



**ACT**  
Government

Environment and  
Sustainable Development

# Notice of decision

Under Part 7 of the *Planning and Development Act 2007*

## Merit track

DA NO: 201119951		DATE LODGED: 1 June 2011
DATE OF DECISION: 9 <sup>th</sup> March 2012		
BLOCK: 5	SECTION: 24	SUBURB: STIRLING
STREET NO AND NAME: 4 Teesdale Place Stirling		
APPLICANT: CB Richard Ellis		
LESSEE: Canberra Labor Club Limited		

### THE DECISION

This application was lodged in the merit track. Pursuant to section 113(2) of the *Planning and Development Act 2007*, the application must be assessed according to the provisions relevant to merit track applications.

I, David Papps, Chief Planning Executive, pursuant to section 162 of the Act, hereby **approve subject to conditions** the proposal to payout the concession in relation to the Crown lease in accordance with documents submitted with the application and endorsed as forming part of this approval.

This decision is subject to the conditions of approval at **PART 1** being satisfied.

**PART 2** sets out the Reasons for the Decision

**PART 3** is Public Notification and Entity Advice.

**PART 4** contains administrative information relating to the determination.

David Papps  
Chief Planning Executive  
Environment and Sustainable Development Directorate  
9 March 2012

### CONTACT OFFICER

Monica Saad  
Phone: (02) 6207 2869  
Email: monica.saad@act.gov.au

## PART 1 CONDITIONS OF APPROVAL

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

### A. ADMINISTRATIVE / PROCESS CONDITIONS

#### A1. LEASING

##### 1. PAYMENT OF THE PAYOUT AMOUNT

The Lessee shall pay the payout amount as determined under Section 263 of the *Planning and Development Act 2007* within 28 days of being notified of the amount or within such further time as may be approved in writing by the ACT Planning and Land Authority.

##### 2. SURRENDER AND REGRANT

That the lessee surrender the existing Crown lease over Block 5 Section 24 Division of Stirling - (Volume 801 : Folio 37) and accept a new Crown lease substantially in accordance with the form of lease appearing at **Attachment 1**.

##### 3. LEASE REGISTRATION

That the lessee shall do all that is necessary to ensure that the new Crown lease giving effect to this approval is registered at the Office of Regulatory Services within 28 days of being notified that the Crown lease is available for registration or within such further time as may be approved by the ACT Planning and Land Authority.

## PART 2 REASONS FOR THE DECISION

The application satisfactorily meets the requirements for approval. The application was approved because, based on the documentation and in the form modified by the imposed conditions, it was considered to meet the requirements of the *Planning and Development Act 2007* (Act).

There are no relevant rules or criteria in the Territory Plan. The application was referred to the Minister for a decision on whether it is in the public interest for the application to be considered. On 19 February 2012, the Minister for Environment and Sustainable Development agreed that it is in the public interest to consider the application. The requirements of Section 261 of the Act have been addressed under Notifiable Instrument 2012-100.

The key issues identified in the assessment are payment of the payout amount as determined under Section 263 of the Act and the surrender of the existing lease in favour of a new lease which will not contain any rental provisions and will be noted as a market value lease. The termination date of the new lease will remain the same.

Other amendments to the lease include removal of the development provisions, the associated works clause and the indemnity clause. A full compliance certificate was issued on 28 January 1981 which indicates that these clauses are now redundant.

Any future proposals to vary the lease to add additional uses or to seek approval for building works on the site will require the submission of further development application(s) for assessment under the Act.

Conditions have been imposed to address the key issues and ensure that the proposal is

consistent with the Act.

## **EVIDENCE**

**Application No. 201119951**

**The Territory Plan zone – CZ6 – Leisure and Accommodation**

**Current Crown Lease – Volume 801 Folio 37**

**Representation – one**

**Entity advice – Social Infrastructure Policy Section**

**Other – Referral to the Australian Valuation Office**

## **PART 3**

### **PUBLIC NOTIFICATION AND ENTITY ADVICE**

#### **PUBLIC NOTIFICATION**

Pursuant to Division 7.3.4 of the Act, the application was publicly notified from 8 June 2011 to 30 June 2011. One (1) written representation was received during public notification.

The main issue raised was that the Social Impact Assessment (SIA) submitted with the application was inadequate to assess the social impact of the application. The application was referred to the Development Policy Section (now known as the Social Infrastructure Policy Section) for advice on the potential social impact of the application. The Social Infrastructure Policy Section advised that there is no detrimental social, cultural or economic impact of the proposed deconcessionalisation.

#### **ENTITY ADVICE**

Pursuant to Division 7.3.3 of the Act, the application was referred to the Social Infrastructure Policy Section and comments were received as follows.

The comments were made following an evaluation of the SIA of this development application.

The site is located on Commercial CZ6 – Leisure and Accommodation Zone land and the use is a 'club' under the Territory Plan. Any future use of the Block would need to comply with the provisions of the Leisure and Accommodation Zone.

Given the site's location in a commercial zone, the assessment of social impacts is different from that likely to accompany a proposal to deconcessionalise a lease on Community Facility Zone land.

Having considered the material supplied, the Social Infrastructure Policy Section recommend that under s261 the Minister decides that it is in the public interest to consider the application and under s139 (2)(l) that there is no detrimental social, cultural or economic impact of the proposed lease variation to remove the concessional status.

## **PART 4**

### **ADMINISTRATIVE INFORMATION**

#### **DATE THAT THIS APPROVAL TAKES EFFECT**

Unless a condition of approval provides for otherwise this approval takes effect 20 working days after the day this notice of decision is given to every person who made a representation on the application. The effective date for development applications approved subject to conditions could

also be adjusted if the approval is reconsidered by the ACT Planning and Land Authority or if an application is made to the ACT Civil and Administrative Tribunal.

Pursuant to section 185 the Act, this approval will expire if:

- the development or any stage of the development is not started within two years after the day the approval takes effect; or
- the development is not finished two years after the day the development begins.

### INSPECTION OF THE APPLICATION AND DECISION

A copy of the application and the decision can be inspected between 8:30am and 4:30pm weekdays at the Environment and Sustainable Directorate Dickson Customer Service Centre at 16 Challis Street, Dickson, ACT.

### RECONSIDERATION OF THE DECISION

If the applicant is not satisfied with the decision to approve the application subject to conditions, they are entitled to apply to the ACT Planning and Land Authority for reconsideration within 20 working days of being told of this decision or within any longer period allowed by the ACT Planning and Land Authority.

Application forms and further information about reconsideration are available from the ACT Planning and Land Authority's website and Customer Service Centres. The delegate of the ACT Planning and Land Authority reconsidering the decision must be different from, and senior to, the original decision maker. An application for reconsideration does not prevent an application for a review of the same decision being made to the ACT Civil and Administrative Tribunal.

### REVIEW BY THE ACT CIVIL AND ADMINISTRATIVE TRIBUNAL (ACAT)

Decisions that are reviewable by the ACAT are identified in Schedule 1 of the *Planning and Development Act 2007*, except for those precluded under Schedule 3 of the *Planning and Development Regulation 2008* – Matters exempt from third-party ACAT review.

This Notice of decision has also been sent to all people who made representations in relation to the proposal.

## **APPENDIX 1**

### CONTACT DETAILS OF RELEVANT AGENCIES

<p><b>Environment and Sustainable Development Directorate</b></p> <p><i>ACT Planning and Land Authority</i></p> <ul style="list-style-type: none"> <li>- list of certifiers for building approval</li> <li>- demolition information</li> <li>- asbestos information</li> </ul> <p><i>Environment Protection Authority</i></p> <ul style="list-style-type: none"> <li>- environment protection</li> <li>- water resources</li> <li>- asbestos information</li> </ul>	<p>Website: <a href="http://www.actpla.act.gov.au">www.actpla.act.gov.au</a> Telephone: (02) 6207 1923</p> <p>Website: <a href="http://www.environment.act.gov.au">www.environment.act.gov.au</a> Telephone: (02) 6207 6251</p>
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Conservation, Planning and Research  - threatened species/wildlife management	Website: <a href="http://www.environment.act.gov.au">www.environment.act.gov.au</a> Telephone: (02) 6207 1911
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**ADVICE TO APPLICANT****REVIEW OF THE DECISION**

The following notes are provided in accordance with regulation 7 of the *ACT Civil and Administrative Tribunal Regulation 2009*. Refer to the Review by the ACT Civil and Administrative Tribunal (ACAT) section of the Notice of Decision for information about its relevance to this development application.

**CONTACT DETAILS**

The review authority is the ACT Civil and Administrative Tribunal (ACAT).

Location	Contact details
ACT Civil and Administrative Tribunal Level 4, 1 Moore Street CANBERRA CITY ACT 2601	Website: <a href="http://www.courts.act.gov.au">www.courts.act.gov.au</a> Email: <a href="mailto:tribunal@act.gov.au">tribunal@act.gov.au</a> Telephone: (02) 6207 1740 Facsimile: (02) 6205 4855 Post: GPO Box 370, CANBERRA, ACT, 2601 Document exchange: DX 5691

**POWERS OF THE ACAT**

The ACAT is an independent body. It can review on their merits a large number of decisions made by ACT Government ministers, officials and statutory authorities. The ACAT can agree with, change or reject the original decision, substitute its own decision or send the matter back to the decision maker for reconsideration in accordance with ACAT recommendations.

**APPLICATIONS TO THE ACAT**

To apply for a review, obtain an application form from the ACAT. You can also download the form from the ACT Legislation Register <http://www.legislation.act.gov.au/af/2009-278/current/pdf/2009-278.pdf>.

If you are applying on behalf of an organisation or association of persons, whether incorporated or not, the Tribunal in deciding whether to support this application will consider the effect of the decision being reviewed on the interests of the organisation or association in terms of its objects or purposes. A copy of the relevant documents will be required to be lodged with the Tribunal.

**TIME LIMITS FOR APPLICATIONS**

The time limit to make a request for a review is 28 days from the date of this Notice of decision. The time limit can be extended in some circumstances (refer to sections 10 (2), 10(3), 25(1)(e) and 25(2) of the *ACT Civil & Administrative Tribunal Act 2008*; section 7 of the *ACT Civil and Administrative Tribunal Procedure Rules 2009 (No 2)*; and section 409 of the *Planning and Development Act 2007*).

**FEES**

Applications to the ACAT, including an application to be joined as a party to a proceeding, require payment of a fee of not less than \$184 (the Tribunal Registry will advise of the current fee), unless you are receiving legal or financial assistance from the ACT Attorney-General. You can apply to have the fee waived on the grounds of hardship, subject to approval (refer to section 22T

of the *ACT Civil and Administrative Tribunal Act 2008*). Decisions to grant assistance are made on the grounds of hardship and that it is reasonable, in all the circumstances, for the assistance to be granted. Write to: The Chief Executive, ACT Department of Justice and Community Safety, GPO Box 158, CANBERRA ACT 2601. Ask the ACAT for more details.

#### TIME LIMITS FOR REVIEWS OF DECISIONS

The ACAT is required to decide appeals in land and planning and tree protection cases within 120 days after the lodging of the appeal, unless that period is extended by the ACAT upon it being satisfied that it is in the interests of justice to do so.

#### FORMS OF LEGAL, FINANCIAL AND OTHER ADVICE AND ASSISTANCE

The following organisations can provide advice and assistance if you are eligible:

- ACT Attorney-General, write to The Chief Executive, ACT Department of Justice and Community Safety, GPO Box 158, CANBERRA, ACT, 2601;
- the ACT Legal Aid Office, telephone 1300 654314;
- Legal Advice Bureau, telephone (02) 6247 5700;
- ACT Council of the Ageing, telephone (02) 6282 3777;
- Welfare Rights and Legal Centre, telephone (02) 6247 2177; and
- Environmental Defender's Office (ACT), telephone (02) 6247 9420.

#### AWARDING OF COSTS

You will have to pay any costs involved in preparing or presenting your case. The ACAT also has the power to award costs against a party if the party contravenes a direction of the ACAT and the ACAT considers it in the interests of justice to make such an order. This power is in addition to the power of the ACAT to strike out a party and to dismiss an application for failure to comply with the ACAT's directions.

#### ACCESS TO DOCUMENTS ABOUT THE DECISION

You may apply for access to any documents you consider relevant to this decision under the ACT Freedom of Information Act 1989. Information about Freedom of information requests is available on the ACT Planning and Land Authority's web site or by contacting us by phone on (02) 6207 1923.

#### PROCEDURES OF THE ACAT

The procedures of the ACAT are outlined on the ACAT's website, including in the Guide to the Land and Planning Division and the Guide to the Hearing. Contact the ACAT for alternative ways to access information about the ACAT's procedures.

#### TRANSLATION AND INTERPRETER SERVICES

The ACT Government's translation and interpreter service runs 24 hours a day, every day of the week. Telephone 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 τηλεφωνήσετε στο
ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
MALTESE	Jekk għandek bżonn l-għajnuna 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	Ако вам је потребна помоћ преводиоца телефонирајте:
SPANISH	Si necesita la asistencia de un intérprete, llame al:
TURKISH	Tercümana ihtiyacınız 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

**This is a market value  
lease - s238(2)(a)(ii) Planning  
and Development Act 2007**

**AUSTRALIAN CAPITAL TERRITORY**

**PLANNING AND DEVELOPMENT ACT 2007**

**Australian Capital Territory (Planning and Land  
Management) Act 1988 (C'th) (ss 29, 30 & 31)**

LEASE GRANTED pursuant to the Planning and Development Act 2007 and the  
Regulations made under that Act on the                      day of

Two thousand and twelve WHEREBY THE PLANNING AND LAND  
AUTHORITY ("the Authority") ON BEHALF OF THE COMMONWEALTH OF  
AUSTRALIA ("the Commonwealth") in exercising its functions grants to

LESSEE **CANBERRA LABOUR CLUB LIMITED** a company having its registered office  
at                      in the Australian Capital Territory

LAND ("the Lessee") ALL THAT piece or parcel of land situate in the Australian Capital  
Territory containing **an area of 1.576 hectares** or thereabouts and being **Block 5  
Section 24 Division of Stirling** as delineated on **Deposited Plan Number 5244** in  
the Registrar-General's Office at Canberra in the said Territory ("the land")

RESERVING unto the Territory all minerals and the right to the use, flow and  
control of ground water under the surface of the land TO HOLD unto the Lessee  
TERM for a term commencing on the                      day of                      **Two thousand and  
twelve** ("the date of the commencement of the lease") and terminating on the  
**fourth day of June Two thousand and seventy nine** to be used by the Lessee for  
the purpose set out in Clause 3(a) of this lease only YIELDING AND PAYING  
THEREFOR rent in the amount and in the manner and at the times provided for in  
this lease and UPON AND SUBJECT TO the covenants conditions and agreements  
contained in this lease.



## INTERPRETATION

## 1. IN THIS LEASE unless the contrary intention appears:

- (a) "Authority" means the Planning and Land Authority established by section 10 of the Planning and Development Act 2007;
- (b) "building" means any building or structure, constructed or partially constructed or to be constructed, as the context permits or requires, on or under the land;
- (c) "club" means the use of land as a meeting place for persons associated, or a body incorporated, for a social, sporting, athletic, literary, political or other like purpose, and which is a licensed premise under the Liquor Act 2010;
- (d) "gross floor area" means the sum of the gross areas of the floor or floors of the building measured from the external faces of the exterior walls or from the centre lines of walls separating the building from any other building;
- (e) "Lessee" shall:
  - (i) where the Lessee consists of one person be deemed to include the Lessee and the executors administrators and assigns of the Lessee;
  - (ii) where the Lessee consists of two or more persons be deemed to include in the case of a tenancy in common the persons and each of them and their and each of their executors administrators and assigns and in the case of a joint tenancy be deemed to include the said persons and each of them and their and each of their assigns and the executors administrators and assigns of the survivor of them; and
  - (iii) where the Lessee is a corporation be deemed to include such corporation its successors and assigns;
- (f) "premises" means the land and any building or other improvements on the land;
- (g) "Territory" means:
  - (i) when used in a geographical sense the Australian Capital Territory; and
  - (ii) when used in any other sense the body politic established by section 7 of the Australian Capital Territory (Self-Government) Act 1988 (C'th);

- (h) words in the singular include the plural and vice versa;
- (i) words importing one gender include the other genders;
- (j) a reference in this lease to any statute or statutory provision shall include a reference to any statute or statutory provision that amends, extends, consolidates or replaces the statute or statutory provision and to any other regulation, instrument or other subordinate legislation made under the statute.

2. THE LESSEE COVENANTS WITH THE COMMONWEALTH as follows:

- |                                 |   |
|---------------------------------|---|
| RENT                            | (a) That the Lessee shall pay to the Authority rent at the rate of five cents per annum if and when demanded payable within one month of the date of any demand made by the Authority relating thereto and served on the Lessee;                  |
| MANNER OF<br>PAYMENT<br>OF RENT | (b) That any rent or other moneys payable by the Lessee to the Authority under this lease shall be paid to such person as may be authorised by the Authority for that purpose at Canberra in the said Territory without any deduction whatsoever. |

3. THE LESSEE FURTHER COVENANTS WITH THE COMMONWEALTH as follows:

- |                          |   |
|--------------------------|---|
| PURPOSE                  | (a) To use the premises only for the purpose of a club;   |
| GROSS FLOOR<br>AREA      | (b) That the combined gross floor area of all buildings erected on the land shall not be less than 400 square metres and shall not exceed 2,000 square metres;  |
| CARPARKING               | (c) That the Lessee shall provide and maintain a carparking area on the land sufficient to accommodate not less than forty cars;  |
| PRESERVATION<br>OF TREES | <p>(d) That the Lessee shall not, without the previous consent in writing of the Territory, remove any tree:</p> <ul style="list-style-type: none"> <li>(i) that has been identified in a development approval for retention during the period allowed for construction of the building; or</li> <li>(ii) to which the <u>Tree Protection Act 2005</u>, applies;</li> </ul> |
| SERVICE AREAS            | (e) That the Lessee shall screen and keep screened all service areas to the satisfaction of the Authority and shall ensure that all plant and machinery contained within the premises is suitably screened from public view;  |

BUILDING SUBJECT TO APPROVAL	(f) That the Lessee shall not without the previous approval in writing of the Authority, except where exempt by law, erect any building, or make any structural alterations to any building, on the land;
REPAIR	(g) That the Lessee shall at all times during the said term maintain repair and keep in repair the premises to the satisfaction of the Authority;
FAILURE TO REPAIR	(h) If and whenever the Lessee is in breach of the Lessee's obligations to maintain repair and keep in repair the premises the Authority may by notice in writing to the Lessee specifying the repairs and maintenance needed require the Lessee to effect the necessary work in accordance with the notice. If the Authority is of the opinion that a building or some other improvement on the land is beyond reasonable repair the Authority may by notice in writing to the Lessee require the Lessee to remove the building or improvement and may require the Lessee to construct a new building or improvement in place of that removed within the time specified in the notice. If the Lessee does not carry out the required work within the time specified by the Authority any person or persons duly authorised by the Authority with such equipment as is necessary may enter the premises and carry out the necessary work and all costs and expenses incurred by the Authority in carrying out the work shall be paid by the Lessee to the Authority on demand and from the date of such demand until paid shall for all purposes of this lease be a debt due and payable to the Authority by the Lessee;
RIGHT OF INSPECTION	(i) Subject to the provisions of the <u>Planning and Development Act 2007</u> to permit any person or persons authorised by the Authority to enter and inspect the premises at all reasonable times and in any reasonable manner;
RATES AND CHARGES	(j) To pay all rates charges and other statutory outgoings assessed levied or payable in respect of the premises as and when they are due for payment.

4. THE COMMONWEALTH COVENANTS WITH THE LESSEE as follows:

QUIET ENJOYMENT	(a) That the Lessee paying the rent and all other money due and observing and performing the covenants and stipulations on the part of the Lessee to be observed and performed shall quietly enjoy the premises without interruption by the Authority or any person lawfully claiming from or under or in trust for the Authority;
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- SURRENDER (b) That the Lessee may at any time upon payment of all rent and other moneys due to the Authority under this lease surrender this lease to the Authority but subject to any law of the Territory to the contrary the Lessee shall not be entitled to receive any compensation from the Authority in respect of such surrender or in respect of any buildings or other improvements upon the land.

5. IT IS MUTUALLY COVENANTED AND AGREED as follows:

- TERMINATION (a) That if:
- (i) any rent or other moneys payable under this lease shall remain unpaid for three months next after the date appointed for payment thereof (whether such rent or other moneys shall have been formally demanded or not); or
  - (ii) the said land is at any time not used for a period of one year for the purpose for which this lease is granted; or
  - (iii) the Lessee shall fail to observe or perform any other of the covenants herein contained in this lease on the part of the Lessee to be observed or performed and shall have failed to remedy such breach within a period of six months from the date of service on the Lessee of a notice in writing from the Authority specifying the nature of such breach
- the Authority on behalf of the Commonwealth may terminate this lease but without prejudice to any claim which the Authority or the Commonwealth may have against the Lessee in respect of any breach of the covenants on the part of the Lessee to be observed or performed;
- ACCEPTANCE OF RENT (b) That acceptance of rent or other moneys by the Authority during or after any period referred to in Clauses 5(a) (i), (ii) or (iii) of this lease shall not prevent or impede the exercise by the Authority of the powers conferred upon it by the said Clauses;
- FURTHER LEASE (c) Subject to the Lessee paying all money required to be paid under the provisions of the Planning and Development Act 2007 the Lessee shall be entitled to a further lease of the land for such further term and at such rent and subject to such conditions as may then be provided or permitted by Statute Ordinance or Regulation;
- NOTICES (d) That any notice requirement demand consent or other communication to be given to or served upon the Lessee under this lease shall be deemed to have been duly given or served if signed by or on behalf of the Authority and delivered to or sent in a prepaid letter addressed to the Lessee at the registered office

of the Lessee in the said Territory BUT if for any reason the Lessee does not have a registered office in the said Territory then at the usual or last-known address of the Lessee or affixed in a conspicuous position on the premises;

**EXERCISE OF  
POWERS**

- (e) Any and every right, power or remedy conferred on the Commonwealth or Territory in this lease, by law or implied by law may be exercised on behalf of the Commonwealth or the Territory or as the case may be by:
- (i) the Authority;
  - (ii) an authority or person for the time being authorised by the Authority or by law to exercise those powers or functions of the Commonwealth or Territory; or
  - (iii) an authority or person to whom the Authority has delegated all its powers or functions under the Planning and Development Act 2007.

IN WITNESS whereof the Authority on behalf of the Commonwealth and the Lessee have executed this lease.

Signed by [name of signatory] )  
a delegate authorised to execute this lease ) .....  
on behalf of the Commonwealth in the ) Delegate  
presence of [name of witness] )  
.....  
Witness

Signed by **CANBERRA LABOR CLUB** )  
**LIMITED** by: )

.....  
Signature

.....  
Name in full

.....  
Director/Secretary

.....  
Signature

.....  
Name in full

.....  
Director/Secretary