DA202342133 - BLOCK 14 SECTION 86 NICHOLLS

REPRESENTATION BY OBJECTION

Executive Committee

Community of Nicholls Residents Group Inc. (CNRG)

PREFACE

This submission relates to the subdivision **DA 202342133**. But, as discussed below, it is one of 9 associated 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 (**DA202342167** to **DA202342174** inclusive). These DAs refer to Stages A-H of the development proposed to be constructed over 10 years on the 'yet-to-be-approved' subdivided block (Block A). Accordingly, CNRG'S submission is also made in response to the overall proposed development.

PROPOSAL

DA202342133 seeks Lease Variations to:

- divide Block 14 Section 86, Nicholls – PRZ2 zone, Gold Creek Golf Course – into 2 blocks;
- reconfigure the 'hatched developable area' to better fit a future development;
- redistribute the allowable uses and development rights between the 2 proposed Blocks; and
- change the Purpose Clause of the newly created Block to remove the words "golf course".

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 the Lease Variations sought by Gungahlin Golf Investments (GGI) in the subdivision DA, which are required before the proposed development (as described in the 8 DAs for Stages A-H) can proceed.

If the subdivision DA is not refused, as it should be, Gungahlin Golf Investments (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 only 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 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 PRZ2 – 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 objectives of the zone.
- 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 +82,210m^2) 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.
- The distribution of development rights is problematic. Approval of this overall development would firmly establish the process for the ultimate and final demise of the golf course.
- The codified LVC will not reflect the real uplift in value of the lease if the development is approved.

DETAILED COMMENTS

1. THE PROPOSAL

This DA is the FIRST in a package of nine (9) Development applications 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**.

That PART of the proposal submitted under **DA202342133** is described as follows:

Lease Variation with the following components:

Reconfiguration of the developable area (Annexure 1) in the Crown Lease; Clause changes; Subdivision of the block into two (2) parcels; and Redistribution of allowable uses and development rights between the two proposed parcels.

This Representation relates to that PART of **THE PROPOSAL** submitted under **DA202342133** described above.

The Application for **DA202342133** states that the **proposed use** of the land is:

Commercial accommodation use LIMITED TO guest house, hotel, and motel; Indoor recreation facility; Outdoor recreation facility; and Club and/or child care centre ***ANCILLARY TO*** *outdoor recreation facility and/or indoor recreation facility; [emphasis added]*

and that these uses are consistent with the Crown Lease.

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 PRZ2 Restricted Access Recreation (PRZ2) Zone and is also not permitted by the Crown Lease. Further, COMMERCIAL ACCOMMODATION USE (the umbrella term) is not assessable development in the PRZ2 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 Government[2]**. This would align well with the PRZ2 Zone Objectives, as in 2020 the Environment, Planning and Sustainable Development Directorate (EPSDD) undertook an unpublished review of PRZ2 zoned lands. This review found that**

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[1] Ample 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-recclaimed

there is a limited amount of PRZ2 land in the ACT and that it plays an important role in providing recreational opportunities for an ever-increasing population.

2. CHARACTERISATION OF THE PROPOSED DEVELOPMENT & THE PURPOSE OF THE SUBDIVISION

DA202342167 for construction of STAGE A of the overall development includes Design and Siting for ***68 commercial accommodation units, ranging from 2-3 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 interpretation of the purpose of a motel which is to provide short term accommodation for the travelling public[4].

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

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

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[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".

[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.

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.

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 this subdivision DA is to excise land from the golf course (again), create a 10-ha parcel of land (Block A) and to subsequently develop that 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). This DA cannot and must not be considered in isolation of the overall 10-year staged development for 694 residential dwellings comprising this DA and DA202342167 to DA202342174 inclusive.

3. PRZ2 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 *PRZ2 Zone Objectives* is that they are all "Met" or "Not Applicable". The responses to the Zone Objectives, specifically Objectives (a) and (c) are considered below.

The Zone objectives are to:

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

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

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

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

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

The Applicant's response in the Statement Against Criteria (SCR) to Objectives (b), (d) & (e) is: Not Applicable.

The response to Objective (a) is:

> *Objective Met. The proposed lease variation is considered* ***to improve the capacity of the existing outdoor recreation facility to meet the leisure requirements of the community*** *within the district of Gungahlin. The provision of a more functional location for commercial accommodation, indoor recreation, club and/or childcare uses within the site furthers this objective.*
>
> 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.

And to Objective (c) is:

> *Objective met. There will be negligible noise, traffic, parking, privacy or illumination impacts on adjacent developments* ***as a result of the proposed lease variation****.*
>
> Comment: **Not Agreed.** Assessed against this Objective, the **proposed development** does not provide any sport and recreation facilities.

Contrary to the SCR, the DA fails to satisfy the 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 facilities and/or ignore the development under assessment.

The existing Crown Lease provides for 8,000 m^2 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, 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.

IN SUM: The DA is inconsistent with the PRZ2 zone objectives. 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 appropriately located to meet the needs of the community.

This DA to subdivide Block 14 to excise a 10-ha parcel, to relocate the developable area and to redistribute uses and development rights, is contrived solely for the purpose of facilitating RESIDENTIAL USE in the form of *multi-unit housing* and RESIDENTIAL USE is PROHIBITED in the PRZ2 zone.

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 "not applicable" and that, therefore, the Code has no particular relevance to this proposal. 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 upon which turns the permissibility of the development.

Rule 7 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 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 Applicant's response in the SCR to both R7 and C7 is:

> **"Not Applicable. This lease variation proposal does not involve the development of a club, educational establishment, guest house, hotel, or motel."**

The DA does not comply with R7 and C7 of the Parks and Recreation Development Code because it is publicly transparent[6] that the Applicant/developer is seeking DA approval for "commercial accommodation units" (the overall proposal) characterised as a "motel" and because "commercial accommodation units" are not an assessable development in the Merit Track under the Territory Plan 2008. This is evidenced by GGI's protestations on the consultation webpage that

> *"The proposed development is for* ***rental accommodation****,* ***NOT*** *a* ***MOTEL*** *as is traditionally described in Australia."*

The above response to R7 and C7 is 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. This Subdivision/Lease Variation DA does not include Design and Siting because the intended use of the land has been purposefully shifted to separate and subsequent DAs for Stages A-H of the proposed development.

IN SUM: The Applicant seeks to manipulate the planning system to ensure that the Design and Siting component of the overall development does not impede approval of the subdivision. CNRG's position is that DA202342133 should be assessed and determined first. If subdivision is not

[6] DA202342167 – SCR – P.37 "the proposed motel" and p.48 parking assessment for "motel".

approved, then the remaining 8 component parts of the overall development would, by necessity 'fall over'. All DAs should be REFUSED.

4.1 Ancillary Use /Development

Rule 7 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]*

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 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 the 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 <u>also</u> not an assessable development in the Merit Track in the PRZ2 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 true[7], the proposed **RESIDENTIAL** development for **multi-unit housing** comprising 694 **dwellings** is of such bulk, scale, height, and dominance that it must be assessed as a separate use.

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 Variation[8]. 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.

<u>IN SUM</u>: The <u>overall</u> development proposal, comprising an inter-related and inter-dependent 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 because RESIDENTIAL USE is prohibited under the Territory Plan 2008 and not permitted by the Crown Lease. The proposal cannot be characterised as secondary, subordinate or ancillary to the golf course. It would be located on a separate parcel of land with a new block number unrelated to the primary use of the land, which is currently golf course or any other outdoor recreation facility. Further, this proposal by itself, and specifically all 9 DAs associated with the

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[7] 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 subsiding the golf course.

[8] 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).

overall development, changes the commercial accommodation use, LIMITED to guest house, hotel and motel (as permitted by the Crown Lease), from an ANCILLARY use to the PRIMARY land use.

All DAs should be REFUSED.

5. LEASE VARIATION GENERAL CODE – NOT MET

This DA is for Lease Variation only, as described above under "THE PROPOSAL".

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.*
>
> Comment: **Not Agreed**.

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.

6. THE PURPOSE CLAUSE

The SCR sets out the proposed Purpose Clauses and how the rights are proposed to be distributed between Block A and Block B.

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.

Section 2.4.4 – Proposed Redistribution of Rights

This section of the SCR details proposed changes to the Purpose Clause to redistribute the rights that currently accrue to Block 14 Section 86 NICHOLLS.

The proposed Purpose Clause for Block A is as follows:

To use the premises for one or more of the following purposes:

- *(i) commercial accommodation use LIMITED TO guest house, hotel, and motel;*
- *(ii) indoor recreation facility;*
- *(iii) outdoor recreation facility; and*
- *(iv) club and/or child care centre ANCILLARY TO outdoor recreation facility and/or indoor recreation facility.*

The proposed Purpose Clause for Block B is as follows:

To use the premises for the purpose of an outdoor recreation facility that must consist of a golf course with grassed greens and a minimum of eighteen (18) holes that may include practice fairways and putting greens; AND IN ADDITION, for one or more of the following purposes:

- *(i) commercial accommodation use LIMITED TO guest house, hotel, and motel;*
- *(ii) indoor recreation facility;*
- *(iii) outdoor recreation facility; and*
- *(iv) club and/or child care centre ANCILLARY TO outdoor recreation facility and/or indoor recreation facility;*

The effect of these Purpose Clause changes is:

Subject to approval, Block A (a separate subdivided parcel of land zoned PRZ2) could be developed for the listed uses (i) and (ii) as separate, independent uses not ANCILLARY to the golf course or any other outdoor recreation facility, because no such outdoor recreation facility would remain on Block A. An additional club and childcare centre could also be constructed on proposed Block A, ancillary to an indoor recreation facility, if an additional facility were approved and constructed.

In ADDITION, the Applicant is seeking to retain the ancillary uses on Block B (the Golf Course Lease). Such a Purpose Clause will only invite future applications for subdivision and development of the golf course, incrementally reducing its size and threatening its viability as a venue for national and, potentially, international sporting competitions.

IN SUM: There are already several indoor recreation facilities (existing and proposed) on Block 11 Section 86, zoned CZ6. Nicholls does not need infinite capacity for indoor/outdoor recreation facilities and childcare centres and there is already a DA under consideration for another childcare centre and indoor recreation facility at nearby Casey Market Town. There is also a childcare centre at Federation Square.

If DA 202342133 is approved, careful consideration must be given as to how these rights are distributed. Some of these rights have already been taken up multiple times and GGI will be further encouraged to continue with the cookie-cutter, progressively removing parcels of land for residential and commercial development. Approval of this overall development would firmly establish the process for the ultimate and final demise of the golf course.

7. OTHER RELEVANT ISSUES

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 Course[9] 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 over 10 years without a DA-approved Masterplan or Subdivision design, is disrespectful to the Nicholls community.

Each of the 8 development DAs depends upon the approval of this FIRST DA (202342133), with subsequent DAs and Lease Variations to be approved and implemented sequentially over a period of 10 years. If the **DA202342133** (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.

Lease Variation Charge (LVC)

LVC for the proposed subdivision is a chargeable variation under Section 276E of the Planning and Development Act 2007 and is codified at $7,500.

IN SUM: It should be noted that, in August 2023, the Suburban Land Agency sold an 11.5 ha parcel of land at Lawson with potential for up to 184 dwellings for $14 million.[10] This is a true indication of the uplift in value of the Lease if this development were to be approved. This uplift in value would go straight into GGI's pockets whilst the broader population of the ACT would be meeting most of the cost of the off-site works required to service the development. This is in addition to the cost of lost amenity to the residents of Nicholls.

Substantial infrastructure requirements

The overall 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.

Developable area

The DA includes a lease variation for:

"Reconfiguration of the developable area (Annexure 1) in the Crown Lease"

Figure 6 - Site Plan in the SCR illustrates the existing Developable Area and the proposed boundaries of the reconfigured Developable Area. The existing Developable Area (7.5 ha) is identified by blue shading and the proposed reconfigured Developable Area (7.5 ha) is marked by grey shading. The

[9] For example, Yarralumla Brickworks Masterplan for approximately 360 dwellings
[10] Canberra Times https://www.canberratimes.com.au/story/8414434/four-development-sites-in-belconnen-released-for-sale/

boundaries of the reconfigured Developable Area are awkward, irregular, and generally shaped to the footprints of the proposed buildings and roads. Minimal clearance is included.

Specifically, Figure 6 excludes those areas variously identified in **DA202342167** as "public realm" and "high quality open space" [11] which, if approved, would be ancillary and integral to the overall development. Further, landscaping 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 risk[12]. Therefore, the open space area identified within proposed Block A is within the Developable Area not exclusive of it.

IN SUM: The boundaries of proposed Block A and the proposed Developable Area are, in fact, contiguous, ie. approximately 10 ha. As the existing Developable Area is only 7.5 ha, the proposed Developable Area has been increased in area by approximately 2.5 ha.

AN ADDITIONAL LEASE VARIATION IS REQUIRED FOR THIS COMPONENT OF THE OVERALL PROPOSAL.

To suggest otherwise, by the application of cut-outs to conceal and disguise the true size of the Development Area and to reduce it to 7.5 ha to avoid a s277 Lease Variation, is not right.

8. 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. DA202342133 for:

Lease Variation with the following components:

Reconfiguration of the developable area (Annexure 1) in the Crown Lease; Clause changes; Subdivision of the block into two (2) parcels; and Redistribution of allowable uses and development rights between the two proposed parcels.

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

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[11] **Refer to the Landscape Plan – Site Coverage-01, Plan No L102 (DA202342167) for this detail.**

[12] Bushfire Risk Assessment (ABPP, 30-Aug-2023