

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: 09 January 2015		
BLOCKS: 6, 7 & 9	SECTION: 69	SUBURB: Lyneham
STREET NO AND NAME: 1 RANDWICK RD, LYNEHAM		
LESSEE: CANBERRA RACING CLUB INCORPORATED		

On 26 July 2014, the Minister for Planning, requested the planning and land authority (authority), within the Environment and Planning Directorate (EPD), to determine the concessional or market value status of the Crown lease over the above blocks under Section 258 of the *Planning and Development Act 2007 (Act)*.

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, Maggie Chapman, delegate of the planning and land authority, pursuant to section 258 of the *Planning and Development Act 2007* hereby give notice that the Crown lease over **Blocks 6, 7 and 9 Section 69 Lyneham** (Volume 1846: Folio 68) is a **market value lease**.

2 LEASE DECISION NOTICE

Section 258(5) of the Act provides that the authority must give written notice of the intention to determine the status of the lease under Section 258 to the lessee and any other entity with a registered interest in the lease to which the decision relates.

On 15 September 2014, the authority wrote to the lessee and the interested parties to advise of the intention to determine the status of the Crown lease, and advised that representations in relation to this matter should be submitted by 8 October 2014.

No representations were received.

3 REASONS FOR THE DECISION

An examination by the authority of the leasing status of **Blocks 6, 7 and 9 Section 69 Lyneham** has confirmed the following facts:

1. The Canberra Racing Club Incorporated was originally located on Blocks 2 and 3 Section 69 Lyneham. Block 14 Section 71 Lyneham was granted to the ACT Racing Club in July 2001 conditional upon it being consolidated with Blocks 2 and 3. The consolidated block was identified as Block 4 Section 69 Lyneham.
2. Both Blocks 2 and 3 were rental leases. The percentage rent for Block 2 was determined at 5% per annum of the site value. While Block 3 was a rental lease, the lease did not specify either a minimum rent or a percentage rent payable.
3. As part of the negotiations that resulted in the creation of Block 4, the Territory agreed that the payout of the land rent for Blocks 2 and 3 Section 69 Lyneham would be staged over three years from the date of commencement of the consolidated lease. Therefore, although the lease for Block 4 was a nominal rent lease, provision was made to accommodate the staged payout of the land rent commitments from the former Blocks 2 and 3.
4. The final 'instalment' was paid on 8 October 2004.
5. Block 4 was subsequently subdivided into a lease over Blocks 6, 7 and 9 Section 69 Lyneham and a lease over Block 8 Section 69 Lyneham. The lease over Blocks 6, 7 and 9 Section 69 Lyneham was granted on 6 November 2006. Block 8 was subsequently sold.
6. The Crown lease over Blocks 6, 7 and 9 Section 69 Lyneham was granted on 9 May 2008 under the *Land (Planning and Environment) Act 1991*. The lease commenced on the date of grant and terminates on 9 October 2100.
 - i. The lease is a nominal rent lease, requiring payment of 5 cents per annum if and when demanded.
 - ii. The purpose clause permits the land to be used for the purpose of an outdoor recreation facility consisting of a racecourse facility restricted to a racecourse, training track, equestrian facilities and associated activities including ancillary to this use:
 - (A) Residential accommodation,
 - (B) The sale of horses,
 - (C) The telecasting or broadcasting of race meetings,
 - (D) Sports betting facilities, and
 - (E) A licensed club for members of the Canberra Racing Club Incorporated not exceeding 1000 square metres of gross floor area to be used in conjunction with the racecourse facility.

IN ADDITION the premises may also be used for one or more of the following purposes:

- (A) Community activity centre LIMITED TO indoor community meetings including religious services,
- (B) Emergency services facility,
- (C) Outdoor recreation facility LIMITED TO an 18 hole pitch and putt golf course and ancillary golf shop,
- (D) Tourist facility LIMITED TO trade, art and craft exhibitions, and

(E) Ancillary offices and caretaker's residence.

Legislative requirements

Section 235C of the Act defines the meaning of a **possibly concessional** lease as follows:

- (1) For this Act, a lease is possibly concessional if the lease –
 - (a) was granted-
 - (i) before 31 March 2008; or
 - (ii) after 30 March 2008 and before the commencement of this section under the *Land (Planning and Environment) Act 1991*; and
 - (b) does not include a statement, in the lease or a memorial to the lease –
 - (i) that the lease is a concessional lease; or
 - (ii) to the effect that the lease is a market value lease; and
 - (c) is mentioned in schedule 5, part 5.3.
- (2) However, a lease is not **possibly concessional** if the lease is also mentioned in schedule 5, part 5.2.

The lease is not mentioned in schedule 5, part 5.2.

The lease over **Blocks 6, 7 and 9 Section 69 Division of Lyneham** was granted under the *Land (Planning and Development) Act 1991* after 31 March 2008 and does not include a statement regarding the concessional status.

The lease is, therefore, a 'possibly concessional' lease because it is mentioned in Item 8 of Schedule 5, part 5.3.

Payout of Rent

The rent for the initial lease over Block 2 was 5% per annum which was market value rent. While the lease over Block 3 does not indicate the percentage rent payable, the files inform the rent payable was 5% of the site value.

As noted above, the land rent was paid by instalments prior to the grant of the current lease over Blocks 6, 7 and 9 Section 69 Lyneham. Therefore, the Territory has received the full market value for the lease.

Having considered all of the above, the Authority concludes that the Crown lease over Blocks 6, 7 and 9 Section 69 Lyneham is a **market value lease** as defined in section 235B of the *Planning and Development Act 2007*.

REVIEW BY THE ACT ADMINISTRATIVE APPEALS TRIBUNAL (AAT)

This decision is reviewable by the AAT as identified in Schedule 1 of the *Planning and Development Act 2007*. The attached notes are provided in accordance with the ACT Administrative Appeals Tribunal (AAT) Code of Practice.

WRITTEN NOTICE TO INTERESTED PARTIES

In accordance with section 257(5) of the *Planning and Development Act 2007*, written notice of this decision will be sent to the interested party (the Lessee) in relation to the written application.

4 EVIDENCE

Current Crown lease, (Blocks 6, 7 and 9 Section 69 Lyneham (Vol 1846:Folio 68)
The surrendered Crown lease over Block 4 Section 69 Lyneham (Vol 1618: Folio 97)
The surrendered Crown lease over Block 3 Section 69 Lyneham (Vol 1541: Folio 63)
The surrendered Crown lease over Block 2 Section 69 Lyneham (Vol 1541: Folio 58)
The Territory Lease files for all the above blocks.

DELEGATE

Maggie Chapman
Delegate of the planning and land authority
09 January 2015

REVIEW OF THE DECISION

The following notes are provided in accordance with the ACT Administrative Appeals Tribunal (AAT) *Code of Practice for Notification of Reviewable Decisions and Rights of Review*.

CONTACT DETAILS

The review authority is the Administrative Appeals Tribunal (AAT).

Location	Contact details
Tribunals Branch Magistrates Court 4 Knowles Place CANBERRA ACT 2601	Website: www.courts.act.gov.au Email: tribunals@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 AAT

The AAT 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 AAT 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 AAT recommendations.

APPLICATIONS TO THE AAT

To apply for a review, obtain an application form from the AAT. 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 AAT for more details.

FEES

Applications to the AAT, including an application to be joined as a party to a proceeding, require payment of a fee of not less than \$184 (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 62 of the *Administrative Appeals Tribunal Act 1989*). 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 AAT for more details.

TIME LIMITS FOR REVIEWS OF DECISIONS

The AAT 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 AAT 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 AAT also has the power to award costs against a party if the party contravenes a direction of the AAT and the AAT considers it in the interests of justice to make such an order. This power is in addition to the power of the AAT to strike out a party and to dismiss an application for failure to comply with the AAT'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 ACT Planning and Land Authority's web site or by contacting us by phone on (02) 6207 1923.

PROCEDURES OF THE AAT

The procedures of the AAT are outlined on the AAT's website, including in the Guide to the Land and Planning Division and the Guide to the Hearing. Contact the AAT for alternative ways to access information about the AAT'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, òmpel:
PERSIAN	: اگر به ترجمه شفاهی احتیاج دارید به این شماره تلفن کنید:
PORTUGUESE	Se você precisar da ajuda de um intérprete, telefone:
SERBIAN	Ako vam je potrebna pomoć prevodioca telefonirajte:
SPANISH	Si necesita la asistencia de un intérprete, llame al:
TURKISH	Tercümana ihtiyacımız 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

From: [Andrew Clark](#)
To: [Sare, Irma](#)
Cc: [Rowan Cumming](#); [Kieran Fordham](#)
Subject: FW: CRC - Lease Determination
Date: Wednesday, 24 February 2021 5:13:26 PM

CAUTION: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Hi Irma

As per the email below would you be able to provide me the determination on Canberra Racing Club's crown lease?

Your assistance is greatly appreciated.

Regards

Andrew Clark FCA
Chief Executive Officer
Canberra Racing Club
Telephone: 02 - 6204 0000
Mobile: [REDACTED]
E-mail: [REDACTED]@thoroughbredpark.com.au
Internet: www.thoroughbredpark.com.au

This communication is confidential and may contain legally privileged information. By the use of email over the Internet the Canberra Racing Club is not waiving either confidentially of, or legal privilege in, the content of the email and of any attachments. If the recipient of this message is not the intended addressee please call the Canberra Racing Club immediately on 02) 6204 0000.

From: Rowan Cumming [REDACTED]@lockbridge.com.au>
Sent: Wednesday, 24 February 2021 4:04 PM
To: Andrew Clark [REDACTED]@thoroughbredpark.com.au>
Cc: Kieran Fordham [REDACTED]@lockbridge.com.au>
Subject: CRC - Lease Determination

Hi Andrew,

I contacted leasing within EPSDD today to chase down the determination on CRC's crown lease.

Irma Sare confirmed for me that it is a market lease and that the determination was provided to the Race Club manager back in 2015. I requested a copy but I would need your authorisation for her to issue it to me.

It would likely be a simpler process if you contact Irma directly and requested a copy of the determination provided in 2015. Her email address is Irma.sare@act.gov.au

Can you please let me know if you are happy to chase this up?

Kind regards,

Rowan Cumming

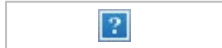
Consultant

M [REDACTED]

E [REDACTED]@lockbridge.com.au

W www.lockbridge.com.au

Unit 2, Ground Floor, 101 Northbourne Avenue, Turner ACT 2612



Disclaimer: This email & any attachments may be confidential and legally privileged. We do not guarantee this email is error or virus free.

From: [Messer, Sue](#)
To: [Gravitis, Jason](#)
Subject: RE: Confirmation of club leases to be determined
Date: Wednesday, 27 August 2014 11:08:19 AM
Attachments: [Signed letter from Minister Gentleman to Dorte Ekelund..obr](#)

Thanks Jason

Can you please do a determination of all of the blocks referred to in the attached letter. I know that some of them are not concessional such as 6, 7 and 9 Section 69 Lyneham. However, the letter requests that we do a determination on all of those not previously determined.

The blocks are:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
6,7 & 9/69 Lyneham (market value)

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Thanks

Susan Messer | Manager
DA Leasing
Phone 02 6207 2869
Lease Administration | Environment and Planning | **ACT Government**
Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | www.environment.act.gov.au


From: Gravitis, Jason
Sent: Wednesday, 27 August 2014 10:58 AM
To: Messer, Sue
Subject: Confirmation of club leases to be determined

Hi Sue

I've put your Small Clubs docs back on your desk.

The list as I understand it of leases that are required to be determined is:...

[REDACTED]



Can I please just ask you to confirm these and also to forward an instruction (perhaps with the letter from the Minister to the DG with the direction to determine them) so we have a reason for doing the determinations on file?

Regards

Jason Gravitis

Phone 02 6207 0027

Planning Delivery Division | Environment and Planning Directorate | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 |

www.environment.act.gov.au

Hill, Elizabeth

From: Messer, Sue
Sent: Thursday, 28 August 2014 2:58 PM
To: Gravitis, Jason
Subject: RE: Confirmation of club leases to be determined

Follow Up Flag: Follow up
Flag Status: Flagged

Sorry Jason

[Redacted]

Susan Messer | Manager

DA Leasing

Phone 02 6207 2869

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From: Gravitis, Jason
Sent: Thursday, 28 August 2014 2:56 PM
To: Messer, Sue
Subject: RE: Confirmation of club leases to be determined
Importance: High

Hi Sue

[Redacted]

Thanks in advance

Jason G

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The blocks are:



6,7 & 9/69 Lyneham (market value)



Thanks

Susan Messer | Manager

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From: [Gravitis, Jason](#)
To: [Saad, Monica](#)
Cc: [Corrigan, Jim](#); [Crowe, Lindsay](#)
Subject: Status of Determinations Requested by Minister
Date: Thursday, 4 September 2014 4:57:00 PM

Hi Monica

Further to our recent discussion, below is a list from our newly developed tracking spreadsheet listing the determinations as requested by the Minister.

Following research of the past DA, TL, LTO and SP files, the status of some are definitely known/previously determined (in bold). Those that I think there is evidence that the leases have been identified previously as MV/concessional (but have not yet found the evidence on file for) are in italics. Those that are required to be determined/completely unknown at this point in time are marked with '?'.

I trust this is of some assistance. Please let me know if further information is required!

Regards

Jason G

Authority	Block	Section	Suburb	Lessee	Status
Minister					
Minister					
Minister					
Minister					
Minister					
Minister					
Minister					
Minister	6, 7 & 9	69	LYNEHAM	Canberra Racing Club Incorporated	<i>?Market Value?</i>
Minister					

Jason Gravitis
Phone 02 6207 0027



ACT
Government

Environment and Planning



Dear 

INTENTION TO DETERMINE STATUS OF CROWN LEASE (AS CONCESSIONAL OR MARKET VALUE)

Crown Lease(s): Block 6 Section 69 Division/District Lyneham
Lessee: Canberra Racing Club Incorporated

I refer to the above Crown lease held by the Canberra Racing Club Incorporate, in which you have an interest registered against the Crown lease at the ACT Land Titles Office.

I wish to advise that it is the intention of the planning and land authority (within the Environment and Planning Directorate (EPD)) to make a formal decision under section 258 of the *Planning and Development Act 2007* (the Act) as to whether the Crown lease for the above block is a concessional lease or market value lease.

If you feel the decision (whether the lease is concessional or market value) may affect your interests in any way and you wish to make a written representation to EPD, please forward your comments to the following address:

Manager –Leasing DA
Planning Delivery Division
Environment & Sustainable Development Directorate
GPO Box 1908
CANBERRA ACT 2601

Alternatively, you may wish to email your representation to: ACTPLADALEasing@act.gov.au
Your written representation must arrive by close of business **8 October 2014**. The EPD is required to consider any representations made in the time given and once the assessment has been completed you will be provided with a written notice of the decision(s).

Further information on the provisions of the *Planning and Development Act 2007* is available online from the ACT Legislation Register at www.legislation.act.gov.au Please contact me on 6207 2869 (or alternatively by email via ACTPLADALEasing@act.gov.au) if you require any further information regarding this matter.

Yours sincerely



Susan Messer
Manager
DA Leasing
15 September 2014



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Government

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[REDACTED]
Dear [REDACTED]

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Environment and Planning



Dear 

INTENTION TO DETERMINE STATUS OF CROWN LEASE (AS CONCESSIONAL OR MARKET VALUE)

Crown Lease(s): Block 6 Section 69 Division/District Lyneham
Lessee: Canberra Racing Club Incorporated

I refer to the above Crown lease held by the Canberra Racing Club Incorporate, in which you have an interest registered against the Crown lease at the ACT Land Titles Office.

I wish to advise that it is the intention of the planning and land authority (within the Environment and Planning Directorate (EPD)) to make a formal decision under section 258 of the *Planning and Development Act 2007* (the Act) as to whether the Crown lease for the above block is a concessional lease or market value lease.

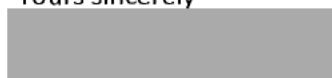
If you feel the decision (whether the lease is concessional or market value) may affect your interests in any way and you wish to make a written representation to EPD, please forward your comments to the following address:

Manager –Leasing DA
Planning Delivery Division
Environment & Sustainable Development Directorate
GPO Box 1908
CANBERRA ACT 2601

Alternatively, you may wish to email your representation to: ACTPLADALEasing@act.gov.au
Your written representation must arrive by close of business **8 October 2014**. The EPD is required to consider any representations made in the time given and once the assessment has been completed you will be provided with a written notice of the decision(s).

Further information on the provisions of the *Planning and Development Act 2007* is available online from the ACT Legislation Register at www.legislation.act.gov.au Please contact me on 6207 2869 (or alternatively by email via ACTPLADALEasing@act.gov.au) if you require any further information regarding this matter.

Yours sincerely



Susan Messer
Manager
DA Leasing
15 September 2014



ACT
Government

Environment and Planning



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15 September 2014



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15 September 2014



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15 September 2014



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Environment and Planning



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Susan Messer
Manager
DA Leasing
15 September 2014



ACT
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Environment and Planning



To whom it may concern

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Susan Messer
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DA Leasing
15 September 2014



ACT
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Environment and Planning



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Susan Messer
Manager
DA Leasing
15 September 2014



ACT
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Environment and Planning



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Yours sincerely



Susan Messer
Manager
DA Leasing

15. 9. 2014



ACT
Government

Environment and Planning

[REDACTED]

Dear Sir/Madam

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Environment & Sustainable Development Directorate
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Yours sincerely

[REDACTED]

Susan Messer
Manager
DA Leasing
15 September 2014



ACT

Government

Environment and Planning

The Manager
Canberra Racing Club Incorporated
Randwick Road
LYNEHAM ACT 2602

Dear Sir/Madam

INTENTION TO DETERMINE STATUS OF CROWN LEASE (AS CONCESSIONAL OR MARKET VALUE)

Crown Lease(s): Block 6 Section 69 Division of Lyneham
Lessee: Canberra Racing Club Incorporated

I refer to the above Crown lease held by the Canberra Racing Club Incorporated.

I wish to advise that it is the intention of the planning and land authority (within the Environment and Planning Directorate (EPD)) to make a formal decision under section 258 of the *Planning and Development Act 2007* (the Act) as to whether the Crown lease for the above site is a concessional lease or market value lease.

If you feel the decision (whether the lease is concessional or market value) may affect the interests of the Club in any way and you wish to make a written representation to EPD please forward your comments to the following address:

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Yours sincerely



Susan Messer
Manager
DA Leasing
15 September 2014



ACT
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Environment and Planning

The Manager
Canberra Racing Club Incorporated
Randwick Road
LYNEHAM ACT 2602

Dear Sir/Madam

DETERMINATION OF STATUS OF CROWN LEASE AS MARKET VALUE

Crown Lease(s): **Blocks 6, 7 and 9 Section 69 Division of Lyneham**
Lessee: **Canberra Racing Club Incorporated**

I refer to our letter dated 15 September 2014 (copy attached) advising that it was the intention of the Environment and Planning Directorate to determine the status of the Crown lease(s) for Blocks 6, 7 and 9 Section 69 LYNEHAM.

The authority has completed the assessment of the status of the Crown lease(s) and a determination has been made.

In accordance with section 258(5) of the *Planning and Development Act 2007* please find attached a copy of the determination of 9 January 2015. A copy of the determination will also be forwarded to each party with a registered interest in the Crown lease.

Please note that a Market Value Notification is required to be lodged against the Crown lease title to formalise the decision in the Land Titles register. This will be prepared and forwarded along with information regarding lodgement at the expiry of the appeal period for this determination.

Should you have any enquiries in relation to this matter, please do not hesitate to contact myself on 02 6207 2869, or by email via actpladaleasing@act.gov.au

Yours sincerely



Susan Messer
Manager
Leasing DA

9 February 2015

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: 09 January 2015		
BLOCKS: 6, 7 & 9	SECTION: 69	SUBURB: Lyneham
STREET NO AND NAME: 1 RANDWICK RD, LYNEHAM		
LESSEE: CANBERRA RACING CLUB INCORPORATED		

On 26 July 2014, the Minister for Planning, requested the planning and land authority (authority), within the Environment and Planning Directorate (EPD), to determine the concessional or market value status of the Crown lease over the above blocks under Section 258 of the *Planning and Development Act 2007* (Act).

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, Maggie Chapman, delegate of the planning and land authority, pursuant to section 258 of the *Planning and Development Act 2007* hereby give notice that the Crown lease over **Blocks 6, 7 and 9 Section 69 Lyneham** (Volume 1846: Folio 68) is a **market value lease**.

2 LEASE DECISION NOTICE

Section 258(5) of the Act provides that the authority must give written notice of the intention to determine the status of the lease under Section 258 to the lessee and any other entity with a registered interest in the lease to which the decision relates.

On 15 September 2014, the authority wrote to the lessee and the interested parties to advise of the intention to determine the status of the Crown lease, and advised that representations in relation to this matter should be submitted by 8 October 2014.

No representations were received.

3 REASONS FOR THE DECISION

An examination by the authority of the leasing status of **Blocks 6, 7 and 9 Section 69 Lyneham** has confirmed the following facts:

1. The Canberra Racing Club Incorporated was originally located on Blocks 2 and 3 Section 69 Lyneham. Block 14 Section 71 Lyneham was granted to the ACT Racing Club in July 2001 conditional upon it being consolidated with Blocks 2 and 3. The consolidated block was identified as Block 4 Section 69 Lyneham.
2. Both Blocks 2 and 3 were rental leases. The percentage rent for Block 2 was determined at 5% per annum of the site value. While Block 3 was a rental lease, the lease did not specify either a minimum rent or a percentage rent payable.
3. As part of the negotiations that resulted in the creation of Block 4, the Territory agreed that the payout of the land rent for Blocks 2 and 3 Section 69 Lyneham would be staged over three years from the date of commencement of the consolidated lease. Therefore, although the lease for Block 4 was a nominal rent lease, provision was made to accommodate the staged payout of the land rent commitments from the former Blocks 2 and 3.
4. The final 'instalment' was paid on 8 October 2004.
5. Block 4 was subsequently subdivided into a lease over Blocks 6, 7 and 9 Section 69 Lyneham and a lease over Block 8 Section 69 Lyneham. The lease over Blocks 6, 7 and 9 Section 69 Lyneham was granted on 6 November 2006. Block 8 was subsequently sold.
6. The Crown lease over Blocks 6, 7 and 9 Section 69 Lyneham was granted on 9 May 2008 under the *Land (Planning and Environment) Act 1991*. The lease commenced on the date of grant and terminates on 9 October 2100.
 - i. The lease is a nominal rent lease, requiring payment of 5 cents per annum if and when demanded.
 - ii. The purpose clause permits the land to be used for the purpose of an outdoor recreation facility consisting of a racecourse facility restricted to a racecourse, training track, equestrian facilities and associated activities including ancillary to this use:
 - (A) Residential accommodation,
 - (B) The sale of horses,
 - (C) The telecasting or broadcasting of race meetings,
 - (D) Sports betting facilities, and
 - (E) A licensed club for members of the Canberra Racing Club Incorporated not exceeding 1000 square metres of gross floor area to be used in conjunction with the racecourse facility.

IN ADDITION the premises may also be used for one or more of the following purposes:

- (A) Community activity centre LIMITED TO indoor community meetings including religious services,
- (B) Emergency services facility,
- (C) Outdoor recreation facility LIMITED TO an 18 hole pitch and putt golf course and ancillary golf shop,
- (D) Tourist facility LIMITED TO trade, art and craft exhibitions, and

- (E) Ancillary offices and caretaker's residence.

Legislative requirements

Section 235C of the Act defines the meaning of a **possibly concessional** lease as follows:

- (1) For this Act, a lease is possibly concessional if the lease –
- (a) was granted–
 - (i) before 31 March 2008; or
 - (ii) after 30 March 2008 and before the commencement of this section under the *Land (Planning and Environment) Act 1991*; and
 - (b) does not include a statement, in the lease or a memorial to the lease –
 - (i) that the lease is a concessional lease; or
 - (ii) to the effect that the lease is a market value lease; and
 - (c) is mentioned in schedule 5, part 5.3.
- (2) However, a lease is not **possibly concessional** if the lease is also mentioned in schedule 5, part 5.2.

The lease is not mentioned in schedule 5, part 5.2.

The lease over **Blocks 6, 7 and 9 Section 69 Division of Lyneham** was granted under the *Land (Planning and Development) Act 1991* after 31 March 2008 and does not include a statement regarding the concessional status.

The lease is, therefore, a 'possibly concessional' lease because it is mentioned in Item 8 of Schedule 5, part 5.3.

Payout of Rent

The rent for the initial lease over Block 2 was 5% per annum which was market value rent. While the lease over Block 3 does not indicate the percentage rent payable, the files inform the rent payable was 5% of the site value.

As noted above, the land rent was paid by instalments prior to the grant of the current lease over Blocks 6, 7 and 9 Section 69 Lyneham. Therefore, the Territory has received the full market value for the lease.

Having considered all of the above, the Authority concludes that the Crown lease over Blocks 6, 7 and 9 Section 69 Lyneham is a **market value lease** as defined in section 235B of the *Planning and Development Act 2007*.

REVIEW BY THE ACT ADMINISTRATIVE APPEALS TRIBUNAL (AAT)

This decision is reviewable by the AAT as identified in Schedule 1 of the *Planning and Development Act 2007*. The attached notes are provided in accordance with the ACT Administrative Appeals Tribunal (AAT) Code of Practice.


WRITTEN NOTICE TO INTERESTED PARTIES

In accordance with section 257(5) of the *Planning and Development Act 2007*, written notice of this decision will be sent to the interested party (the Lessee) in relation to the written application.

4 EVIDENCE

- Current Crown lease, (Blocks 6, 7 and 9 Section 69 Lyneham (Vol 1846:Folio 68)
- The surrendered Crown lease over Block 4 Section 69 Lyneham (Vol 1618: Folio 97)
- The surrendered Crown lease over Block 3 Section 69 Lyneham (Vol 1541: Folio 63)
- The surrendered Crown lease over Block 2 Section 69 Lyneham (Vol 1541: Folio 58)
- The Territory Lease files for all the above blocks.

DELEGATE


Maggie Chapman
Delegate of the planning and land authority
09 January 2015

REVIEW OF THE DECISION

The following notes are provided in accordance with the ACT Administrative Appeals Tribunal (AAT) *Code of Practice for Notification of Reviewable Decisions and Rights of Review*.

CONTACT DETAILS

The review authority is the Administrative Appeals Tribunal (AAT).

Location	Contact details
Tribunals Branch Magistrates Court 4 Knowles Place CANBERRA ACT 2601	Website: www.courts.act.gov.au Email: tribunals@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 AAT

The AAT 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 AAT 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 AAT recommendations.

APPLICATIONS TO THE AAT

To apply for a review, obtain an application form from the AAT. 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 AAT for more details.

FEES

Applications to the AAT, including an application to be joined as a party to a proceeding, require payment of a fee of not less than \$184 (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 62 of the *Administrative Appeals Tribunal Act 1989*). 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 AAT for more details.

TIME LIMITS FOR REVIEWS OF DECISIONS

The AAT 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 AAT 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 AAT also has the power to award costs against a party if the party contravenes a direction of the AAT and the AAT considers it in the interests of justice to make such an order. This power is in addition to the power of the AAT to strike out a party and to dismiss an application for failure to comply with the AAT'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 ACT Planning and Land Authority's web site or by contacting us by phone on (02) 6207 1923.

PROCEDURES OF THE AAT

The procedures of the AAT are outlined on the AAT's website, including in the Guide to the Land and Planning Division and the Guide to the Hearing. Contact the AAT for alternative ways to access information about the AAT'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-għajjnuna 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