



ACT
Government

Chief Minister, Treasury and
Economic Development

Freedom of Information Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI Reference: CMTEDDFOI 2021-249

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	Published
4. Additional information identified	No
5. Fees	N/A
6. Processing time (in working days)	29
7. Decision made by Ombudsman	N/A
8. Additional information identified by Ombudsman	N/A
9. Decision made by ACAT	N/A
10. Additional information identified by ACAT	N/A

From: [Yule, Kelly-Jane \(Health\)](#)
To: [CMTEDD FOI](#)
Subject: Fwd: [REDACTED] : Freedom of Information Request Fwd: UPDATE: PsycleLife Gym - Kingston
Date: Monday, 20 September 2021 5:36:19 PM
Attachments: [image001.png](#)

OFFICIAL

Get [Outlook for iOS](#)

From: [REDACTED]
Sent: Monday, September 20, 2021 5:02:56 PM
To: Yule, Kelly-Jane (Health) <Kelly-Jane.Yule@act.gov.au>
Subject: Re: [REDACTED] Freedom of Information Request Fwd: UPDATE: PsycleLife Gym - Kingston

CAUTION: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

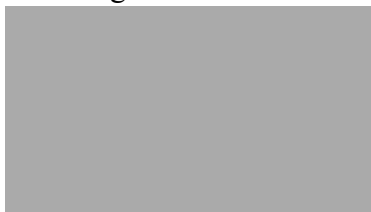
Good Evening Kelly

I trust you are well and staying safe.

I understand that PsycleLife was issued a Show Cause Notice (SCN) under section 353 of the *Planning and Development Act 2007* was issued on 13 September by Access Canberra. See email below from Ms Sargent. I would appreciate if I could get a copy of the letter. Thank you.

Stay Safe.

Kind Regards





ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI2021-249



FREEDOM OF INFORMATION REQUEST

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 20 September 2021, in which you sought access to a copy of *“the show cause notice” issued to PsycheLife (50 EastLake Parade, Kingston ACT), dated 13 September 2021.*

Authority

I am an Information Officer appointed by the Director-General under section 18 of the Act to deal with access applications made under Part 5 of the Act.

Timeframes

In accordance with section 40 of the Act, CMTEDD was required to provide a decision on your access application by 19 October 2021 however following on from a third-party consultation the revised due date is 9 November 2021.

Decision on access

Searches were completed for relevant documents and one document was identified that fell within the scope of your request.

I have included as **Attachment A** to this decision the relevant document. I have decided to grant full access to the relevant documents.

Statement of Reasons

In reaching my access decisions, I have taken the following into account:

- the Act,
- the content of the documents that fall within the scope of your request, and
- the contentions of the consulted third parties.

Public Interest Test under schedule 2 of the Act

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interest lies. As part of this process, I must consider factors favouring disclosure and non-disclosure.

In *Hogan v Hinch* (2011) 243 CLR 506, [31] French CJ stated that when ‘used in a statute, the term [public interest] derives its content from “the subject matter and the scope and

purpose” of the enactment in which it appears’. Section 17(1) of the Act sets out the test, to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and Schedule 2 of the Act.

Taking into consideration the information contained in the documents found to be within the scope of your request, I have identified that the following public interest factors are relevant to determine if release of the information contained within these documents is within the ‘public interest’.

Factors favouring disclosure (Schedule 2.1)

(xiii) contribute to administration of justice generally including procedural fairness

I consider that disclosing the contents of the information sought would significantly contribute to administration of justice generally including procedural fairness.

I am satisfied that this relevant consideration favours disclosure in this case, and in the interests of enhancing transparency and accountability, I afford it significant weight.

Charges

Processing charges are not applicable for this request because the total number of pages to be released to you is below the charging threshold of 50 pages.

Online publishing – Disclosure Log

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published in the CMTEDD disclosure log between 3-10 days of my decision. Your personal contact details will not be published. You may view CMTEDD disclosure log at

<https://www.cmtedd.act.gov.au/functions/foi/disclosure-log-2020>.

Ombudsman Review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in CMTEDD disclosure log, or a longer period allowed by the Ombudsman.

We recommend using this form [Applying for an Ombudsman Review](#) to ensure you provide all of the required information. Alternatively, you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Via email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) Review

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
Level 4, 1 Moore St
GPO Box 370
Canberra City ACT 2601
Telephone: (02) 6207 1740
<http://www.acat.act.gov.au/>

Should you have any queries in relation to your request please contact me by telephone on 02 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely,



Katharine Stuart
Information Officer
Information Access Team
Chief Minister, Treasury and Economic Development Directorate
1 November 2021

Show cause notice – Controlled activity orders on authority's own initiative

Under section 353 (2) of the *Planning and Development Act 2007*

LESSEE/OCCUPANT DETAILS	Demco Pty Ltd PO BOX 6894 Charnwood ACT 2615
BLOCK/SECTION/SUBURB	Unit 106 & 107 Block 7 Section 48 Kingston

To The Director(s)

Under section 353 (2) of the *Planning and Development Act 2007* (the Act), Access Canberra gives Demco Pty Ltd (lessee) notice that it intends to make a controlled activity order (order) relating to Units 106 & 107 Block 7 Section 48, in the division of Kingston in the Australian Capital Territory, comprised in Certificate of Title Volume 2152 Folios 36 & 37 (land).

Controlled Activity to which this Notice Relates

This notice relates to the following controlled activities prescribed under schedule 2 of the Act.

1. Schedule 2, Item 3(a) of the Act, *undertaking a development for which a development approval was required; without development approval.*

Persons to whom the order would be directed

If made, the order would be directed to you as the Lessee and registered proprietor of the Crown lease of the land.

An order, if made, would direct you, under section 355 of the Act, to:

- Within 28 days of the date of the Order, apply for a development approval which is paid for, and accepted for assessment and comply with any further requests for information by the planning and land authority for a building or structure, or part of a building or structure, that has been constructed without development. Namely apply for a development approval for the change of National Construction Code (NCC) class from a Class 5 or 6 to a Class 9b; and,
- If approval is granted, comply with the conditions of the approval within 3 months from

the date of approval; or,

- If the approval is refused, restore and land, building or structure that has been altered without development approval or permission required under territory law within 1 month of the date of refusal unless one or more of the decision is subject of an ACT Civil and Administrative Tribunal (ACAT) merits review proceeding, in which case, 14 days after the day on which the ACAT publishes its decision in respect of those merit review application/s, Namely cease using Units 106 & 107 as a Class 9b structure; or
- Cease using the part of the building or structure that is being used without development approval, being the gym known as Psyclelife.

Facts

1. On 27 August 2014 a Certificate of Occupancy was issued on the land for 100 residential apartments, an office building and a basement carpark. NCC Classes 2,5,6 & 7.
2. On 18 July 2016 a Building Approval was issued for Units 106 & 107 for a Class 9b new gym tenancy and installation of new toilets and showers. On 29 August 2016 a Certificate of Occupancy and Use was issued for this building approval.
3. ACT Government records show that no development application was submitted to change the use of the building from a Class 5 or 6 building to a Class 9b building.
4. Section 1.20 of the *Planning and Development Regulation 2008* states that an internal alteration to a non-residential building if the alteration does not change the class of the building under the building code.
5. In building code in place at the time of the Building Approval was the National Construction Code 2016 (NCC 2016).
6. Part A3.3(a)(i) of the NCC 2016 states that where parts of a building have different purposes – if not more than 10% of the floor area of a storey, being the minor use is used for a purpose which is a different classification, the classification applying to the major use may apply to the whole storey.
7. It is the belief of the planning and land authority that in this circumstance the major use does not apply and this provision of the NCC 2016 does not negate the requirement of a development approval that is outlined in Section 1.20 of the *Planning and Development Regulation 2008*.
8. An inspection conducted by Access Canberra building inspectors on 12 April 2021, the inspection report states that a gym is operational in the units. The inspection report is attached at **Attachment A**.
9. Advice from the planning and land authority is attached at **Attachment B**.

Response

Each person given this show cause notice may, not later than 10 working days after the day this notice is given, give Access Canberra written reasons explaining why the controlled activity order should not be made.

Access Canberra will consider any written reasons given before making a decision to make the order in relation to a controlled activity mentioned in this show cause notice, or to not to make the order mentioned in this show cause notice.

Please respond to the letter no later than 10 working days after the day you are given this notice. A written response must be sent to Access Canberra Building and Planning Compliance at GPO Box 158 Canberra City ACT 2601 or by email to bpc@act.gov.au

A person commits an offence of 'Contravening a controlled activity order' under section 361 of the *Planning and Development Act 2007* if;

- (a) the planning and land authority makes a controlled activity order directed to the person; and
- (b) the order requires the person to do, or not do, something stated in the order; and
- (c) the person is given notice of the making of the order (whether by being given a copy of the order or otherwise); and
- (d) the person contravenes the order.

Maximum penalty: the amount stated in schedule 2, item 3, column 3 in relation to the activity for which the order made is 60 penalty units – for an individual is \$9,600 and for a corporation is \$48,600.

Prosecution may be undertaken at the discretion the Director of Public Prosecutions.

Should you wish to discuss this matter further, please contact **Douglas Farr**, Building and Planning Compliance via email bpc@act.gov.au

Yours sincerely



Adam Pascoe
Delegate of the Planning and Land Authority
Access Canberra

13/09/2021

ADMINISTRATIVE INFORMATION

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 τηλεφωνήστε 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	Ako vam je potrebna pomoć prevodioca telefoniрајте:
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