

Rachel Stephen-Smith MLA

Minister for Health

Minister for Children, Youth and Family Services

Minister for Disability

Minister for Aboriginal and Torres Strait Islander Affairs

Member for Kurrajong

RESPONSE TO QUESTION ON NOTICE**Questions on Notice Paper No 40****22 March 2024****Question No. 1739****MRS KIKKERT MLA** - To ask the Minister for Planning:

- 1) When was the property on Block 8, Section 88 in McKellar constructed.
- 2) How many development applications have been submitted for this block and how many were fulfilled.
- 3) When was the last development application for this block submitted.
- 4) Has the Government ever had to issue any notices, warnings or any other communication to the owner of this block in relation to the condition of the block or the building on it; if so, (a) when were those communications sent, (b) what was the nature of those communications and (c) how did the owner respond to them.
- 5) Does the Government have the authority to condemn a home for demolition; if so, under what circumstances would that decision be made.

MS STEPHEN-SMITH MLA - The answer to the Member's question is as follows:

- 1) In relation to Block 8 Section 88 McKellar, the Territory Planning Authority (the Authority) has advised that their records show that construction commenced in 2014. Records also show that no final certificate of occupancy and use has yet been issued.
- 2) In 2013, a building approval was issued by a private certifier for a single dwelling with attached garage for Block 8 Section 88 McKellar. In the building application the certifier declared that the proposal was exempt from development approval. In 2015, another building approval was issued by a different building certifier for a similar exempt single dwelling with attached garage and proposed swimming pool.

- 3) No development applications (DAs) have been submitted in relation to this block. However, in 2015 an application for an exempt declaration was submitted in relation to an encroachment on the building envelope.

An application for an exemption declaration is not a DA but a type of application available for single residential dwellings that would be exempt from the requirement for a development application (DA), except for specific eligible minor departures. On 17 March 2015, the application was refused as the Authority determined that the part of the building outside the building envelope was not a minor departure.

- 4) Yes, Access Canberra records indicate that the ACT Government has issued several statutory notices and communications to the owner of Block 8 Section 88 McKellar since 2006 which pre-dated the existence of Access Canberra in 2014.

Since 2018, Access Canberra has sent Show Cause notices and advisory letters to the owner in response to complaints received about the unfinished development at the site. The notices required the block to be cleaned in accordance with the *Planning Act 2023*.

The block was cleaned, and the site was fenced in response to the Show Cause notices. It would be inappropriate to comment further on the issues at Block 8 Section 88 McKellar as this matter remains an active investigation with Access Canberra.

- 5) Under Chapter 12 of the *Planning Act 2023*, regulatory options include issuing a controlled activity order directing rectification works to bring developments into compliance with the Act. Rectification work may include requiring the removal of a structure built without the required planning approval.

I also note that there are provisions available to Construction Occupations Registrar under section 38 of the *Construction Occupations (Licensing) Act 2004*, the registrar may make an order (a **rectification order**) in relation to an entity requiring the entity to demolish a building or part of a building where a construction service has been provided. Rectification work can be directed to a lessee, occupier or anyone by whom, or on whose behalf, a controlled activity has been conducted.

Under the *Building Act 2004*, the Construction Occupations Registrar may give notice to the owner of a parcel of land directing them to carry out building work, including demolition, if reasonable grounds exist. Such grounds are listed at section 61 of the *Building Act 2004* and include if a building is unsafe or has deteriorated to a point where it is not able to be used for the purpose for which it was constructed.

Approved for circulation to the Member and incorporation into Hansard.



Rachel Stephen-Smith MLA

Acting Minister for Planning

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This response required 3hrs to complete, at an approximate cost of \$397.62