



# Clearance and Performance Assessment

<b>Tracker Number</b> 07/12604	<b>Date Due:</b> N/A
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- Information Brief
- Meeting Brief
- Agency Submission **Redevelopment of Phillip Pool on Block 2 Section 22 Phillip**
- Media Event
- Question Time Brief (QTB)
- Question On Notice (QoN)
- Ministerial
- Cabinet

**Sign Off:**  
Chief Planning Executive

Director

Business Unit Name

Action/Contact Officer



Leasing

Gerard Allen

Date

Date

Phone

16/10/07  
12-10-07

62054965

**This section to be completed by the Minister's Office**

Satisfactory

Unsatisfactory

Overdue

Unclear

Poorly presented

Lacked relevance and practicality

Illogical

Inaccurate

Issues not adequately addressed

No/inadequate consideration of financial & media implications

Lacked clear recommendations

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**Further Action/Comments**

.....  
OPTION 1 AGREED.  
.....

**Signature**.....



**SUBJECT: REDEVELOPMENT OF PHILLIP POOL ON BLOCK 2 SECTION 22 PHILLIP**

**MINISTER FOR PLANNING**

Chief Planning Executive

*[Handwritten signature]*  
16/10

*Minister,  
unless directed otherwise,  
the Authority will, in its  
statutory capacity, pursue  
option 1.*

**PURPOSE**

To provide you with information about the key issues in respect of Phillip Pool at Block 2 Section 22 Phillip (Block 2).

**BACKGROUND**

The original Crown lease over Block 2 expired on 31 July 1998. From 1 August 1998 to date, the Crown lessee, Glencora Pty Limited ("Glencora") has continued to occupy Block 2 on a holding over basis. The Crown lease over Block 2 was granted for the purpose of a public heated swimming pool, an ice skating rink and for purposes incidental to those purposes.

To ensure the continued professional operation of the Phillip Pool and the ice skating rink, clause 4(u) of the Crown lease prohibits the assignment or transfer of the Crown <sup>Y</sup>without the prior written consent of the Territory. *lease*

Before the expiration of the original Crown lease, Glencora applied for the grant of a further 99-year Crown lease over Block 2 pursuant to section 172 of the *Land (Planning and Environment) Act 1991* (Land Act). Subject to some restrictions at section 172, relevantly whether the Territory or Commonwealth needs Block 2 for a public purpose, Glencora would be entitled to this grant. The grant of a further Crown lease will be for the same purposes as the original Crown lease. *This is critical to understand*

On 13 November 1998, the ACT Planning and Land Authority (Authority) offered a further Crown lease to Glencora on condition it purchases the Territory owned improvements on Block 2. Based on advice from the Australian Valuation Office, the Authority advised Glencora that the value of the Territory owned improvements was \$180,000. Glencora has contested this amount on the basis that such improvements are in poor condition and will be replaced in any redevelopment of Block 2.

There is no statutory requirement for the Authority to conduct public consultations in relation to a proposed grant of a further Crown lease. However, there were extensive discussions with Mr Rick Rand from the Sport and Recreation Facilities section of the Department of Urban Services at the time of the proposed grant. ACT Swimming was also included in those discussions and outlined its views on the features it would like to see in any new centre.

During the negotiations in respect of the value of the Territory owned improvements, DVP 259 was approved by the Legislative Assembly and has since taken effect. One of the purposes of DVP259 was to ensure the provision of a pool and an ice skating rink on Block 2.

A draft Deed of Agreement between the Territory, the Authority and Glencora has been prepared by the ACT Government Solicitors Office. Amongst other things, upon receipt of a further Crown lease, Glencora is obliged to pay \$180,000 to the Territory within 60 months from the date of the Deed (Redevelopment Date). However, if Glencora redevelops Block 2 to the satisfaction of both the Territory and the Authority before the Redevelopment Date, Glencora's obligation to pay the \$180,000 will lapse. If Glencora does neither, either the Territory or Authority can immediately terminate the Deed. Any termination of the Deed will operate as a termination of the further Crown lease and Block 2 will revert to the Territory.

If Glencora redevelops Block 2 in accordance with the Deed and surrenders the further Crown lease over Block 2, it will be granted a new Crown lease expiring on 31 July 2098.

The Deed has been prepared in consultation with Mr Rick Rand from the Sport and Recreation Services section of the Department of Territory and Municipal Services.

A key element in the Territory facilitating the continued successful operation of the swimming pool and ice skating rink on Block 2 has been the provision of 50 new 2-hour car parking spaces immediately adjacent to the main entrance to the complex on Block 2.

Further, to ensure the continued professional operation of the Phillip Pool and the ice skating rink, the Territory has ensured that there are performance standards in the Crown lease that Glencora must comply with.

## ISSUES

The Territory has demonstrated a commitment to the retention of pool and ice skating rink facilities on Block 2, by the increased provision of car parking spaces adjacent to the main entrance to the Block 2 complex, through DVP 259 and provisions in the Crown lease.

Any future redevelopment of Block 2 must preserve these facilities. In the normal course of events, any future redevelopment of Block 2 will be subject to extensive public consultation.

## OPTIONS

The options for progressing this matter are as follows.

### Option 1

Agree with progressing the grant of the further Crown lease over Block 2 and settling the Deed of Agreement. ✓

### Option 2

Not grant a further Crown lease, not enter into the Deed of Agreement.

Agreed. //

Compulsorily acquire Block 2 under the *Lands Acquisition Act 1994*, and pay extensive compensation to Glencora. Experience would seem to indicate that this will be a very long process made longer by any appeals by Glencora against the amount of compensation offered by the Territory. Upon acquisition, the Territory could resell Block 2 for purposes which include commercial redevelopment of Block 2 in accordance with DVP 259 (and which may not include an obligation to provide pool and ice skating rink facilities).

This is the consequence of pursuing Woden YES request.

### **Option 3**

A subset of option 2, instead of the Territory on-selling the acquired land, the Territory could operate the pool and ice skating rink itself.

### **KEY MESSAGES**

There are no key messages.

### **BUDGET IMPLICATIONS**

There may be budget implications if the Territory exercises the option to compulsorily acquire Block 2 through the *Lands Acquisition Act 1994*. However, any compensation paid to Glencora for its improvements on Block 2 may be more than offset by selling Block 2 with a broader purpose clause including commercial activities, on the open market.

If the Territory exercised the option of compulsorily acquiring Block 2 and operating the pool and ice skating facilities itself, there would be extensive budget implications including the extensive compensation payable to Glencora and the extensive operating costs for these facilities. Even if the Territory contracted out these obligations it would have residual obligations in relation to capital works if and when capital infrastructure requires replacement.

### **CONSULTATION STRATEGY**

There has been extensive public consultation in respect of the variation to the Territory Plan.

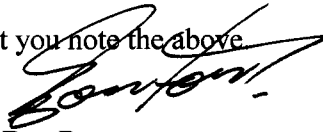
As discussed above, there is no statutory obligation on the Territory or the Authority to conduct public consultation in respect of any proposed grant of a further Crown lease on application by the current holder of that Crown lease.

### **CRITICAL DATE**

At this stage, given that the Deed of Agreement has not been finalised, Glencora is still "holding over" under the original Crown lease and it has not lodged a development application in respect of the redevelopment of Block 2, there would appear to be no critical date.

**RECOMMENDATIONS**

It is recommended that you note the above



Name Ben Ponton  
Section/Branch Director, Development Services Branch  
Date 12 October 2007.

**AGREED/ NOT AGREED/ NOTED/ PLEASE DISCUSS**



Andrew Barr MLA  
Minister for Planning  
22.10.07

Contact officer: Gerry Allen  
Position: Manager, Leasing section  
Branch: Development Service Branch  
Phone: 6205 4965  
Date: 8 October 2007.



**MINISTERIAL CORRESPONDENCE/BRIEF REQUEST FORM**

**Objective Number:** 07/15649  
 Due to CPE/Executive Services noon: 6/12/07  
 Due to MINISTER'S OFFICE: 10/12/07  
 Priority: Urgent / Normal

**SUBJECT: Lease for Phillip Pool and Ice Skating Rink – Tony Adams**

**TO:**

- Planning Services
- Development Services
- Client Services
- Chief Planning Executive
- Other

**ITEM FOR USE OF:** *(indicate for whose attention and signature the item is to be prepared for)*

- Minister
- Chief Minister
- Chief Planning Executive
- Deputy CPE
- Planning Adviser
- Other:

**REQUEST:**

<input checked="" type="checkbox"/> Reply to correspondence	<input type="checkbox"/> Information brief	<input type="checkbox"/> Arrangements Brief
<input type="checkbox"/> Authority response	<input type="checkbox"/> Meeting Brief	<input type="checkbox"/> Speech
<input type="checkbox"/> Information only	<input type="checkbox"/> Dept Officer to attend	<input type="checkbox"/> Speaking Notes
<input type="checkbox"/> Appropriate action	<input type="checkbox"/> Media Release	<input type="checkbox"/> Power Point Presentation

**MEETING/EVENT:**

Time:	Date:	Duration:
Location:	Event Contact/Organiser:	

**Further Information:**

Brooke Ellis

Date: 26/11/2007

*Office of the Minister for Planning*

**Dear Minister Barr**

**Please find attached letter following our meeting last Monday**

**Tony Adams | Senior Director  
CB Richard Ellis (V) Pty Ltd  
Consultancy - Town Planning  
Level 1, 11 Lonsdale Street | Braddon, ACT 2612  
GPO Box 1987 | Canberra, ACT 2601  
T 61 2 6232 2733 | F 61 2 6232 2740 | M 61 438 571 511  
[tony.adams@cbre.com.au](mailto:tony.adams@cbre.com.au) | [www.cbre.com.au](http://www.cbre.com.au)**

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26/11/2007

**Ellis, Brooke**

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**From:** BARR  
**Sent:** Thursday, 22 November 2007 12:17 PM  
**To:** Ellis, Brooke  
**Subject:** FW: Phillip Pool and Ice Skating Rink

Brooke

Has been copied to Neil but needs a formal response from me.

Andrew

---

**From:** Adams, Tony @ Canberra [mailto:Tony.Adams@cbre.com.au]  
**Sent:** Thursday, 22 November 2007 7:34 AM  
**To:** BARR  
**Cc:** Savery, Neil  
**Subject:** Phillip Pool and Ice Skating Rink

**Dear Minister Barr**

**Please find attached letter following our meeting last Monday**

Tony Adams | Senior Director  
CB Richard Ellis (V) Pty Ltd  
Consultancy - Town Planning  
Level 1, 11 Lonsdale Street | Braddon, ACT 2612  
GPO Box 1987 | Canberra, ACT 2601  
T 61 2 6232 2733 | F 61 2 6232 2740 | M 61 438 571 511  
[tony.adams@cbre.com.au](mailto:tony.adams@cbre.com.au) | [www.cbre.com.au](http://www.cbre.com.au)

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26/11/2007

22 November 2007

Mr Andrew Barr MLA  
Minister for Planning  
ACT Legislative Assembly  
London Circuit  
Canberra City 2601

Dear Mr Barr

### **Phillip Pool and Ice Skating Rink**

Thank you for making time to meet with myself and Mr John Anderson on Monday last to discuss the future of the Phillip Pool site. We provide the following summary of the position, as we see it, for your records.

The lease over the property is held by Glencora Pty Ltd who have operated the pool and ice skating rink since 1989.

As you are aware the facilities are now aged and beyond their normal commercial life. Substantial re-investment is required if the pool and ice rink are to continue to serve the Woden and Canberra communities as they have done for a long period. It is well understood that these types of facility are not commercially viable as stand-alone commercial enterprises. The government subsidy that was required to facilitate the establishment of the new Belconnen complex is evidence of this. The level of capital injection necessary for the continued operation of the Phillip facilities is not commercially supportable in its own right. At the same time their continued operation is considered to be important to the community. Glencora have been engaged in discussion with the Planning Authority over several years, seeking a resolution to this problem.

The outcome of these negotiations was an agreement that redevelopment of the site would be facilitated by the issue of a new lease with an attached deed of agreement, essentially mandating a requirement for a new pool and permitting some commercial development.

Glencora have now received an offer of lease with an accompanying deed of agreement from the Authority. Following careful consideration of these documents, including input by Glencoras' legal advisors we have concluded that the offer is unworkable. It will not meet commercial objectives and will therefore also fail to meet government or community expectations. We can provide a detailed response on this

issue if required but for the sake of brevity and because a simple alternative solution is available we have not done so here. The key issues are summarised in an attachment to this letter.

It is important to note that the "lease with deed of agreement" solution was developed on the basis that the land was subject to a simple "entertainment accommodation and leisure" zoning, and that if further development was permitted there was no surety that the pool and ice rink would be retained. The function of the deed was to require that any further development would incorporate a new pool and ice rink. Whilst deeds of agreement are a workable mechanism it is acknowledged that they are complex and administratively costly. They should be avoided if possible.

Fortunately a much simpler solution has emerged with the finalisation of variation no. 259 to the Territory Plan. The Territory Plan now mandates the continued operation of a pool and ice rink. This means that a deed of agreement that duplicates this requirement is now redundant. The Territory objective of a continuing pool and ice facility can now be realised through the ordinary operation of the lease and Territory Plan. I explain this as follows:

The current crown lease (and any new or extended lease would be the same) provides for the lessee:

"to use the premises only for the purpose of public heated swimming pools ice skating rink and for purposes incidental thereto....".

The Territory Plan says (Town Centre Commercial Land Use Policy Clause 4.2, a) Land Use Restrictions, para 4) in relation to Block 2 section 22 Phillip:

"The lessee of Section 22 Block 2 Phillip shall continue to provide a 50 metre public pool and an ice skating rink suitable for a national ice hockey competition, located on the northern portion of the block with unimpeded visual connection and direct public address to Irving Street. Development of the site for uses other than a swimming pool and ice skating rink shall be restricted to the southern portion of the block and shall only be permitted in conjunction with the redevelopment of the pool as an indoor facility."

Whilst we have some difficulty with the specifics of the Territory Plan provision (discussed below) it is clear that these two clauses acting in concert mean that the future operation of the pool and ice rink is mandatory, and will remain so regardless of any other approvals that may be granted for development of the site. If the lessee fails to operate a pool and ice rink then the lease will be forfeit – the need for the deed of agreement has fallen away.

It is now possible for all the Territory objectives to be met simply by issuing a new 99 year crown lease on the same terms as the current lease. The lessee would pay for

the Territory owned improvements (we understand that a figure of \$180,000 has been agreed) and would pay market value for the land.

The lessee could then proceed to pursue development options compatible with the Territory Plan requirements. These now include office and residential development as variation 259 rezoned the land to "commercial town centre" (with an additional requirement regarding retention of the pool and ice rink as noted above).

From the above we believe that we now have a solid but simple framework for the future. There remains however a difficulty at the detail level – we believe that the further development now permitted under the Territory Plan, whilst useful, may be insufficient to fund the necessary pool and ice rink upgrades to the extent that may be desired by the community.

The original proposal put to the Authority was for upgrade of the pool only and for commercial or residential development of up to ten (or more) stories. The Territory Plan now requires that the ice rink must also be included, development is nominally limited to six stories, and only permitted on the southern portion of the block. The costs have increased, the development potential has reduced, and flexibility with site design is reduced.

We suggest that consideration be given to two further minor amendments to the Territory Plan as set out below, noting that this would retain the major government objective of keeping the pool and ice rink operational and available to the public.

Para 4 clause 4.2 of the town centre commercial land use policy (quoted above) to be revised to read as follows:

"As part of any approval for substantial development of Block 2 Section 22 Phillip the lessee must be required to facilitate the provision of a 50 metre public pool and an ice skating rink suitable for a national ice hockey competition on the site or in a location satisfactory to the Territory and subject to any other arrangements including funding as required by the Territory."

Clause 2.14 of Part B2 currently reads as follows:

"In the Precinct 'b' areas north of Launceston Street, the maximum building height shall generally be six storeys. Taller buildings up to a maximum of twelve storeys may be permitted provided that all matters for consideration under Part A3 Section 9.3 of the Territory Plan Written Statement have been satisfactorily addressed during the development application stage for any development proposal."

Noting that Section 9.3 includes some 25 matters for consideration the success of any proposal for a building over six storeys would be doubtful. Block 2 can be considered to be a "landmark" site, providing a main entry to the town centre precinct and with

a road to its south and therefore no overshadowing problems. It has a unique position in this precinct. It would seem that a taller building here could be readily approvable and we suggest that the above clause could be amended to read as follows:

"In the Precinct 'b' areas north of Launceston Street except for Block 2 Section 22, the maximum building height shall generally be six storeys. Taller buildings up to a maximum of twelve storeys may be permitted provided that all matters for consideration under Part A3 Section 9.3 of the Territory Plan Written Statement have been satisfactorily addressed during the development application stage for any development proposal. The maximum building height at Block 2 Section 22 shall be twelve storeys."

In summary, we are seeking:

A crown lease with the same purpose clause as at present for period of 99 years, subject to purchase of Territory owned assets and payment of market value for the land.

A Territory Plan variation to provide some flexibility regarding the location and delivery of new pool and ice rink facilities whilst ensuring that their provision remains a mandatory condition on any further development.

The crown lease will enable the owner to immediately commence investigations on redevelopment opportunities, taking advantage of the current buoyant market for both residential and commercial uses. The Territory Plan variation will take longer and ultimately may not succeed, but if it does it will provide for additional flexibility and potentially a much improved outcome for the community.

Thank you again for the opportunity to meet with you and we look forward to an early resolution of this matter.

Yours sincerely



CB Richard Ellis (V) Pty Ltd  
Tony Adams  
Senior Director Town Planning  
CBRE Consulting

Attachment: Draft Lease and Deed of Agreement September 2007  
Comments and Issues

Block 2 Section 22 Phillip  
Draft Lease and Deed of Agreement September 2007  
Comments and Issues

- The proposed lease includes a restriction on transfer that reduces its commerciality, this restriction is also intended to carry forward to the long term lease.
- The deed requires that Glencora undertake the upgrade of the pool and ice rink facilities to Territory requirements during the initial five year lease period and prior to the issue of a long term lease. Any supporting commercial development cannot proceed until the long term lease is issued. The pool and ice rink must therefore be funded prior to the receipt of any return from a supporting commercial development.
- Most importantly, the opportunity for the change of use charge on supporting commercial development to be assigned to the pool and ice rink redevelopment is lost. This was an essential feature of the proposal.
- The attachment of the deed to the new lease and the provision that a breach of the deed is a breach of the lease represents a diminution of the existing position where the lessee simply continues to occupy and operate the premises on a holding over arrangement.



# Clearance and Performance Assessment

<b>Tracker Number</b>	<b>Date Due:</b>
07/15649	6/12/07

Title:

- Information Brief
- Meeting Brief
- Agency Submission
- Media Event
- Question Time Brief (QTB)
- Question On Notice (QoN)
- Ministerial

Ministerial-Lease for Phillip Pool and Ice Skating Rink - Tony Adams

**Sign Off:**  
Chief Planning Executive

Date 6/12/07

Deputy Chief Planning Executive

Date

Director, Branch

Date

Business Unit Name

GERARD ALLEN

Action/Contact Officer

Telephone 5/12/07

**This section to be completed by the Minister's Office**

Satisfactory

Unsatisfactory

- Overdue
- Unclear
- Poorly presented
- Lacked relevance and practicality
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- Lacked clear recommendations

**Further Action/Comments**

Signature.....



## Andrew Barr MLA

MINISTER FOR EDUCATION AND TRAINING  
MINISTER FOR PLANNING  
MINISTER FOR TOURISM, SPORT AND RECREATION  
MINISTER FOR INDUSTRIAL RELATIONS

---

MEMBER FOR MOLONGLO

Mr Tony Adams  
Senior Director Town Planning  
CBRE Consulting  
CB Richard Ellis (V) Pty Ltd  
Level 1, 11 Lonsdale Street  
BRADDON ACT 2601

Dear Mr Adams

Thank you for your letter of 22 November 2007 following our earlier meeting.

It appears that your client is seeking the following:

1. the grant of a further 99-year Crown lease over Block 2 Section 22 Phillip for the same purposes; and
2. a variation to the Territory Plan to provide some flexibility regarding the location and delivery of a new pool and ice skating rink.

### Further Crown lease

From the information provided to me by the ACT Planning and Land Authority (Authority), on 23 January 1998, before the expiration of its current Crown lease, your client applied for a further 99-year Crown lease over Block 2. In accordance with the Authority's usual practice, your client was entitled to this grant upon condition that it bought all Territory owned improvements on Block 2. The Australian Valuation Office has valued the Territory owned improvements at \$180,000.

As I understand it, for approximately 10 years your client has disputed this amount, has not complied with this condition and has not paid the \$180,000 to the Territory. Consequently, the Authority has been unable to grant a further Crown lease to your client.

If your client pays the amount of \$180,000 to the Territory, it will be granted a further 99-year Crown lease over Block 2 for the same purposes. This will address the first point above.

### ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601  
Phone (02) 6205 0011 Fax (02) 6205 0157 Email barr@act.gov.au

I note your reference to a Deed of Agreement. As I understand it, the Deed of Agreement was a compromise between payment for the Territory owned improvements on Block 2 and redevelopment of Block 2.

I note that this Deed would not be required if your client paid the \$180,000 for the Territory owned improvements on Block 2. Moreover, on page 2 of your letter, you have asserted that the function of the Deed was to require that any further development would incorporate a new pool and ice-skating rink.

From the information available to me, this is not the function of the Deed as these requirements are already clearly stated in both the amended Territory Plan and the purpose clause of the Crown lease and there would be no need to reiterate these in the Deed.

#### Variation to the Territory Plan

As a result of V259, the Territory Plan in respect to Block 2 has been changed. Amongst those changes was the removal of the Entertainment, Accommodation and Leisure Land Use Policy (B8) and insertion of the Commercial B2B Precinct 'b' Land Use Policy. In addition, the 8M Area Specific Policy Overlay that applied under B8 for the Phillip Pool site was removed.

In addition, on Block 2, the Crown lessee of Block 2 was obliged to continue to provide a 50 metre public pool and an ice skating rink suitable for a national ice hockey competition, located on the northern portion of the block with unimpeded visual connection and direct public address to Irving Street Phillip.

#### Addressing the Public Interest on Block 2

The amended Territory Plan, as a result of V259, specific provisions in the Crown lease in respect of the continued provision of a 50 metre public pool and an ice skating rink, and the provision of 50 new 2 hour parking spaces adjacent to the main entrance to the pool/ice skating complex should ensure that the public interest for this site is protected.

#### Further Amendments to the Territory Plan

Given the more than adequate protection of the public interest from V259, I see no need to further amend the Territory Plan in the terms that you have outlined in point 2 above.

Thank you for raising the matter. I trust that I have adequately addressed your concerns.

Yours sincerely



Andrew Barr MLA  
Minister for Planning

18 JAN 2008