and Section 8 - Other Development Subsection 8.3.11 - Public Assembly Buildings. The ESA requested an updated Bushfire Management Plan reflecting the sensitive use development, but this was not provided by the applicant. Please refer to [Appendix A](#) - [Attachment 4](#) for detailed ESA advice.

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- The Conservator has raised concerns over the size of the required APZs due to the development being deemed as 'Sensitive-use Development' by the ESA. This requires APZs to be 93 metres wide. Therefore, applying the APZ to the primary edges of the building footprint will extend the APZ into the river corridor which is well outside of the development area. The APZ would need to be managed in perpetuity and would pose significant ongoing costs and ecological impacts to maintain at required standards. Please refer to [Appendix A - Attachment 1](#) for details of Conservator advice.

ENTITY NON-COMPLIANCE / ADVICE

- **Conservator of Flora and Fauna (the Conservator)**

The Conservator has not supported the proposal due to the potential considerable impacts on the conservation values of the GCC. The Conservator has raised concerns in relation to the significant impacts of the proposed pavilion and associated landscaping and the proposed access road on existing NTG and PTWL habitat and resulting non-compliance with the NC Act, the [ACT Native Grassland Conservation Strategy 2017 and associated NTG and PTWL action plans](#), and the GCCMP. The Conservator also requested provision of information on potential impacts to burrowing native animals, including wombats and how these impacts have been considered/avoided/mitigated. Additional concerns raised included the requirement of the APZs and bushfire management. Please refer to [Appendix A - Attachment 1](#) for comments received from the Conservator.

- **Environment Protection Authority (EPA)**

The main concern raised by EPA was in relation to the proposed development being within the 2.45km clearance zone from the LMQCC and potential odour impacts. Please refer to **PART B** for EPA comments.

- **Emergency Services Agency (ESA)**

ESA does not support the proposal and requires an updated Bushfire Assessment Report to meet provisions for 'Sensitive Use Development' detailed within 2023 ACT Bushfire Management Standards (commensurate to Planning for Bushfire Protection 2019). ESA noted that due to the nature and location of this development being within a Bushfire Prone Area (BPA), ACT Fire and Rescue deem it as 'Sensitive-use Development' as detailed in Section 11 of the Strategic Bushfire Management Plan 2019-2024. Please refer to [Appendix A - Attachment 4](#) for further details.

- **ICON Water**

A 'Failed to Comply' notice was issued by ICON Water, advising Design Acceptance for External Services or off-site works must be in principle design approved by Icon Water Hydraulic Assets. Please refer to [Appendix A - Attachment 6](#) for further details.

- **ACT Heritage Council**

The ACT Heritage Council advised that the proposal will adversely impact Aboriginal Cultural Values and further information was requested. Please refer to [Appendix A - Attachment 2](#) for the Council's advice.

OTHER INCONSISTENCIES:

- **Staged Development** – the proposal is to be developed in two stages. The applicant was requested to clarify how Stage 1 would function in absence of essential services such as waste management and toilets, which were intended to be part of Stage 2. In response the applicant stated that *'The development has been designed so that Stage 1 could operate independently from Stage 2 in relation to servicing, waste management and the like. However, Stage 1 alone is unlikely to generate sufficient revenue to run the facility and will require ongoing support from the Joint Venture Partners. The preference is to complete the full facility at the outset to minimise disruption and construction time and provide the best chance to*

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establish a self-funding operation from the outset.... ideally the development would be built in one stage, however, with the construction escalation costs over the preceding years and the delays in the urban development, the GJV needs to consider cashflow for the project'.

This justification is not considered to support the proposed staged development. In addition, a staged development has the potential to impact the GCC in the long term via extended construction impacts.

- Missing Drawing - Landscape drawing 1104 is missing from the set provided. Applicant was requested to provide it. L-1104 provided is a duplicate of L-1106

ADDITIONAL MATTERS CONSIDERED DURING ASSESSMENT / PRIOR TO DECISION

- Entity advice on further Information received under s141
 - The additional information received in response to the s141 further information request was referred to entities for advice. Please refer to **PART B** and **Attachments** included with the decision for more details.
- Meetings with the proponent – Ginninderry – March 2024 and April 2024
 - A site inspection was undertaken in March 2024 with the Senior Conservation Officer from the Office of the Conservator of Flora and Fauna and the proponents to understand the impacts of the proposed development on the local ecological values.
 - A meeting was also organised with the proponent to discuss the main issues identified in the assessment.
 - The proponent requested a meeting with the Conservator to further discuss the impacts on NTG and PTWL habitat.
- Further advice from the Conservator – May 2024
 - As requested by the proponent, meeting was held with the Conservator's office to discuss Conservator concerns, particularly in relation to the impacts on NTG and PTWL habitat and to identify any feasible options that may make it "potentially supportable" by the Conservator.

The Conservator provided comprehensive reasoning for their non-support identifying the areas of impact from the proposed development, but also suggested possible options including:

- Realignment of the two-way paved road access road to avoid impact to NTG, and to avoid disturbing and fragmenting the large patch of PTWL habitat
- Upgrading the road to tanker specifications while retaining it as a dirt road to reduce fragmentation impacts (in the event realignment is not possible)
- Redesign of the project so that there is no impact on NTG.

Refer to Appendix A - Attachment 1 for additional advice from the Conservator.

- The proponent provided a follow up response indicating that a two-way natural surface access road and removal of the constructed amphitheatre and play-ground area could be agreed to in order to reduce ecological impacts. However, the proponent also indicated that while the proposed building could be shifted to avoid impacts to NTG, the intention was to retain the overall scale of the building.
- This response was discussed with the Conservator's office. It was advised that although a natural surface road would help reduce impacts, high levels of vehicular or pedestrian movement (above 5 movements per hour) are known to impact grassland fauna. A proposal of this scale, involving higher number of vehicular movements, would result in increased fauna mortality rates, likely impacting PTWL. Therefore, reducing expected traffic to approximately 5 vehicle movements/hour would effectively avoid increased risk of mortality.

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Mitigation measures (including monitoring and modelling) would be required if a decision was made to permit a road with significantly more vehicle movements, irrespective of the road width or construction type.

- Advice from ACT Heritage – June 2024

- ACT Heritage advised that the Statement of Heritage Effect (SHE) for the proposed development has not yet been approved and further information has been requested from the applicant.

CONCLUSION

The subject proposal will significantly impact threatened ecological values and functions and has not demonstrated consistency with the relevant Territory Plan definitions of a 'parkland' and 'ancillary use' as noted above. The subject development is not considered of appropriate size and scale for the GCC. It also has not demonstrated compliance with the Ginninderry Stage 2 EIS Exemption, GCC Management Plan, Ginninderry Development Offset Management Plan and Ecological Impact Assessment (EIA), the *Planning and Development Act 2007* and the Territory Plan definitions, NUZ4 Zone Objectives and Non-Urban Zone Development Code and other general codes as identified above.

The Conservator, the EPA, the ESA and ICON Water do not support the current proposal and the ACT Heritage Council has requested further information and has not supported the SHE to date.

The GCC acts as an important regional conservation connectivity link. The potential impacts on the ecological values of the site are considered significant on the overall GCC. This is particularly concerning given that the proposed development is situated within a conservation corridor.

Avoidance of impacts is the most important first step of the mitigation hierarchy and the application has not demonstrated that this step has been given sufficient weight to demonstrate consistency with the mitigation hierarchy. Construction of a visitor centre (the core function of which is to connect visitors with the reserve), should not significantly impact the values it is meant to showcase when alternative, lower impact options could be explored.

The planning and land authority considered all legislative options available in determining this decision. Reducing the size and scale of the proposed building (e.g. smaller area with compatible car parking spaces), removing the amphitheatre and play area in order to avoid impacts on NTG habitat and rerouting or adjusting (e.g. surface changes) the proposed access road to reduce impacts to NTG and PTW habitat were considered possible changes that may increase the suitability of the proposed development. The Authority also considered the option of departing from entity advice to conditionally approve the development with modifications. However, it was considered that to achieve these changes, significant revisions to the proposal would be required, which may have currently unknown implications and impacts. In addition, the non-compliance with the various planning policies (as identified above) and inconsistency with the territory plan definitions of 'parkland' and 'ancillary use' would still potentially remain as outstanding issues, and entity support of any modified proposal could not be assured.

It is to be noted that the proponent was previously provided the opportunity to address these issues via a request for further information, but no changes were made to the development in response at the time. A rationale for the size and uses was instead provided comparing the subject development to other visitor centres in Canberra and in other Australian states.

Under the transitional provisions of the new planning legislation (the *Planning Act 2023*), the opportunity for making amendments to an active DA made under the *Planning and Development Act 2007* (such as this DA) has now passed. There is therefore no ability for the applicant to apply for an amendment under section 144 to amend this DA. While the Authority considered an additional request for further information, it reached the view that a refusal was the preferable decision.

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Given the changes that would be required to the proposal to address the above matters, the view was formed that the proposal, as it currently stands, cannot be addressed through a conditional approval. Therefore, in accordance with section 162 of the Act, the planning and land authority **refuses** this current application for the proposed development.

Any future application (including reconsideration) should consider the above issues and explore options to minimise impacts on the GCC, the scale and use are more suited to the site (and are permissible), address other outstanding matters and ensure compliance with the relevant policies and entity requirements.

EVIDENCE

The following evidence formed part of the assessment of this application:

Development Application:	202341697
Territory Plan Zones:	NUZ4 – River Corridor Zone, PRZ1 – Urban Open Space Zone
Development Codes:	Non-Urban Zones Development Code, Parks and Recreation Zones Development Code
Precinct Code:	Belconnen District Precinct Map and Code and Strathnairn Precinct Code
General Codes:	Parking and Vehicular Access General Code, Access and Mobility General Code, CPTED General Code, Signs General Code, Waterways: Water Sensitive Urban design General Code
Legislative requirements:	The <i>Planning Act 2023</i> in particular the transitional arrangements for DAs such as this made before its commencement. the <i>Planning and Development Act 2007</i> in particular sections 128 and 129.
Entity advice and Public Notification:	As addressed in PART B of this Decision
Assessment process	The DA was assessed by 2 senior officers, referred to Assessment Advisory Panel of 7 senior officers and decision reviewed by 2 senior officers.

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PART B – PUBLIC NOTIFICATION AND ENTITY ADVICE

PUBLIC NOTIFICATION

Pursuant to Division 7.3.4 of the Act, the application was publicly notified from 12 July 2023 to 2 August 2023. Nine (9) written representations were received during public notification period.

The main issues raised in the representations included:

- Non-compliance with the EPBC Act, GCCMP, EIS Exemption, Territory Plan 2008;
- Concerns over inadequate / flawed Environmental Impact Assessment;
- Impacts of the proposal on the threatened species and ecological communities;
- Development will have unavoidable residual impacts to *ACT Nature Conservation Act 2004* native vegetation and habitat adjacent to the development footprint;
- Direct and indirect impacts on local flora and fauna;
- Inadequate information on environmental offsets
- Increased impacts on MNES and triggering of the defined process strategy under the EPBC Act and due to the scale of the proposed development exceeding the originally envisaged;
- Impacts on the native vegetation;
- Interference of the proposal on the wildlife movement along the riverbank;
- Impact on wombat population and other local borrowing fauna, aquatic species etc.
- Considerations and changes to ensure the safety and welfare of native wildlife is taken into account;
- Removal of trees and tree protection;
- Impact on the heritage values of the area, impact on aboriginal sites;
- Location of utilities or arrangement of sewage processing plant not clearly identified;
- Parking and traffic impacts due to large number visitors expected;
- Concerns over the size of the pavilion and scale of the development;
- Prior public consultation a large, 1000m² building was not asked for;
- Trust's office does not need to be near the river but in the Ginninderry suburbs;
- Visitor centres in nature reserves and national parks are usually at the edges to minimise disturbance to the environment;
- Concerns over public access controls and enforcement in protecting the MNES and the corridor from increase in population of the adjacent urban areas;
- Soil trenching for new buildings, roads and carparks causes loss of microorganisms, fungi, insects, etc. and must therefore be minimised;
- Increased noise, vibration and dust during construction;
- Consideration of noise and light pollution, especially during events;
- Changes in hydrology and increased sedimentation of receiving waterways during construction;
- Weed introduction and/or spread during construction and operation;
- Increase in pest animal population as a result of increased human activity during operation;

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- Hours of operation (7am – 11pm, all 7 days a week) and estimated large number of visitors /vehicle movements;
- Excessive visitor numbers and capping visitor numbers for natural integrity;
- Consideration of Waste Management and environmental sustainability; and
- Building, fire hazard and location within bushfire prone area.

The issues raised in the representations were considered in the assessment of the development application. The proposed development has been considered inconsistent with the relevant planning policies, the Territory Plan and entity requirements has therefore been **refused**. Please see the reasons of the decision above.

ENTITY ADVICE and REQUIREMENTS

Pursuant to Division 7.3.3 of the *Planning and Development Act*, the application was referred to the entities below.

A summary of entity comments can be found below.

1. THE CONSERVATOR OF FLORA AND FAUNA (the Conservator)

- The Conservator provided advice stating that there appear to be inconsistencies with the objectives of the ACT Native Grassland Conservation Strategy and the Natural Temperate Grassland and Pink-tailed Worm-lizard Action Plans. Further information was requested.
- Further advice was received from the Conservator on s141-C application advising that the previous comments remain relevant. Additional comments were also made.

Please refer to Appendix A - Attachment 1 for details.

The advice is considered in the reasons for the refusal.

2. ACT HERITAGE COUNCIL (the Council)

- The Council advised that the proposed development would damage Aboriginal places and further information was needed to adequately assess the extent and nature of the proposed heritage impacts. The DA is not supported until further information is provided. Additional *Heritage ACT 2004* approvals are also required.
- Further advice was received from the Council on s141-C application advising that the proposed development would damage Aboriginal places and further information was required to clarify the development footprint and its impact on the Aboriginal Places. It was noted that an application was submitted directly to the Council.

A copy of the Council's latest advice is attached to this Notice of Decision at Appendix A - Attachment 2.

3. ENVIRONMENT PROTECTION AUTHORITY (EPA)

- EPA advised that the proposal is not supported. The proposed development is located within the buffer identified in the West Belconnen Concept Plan (WBCP) and is inconsistent with the mandatory rule R13 of the WBCP.

The area is identified as being impacted by odour from the nearby Lower Molonglo Water Quality Control Centre (LMWQCC) sewage treatment plant.

Following additional advice was received from EPA in relation to Site Audit:

- *The EPA received a revised site audit statement (SAS No. 2020/01R) and report on 29 January 2021. The EPA reviewed the revised audit documents and reissued the Endorsement of Site audit statement and report for Ginninderry Precinct – Audit Area 2 on 9 February 2021.*

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The proposed development must be undertaken in accordance with the attached (Included herewith at [Appendix A - Attachment 3](#)) endorsement letter and the associated site audit statement and report, including implementation and compliance with the CEMP and the Auditor's recommendations and overall comments as detailed in the revised SAS.

- Further advice was received from EPA on s-141C application stating that EPA does not support the DA for following reason:
 - The proposed development is located within the buffer identified in the West Belconnen Concept Plan (WBCP) and is inconsistent with the mandatory rule R13 of the WBCP.

The area is identified as being impacted by odour from the nearby Lower Molonglo Water Quality Control Centre (LMWQCC) sewage treatment plant.

In the response to entity comments submitted in this amendment, the applicant refers repeatedly to "existing recreational uses" along the Murrumbidgee river located in the buffer zone. However, these are not of a comparable size or purpose to the proposed development. The applicant seeks to compare the use of the centre to the use of a walking track and concludes that if the walking track is allowed, so should the pavilion. The EPA considers this a false equivalence. In the proposed riverside development, people will spend many hours in one place for educational purposes, for dining or for functions such as weddings and the like. The presence of a large kitchen and dining area in the proposed plans indicates that the production and consumption of food is an important part of the business plan. The impact of odour will be far greater on people in these circumstances than on a person walking along a hiking trail or briefly looking at an informative billboard.

The EPA therefore considers the proposed development will be impacted by odour from the LMWQCC and hence it cannot be supported in its current form.

The advice is considered in the reasons for the refusal.

4. ACT EMERGENCY SERVICES AGENCY (ESA)

- ESA provided advice stating that further information was required for further assessment.

ESA noted that due to the nature and location of this development being within a Bushfire Prone Area (BPA), ACT Fire and Rescue deem it as 'Sensitive-use Development' as detailed in Section 11 of the *Strategic Bushfire Management Plan 2019-2024*. As such, ACT Fire and Rescue require provisions within *Planning for Bushfire Protection 2019* to be met, specifically Section 6 - Special Fire Protection Purpose Developments and Section 8 - Other Development - Subsection 8.3.11 - Public Assembly Buildings.
- Further advice was received from ESA on s141-C application requesting further information for further assessment. The advice stated –
 - As per previous comments, ACTF&R will require Bushfire Assessment Report to be amended to meet provisions for 'Sensitive Use Development' detailed within 2023 *ACT Bushfire Management Standards* (commensurate to *Planning for Bushfire Protection 2019*).
ACTF&R cannot support development until review and agreement of adjusted report where ESA Commissioner approval will be required. This provision is specified within the *Strategic Bushfire Management Plan 2019-2024* (page 16, 61), the *Emergencies Act 2004* and the *Planning and Development Amendment Regulation 2020* Section 1.99AA.

Copies of the ESA advice are attached to this Notice of Decision at [Appendix A - Attachment 4](#).

The advice is considered in the reasons for the refusal.

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5. TRANSPORT CANBERRA AND CITY SERVICES (TCCS)

- TCCS provided advice on the proposal stating that the proposal is supported subject to conditions. Please refer to Appendix A - Attachment 5 for details.
- Further advice was received from TCCS on s141-C application advising that the previously provided conditions continue to apply.

The advice was considered and noted.

6. URBAN TREESCAPES - TCCS

- tree protection advised that the Development Application could be supported, subject to a condition that all works are in accordance with the Tree Management Plans 1-4 and the Tree Management – Legend & Notes-05.

The advice was considered and noted.

7. ACT HEALTH PROTECTION SERVICES (HPS)

- HPS supported the proposal subject to following advice:
 - food businesses will need to comply with the *Food Act 2001* and the ACT Food Business Fit-Out Guide. The applicant is required to submit food business registrations and fit-out applications (with suitably detailed plans) to the HPS for any food business prior to construction. The applicant is advised to contact the HPS for further information.
 - all taps and outlets utilising rain or stormwater are clearly labelled as being provided with non-potable water.
 - water supplied to the proposed “Water play” area must be either potable single use, or where recirculated, provided with suitably designed filtration and disinfection/treatment systems to prevent the water being a vector for disease-causing organisms.
 - the design and construction of swale drains, rain garden and upgrade of the existing dam must minimise the potential to cause an insanitary condition (local mosquito nuisance) under the Public Health Act 1997.
 - Plans indicate the use of a sewer holding tank servicing the pavilion. Where this tank is not connected to mains sewer, approval for the installation of the tank and septic system must be obtained from the HPS under requirements of the Public Health Regulations 2000 prior to installation. The applicant is advised to contact the HPS for further information.

There are no further public health concerns in relation to the development application.

The advice was considered and noted.

8. ICON WATER

- ICON Water provided advice stating the proposal Failed to Comply.
Design Acceptance for External Services or off-site works must be in principle design approved by ICON Water Hydraulic Assets.
- ICON Water provided advice on s-141-C stating the proposal Failed to Comply for the same reasons noted above.

A copy of the latest ICON Water advice is attached to this Notice of Decision at Appendix A - Attachment 6.

The advice is considered in the reasons for the refusal.

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9. EVOENERGY (ELECTRICITY)

- Evoenergy (Electricity) provided Conditional Compliance for the proposal.
- Further advice was received from Evoenergy (Electricity) on s141-C application advising proposal is supported subject to compliance with conditions.

A copy of the latest Evoenergy (Electricity) advice is attached to this Notice of Decision at Appendix A - Attachment 7.

The advice was considered and noted.

10. EVOENERGY (GAS) - Jamena

- Jamena confirmed that Evoenergy (gas) has no objections to the proposed development.
- Further advice was received from Evoenergy (gas) on s141-C application advising Evoenergy (gas) has no objections to the proposed development.

The advice was considered and noted.

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ATTACHMENT 1

ADMINISTRATIVE INFORMATION RELATING TO NOTICE OF DECISION

Inspection of the Application and Decision

A copy of the application and the decision can be inspected at *planning and land authority's office from 9:00 am to 4.00 pm, Monday to Friday at 8 Darling Street, Mitchell, ACT 2911.*

Submission of revised drawings or documentation

If a condition of approval requires the applicant to lodge revised drawings and / or documentation with the planning and land authority for approval pursuant to section 165 of the Act, the submission must be made by completing an application in e-development.

Reconsideration of the Decision

If the DA applicant is not satisfied with the decision made by the planning and land authority, they are entitled to apply to the planning and land authority for reconsideration within 20 working days of being told of this decision pursuant to section 191 of the Act. A longer timeframe may apply only if granted in writing by the Authority pursuant to section 191(5)(b) of the Act.

More information is available online at [Amend or appeal an application - Environment, Planning and Sustainable Development Directorate - Planning \(act.gov.au\)](https://www.act.gov.au/planning-and-sustainable-development-directorate/planning).

Please contact Access Canberra Customer Services if you wish to lodge a reconsideration application.

Review by the ACT Civil and Administrative Tribunal (ACAT)

1. Decisions that are reviewable (sometimes referred to as appeals) by the ACAT are identified in Schedule 1 of the [Act](#), except for matters that are exempted under Schedule 3 of the [Planning and Development Regulation 2008](#) (matters exempt from third party review).
2. The notice of decision and this advice have been sent to all people who made a representation in relation to the application.
3. The ACAT is an independent body. It can review a large number of decisions made by ACT Government ministers, officials and statutory authorities on their merits. 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.
4. More information on appeal rights is available online at [Amend or appeal an application - Environment, Planning and Sustainable Development Directorate - Planning \(act.gov.au\)](https://www.act.gov.au/planning-and-sustainable-development-directorate/planning)
5. The ability to review the Authority's decision is a matter of law. **If** you think you have a right of review, you may apply to the ACAT for a review of the decision. Application forms can be obtained from the ACAT at the website listed below. You can also download the form from the ACT Legislation Register. It is recommended you seek independent advice in regards to such reviews eg a legal practitioner.
6. If you are applying on behalf of an organisation or association, 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.
7. 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),

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10(3), 25(1)(e) and 25(2) of the *ACT Civil & Administrative Tribunal Act 2008*; and rule 38 of the *ACT Civil and Administrative Tribunal Procedures Rules 2020*.

8. 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. Applications should be made in writing to: the Director General, Justice and Community Safety Directorate, GPO Box 158, CANBERRA ACT 2601. You can ask the ACAT for more details.
9. 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.
10. The following organisations may be able to provide you with advice and assistance if you are eligible:
 - ACT Law Society, telephone 6274 0300ACT
 - Legal Aid Office, telephone 1300 654 314
 - ACT Council of the Ageing, telephone 02 6154 9740
 - Welfare Rights Centre, telephone 1800 226 028
 - Environmental Defender's Office (ACT), telephone 02 6243 3460.
11. 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 in the circumstances specified in s 48 of the *ACT Civil and Administrative Tribunal Act 2008*. 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.
12. You may apply for access to any documents you consider relevant to this decision under the *ACT Freedom of Information Act 2016*. Information about Freedom of information requests is available on the planning and land authority's web site at <https://www.environment.act.gov.au/about/access-government-information> or by contacting us by phone on 02 6207 1923.
13. 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.

Review by the ACT Supreme Court

1. The Authority's decision may also be subject to judicial review by the ACT Supreme Court under the *Administrative Decisions (Judicial Review) Act 1989* (ADJR Act).
2. Under the ADJR Act, an *eligible person* may make an application for review of a decision.
3. An *eligible person* must demonstrate that their interests are adversely affected by the decision and that the application raises a significant issue of public importance.
4. Section 5 of the ADJR Act sets out the grounds on which a decision can be reviewed.
5. The time limit to make an application for review is 28 days from the date the Notice of Decision is provided to the applicant and those people who made a representation.

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6. The ACT Supreme Court is a costs jurisdiction where costs generally follow the event. This means that the unsuccessful party is required to pay the costs of the successful party.
7. For more information on ACT Supreme Court processes and fees, please visit <https://courts.act.gov.au/home>.

Other approvals

A notice of decision under the *Planning and Development Act 2007* grants development approval only. Other approvals may be required, including:

1. **Building Approval**

Most building work requires building approval under the *Building Act 2004* to ensure it complies with building laws such as the *Building Code of Australia*. The lessee should engage a private building certifier to determine whether building approval is required and assess and approve the building plans before construction commences. A list of certifiers can be obtained from the [Environment, Planning and Sustainable Development Directorate](#).

2. **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 the Transport Canberra and City Services Directorate at <https://www.tccs.act.gov.au/city-living/trees>.

3. **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 the carrying out of works, including the storage of materials or waste, without prior approval of the Territory. More information is available from the Transport Canberra and City Services Directorate at <https://www.tccs.act.gov.au/city-living/public-land-use>.

4. **Works on unleased Territory Land**

In accordance with the *Public Unleased Land Act 2013*, no work can be undertaken on unleased Territory land without the approval of the Territory. Such approval must be obtained from the Senior Manager, Place Coordination and Planning, Transport Canberra and City Services Directorate by way of:

- (a) a certificate of design acceptance prior to the commencement of any work; and
- (b) 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.

Contact details for relevant agencies

ACT Civil and Administrative Tribunal Level 4, 1 Moore Street CANBERRA CITY ACT 2601 GPO Box 370, CANBERRA, ACT 2601	www.acat.act.gov.au tribunal@act.gov.au 02 6207 1740 02 6205 4855 (Fax)
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<p>ACT Supreme Court 4-6 Knowles Place, CANBERRA CITY ACT 2601 GPO Box 1548, CANBERRA CITY, ACT 2601</p>	<p>www.courts.act.gov.au 02 6205 0000</p>
<p>Environment, Planning and Sustainable Development Directorate 480 Northbourne Avenue DICKSON ACT 2602 GPO Box 158, CANBERRA 2601</p> <ul style="list-style-type: none"> • <i>Planning and land authority</i> <ul style="list-style-type: none"> - list of certifiers for building approval - demolition information - asbestos information • <i>Environment Protection Authority</i> <ul style="list-style-type: none"> - environment protection - water resources - Conservation, Planning and Research - threatened species/wildlife management • <i>WorkSafe ACT</i> <ul style="list-style-type: none"> - asbestos information • <i>ACT Heritage Council</i> <ul style="list-style-type: none"> - Aboriginal, historic and natural heritage management • <i>Tree Protection Unit</i> <ul style="list-style-type: none"> - <i>Development Applications (DA) issue:</i> - <i>Tree Damaging Activity Applications (TDAA) issue:</i> 	<p>www.planning.act.gov.au 02 6207 1923</p> <p>EPAPanningLiaison@act.gov.au 6207 5642</p> <p>worksafe@worksafe.act.gov.au 132 281</p> <p>www.environment.act.gov.au 132 281</p> <p>TCCS.TreeProtectionACTPLARef@act.gov.au</p> <p>TCCS.TreeProtection@Act.gov.au</p>
<p>Transport Canberra and City Services</p> <ul style="list-style-type: none"> • landscape management and protection plan approval • use of verges or other unleased Territory land • works on unleased Territory land - design acceptance • driveway inspections or building applications • damage to public assets 	<p>www.tccs.act.gov.au</p> <p>132 281</p> <p>02 6207 0019 (development coordination)</p> <p>tccs.dcdevelopmentcoordination@act.gov.au</p>
<p>Health Directorate</p>	<p>www.health.act.gov.au hps@act.gov.au 02 5124 9700</p>
<p>Education Directorate</p>	<p>www.education.act.gov.au 02 6205 5429</p>
<p>Utilities</p> <ul style="list-style-type: none"> • Telstra (networks) • TransACT (networks) • Icon Water • Electricity reticulation 	<p>02 8576 9799 02 6229 8000 02 6248 3111 02 6293 5749</p>

NOTICE OF DECISION

DA 202341697

Translation and interpretation services

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

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