



NOTICE OF DECISION

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

S197 Amendment

I, Richard Davies, delegate of the planning and land authority, pursuant to section 198 of the *Planning and Development Act 2007*, **refuse** to amend the development approval, in accordance with the application made under section 197 of the Act, in accordance with the plans, drawings and other documentation approved and endorsed as forming part of this approval.

Pursuant to section 197 of the Planning and Development Act 2007, approval is sought to amend development approval No. 201732666 dated 5 September 2018 by:

- increasing the number of residential units from 270 to 290;
- adding communal facilities (pool and spa) and 27 parking spaces with an overall gross floor area (GFA) increase of 360sqm;
- changing the ground floor including the removal of residential units, mezzanine level and adding commercial tenancies fronting Gozzard and Swain Streets
- changing facade materials, louvres and balustrades; and
- minor structural building amendments to facilitate the above-mentioned changes

DA Number: 201732666/**S197D**
Block: 4 & 5
Section: 224
Suburb: Gungahlin
Address: 90 Swain Street
Application lodged: 21 April 2020
Assessment track: Merit

This decision contains the following information:

Part A– reasons for the Decision

Part B – public notification & entity advice

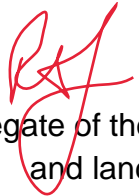
A copy of the development application and this approval may be inspected at the planning and land authority's office from 8.30 am to 4.30 pm, Monday to Friday at 16 Challis Street, Dickson, ACT 2602

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Delegate of the planning
and land authority
17 August 2020

NOTICE OF DECISION

DA 201732666/S197D

PART A – REASONS FOR THE DECISION

The application was refused because it was found to not meet the relevant rules and criteria of the Territory Plan. In particular, the application was considered inconsistent with:

- the relevant codes, being the Draft Variation 364 (DV364), Commercial Zones Development Code (CZDC), Multi Unit Housing Development Code (MUHDC), Parking and Vehicular Access General Code; Crime Prevention Through Environmental Design (CPTED) and
- the advice received from entities, including:
 - Transport Canberra and City Services (TCCS)
 - The Tree Protection Unit (TPU) of the Conservator of Flora and Fauna
 - Icon Water
 - Environment Protection Authority (EPA); and
 - Early Childhood Regulatory Policy and Coordination (CECA)

Refer to **Part B** of this Decision for further information regarding entity advice.

The following key inconsistencies have been identified through the assessment process:

Inconsistencies with Relevant Codes

The development proposal was found to be inconsistent with the provisions of the Territory Plan in particular, the following sections of DV364, GPMC, CZDC and MUHDC.

Draft Variation 364 (DV364) – Amendments to the GPMC with Interim Effect

- 19.1 Number of storeys – Rule 61 (mandatory)
 - The development exceeds the maximum number of storeys as specified in *Figure 16* of DV364. Elevations, sections and floor plans provided show a substantial portion of the southern tower is up to 12 storeys high and extends into the south-western zone of the block where *Figure 16* specifies a maximum of 9 storeys is permitted in this zone.

The proposed increase in the southern tower's footprint will increase overshadowing which go against minimising detrimental impacts and contributing to desired planning outcomes. The authority considers the extent of the encroachment does not comply with this mandatory rule.

- 5.1 Building design – general – Criteria 6
 - The proposed car park and internal driveway on the ground floor leaves no room for landscaping along the western boundary. A screen fence is also proposed along the western boundary. The proposed changes are considered to integrate poorly with the existing adjoining childcare centre to the west.

Commercial Zones Code (CZDC)

- 3.1 Building design and materials – Criteria 3

The overall building design and architectural treatment in the proposed iteration is considered to be far less appealing than what was previously approved with the façade treatment, change to materials and overall architectural expression.

NOTICE OF DECISION

DA 201732666/S197D

The treatment of the upper floors, including reductions in building separation, the removal of splayed balconies/windows and the removal of screening elements reduces privacy not only between dwellings on the site but also to adjacent developments including the childcare centre.

The previously approved central landscaped courtyard, residential and commercial units on the ground floor contributed to permeability around the buildings with a visual connection from Gundaroo Drive and Gozzard Street. The amendment effectively cuts off the visual connection from Gundaroo Drive with a screen fence along the northern boundaries and replaces a large portion of the landscaped courtyard with a carpark.

The proposal includes replacement of residential units on the ground and mezzanine level with car parking and several small-scale tenancies. The provision of ground floor parking, particularly when replacing landscaped area, significantly detracts from the amenity of the proposal and restricts pedestrian movement through the site.

The viability of 10 small-scale commercial tenancies proposed is questionable in comparison to 2 large commercial tenancies in the previous approval.

- 3.3 Parking structures – Criteria 6

The proposed carpark, internal driveway and screen fences on the ground floor presenting to Gundaroo Drive are not considered to contribute positively to an interesting, functional or attractive façade.

- 4.1 Landscaping – Criteria 14 and 15

The amendment proposes a substantial decrease in landscaping across the site. Several trees on the eastern side of the block are removed. A large portion of the previously approved ground floor courtyards is also reduced to accommodate the new carpark. In accumulation, the changes substantially limit site permeability and detracts from the amenity for residents and visitors.

- 4.2 Lighting – Rule 16 and 17 (mandatory)

The lighting plan does not specify details of external lights to demonstrate compliance with Australian Standard AS1158.3.1 Pedestrian Lighting or AS4282 – Control of the Obtrusive Effects of Outdoor Lighting.

- 5.2 Traffic generation – Criteria 21

The authority has concerns as to whether the proposed increase in residential and commercial units will have an adverse impact on the existing surrounding road network. The additional vehicle movements interacting with the adjacent childcare centre is also not considered a desirable outcome.

- 5.3 Service access and delivery – Rule/Criteria 22

The ground floor carpark does not provide adequate provision for the manoeuvring of vehicles to enter and leave the site in a forward direction. In particular, the east end of the carpark does not include a reverse bay.

- 6.1 Potentially noisy uses – R23 (mandatory)

EPA provided advice stating that further information is required as identified in **Part B** of this Decision.

NOTICE OF DECISION

DA 201732666/S197D

- 7.3 Tree protection – Rule 30 (mandatory)

The amendment application was referred to the Tree Protection Unit (TPU) of the Conservator of Flora and Fauna. TPU provided advice stating that the proposed amendments is not supported for the reasons identified in **Part B** of this Decision.

However, the removal of the high-quality regulated tree on the development site was granted in the previous approval pursuant to section 119 (2) of the Planning and Development Act 2007.

- 21.2 Post occupancy waste management – R64 (mandatory)

TCCS do not support the amendments to the development approval for the reasons identified in **Part B** of this Decision.

- 22.1 Utilities – Rule 67 (mandatory)

Icon Water did not support the amendments to the development approval for the reasons identified in their Statements of Non-Compliance – attached to this Decision.

Multi Unit Housing Development Code (MUHDC)

- 6.2 Solar access – apartments – Rule/Criteria 58

The previously approved development achieved approximately 80% of units receiving at least 3 hours of solar access to *daytime living areas* between 8am and 4pm on the winter solstice. The MUHDC states “*daytime living area means a habitable room other than a bedroom*”. The solar penetration diagram for the proposed amendments indicate approximately 75% of units will receive at least 3 hours of solar access.

However, the authority questions the accuracy of the calculations provided. Some units that have unfavourable orientations, unsuitable rooms externally facing and lower level units that will be overshadowed by the adjacent tower are indicated as receiving at least 3 hours of solar access to a daytime living area between 8am and 4pm. Detailed internal shadow diagrams were not provided as evidence to support the calculations.

- 6.3 Privacy – Rule/Criteria 59 and 60

The separation between the two towers have been significantly reduced and will compromise the privacy between adjacent residential units. The proposed privacy screens between adjoining balconies does not sufficiently address privacy issues between towers. Some units located in higher levels will have an increased direct line of sight into other units in the adjoining tower.

The proposed communal rooftop terrace will also have a direct line of sight to balconies and primary windows/glass doors in the adjoining tower.

The façade screening plan shows the field of view from internal locations of residential units and not the extremity of balconies. The privacy screening to YMCA is insufficient as per the original condition of approval.

- 6.4 Principal private open space (PPOS) – Rule/Criteria 61

Privacy to PPOS is not adequate due to similar reasons noted above in Rule/Criteria 59 and 60.

NOTICE OF DECISION

DA 201732666/S197D

- 7.3 Internal driveways – Rule/Criteria 73 and 74
The proposed internal driveway does not provide sufficient planting or landscaping areas along west boundary. Very limited planting area is provided around the carpark. No reverse bay is provided in the ground floor carpark to allow vehicles to leave in a forward direction.
- 7.4 Residents' car parking – Rule/Criteria 77 and 78
Parking space allocations for residents, employees and visitors are no longer specified on the proposed plans; this raises the questions as to whether all parking could be accommodated on site. A number of car parking spaces are splayed, some also in tandem, and are not considered a suitable layout.
- 7.4 Residents' car parking – Rule/Criteria 81
It is questionable whether the distance between the basement ramp and the Swain St and Gozzard St intersections would be long enough to accommodate vehicle queuing during morning peak hours particularly when considering the cumulative demand from this proposal and nearby developments.
- 7.5 Visitor parking – Rule/Criteria 82 and 83
Parking space allocations for residents, employees and visitors are no longer specified on the proposed plans; this raises the questions as to whether all parking could be accommodated on site. A number of car parking spaces in the basement and ground floor levels are splayed, some also in tandem, and are not considered a suitable layout.
- 7.7 Delivery and removalist vans
No short-stay parking space and associated access is indicated on the plans for delivery trucks, removalist vans and the like.

Other inconsistencies:

- The landscape and ground floor plans show different internal driveway designs.
- There are numerous undocumented changes on the plans that are inconsistent with the previous approved plans.

Further considerations/discussion:

- On the balance of all the issues outlined above, the proposal was considered to be inconsistent with the Territory Plan and relevant legislation. Additionally, after assessment and deliberation, the authority considered that when the impacts are considered accumulatively, it is questionable as to whether the amendment is substantially the same as what was previously approved. In the event of any reconsideration application, the applicant will need to provide additional supporting information to satisfy the Authority (or other decision-maker) of matters required under section 198 of the Planning and Development Act 2007 i.e. the amended development will be substantially the same as the development for which approval was originally given.

NOTICE OF DECISION

DA 201732666/S197D

EVIDENCE

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

Development Application:	201732666/S197D
Territory Plan Zones:	CZ2 Business Zone
Development Codes:	Commercial Zones Development Code; and Multi-Unit Housing Development Code
Precinct Code:	Gungahlin Precinct Map and Code
Crown Lease:	Volume 2153 Folio 51 and Volume 2153 Folio 52
Legislative requirements:	Sections 119 and 120 of the <i>Planning and Development Act 2007</i>
Representations and Entity advice:	Addressed in Part B of this Decision

PART B – PUBLIC NOTIFICATION AND ENTITY ADVICE

PUBLIC NOTIFICATION

Pursuant to Division 7.3.4 of the Act, the application was publicly notified from 30 April 2020 to 29 May 2020. Ninety-four (94) written representations were received during public notification period.

The main issues raised were as follows.

- (a) Increased traffic
- (b) Parking
- (c) Infrastructure
- (d) Emergency Services and Emergencies
- (e) Health and Safety
- (f) Human Rights
- (g) Noise and dust
- (h) Waste
- (i) Pollution
- (j) Zone Objectives
- (k) Draft Variation 364
- (l) Design
- (m) Building Bulk and Scale
- (n) Setbacks
- (o) Privacy & Overlooking
- (p) Overshadowing
- (q) Departure from Original Application

The issues raised in the representations were considered in the assessment and making of the decision for this development application. The proposed amendments have been refused for the reasons identified under **Part A** of the decision.

NOTICE OF DECISION

DA 201732666/S197D

ENTITY ADVICE & REQUIREMENTS

Pursuant to Division 7.3.3 of the *Planning and Development Act*, the application was referred to the below entities. Where an entity requested conditions to be imposed on this development, those conditions have been incorporated into Part A of this Decision. A summary of entity comments can be found below.

1. Transport Canberra and City Services (TCCS)

TCCS provided advice stating that further information is required. TCCS' comments are as follows:

WASTE

1. *As this is a revised proposal and lease variation for increased yield an updated Waste Management Plan and collection arrangement must be prepared in accordance with the DDC Waste Code 2019 or its latest revision.*
2. *The original DA approval for a development yield of 270 units included a waste servicing arrangement for 2 x weekly waste collection and 1 x weekly recycling collection comprising 4 x 3m³ waste hoppers and 21 x 1.1m³ recycling hoppers. TCCS can support the proposed 2 x weekly recycling collection frequency however the enclosure space and clearances to all hoppers must be fully compliant with the Waste Code.*
3. *The presentation of hoppers by Strata management is only considered by TCCS NoWaste on a case-by-case basis when all options have been exhausted and/or where pre-existing site constraints exist. Again, as this is a revised proposal and lease variation for increased yield, including revised building layouts, it is expected that a complaint waste collection arrangement is achieved.*

2. Tree Protection Unit (TPU) of the Conservator of Flora and Fauna

TPU provided advice stating that the proposal is not supported. TPU's comments are as follows:

*The proposed development for Gungahlin 4/244, is not supported by the Tree Protection Unit as there is a significant remnant *Eucalyptus blakelyi* that will not meet any of the criteria for removal under the Tree Protection Act 2005.*

*A remnant tree is one that existed prior to development in the area. *Eucalyptus blakelyi* is an important keystone species that provides many benefits to local wildlife as well as the broader community. Trees provide many benefits including, shading in summer, wind amelioration, improved air quality, reduced water runoff, habitat for wildlife, urban amenity and increased property values.*

On the 27 September 2018, the loss of mature native trees was listed as a key threatening process under the Nature Conservation Act 2014. This supports and further justifies the decision to retain the tree.

NOTICE OF DECISION

DA 201732666/S197D

3. ACT Emergency Services Agency (ESA)

ESA provided advice stating that the proposal is supported. A copy of ESA's advice is attached to this Notice of Decision.

4. Icon Water

Icon Water provided advice stating that the proposed amendment application 'Fails to Comply'. A copy of Icon Water advice is attached to this Notice of Decision.

5. Evoenergy (Electricity)

Evoenergy provided advice stating that the proposal is supported with conditions. A copy of Evoenergy Electricity advice is attached to this Notice of Decision.

6. Jemena (Gas)

The amended application was referred to Jemena. However, a response was not received by the authority within the stipulated time of 15 working days.

As per section 150 of the *Planning and Development Act 2007*, where an entity did not respond within this stipulated time, it is taken to have given advice that the entity supports the application.

7. Environment Protection Authority (EPA)

EPA provided advice stating that further information is required. EPA's comments are as follows:

The proposed removal of the mezzanine level will likely have fundamental impacts on noise attenuation and management opportunities from the commercial spaces on the residential dwellings within the development. Prior to being able to provide comment on the proposed amendments, an acoustic impact assessment will be required to be submitted to the EPA for review.

8. Early Childhood Regulatory Policy and Coordination (CECA)

CECA provided comments as follows:

Children's Education and Care Assurance (CECA) is greatly concerned for the impact that this development has on the neighbouring education and care centre YMCA Gungahlin ELC. Further, CECA would like to comment that YMCA Gungahlin ELC is a high quality community based service with a rating of Exceeding the National Quality Standards. This service provides a much needed community focus and contemporary pedagogy for children in the Gungahlin Region. CECA would like to highlight that YMCA Gungahlin ELC is one of only six community based centres out of 25 education and care services in the Gungahlin Region.

Given the short notice, I have dot pointed the following concerns:

1. *Shared Driveway and Carparking – Significant Risk to Child Safety.*

- (a) *It is identified that DA 201732666-S197D-4/224 GUNGAHLIN has a shared driveway with the car parking of parents and children attending YMCA Gungahlin ELC.*

NOTICE OF DECISION

DA 201732666/S197D

- (b) *It is anticipated that the majority of traffic from the 280 apartments and 30 additional car parking spaces (possibly over 300 cars) will greatly increase the traffic flow at peak times during YMCA Gungahlin drop off and pick up times.*
 - (c) *YMCA Gungahlin ELC has access one disabled and six regular carpark spaces where vehicles park nose into the curb and are required to back out into shared driveway. Very young children getting into vehicles (sometimes families with one that one child) could very easily step out into the driveway resulting in significant safety concerns.*
 - (d) *According to the DA 201732666-S197D-4/224 GUNGAHLIN the width of the drive way is 6.225 metres. This appears fairly narrow for the significant number of vehicles using this driveway and the traffic that is required to back out and turn around.*
 - (e) *Garbage Trucks, Fire Trucks and other large vehicles to block 6 (DA 201732666-S197D-4/224 GUNGAHLIN) will likely block carparking spaces for families accessing YMCA Gungahlin ELC.*
 - (f) *Heavy construction and traffic on Swain Street does not allow for safe parking to drop off and pick up for families taking multiple children into education and care service.*
 - (g) *No walkway path is provided on the east side of driveway for pedestrians to safely walk from additional ground floor car park spaces to Swain Street.*
2. *YMCA Gungahlin ELC Emergency Evacuation Points – High Risk to Child Safety.*
- (a) *CECA has been advice that both emergency assembly areas for YMCA Gungahlin ELC will be impacted by the development. YMCA Gungahlin ELC will be required to reassess the first assembly area, as it is located on the Swain Street easement of Block 6. The second and alternative assembly area is on the easement adjacent to Block 3 on Gundaroo Drive. It is understood by that this location will now be used at a vehicle entry and exit to the site on Block 6 as well as additional parking for onsite workers.*
3. *It is understood from YMCA Gungahlin ELC that part of the outdoor place space will be unusable for an extended period of time due the development needing to drill supports into the understood of the playground. The National Law requires that a service must operate with a minimum of 7sq metres of outdoor space per child. It would be necessary for CECA to approve any reduction of outdoor space at the education and care service and any proposed changes to the space to ensure the safety and wellbeing of children.*
- (a) *CECA is concerned about the quality of the outdoor space given the forecast shadow over the outdoor playground across the morning period. This is further a concern given that children in the ACT require additional sunlight during the winter periods to combat concerns for Vitamin D deficiency. CECA notes that the overall shadow over YMCA Gungahlin ELC has not changed given the amendments in DA 201732666-S197D-4/224 GUNGAHLIN.*

NOTICE OF DECISION

DA 201732666/S197D

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