



ACT
Government

NOTICE OF DECISION

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

Partial Approval

I, Chris Gell, delegate of the planning and land authority, pursuant to section 162 of the *Planning and Development Act 2007*, **approve subject to conditions**, the proposal for:

- **construction of 152 residential units including 16 adaptable units, 2 commercial units and two levels of podium car parking spaces;**
- **amending the crown leases over Blocks 2 and 3 by limiting the easement for access on Block 3 to a height of 5 metres; and**
- **landscaping, paving, aerial encroachment by an awning along Kate Crace Street and associated other site works**
- **variation to the Crown lease over Block 3 to amend the purpose clause, removing the use of club and drink establishment, adding additional uses; and removing the gross floor area limit.**

Partial Refusal

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

- **variation to the Crown lease over Block 3 to remove the provision requiring public car parking, and to add the use of indoor recreation facility limited to a fitness centre and gymnasium.**

at **Blocks 2 and 3 Section Gungahlin**, in accordance with the plans, drawings and other documentation submitted as forming part of this application.

DA Number: 202037861
Blocks: 2 and 3
Section: 227
Suburb: Gungahlin
Application lodged: 24/11/2020, 10/03/2021 and 29/06/2021
Assessment track: Merit

This decision contains the following information:

Part A – conditions of approval
Part B – reasons for the Decision
Part C – public notification & entity advice
Attachment 1 – administrative information
Attachment 2 – draft Crown lease (Block 2)
Attachment 3 – draft Crown lease (Block 3)
Attachment 4 – application form - encroachment licence (2-party)

CONTACT / ENQUIRIES

Phone: (02) 6207 6383

Online Form:

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

Chris Gell

Delegate of the planning and
land authority

12 July 2021

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A copy of the development application and this approval may be inspected at the planning and land authority's office from 9:00 am to 4:00 pm, Monday to Friday at 480 Northbourne Avenue, Dickson, ACT 2602

PART A – CONDITIONS OF APPROVAL

This application is approved subject to the following conditions being satisfied. Some conditions of approval will require attention before the approved drawings will be released, others before work commences or before the completion of building work.

Please note that this approval includes leasing requirements.

THE LEASING COMPONENT OF THIS APPROVAL WILL EXPIRE 2 YEARS AFTER THE APPROVAL TAKES EFFECT or otherwise in accordance with the conditions of approval.

There are legislative requirements that must be met prior to the registration of the instrument of variation. See **Advisory Notes** for further information about those legislative requirements.

A. CONDITIONS RELATING TO LEASE VARIATION

This application is approved subject to the following conditions being satisfied.

A1. COMMENCEMENT OF BUILDING WORK

That no building work in relation to this Development Application except demolition or decontamination is to commence on the site until the Instruments of Variation are registered at Access Canberra Land Titles.

A2. INSTRUMENT OF VARIATION

That the lessee accepts the variation substantially in accordance with the draft Instrument of Variation at Attachment 2 and 3.

The Instrument of Variation must be registered at Access Canberra Land Titles prior to the expiry of the leasing component of this approval.

This includes but is not limited to:

- (i) payment of any lease variation charge;
- (ii) obtaining mortgagee and relevant interested parties consent to register instrument 'Application to Vary Crown Lease (AVCL)', (if required, use Land Titles Office instrument '042 - C - Consent to register' to provide consent);
- (iii) lodgement of the instrument, 'Application to Vary Crown Lease (AVCL)', at Access Canberra Land Titles including the payment of any fees.

Please also see the **Advisory Notes** for additional information on the lease variation.

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B. CONDITIONS FOR LICENCING OF ENCROACHMENTS (2-Party)

B1. COMMENCEMENT OF BUILDING WORK

No building work in relation to the encroachment (the works on unleased Territory land that are part of this development approval) is to commence on the site until the lessee has applied for and has been granted a licence in relation to the encroachment, being **awning encroachment along Kate Grace Street and the Valley Avenue**, by the planning and land authority pursuant to section 303 of the *Planning and Development Act 2007* and in the form approved by the planning and land authority.

B2. APPLICATION FOR A LICENCE (See attached application form at *Attachment 4*)

Prior to the commencement of building work, the lessee (the proposed Licensee) must lodge with the Environment, Planning & Sustainable Development Directorate (EPSDD) an application for the grant of a licence to occupy and use unleased Territory land, pay the appropriate fee and undertake the following:

(i) Encroachment plan

- the lessee (the proposed Licensee) must submit to EPSDD a plan detailing all dimensions of the proposed encroachment including area, block boundaries and location of encroachment in relation to the building, adjacent unleased Territory land and/or public road. Plan details must be sufficient to enable the preparation of a Spatial Data Mapping System (SDMS) plan and number.

(ii) Public liability insurance

- the lessee (the proposed licensee) must obtain public liability insurance in respect of the encroachment by complying with the procedures outlined in the *Financial Management (Public Liability Insurance) Guidelines 2011*.

The procedures are specified below in summary form:

1. nominate each and all of the proposed activities the proposed licensee wishes to undertake on Territory land or premises ("Premises");
2. take out a public liability insurance policy for the term of the licence;
3. submit a certificate of currency in respect of the public liability insurance, which clearly states that the encroachment is covered by the insurance policy; and
4. Comply with obligations in respect of risk management plans if applicable.

This information is to be forwarded to the:

Licensing Officer
Leasing Services
Planning Delivery Division
Environment, Planning & Sustainable Development Directorate
GPO Box 158
CANBERRA ACT 2601
Ph: (02) 6207 1923

Note: *The Activity Schedule will form part of the licence agreement.*

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B3. TRANSFER OF TITLE

The lessee must not transfer or assign its interest in the premises unless and until the proposed transferee or assignee is granted a licence by the planning and land authority pursuant to section 303 of the *Planning and Development Act 2007*, under the same terms and conditions as the licence granted in accordance with Conditions **B1** and **B2** and meets the insurance requirements in accordance with Condition **B2**.

C. ADMINISTRATIVE / DEVELOPMENT and ENTITY CONDITIONS

C1. FURTHER INFORMATION

Within 28 days from the date of this decision, or within such further time as may be approved in writing by the planning and land authority, the applicant shall lodge with the planning and land authority for approval revised plans and architectural drawings, based on the relevant drawings submitted as part of the application, showing:

- a) Revised solar access diagrams demonstrating the stated solar access rates have been achieved. This was previously requested but not provided.
- b) An indication of the location of full height screens, as required by the 'Windtech' wind assessment report, dated 10/2/2021. These screens are required to be clear glazing, to maintain solar access to the apartments.
- c) Provide common toilet facilities for staff and customers of the commercial tenancies.
- d) Relocate the adaptable parking space adjacent to the parking entry. There are concerns with the safety of this location.
- e) It is noted that the lifts generally face outwards with the doors obscured. Please indicate signage to ensure the location of the lifts are obvious to carpark users.
- f) Please indicate suitable measures to increase the safety of the carpark, such as pedestrian crossings, speed humps and speed limit signs.
- g) Please indicate showers if the tenancy facing Efkarpidis Street is intended for use as an end of trip facility.
- h) Redesign the car park storage enclosure area to remove any possibility of entrapment.
- i) Provide an indication of high-quality ground level lighting treatments to the street frontages. This could include measures such as up lighting and spotlights to landscaping.

C2. COMMENCEMENT AND COMPLETION

- a) This development must be started (commenced) within **three years** from the date when this approval takes effect.
- b) This development must be finished (completed) within **three years** from the date when it started, or within such further time as approved in writing by the planning and land authority.

Note: The planning and land authority may extend the time to commence or finish the development if an application, to extend the time to commence or finish the development, is made prior to when the development has to be started or finished – refer to section 184(3) and 188 of the Planning and Development Act 2007.

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C3. ENVIRONMENT PROTECTION AUTHORITY (EPA)

The development shall comply with the following conditions to the satisfaction of EPA:

Contaminated Sites:

The Environment Protection Authority (EPA) would support the development application subject to the following conditions:

- a) A site-specific unexpected finds protocol (UFP) must be prepared by a suitably qualified environmental consultant and implemented during site development works. The UFP must include, amongst other things, appropriate procedures for the identification, assessment, management, validation and disposal of potential contamination at the site and contractor induction procedures into the use of the UFP.

Note: Where remediation and validation is required at the site under the UFP the site validation report must be forwarded to the EPA for review and endorsement prior to occupancy of the site;

- b) All spoil identified at the site must be managed in accordance with EPA Information Sheet - Spoil Management in the ACT;
- c) All soil subject to disposal from the site must be assessed in accordance with EPA Information Sheet 4 - Requirements for the reuse and disposal of contaminated soil in the ACT;
- d) No soil is to be disposed from site without EPA approval.

Noise

- e) The NMP refers to the collection of residential waste from the development is to be conducted at the same time as other residential waste. The permitted time for the collection of all commercial waste including residential is detailed under the *Commercial Waste Industry Code of Practice*.

Erosion and Sediment Control for sites OVER 0.3ha

- f) Construction and development works should be in accordance with "*Environment Protection Guidelines for Construction and Land Development, 2011*".
- g) Construction/development on a site of 0.3 hectares or greater is an activity listed in Schedule 1 of the *Environment Protection Act 1997* as a Class B activity. Therefore, the contractor/builder proposing to develop the site must hold an Environmental Authorisation or enter into an Environment Protection Agreement with the EPA in respect of that activity PRIOR TO WORKS COMMENCING. This is a 'blanket' agreement that covers all sites. There are no fees for this agreement and it is valid for three years. The agreement addresses erosion & sediment control, noise and air pollution issues. The plans should be considered at the design stage for approval in principle prior to tenders being called in order to allow contractors to incorporate the cost of sediment and erosion control measures. The EPA may withdraw from the Agreement if there is poor environmental performance on site. If an agreement is withdrawn or not entered into, there is a requirement under the Act to apply for an Environmental Authorisation for each site greater than 0.3 hectare. There is a fee for the authorisation based on the site area - the larger the site the greater the fee.

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Water Quality

- h) The site should include appropriate environment management controls that ensure compliance with the Environment Protection Act 1997 and the Water Quality Environment Protection Policy.

For further information please contact the EPA Planning Liaison on 6207 5642 or email EPAPlanningLiaison@act.gov.au

C4. TRANSPORT CANBERRA AND CITY SERVICES (TCCS)

The development shall comply with the conditions to the satisfaction of TCCS. A copy of the TCCS Standard Conditions is attached to this Notice of Decision.

C5. COMPLIANCE WITH ENTITY REQUIREMENTS

The development must comply with all of the conditions imposed by each of the relevant entities as stated in each of their advice (refer to the advice submitted with the application).

C6. TRAFFIC MANAGEMENT WITHIN SITE / ACCESS EASEMENT

Appropriate signage and traffic control devices, in accordance with the relevant Australian Standards, must be installed to manage traffic along the access easement between Block 1 and Block 3 for the safety of all users.

C7. BUILDINGS, STRUCTURES AND ASSOCIATED WORKS

All works, including the retaining walls, footings, must be wholly contained within the leased boundaries of the subject site - Block 3, Section 227, division of GUNGAHLIN.

C8. EXTERNAL LIGHTING

External lighting is to comply with the following:

- *Australian Standard AS1158.3.1 Pedestrian Lighting*
- *Australian Standard AS4282 - Control of the Obtrusive Effects of Outdoor Lighting.*

C9. ACCESS & MOBILITY

- The development must consider and apply any recommendations as noted in the Compliance Report, prepared by Indesign Access, dated 4 October 2020.
- The proposal must be in accordance with relevant provisions of the Australian Standard *AS1428.1-2009 and AS/NZ 2890.6-2009* and the National Construction Code.

C10. SERVICES

Any service connections including, point of entry, meter boxes and gas meters, are to be located clear of areas approved for car parking space(s) to ensure these services do not reduce the minimum area of the parking spaces and/or restrict vehicular access.

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C11. WASTE MANAGEMENT

All construction/ building waste is to be stored on the site in suitable receptacles and collected regularly. The lessee is to take all reasonable steps to ensure that waste, particularly wind-borne litter, does not affect adjoining or adjacent properties.

Advisory Notes

This application is approved with the following advisory notes. It is recommended that careful consideration be given to advisory notes prior to commencing work.

1. UNIMPROVED LAND VALUE FOR RATING PURPOSES

As a consequence of this lease variation, the unimproved value of the property for rating purposes is likely to increase. Where rates assessments have been issued they will be amended to reflect the higher unimproved value from the time of the lease variation.

2. LEASE VARIATION CHARGE

Prior to the registration of the Instrument of Variation, the lessee must, as is required under the *Planning and Development Act 2007*, pay any assessed Lease Variation Charge. Once advised of the lease variation charge, the charge should be paid not less than 6 months prior to the expiration of this approval. This will ensure that sufficient time remains to enable the Instrument of Variation to be registered at Access Canberra Land Titles prior to expiry of this approval.

3. EXPIRY OF APPROVAL

In accordance with S185 of the Act this approval will expire 2 years after the date this approval takes effect. Under section 188 of the Act, the applicant may apply to the planning and land authority to extend the prescribed period to register the lease variation, but such an application must be made prior to the expiry of the DA approval.

4. VENTILATION SYSTEM

All exhaust and ventilation systems must be installed and operated to comply with the Australian Standard *AS1668.1 - The Use of Ventilation and Air-conditioning in Buildings*.

5. NOISE

Noise from equipment which may be installed or used at the site, including air conditioning units and pool pumps etc, must comply with the noise standard at the block boundary at all times as per the *Environment Protection Regulation 2005*. Please consider the type and location of noise generating equipment prior to installation. Written assurance should be sought from the supplier/installer of the equipment that it complies with the Noise Zone Standard as per the *Environment Protection Regulation, 2005*.

6. SIGNAGE

- No signage is approved as part of the subject Development Application.
- All signage installed at the site, including advertising signage and hoarding, should comply with the *Australian Association of National Advertisers (AANA) Code of Ethics* and the *ACT Government's Hoarding Signage Advertising Guidelines* available online at <https://www.planning.act.gov.au/build-buy-reno-vate/for-industry/industry-resources/hoarding-signage-guidelines>

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PART B – REASONS FOR THE DECISION

Partial Approval

The application was **partially approved** because, based on the documentation and in the form modified by the imposed conditions, it was considered to meet the relevant rules and criteria of the Territory Plan and section 120 of the *Planning and Development Act 2007*.

The key issues with the proposal identified during the assessment included concerns that the development did not provide sufficient active frontage to Efkarpidis and Kate Grace Streets, that the development lacked a suitable address to The Valley Avenue and concerns with the extent of off-form concrete. It is noted that the lessee had previously tried to secure a tenant for a commercial office development on this site but was not successful.

Following a further information request, the applicant lodged an amendment application (S144C and S144E) which reduced the extent of off-form concrete, increased the commercial tenancies fronting onto Efkarpidis Street and improved the presentation to The Valley Avenue. These changes were considered acceptable.

The site constraints, including the level variation, the viability of commercial space at this location and Territory Plan requirements influenced the design outcome, including live/work units opening off public courtyard spaces at the first-floor level. This form of commercial space is not widely offered in the Gungahlin Town Centre and will add to the diversity of commercial space in the area, while providing flexibility of use and satisfying Territory Plan requirements.

Partial Refusal

The application was **partially refused** due to concerns regarding the removal of public car parking provisions in the lease. DA Leasing provided the following comments:

DA Leasing does not support the removal of the car parking provision, but does support the amendment of that clause to reflect the standard clause for mixed-use developments as follows:

That the Lessee shall provide and thereafter maintain storage areas covered carparking, hardstanding carparking, adequately illuminated vehicle access roads, pedestrian pathways and vehicle access drives on the land to a standard acceptable to the Authority in accordance with plans and specifications prepared by the Lessee and previously submitted to and approved in writing by the Authority;

The proposed variation to the clause change to include 'Indoor recreation Facility limited to fitness centre and gymnasium' is also **refused** due to the potential impact of noise from the gym on residential uses.

Comments provided through representations of the application were considered during the assessment. These included concerns that the site should be used primarily for commercial uses, that the podium reduces street level activation, traffic impacts and concerns with the removal of the car parking requirements from the lease.

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Evidence

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

Development Application:	202037861 / S144C / S144E
Territory Plan Zones:	CZ1 Core Zone
Development Codes:	Commercial Zones Development Code
Precinct Code:	Gungahlin Precinct Map and Code
Crown Lease:	Volume 2432 Folio 37 (Block 2) Volume 2432 Folio 36 (Block 3)
Legislative requirements:	Sections 119 and 120 of the <i>Planning and Development Act 2007</i>
Entity advice:	addressed in Part C of this Decision

PART C – PUBLIC NOTIFICATION AND ENTITY ADVICE

PUBLIC NOTIFICATION

Pursuant to Division 7.3.4 of the Act, the application was publicly notified from 3 December 2020 to 23 December 2020. Three written representations were received during public notification period.

The issues raised in the representations were considered in the assessment and making of the decision for this development application. Please refer to 'Reasons for the Decision' in **PART B** for further clarification.

S144C & S144E Further Information/ Amendment

The planning and land authority considered that no-one other than the applicant will be adversely affected by the amendments and the revised proposal would not increase the environmental impact. Consequently, pursuant to section 146(3) of the Act, the authority waived the requirement to publicly notify the amended application.

ENTITY ADVICE

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 on 17 December 2020 requesting further information.
- On 25 March 2021 further advice was received from TCCS on S144C amendments to the proposal, stating that the proposal is supported subject to standard conditions.

A copy of TCCS standard Conditions is attached to this Notice of Decision.

Refer to **Part A** for conditions in regard to compliance with entity advice.

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2. ENVIRONMENT PROTECTION AUTHORITY (ESA)

EPA provided advice on 14 December 2020 stating that the proposal is supported subject to conditions and advice.

Please refer to **Part A** of the decision for the relevant conditions and advice.

3. EMERGENCY SERVICES AGENCY (ESA)

EPA provided advice on 23 December 2020 stating that the proposal is supported subject to conditions and advice.

A copy of ESA advice is attached to this Notice of Decision.

Refer to **Part A** for conditions in regard to compliance with entity advice.

4. ICON WATER

- ICON Water provided advice on 3 December 2020 stating that the proposal Failed to Comply the ICON Water Network requirements.
- On 17 March 2021 further advice was received from ICON Water on S144C amendments to the proposal, stating that the proposal is supported subject to conditions.

A copy of the ICON Water advice is attached to this Notice of Decision.

Refer to **Part A** for conditions in regard to compliance with entity advice.

5. EVOENERGY (ELECTRICITY)

- EvoEnergy (Electricity) provided advice on 10 December 2020 stating that the proposal is supported subject to conditions.
- On 18 March 2021 further advice was received from EvoEnergy (Electricity) on S144C amendments to the proposal, stating that the proposal is supported subject to conditions.

A copy of the EvoEnergy (Electricity) advice is attached to this Notice of Decision.

Refer to **Part A** for conditions in regard to compliance with entity advice.

6. EVOENERGY (GAS)

- EvoEnergy (Gas) comments were not received for the original proposal.
- On 11 March 2021 advice was received from EvoEnergy (Gas) on S144C amendments to the proposal, stating that the proposal is supported subject to conditions.

A copy of the EvoEnergy (Gas) advice is attached to this Notice of Decision.

Refer to **Part A** for conditions in regard to complying with entity advice.

S144E Further Information / Amendment:

S144E amended application was not referred to other entities as the proposed amendments were considered not to have any further impact on the advice provided by the relevant entities.

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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 τηλεφωνήστε στο
ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
MALTESE	Jekk għandek bżonn l-għajjnuna 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	Ako vam je potrebna pomoć prevodioca telefonirajte:
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