



Community of Nicholls Residents Group

DA202342167 - BLOCK 14 SECTION 86 NICHOLLS

REPRESENTATION BY OBJECTION

Executive Committee

Community of Nicholls Residents Group Inc. (CNRG)

PREFACE

This submission relates to [DA202342167](#). But, as discussed below, it is the SECOND of 9 associated Development Applications (DAs) that relate to a single 694 dwelling development on Gold Creek Golf Course land. As such, it must be assessed in conjunction with the other 8 inter-dependent DAs, which include the proposed Subdivision ([DA202342133](#)) and Stages B-H ([DA202342168](#) to [DA202342174](#) inclusive) of the development proposed to be constructed, over 10 years, on the 'yet-to-be-approved' subdivided block (refer Block A in the Site Plan for [DA202342133](#)). Accordingly, CNRG's submission is also made in response to the overall proposed development.

PROPOSAL

[DA202342167](#) is for Commercial Development and Lease Variation as follows.

- Design and Siting for Stage A in the "Gold Creek Master Plan" for 68 commercial accommodation units of 2-3 levels, comprising 29 townhouse units (area A1) and 39 townhouses and apartments with basement parking (area A2).
- Tree removal, driveway, landscaping and associated site works.
- Lease Variation to increase the permissible Gross Floor Area (GFA) in the Crown Lease from 8,000m² by a further 2,450m² to account for the proposed Stage A development.

COMMUNITY OF NICHOLLS OVERVIEW

On behalf of the 6,500+ Nicholls residents, the Executive Committee of CNRG, for all the reasons discussed in the 'Detailed Comments' section below, **strenuously objects** to all the Lease Variations and Design and Siting proposals for ***commercial accommodation units*** sought by Gungahlin Golf

Investments (GGI), noting that approval of [DA202342133](#) is necessary before the proposed development (as described in this DA and the subsequent 7 DAs for Stages B-H) can proceed.

If the subdivision DA is not refused, as it should be, GGI proposes to construct, over a 10-year period, a massive suburb-changing 694 dwelling complex on utilized golf course land. It is to be built on what are currently utilized (and described in the Crown Lease) as three Practice Holes – used by Golf Club Members, the public and Golf Professionals training inexperienced golfers – and the Driving Range, which is an ‘ancillary use’ cash-cow for the golf operation. Also, the three Practice Holes have at times been variously used as substitute holes, when one or more holes on the 18-hole championship golf course have been out-of-play, thereby maintaining play on the Purpose Clause-required 18-hole golf course.

GGI’s stated rationale for doing the development is 2-fold:

- to address the shortage of rental accommodation in Canberra – [SQM Research data \(Rental Vacancy Rates, Canberra, 2023\)](#) shows that the vacancy rate in Gungahlin is trending at 2.3%. This compares very favourably with Canberra as a whole (1.8%) and Sydney (1.4%) and the optimum rate of 3%. More important than the overall vacancy rate, there is a shortage of ‘affordable long-term rental’ accommodation. However, GGI has said that they are not building under the ACT Government’s *BTR Incentive Scheme*, as they are “*not doing any affordable rental in the development*”; and
- to increase the future viability of the golf operation – we have heard this argument many times before. There are very few golf courses in the world that, on their own, turn a profit. It is the ancillary services you put around the centrepiece which make profits and cross-subsidise the golf operation. To this end, back in 2014, the proponent was granted a subdivision of the business precinct from the golf course, which allowed them to unit title the precinct and sell-off the ancillary businesses that were previously cross-subsidising the golf operation.

This development has been variously described by the Applicant and proponent as “Build-to-Rent”, “dwellings”, “multi-unit housing”, “residential properties”, “commercial accommodation units” and finally, a “motel”. THE PROPOSED DEVELOPMENT IS UNEQUIVOCALY A 694-DWELLING MULTI-UNIT RESIDENTIAL HOUSING DEVELOPMENT FOR LONG-TERM RENTAL. As discussed in more detail below, **residential use is prohibited** by the Territory Plan 2008 in PRZ2 zones and is also not permitted by the Crown Lease. Accordingly, all 9 DAs should be collectively REFUSED and that this PRZ2 land and trees be retained for current and future recreational use, as well as for ‘heat sink’ absorbing and carbon sequestering green space purposes.

GGI purchased the Gold Creek Country Club Lease – incorporating an 18-hole championship golf course with practice holes, driving range and putting greens – off-market for a bargain-basement price of \$3m in 2005. It has since made several attempts to profit from expanding the ‘permitted uses’ on this PRZ2 Restricted Access Recreation Zone land, to pursue residential and commercial development. The latest resulting in the failed attempt to “*Re-imagine: Gold Creek Country Club*”, when the community rebelled against their blatant attempt to excise the whole of the back 9 of the Golf Course for future residential and commercial development. We are again rebelling, this time to prevent a further recreation land grab for unwarranted development.

Nicholls residents made important lifestyle and financial decisions to buy and build in Nicholls, based on its configuration around a golf course and the associated open green space it affords – note that the PRZ2 zone is overlaid by ‘Urban Open Space’ and that the golf course land forms part of the

regulated open green space required in all new suburbs, including Nicholls. When selling the Lease to GGI in 2005, it was made clear in the Legislative Assembly by then-Minister for Planning, Mr Simon Corbell that the Lease was “*not being sold as a land bank*”. Residents rightly assumed that this meant the area encompassed by the Golf Course Lease would not be available for future residential or commercial development. GGI’s newest proposed development would not only result in a 30% increase in the suburb’s population – in what can only be described as an incredibly dense configuration, with one road in and out – but it would also change the 2-storey, low-rise, detached-dwelling nature of the suburb and give rise to a large number of significant physical and social infrastructure concerns. It would also destroy a well-used wildlife/nature corridor to the surrounding Nicholls environment. The area in question is habitat to a pod of approximately 200 kangaroos, plus many other native wildlife species, including Blue Tongue Lizards, Echidnas, Cockatoos and Magpies. These species are protected under the *Nature Conservation Act 2014* and have a dependency on this green space to exist, forage and breed. The DA also includes plans for the extensive removal of established trees (native and ornamental). If allowed to proceed, these tree removals would substantially change the streetscape at the entrance to the suburb and remove significant wildlife habitat.

SHORT SUMMARY OF FUNDAMENTAL / KEY ISSUES

- The development has been characterised as a **motel, but** it is unequivocally a form of **multi-unit housing** for **RESIDENTIAL USE**. Ample evidence exists that the intention of the proponent is for a residential land use.
- The site is zoned PR22 – Restricted Access Recreation Zone under the Territory Plan 2008. **RESIDENTIAL USE** is prohibited and **Commercial accommodation units** per se is not an assessable development.
- The overall proposal is inconsistent with the *PR22 Zone Objectives*.
- The overall proposal is inconsistent with the *Parks & Recreation Development Code*.
- The overall proposal is inconsistent with the *Lease Variation Code*.
- The overall proposal is inconsistent with the Crown Lease which does not permit RESIDENTIAL USE.
- Gold Creek Masterplan has no status and is irrelevant.
- As a minimum, an approved Masterplan/Subdivision design process is essential, due to the substantial infrastructure requirements. The development proposal comprising 694 dwellings (gfa +82,210m²) represents an almost 30% increase in the dwelling density of the suburb. Approval of this overall development would fundamentally and permanently change the character of Nicholls and firmly establish a process for the ultimate and final demise of the golf course.

DETAILED COMMENTS

1. THE PROPOSAL

This DA is the SECOND in a package of nine (9) DAs for **COMMERCIAL DEVELOPMENT AND LEASE VARIATIONS** on **BLOCK 14, SECTION 86 NICHOLLS**.

CNRG’s submission is made in response to the proposed development “**AS A WHOLE**”, as detailed in the following 9 DAs –

DA202342133 and **DA202342167** to **DA202342174**.

This Representation relates to that PART of **THE PROPOSAL** submitted under **DA202342167** described above.

The Application for **DA202342167** states that the **proposed use** of the land is:

Commercial Accommodation Use (68 commercial accommodation units meeting the definition of "Motel" as per the Crown Lease)

Question: *Is the proposed **use** [emphasis added] consistent with the current Crown lease?*

Answer: "NO".

We agree that the proposed use is not consistent with the Crown Lease. It is also inconsistent with the Territory Plan 2008.

As discussed in detail below, the proposal is unequivocally a form of **multi-unit housing** comprising 694 dwellings for **RESIDENTIAL USE**¹. **RESIDENTIAL USE** is prohibited by the Territory Plan 2008 in the PR22 Restricted Access Recreation Zone and is also not permitted by the Crown Lease. Further, COMMERCIAL ACCOMMODATION USE (the umbrella term) is not assessable development in the PR22 zone. Therefore, **commercial accommodation units** per se are also not permitted by the Territory Plan.

IN SUM: Submission of this proposal for assessment as nine (9) separate and complex development applications is calculated to obfuscate the intended future use of the land and manipulate the planning system. It is contrived to effectively dilute detailed assessment of the impacts of the proposal "AS A WHOLE" by reducing the proposed development to its component parts. This DA and the other eight (8) inter-related DAs should be REFUSED.

All components of the proposal and the **cumulative impacts** should be assessed "AS A WHOLE", in a single development application. Further, GGI should seek to develop genuine ancillary uses consistent with the Zone Objectives to cross-subsidise the golf course. If they cannot do this, they should surrender the lease to the Territory for re-sale to a genuine golf course management entity or sell it on the open market as a golf course.

Alternatively, as GGI has not established its bona fide intentions to promote and maintain the golf course for the purposes permitted by the Crown Lease and having made repeated attempts to use it as a land bank, the ACT Government should give serious consideration to terminating the Lease and returning it to public ownership for a range of sporting and recreational uses, including golf course, similar to actions being undertaken by the NSW Government². This would align well with the *PR22 Zone Objectives*, as in 2020 the Environment, Planning and Sustainable Development Directorate (EPSDD) undertook an unpublished review of PR22 zoned lands, which found that there is a limited amount of PR22 land in the ACT and that it plays an important role in providing recreational opportunities for an ever-increasing population.

¹Ample evidence, that this DA is not for **commercial accommodation units**, exists on the proponent's [consultation webpage](#) and in the information pamphlet which includes multiple references to the prohibited residential land use. In addition, the supporting Traffic Impact and Parking Assessment (TTW, 25-Aug-2023) and the Bushfire Risk Assessment (ABPP, 30-Aug-2023) for Stages B and G (of the overall development (DA202342168 and DA202342173)) have both been prepared on the premise that the proposed development is for residential use.

² <https://concreteplayground.com/sydney/travel-leisure/moore-park-golf-course-reclaimed>

2. CHARACTERISATION OF THE PROPOSED DEVELOPMENT

DA202342167 for construction of STAGE A of the overall development, includes Design and Siting for **68 commercial accommodation units, ranging from 2 and 3-bedroom townhouses and 1, 2 and 3-bedroom apartments** on proposed Block A, characterised as a **MOTEL**.

GGI's [consultation webpage](#) miscellaneously describes the proposal as "Build-to-Rent" (BTR)³, "commercial accommodation units", "dwellings", "apartments", "townhouses", "residential properties" and "rental accommodation". Their 'Listening Report' (submitted with **DA202342167**) belittles the major community concern, which was about the permissibility of the development in the context of the Territory Plan 2008 and the Crown Lease.

Concurrently, on the [consultation webpage](#), the response to the FAQ – "Are you building a motel on the Site?" states:

*The proposed development is for **rental accommodation**, NOT a **MOTEL** as is traditionally described in Australia. We have used the term **build-to-rent** to describe the fact that instead of being built with the aim of selling to a buyer, or buyers, **the plan is to keep these dwellings as rental accommodation** owned and managed by Gungahlin Golf Investments. [emphasis added]*

If, as the Applicant/proponent has stated, the proposed development is "**NOT a MOTEL**", then why have 9 DAs been submitted for a "motel" comprising 694 dwellings when the proposed use is clearly RESIDENTIAL accommodation. Characterisation of the proposal as a **MOTEL** is inconsistent with any reasonable, plain English interpretation of the purpose of a motel, which is to provide short term accommodation for the travelling public⁴.

Motels in the ACT typically comprise 60-150 rooms for short-term occupancy.

Within the Gungahlin District the existing commercial accommodation offering is:

- | | |
|-----------------------------|---|
| ▪ Gold Creek Tourist Resort | 65 units plus guest amenities and function room |
| ▪ Leumeah Lodge, Nicholls | 60 room hostel |
| ▪ Abode Hotel, Gungahlin | 61 self-contained units |
| ▪ Abode Hotel, Belconnen | 152 self-contained apartments |
| ▪ Mercure Hotel, Belconnen | 125 rooms |
| ▪ DA for Hotel in Nicholls | 60 rooms plus 550 seat venue |

The demand for additional commercial accommodation of this magnitude has not been established, and unless the development is in a town centre (e.g. Gungahlin or Belconnen) then the appropriate

³ The Territory Plan 2023 lists Build-to-Rent as an example of **multi-unit housing**.

⁴ For example, in the National Capital Plan **motel** is defined as:

"A building or buildings used primarily for the temporary accommodation of persons travelling by motor vehicle where common facilities including meals are provided for persons accommodated in the motel or the public generally, and whether or not these facilities are licensed".

scale of any commercial accommodation should be limited to 60 units. Motel is defined in the Territory Plan and the Crown Lease.⁵

Best practice legal drafting conventions apply to the drafting of a Crown Lease, as it is a legal Contract. **Importantly**, a defined term is emphasised by using one or more of the following styles:

- Initial capitalisation (not in this case);
- Bold and italicised text (not in this case); or
- In this case, the term is emphasised by the use of inverted commas (“commercial accommodation units”)

Commercial accommodation units, as it appears in the definition of “motel”, is used here as a plain English description of a motel. It has been presumed, incorrectly, that the plain English meaning of commercial accommodation units in the definition of “motel” is the same as the defined term in the Territory Plan 2008 and the Crown Lease. It is NOT.

If this were true, “commercial accommodation units” per se could be constructed on the land in error, when this use is contrary to the provisions of the Crown Lease and not permitted by the Territory Plan.

This is a serious mal-interpretation of the Crown Lease.

Further, “***commercial accommodation units*** means a room or suite of rooms that is made available on a commercial basis for short-term accommodation”. Short-term accommodation does not also mean long-term RESIDENTIAL USE.

Nevertheless, ***commercial accommodation units*** per se (the defined use) is not a permitted use because:

- COMMERCIAL ACCOMMODATION USE is not assessable in the Merit Track in the PRZ2 zone; and
- COMMERCIAL ACCOMMODATION USE in the Crown lease is LIMITED TO guest house, hotel and motel which are all defined terms in the Territory Plan 2008 and the Crown Lease.

Notwithstanding the miscellany of descriptions applied to this development, it is unequivocally a form of ***multi-unit housing*** for RESIDENTIAL USE.

IN SUM: The purpose of DA202342167 is to develop part of a 10-ha parcel of land for RESIDENTIAL USE in the form of ***multi-unit housing***. RESIDENTIAL USE is PROHIBITED in the PRZ2 Zone. This proposal, nor any part of it, is not permitted in PRZ2 and/or not consistent with the zone objectives (see below). The Applicant has focused on an apparent ambiguity in language and misinterpreted the Crown Lease by assuming that the reference to commercial accommodation units within the definition of “motel” is also a reference to the defined use of “commercial accommodation units”, rather than its plain English meaning. “Commercial accommodation units” are not assessable in the Merit Track in the PRZ2 Zone and not permitted by the Crown Lease. If this were a legal drafting

⁵ “Motel” means the use of the land for one or more commercial accommodation units and where the units are provided with convenient space for parking of motor vehicles. It may also include associate facilities such as a restaurant, bar or functions.

error, it would represent an internal contradiction and ambiguity of the worst kind for the Crown Lease to permit a use that is inconsistent with the Territory Plan 2008.

3. PR22 ZONE OBJECTIVES – NOT MET

It is asserted that the development should be assessed in the merit track, because it purportedly satisfies the zone objectives when clearly it does not. The Applicant's response in the Statement Against Criteria (SCR) to the *PR22 Zone Objectives* is that they are all "Satisfied", when only Objective (e) is actually satisfied. The individual responses to the Zone objectives are considered below.

The Zone objectives are:

- a) *Accommodate facilities that will meet the recreational needs and demands of the community and are appropriately located for the potential users of the facility.*

Response: **Objective Satisfied.** *The preservation of the Gold Creek Golf Club, the integration of commercial accommodation and other complimentary commercial activity and designing for increased amenity all contribute positively to the character of the zone.*

Comment: **Not Agreed.** The facilities described already exist on UNRELATED Block 11 Section 86 NICHOLLS and the response does not make any assessment of how the **proposed development** would meet this objective.

- b) *Make provision for a range of sport and recreation facilities and users, whether in public or private ownership that may be commercial in nature.*

Response: **Objective Satisfied.** *The existing Golf Club is retained in place and complimentary service offerings added that will enhance and promote the sports and recreation facilities.*

Comment: **Not Agreed.** Assessed against this Objective, the **proposed development** (if approved) would be constructed on a new unrelated block with a new Crown Lease (if approved) that does not provide any sport and recreation facilities, commercial or otherwise. It will **not** be ANCILLARY to the golf course (see later discussion below). The plans illustrate RESIDENTIAL USE and a communal facility for use by the residents. A small area (approximately 200 m², including kitchen) is identified for commercial use. Further, as above, the existing "Golf Club" is located on UNRELATED Block 11 Section 86 NICHOLLS.

- c) *Ensure the amenity of adjoining development is not unacceptably affected by the operation of sport and recreation facilities, particularly in terms of noise, traffic, parking, privacy and outside lighting at night.*

Response: **Objective Satisfied:** *The existing Golf Club is retained in its current form and no additional impact from the sports and recreation facilities is foreseen.*

Comment: **Not Agreed.** Assessed against this Objective, the **proposed development** does not provide any sport and recreation facilities and there is no assessment about its impacts on the existing and adjoining residential development.

The proponent's assertion is that the adjoining development is the existing Golf Club, without any consideration of the impact on residents of RZ1 zoned Nicholls and surrounding suburbs, including Casey. The 10-year staged development would necessitate construction works for major infrastructure, road widening, intersections, water, sewerage, and electricity. Although the Golf Course would be able to function, the proposal would adversely impact the functional amenity, access and egress, and environment for Nicholls residents, as well as the Gold Creek Village businesses that would be detrimentally affected. The proposed 694-dwelling development is disproportionate in size, scale and density to the area of Block A, if [DA202342133](#) is approved, and particularly within the context of Nicholls and its existing residential dwelling distribution. The density ratio per unit for the proposed 694-unit development on approximately 105,000m² of subdivided land is 150m² per unit, which is far below the 250m² per unit ratio indicated for developments of this type and magnitude. There are 2396 private dwellings⁶ in Nicholls. The dwelling density is generally 1 dwelling per 1,398m² of developed land, ie. excluding all parks

The absence of an Infrastructure Plan renders assessment of the staged delivery of infrastructure and associated impacts on the community impossible. The SCR states there is no impact on the National Capital Authority, but no consideration is given to the impact on the Curran Drive / Barton Highway intersection by the Nicholls community and surrounding suburbs.

Treasury reports state that BTR long-term rental developments should be a maximum of 250-400 dwellings, and "should include at least 50% studio and one-bedroom apartments, and not more than 10% should be 3-bedroom units". Most dwellings in this Stage A development are 2 to 4 bedroom-units, only 18% are 1 Bedroom apartments and none of them will be for 'affordable' housing.

The existing Crown Lease provides for 8,000 m² of gfa and the existing 'hatched developable area' provides an optimum location for any future ANCILLARY uses such as a guesthouse, hotel or (genuine) motel, or additional indoor recreation facility, in proximity to the existing club, childcare centre, play centre, gym and swimming pool, which are now all located on Block 11 Section 86 NICHOLLS, zoned CZ6. [DA202342200](#) for an indoor recreation centre on Unit 1 of Block 11, if approved, will further add to the mix of 'ancillary' recreational facilities that once supported and cross-subsidised the golf course, before they were unit titled and sold-off.

d) *Design and landscaping of development is to be compatible with the surrounding landscape*

Response: **Objective satisfied.** *The design and landscaping of the development has been thoughtfully planned to integrate with the style of the surrounding design and landscape.*

Comment: **Not Agreed.** Assessed against this Objective, the landscaping for the **proposed development** is integral to the overall development proposal. It is necessary to separate the buildings and is required to satisfy Asset Protection Zone (APZ) requirements for both inner and outer protection zones to protect against bushfire risk⁷. The development necessitates the removal of approximately 10 ha of 30-year-old trees and all new plantings would require a similar period for re-growth. Screening between Stages A & B of the proposed development and the

⁶ <https://www.abs.gov.au/census/find-census-data/quickstats/2021/SAL80101>

⁷ Bushfire Risk Assessment (ABPP, 30-Aug-2023)

existing residential dwellings on Harcourt Hill would be removed with no scope for replanting. Far from integrating with the “*style of the surroundings design and landscape*” – the reverse is true.

e) *Provide safe pedestrian and cycling access to recreation facilities to promote active living.*

Response: **Objective satisfied.** *Pedestrian and cycling access to recreation facilities, ensuring safety and promoting active living, is facilitated through the provision of footpaths*

Comment: **Agreed.**

IN SUM: Contrary to the SCR, other than Objective (e), the DA fails to satisfy the PRZ2 zone objectives. The SCR fails to properly assess and critically analyse the proposal within the context of the expressed outcomes of the zone objectives. The responses focus entirely upon the existing golf course and the facilities located on Block 11 Section 86, and ignore the proposed development under assessment.

The proposed development is not ANCILLARY to the golf course (see below). It is an independent use for *multi-unit housing* comprising 694 dwellings. This development proposal is not a facility ... “*that will meet the recreational needs and demands of the community ... appropriately located for the potential users of the facility*”. Nor will it make “*... provision for a range of sport and recreation facilities and users*”. It is a RESIDENTIAL housing development.

This type and scale of development is/was not envisaged in PRZ2 and therefore it cannot be assessed in the context of the zone objectives, as they all specifically relate to use of the land for recreational facilities.

This DA, which seeks to increase the allowable GFA to construct 68 “commercial accommodation units” on a yet-to-be-subdivided 10ha parcel of land excised from the Golf Course Lease, is for RESIDENTIAL USE in the form of *multi-unit housing* and RESIDENTIAL USE is PROHIBITED in the PRZ2 zone ... it must be REFUSED.

4. PARKS AND RECREATION DEVELOPMENT CODE – NOT MET

For the most part, the Applicant/proponent has determined that the Rules and Criteria of the *Parks and Recreation Development Code* are either “met”, “satisfied” or “not applicable”. CNRG disagrees with this Code assessment in principle. For the most part, the Rules and Criteria of the Code relate to the minutia of actually undertaking the proposed development. However, it is Rule 7 and Rule 8 upon which turns the permissibility of the development.

Rule 7 (R7) of the Code states that development for the purposes of Club, Educational Establishment, Guest House, Hotel, Motel must meet one of the following:

a) *Is **ANCILLARY** to the use of the land for recreation purposes; [emphasis added]*

Criteria 7 (C7) of the Code states that development for these purposes must meet all of the following:

a) *Does not unreasonably restrict the availability of land in the zone for recreation purposes;*

b) *Is of an appropriate scale and compatible with the recreational purposes of the zone.*

The development proposal does not satisfy R7 (see below) and the Applicant has responded to C7 as follows:

“Criterion Satisfied.

a) The proposed development is designed to retain the existing Golf Club in its current form and does not restrict the use of the land for recreational purposes.

b) The scale of the development is considered appropriate to the extent of the land by containing development within a small, easily accessible part of the land and maintaining a physical scale that will not unduly burden the land in its primarily recreational purpose.”

IN SUM: The DA does not comply with R7 and C7 of the *Parks and Recreation Development Code* because it is publicly transparent⁸ that the overall development is for a proposal that is not ancillary to the use of the land as a golf course and changes the primary use of the land to a prohibited RESIDENTIAL USE, characterised as a “motel”.

4.1 Ancillary Use/Development

R7 of the Code states that development for the purposes of Club, Educational Establishment, Guest House, Hotel, and **Motel** must be **ANCILLARY to the use of the land for recreation purposes**. [emphasis added]. Notwithstanding, the Applicant’s decision to address C7 rather than comply with Rule 7, **is still very relevant**.

The proposed development does not comply with Rule 7 because it does not meet the test for ‘ancillary’ use. There is no plausible explanation for a proposed 694 multi-unit dwelling “Motel” to be considered ANCILLARY to a mandatory use of “outdoor recreation area” (golf course), even more so when it is to be constructed on a 10-ha parcel of land with a new Block number and operated independently of said golf course. In the context of planning, ‘ancillary’ means the use is secondary or subordinate to the principal and dominant use of the land. It is not an independent use. The dominant use of BLOCK 14 SECTION 86 NICHOLLS is a golf course. Ancillary uses ordinarily do not require a planning approval. RESIDENTIAL USE is PROHIBITED. As an independent use, **commercial accommodation units** per se are also not an assessable development in the Merit Track in the PR22 zone.

How the developer exactly means to secure “a revenue stream that can be reinvested into the operation of the golf course” has not been articulated in the DA. Even if this were true⁹, the proposed **RESIDENTIAL** development for **multi-unit housing** comprising 694 **dwelling**s is of such bulk, scale, height, and dominance that it must be assessed as a separate use.

⁸ DA202342167 – SCR – P.37 “the proposed motel” and p.48 parking assessment for “motel”.

⁹ GGI bought a golf course for \$3 million, not a land bank with a Future Urban Area (FUA) overlay. If they cannot efficiently run a golf course, then they should consider selling to a group with the relevant expertise. GGI has run the financial viability argument many times before to justify development, particularly in 2015 when they gained approval to subdivide the business precinct from the golf-course, and then unit titled and sold-off what were, until then, the ‘ancillary’ use businesses that were cross subsidising the golf course.

There are examples of golf courses in the ACT where land has been excised for the purpose of RESIDENTIAL USE via a robust planning process culminating in a Territory Plan Variation¹⁰. If these DAs are approved, there is no mechanism in the Territory planning system to prevent unit-title and sale of future dwellings, in the same way that the ancillary businesses, once excised from the golf course, were unit titled and sold-off.

IN SUM: The responses to the *Parks and Recreation Development Code* are gratuitous and fundamental to the reasons why this development proposal **MUST BE** assessed in its entirety and not via a collection of inter-related DAs that reduce the entire development to its component parts.

The **overall** development proposal – comprising an inter-related package of nine (9) Development Applications including Subdivision, Lease Variations and Design and Siting for *multi-unit housing* comprising 694 dwellings, characterised as a “motel” – is prohibited in the PRZ2 zone and not permitted by the Crown Lease. The proposal cannot be characterised as secondary, subordinate or ancillary to the mandatory use of “outdoor recreation facility” (golf course). Rather, it would be an independent use, located on a separate parcel of land, with a new block number unconnected to the primary use of the land. Further, this proposal by itself, and specifically all 9 DAs associated with the overall development, changes the commercial accommodation use, LIMITED to guest house, hotel and motel, from an ANCILLARY use to the PRIMARY land use.

There already exists on Block 11 (UP 4087), zoned CZ6, a Club (including Trevino’s restaurant), a Childcare Centre, two indoor recreation facilities (gym and swimming pool) and a Kids Play Centre. These were the approved ancillary uses that were subdivided from the golf course, unit titled and sold-off in 2015. If approved, it is inevitable that this development will also be unit titled and sold-off at the first opportunity.

All 9 DAs should be REFUSED.

4.2 Development

Rule 8 of the Code for PRZ2, Restricted Access Recreation Zone, requires that the maximum height of buildings in blocks adjacent to Residential Zones are to be limited to two storeys or 10 m.

The proposed development, comprising 3 and 4 storey buildings, does not comply with the Rule, and the Applicant/proponent has responded to the Criteria as follows:

Due to the slope of the property away from the adjacent residential zones, the perceived height of buildings remains at a scale and impact aligned with the desired character for the area.

IN SUM: This development breaches both the height and the number of storeys requirements of the Code. Stage A has three-storey buildings with height of 10.26m, Stage B a height of 14.8m and so on through the entire precinct. Stage H has four story buildings reaching a height of 15.8m. The perceived height of the proposed development is irrelevant, because the prevailing height of residential development in Nicholls is two storeys. Notwithstanding, the slope of the land,

¹⁰ Examples are the Federal Golf Club at Red Hill (TPV 394), Yowani Golf Club at Lyneham (TPV 370) and Belconnen Golf Club in Holt (TPV 298).

development of such height (bulk and scale) is incongruent and completely divergent to the well-established character, look and feel of the surrounding suburb of Nicholls.

5. LEASE VARIATION GENERAL CODE – NOT MET

This DA seeks a Lease Variation to increase the GFA – proposed to be allocated to Block A (7,900m²) under the Subdivision DA (202342133) – by 2,450m² to accommodate Stage A of the proposed development, as illustrated in the Plans attached to DA202342167. Overall, the development proposal is seeking to increase the permitted GFA of 8,000m² in the Crown Lease by a staggering 10-fold increase to 82,210m².

Criteria 1 of the *Lease Variation General Code* requires that “a lease is varied only where all of the following are achieved:

- i) the varied lease is consistent with the Territory Plan including all relevant codes; and
- ii) the land to which the lease applies is suitable for the development or use authorised by the varied lease.”

Response: **Criterion Satisfied**. An assessment of the proposal against the provisions of the Territory Plan is provided in the Section 5 to Section 11, above. The proposal is considered to be consistent with the Territory Plan.

IN SUM: CNRG fundamentally disagrees that the development proposal is consistent with the *Lease Variation General Code* for all the reasons articulated in 1 to 4 above. In repetition, the proposal is for RESIDENTIAL USE and RESIDENTIAL USE is PROHIBITED by the Territory Plan 2008.

Further, “commercial accommodation units” are also not assessable in the Merit Track under the Territory Plan, because COMMERCIAL ACCOMMODATION USE per se is not permitted by the Territory Plan or the Crown Lease.

6. OTHER RELEVANT ISSUES

6.1 Gold Creek masterplan

The community has not been consulted in relation to this document, which is the property of GGI. It is not an approved masterplan (in any form) under the Planning & Development Act 2007, has no status and is irrelevant. It’s not inconceivable, for example, that this proposal is Stage 1 of GGI’s “Masterplan” to carve up the entire golf course for residential development.

There is no over-arching approved masterplan for development of the Gold Creek Golf Course¹¹ and there is no future development identified on the Golf Course in the *Draft Gungahlin District Strategy*. As stated above, there has been no consultation in relation to the “Gold Creek Masterplan”, which has no status in Planning Law. The manipulation of the planning system by the submission of nine (9) separate, complex and inter-dependent DAs for the purpose of delivering a staged residential development without a DA-approved Masterplan or Subdivision design, is totally disrespectful to the Nicholls community.

¹¹ For example, Yarralumla Brickworks Masterplan for approximately 360 dwellings

Each of the 8 development DAs depends upon the approval of the FIRST DA (**202342133**), with subsequent DAs and Lease Variations to be approved and implemented sequentially over a period of 10 years. If the DA **202342133** (subdivision) is not approved in the first instance, then none of the other stages of the development can progress. **Importantly**, under s185 an approval for a Lease Variation ends 2 years after the day the approval takes effect. Whilst an approval can be extended (s188), a staged development spanning a period of 10 years should not be approved on the underlying assumption that an extension of time to register a Lease Variation would be granted.

6.2 Substantial infrastructure requirements

The proposal necessitates substantial onsite and offsite infrastructure works, including (but not limited to) road widening, construction of access, intersection works at the Barton Hwy, provision of water, sewer and electricity and, potentially an electrical substation. The scale of this development involving subdivision and major infrastructure works should, as a minimum, be the subject of a Subdivision design under the Planning Act 2023.

7. CONCLUSION

Having regard to all of the above and the reasoned arguments set out in this submission, CNRG is absolutely unequivocal in its objection to all 9 Development Applications.

DA202342167 for Commercial Development and Lease Variation as follows:

- *Design and Siting for Stage A in the “Gold Creek Master Plan” for 68 commercial accommodation units, comprising 29 townhouse units (area A1) and 39 townhouses and apartments with basement parking (area A2).*
- *Tree removal, driveway, landscaping and associated site works.*
- *Lease Variation to increase the permissible GFA in the Crown Lease from 8,000m² by 2,450m² to account for the proposed Stage A development.*

cannot be considered in isolation of the impacts and permissibility of the OVERALL development and ALL nine (9) DAs should be REFUSED. As provided above, robust reasons for refusal should be provided that will stand-up to scrutiny in the ACAT, if necessary.