

2022

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**Government Response to Standing Committee on Planning, Transport and City Services:
Report 8—Inquiry into Giralang shops—Interim Report**

**Presented by
Mick Gentleman MLA
Minister for Planning and Land Management
April 2022**

Introduction

The ACT Government's priority for the Giralang Shops is to obtain the best outcome for the community with the greatest amount of certainty over what is to be delivered on the site (Giralang Section 79 Blocks 6 and 3, and Section 80 Block 4).

The Minister for Planning and Land Management on 25 July 2018 used ministerial call-in powers under the *Planning and Land Management Act 2007* to approve the development (DA 201833501). The Minister stated at the time that he used these powers to "signal the end to a long and frustrating journey for the people of Giralang".

The planning and land authority on 10 July 2020 granted an extension of time for the development to commence to 24 July 2023 pursuant to Section 188 of the *Planning and Development Act 2007*. The *Planning and Development Act 2007* does not allow the planning and land authority to grant any further extensions.

The Government understands the independent authority considered an extension of time would allow the lessee to continue negotiations with prospective tenants, which was preferable to the alternative of letting the development approval lapse, which would have created further delays and greater uncertainty.

While no update is available on when construction of the development may progress, two further applications have been made to the independent planning and land authority which relate to the original approval.

The Government heard during the inquiry about the difficulties that the limited supermarket size created in the delivery of the Giralang Shops and introduced a draft Territory Plan Variation to address the issue. Territory Plan Variation 381 (V381) was approved and tabled in the Assembly on 22 March 2022. V381 increases the maximum gross floor area (GFA) for shops in local centres from 1000m² to 1500m² by amending the Commercial Zones Development Code.

The Developer has stated that they have so far been unable to secure an anchor supermarket tenant which is integral to the viability of the development. The Developer has also publicly stated it is optimistic that this situation will be resolved soon following the preparation of the Territory Plan Variation 381, and commercial negotiations with a prospective supermarket tenant.

The Government understands and shares community concern at the lack of development at the site and hopes to see the current development approval acted upon and associated tenancies occupied in the near future.

ACT Government Response to the Standing Committee on Planning, Transport and City Services Interim Report 08 – Inquiry into Giralang Shops

Recommendation 1

The Committee recommends that the ACT Government write to owner of the Giralang Shops site outlining the process for surrendering a crown lease to the ACT Government and seeking confirmation from the developer that whether surrendering the lease is something they will consider.

Response

AGREED

The Minister for Planning and Land Management wrote to the lessee of Giralang Section 79 Block 6 on 17 February 2022 and provided advice outlining the process for surrendering a crown lease section 299 of the *Planning and Development Act 2007*.

The advice provided indicates:

- The lease in relation to Giralang, Section 79 Block 6 is silent on surrender, so the *Planning and Development Act 2007* (the Planning Act) is applicable. Section 299 of the Planning Act provides:
 - (1) a person who holds a lease may, at any time, with the consent of the planning and land authority, surrender the lease or part of the land comprised in the lease;
 - (2) the planning and land authority may agree to accept the surrender of a lease, or part of the land comprised in a lease, under subsection (1) either unconditionally or subject to any condition the authority considers appropriate.
- The surrender of a lease, or part of the land comprised in a lease, would then require compensation to be paid in accordance with sections 210 and 211 of the *Planning and Development Act 2007*. All outstanding monies (if any) would be required to be paid prior to completion of this transaction.
- The ACT Government acknowledges the Minister granted Development Approval on 25 July 2018 and as condition of this approval, works must commence by 24 July 2023. The Lessee is entitled to proceed with this development under the existing approval.

The ACT Government notes the processes to surrender a lease, identify an alternative custodian and subsequently develop the site may be lengthy and would not provide certainty to the community about the development outcomes at the site.

Recommendation 2

The Committee recommends that the owner of the Giralang Shops site respond to the ACT Government letter indicating their reasons for or against surrendering the crown lease.

Response

NOTED

This recommendation is addressed to the Developer.

Recommendation 3

The Committee recommends that the correspondence from Recommendations 1 and 2 be made publicly available.

Response

AGREED IN PRINCIPLE

The Minister for Planning and Land Management's correspondence dated 17 February 2022 is provided with this Government Response at [Addendum A](#).

Wherever possible, responses from the developer will be provided subject to compliance with commercial-in-confidence limitations, and freedom of information and privacy guidelines.

The Government notes the intention of the *Freedom of Information Act 2016* to have a pro-disclosure bias and discretions given under it be exercised as far as possible in favour of disclosing government information.

Recommendation 4

The Committee recommends that if the owner of the Giralang Shops site determines they will not surrender the crown lease to the ACT Government that the owner of the Giralang Shops site enter a Memorandum of Understanding with the ACT Government which outlines the steps that will be taken to progress the development and the timeframes for these.

Response

NOTED

An MOU with the Developer will not provide additional certainty to the community about the development outcome for the Giralang Shop site that is over and above that provided for by established statutory mechanisms, including development approval processes under the *Planning and Development Act 2007*. An MOU is typically only an expression of intent between parties to a partnership and is not legally binding or enforceable.

Entering into an MOU may also create challenges for regulators seeking to enforce the *Planning and Development Act 2007*.

On 25 July 2018, the Developer was provided an active development approval (DA 201833501). As a condition of this approval, works on the Giralang Shops must commence by 24 July 2023. The developer is entitled to proceed with this development under the existing approval and there is no obligation on the lessee to enter an MOU as part of the existing approval.

The ACT Government will continue to keep the community informed of actions taken in relation to the Giralang Shops site.

Recommendation 5

The Committee recommends that both the Owner of the Giralang Shops site and the ACT Government, in the Memorandum of Understanding, outline the steps they will take to support the progression and delivery of the Giralang Shops development.

Response

NOTED

Refer to the response to Recommendation 4.

Recommendation 6

The Committee recommends that the members of the Giralang community be included in the development of the Memorandum of Understanding.

Response

NOTED

Refer to the response to Recommendation 4.

Recommendation 7

The Committee recommends that the Memorandum of Understanding include but not be limited to the issues covered in the recommendations to this report.

Response

NOTED

Refer to the response to Recommendation 4.

Recommendation 8

The Committee recommends that the Memorandum of Understanding be made publicly available and be finalised no later than 30 June 2022.

Response

NOTED

Refer to the response to Recommendation 4.

Recommendation 9

The Committee recommends that should construction on the Giralang Shops site development have not recommenced by 30 June 2022 that the Memorandum of Understanding incorporate a clear and enforceable plan for temporary land use at the site so that the public can access and benefit from the social benefit intended from the zoning.

Response

NOTED

Further to the Government's response to recommendation 4, a Memorandum of Understanding has no legal or legislatively enforceable status in relation to the ACT Planning and Development framework.

Temporary site activation is permitted under the existing provisions of the *Planning and Development Act 2007*, with most temporary structures being exempt from requiring development approval. The Government welcomes site activation, particularly as a way to improve social connection and liveability.

Recommendation 10

The Committee recommends that the ACT Government write to seek advice on whether:

- *Harris Farm Supermarkets would consider opening in Canberra and in Giralang; and*
- *Woolworths, Aldi and IGA would consider opening in Giralang.*

Response

NOTED

The ACT Government recognises the importance of local shops and the value they generate for their communities, both in terms of economic opportunity, and community building. As per the current development approval of 2018, the ACT Government is supportive of the development of a supermarket at the Giralang shops.

The ACT Government will continue to work with the site owner and developer so that a suitable supermarket is developed, and that members of the Giralang community are afforded appropriate access to this vital service.

The ACT Government undertakes a range of investment attraction activities; however, these are typically a pitch for the whole of the ACT, or for sites owned by the ACT Government.

The ACT Government has some concerns that directly engaging with potential retailers may set an expectation that the ACT Government is able to enter into commercial negotiations for the establishment of a supermarket at the Giralang shops site. Direct approach from Government may also interfere with any commercial negotiations between the lessee and supermarket operators.

Recommendation 11

The Committee recommends that the owner of the Giralang Shops site outline how the site will be tidied and secured in accordance with unmet commitments by the owner of the shops site and to a standard agreeable to the Giralang Community.

Response

NOTED

This recommendation is addressed to the Developer.

Recommendation 12

The Committee recommends that the owner of the Giralang Shops site commits to a date for the timely delivery of the public realm improvements which they indicated would be delivered as part of the proposed development.

Response

NOTED

This recommendation is addressed to the Developer.

Recommendation 13

The Committee recommends that the owner of the Giralang Shops Site and the ACT Government report to the committee on progress of the recommendations in the interim report by July 2022.

Response

AGREED

The ACT Government has provided this response to the Interim Report which provides an update on the progress of the recommendations.

Addendum A



Mick Gentleman MLA

Manager of Government Business
Minister for Planning and Land Management
Minister for Police and Emergency Services
Minister for Corrections
Minister for Industrial Relations and Workplace Safety

Member for Brindabella

Mr Dimitri Nikias
Director, Giralang Property Pty Ltd
8 Geraldton Crescent
FYSHWICK ACT 2609
By email: mail@nikiasdiamond.com.au

Dear Mr Nikias

I am writing to you regarding the property Giralang Section 79 Blocks 6 and 3, and Section 80 Block 4 (the Giralang Shops site) for which Giralang Property Pty Ltd is the lessee.

The ACT Legislative Assembly Standing Committee for Planning, Transport and City Services (the Standing Committee) is undertaking an inquiry into Giralang Shops and presented an [Interim Report](#) in December 2021 (the Report). The Report contains six findings and 13 recommendations addressed to both the ACT Government and Giralang Property Pty Ltd.

In responding to the Report, I note the ACT Government's ongoing position in relation to the Giralang Shops is that the Government believes it is appropriate that the ACT community has certainty about when a local shopping centre will be realised at the Giralang Shops site (Giralang Section 79 Blocks 6 and 3, and Section 80 Block 4).

In working towards this outcome, I exercised my call-in powers under the *Planning and Land Management Act 2007* to approve the development (DA 201833501) on 25 July 2018. This action was taken in the interest of delivering an outcome for the community and to see the local shops re-developed in a timely manner. As a condition of this active approval works must commence by 24 July 2023. As the lessee for this site Giralang Property Pty Ltd is entitled to proceed with development as per this existing approval.

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Addendum A

I continue to believe the realisation of the develop DA 201833501 is the most likely prospect to achieve the desired outcome. However, I note Recommendation 1 of the Standing Committee's report states:

"The Committee recommends that the ACT Government write to owner of the Giralang Shops site outlining the process for surrendering a crown lease to the ACT Government and seeking confirmation from the developer that whether surrendering the lease is something they will consider."

In responding to this recommendation, I provided the following general advice about the procedures for voluntarily surrendering a lease to the ACT Government under *the Planning and Development Act 2007* (the Act).

- Section 299 of the Act provides:
 - (1) *A person who holds a lease may, at any time, with the consent of the planning and land authority, surrender the lease or part of the land comprised in the lease.*
 - (2) *The planning and land authority may agree to accept the surrender of a lease, or part of the land comprised in a lease, under subsection (1) either unconditionally or subject to any condition the authority considers appropriate.*
 - (3) *The surrender of a lease, or part of the land comprised in a lease, does not entitle the lessee to a refund or remission of any rent already paid or owing.*
- The surrender of a lease, or part of the land comprised in a lease, would then require compensation to be paid in accordance with sections 210 and 211 of the *Planning and Development Regulation 2008*.
- The amount payable on surrender of a lease is prescribed by Section 210 of the Regulation which states:

the lesser of the following amounts:

 - (a) *the amount paid for the grant or transfer of the lease to the lessee less any amount payable to, or incurred by, the Territory under section 211;*
 - (b) *the market value of the lease less any amount payable to, or incurred by, the Territory under section 211.*
- The amount payable may be limited by section 211, which states:

The planning and land authority may pay an amount mentioned in section 210 if—

 - (a) *the application for payment is made by the lessee—*
 - (i) *before the period for the lease's building and development provision has ended; or*
 - (ii) *because the lease has been terminated; and*
 - (b) *the planning and land authority is satisfied that it is not appropriate to consent to a transfer of the lease under the Act, section 298; and*
 - (c) *all outstanding amounts payable to the Territory in relation to the lease (including rates, land tax, stamp duty and land rent) have been paid; and*
 - (d) *all amounts incurred by the Territory in relation to the surrender or termination of the lease have been paid.*

Addendum A

I would appreciate your advice as to whether Giralang Property Pty Ltd would consider voluntarily surrendering a lease to the ACT Government. I note the ACT Government has taken no actions in relation to considering the surrender of these leases except for the preparation of this general advice and will take no further action unless advice is received from Giralang Property Pty Ltd.

I look forward to advice on when the local shopping centre services will be realised at the Giralang Shops for the ACT community.

Yours sincerely



Mick Gentleman MLA

17/2/2022