

Rowe, Trevor

From: Committees
Sent: Monday, 12 December 2011 9:51 AM
To: Rowe, Trevor
Subject: FW: DV307 The Brumbies
Attachments: Brumbies Blocks 3 and 4.jpg; ACTPLA letter to Brumbies re Lease Decd 2010.pdf

From: David Denham [<mailto:denham@webone.com.au>]
Sent: Friday, 9 December 2011 5:08 PM
To: COE; LECOUEUR; PORTER
Cc: Committees
Subject: DV307 The Brumbies

Dear Committee members.

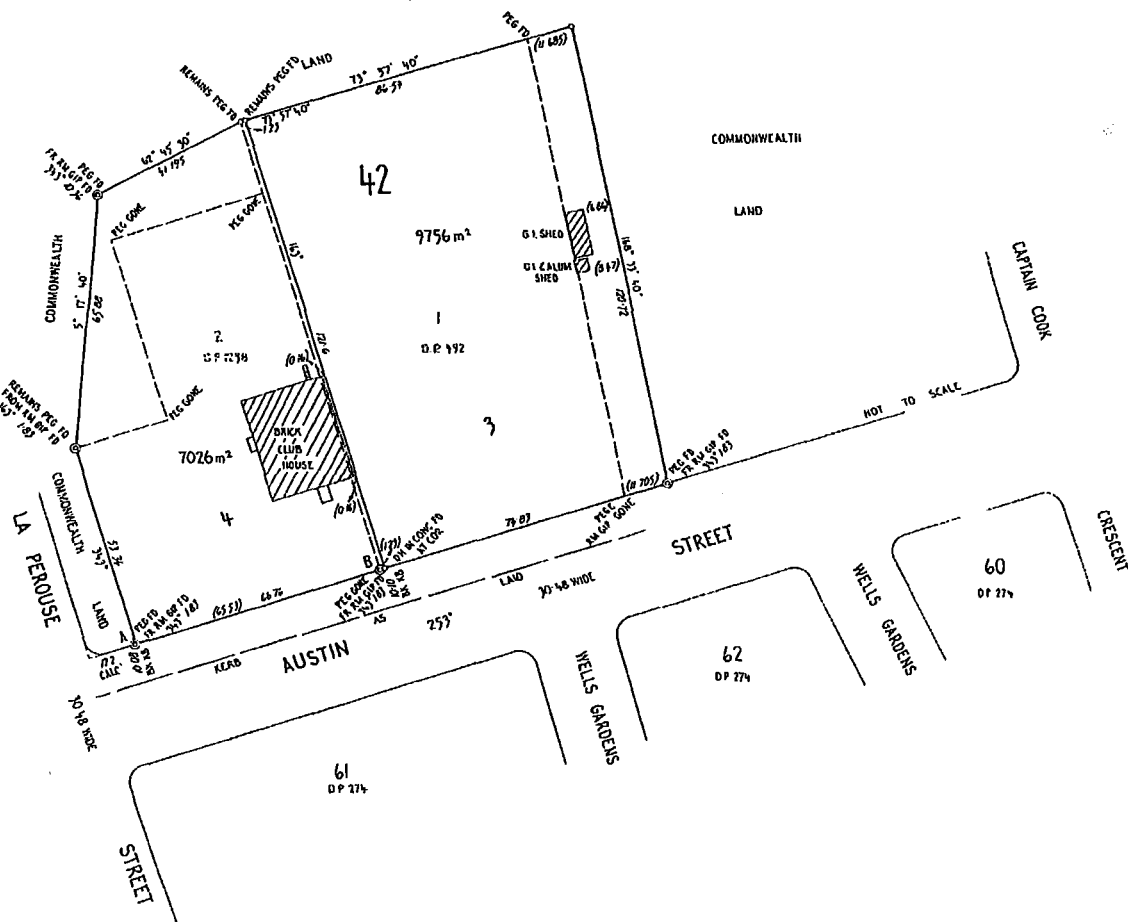
At an earlier hearing there was some uncertainty regarding the concessional statement of Block 15. I have attached for your information a plan of Blocks 3 & 4 (before they were combined) and a letter from ACTPLA explaining the lease situation, in case you do not have this information.

As you can see from Clause 16. The Treasurer waived any monies due on the de-concessional process.

I don't recall a DA covering this variation, as was provided by the Brumbies earlier this year on what was Block 4.

All very complicated

David Denham
7 Landsborough Street
Griffith ACT 2603
Australia
Tel : 02 6295 3014



REFERENCE MARKS
 Dashed line to top left corner of block 1
 (Except as otherwise shown)
 All measurements in metres

I, PAUL CHARLES KELLY of CANBERRA
 a surveyor registered under the Surveyors Ordinance 1967, do hereby
 certify that the survey represented on this plan is accurate and has been
 made (1) by me and (2) in accordance with the provisions of the
 Survey Practice Ordinance 1978 and was completed on 24th JAN 77
 (Signature) *P.C. Kelly*
 Surveyor registered under the Surveyors Ordinance 1967
 I certify that this plan is the plan prepared in accordance with
 the Ordinance 1967
13.2.77
 Commonwealth Surveyor-General

PLAN OF
 BLOCKS 3 & 4, SECTION 42
 BEING A RESUBDIVISION OF BLOCKS 1 & 2
 DIVISION: GRIFFITH
 DISTRICT: CANBERRA CENTRAL

AUSTRALIAN CAPITAL TERRITORY
 SCALE 1:750

Field Books: 52047 72/2650

Deposited in the office of the Registrar of Titles at Canberra to
 the Australian Capital Territory the *Twentyfourth*
 day of *May* 1981 at *10* o'clock in the *PM* day
 Approved

DEPOSITED PLAN
 5950

AMCHS DP 492 & DP 738



Officer : Rachel Mynott
Phone : 6207 7257
Fax : 6207 1856
Email : rachel.mynott@act.gov.au

Mr Andrew Fagan
Australian Capital Territory & Southern
New South Wales Rugby Union Club
PO BOX 3865
Manuka ACT 2603

Dear Mr Fagan

Block 15 Section 42 Griffith – Volume 1552 Folio 84

Please find attached the ACT Planning and Land Authority's (the Authority's) decision under section 258 of the *Planning and Development Act 2007* (the Act) regarding the concessional status of the Crown lease over Block 15 Section 42 Griffith.

Further information on the provisions of the Act is available online from the ACT Legislation Register at: www.legislation.act.gov.au/a/2007-24/default.asp.

Please contact me on 02 6207 2869 if you require any further information in relation to this matter.

Yours sincerely

A handwritten signature in cursive script, appearing to read "S. G. Messer".

Susan Messer
Delegate of the ACT Planning and Land Authority

23 December 2010



Determination of the concessional status of a Crown lease

Under Chapter 9 Part 9.4 Division 9.4.1 of the
Planning and Development Act 2007

DETERMINATION OF CONCESSIONAL STATUS OF A CROWN LEASE		
DATE OF DECISION: 22 December 2010		
BLOCK: 15	SECTION: 42	SUBURB: GRIFFITH
STREET NO AND NAME:		
LESSEE: AUSTRALIAN CAPITAL TERRITORY & SOUTHERN NEW SOUTH WALES RUGBY UNION LIMITED		

On 11 October 2010, Australian Capital Territory & Southern New South Wales Rugby Union Limited applied to the ACT Planning and Land Authority (Authority) for a determination under Section 256 of the *Planning and Development Act 2007* (Act) of the concessional status of the Crown lease over the above block.

A concessional lease is defined at Section 235A of the Act.

A market value lease is defined at Section 235B of the Act.

The meaning of 'possibly concessional' is defined at Section 235C of the Act.

Schedule 5, Part 5.2 of the Act includes a schedule of market value leases.

Schedule 5, Part 5.3 of the Act includes a schedule of possibly concessional leases.

1 THE DECISION

I, Susan Messer, delegate of the Planning and Land Authority, pursuant to section 257 of the Act hereby give notice that the Crown lease over Block 15 Section 42 Griffith (Volume 1552: Folio 84) is a concessional lease.

2 LEASE DECISION NOTICE

On 11 October 2010, Australian Capital Territory & Southern New South Wales Rugby Union Limited applied to the Authority for a determination under Section 256 of the Act of the concessional status of the Crown lease over the above block.

Section 257(6) of the Act provides that the Authority must give written notice of the decision under subsection (1) to the applicant and anyone else with an interest in the lease to which the decision relates.

There is one registered Interested party which was notified of the application on 26 October 2010.

3 REASONS FOR THE DECISION

Item 8 of part 5.3 of the Act refers to a lease -

- (a) granted to a club, whether or not the club is still the lessee; or
- (b) that authorises the land comprised in the lease to be used for a club.

Therefore, the Crown lease for Block 15 Section 42 Griffith is a possibly concessional lease as defined at Section 235C of the Act.

An examination by the Authority of the leasing status of Block 15 Section 42 Griffith has confirmed the following information:

1. The initial unregistered lease over part Section 42 was granted pursuant to the *Leases Ordinance 1918-1937* to John Stanley Cusack and Charles William Chandler on 4 October 1950 for a period of five years commencing on 1 September 1950 for the purpose of a 'Bowling Green Club House or such other purposes as may be approved in writing by the Commonwealth or the Minister on behalf of the Commonwealth only. This lease was granted for a rent of 1 shilling per annum if and when demanded.

Our files indicate that an offer of a lease at a rent of £713.11.00, being three fifths of 5% per annum on the capital costs and three fifths of the cost of maintenance of the bowling greens, was made to the Lessee on 4 July 1949. The rent of 1 shilling per annum is an amount less than market value and, accordingly, this lease was a *concessional lease* as defined in the Act.

2. On 1 April 1955 Crown lease Volume 5 Folio 476 was granted over Block 1 Section 42 Griffith pursuant to the *Leases (Special Purposes) Ordinance 1925* to Canberra South Bowling Club Incorporated commencing on 10 July 1957 for a term commencing on 23 April 1955 and terminating on 22 April 1980 for the purpose of a 'bowling club and any purpose incidental thereto. This lease was granted as a rental lease at the rate of £18 per annum which was equivalent to a rental of 1% per annum of the unimproved capital value of £1,800. Therefore, this lease was a *concessional lease* as defined in the Act.

Block 1

3. On 4 June 1957, the Territory offered a lease over Block 2 Section 42 Griffith under the *Leases (Special Purposes) Ordinance 1925* to the Canberra South Bowling Club Incorporated for a term of ninety nine years. Payment was determined at £20 per annum calculated at 1% per annum of the unimproved capital value of £2,000 for the first twenty years and thereafter at £1 per centum per annum of the unimproved value of the land.

Block 2

On 3 July 1957, the Club accepted the offer. The lease was granted on 31 March 1958 and commenced on 10 July 1957. The lease permitted the land to be used for the purpose of a bowling club conducted in accordance with the Memorandum and Articles of Association of the lessee for the time being in force but not for the purpose of letting any building or part of a building on the said land for any trading or commercial purpose. Therefore, this lease was a *concessional lease* as defined in the Act.

The lease contained a clause restricting the assignment or transfer of the lease without the consent of the Minister.

4. On 16 November 1960, the club again applied for additional land adjacent to Block 2.

On 20 February 1961, the Territory offered the additional land subject to consolidation with the existing lease over Block 2. The unimproved value of the site (Block 2 and the additional land) was assessed at £2,500. The land rent was assessed at £25 per annum being 1% of that value being payable until 9 July 1977.

Additional
land
to Block 2

The lease over Block 2 (the identifier was not changed) was regranted on 5 May 1964, commencing on 10 March 1961 and terminating on 9 July 2056 (the termination date in the original lease). Therefore, this lease was a *concessional lease* as defined in the Act.

5. On 9 May 1966, the club sought additional areas of land adjacent to both Blocks 1 and 2.

The Territory approved the grant of additional land on 14 November 1966 with the club being offered two new leases issued under the *Leases (Special Purposes) Ordinance 1925* to be known as Blocks 3 and 4 Section 42 Griffith. Rent would be assessed at 1% per annum of the unimproved values of \$4160 for Block 3 and \$5700 for Block 4 until the original rent reappraisal date for both leases. The club accepted the offer on 24 April 1967.

Further additional land.

6. On 2 December 1976, the Department advised the club that while the club was occupying and using the additional land, the leases giving effect to the additional land had not been finalised.
7. On 26 April 1977, the club requested that the lease term of Block 1 (to become Block 3) Section 42 be extended to expire on 9 February 2056 to coincide with the expiry date of the lease over Block 2 (to become Block 4) and that the leases be consolidated into one lease which would also include the additional land.

As at 10 October 1978, the amount outstanding for the improvements on the site which were to be purchased by the club was \$392.00. This was paid on 30 October 1978.

8. The Department sought valuation advice of the current unimproved value for the consolidated block on 14 January 1980. The Valuation Office advised that the current unimproved value of Block 3 was \$40,000 and Block 4 was \$60,000, with the value of the consolidated lease at \$100,000 on 14 April 1980.
9. Land rent was abolished for leases issued under the *Leases (Special Purposes) Act* from 1 January 1971. Nominal rent of 5 cents per annum if and when demanded applied thereafter.
10. The lease over Block 1 Section 42 expired on 22 April 1980.
11. A new lease for Block 3 was offered incorporating land rent provisions replacing the expired lease over Block 1 and additional land.
12. Rent for Block 3 was reappraised as at 22 April 1983 with the Chief Valuer recommending an amount of \$30,000 as the unimproved capital value. Rent was determined at 4% of the unimproved capital value which was \$1,200 per annum.
13. On 27 May 1983, Crown lease Volume 892 Folio 56 was granted over Block 3 Section 42 pursuant to the *City Area Leases Act 1936* to the Canberra South Bowling Club Incorporated commencing on 23 April 1980 and terminating 9 July 2056 for the purpose of a 'bowling club and for any purpose incidental thereto'. This lease was granted as a rental lease at the rate of \$1,200.00 per annum to be re-assessed at three year intervals.
14. A new lease for Block 4 was offered incorporating the additional land but without land rent provisions.
15. On 27 May 1983 Crown lease Volume 892 Folio 57 was granted over Block 4 Section 42 pursuant to the *City Area Leases Act 1936* to Canberra South Bowling Club Incorporated commencing on 23 April 1980 and terminating 9 July 2056 for the purpose of a 'bowling club and for any purpose incidental thereto'. This lease was granted as a nominal rent lease, being 5 cents per annum. This lease was surrendered on 8 June 1991 and consolidated with the lease over Block 3 set out in the previous dot point to form Block 15 Section 42 Griffith (see below).

Block 3

Block 4

Consolidated Block 15 1991.

16. On 8 June 1999 the leases over Blocks 3 and 4 were surrendered and consolidated into Crown lease Volume 1552 Folio 84 granted over Block 15 Section 42 pursuant to the *Land (Planning and Environment) Act 1991* to Canberra South Bowling and Recreation Club Incorporated commencing on 8 June 1999 and terminating on 9 July 2056 for the purpose of a 'Bowling and Sporting Club and any purpose incidental thereto'.

1999

The lease contained a provision requiring the lessee to pay an amount equal to \$80,000 being the site value of the area previously identified as Block 3.

Block 3
waived

On 7 August 2009, the Treasurer waived the land rent and associated accumulated interest owed to the Territory over that area of Block 15 formerly known as Block 3.

Conclusion

Section 235A of the Act defines "made" as follows:

"made – a payment has been made if the relevant amount –

- (a) was paid to the Territory, a territory entity, the Commonwealth, a Commonwealth entity or the entity that originally granted the lease; or
- (b) was waived by the Treasurer under the *Financial Management Act 1996*, section 131, or part of the amount was waived and the rest of the amount was paid."

As the requirement was waived, that area of Block 15 formerly identified as Block 3 is not concessional.

That area of Block 15 formerly identified as Block 4 is considered to be concessional as, while the land rent was abolished in 1971, the rent paid for the lease, prior to that time, was at a concessional rate.

Block 3
not
concessional
Block 4
concessional

Legislation requirements

Section 235A of the Act defines concessional lease to mean:

- (a) a lease –
 - (i) granted for a consideration less than the full market value of the lease, whether paid as a lump sum or payable as rent, or for no consideration; and
 - (ii) for a lease granted before 31 March 2008 – in relation to which neither of the following payments has been made:
 - (A) an amount in relation to the grant of the lease that is equal to the lease's market value at the time of payment or, if the amount is paid in parts, at the time of the last payment;
 - (B) an amount to reduce the rent payable under the lease to a nominal rent under the *Land (Planning and Environment) Act 1991*, section 186 (Variation of lease to pay out rent); and
- (b) includes the following leases:
 - (i) a consolidated or subdivided concessional lease;
 - (ii) a further consolidated lease;
 - (iii) a regranted concessional lease.

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 ACAT section of the Notice of Decision for information about its relevance to this development application.

CONTACT DETAILS

The review authority is the ACAT.

Location	Contact details
ACT Civil and Administrative Tribunal Level 4, 1 Moore Street (the Health building) CANBERRA CITY ACT 2601	Website: www.courts.act.gov.au Email: tribunal@act.gov.au 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. 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 receiving this Notice of Decision. The time limit can be extended in some circumstances. Check with the ACAT for more details.

FEEES

Applications to the ACAT, including an application to be joined as a party to a proceeding, require payment of a fee (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; and
- Welfare Rights and Legal Centre, telephone (02) 6247 2177.

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 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	如果你需要译员的帮助，请打电话:
CROATIAN	Ako trebate pomoć tumača telefonirajte:
GREEK	Αν χρειάζεστε διερμηνεία τηλεφωνήστε στο
ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
MALTESE	Jekk għandek bżonn l-għajjnuna t'interpretu, čempel:
PERSIAN	اگر به ترجمه شفاهی احتیاج دارید به این شماره تکلن 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	