



Legislative Assembly for the
Australian Capital Territory

Standing Committee on Environment
and Planning

Submission Cover Sheet

Inquiry into the use of controlled activity orders

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Submitter: Belconnen Community Council

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Standing Committee on Environment and Planning
ACT Legislative Assembly
GPO Box 1020
Canberra ACT 2601

Via LACommitteeEnvironment@parliament.act.gov.au

Dear Committee,

Inquiry into the use of controlled activity orders

The Belconnen Community Council (BCC) welcomes the opportunity to contribute to the Committee's inquiry into controlled activity orders (CAOs).

CAOs can provide a useful, relatively low-cost way to ensure Crown leaseholders meet their obligations and land delivers the outcomes for which it was leased.

The ACT Government needs to use this existing tool more regularly, consistently, and transparently.

This requires a clear process to identify non-compliance, decide when enforcement should occur, escalate persistent breaches and report on outcomes.

A clear framework would give leaseholders greater certainty, hold the Government more accountable and, importantly, give communities confidence that Crown lease land will not simply sit unused or underused indefinitely.

Residents should not have to chase Access Canberra before it uses these powers. Access Canberra should apply this tool regularly, consistently and transparently on behalf of the community.

Yours sincerely

Lachlan Butler
Chair



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Controlled activity orders are an enforcement tool, not a punishment

The first step toward a consistent CAO system should be to explain clearly what the tool does and why it is used.

The Planning Act 2023 gives the Territory Planning Authority power to make a controlled activity order, either on its own initiative or following an application.

That power can achieve several practical outcomes. A CAO can direct a person to comply with a lease provision or development agreement, restore land or buildings that have fallen into disrepair, comply with a development approval, clean up and maintain a leasehold, or stop undertaking a controlled activity.

These outcomes point to the central purpose of the tool: a CAO should bring a leaseholder into compliance. Once this purpose is clear, it can also make the process easier to understand by publishing accessible guidance explaining when it may consider a CAO, the process it follows and the circumstances in which further enforcement may follow.

Clear understanding of the process will help the community see Crown lease enforcement as a normal part of the planning system rather than an exceptional or politically motivated intervention.

The need for a clear and proportionate enforcement framework

Clear understanding of the process alone will not make CAOs effective. Access Canberra needs to set out when and how to use the power.

For this reason, the most important recommendation from this inquiry is for Access Canberra to establish a clear enforcement framework for lease non-compliance.

This matters because a CAO only changes behaviour when leaseholders expect persistent non-compliance to trigger enforcement. A statutory power on paper does not guarantee effective enforcement in practice. The deterrent effect depends not only on the severity of the consequence, but also on whether leaseholders believe Access Canberra will apply it.

This point becomes particularly important when the Committee considers land banking. If Access Canberra applies its enforcement clearly and consistently, leaseholders have a stronger reason to use land for its leased purpose rather than leave it unused while they wait for circumstances to change.

Existing legislation already gives Access Canberra a broad range of enforcement options, from engagement and notices through to controlled activity orders, penalties and lease termination. That breadth provides a sound foundation. The problem, from the



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community's perspective, lies in the lack of visibility around how Access Canberra moves between those options and when it decides to escalate.

This framework would still allow legitimate circumstances to be considered. The BCC does not suggest that every breach should automatically trigger a CAO, or that every CAO should lead to lease termination. Legitimate planning, financial, construction and legal circumstances can sometimes justify additional time, as can a genuinely temporary vacancy or delayed development.

At the same time, those considerations should not allow prolonged non-compliance to continue indefinitely. When a leaseholder persistently fails to use land for its leased purpose, there should be a clear point at which formal enforcement, including repeat and escalating fines, is considered.

This approach would also help address land banking without intervening directly in a site's ownership or development. The BCC therefore recommends that the Government establish and publish an enforcement framework for significant or persistent lease non-compliance.

This should give leaseholders and the public a reasonable understanding of how Access Canberra makes enforcement decisions. Access Canberra should respond early to non-compliance, take genuine circumstances into account and escalate enforcement when non-compliance persists.

Transparency would improve public confidence

A consistent framework will work better when the community can see how it is used. Greater transparency around lease compliance and enforcement would therefore improve public confidence.

For residents, one of the most frustrating aspects of prolonged problems at particular sites is not knowing what action is or will be taken. They can see when land sits vacant, underused or deteriorating, and they may know lease conditions apply. What they often cannot see is whether Access Canberra has identified the issue, contacted the leaseholder, or considered or taken enforcement action. The community's experience with both Big Splash and the Hawker Tennis Centre demonstrates this gap.

That gap creates an obvious opportunity for greater transparency. The BCC recommends that the ACT Government establish a public register of controlled activity orders and significant Crown lease compliance matters, subject to appropriate privacy and commercial considerations.



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A register would take the onus off residents to push for enforcement and reduce speculation about whether the Government knows about an issue or has acted on it.

The BCC recognises the register would carry a resourcing cost, and the Government would need to define its scope carefully so it does not become a vehicle for vexatious complaints. Nevertheless, the Government should consult on its design while starting from a clear principle: the existence and status of a CAO should normally count as public information, rather than information residents must extract case by case.

The Government should reinforce this transparency through regular reporting on Crown lease compliance and enforcement. Reporting should cover complaints, formal enforcement, CAOs issued and complied with, CAOs contravened, penalties, further enforcement and lease terminations.

Use existing powers before creating more expensive interventions

Transparency would show whether the framework is used, while effective use of the framework could also reduce the need for more expensive intervention.

A properly functioning CAO framework provides a comparatively low-cost way to achieve public outcomes.

When an important site does not deliver the outcome intended under its lease, the Government may consider acquisition, redevelopment, financial support or changes to planning arrangements. Those interventions can involve significant public expenditure.

Greater and more timely use of existing lease enforcement powers could achieve the same or better outcome at a lower cost.

In other words, Access Canberra should make full and effective use of the regulatory tools already available to it. Used properly, CAOs can occupy the middle ground between doing nothing and the Government spending significant public money to fix, acquire or redevelop a site or provide an alternative facility.

Penalties and the question of effectiveness

The same principle should guide the Committee's consideration of penalties. A stronger maximum penalty may help, but only if used as part of credible enforcement.

The Minister for Planning has said publicly that he does not consider the range of penalties under the Planning Act high enough, and has flagged a review of enforcement powers and penalties.



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The BCC is not aware of any examples where penalties have been applied to a leaseholder's non-compliance with the conditions of their lease. If Access Canberra has not used the existing penalties even where non-compliance remains clear and prolonged, little evidence suggests that simply raising the maximum penalty will fix the underlying problem.

A substantially higher penalty could provide a stronger deterrent. However, it will only do so if the ACT Government also improves the credibility and consistency of enforcement.

The Committee should therefore assess any proposed increase alongside evidence about how existing penalties are used. The objective should be to make penalties an effective part of the overall enforcement framework, rather than simply raise the size of a penalty it rarely applies.

Conclusion

The ACT does not necessarily need more enforcement powers. It needs the Government to use its existing powers consistently.

The ACT does not need a system where every failure immediately results in a large fine or lease termination. It does, however, need a system where Crown lease obligations carry real weight, enforcement remains predictable, Access Canberra acts transparently and prolonged non-compliance does not continue indefinitely.

Controlled activity orders can form an important part of this system. They can help achieve outcomes without immediately resorting to costly acquisition, redevelopment or subsidy, provided they are used as part of a credible and consistent enforcement.

The BCC encourages the Committee to recommend a clear and transparent approach to enforcement. Leaseholders should have a fair opportunity to comply, but the community should also know that Government will act when Crown lease obligations are ignored.



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About the BCC

- The Belconnen Community Council (BCC) is a non-partisan, volunteer-driven organisation that aims to be at the forefront of advocating for our region, making it an even more attractive place to live, work, and enjoy life.
- The BCC represents the interests of its members and the community to the ACT Government and other stakeholders on various matters affecting the people who live, work, and play in the Belconnen District.
- The Belconnen Community Council receives support and funding from the ACT Government.

