



ACT
Government

Chief Minister, Treasury and
Economic Development

Freedom of Information Disclosure Log Publication Coversheet

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

Application Details	
Ref. No.	CMTEDDFOI 2023-409
Date of Application	4 December 2023
Date of Decision	12 February 2024
Processing time (in working days)	43
Fees	N/A
Decision on Access	Partial Release
Information Requested (summary)	I am seeking access to information under the Freedom of Information Act concerning any documents, correspondence, e-mails, notes, minutes, penalties, enforcement or any other relevant information between the Lessee (or owner) of Section 88, block 8, Mckellar and the ACT Government between 01/01/2023 and 27/10/23 and the planning and construction of a building on this
Publication Details	
Original application	<input checked="" type="checkbox"/> Published <input type="checkbox"/> N/A
Decision notice	<input checked="" type="checkbox"/> Published <input type="checkbox"/> N/A
Documents and schedule	<input checked="" type="checkbox"/> Published <input type="checkbox"/> N/A
Decision made by Ombudsman	N/A
Additional information identified by Ombudsman	N/A
Decision made by ACAT	N/A
Additional information identified by ACAT	N/A

Case Rich Text Description (Used for Forms):

I am seeking access to information under the Freedom of Information Act concerning any documents, correspondence, e-mails, notes, minutes, penalties, enforcement or any other relevant information between the Lessee (or owner) of Section 88, Block 8, Mckellar and the ACT Government between 01/01/2023 and 27/10/2023 and the planning and construction of a building on this parcel of land.

Comments to SME:

Good morning,

Are you able to assist [redacted] with his enquiry?

Thank you

*** (required) Send response to:**

Staff Member

Customer

*** (required) Please enter your response here**

Good afternoon [redacted]

We are happy to assist you with your request for information.

Is it possible for you to provide a direct email address for EPSDD's Freedom of Information Team to contact you rather than via this online form?

I've left a message on your mobile yesterday afternoon requesting this information or you can email to epsdfoi@act.gov.au outlining the information you are seeking.

In the interim we are unable to commence processing your application, as under section 30(2)(b) the Freedom of Information Act 2016, an application must include an email or postal address which notices under this Act may be sent to the applicant (please note your email address is not disclosed to us via this form.)

Kind regards

Angelina Aloisi (she/her) | A/g Assistant Director Information Governance (FOI and Information Access)

Phone: 02 6207 7912 | Email: epsdfoi@act.gov.au

Legal Policy and Information Access | Environment, Planning and Sustainable Development Directorate | ACT Government

Submit

Acknowledgement of Country

We acknowledge the Ngunnawal people as traditional custodians of the ACT and recognise any other people or families with connection to the lands of the ACT and region. We acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region.

Services

Births, relationships and deaths (<https://www.accesscanberra.act.gov.au/births-relationships-and-deaths>)

Building and property (<https://www.accesscanberra.act.gov.au/building-and-property>)

Business and work (<https://www.accesscanberra.act.gov.au/business-and-work>)

City services (<https://www.accesscanberra.act.gov.au/city-services>)

Consumer rights (<https://www.accesscanberra.act.gov.au/consumer-rights>)

Driving, transport and parking (<https://www.accesscanberra.act.gov.au/driving-transport-and-parking>)

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Feedback and complaints (<https://www.accesscanberra.act.gov.au/contact-us/feedback-and-complaints>)

Pay online (<https://www.accesscanberra.act.gov.au/pay-online>)

Phone 13 22 81 (tel:132281)

Service Centre locations (<https://www.accesscanberra.act.gov.au/contact-us#Visit-an-Access-Canberra-Service-Centre>)

Staff login (https://www.accesscanberra.act.gov.au/home?SQ_ACTION=login)

Accessibility (<https://www.accesscanberra.act.gov.au/accessibility>)

Privacy (<https://www.accesscanberra.act.gov.au/privacy>)

Copyright and disclaimer (<https://www.accesscanberra.act.gov.au/copyright-and-disclaimer>)



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 4 December 2023, in which you sought:

“access to information under the Freedom of Information Act concerning any documents, correspondence, e-mails, notes, minutes, penalties, enforcement or any other relevant information between the Lessee (or owner) of Section 88, Block 8, Mckellar and the ACT Government between 01/01/2023 and 27/10/2023 and the planning and construction of a building on this parcel of land.”

Authority

I am an Information Officer appointed by the Director-General of CMTEDD 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 within 30 working days of receipt of your application, however after third party consultation, a decision on your access application is due by **14 February 2023**.

Decision on Access

Searches were completed for relevant documents based on information provided by you. Two documents were identified as within scope, and I have decided to grant partial access to these documents relevant to your request.

I have included as **Attachment A**, a schedule of the relevant documents. This schedule provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

My access decisions are detailed further in the following statement of reasons, in accordance with section 54(2) of the Act, and the documents released to you are provided as **Attachment B** to this letter.

Statement of Reasons

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

- the Act
- the content of the information that falls within the scope of your request
- the views of third parties
- the *Human Rights Act 2004*.

Exemption claimed

My reasons for deciding not to grant access to some of the identified documents and components of these documents are as follows:

Information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act

Public Interest

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 in the public interest under Schedule 2.1:

- (a) *disclosure of the information could reasonably be expected to do any of the following:*
- (i) *promote open discussion and accountability.*
 - (viii) *reveal the reason for a government decision and any background or contextual information that informed the decision.*

Having considered the factors identified as relevant in this matter, I consider that release of the information contained in these documents may reasonably be expected to promote open discussion about government operations within the community, particularly those relating to building applications.

I consider that release of the information contained in the documents may contribute to understanding the reasons behind government decisions and procedures followed by providing you with a copy of the documents that fall within the scope of your request.

Factors favouring nondisclosure in the public interest under Schedule 2.2:

- (a) *disclosure of the information could reasonably be expected to do any of the following:*
- (ii) *prejudice the protection of an individual's right to privacy or any other right under the [Human Rights Act 2004](#).*

Having reviewed the documents, I consider the protection of an individual's right to privacy is a significant factor. Protection of personal information for an individual when engaging with government, in my opinion, outweighs the benefit which may be derived from releasing the personal information of an individual involved in this matter. Additionally, I have decided that release of this information could prejudice their right to privacy under the *Human Rights Act 2004*.

Individuals are entitled to expect the personal information they have supplied as part of a government process will be dealt with in a manner that protects their privacy. Considering the type of information to be withheld from release, I am satisfied that the factors in favour of release can still be met while protecting the personal information of the individual involved.

Having applied the test outlined in section 17 of the Act and deciding that release of personal information contained in the documents is not in the public interest to release, I have chosen to redact this specific information in accordance with section 50(2). Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that I believe is not in the public interest to release will ensure that the intent of the Act is met and will provide you with access to the majority of the information held by CMTEDD within the scope of your request.

Charges

Processing charges are not applicable for this request because the 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. 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-2023>.

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 provided to you, 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
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 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely,



Katharine Stuart
Information Officer
Information Access Team
Chief Minister, Treasury and Economic Development Directorate
12 February 2024



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST

Reference NO.

I am seeking access to information under the Freedom of Information Act concerning any documents, correspondence, e-mails, notes, minutes, penalties, enforcement or any other relevant information between the Lessee (or owner) of Section 88, block 8, Mckellar and the ACT Government between 01/01/2023 and 27/10/23 and the planning and construction of a building on this parcel of land.

CMTEDDFOI 2023-409

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-4	Email Correspondence: Advisory letter for Delaying construction completion work-fire Hazard For 36 Kitty Mcewan cct 8_88 McKellar	25 July 2023	Partial Release	Sch 2 s2.2 (a)(ii)	Yes
2	5-6	298D (2) Letter to lessee - Breach of Lease Notification - MCKELLAR - S088 - B0008 RPP44 63700 51001 58152 31602	10 October 2023	Partial Release	Sch 2 s2.2 (a)(ii)	Yes
Total No of Docs						
2						

From: Sch 2.2(a)(ii) Ami"
Sent: 25/07/2023 1:33 PM
To: Sch 2.2(a)(ii)
Subject: Advisory letter for Delaying construction completion work-fire Hazard For 36 Kitty Mcewan cct 8/88 McKellar
Attachments: Advisory letter for Delaying construction completion work-fire Hazard.pdf

OFFICIAL

Good afternoon,

Please see attached Advisory letter in relation to the concern raised about Delaying the Building construction work and Uncleaned leasehold- Overgrown grass Fire hazard, which required your actioning.

Kind Regards,

Ami
Building Inspector | Rapid Regulatory Response Team
Access Canberra | ACT Government
Phone: 02 6205 2409 / Email: Sch 2.2(a)(ii)
8 Darling Street, Mitchell | GPO Box 158 Canberra City ACT 2601 | <http://www.act.gov.au/accesscbr>
I acknowledge the Ngunnawal people as traditional custodians of the ACT and recognise any other people or families with connection to the lands of the ACT and region. I acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region.





Advisory letter– Delaying the construction work completion.

OWNER/LESSEE DETAILS/OCCUPIER	Sch 2.2(a)(ii)
SECTION/BLOCK/SUBURB	088/0008/ Mckellar
POSTAL ADDRESS	36 Kitty Mcewan cct

19 July 2023

To Sch 2.2(a)(ii),

On 21/06/2023, Building Inspectors from Access Canberra (AC) Rapid Regulatory Response Team (RRRT) conducted a site inspection of the subject property at 36 Kitty Mcewan cct, McKellar, in response to concerns raised about delaying the construction work completion and uncleaned property/ overgrown grass (Fire hazard) to the subject block. RRRT inspectors observed the property from public domain (see photos in Appendix 1).

Based on the inspection from public domain and the photos, the RRRT Inspectors observed an approximately 1.3m high grass grown surrounding the subject block (See Appendix 1 photos), temporary construction fence was intact on subject block, no construction work was on going at the time of the inspection. Access Canberra records shows that the block was investigated many times previously (for a period more than 8 years) for the same issues as of the issues currently raised.

Issue 1 - Delaying building construction work.

During the inspection it has been determined by the building inspector the subject block's (B8 S88 McKellar) current status is still under construction (construction is not completed) and temporary construction fencing are in place, the building inspectors were unable to observe the backyard. As per the Access Canberra Building and planning record, the exempt development application and building approval (BA B20133746 in 2013 and B2015938 in 2017) is present for the subject block and due to delaying the completion of the construction work, the Building Approval (BA) is expired as it passed the 24 months of construction period from commencement date.

Item 1(a)(ii), Schedule 2 Controlled Activities, of Planning and Development Act 2007, state the building or development work requires to complete the construction work within stated time which is twenty-four (24) months from commencement date. For the subject block the completion of the

construction work period is expired and the construction work is not completed which state the Certificate of Occupancy has not been issued yet.

In relation to your property (B08 S088 McKellar), Memorandum of Provisions (MOP) No. 2000011 is a part of the Crown lease for the subject block and Clause 2.4 of the MOP state that within twenty-four (24) months from the Commencement Date the construction must be completed.

Therefore, the current status of the block is a breach of Clause 2.4 of MOP (2000011) which is a controlled activity in pursuant to Item 1 of Schedule 2 of *the Planning and Development Act 2007* – failing to comply with a building and development provision requires to complete the construction work within the stated time is a controlled activity.

The desktop audit included review of Access Canberra records which revealed that there are Exempt Development application and Building Approvals for the subject property which is expired. The current status of the subject property is a breach of 298d extension of time to complete works-required fee of the Planning and Development Act 2007, (P&D Act 2007) which state that if the time to complete the work need extension of time, the lessee must pay the required fee to the planning and land authority. There is no evidence of Extension of Time (EOT) application after 31/03/2015 and no payment has been made for Extension Of time (EOT). Lease compliance team sent payment the last payment due letter on 11/08/2022.

Issue 2 - Fire hazard (overgrown grass).

During the site inspection, inspectors observed overgrown grass (approximately 1.3 meter high) within the verge in-front of the block and within the front yard of the block from public domain. In regard to the concerns raised about long grass grown within the block and within the verge (potential fire hazard), the matter was referred to the ACT Fire and Rescue – Emergency Services to investigate the matter.

Your response outlining an intent and required timeframe to address the matter mentioned in this letter is required within **15 working days** from the date of the letter.

Should you require any further information regarding this matter please contact me via email at mit@act.gov.au

Yours sincerely

Ami

Sch 2.2(a)(ii)

Rapid Regulatory Response Team





Sch 2.2(a)(ii)

Dear Lessee

Block 8 Section 88 MCKELLAR

The Lease Compliance Team have undertaken an audit of properties within the ACT, in relation to the building and development provisions contained within the Crown lease. The above property has been identified as having outstanding extension of time fees.

The current building and development provisions required:

- **Completion of the development by 31 March 2015; and**
- **Completion of the Facilities by 31 March 2015.**

After 1 April 2014, under section 298 D, (2) of the *Planning and Development Act 2007*:

It is now an obligation of the Lease Compliance Team to give the lessee written notice of a required fee payable, for the year or part year until the development is completed. The fee will be for the preceding 12 months, or part year if the development is completed. The land rates for the year of non-compliance are used in the calculation of the debt owed to the ACT Government.

For the periods of extension post 31 March 2008 the fee is calculated using the following formula

A x D / 365 x B:

- A=** multiplier (as prescribed by the *Planning and Development Regulation 2008*);
D= number of days for which the longest extension is sought; (an earlier extension of time application is considered in this calculation and extends from the previous multiplier used)
B= the amount of rates imposed under the *Rates Act 2004 section 14*,

Sch 2.2(a)(ii)

Sch 2.2(a)(ii)

The total amount payable is due by **17 November 2023** to avoid any debt recovery action that may be taken against you. Failing to pay outstanding extension of time fees could lead to the termination of the Crown lease for this block, under section 382 of the *Planning and Development Act 2007*.

The authority will approve the extension to the building and development provisions on receipt of the total amount payable.

Payment Options

Payment can be made via the online smartform using the below link

<https://forms.act.gov.au/smartforms/servlet/SmartForm.html?formCode=1215&tmFormVersion>

Alternatively, payment can be made via **eftpos** at 8 Darling Street Mitchell between the hours of 8.30am and 4.30 pm Monday to Friday. A copy of this letter must be provided to the counter for payment.

Financial Hardship

If you are suffering financial hardship, these options are available to you:

- You can request to pay the above amount in full, later than the 30 days provided.
- Request a payment plan for a period of up to 12 Months.
- Submit a hardship application through the Access Canberra Smartform at the following link - <https://forms.act.gov.au/smartforms/servlet/SmartForm.html?formCode=1173> . In your application, provide a written submission including sufficient evidence outlining the circumstances that have affected your ability to complete construction.

Please note: For the Lease Compliance Team to assess a hardship claim, you will need to meet the hardships requirements under the legislation. The legislative requirements can be found at the following links:

From section 298 of the *Planning and Development Act 2007* -

<https://www.legislation.act.gov.au/View/a/2007-24/current/PDF/2007-24.PDF>

From section 200 of the *Planning and Development Regulation 2008* -

<https://legislation.act.gov.au/View/sl/2008-2/current/PDF/2008-2.PDF>

Should you require any further information regarding this matter please contact the Lease Compliance Team on telephone 6205 5295 or via email feecompliance@act.gov.au.

Yours sincerely

Sch 2.2(a)(ii)

Lease Compliance
Access Canberra
12 October 2023