

# Notice of decision

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

## Merit track

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DA NO: 202342133	<b>DATE LODGED: 27 November 2023</b>	
DATE OF DECISION: 27 September 2024		
BLOCK: 14	SECTION: 86	<b>DIVISION: NICHOLLS</b>
STREET NO AND NAME: Gold Creek Golf Course – Curran Drive		
APPLICANT: Canberra Town Planning Pty Ltd		
LESSEE: Gungahlin Golf Investments Pty Limited		

### THE DECISION

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

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

- **Subdivision of Block 14 Section 86 Division of Nicholls; and**
- **A variation to the Crown lease to**
  - **expand the developable area for commercial uses; and**
  - **redistribute the allowable uses, development rights, and gross floor area between the two proposed blocks.**

**Section A** sets out the Reasons for the Decision.

**Section B** is a list of evidence used in relation to the making of the decision.

**Section C** is Public Notification and Entity Advice.

**Section D** contains administrative information relating to the determination.

### DELEGATE



Aaron Oshyer  
Delegate of the planning and land authority  
Environment, Planning and Sustainable Development Directorate  
27 September 2024

### CONTACT OFFICER

Simon Baker  
Phone: (02) 6207 5403  
Email: [actpladaleasing@act.gov.au](mailto:actpladaleasing@act.gov.au)

**A. REASONS FOR THE DECISION**

1. The development application was referred to the National Capital Authority and they have not supported the proposal, as the proposed expansion of the developable area for commercial uses is inconsistent with the *National Capital Plan* (NCP). The current developable area, as depicted in attachment 1 in the Crown lease for Block 14 Section 86 Nicholls, aligns with the Urban Areas in the NCP, which permits commercial uses. However, the proposed amendment to the developable area encroaches into the Hills, Ridges and Buffer Spaces which does not permit 'club', 'child care centre', 'commercial accommodation' or 'indoor recreation' uses in this location.
2. As the Territory Planning Authority (the authority) is unable to approve the expansion to the developable area, due to its inconsistency with the NCP, we are also unable to approve the proposed subdivision. The proposed subdivision boundary is aligned with the expansion to the developable area.
3. As the expansion of the developable area and subdivision of the block, is not supported it follows that the proposal to redistribute the allowable uses, development rights, and gross floor area between the two proposed blocks is similarly refused. Divorcing the nexus between the commercial uses and the golf course, and the redistribution of the gross floor area between the two blocks, has not been adequately justified.

**B. EVIDENCE USED IN RELATION TO THE MAKING OF THE DECISION**

1. Development Application 202342133.
2. File No. 1-2023/92392.
3. The Territory Plan zone – PRZ2 – Restricted Access Recreation Zone.
4. The Development Code – Parks and Recreation Zone Development Code.
5. The Precinct Code – Nicholls Precinct Map and Code; and
  - Gungahlin Precinct Map and Code.
6. The General Codes – Lease Variation General Code; and
  - Parking and Vehicular Access General Code
7. Current Crown Lease – Volume 2157 : Folio 38.
8. Planning and Development Act 2007 and subsequent legislation.
9. National Capital Plan
10. Representations.
11. Entity advice.

**C. PUBLIC NOTIFICATION AND ENTITY ADVICE****PUBLIC NOTIFICATION**

1. Pursuant to Division 7.3.4 of the Act, the application was publicly notified from 1 December 2023 to 15 January 2024. Three hundred and four written representations were received during public notification.
2. The main issues raised were as follows. Comments are provided as appropriate.
  - (a) *Permissibility of development*  
As the development application has been refused, the authority agrees that the proposal is not a permissible development for this site.

- (b) *Undermining of primary golf course use*  
The Crown lease for Block 14 Section 86 Nicholls requires the operation of an 18-hole golf course for the additional permitted commercial uses to be operated on the site. Although the development application does not propose any changes to the golf course, the proposed subdivision divorces the nexus between the golf course and the commercial uses for proposed Block A. While the proposed lease for block A retains the recreational uses, removing the requirement for the recreational uses is deemed to contradict the intention of the PRZ2: Restricted Access Recreation Zone.
- (c) *Perceived misuse of planning system due to the submission of multiple development applications relating to the site*  
There are currently eight additional development applications being assessed for this site. The applicant has explained that this is because they are planning to stage the development and wanted EPSDD to assess each stage as a standalone development. There is no reason that the applicant cannot breakup the development in this manner. It is noted that each of the application were submitted at the same time.
- (d) *Inconsistency of the proposal with relevant policy considerations*  
As the proposal to expand the developable area is inconstant with the National Capital Plan, it is also inconsistent with the Territory plan. This is the main reason the authority has refused this proposal.
- (e) *Perceived insufficiency of community engagement*  
Section 20A of the Planning and Development Regulation 2008 necessitates that a development proposal meeting certain requirements for the purposes of mandatory pre-application community consultation. As the proposal for this development application does not meet these criteria, it does not require preapplication consultation with the community or National Capital Design Review Panel. The proponent is not obliged to undertake such consultation and has, lawfully, not done so in relation to this application. The community has been afforded the opportunity to view and comment on the proposal as a part of the assessment process for this application.
- (f) *Adverse impact on values of blocks in the locality*  
This matter is not a planning consideration.
- (g) *Other issues*  
As there were over 300 representations for this proposal, there were many varied issues which we may not have addressed in the decision. However, we have aimed to respond to each of the main objections raised and the issues that were most common throughout the representations. There were considerable concerns relating to the other eight development applications lodged for proposed buildings on the site which do not relate specifically to this application. The decisions for the respective development applications will separately address the main concerns raised in the representations received for those application.

### ENTITY ADVICE

3. Pursuant to Division 7.3.3 of the Act, the application was referred to entities and advice was received. The referral entities' comments are as follows. A response to the advice is provided as appropriate.

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### Environment Protection Authority

4. On 29 November 2023 advice was received from the Environment Protection Authority (EPA) in relation to the proposal. EPA conditionally supported the proposal with the following comments:

*"The Environment Protection Authority (EPA) supports the DA subject to the following conditions of approval being included in the Notice of Decision and enforced under the Planning Act 2023.*

**Conditions:**

Contaminated Sites

*Golf courses have in the past been associated with site contamination due to the application and storage of certain chemicals for the control of weeds and pests and the use of controlled and uncontrolled fill for the construction of fairways and greens. Other potentially contaminating activities may have also been undertaken at the site associated with current and past uses.*

*The EPA would support the application subject to the following conditions:*

- Prior to the commencement of development works an environmental assessment (and remediation if necessary) in accordance with EPA endorsed guidelines must be undertaken by a suitably qualified environmental consultant to determine whether past activities have impacted the area from a contamination perspective and to determine whether the site is suitable for the proposed uses.*
- The consultant's assessment report into the site's suitability for the proposed and permitted uses from a contamination perspective and a letter of introduction from the land custodian and/or person/company responsible for commissioning the report detailing the purpose of the report and the action being requested from the EPA must be submitted to the EPA for review and endorsement by the EPA prior to the commencement of development works on this site.*

Noise Management

*The Crown lease currently has a provision under purpose clause (3) (a) detailing that a Noise Management Plan is required to be submitted to and endorsed by the EPA prior to any noisy uses being activated. This provision needs to be maintained and taken over in both Crown Leases for block A and block B. When a NMP is endorsed on a leased block, the approved NMP must be registered as an encumbrance on the Title."*

Matters raised have been incorporated as advice here, but it is not applicable as this application has been refused.

### Transport Canberra City Services (TCCS)

5. On 21 December 2023 advice was received from TCCS in relation to the proposal. The advice states that TCCS support the proposal.

Matters raised have been incorporated as advice here, but it is not applicable as this application has been refused.

### Evo Energy (Electricity)

6. On 13 December 2023 advice was received from Evo Energy (Electricity) in relation to the proposal. Evo Energy (Electricity) conditionally support the proposal with the following comments:

*"Development is to comply with minimum 1.5m machinery access clear of obstacles and vegetation to assets within the block.*

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*Development is to comply with minimum separation requirements to underground assets.  
Ref Evoenergy Drawing 3832-018*

*Proponent is required to submit the Request for "Preliminary Network Advice" via  
<https://www.evoenergy.com.au/key-documents/forms/prelimelecnetworkadvice> prior to  
commencement of any development activity to negotiate the connection of new and/or  
relocation of existing electricity assets.*

*The location of the proposed or existing Point of Entry/ Meter Box is to comply with  
Evoenergy's Service and Installation rules."*

Matters raised have been incorporated as advice here, but it is not applicable as this application has been refused.

### Evo Energy (Gas)

7. On 29 November 2023 advice was received from Evo Energy (Gas) in relation to the proposal. The advice states that:  
*"Jemena have reviewed the proposed development and can confirm Evoenergy gas have no objections".*

Matters raised have been incorporated as advice here, but it is not applicable as this application has been refused.

### Icon Water

8. On 4 December 2023 advice was received from Icon Water in relation to the proposal. The advice states that Icon water do not support the proposal with the following comments:  
*"Design Acceptance for External Services or off site works must be in principle design approved by Icon Water Hydraulic Assets. Phone Icon Water Asset Acceptance on ph.: 02 6248 3111 or email to [hydraulicassetacceptance@iconwater.com.au](mailto:hydraulicassetacceptance@iconwater.com.au). This needs to be referred back to Icon Water Building Approvals area for approval prior to any DA/BA Approval by ACTPLA or certifiers.*

*Please complete attached Icon Water Design Form Pack, Hydraulic servicing plans and email to [hydraulicassetacceptance@iconwater.com.au](mailto:hydraulicassetacceptance@iconwater.com.au).*

*Icon Water will then identify whether your development falls into the capital contribution code scheme, and will write you a letter to confirm.*

*On confirmation, please resubmit Development Application to Icon Water for Building Approval prior to any DA/BA approval by ACTPLA or certifiers.*

*Icon Water is unable to assess the current application until an 'In-Principle' acceptance of the External Services Plan is obtained. Additional requirements may apply once an 'In-Principle' accepted ESP is submitted."*

Matters raised have been incorporated as advice here, but it is not applicable as this application has been refused.

### National Capital Authority (NCA)

9. On 30 November 2023 advice was received from the NCA in relation to the proposal. The advice states that NCA do not support the proposal with the following comments:  
*"Thank you for the referral for DA202342133, Block 14 Section 86 Nicholls. The proposed lease variation is inconsistent with the National Capital Plan (the Plan).*

*The General Policy Plan – Metropolitan Canberra (Figure 2) in the Plan identifies most of this block as ‘inner hills, ridges and buffer spaces’ with part of the block zoned as urban areas. The part identified as urban areas is represented in the existing crown lease as zone B in attachment 1, where the proposed land uses are currently permitted.*

*The site plans show that the proposed development area in the lease variation encroaches into the areas zoned as hills, ridges and buffer spaces in the Plan. Section 3.2.4.4 of the Plan does not permit commercial accommodation or indoor recreation facility for sites zoned as hills, ridges and buffer spaces at this location (outdoor recreation facility is permitted).*

*The NCA had a meeting with the proponent about this site in 2017 and expressed concerns about the hills, ridges and buffer spaces being eroded for developable urban areas.*

*The site is more than 200 metres away from the Barton Highway Approach Route and is not subject to Special Requirements of the Plan.”*

Matters raised have been incorporated as advice here, and taken into consideration in the refusal of this application.

#### Emergency Services Agency (ESA)

10. On 20 December 2023 advice was received from ESA in relation to the proposal. The advice states that ESA support the proposal.

Matters raised have been incorporated as advice here, but it is not applicable as this application has been refused.

#### ACT Heritage Council

11. On 20 December 2023 advice was received from TCCS in relation to the proposal. The advice states that the ACT Heritage Council support the proposal with the following advice:  
*“Thank you for seeking ACT Heritage Council (Council) advice on DA202342133, which relates to a proposed lease variation for Block 14 Section 86 Nicholls. This development application is associated with another eight development application referrals (see DA202342167 to DA202342174) in relation to the Gold Creek Masterplan. DA202342133 proposes:*

- Lease (sic) variation to subdivide Block 14 Section 86 Nicholls into two blocks, reconfigure the developable area, distribute the uses and rights between the two resulting blocks permitting one block to contain the golf course and commercial uses with the other block removing the golf course use; and*

*While not noted in the application form, plans have been provided showing indicative utility and storm water works.*

*Review of the ACT Heritage Register identifies that the subject block contains Registered Aboriginal Place, ‘GTRIF2’ which was first recorded in 1992 as an isolated artefact, as part of an assessment to develop a Gungahlin tourist resort. It is unclear if GTRIF2 is extant. This Aboriginal place is located on the eastern side of the subject block and is located in the ‘Block B’ area proposed to continue use as a golf course. GTRIF2 also appears to be removed from any proposed utility and storm water works.*

*Additionally, review of historic aerial imagery identifies that the block was subject to high levels of disturbance during its development into a golf course in the mid-1990s. This review of imagery suggests there may be small pockets of lesser disturbance, and that a number of remnant native trees remain present in the areas proposed for future development. The tree plans and reports provided with the associated development application referrals also note the presence of remnant trees. The pockets of lesser disturbance have the potential to contain unrecorded Aboriginal places and objects, noting that an Aboriginal place has been previously recorded in the subject block. Additionally, culturally modified trees have previously been identified in remnant native vegetation in urban areas.*

*On this basis, and as a delegate of the Council, I advise that prior to any works commencing associated with DA202342133, the following further information is required to adequately assess the potential heritage impacts of the development, being:*

- 1. A heritage inspection of the lesser disturbed parts of Block 14 Section 86 Nicholls subject to future works, including consideration of remnant mature native vegetation, by a qualified archaeologist and Representative Aboriginal Organisations (RAOs), to assess the potential Aboriginal heritage values of the area. Arborist assessment may also be required, dependent on findings.*
- 2. Consultation with RAOs to identify any other cultural heritage values associated with the locality.*
- 3. Submission of a report describing the above actions and their outcomes to the Council for review, and for Council advice on any additional Heritage Act 2004 requirements.*
  - a. If inspection and RAO consultation do not identify any Aboriginal heritage values, a letter report will suffice.*
  - b. If inspection and RAO consultation do identify any Aboriginal heritage values, a Cultural Heritage Assessment (CHA) report prepared in accordance with the Council's 2015 Cultural Heritage Reporting Policy will be required.*

*Additionally, as the application does not include an Unexpected Discovery Protocol, the following is also required:*

- 4. An Unexpected Discovery Protocol describing how any heritage finds encountered during any works will be managed in accordance with Heritage Act 2004 provisions.*

*The above requirements are not needed prior to lease variation and subdivision. However, if utility works form part of DA202342133 these above requirements are requested prior to any approval of DA202342133 to assess the potential heritage impacts of the proposal.*

*It is acknowledged that DA202342133, is one of nine DAs relating to this proposal. Only one document addressing the above requirements for the subject area is necessary and can be referred to support all nine development applications (where applicable if works are proposed as part of DA202342133)."*

Matters raised have been incorporated as advice here, but it is not applicable as this application has been refused.

## **D. ADMINISTRATION ADVICE**

### INSPECTION OF THE APPLICATION AND DECISION

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

### RECONSIDERATION OF THE DECISION

2. If the applicant is not satisfied with the decision to refuse the application, they are entitled to apply to the planning and land authority for reconsideration within 20 working days of being told of this decision or within any longer period allowed by the planning and land authority.
3. To submit an application for reconsideration, documents must be provided electronically by email to [epdcustomerservices@act.gov.au](mailto:epdcustomerservices@act.gov.au) or provided at the customer service centre on a CD/DVD. The delegate of the Authority reconsidering the decision must be different from, and senior to, the original decision maker. An application for reconsideration does not prevent an application for a review of the same decision being made to the ACT Civil and Administrative Tribunal. Application forms and further information about reconsideration are available from the planning and land authority's website and Customer Service Centres.

### REVIEW BY THE ACT CIVIL AND ADMINISTRATIVE TRIBUNAL (ACAT)

4. Decisions that are reviewable by the ACAT are identified in Schedule 1 of the *Planning and Development Act 2007*, except for those precluded under Schedule 3 of the *Planning and Development Regulation 2008* – Matters exempt from third-party ACAT review.
5. This Notice of decision has also been sent to all people who made representations in relation to the proposal.



## REVIEW OF THE DECISION

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

### CONTACT DETAILS

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

Location	Contact details
ACT Civil and Administrative Tribunal Allara House 15 Constitution Avenue CANBERRA CITY ACT 2601	Website: <a href="http://www.acat.act.gov.au">www.acat.act.gov.au</a> Email: <a href="mailto:tribunal@act.gov.au">tribunal@act.gov.au</a> Telephone: (02) 6207 1740 Post: GPO Box 370, CANBERRA, ACT, 2601

### POWERS OF THE ACAT

The ACAT is an independent body. It can review on their merits a large number of decisions made by ACT Government ministers, officials and statutory authorities. The ACAT can agree with, change or reject the original decision, substitute its own decision or send the matter back to the decision maker for reconsideration in accordance with ACAT recommendations.

### APPLICATIONS TO THE ACAT

To apply for a review, obtain an application form from the ACAT. You can also download the form from the ACT Legislation Register <https://www.legislation.act.gov.au/af/2016-6/>.

If you are applying on behalf of an organisation or association of persons, whether incorporated or not, the Tribunal in deciding whether to support this application will consider the effect of the decision being reviewed on the interests of the organisation or association in terms of its objects or purposes. A copy of the relevant documents will be required to be lodged with the Tribunal.

### TIME LIMITS FOR APPLICATIONS

The time limit to make a request for a review is 28 days from the date of this Notice of decision. The time limit can be extended in some circumstances (refer to sections 10 (2), 10(3), 25(1)(e) and 25(2) of the *ACT Civil & Administrative Tribunal Act 2008*; section 7 of the *ACT Civil and Administrative Tribunal Procedure Rules 2009 (No 2)*; and section 409 of the *Planning and Development Act 2007*).

### FEES

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

### TIME LIMITS FOR REVIEWS OF DECISIONS

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

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

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

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

**AWARDING OF COSTS**

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

**ACCESS TO DOCUMENTS ABOUT THE DECISION**

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

**PROCEDURES OF THE ACAT**

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

**TRANSLATION AND INTERPRETER SERVICES**

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

ENGLISH	If you need interpreting help, telephone:
ARABIC	: إذا احتجت لمساعدة في الترجمة الشفوية ، إتصل برقم الهاتف :
CHINESE	如果你需要传译员的帮助，请打电话：
CROATIAN	Ako trebate pomoć tumača telefonirajte:
GREEK	Αν χρειάζεστε διερμηνέα τηλεφωνήστε στο
ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
MALTESE	Jekk għandek bżonn l-għajnuna t'interpretu, ċempel:
PERSIAN	: اگر به ترجمه شفاهی احتیاج دارید به این شماره تلفن کنید:
PORTUGUESE	Se você precisar da ajuda de um intérprete, telefone:
SERBIAN	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