



**NOTICE OF DECISION - CONTROLLED ACTIVITY ORDER
SECTION 427 *PLANNING ACT 2023***

BLOCK 8 SECTION 88 SUBURB McKellar

Lessee: [REDACTED]

1. THE DECISION

In accordance with Section 427 of the *Planning Act 2023*, I Mathew Bond, delegate of the Territory Planning Authority hereby make the controlled activity order attached to this notice.

2. FACTS

1. On 13 September 2004, the Crown Lease (1063455) had been granted. The Memorandum of the provisions 2,000,011 has been registered in the registrars-general officer and/or any provisions set out in any annexure are part of this Crown Lease (Attachment A).
2. On 02 November 2004, the Crown Lease was transferred into joint tenants which were [REDACTED] and [REDACTED].
3. The Crown Lease for the Block identifies all the rights and obligations of the lessees in relation to the Block. Section 2 of The Memorandum of provisions (MOP) 2,000,011 states the lessee's obligations. Specifically, MOP 2,000,011 clause 2.6 states that the land must be used in relation to its purpose and that the lessee complies with clause 3.2. (Attachment B).

The purpose in which the land can be used for is for a single dwelling only. This is shown within section 5 of the Crown Lease. The definition of single dwelling is:

Single dwelling housing means the use of land for residential purposes for a single dwelling only.

4. On 29 November 2006 a letter was sent from the Environment, Planning and Sustainable Development Directorate (EPSDD) (the Authority) previously known as the ACT Planning and Land Authority to the lessees outlining the breaches of the Crown Lease and the method by which those breaches may be resolved. The letter asked the lessees to either address the breaches or provide a response to the Authority regarding the breaches within 28 days. No response was received by the Authority at the time (Attachment C).
5. On 04 January 2007, a letter was sent from the Authority to the lessees explaining the order making process in relation to the identified Crown Lease breaches and asking the lessees to provide a response to the initial letter dated 29 November 2006. To date a response to this letter has not been received by the Authority (Attachment D).

6. On 05 February 2007 a letter was sent from the Authority to the lessees, informing the lessees that the Authority was issuing a notice under s255 of the *Land (Planning and Environment) Act 1991* that the Authority was considering making an order against the lessees in relation to the breaches of the Crown Lease. The letter asked the lessees to provide a response to the notice within 7 days. A response was not received at the time (Attachment E).
7. On 29 February 2012, a letter was sent from the ESPDD outlining the breaches of the Crown Lease and the method by which those breaches may be resolved (Attachment F).
8. On 09 May 2012 officers from the Authority conducted an inspection of the Block. The inspection revealed that no development had occurred on the Block (Attachment G).
9. On 21 February 2013, a letter was sent from the Authority outlining the breaches of the Crown Lease and the method by which the breaches may be resolved. The letter also stated that failure to resolve the breaches is a ground for terminating the lease under section 382 of the *Planning and Development Act 2007* (the Act). The letter asked the lessees to lodge an application with the Authority to extend the lease development covenants within 28 days after receiving the letter. This letter was sent by registered post, and a response to this letter was not received by the Authority (Attachment H).
10. On 03 May 2013 officers from the Authority conducted an inspection of the Block. The inspection revealed that no development had occurred on the Block (Attachment I).
11. On 25 June 2013 officers from the Authority conducted an inspection of the Block. The inspection revealed that no development had occurred on the Block (Attachment J).
12. On 29 July 2013, the Authority served a Notice of Intention to Terminate the Crown Lease at Block 8 Section 88 McKellar dated 26 July 2013 on the lessee's (Attachment K).
13. On 15 August 2013 Building Approval (BA) 20133746 was issued by Certifier CTECK HOP LTY LTD for a DA-exempt residence, garage, alfresco and porch.
14. On 19 August 2013, the Authority received submissions from the lessees in relation to the notice dated 26 July 2013. The submission highlighted [REDACTED] [REDACTED] as well as demonstrated that a licensed builder had been engaged (Attachment L).
15. On 20 December 2013, Kevin Rochford, a delegate of the Authority, decided to terminate the Crown Lease at Block 8 Section 88 McKellar (Attachment M).
16. On 30 January 2014, the lessees made an application to the ACT Civil and Administrative Tribunal for a review of the decision dated 20 December 2013 to terminate the Crown Lease (Attachment N).
17. On 27 May 2014, the Authority issued a Show Cause Notice pursuant to s353 of the Act. The Show Cause Notice allowed 10 working days for the lessees to make submissions in relation to the Authority's consideration to issue a Controlled

Activity Order on the Block (Attachment O).

18. On 6 June 2014, the lessees provided a submission in relation to the Show Cause Notice issued on 27 May 2014. In their submissions the lessees did not dispute that it would be appropriate for the Authority to issue a Controlled Activity Order, and they requested that the Authority allow them until 31 March 2015 to complete the development after considering their circumstances (Attachment P).
19. On 11 September 2014, an extension of time had been granted for the period of 13 September 2005 to 31 March 2015 for the completion of development and facilities under clauses 2.4 and 2.5 of the Crown Lease (Attachment Q).
20. On 13 March 2015, BA (B2015938) was issued by Certified Building Solutions PTY LTD for the construction of a DA exempt residence, garage, alfresco, porch, and swimming pool. The Licensed builder for this project was Kascon Projects Pty Ltd (Lic 2013548).
21. [REDACTED]
22. From November 2008 to November 2025, the ACT Government has received several controlled activity complaints regarding this block. Complaints raised numerous issues relating to the uncleanliness, lack of site maintenance, non-compliance with the Crown Lease and the building had not been completed.
23. On 2 November 2023, a monitoring inspection had been undertaken by building inspectors from the Compliance, Monitoring Inspection Team (CMIT), Access Canberra. The inspection identified that although the site has temporary fencing placed along the front of the premises, both ends of the fencing are accessible. The site has not been maintained as the grass, weeds and alike are overgrown and may attract vermin/animals. At the time of the inspection there were no signs that any building work was being undertaken (Attachment R).
24. Access Canberra records show that the last active building approval was issued on 13 March 2015, and a Certificate of Occupancy and Use has not been issued for the construction of a dwelling. [REDACTED]
25. On 09 September 2025, a monitoring inspection had been conducted by CMIT. The inspection observed that the front boundary still had temporary fencing in place, however a large amount of dirt had been dumped on the block. The inspection also observed that parts of the dwelling have been vandalised, smashed, and deteriorated and in need of replacement or repair (Attachment S).
26. On 24 September 2025, a site inspection was conducted by CMIT and the Construction Audit Team. Both inspectors accessed the premises under section 131 of the *Building Act 2004*.

The inspection observed multiple non-compliances across the site. Non-compliances have had been caused by a lack of progress on the site causing the timber elements and unprotected external elements to become weathered and damaged. Additionally, vandalism is causing damages to window furnishings and internal areas of the dwelling to degrade and be noncompliant to NCC and Australian standard provisions.

The reassessment of energy efficiency certificate would be required to ensure the existing EER score has not been compromised due to delays in construction, and the existing score is compliant to achieve Building (General) provisions (Attachment T).

27. The block has not been adequately secured and maintained resulting in numerous incidents of trespassing, which has increased the risk of harm to the public by allowing members of the public to enter the dwelling. As the building was not completed and occupied without a Certificate of Occupancy and Use, there has been a failure by the lessees to safeguard the maintenance and security of the block to ensure access restrictions to the public.
28. Since mid-2024 Inspectors from CMIT have made multiple attempts to reach compliance which have been progressed through educative and low-level compliance measures without success.
29. On 11 November 2025 a show cause notice was issued to lessees [REDACTED] and [REDACTED] in relation to failing to comply with a provision of a lease and failing to use the land for a continuous period of at least 1 year for the purpose for which the lease over the land that is granted and for not using the land for its purpose.
30. On 24 December 2025, an email received by [REDACTED] in which the email provided a scanned copy of the lessee's response to the show cause notice, as the mailed copy of the response had not been received.
31. On 22 January 2026 [REDACTED] provided a written consent letter from the lessee, allowing [REDACTED] to act on behalf of the lessee.

3. REASONS FOR THE DECISION

Consideration has been taken regarding to Access Canberra Regulatory Enforcement Policy, and the response made to the show cause notice provided by the lessee. This investigation has been progressed through educative and low-level compliance measures without success.

The lessees have demonstrated a history of non-compliance with the provision of a lease and have failed to comply with Schedule 4, item 10 of the Act, failing to use the land for a continuous period of at least 1 year for the purpose for which the lease over the land that is granted and for not using the land for its purpose.

The lessees have also demonstrated a history of non-compliance with the provision of a lease and have failed to comply with clauses 2.4, 2.5 and 3.5 (a) and (b) of the Memorandum of Provisions dating back to 2015. I'm aware however that the lessee's are now in contact with Access Canberra to resolve this issue.

Regarding a new Building Approval and seeking assistance from your private certifier. Further advice regarding this matter has been outlined in the corresponding email.

I am satisfied that a Controlled Activity Order is warranted to be issued in order to ensure that the non-compliance is addressed in a timely manner and in order to reach a resolution to the above issues.



Mathew Bond
Delegate of the Territory Planning Authority under the *Planning Act 2023*

23 January 2026



CONTROLLED ACTIVITY ORDER

This is a Controlled Activity Order (Order) made by the Territory Planning Authority under section 427 of the *Planning Act 2023* (PA)

Part 1. THIS ORDER IS DIRECTED TO

[REDACTED]

Part 2. PREMISE IN WHICH THIS ORDER RELATES (THE LAND)

N/A	BLOCK 8	SECTION 88	DIVISION of McKellar
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Part 3. GROUNDS ON WHICH THIS ORDER IS MADE

1. [REDACTED] is the lessee and registered proprietor of the land as identified in Part 2, which is leased from the Commonwealth under Crown lease registered Volume 1703 Folio 9 (the lease)
2. The lessees are conducting the following controlled activities: -

Schedule 4, item 1, failing to comply with a provision of a lease,

Schedule 4, item 10, failing to use the land for a continuous period of at least 1 year for the purpose for which the lease over the land that is granted and for not using the land for its purpose.

Specifically the lessee is to meet the lease provisions as stated in Memorandum of Provisions (MOP 2000011) specifically, not using the land for a continuous period of at least 1 year for the purpose for which the lease over the land is granted, not using the land for its purpose and failing to comply with the new building and development provision requiring works to be commenced and completed within a stated time and
3. The above activities are listed in Schedule 4 of the PA and are subject to the controlled activity order process under the PA.

Part 4. THIS ORDER DIRECTS THE ENTITY OUTLINED IN PART 1 TO

1. In accordance with section 429 (3)(c) The lessee is to no later than **31 July 2026** comply with a lease provision or development agreement;

Specifically the lessee is to meet the lease provisions as stated in Memorandum of Provisions (MOP 2000011) specifically, not using the land for a continuous period of at least 1 year for the purpose for which the lease over the land is granted, not using the land for its purpose and failing to comply with the new building and development provision requiring works to be commenced and completed within a stated time and
2. In accordance with section 429 (3)(n) The lessee is to keep from doing anything that is a controlled activity whether a controlled activity order has been, or could be, made under paragraphs (a) to (m).



Part 5. THIS ORDER TAKES EFFECT


This Order takes effect on 26 January 2026

Part 6. PERIOD FOR COMPLIANCE WITH THE ORDER Part 7. ENDING OF ORDER


The entity identified in Part 1, must within, 30 days from the date identified in Part 8, comply with the directions outlined in Part 4.

THIS ORDER OPERATES UNTIL IT IS REVOKED

Part 8. EXECUTION


Mathew Bond
Delegate of the Territory Planning Authority
under the *Planning Act 2023*
23 January 2026

Part 9. CONTACT OFFICER

Mathew Bond Inspector	
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Important Information

REVIEW OF THE DECISION

The following notes are provided in accordance with regulation 7 of the *ACT Civil and Administrative Tribunal Regulation 2009*. You may apply to the ACT Civil and Administrative Tribunal (ACAT) for an administrative review of this decision.

CONTACT DETAILS

The review authority is the ACT Civil and Administrative Tribunal (ACAT).

Location	Contact details
Allara House 15 Constitution Avenue CANBERRA CITY ACT 2601	Website: www.acat.act.gov.au Email: tribunal@act.gov.au Telephone: (02) 6207 1740 Facsimile: (02) 6205 4855 Post: GPO Box 370, CANBERRA, ACT, 2601

APPLICATIONS TO THE ACAT

To apply for a review, obtain an application form from the ACAT. You can also download the form from the ACAT website <https://www.acat.act.gov.au/case-types/review-of-act-government-decisions>.

TIME LIMITS FOR APPLICATIONS

The time limit to make a request for a review is 28 after the day the decision to be reviewed is made or other time as allowed by ACAT (refer to s10 of the *ACT Civil & Administrative Tribunal Act 2008*).

FEES

Applications to the ACAT, including an application to be joined as a party to a proceeding, require payment of a fee. 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*).

APPLICATIONS TO THE SUPREME COURT

This decision may also be reviewable in the ACT Supreme Court pursuant to the provisions of the *Administrative Decisions (Judicial Review) Act 1989*.

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 τηλεφωνήσετε 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	Ако вам је потребна помоћ преводиоца телефонирајте:
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