



9 November 2017

Re: Breach of the United Nations Convention on the Rights of the Child – Development

Application for 90-92 Swain Street 'Air Towers' in Gungahlin adjacent to Early Learning Centre

We write to you to express our concern about the impact on children should the development of two residential multi-unit towers of 18 and 8 storeys high ('Air Towers') at 90-92 Swain Street in Gungahlin proceed.

The unacceptable and disheartening lack of regard Empire Global has had for the 167 children in the care of the YMCA Early Learning Centre (ELC) as the adjacent neighbour to the proposed development has left no option but to advise you, as the caretaker of quality education and care of young people in the ACT, about the certain and significant impact on children against the United Nations Convention on the Rights of the Child (UNCRC) during the construction and ultimately operation of this enormous structure should it proceed.

Matters relating to construction impact are not within the purview of the Environment, Planning and Sustainable Development Directorate when determining whether the Development Application should be approved. This has created a reality where the developer does not have any mandated responsibility to mitigate construction risk and impact in respect of the ELC despite being located within 10 metres of the proposed construction. It also means that we have no planning or appeal mechanism to highlight the breaches of the UNCRC. Article 3 requires that all organisations concerned with children must ensure that the best interests of the child are a primary consideration, ensuring the protection and care that is necessary for their wellbeing. Further, Article 4 requires that Governments make these rights available to children and implement them accordingly.

We are the voice of these children and we cannot stay quiet when they will be the victims of a government decision that has no power to consider their rights as a part of the decision making process.

As referenced in our opening paragraph, directly adjacent to the proposed 18 storey high-rise is the YMCA ELC catering for 167 children aged from 6 weeks to 5 years, and rated as "Exceeding" under the National Quality Framework. The building was purpose designed in 2014 to face north east and accordingly all the glass and light and playground areas are on the north east. The implication of Empire Global's current design is that the ELC will be entirely in shadow from 10am to 3pm and we will have no sunlight entering the children's environment. The ELC is a purpose built early education and care space, designed to maximise natural light for children and their environments. Natural light and sunshine has many proven health benefits and the design enabled us to continue our commitment to sustainability. Having our ELC covered in shadow for 5 hours during the day will not allow us to continue to be sustainable nor maintain our natural light filled playspaces. We note also that the ELC across the road, Yerrabi Ponds, will be subject to an even greater shadowing impact than 5 hours per day. Article 31 of the UNCRC requires that children have the right to relax, play and to join in a wide range of leisure activities. We assert that this development will contravene that right should it proceed. Further, the construction period will also limit the right of children in the ELC to rest and leisure as a direct implication of the noise and dust that will be generated by construction activities.

As you are aware the YMCA and the Children and Young People Commissioner are committed to taking action to ensure that children and young people are protected from exploitation, abuse or harm. The perspective drawing (attached) shows the western face of the building starts from a 0m boundary setback and presents an 18 storey building with all apartment windows directly facing and overlooking the ELC. The apartments will overlook the outdoor playspaces and will look into the rooms and nappy change areas. This design creates significant risk to the privacy and safety of children, and represents a breach of Article 16 of the UNCRC – the child's right to privacy. In an environment in which the implementation of child safe practices is a recognised priority to mitigate risks in respect of the welfare of children, the proposed design fails to uphold these commitments.

YMCA CANBERRA

35 Alexandrina Drive, Yarralumla ACT 2600
T 02 6232 4285 E admin.canberra@ymca.org.au
Canberra.ymca.org.au

ACT HUMAN RIGHTS COMMISSION

Level 2, 11 Moore Street, Canberra City ACT 2600
T 02 6205 2222 E humanrights@act.gov.au
hrc.act.gov.au



CHILDREN & YOUNG
PEOPLE COMMISSIONER
ACT Human Rights Commission



We remain steadfast in our commitment to supporting parents and carers to protect their children and this design entirely undermines the safety and privacy of children within the ELC.

When read together, Articles 24, 27, 29 and 36 of the UNCRC articulate a range of responsibilities centred on ensuring maximum developmental potential and protecting children from activities that could harm their health and development. Traffic, dust and noise impacts during construction are fundamental impediments to achieving an environment that does not harm children, noting that the children's outdoor play space will be within 10 metres of the construction zone. The proponent has made no attempts to respond to serious concerns about noise well above the usually accepted standards, including noise mitigation suggestions or the possibility of a noise management plan during construction. Children are an especially vulnerable group in noise exposure scenarios and it is well accepted that excessive and consistent noise can be a pollutant and environmental stressor for children causing them harm in both the short and long term.

The traffic report lodged in the Development Application fails to mention the conflict between 250 cars leaving the development in the morning, and the parents dropping off children at the centre through the same access road. The plans show that once the buildings are constructed, the current driveway and carpark to the ELC will be a shared driveway for current parents and staff, as well as 600+ residents of the buildings. This creates a hazardous thoroughfare where children are being dropped off and picked up each morning and evening Monday to Friday.

Further, the ACT has had numerous crane accidents including deaths and near fatalities (crane and scaffold and major concrete pumps which are similar to cranes) in recent years and a safety clearance zone over the childcare centre would be critical.

Suggestions that appropriate or engaged community consultation have occurred with respect to this development are disingenuous. Empire Global has not consulted at all with respect to the current plans nor has any effort been made to limit the impact of construction on the welfare and safety of children and staff at the adjacent ELCs.

This design and the construction process produces excessive and unreasonable risk to the safety, privacy and health of children. Their right to sunlight, quiet enjoyment of outdoor playspaces, privacy and protection from activities that harm their development are all matters that have not been considered in the planning, consultation and ultimately the process of approval for this development.

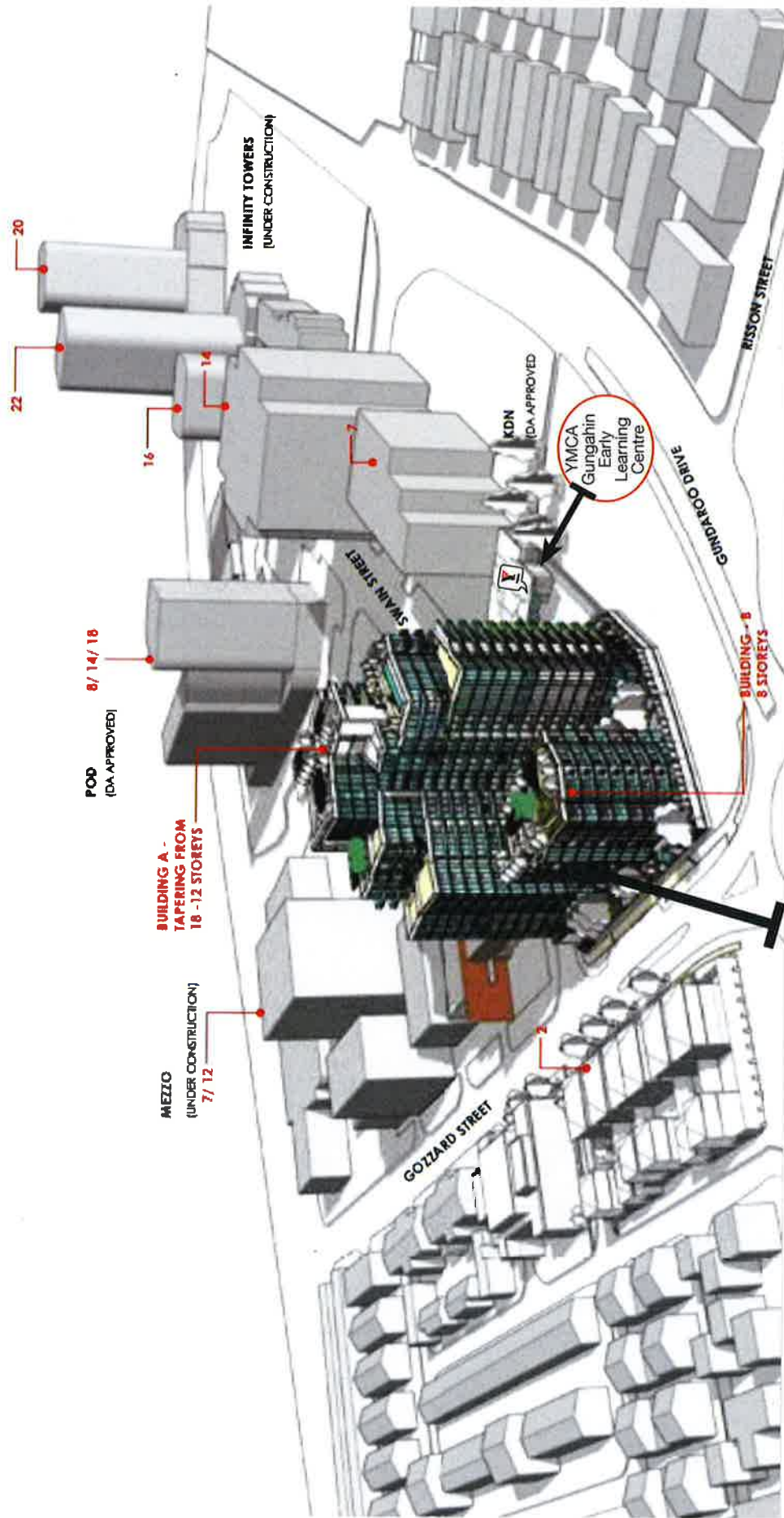
We do not believe that the proposed development at 90-92 Swain Street Gungahlin is appropriate. Further YMCA Canberra and the Children and Young People Commissioner assert that, if approved, this development will directly contravene Article 3, 4, 16, 24, 27, 29, 31 and 36 of the UNCRC. We seek your support in ensuring that our children's rights are protected in the ACT.

Please do not hesitate to contact Darren Black on 6232 4285 if you wish to discuss this matter further.

Yours sincerely

Darren Black
Chief Executive Officer
YMCA Canberra

Jodie Griffiths-Cook
Children and Young People Commissioner
ACT Human Rights Commission



Empire Global Proposed Gungahlin Development
18 storey tower. 58 metres high.
Corner of Gozzard and Swain Street.