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15 February 2021

ACTPLA

Environment, Planning and Sustainable Development Directorate  
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## Representation in Response to Reconsidered Development Application 201732666 (Gungahlin Block 4 Section 224)

### Introduction

The Gungahlin Community Council (GCC) is a voluntary, not for profit, community-based association operating in the Gungahlin district of Canberra, in the Australian Capital Territory. Our objective is to preserve and improve the social, cultural, economic, and environmental well-being of Gungahlin and the Gungahlin community<sup>1</sup>. The Gungahlin Community Council receives support and funding from the ACT Government.

This representation is informed by, and made on behalf of, the residents of Gungahlin.

### Background

The GCC opposed development application (DA) 201732666 when it was submitted in November 2017<sup>2</sup>. Despite 118 representations being made, the DA was approved in September 2018.

The GCC opposed the amendment to the same DA when it was submitted in August 2020, and subsequently denied.

### Representation

The GCC remains opposed to the proposed development, and **strongly rejects the “reconsideration” of the Notice of Decision for the amended DA.**

Our reasons for doing so are based on

- **Credibility**, as the reconsideration appears to be just another attempt at an amended DA;
- **Consistency**, as the development is substantially similar in scale to the original proposed in 2017;
- **Concerns**, related to the very subjective nature of the original 2018 Notice of Decision; and
- **Changes**, to the development and the associated planning framework.

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<sup>1</sup> <https://gcc.asn.au/about-gcc/>

<sup>2</sup> <https://gcc.asn.au/air-towers-development-application/>

Credibility – of the “reconsideration”

**The documentation provided with the reconsideration contains numerous changes to the amended DA and/or original DA and reads as a further amendment and does not appear to challenge the validity of the Notice of Decision for the Amended DA.**

The GCC’s “lay-person” interpretation of S191 of the ACT Planning Act<sup>3</sup> is that it appears to be a mechanism to challenge the validity of a **Notice of Decision**, but not (as outlined in S193<sup>4</sup>) to allow (effectively) another iteration of a DA to be considered, unless the Planning Authority is applying a very broad interpretation of section (6)(b):

- (6) Also, in reconsidering the original decision, the planning and land authority—
- (a) must consider any information available to the authority when it made the original decision and information given in the reconsideration application; and
  - (b) may consider any other relevant information.

The GCC’s concerns are highlighted by the fact that much of the reconsidered DA documentation is:

- labelled as “RESPONSE\_TO\_NOD” suggesting this is very much an amendment based on the Notice of Decision – not a challenge to the Notice of Decision itself, and
- based on proposed changes to either the original DA approved in 2018, or the amended DA rejected in 2020, on an inconsistent basis. This makes interpretation of the proposal very difficult.

### Changing Rules

The Gungahlin Town Centre Precinct code is a fundamental part of the ACT planning system as applied to this site. Draft Variation 364 to the Territory Plan (DV364) proposes changes to the Gungahlin Town Centre Precinct based in part on the results of the Gungahlin Town Centre Planning Refresh initiated in response to concerns raised by the GCC in late 2016. The GCC has significant concerns with DV364<sup>5</sup> but is even more alarmed with the implementation of DV364.

The consultation legislation draft<sup>6</sup> for DV364 states that DV364 had interim effect commencing on 23 August 2019 which lapses one after one year. Depending on what advice is provided online or from contact with EPSDD, DV364 has been repealed<sup>7</sup> or has lapsed. The path forward and timeline regarding revision/implementation of DV364, including responses to submissions remains unclear. The advice from EPSDD is that the previous precinct code is now in effect. This is an entirely unsatisfactory situation as the precinct code should be guiding the strategic development of the town centre over the next 5 – 10 – 20 years not changing twice in less than a year.

### Notification Process

As someone that lodged a representation to the amended DA, the GCC President received an email from [ACEPDCustomerServices@act.gov.au](mailto:ACEPDCustomerServices@act.gov.au) on 19 January 2021 advising that a reconsideration had been lodged (as per S193(5)(b) it seems). The email indicated documents detailing the reconsideration were attached (they were not), and that “AN INVITATION TO OBJECTIVE CONNECT WILL BE SENT SOON FOR YOU TO VIEW PLANS & SUPPORTING DOCUMENTS”. The GCC has no knowledge of “Objective Connect”, but assumes it is another name for the eDevelopment platform. Nevertheless, no invitation was ever received. Attempts were made by return email to clarify the situation without success. The GCC only gained access to the relevant

<sup>3</sup> [http://classic.austlii.edu.au/au/legis/act/consol\\_act/pada2007236/s191.html](http://classic.austlii.edu.au/au/legis/act/consol_act/pada2007236/s191.html)

<sup>4</sup> [http://classic.austlii.edu.au/au/legis/act/consol\\_act/pada2007236/s193.html](http://classic.austlii.edu.au/au/legis/act/consol_act/pada2007236/s193.html)

<sup>5</sup> <https://gcc.asn.au/gcc-submission-to-gungahlin-town-centre-planning-refresh-dv364/>

<sup>6</sup> <https://www.legislation.act.gov.au/View/ni/2019-641/20191001-72319/PDF/2019-641.PDF>

<sup>7</sup> <https://www.legislation.act.gov.au/ni/2019-641>

documentation when by chance we noticed the reconsideration had been publicly notified (perhaps per SS193(5)(a)).

### Failure to Enforce Decisions

In mid 2020, a protected tree on the site (not protected by the original DA decision – see below) was removed by the developer without approvals to do so. The developer appears to have not suffered any consequences as a result.

Collectively, these issues undermine the confidence the GCC has that the planning system is robust and being enforced.

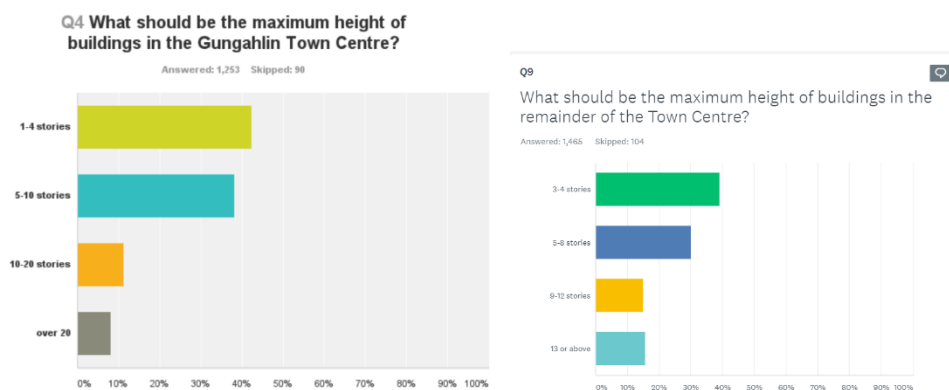
### Consistent – with the view of residents

The GCC's view is that this development should not proceed on the proposed site. This is consistent with the position we have been advocating on behalf of the Gungahlin community since 2016<sup>8</sup>. Specifically:

- The 15-storey **height** does not align with community expectations for building heights in the Gungahlin Town Centre.
- The GCC's community **surveys** conducted in 2014 and 2019 showed a strong preference for buildings in the town centre of 10 stories or less (2014: 80% of respondents) and for no further residential development in the town centre (2019: 57% of respondents).
- The buildings will **overshadow and overlook** the YMCA Early Learning Centres; as well as nearby residential areas, removing winter sun and privacy.
- The **impact to traffic** in the surrounding areas arising from an additional 290 apartments.
- The continued development of an **excessive number of residential apartments** at the expense of any other potential commercial office development.
- A lack of consideration about **infrastructure to support the increasing number of residents** in this section of Gungahlin. For example, schools, green spaces, pedestrian access etc.

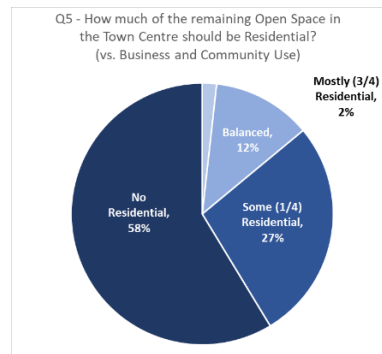
It is important to note that although there are similar mixed-use (residential) developments in Town Centre Precinct 2b, the GCC has only taken a strong position against the Air Towers/Establishment development principally because of its location.

Community surveys undertaken in 2014 and 2019 have shown strong opposition (more than 70%) amongst residents to further residential development in the Gungahlin town centre and to developments over 10 storeys, as indicated below.



GCC Survey Results regarding Building Height – 2014 (left) and 2019 (right)

<sup>8</sup> <https://gcc.asn.au/getting-development-right-for-the-town-centre-the-gungahlin-residential-towers-story/>



*GCC Survey Result (2019) regarding Residential Development (1,506 responses)*

## Concerns – with the Notice of Decision

The original Notice of Decision was largely dismissive of a few concerns (outlined below) that are not addressed in the amended and reconsidered DA, and the GCC would like to highlight these as the GCC believes they should be addressed in the DA for the site.

- “Any future applications to amend this development proposal will require assessment involving greater scrutiny” (Condition E9, p. 9). The GCC has not been provided with evidence that this scrutiny has been demonstrated, particularly regarding the (many, 39) conditions imposed by the original DA – we do not have confidence that the Directorate has enforced these conditions.
- Changes were made to the original DA (2018) by the proponent after its submission (from 18 stories to 16). These were not publicly notified because “the authority considered the amended design will reduce the potential impacts of the building height and mass, and that the revised proposal will decrease the potential environmental impact” (p. 10). These changes are not considered by the GCC to be adequate as the development is still significant in scale and will have significant environmental impact. There are other references in the Notice of Decision that make the subjective claim that simply reducing the height from 18 to 16 storeys was in effect “a win” – rather than making the case for why 16 storeys was acceptable (for example, see over shadowing below).
- The privacy concerns of the YMCA child care centre are claimed to be addressed by requiring screening on the Western windows of the first four floors of the development, but this hardly seems adequate when 16 storeys of units (over 100 in total) will face the childcare centre. The Notice of Decision suggests that the “interface distance and vistas enjoyed by residents will offer for protection for the privacy of the children” (p. 11) but provides no objective analysis or evidence what distance is adequate, or quality of vista would be needed to provide this protection.
- Further, any requirements to comply with the United Nations Convention of the Rights of Child regarding privacy are dismissed as the development “is not unlawful because the development meets the requirements, including the requirements related to privacy, of the Territory Plan and the Planning and Development Act (p. 11)
- Regarding overshadowing, the decision simply indicates the “overshadowing impact is reduced from the original proposal” (p. 11) yet the impacts are still very significant as the childcare centre playground will be overshadowed until 10:30am, and that the overshadowing of existing residential units is “inevitable” (p. 11) (it’s obviously only inevitable if the development is built).
- The ACT Conservator of Flora and Fauna could not support the proposal on the basis “it proposed to remove a high-quality regulated tree on the development site” (p. 12). The authority indicates this advice was “considered” yet the DA was approved – another example of a subjective conclusion with little or no supporting evidence to justify it. **NOTE – the tree in question was felled by the proponent in mid 2020 without an approved DA or building permit.**
- In the final assessment the authority echoes the arguments of the proponents in very subjective terms, inconsistent with community views (p. 12)
  - “There are existing developments and developments to be constructed within the surrounding area of varying height, mass and scale”

- “The height and scale of the development is compatible with the locality”
- “The setback ... and transition ... is considered an acceptable outcome”
- The Notice of Decision has been corrected three times since its release (24 October 2018, 14 March 2019, 22 August 2019) mostly related to the conditions of approval. It has been difficult for the GCC to obtain evidence of why these corrections have occurred how these changes to the conditions of approval have been complied (or not) with.

In contracts, the Notice of Decision for the amended DA was much better researched, and included objective references to where and the proposal was non-compliant.

### Changes – with the Development and Planning Framework

In addition to our concerns with this reconsideration appearing like an amendment noted above, there are aspects of these changes of great concern to the GCC.

- The GCC **strongly opposes the construction of a temporary carpark and access roads** along Gundaroo Drive in the heritage area that includes the Old Gundaroo Road. The proponent has a demonstrated lack of interest in preserving and caring for green space and trees, and these are highly valued by Gungahlin residents.
- Despite claiming to be a “mixed-use” development **the proposal is not very mixed**. The number of commercial tenancies (4) is greatly exceeded by the number of residential units (292). This proposal, like most of the mixed-use proposals within the town centre does not contribute much to the vibrancy of the town centre through the provision of retail and other services.
- There are **substantial changes to in the reconsidered DA as to how traffic will flow to/from the development**, yet no new complete traffic analysis is provided; only some comments on the analysis provided in the amended DA (noting that the traffic analysis in the amended DA was flawed in the opinion of the GCC).
- It appears **the number of units in the “reconsidered” DA has increased, and the number of parking places proposed decreased**. The Gungahlin community already has significant existential (not modelled) concerns regarding traffic flow and parking in the town centre. Continued failings by developers to provide adequate parking will only exacerbate this.
- The proponent suggests that the proposed development is within 500m of the Canberra Metro. This is not practically true. The **development is at least 700m from the Gungahlin Light Rail stop** via all forms of terrestrial transport.
- The proponent argues the scale (height) of the development responds appropriately to the escalating density along Gundaroo Drive. This is demonstrably not true. From South to North along Gundaroo Drive the number of storeys of each of the residential tower developments are 20, 22 (Infinity), 16 (Pod), 14, 7 (Lumi), 1, (YMCA), and then 15/8 (Establishment); there is an **obvious “escalating” disconnect from the proposed development** and Lumi at least, but certainly the YMCA.

The GCC also strongly supports the concerns the YMCA position that although the proponent:

“ presented clear changes to the project and replied to many objections in good faith, there are some points we are not completely satisfied with.

- Height of the building: The government approved a 14 floor building, which is way different than the 7 floor building average in the area. Besides of shade cast, there higher building will increase the development construction time, number of workers needed and street movement for the whole community.
- Driveway to new carpark: The gravel road proposed to access the new carpark will impact our customers and community generating dust, reducing the easiness to access, requiring constant management and affecting customer experience. We requested a layer of pitching in top but apparently the heritage importance of the land could block that option.”

Yours Sincerely

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