

Chief Minister, Treasury and Economic Development Directorate

To: Minister for Planning and Sustainable Development

Date: 20/02/2025

From: Executive Branch Manager, Construction and Planning Regulation Branch, Access Canberra

Through: Deputy Director-General, Access Canberra

Subject: Update on the query from the Office of the Commissioner for Sustainability and the Environment in relation to a complaint about Majura Block 709



Critical Date: in usual course of business

Tracking No.: 25_0004289

- DDG 20/02/2025

Recommendation

That you **note** the information contained in this brief.

Chris Steel MLA   / Please Discuss 4./3./25

Minister's Office Feedback

Background

1. Block 709 Section 0, Majura (209 Majura Road), is a rural block that has been the subject of complaints raising environmental concerns and alleging the block is being used for purposes other than those permitted under the Crown Lease.

Lease matter

2. The Access Canberra Rapid Regulatory Response Team (**RRRT**), the Compliance Monitoring Inspections Team (**CMIT**), and the Environment Protection Authority (**EPA**) have investigated the matter and inspected the block several times since late 2022.

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3. RRRT found that the block was being used for industrial purposes inconsistent with the purpose permitted under the Crown Lease (i.e. agricultural purposes, including broadacre animal farming, crop and pasture production and horticulture). On 1 December 2022, the RRRT issued a Show Cause Notice to the owner of the block about the planning issue.
4. In February 2023, the lessee submitted a Development Application (**DA**) for variation of the crown lease to add commercial purposes followed by another DA in November 2023 for a variation to permit the use of the block as a 'transport depot'. The Territory Planning Authority granted approval on 6 September 2024 subject to conditions. The Notice of Decision is available [here](#).
5. RRRT took no further regulatory action noting the voluntary actions by the lessee to achieve compliance. The EPA has also determined that no water pollution was observed during the inspections and that additional environmental control measures had been installed within the block as agreed.

Other matters

6. The Office of the Commissioner for Sustainability and the Environment (**OCSE**) also received a complaint about the block and started investigating this matter in July 2023. Access Canberra subsequently met with the Commissioner on 29 August 2023 to discuss the matter.
7. A response to a number of questions raised by the OCSE was also provided ([Attachment A](#)). While there was other correspondence between AC and the OCSE, this letter captures the principal reasons for the regulatory approach taken.
8. The OCSE prepared a draft complaint report about this issue and sought comments from the relevant ACT Government agencies, including Access Canberra. The final complaint report: *Complaint 2023-001 Majura Valley Rural Block Used for Industrial Purposes* was released on 26 June 2024 [Attachment B](#).

Issues

9. On 9 January 2025, the OCSE wrote to the Director-General of EPSDD ([Attachment C](#)), raising concerns about the Block 709 being advertised for lease as a 'Transport Depot' with photos attached showing materials and equipment being stored within the drip line of trees, alleging this was a breach of the block's DA conditions.
10. On 9 January 2025, EPSDD referred this compliance matter to Access Canberra who undertook to investigate this issue and engage with the lessee.
11. On the same day, a compliance officer from Access Canberra contacted Complex Co, the lessee, and advised that the storage of equipment and materials within the drip lines of regulated trees may constitute a breach of the DA conditions

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and the land management agreement and a controlled activity pursuant to Item 7, Schedule 4 of the *Planning Act 2023*.

12. The lessee agreed to remove the equipment and materials from the drip line of trees.
13. The EPA did not identify any compliance issues under *the Environment Protection Act 1997*. This was consistent with findings of initial inspections undertaken in 2022.
14. On 21 January 2025, Access Canberra further referred the complaint to the Office of the Conservator of Flora and Fauna (the **Conservator**) for further advice in relation to any compliance issues that may impact or intersect with the *Planning Act 2023* and the DA approval regarding the protection of the native flora on the site under the *Nature Conservation Act 2014*.
15. On 6 February 2025, the Conservator provided advice about this matter stating that there were no breaches identified under the *Nature Conservation Act 2014* that would need to be pursued.
16. Access Canberra did not identify any further compliance issues in relation to the DA and consistent with Access Canberra's Accountability Commitment Framework, no regulatory sanctions were applied noting the lessee removed the materials as requested.
17. On 5 February 2025, the Chief Planner at EPSDD responded to the OCSE's letter, including details of compliance actions undertaken by Access Canberra Attachment D.
18. A further update regarding the Conservator's response was provided by Access Canberra via email to the OCSE on 7 February 2025.
19. There are no further actions required from Access Canberra under the *Planning Act 2023* or the *Environment Protection Act 1997* at this stage.

Financial Implications

20. Nil

Consultation

Internal

21. The RRRT and EPA within Access Canberra.

Cross Directorate

22. Access Canberra sought advice about this matter from the Office of the Conservator of Flora and Fauna in EPSDD and the Tree Protection Branch within Transport Canberra and City Services Directorate.

External

23. Nil

Work Health and Safety

24. Nil.

Benefits/Sensitivities

25. Nil

Communications, media and engagement implications

26. Nil.

Signatory Name: Margaret McKinnon Phone: 6207 7290

Action Officer: Nick Lhuede Phone: 6207 8606

Attachments

Attachment	Title
Attachment A	23_130644 - Correspondence from CoR to OCSE Commissioner Dr Lewis - Block 709 Majura Valley
Attachment B	Final complaint report from the Office of the Commissioner for Sustainability and the Environment
Attachment C	20250109 - Letter from OCSE to Mr Ben Ponton, DG, EPSDD re Majura Block 709 Query
Attachment D	Response letter to Dr Sophie Lewis - Majura Block 709



ACT
Government

Chief Minister, Treasury and
Economic Development

OBJ ref: 23/130644

Dr Sophie Lewis
ACT Commissioner for Sustainability and the Environment
Sophie.Lewis@act.gov.au

Dear Commissioner,

Please find below the response to the matters raised in your correspondence to Mr Matthew Kamarul on 14 December 2023 in relation to your complaint (number 001-2023) regarding Majura Rural Block 709.

Noting these matters relate to enforcement and compliance with the *Planning and Development Act 2004* (as superseded by the *Planning Act 2023*), I am responding on behalf of Access Canberra as these matters fall within my portfolio of responsibilities as the relevant executive officer.

I would thank you for providing additional time to respond to your questions by 10 January 2023. In future, and as appropriate, it would assist in Access Canberra responding to your correspondence if the Office of the DDG of Access Canberra were copied into correspondence at ACOfficeoftheDDG@act.gov.au.

To assist in providing this response, I have restated the questions you raised on 14 December 2023 in bold below.

Questions

1. Is it standard procedure for a breach of lease conditions to be remedied through an invitation to vary the lease through submission of a DA? Could Access Canberra please explain how the remedial action (DA application) that was proposed in this case was decided on and who made this decision?

It is appropriate to respond to this question in consideration of the relevant legislative and procedural elements.

1. The *Planning and Development Act 2007* (superseded) Section 205 is relevant to this matter.

Section 205 applies if “*a development has been undertaken; and development approval was required for the development; and there was no development approval for the development*”.

Under Section 205 (3) *“the lessee of the land (or for land under a land sublease, the sublessee) where the development was undertaken may apply for approval for the development under part 7.3 (Development applications)”*

Further, under 205 (4) *“the planning and land authority must treat an application for development approval for the development as if the development had not been undertaken, subject to section 139 (2) (o) (Form of development applications)”*

This clause in the superseded Act clearly encompasses that Development Approval may be applied for where development has previously occurred or is occurring. How such an application is decided upon is a matter for the relevant strategic and statutory planning areas in EPSDD.

Similar provisions exist under Section 215 of the *Planning Act 2023*.

2. It is necessary that the Delegate of the Authority (both the Planning and Land Authority, as superseded; and the Territory Planning Authority now in place) advise respondents that this avenue for approval is available in legislation.

The public service principles established under the *Public Sector Management Act 1994* not only requires public official to act

“With reasonable care and diligence, impartiality and honesty”

but under S9(1) C (iii) require

“If dealing with a member of the public—make all reasonable efforts to help the person to understand the person’s entitlements, and any requirement the person is obliged to meet, under a territory law”

3. The *Planning and Development Act 2007* sets out how complaints are to be considered. Below are selected clauses of Section 345(1) in relation to complaints;

345 (1) After investigating a complaint made under this part, the planning and land authority must do 1 or more of the following:

(a) if satisfied that no further action is necessary in relation to the complaint—give the complainant notice under subsection (2) and take no further action in relation to the complaint.

(e) take action under part 11.3 (Controlled activity orders) in relation to the conduct complained about.

(h) if satisfied that it would be appropriate to give a prohibition notice in relation to the conduct complained about—give a prohibition notice under part 11.5 (Prohibition notices) in relation to the conduct;

(k) take any other action the authority considers appropriate.

While this section sets out a range of regulatory options which may be applied, Section 345 (1) k in particular provides the authority with discretion in relation to the actions it may undertake.

Similar provisions exist under S.419 of the *Planning Act 2023*.

4. The *Planning and Development Act 2004* Section 355 (1) (as superseded) sets out that before deciding whether to make a Controlled Activity Order (CAO) mentioned in a show cause notice, the Planning and Land Authority must consider any reasons given in accordance with the show cause notice.

Under 355 (2); *The planning and land authority may decide;*

(a) to make a controlled activity order in relation to a controlled activity mentioned in the show cause notice; or

(b) not to make the controlled activity order mentioned in the show cause notice.

Section 355(2) provides the Authority with discretion to undertake regulatory action in relation to controlled activities, including provision to make, or not make, a CAO.

Similar provisions exist under the Section 427 of the new *Planning Act 2023*.

5. Access Canberra operates within a clear Accountability Commitment framework, endorsed by government, which sets out its approach as a risk-based regulator. The Accountability Commitment framework documents explain the factors Access Canberra considers when dealing with non-compliance, how we make our regulatory decisions, and how we outline our key goals and priorities. These documents can be found via the Access Canberra website:

<https://www.accesscanberra.act.gov.au/about-us/access-canberra-policies-accountabilities-and-reporting>

Regarding this matter, I would draw your attention to the 'Building and construction services compliance framework' document.

The appropriate enforcement response is determined based on a range of factors including the risk or realised consequences. Access Canberra will apply the most appropriate regulatory tool to address the conduct and to achieve the desired regulatory outcome. Actions available under current, and superseded, planning legislation may include warnings, a prohibition notice, a controlled activity order, a rectification works order or injunctions.

Some regulatory actions may operate concurrently, for example a controlled activity order and prohibition notice may be in place at the same time.

The Accountability Commitment framework sets out the optimal outcome for Access Canberra is for compliance to be achieved by the respondent in a voluntary manner, and where there are no immediate issues of safety identified. This important principle helps to guide the regulatory actions that are taken.

This matter was investigated, as documented in the Preliminary Investigation Report and provided to you previously. Non-compliance with the Crown lease was established, however no safety or environmental concerns were identified. Considering these factors, immediate regulatory action, such as a prohibition notice, was not considered necessary.

A Show Cause Notice and advisory letter were sent by officers of the Access Canberra Rapid Regulatory Response Team (RRRT) to the leaseholder on 1 December 2022 following investigation. As you have noted, the advisory letter set out the matter of non-compliance with the lease and included the option of the leaseholder obtaining a lease variation.

The leaseholder responded on 13 December 2023 stating *"Thanks for the below and previously attached. We have full intentions of complying with requirements and are currently in the process of a lease variation to allow the block to be used as a transport depot."*

As previously advised, this commitment by the leaseholder was followed up by Access Canberra and a Development Approval (DA) has been lodged.

The actions taken were consistent with of the provisions of the *Planning and Development Act 2007* and the *Public Sector Management Act 2004*; and in consideration of the relevant sections Access Canberra Accountability Commitment framework.

While a lengthy response, I feel it is of value to step through the relevant considerations undertaken by officers in this matter.

2. Further to Q1, could Access Canberra provide OCSE with a copy of the relevant operating procedure, guideline or equivalent document which guides the process for handling a failure to comply with a provision of a lease, together with commentary on how the procedure was applied in this case?

The information provided in response to Question 1 (above) sets out the legislative and procedural framework for decision making.

3. Could Access Canberra provide OCSE with any other examples where failure to comply with a provision of a lease was remedied through a DA for a lease variation or equivalent retrospective changes to lease conditions to accommodate a change of use?

A relevant example relating to a rural lease, from 2021, is the matter of Aussie Buggy Adventures, an off-road buggy hire/drive business operating on a rural lease, B1188 S000 Tuggeranong (Tharwa). At the time of the complaint, the Crown Lease only permitted agriculture and ancillary activities, and the operation was determined to be in breach of the conditions of the lease. In this matter there were issues of environmental harm that resulted in warning letters, and subsequently a prohibition notice, being issued ceasing operations of the hire business. The leaseholder subsequently applied for, and was given, a lease variation that allowed operation of the enterprise subject to conditions of the approval.

Another example relates to a gym in a mixed used development. In this instance, noise complaints led to an investigation that identified the use of the gym was not permissible in relation to the Building Classification. A Controlled Activity Order (amended following appeal to the ACAT) was issued, and for clarity, it set out the following:

This order directs the entity outlined in part one to:

Apply to the planning and land authority for development approval, which is paid for and accepted for assessment, to use the premises for a Class XX use – being an indoor recreational facility; and thereafter,

- (i) Cease the operation of a class XX use until such time as development approval is given; and*
- (ii) comply with any requests for further information by the planning and land authority to allow its assessment to be completed; and,*
- (iii) If the development approval is granted, comply with any conditions of the approval within the required time given under the approval; or*

- (iv) *If the development approval is refused, restore the premises to its approved class use unless the decision is subject of an ACT Civil and Administrative Tribunal (ACAT) merits review proceeding.*

In this matter, the ACAT amended to order to take effect by a given date, allowing the gym to continue to operate until Cause (i) above came into effect. It should be noted this is still an active matter, and given Access Canberra is considering further regulatory action we would prefer no public comment is made on the matter.

I would further note in this matter, a Prohibition Notice under the *Planning and Development Act 2007* is in effect to limit the hours of operation of the gym and reduce impacts on residents. This approach addressed the noise related complaints in this matter whilst allowing the facility to operate and limit impact on gym users, the owner, and their employees.

4. Is it standard practice for a lessee who has been found to have failed to comply with a provision of a lease to be formally permitted to continue with the activity which constituted the failure to comply while the matter is actively being dealt with?

Access Canberra will take reasonable steps to investigate planning complaints in accordance with its legislative and regulatory responsibilities. Investigations, and any regulatory action, is determined on a case-by-case basis and in line with Access Canberra's Accountability Commitment framework.

In this instance, the lessee advised their intention to comply voluntarily by applying to vary the lease conditions and no safety or environmental concerns were identified.

Access Canberra will consider a wide range of factors in making its regulatory decisions, including the consideration of harm occurring, such as public safety or environmental harm, as well as considering any risk of harm that preventing or restricting an activity may cause, for example economic factors or access to employment. Response will also include the respondent's approach to seeking to comply with planning requirements. As allowed by both legislation and the Accountability Commitment framework, Access Canberra may exercise discretion in deciding on the most appropriate regulatory action.

5. Does Access Canberra have any comments about the precedent set by this case (assuming the DA is granted) in signalling to rural lessees that they may use their blocks for activities not permitted by their lease agreement and then retrospectively seek to change their lease conditions?

There are no assumptions made by Access Canberra in relation to any Development Application (DA) outcomes in this, or other matters. This is a matter for the relevant strategic and statutory planning areas in EPSDD.

This matter does not set precedent noting all planning complaints are investigated and regulatory decisions are determined on a case-by-case basis taking into account all the relevant factors, consistent with the processes previously outlined. Access Canberra was operating consistent with its statutory and operational frameworks in dealing with this matter.

6. Please provide any correspondence or procedural documents which explain how and why a change in terminology from ‘construction-related business activities’ to ‘transport depot’ was adopted, or if no such document exists, please provide commentary on this decision. Can Access Canberra also please provide the definition for ‘transport depot’ that was used in deciding on this terminology?

There is no correspondence or procedural document in relation to this point raised.

The words “*construction-related business activities*” was used by the RRRT in the Preliminary Investigation Report to describe the activities on the lease, based on observations and engagement with the lessee at the time of inspection. During the investigation, the term was changed to align with the application for variation of the Crown Lease to permit a “*Transport Depot*”.

Under the Territory Plan 2008 (repealed), “*Transport depot means the use of land for the parking or storage of motor vehicles used in connection with a commercial or industrial transport undertaking*”.

I would note under the new *Territory Plan 2023* (Part G Dictionary) the definition of ‘*transport facility*’ has replaced the previous definitions of ‘*transport depot*’ and ‘*public transport facility*’. I am advised by EPSDD the two definitions were combined into one definition that covers the range of uses associated with a transport facility.

The definition of ‘*transport facility*’ under the *Territory Plan 2023* is:
“*transport facility means the use of land for the assembly, transport or dispersal of passengers travelling by any form of public transport, whether or not such public transport is provided by a public or private agency. It includes facilities for the parking, manoeuvring, temporary layover and storage of public transport vehicles, and vehicles used in connection with a commercial or industrial transport undertaking and driver amenities.*”

Notwithstanding, and as previously advised, it is a matter for EPSDD to make any determination in relation to the lease variation, and permissible uses in this area. Whether any future approve changes are consistent with the actual use would be a matter for compliance and enforcement.

7. If the DA to vary the lease for block 709 is not approved, what action will Access Canberra take to address the lessee's failure to comply with provision of a lease?

It is not appropriate to pre-empt or advise on any regulatory actions in relation to Block 709. At this stage, noting no decision has been made on the Development Application (DA), which may include specific provisions.

Access Canberra will undertake regulatory compliance activities consistent with its legislation and Accountability Commitment framework once a decision has been made. Notwithstanding, Access Canberra will continue to monitor the matter and this matter remains an active investigation.

I hope this assists in your consideration of this matter. Please do not hesitate to contact me if you wish to further clarify my response further.

Yours sincerely

Sch 2.2(a)(ii)

Nick Lhuede

Construction Occupations Registrar

Executive Branch Manager for Construction, Utilities and Environment Protection Branch
Access Canberra

10 January 2024

COMPLAINT REPORT:

Complaint 2023-001

Majura Valley Rural Block Used for Industrial Purposes



Complaint Report Background and Purpose

Purpose of Report

The purpose of this report is to inform the Complainant, the Principal Officers of relevant directorates, and Ministers responsible for relevant portfolios, of the Commissioner for Sustainability and the Environment's (the Commissioner's) findings in relation to the Complaint outlined below.

Status of Report

This report pertains to the Commissioner's functions under Section 12 of the *Commissioner for Sustainability and the Environment Act 1993* (the Act).

This is a non-statutory report. It is **not** a Special Report as defined under Section 21 of the Act. There is no statutory requirement for this report to be tabled in the Legislative Assembly, for recommendations to be presented or for government to formally respond to this report.

Response to Report

As described above, no statutory response is required to this Complaint Report.

ACT Government directorates which have been provided with a copy of the report are encouraged to provide a written response to the Commissioner in relation to those matters which pertain to their portfolio. These will be shared with ministers as appropriate.

The Minister for the Environment, Parks and Land Management may choose to direct the Commissioner to investigate this matter, or related matters raised through this investigation, under Section 21(1)(a) of the Act, which would require the Commissioner to produce a Special Report for the Minister to table in the Legislative Assembly.

Circulation of Report

A copy of this Complaint Report has been provided to:

Minister for Government Services and Regulatory Reform

Minister for Planning

Minister for the Environment, Parks and Land Management

Head of Service

Director-General of the Environment, Planning and Sustainable Development Directorate (EPSDD)

The Complainant

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1. The Complaint

1.1 Background Information

1.1.1 Information from Complainant

The following information was provided to the Office of the Commissioner for Sustainability and the Environment (OCSE) by the Complainant in support of their submission. Note that the text in italics was submitted by the Complainant and does not form part of OCSE's findings.

Block 709 (District of Majura) is a 3 Ha block of land with a rural lease (NUZ1 Broadacre Zoning). In September 2021, Block 709 was purchased as a short-term lease by the large, locally owned civil works construction company Complex Co. Since then, the block has been used for 24 hour industrial purposes, including storage of a large piles of asphalt (Figures sent to Miranda.Gardner@act.gov.au) and movement and storage of many heavy vehicles.

As a direct consequence there is significant noise, light, air, and water pollution that is affecting the lives of neighbouring properties and the environment. Evidence is supplied of significant sediment run-off directly into Woolshed Creek, and the impact of noise, light, and air is clearly evident at the block. The surrounding areas of the Majura Valley are sustainably managed productive rural lands, where industrial land use is inappropriate.

It is understood ... that Complex Co. has been operating illegally on block 709 for uses outside those stipulated by the NUZ1 zoning, and without a land management agreement (LMA). The company is currently pursuing a retrospective lease variation development approval, however this does not negate the current and future impact to the environment, nearby farms and neighbours, or the amenity of the Majura Valley. Negotiations for an LMA are currently underway with Biosecurity and Rural Services, however this LMA should have been finalised within six months of the lease transferral.

Despite many attempts, no meaningful action has been taken on the matter despite clear breaches; breaches that have been brought to the attention of ACT government and public service. Approval of a DA for this site would have serious and lasting consequences on this rural land. The current industrial operations cannot align with the goals of a rural lease in terms of sustainability and environmental conservation.

1.1.2 Location of Block 709 District of Majura



Figure 1: Block 709 Majura (Source: ActMapi)

1.1.3 Crown Lease for Block 709 Majura

The purpose clause in the Crown lease for Block 709 Majura are as follows:

4. THE LESSEE FURTHER CONVENANTS WITH THE COMMONWEALTH as follows:

PURPOSE (a) To use the premises only for the purpose of agriculture not including the agistment of horses and ancillary uses of:

- (i) keeping a maximum of one (1) horse for personal use; and
- (ii) one (1) dwelling;

The relevant terms of the above clauses are defined in the lease as follows:

INTERPRETATION 1. IN THIS LEASE unless the contrary intention appears:

(a) “agriculture” means broadacre animal farming, crop and pasture production, and horticulture for commercial wholesale production, but does not include animal husbandry or any cultivation or animal farming carried out primarily for the personal enjoyment of, or consumption by, the owner(s) or occupant(s) of the land;

(b) “ancillary use” means the use of land for a purpose that is ancillary to the primary use of the land;

1.1.4 Compliance with lease purpose at Block 709 Majura prior to receipt of complaint

Based on historic aerial images, Block 709 appears to have been used as an agricultural or rural lifestyle block (Figure 2) until around 2013. The duplication of the Majura Parkway in 2014 significantly reduced the size of the block and since then images show it being used for storage of vehicles and equipment, with loss of vegetation evident across the site. The extent of this storage and conversion of the block from grass to hard standing or asphalt has increased over the years up to the most recent available satellite imagery from November 2023 (Figures 2-6).

ACT Government records provided to OCSE also document the environmental degradation of the block, including:

- In 2014, the Environment Protection Authority (EPA) responded to a complaint from a member of the public about the use of the lease. The EPA inspection report described ‘builders waste, timber pallets, scrap metal, building materials, derelict vehicles, several shipping containers and other items scattered across the block.’ A warning letter was sent to the lessee. No records of further action have been seen by OCSE.
- In 2015, breaches of the Land Management Agreement for the block were reported including uses not permitted under the lease, failure to protect soil health and vegetation, and failure to control weeds. An EPA warning letter was also sent raising concerns about ‘inappropriate or unlawful storage of chemicals, earthworks and water use.’ No records of further action have been seen by OCSE.



Figure 2: Block 709 in 2012, before Majura Parkway duplication. Source: ActMapi



Figure 3: Block 709 in 2015. Source: ActMapi



Figure 4: Block 709 in April 2021. Source: ActMapi



Figure 5: Block 709 in July 2022. Source: ActMapi



Figure 6: Block 709 in November 2023. Source: ActMapi

- In 2017, the EPA responded to a complaint from a member of the public about potential waterway contamination. Officers observed scaffolding, bricks and sheet metal stored on the block, but no evidence of chemicals or liquids on site. The matter was handed over to ACT Rural Officers. No records of further action have been seen by OCSE.

NOTE: lease transfer to current lessee occurred in September 2021.

- In 2022, the EPA responded to a complaint from a member of the public about activities being undertaken on the block. At the time of the inspection no waterway pollution was observed. EPA Officers requested that material be removed from the creek and that the owners install additional measures to contain runoff from the site. The EPA was satisfied that this was completed.

ACT Government records show several pre-application DAs for this block between 2015 and 2021. These include lease variations to permit use of the block as a tourist facility, service station, transport depot and educational establishment. None of these eventuated in a DA being submitted.

On 22 November 2023, after the commencement of this OCSE Investigation, DA202342506 was submitted with the purpose 'To vary the Crown lease by adding transport depot as a permissible use.'

1.2 Commissioner's Decision to Investigate the Complaint

The Commissioner has considered the complaint with regard to the Act. Under the Act, the Commissioner has the discretion not to investigate complaints subject to statutorily defined circumstances.

In considering this complaint, the Commissioner reviewed information submitted by the complainant and by ACT Government. Information was provided by Access Canberra with regard to regulatory matters, and EPSDD with regard to land management, land use and planning matters.

Based on the information provided, the Commissioner determined that the following elements of the complaint and initial evidence provided by ACT Government agencies warrant further investigation:

1. The concerns raised by the Complainant about 'significant noise, light, air, and water pollution that is affecting ... the environment' and the response from ACT Government to address these concerns.
2. The history of use not permitted under lease conditions and environmentally damaging activities on this block and the response from ACT Government to these.
3. The approval by EPSDD of a rural lease transfer with the box for 'commercial' use ticked on the lease transfer form. This may have had deleterious environmental impacts on Block 709 and neighbouring areas.
4. The process by which an extension was granted by EPSDD for the completion of a Land Management Agreement for Block 709. The delay in finalising this agreement may have had deleterious environmental impacts on Block 709 and neighbouring areas.

The Commissioner is of the opinion that this complaint warrants investigation consistent with the functions of the Commissioner defined in Section 12 (1) of the Act, namely:

- a) investigating complaints about—
 - (i) the management of the environment by the Territory or a territory authority; and
 - (ii) issues relating to ecologically sustainable development in the ACT;

The Commissioner also considers that the substance of this complaint related to the objects of the Act, specifically sections 2B(c) and (e), which are to ‘encourage decision-making that facilitates ecologically sustainable development’ and ‘encourage sound environmental practices and procedures to be adopted by the Territory and territory authorities as a basis for ecologically sustainable development.’

1.3 Evidence Submitted to this Investigation

Provision of information to this investigation by ACT Government has been an iterative process. A DA for a lease variation at the block is currently being assessed by the ACT Government. In this investigation, OCSE has been provided with information from EPSDD and Access Canberra. This information has taken the form both of written and verbal responses to questions, and records and documents relating to this matter.

EPSDD has provided the following:

- Correspondence and documentation relating to environmentally damaging activities and uses not permitted by the lease from 2014 to the present time¹.
- Correspondence relating to pre-application DA discussions for the block from 2015 to the present time.
- Correspondence and documentation relating to current and previous LMAs for the block.
- Correspondence and documentation relating to the transfer of the lease for Block 709 Majura in 2021.
- Correspondence relating to concerns raised by the ACT Rural Landholders’ Association of Farmers (RLAF) in 2022 about the use of this block.
- Correspondence and documentation relating to DA202342506, the DA submitted for a lease variation in November 2023.

OCSE also held several meetings with EPSDD officers.

Access Canberra has provided the following:

- Documentation relating to the Rapid Regulatory Response Team’s inspection of Block 709.
- Written responses to questions from OCSE about compliance procedures and legislation in relation to the substance of the complaint.
- Copies of Access Canberra’s Accountability Commitment.

¹ Note: historically the EPA has been situated within EPSDD so some EPA records are still held within EPSDD’s filing system.

2. Commissioner's Findings

Matter 1: The concerns raised by the Complainant about 'significant noise, light, air, and water pollution that is affecting ... the environment' and the response from ACT Government to address these concerns.

OCSE understands that since September 2022 Access Canberra has received two separate complaints from members of the public about Block 709. One of these, in September 2022, related to pollution entering a waterway from the block. In response to this complaint, officers from the EPA inspected the block. In relation to this matter, Access Canberra advised OCSE that:

At the time of the inspection the officers did not observe any pollution entering Woolshed Creek however there was some material from prior activities which officers requested be removed from the creek. The officers inspected the pollution controls on the Block and requested the owners install some additional measures along the boundary with Woolshed Creek to contain all runoff from the site.

Following the inspection, officers from the EPA referred the matter to ACT NoWaste² as the regulator for waste businesses. On 28 November 2022, EPA officers conducted a follow-up inspection of the site and noted that the additional control measures had been installed as agreed.

Specifically in relation to the Complainant's concerns about 'significant noise, light, air, and water pollution that is affecting ... the environment', OCSE has not found any evidence of complaints relating to these matters which were not responded to and addressed by the EPA in line with the Access Canberra Accountability Framework. With the exception of the waterway pollution complaint described above, the environmental issues at Block 709 Majura are attributable largely to land use change at the block which has occurred over time and without ACT Government approval, as described below.

The second complaint was made in November 2022 and was raised directly with the Ministers for Environment and for Planning. This complaint relates to use of the block for purposes not permitted under leasing conditions and not compatible with policy outcomes for blocks zoned as NUZ1 (Broadacre). In response to this complaint, officers from Access Canberra's Rapid Regulatory Response Team (RRRT) inspected the block.

The RRRT inspection found evidence that Block 709 was being used for purposes not permitted under lease conditions. Their report reads as follows:

During the inspection, the inspectors identified that the property is being used for construction-related business. The inspectors observed three buildings, several trucks and civil works vehicles; shipping containers; crates of concrete pavers and columns; stacks of steel beams and mesh; timber crates; hoist; skip bins; and other building material items.

The inspectors observed stacked shipping containers currently being used as office space and a separate building also being used for office space. A third building was observed on the subject block. It appears to be used for storage of building equipment/materials.

² OCSE has not contacted ACT NoWaste about this complaint.

During the inspection, the inspectors spoke with the property owner by telephone, who confirmed he operates a civil construction business from the property. He claimed to have lodged an application some time ago for a lease variation permitting commercial use of the property. Review of AC records did not evidence lease variation application records.

Review of AC records identified the purpose clause of the Crown Lease, endorsed 23 May 2017, states the subject block is to be used for agricultural purposes which includes broadacre animal farming, crop and pasture production and horticulture.

Based on the inspectors' observations, and confirmation from the property and business owner, the subject block is being used for civil construction-related activities. This is inconsistent with the purpose clause of the Crown Lease. A breach is identified.

A show cause notice and an advisory letter were issued to the lessee following the inspection, on 1 December 2022. The show cause notice requires the lessee to provide a response explaining why a controlled activity order should not be issued on the lease; such an order would result in the issuing of penalties for the lessee if the non-compliant activities were to continue.

The advisory letter also confirms that a breach of lease conditions has occurred, and goes on to state 'RRRT inspectors would like to invite the owner to submit a Lease Variation for the use of the property for civil construction activities, to ensure compliance with the relevant planning legislation.' OCSE understands that this is an established approach to achieve compliance with lease conditions following the identified breach.

OCSE is however unclear of the basis for the invitation to submit a lease variation for 'civil construction activities', since these are not included in the list of permitted uses for NUZ1 under contemporary legislation. It would therefore not be possible for such a variation to be granted.

A monitoring inspection was taken by Access Canberra in November 2023, 14 months after the original site inspection which identified non-compliance. The description of activities being undertaken at the site was largely unchanged from the original inspection. Shortly after this inspection the lessee submitted a DA for a lease variation to add 'transport depot' to the permitted uses of the block.

Access Canberra has explained their decision to make use of this provision as follows:

In this instance, the lessee advised their intention to comply voluntarily by applying to vary the lease conditions and no safety or environmental concerns were identified. Access Canberra will consider a wide range of factors in making its regulatory decisions, including the consideration of harm occurring, such as public safety or environmental harm, as well as considering any risk of harm that preventing or restricting an activity may cause, for example economic factors or access to employment. Response will also include the respondent's approach to seeking to comply with planning requirements. As allowed by both legislation and the Accountability Commitment framework, Access Canberra may exercise discretion in deciding on the most appropriate regulatory action.

Access Canberra further notes in its correspondence with OCSE in relation to this inspection that 'Non-compliance with the Crown lease was established, however no safety or environmental concerns were identified. Considering these factors, immediate regulatory action, such as a prohibition notice, was not considered necessary.' The RRRT is not however an environmental regulator and did not mention environmental issues in their inspection report. Given that concerns had been raised about the use of the block directly with the Ministers for Environment and for

Planning, an inspection by the EPA may have been prudent once non-compliance with the lease was confirmed.

OCSE recognises that Access Canberra officers have acted in accordance with relevant legislation and policy and does not take issue with the actions of individual officers. However, OCSE considers that the legislative and policy framework which has been used to determine the course of action in this matter does not represent sound decision-making as a basis for ecologically sustainable development. This is for the following reasons:

- i. The legislation allows discretion in how powers are exercised. In this case, this means the lessee has been permitted to conduct activities not permitted under lease conditions for over two years (one year from the time of inspection and notification, but it is apparent from other ACT Government communications that awareness of this non-compliance dates back to the time of the lease transfer in September 2021).
- ii. Allowing a lessee to continue with an activity not permitted under their lease for 14 months after the breach of lease conditions was formally identified may not ensure that the environment is sufficiently protected from harm.
- iii. While Access Canberra officers from the EPA and RRRT determined that there was no environmental harm occurring at Block 709 during their inspections, there is no provision within planning or regulatory approaches applied in this case to recognise the fact that land use change and non-compliant activities in and of themselves are potentially a threat to the environment.

Under current legislative and policy frameworks, there is no mechanism to address gradual loss of environmental values over time, even where this is the result of human activity. In this case a well-vegetated rural block has over the course of 10 years been largely converted to hard standing, buildings have been constructed, and the site has become littered with building materials, waste and vehicles³. This change has apparently been allowed to occur with no environmental assessments or approvals.

Change in terminology used to describe activities at Block 709 Majura

Another detail related to this matter identified during the investigation is a change in use of terminology to describe the use of Block 709 in Access Canberra's records, from 'construction-related business' to 'transport depot'. This was acknowledged by Access Canberra in correspondence with OCSE:

The words "*construction-related business activities*" was used by the Rapid Regulatory Response Team in the Preliminary Investigation Report to describe the activities on the lease, based on observations and engagement with the lessee at the time of inspection. During the investigation, the term was changed to align with the application for variation of the Crown Lease to permit a *Transport Depot*".

It is evident from Access Canberra's response that based on the observations of its own inspection team, the activities taking place on Block 709 were construction-related. In comparing the inspection reports for inspections undertaken by the RRRT in September 2022⁴ and November 2023, it is not clear that there has been any material change in the activities being undertaken on Block 709 Majura

³ This can be seen from satellite imagery available on Actmap as well as being referred to in site inspection reports.

⁴ Refer to 2. Commissioners Finding Matter 1 above.

in spite of the introduction of the term 'transport depot'. The description of activities from November 2023 is as follows:

During the inspection it was observed that the block was being used as a transport depot. Further observations showed a number of items such as building materials, mounds of crushed rock and alike [sic] being stored at the block. A number of buildings such as large hangars/sheds and offices have been constructed on the site. A large amount of vehicles were also observed to be parked or stored on the site.

This is not consistent with the 2008 Territory Plan definition of 'transport depot', as follows: '**transport depot** means the use of land for the parking or storage of motor vehicles used in connection with a commercial or industrial transport undertaking'. This definition does not include construction of additional buildings, or storage of construction materials other than vehicles, both of which have occurred on this block. It seems evident that Block 709 Majura continues to be used to operate a construction business, not a transport depot.

In light of this, it is not clear to OCSE what basis the RRRT has for changing its language 'to align with the application for variation of the Crown Lease' as advised. Access Canberra has informed OCSE that a lease variation was its preferred compliance approach in this matter, as permitted under legislation. However, this change of language inaccurately describes the activities at the block in a manner that represents them as a permitted activity under the Territory Plan 2008 (i.e. a transport depot) when it seems clear from the inspection reports that the observed activities are not permitted (i.e. a construction business).

[Matter 2: The history of unpermitted uses and environmentally damaging activities on this block and the response from ACT Government to these.](#)

Based on the information presented in the Background section of this investigation report, it is evident that the previous lessee of Block 709 had also been operating outside the lease conditions. The former lessee received warning letters about their non-compliance with lease conditions from ACT Government officers on several occasions, but no further action appears to have been taken. This lessee entered into several pre-application DA discussions with ACT Government to vary the terms of the lease to permit a range of commercial uses. None of these eventuated in a DA being submitted by the former lessee.

In a letter sent by the EPA to the previous lessee in 2015, regarding alleged offences of 'unlawful storage of chemicals, earthworks and water use', the EPA officer notes that 'The Authority prefers to take an educative and consultative approach in the first instance, where practicable, to resolve matters that concern alleged environmental offences'. In this instance, such an approach appears to have failed to prevent a sustained degradation of the natural environment on block 709. This includes loss of vegetation, soil erosion, and run-off into waterways. While OCSE has not seen any record of vegetation types found on the block prior to 2022, a report for a site inspection conducted by Conservation Research and Rural Services in February 2022 notes:

Under EPBC criteria the woodland community on the block can be listed as a protected community. Yellow Box ± Apple Box tall grassy woodland_u178. In this situation, due to the damaged ground areas, the woodland does not meet criteria.

OCSE has not seen evidence of follow-up monitoring conducted by the EPA to determine the efficacy of the 'education and consultation' approach adopted in this case. While EPA officers have acted in full accordance with legislation, it cannot be determined whether the regulatory approach has supported the EPA's statutory function to 'protect and enhance the quality of the environment' in this instance.

Matter 3: The approval by EPSDD of a rural lease transfer with the box for 'commercial' use ticked on the lease transfer form.

Information provided by EPSDD also showed that when the lease transfer agreement was signed the 'commercial' use box was ticked instead of the box for 'rural'. This is an error which was not identified by EPSDD staff when the lease transfer was approved, so it appears the lessee may have been operating under the understanding that commercial activities were permitted on Block 709 when this is not the case.

This situation appears to have arisen because the lessee was sent a blank lease transfer agreement that had already been signed by ACT Government officers and legal representatives for both parties to the transfer. The new lessee was then able to complete additional details themselves, including ticking the commercial use box. This is acknowledged in ACT Government records, for example the inspection report by Conservation Research and Rural Services officers in February 2022, which states 'When sold, the new owners...ticked the commercial option on the lease, and this was not corrected by EPSDD leasing.'

The process that was followed for the lease transfer seems flawed and not in keeping with sound legal practice. In this matter, it seems that this failing has resulted in detrimental environmental impacts.

In responding to OCSE on this matter, EPSDD asserted that it bears no responsibility for the correct completion of the Land Titles Transfer Form, even though it is a signatory to this document. It asserts that it is the responsibility of the lessee to ensure their activities are legal. Based on the findings of this investigation OCSE considers that in this case, this approach has led to a misunderstanding on the part of the lessee regarding the permitted uses for Block 709 Majura, which may have resulted in detrimental outcomes for the environment.

Matter 4: The process by which an extension was granted for the completion of a Land Management Agreement for Block 709

In November 2022, concerns were raised by members of the public with the Deputy Director-General EPSDD, to the Minister for Planning and Land Management, and the Minister for the Environment expressing concerns about the use of the block, and the lack of a Land Management Agreement (LMA) which is usually a condition of sale for rural blocks in the ACT.

The Deputy Director-General EPSDD's response advises that while an LMA is required for a lease transfer to take place, under the *Planning and Development Act 2007* the ACT Government allows a six-month period following the lease transfer for an LMA to be executed. The response further states that 'ACT Parks and Conservation Service has advised that negotiations for an LMA were put on hold following the transfer due to the requirement for a lease variation.'

In December 2022, an email from the Rural Leasing Team to the lessee about the LMA summarises the situation as follows:

I refer to the transfer of Block 709 Majura dated 14 September 2021. I also refer to your letter of 7 September 2021 stating that you undertake to complete a Land Management Agreement (LMA) within 6 months from the date of transfer.

As you are aware, a condition of the transfer of the property was subject to you entering into a LMA with the Territory (Conservator of Flora and Fauna) in relation to managing the rural land comprised in the lease.

Section 286 of the Planning and Development Act 2007 (Act) states that the interest holder must enter into a LMA not later than 6 months after the day the lease is transferred. As a result, a LMA was due to be finalised by 14 March 2022.

Section 286 of the Act also states that the planning and land authority may extend the period in which a LMA is required to be finalised.

Given that you intend to submit a development application to vary the purpose clause of the lease, an extension of time to complete a LMA has been granted until 31 June 2023.

An LMA for the block was executed in 2023, dated January 2023 and signed on 17 April 2023, over 18 months after the lease was transferred.

Section 286(3) of the *Planning and Development Act 2007* (now repealed⁵ but in force at the relevant times) provided for extensions to the period for executing an LMA beyond six months to be granted at the discretion of the Planning and Land Authority. The legislation stipulated that this must be in writing. OCSE has not seen records relating to the decision-making process for the granting of this extension; rather it appears to have been granted by default when the lessee failed to meet the timeframe stipulated in the *Planning and Development Act 2007*. The legislation does not provide the considerations that the planning authority must contemplate in granting an extension and OCSE is unaware of policy guidance for such considerations. It is unclear on what basis an application for a lease variation would be viewed as a reason for a delay in completion of the LMA.

This delay appears to have been because of the confusion regarding the use of the site and the knowledge among EPSDD staff that the lessee was intending to submit a DA to change the lease conditions for the site. In correspondence from December 2022 (over one year after the lease transfer occurred), ACT Government officer noted 'I have started looking at this LMA a while ago now but it got put on the back burner due to complexities' and 'I haven't been near this one yet with the wide range of activities going on here that contradict the lease conditions.'

A site inspection report prepared by officers from Conservation Research and Rural Services notes 'Currently the owners are in the process of applying for a change of lease, from rural to commercial' and the block is referred to in their report as a 'commercial' property.

⁵ This provision has now been carried over into section 353(3) of the *Planning Act 2023*.

The LMA itself clearly indicates that the lessee has no intention of operating the lease ‘for the purposes of agriculture’ with the key objectives and actions for the site listed as follows:

Key Objectives and Actions	Proposed Timetable
Storage of machinery for civil construction	ongoing
Stockpiling of recycled asphalt material road base	ongoing
Complete lease variation application for rural to commercial use	Underway – completed 2023 approximately
Submit development application for construction of site offices and sheds	2023/24

These objectives and actions appear contrary to the purpose described in the lease for Block 709 Majura.

2.1 Summary of Findings

In relation to this Complaint, the Commissioner has made the following findings based on the information provided during the investigation:

1. Current and historic ACT legislation has not afforded protection of the environment on Block 709 Majura. A reduction in vegetation cover and significant increase in impermeable surfaces from 2014 to the present can be seen in satellite photos.
2. Current and historic regulatory approaches by ACT Government have not afforded protection of the environment on Block 709 Majura; there is no evidence provided that the educative approach of the EPA has afforded environmental protection in this matter.
3. No evidence was found that ACT Government had failed to respond to formal complaints about specific instances of ‘significant noise, light, air, and water pollution that is affecting ... the environment’ at Block 709 Majura.
4. It appears the lessee may have been operating on the incorrect understanding that by ticking the ‘commercial’ use box on the lease transfer agreement, commercial activities were permitted on the block (for example evidenced by the leaseholder’s statement to RRRT officers that he was operating a construction business). Such activities had or had the potential to cause detrimental impacts on the environment at the block.
5. The decision-making process and basis for granting an extension for completion of an LMA for Block 709 Majura is unclear. While the Act provides for granting of extensions, no process to guide this appears to be in place. In this instance, based on the documents provided to OCSE, the process appears to have been ad hoc and reactive. This had or had the potential to cause detrimental impacts on the environment at the site.
6. The purpose of an LMA is to ‘establish appropriate sustainable agricultural management practices and good farm biosecurity for the subject land while maintaining ecological and cultural values present on the land, and protecting the environment from harm’. The LMA for Block 709 Majura does not appear to support these outcomes.

7. The lessee of Block 709 Majura was invited by the RRRT to 'submit a Lease Variation for the use of the property for civil construction activities, to ensure compliance with the relevant planning legislation.' Given that 'construction activities' are not included in the list of permitted uses for NUZ1 under contemporary legislation, it is unclear that this represents a valid compliance approach.
8. The lessee of Block 709 Majura has submitted a DA for a lease variation to add 'transport depot' to the permitted uses for the block. The activities currently being undertaken at the block do not match the definition of a 'transport depot' as described under the Territory Plan. If DA202342506 is granted, it is assumed that the construction business currently operating at the block will still be viewed as non-compliant with the lease.

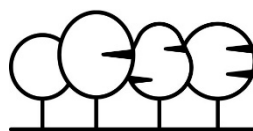
Overall, OCSE considers that a gradual decline in environmental values has been allowed to occur at Block 709 Majura because there is no legislative provision to protect against this type of slow ecological degradation. The informal and unsanctioned change in land use at this site is of most concern to OCSE because of the message it could send to other leaseholders seeking to use NUZ1 blocks for non-agricultural purposes.

2.2 Recommendations

OCSE makes the following recommendations to help clarify government processes with regard to the handling of several administrative matters relating to the substance of this complaint. The intent of these recommendations is to assist with transparency around decision-making regarding the management of Block 709 Majura and attend to environmental outcomes.

1. Review EPA internal processes to include a review period for educative compliance interventions to determine whether this approach has been successful in protecting the environment from harm. This should include clear timeframes within which protection must be demonstrated, and if these are not met alternative regulatory approaches should be taken.
2. Ensure blank executed agreements are not provided to lessees as part of the lease transfer process.
3. Develop policy guidance for the circumstances under which an extension may be granted for a lessee to enter into an LMA, to better protect against adverse environmental outcomes. As it is currently written, and without further interpretation in policy, this provision is very open-ended. More detail would be helpful in clarifying the circumstances under and reasons for which an extension for entering into an LMA may be granted. A defined process by which such an extension may be granted, including delegates for authorisation of extensions, may also be helpful. This will provide transparency for both rural lessees and ACT Government officers.
4. Consider whether, in its current form, an LMA is the most appropriate management mechanism for rural blocks which are not being used for agricultural purposes.

5. Amend the *Planning Act 2023* to clarify the circumstances under which a retrospective application for a DA after a development has occurred is permitted, to ensure that this does not result in adverse environmental outcomes. As it is currently written, this provision is very broad and may not be effective in preventing harm to the environment. More detail would be helpful in clarifying:
 - a. The circumstances under which a post-development DA can be submitted. For example, does this still apply if damage to infrastructure or heritage matters has already occurred?
 - b. The scale and type of development for which a post-development DA can be submitted. As currently worded any scale and type of development would be eligible – is this the intent of the legislation?
 - c. Guidelines to assist officers of the Planning Authority and referral entities in considering a DA ‘as if development had not occurred’ when irreversible change to the development site has already occurred as a result of the development (e.g. in this case, replacement of ground flora with asphalt. Other examples could be unauthorised tree removal or damage to heritage matters).



OFFICE OF THE COMMISSIONER
FOR SUSTAINABILITY AND
THE ENVIRONMENT

Mr Ben Ponton
Director-General
Environment, Planning and
Sustainable Development Directorate
GPO Box 158
CANBERRA ACT 2601

Dear Mr Ponton

**Re: Complaint to the Office of the Commissioner for Sustainability and the Environment
2023-001 Majura Valley Rural Block Used for Industrial Purposes**

I am writing to you further regarding the complaint received by my office on 14 July 2023 about the use of a rural block in Majura for industrial purposes. I provided you with the final complaint report on 26 June 2024.

It has come to my attention that Block 709 Majura is currently being advertised for lease as a transport depot. This is following the granting of DA202342506 to add 'Transport Depot' as a use for the block in September 2024, in accordance with the Territory Plan 2008. The DA approval notes that additional approvals will be required for the infrastructure to support this use.

Photos on the estate agency [website](#) for the block appear to show the entirety of the area is covered in hard standing. The EPA notes in their advice during consideration of the DA that 'Despite ongoing use in the past decade or so that is not in accordance with the purpose clause of the lease, it is not until 2021 that the majority of the block gets covered in gravel/asphalt'.

It seems clear that ACT Government is aware that the current lessee was responsible for replacing most vegetation on the site with hard surfaces. It is disappointing that in spite of ACT Government acknowledging that this has been done in contravention of lease conditions, seemingly no penalty has been imposed or remedial action required.

A number of the photos from the advertisement also show materials and equipment such as skips, water tanks, building supplies and vehicles within the drip line of trees. This is at odds with the DA conditions which state that 'Storage of materials, vehicles or other uses should be pulled back from the drip lines of existing trees to reduce compaction and disturbance impacts.' The fact that this contravention of lease conditions is openly displayed on a public website suggest to me that the lessee has little concern about repercussions for not fulfilling their environmental responsibilities.

Commissioner: Dr Sophie Lewis
GPO Box 158 Canberra ACT 2601
ABN: 66 893 463 785

T: (02) 6207 2626 E: envcomm@act.gov.au W: www.envcomm.act.gov.au



This Office is independent of, but funded by, the ACT Government.

On 29 July 2024 you advised me that the *Planning Act 2023* outlines the legislative requirements for development and avenues for compliance when these requirements are not complied with, and that EPSDD would engage with Access Canberra regarding compliance provisions.

Can you please advise as to whether any compliance action has been taken regarding the usage of Block 709 Majura? If no action has been taken, can you please advise why this is the case?

Yours sincerely

A handwritten signature in black ink, appearing to read 'S Lewis', with a long horizontal flourish extending to the right.

Dr Sophie Lewis
Commissioner for Sustainability and
the Environment

9 January 2025



ACT
Government

Environment, Planning and
Sustainable Development

Obj: 25/0004238

Dr Sophie Lewis
ACT Commissioner for Sustainability and the Environment
5 Constitution Avenue Canberra City ACT 2601
GPO Box 158 Canberra ACT 2601

Dear Dr Lewis,

Re: Complaint to the Office of the Commissioner for Sustainability and the Environment 2023-001 Majura Valley Rural Block Used for Industrial Purposes (Majura Block 709)

Thank you for your letter dated 9 January 2025 to Mr Ben Ponton, Director-General EPSSD. I write to you in my capacity as Chief Planner for the Territory Planning Authority (the TPA) as this matter falls under my current responsibilities. Apologies for the delay in responding.

On 29 November 2023, a development application (DA-202342506) was lodged with the TPA for a lease variation to add "transport depot" as a permissible use. The application was assessed against the requirements of the Territory Plan and *Planning and Development Act 2007*. On 6 September 2024 the TPA approved the application, subject to conditions. Information on application including the Notice of Decision is available at <https://www.planning.act.gov.au/applications-and-assessments/development-applications/browse-das/development-application-details?da-number=202342506&amendment-version=>.

The Environmental Protection Authority (EPA) and the Construction and Planning Regulation (CAPR) Branch of Access Canberra have investigated the complaint in relation to the apparent location of equipment. EPA have advised that they did not identify any compliance issues under the *Environment Protection Act 1997* at the initial stages of investigation.

Access Canberra have advised that a compliance officer from CAPR contacted the lessee of the block, regarding storing of equipment and materials within the drip lines of regulated trees. The officer informed the lessee that not managing land in accordance with the development approval and the land management agreement is a controlled activity pursuant to Item 7, Schedule 4 of the *Planning Act 2023*. The lessee has agreed to remove the equipment and materials from the drip line of trees.

CAPR did not identify any further compliance actions in relation to the development approval and has referred the complaint as received to the Office of the Conservator

of Flora and Fauna (the Conservator). CAPR has also requested further advice from the Conservator under the *Nature Conservation Act 2014* in relation to protection of the native flora on the site and related compliance issues that may impact or intersect with the *Planning Act 2023* and the development approval.

No regulatory sanctions have been applied at this stage, noting the lessee removed the materials as requested and consistent with the Access Canberra Accountability Commitment Framework. I'm advised that CAPR is awaiting advice from the Conservator on any technical aspects that may indicate a potential contravention of the *Planning Act 2023*. Further actions for CAPR and the EPA may be determined based on the advice received from the Conservator.

I trust this information is of assistance.

Yours sincerely



George Cilliers
Chief Planner
Territory Planning Authority

5 February 2025

Chief Minister, Treasury and Economic Development Directorate

To:	Minister for City and Government Services	Tracking No.: 25/0014130
Date:	18/03/2025	
CC:	Chief Finance Officer, CMTEDD	
Through:	Margaret McKinnon, Acting Deputy Director-General, Access Canberra	
From:	Jodie Vaile, Executive Branch Manager, Strategy, Data and Governance, Access Canberra	
Subject:	2025-26 Access Canberra Accountability Indicators	
Critical Date:	21/03/2025	
Critical Reason:	To meet CMTEDD deadlines	

Recommendations

That you:

1. **Note** the information contained in this brief;

Noted / Please Discuss

2. **Agree** to maintain the Accountability Indicators and targets for Output 2.1 (Access Canberra) for 2025-26; and

Agreed / Not Agreed / Please Discuss

3. **Agree** to maintain the CMTEDD Strategic Indicator 3c *It is easy to do business with the ACT Government* target at 90% for 2025-26.

Agreed / Not Agreed / Please DiscussTara Cheyne MLA /...../..... **27/3/25**

Minister’s Feedback

Background

1. Following a review of Access Canberra’s Accountability Indicators (Indicators) in May 2022 by the Strategy and Transformation Office (CMTEDD) which identified flaws with most indicators, Access Canberra undertook to revise its Indicators to improve their value and calculation methodologies. You agreed to the introduction of new Indicators for the 2023-24 financial year (Attachment A).
2. Access Canberra has retained these indicators since that time. Refer to Attachment B for 2023-24 actual and 2024-25 estimated results.
3. Your agreement to 2025-26 input to the budget statement is requested to allow CMTEDD to finalise preparation of the Budget Papers (which will subsequently be circulated by CMTEDD for your agreement).

Issues

4. In 2023-24, Access Canberra did not achieve three out of eight targets but was within 5%. Access Canberra has faced significant budgetary challenges in 2024-25 which has impacted a range of services at various times across the year. Access Canberra expects to achieve similar results to last year.
5. Significant budgetary constraint is expected to impact front-line services in 2025-26 if a range of 2025-26 Budget funding proposals are not successful. If staffing profiles change significantly, Access Canberra has estimated that current targets might not be met.
6. With no ability to pre-empt budget considerations and subsequent impact on services there is no current basis on which to recommend altered settings. Therefore, it is proposed that Access Canberra’s Indicators and targets remain the same for the 2025-26 financial year, noting an opportunity will exist during the Mid-Year Budget Review to amend Indicators if deemed necessary.

Indicator	Proposed Target
a) Access Canberra proactively communicates its priorities for risk-based regulation	100%
i) Statutory authorities have a public statement of expectation	100%

ii) Regulatory activities undertaken in line with the public statements are reported annually	
b) Percentage of the community who find it easy to interact with Access Canberra person-to-person	90%
i) Percentage of individuals that find it easy to interact with Access Canberra person to person	90%
ii) Percentage of business clients that find it easy to interact with Access Canberra person to person	
c) Percentage of the community who find it easy to interact with Access Canberra online.	85%
i) Percentage of individuals that find it easy to interact with Access Canberra online	
ii) Percentage of business clients that find it easy to interact with Access Canberra online	85%
d) Percentage of occupational authorisations issued within the published timeframe	90%
e) Reduction of regulatory burden on business by undertaking risk-based coordinated inspection activity	80%

7. Access Canberra was required to alter the timeframe published on its website for Working with Vulnerable People (WWVP) in March 2024 from 28 days to 65 days, due to a methodological error in calculating the original target, which was impossible to be met. With this amendment, Access Canberra met the target for this indicator (d) in 2023-24. WWVP timeliness is the major driver for meeting the occupational timeliness measure due to the significant volumes processed (comprising approximately 75% of the number of occupational licence transactions counted for the indicator).
8. The Machinery of Government (MoG) changes are also likely to impact on the Indicators (including the Strategic Indicator) for Access Canberra. However, preparation for the 2025-26 Budget will continue based on existing administrative arrangements.
9. The CMTEDD strategic indicator 3c *It is easy to do business with the ACT Government* is based on the combined result of Access Canberra's indicators b) and c). The Strategic Indicator target was set at 90% (the higher of the two Access Canberra ease targets) from 2023-24. It is recommended the 90% target be retained due to the recency of changes to the ease measures and Access Canberra has not yet achieved the strategic indicator target overall (87% in 2023-24).

Financial Implications

10. Nil from the setting of the Indicators.
11. Access Canberra recently completed a procurement process for customer and business client survey services for the coming 3 years. Micromex (the existing provider) was the successful vendor. The cost of the contract over three years is \$396,985.

12. Access Canberra's confidence in achieving its Indicators in 2025-26 is connected to the extent savings are required to remain within its funding envelope. The 2025-26 business case *Access Canberra Business and Regulatory Improvement Program* seeks correction of its structural deficit to ensure it has the operational capacity and budgetary confidence to deliver its services to the standard set by the Indicators.

Consultation

Internal

13. Access Canberra keeps the CMTEDD Chief Finance Officer regularly apprised of its financial position; the work progressing through the Business and Regulatory Improvement Program to improve its operational and fiscal sustainability; and the potential impacts on Indicators from budget management actions.
14. The Chief Executive Officer for the Gambling and Racing Commission (the GRC) has been briefed on the recommended position for Access Canberra's Indicators for 2025-26, due to the connection between the two outputs' Indicators. A separate briefing will be provided by the Commission GRC if significant changes to the GRC's Indicators are requested.

Cross Directorate

15. Nil.

External

16. The Canberra Business Chamber prepared a submission as part of the 2025-26 Budget process. Within the submission was a recommendation for the Government to fund a pilot for 'Net Promoter Scores' (NPS) within Access Canberra and EPSDD. Access Canberra's response to this recommendation (provided to Economic Development, CMTEDD to address within a 2025-26 Budget business case) highlighted the limitations associated with NPS in government settings and the strength of the methods already in place for customer satisfaction polling, including via the annual customer survey.

Work Health and Safety

17. Nil.

Benefits/Sensitivities

18. Until there is greater certainty of Access Canberra's financial and operational settings for 2025-26, there remains doubt over the organisation's capacity to achieve the targets set. Targets may be altered through the mid-year budget review if the MoG or Budget outcomes make targets unattainable or indicators no longer fit for purpose.

Communications, media and engagement implications

19. The Indicators will be published in the 2025-26 Budget Papers. No stand-alone communication of the Indicators is proposed.

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Signatory Name: Jodie Vaile Phone: 6207 1915
Action Officer: Linda Muscat Phone: 6207 5014

Attachments

Attachment	Title
Attachment A	SIGNED - 20230330 - Brief - BBR - 2023-24 Accountability Indicators
Attachment B	2023-24 and 2024-25 Accountability Indicator Targets and Results

Chief Minister, Treasury and Economic Development Directorate

To:	Minister for Business and Better Regulation	Tracking No.: 23/17870
Date:	30/03/2023	
CC:	Click here to enter text.	
From:	A/g Deputy Director-General, Access Canberra	
Subject:	CABINET 2023-24 Accountability Indicators	
Critical Date:	04/04/2023	
Critical Reason:	To meet CMTEDD reporting deadlines for the 2023-24 Budget.	

Recommendations

That you:

1. **Note** the information contained in this brief;

Noted / Please Discuss

2. **Agree** to the 2023-24 Access Canberra (Output 2.1) Accountability Indicators (Attachment A);

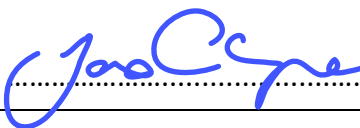
Agreed / Not Agreed / Please Discuss

3. **Agree** in-principle to the 2023-24 ACT Gambling and Racing Commission (Output 1.1) Accountability Indicators; and

Agreed / Not Agreed / Please Discuss

4. **Agree** to the amendment of 2023-24 CMTEDD Strategic Indicator 3c, including the target being set at 90%, as set out in Attachment D.

Agreed / Not Agreed / Please Discuss



Minister's Office Feedback

Background

1. Access Canberra's Accountability Indicators (AIs) were implemented in 2015 (with small changes on a few occasions since) following the formation of the agency through the amalgamation of several Government agencies.
2. Following a review of Access Canberra's AIs in May 2022 by the Strategy and Transformation Office (STO) which identified flaws with most indicators, Access Canberra undertook to revise its AIs to improve their value, measurement and methodologies.
3. The review included consideration of Access Canberra's Strategic Plan 2022-24 and the ACT's wellbeing framework.
4. The proposed revisions impact on the ACT Gambling and Racing Commission (the GRC) accountability indicators and the Chief Minister, Treasury, and Economic Development Directorate (CMTEDD) Strategic Indicator 3c *'It is easy to do business with the ACT Government.'*
5. Your agreement to the proposed changes and current input to the budget statement is required to enable CMTEDD to prepare Budget Papers (which will be subsequently circulated by CMTEDD for your agreement).

Issues***Access Canberra indicators***

6. Access Canberra has eight (8) indicators which were found to use flawed measurement methodologies and did not reflect the range or quality of services being provided.
7. Access Canberra proposes to adopt new AIs for the 2023-24 financial year to address identified shortcomings. The full set of AIs, with definitions, methodologies and targets (to be submitted to CMTEDD) is at Attachments A and B.
8. In summary:
 - Discontinue 2.1a 'percentage of the customers satisfied with Access Canberra' as no significant insights are gained by retaining the indicator due to the high correlation with 2.1b (ease).

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- Discontinue 2.1b 'percentage of Canberra community satisfied with the ease of interacting with Access Canberra' noting improved indicators on ease are included below.
- Discontinue 2.1c 'percentage of services available online' as there are diminishing returns in measuring this output due to digital-first service design. A new measure reflecting quality of service rather than service availability is included below.
- Discontinue 2.1d 'percentage of services completed online' as it fails to reflect quality of service.
- Retain 2.1e 'reduction of regulatory burden from risk-based inspections' for 2023-24 while the Better Regulation Taskforce completes work to develop a more meaningful measure of regulatory value.
- Discontinue 2.1f 'average number of days to issue business authorisation or personal registration' as the existing AI results are skewed by high volume transactions and the target provides only a blunt measure of regulatory efficiency. New measure for timeliness is outlined below.
- Discontinue 2.1g 'compliance rate during targeted campaign inspections' as it only measures one business unit's regulatory activity. New measure of regulatory impact is included below.
- Discontinue 2.1h 'average level of helpfulness after issuing a notice or before issuing a licence/authorisation' as it doesn't provide additional insights to those captured by 2.1b (which is being improved).
- New indicator x) 'Access Canberra proactively communicates its priorities for risk-based regulation', proposing that nominated statutory authorities develop and publish a statement of expectation regarding regulatory priorities and areas of focus, with yearly reporting to occur against activities undertaken in line with the risk-based focus outlined within each statement. Initially the Construction Occupations Registrar, the Environment Protection Authority and the Commissioner for Fair Trading will be required to have statements.
 - i. A Statement of Expectation will include areas of focus which support quantitative and qualitative reporting against activity and outcomes.
 - ii. Due to timing for the publication of the Annual Report, statutory authorities will prepare separate reporting within the financial year to be able to record a result in the annual Budget Statement of Performance.

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- New indicator xx) ‘percentage of the community who find it easy to interact with Access Canberra person to person’, measuring individual and business interactions separately.
- New indicator xxx) ‘percentage of the community who find it easy to interact with Access Canberra online’, measuring individual and business interactions separately.
- New indicator xxxx) ‘percentage of occupational authorisations issued within published timeframes.’ The amendment will improve transparency and nuance in setting service expectations for registrations required for a person to work in the Territory. The breakdown of occupational target timeframes can be found at [Attachment C](#).

9. The targets and rationale for the indicators are:

Indicator	Proposed Target	Rationale
x) Statement of expectation i) Authorities have a statement ii) Regulatory activity against focus areas is reported annually	i) 100% ii) 100%	The definition lists the selected authorities who are captured by the measure, so the target is set at 100% of those in the definition. All authorities will be required to report each year. Detail of what reporting occurred would be demonstrated within verification documentation for audit.
xx) Ease of interacting person-to-person i) Individuals ii) Business	i) 90% ii) 90%	The current target for ease (based on the combined survey methodology and across all channels) is 95%. Access Canberra did not achieve this target in 21-22 (83%). With the changes to the ease indicators and methodology, a small reduction is proposed for the first year. The percentage for person-to-person is higher than the online channel as there is a positive bias towards interactions with a person.
xxx) Ease of interacting online i) Individuals ii) Business	i) 85% ii) 85%	The 2022 customer survey reported ease of transacting online was 83%. Noting people are predisposed to scoring digital systems lower compared to people, and the explicit inclusion of business clients, the target

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		has been set lower than the person-to-person target.
Reduce regulatory burden from risk-based inspections	80%	This is the current target and has remained so for some years.
% of occupational authorisations issued within published timeframes	90%	Based on the listed occupations 3-year average, approx. 90% of decisions are made within the targets outlined in <u>Attachment C</u> . Last year's result would have been 88% under the proposed measure.

10. From 2023-24, Micromex (the current annual customer survey provider) will be engaged to undertake all survey activity required to measure community and business sentiment towards Access Canberra, and for reporting on the new indicators on ease of interacting. Internally conducted client survey activity for the purpose of reporting against indicators will cease as they were qualitative feedback and reflected a small subset of regulatory activities.

11. A review of Access Canberra's privacy policy and notice will be conducted to ensure third party research can utilise details obtained by Access Canberra in the course of dealing with a business client (i.e. for regulatory and licensing activity).

12. As most indicators are either changing entirely or have significant changes in methodology, there will be a break in longitudinal comparability. *Understand.*

ACT Gambling and Racing Commission accountability indicators

13. The proposed changes to Access Canberra's AIs impact on 4 out of 5 ACT Gambling and Racing Commission (GRC) AIs.

14. The GRC Board supports reflecting the changes Access Canberra has proposed for its indicators where appropriate, reducing the number of GRC AIs from 5 to 2. Specifically;

- Discontinue 1.1a *'undertake evidence (e.g. research and evaluation) informed activities to prevent and reduce gambling harm, including through the Gambling Harm Prevention and Mitigation Fund'* as a standalone indicator due to risk of inconsistent application of methodology in reporting against the measure; with the intention of incorporating the intent of the measure into the statement of expectation.
- Discontinue 1.1b *'percentage of customers satisfied with the GRC'* noting the high level of correlation between satisfaction and ease (1.1b and 1.1c).
- Amend 1.1c *'percentage of the Canberra community satisfied with the ease of interacting with the GRC'* to *'percentage of the Canberra community that find it easy to interact with the GRC'*.

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- i. Due to the low volume of interactions online and via phone, the division of the indicator by service channel and client type are not proposed for the GRC.
 - ii. The client base surveyed for this indicator will expand from the current inspection-only clients to include licensing/approvals clients and community sector partners. In 2023-24 these results will be obtained simultaneously with Access Canberra's.
 - iii. The current target of this indicator is 95%, it was proposed that the GRC sets the target to 90% (matching Access Canberra's person-to-person target) noting the changed methodology.
- Discontinue 1.1d 'compliance rate during targeted inspection campaign inspections' and add the new statement of expectation indicator 'the GRC is a proactive risk-based regulator'.
 - i. As per Access Canberra's measure (see paragraph 8 above), it will include the need to publish a statement of expectation for the Board, and for annual reporting of activity undertaken in line with the statement.
 - Discontinue 1.1e 'average level of helpfulness after issuing a notice or before issuing a licence/authorisation' as the indicator captures similar attitudes captured by 1.1c.

15. The indicators form part of GRC's Statement of Intent (SOI) which is published in the annual Budget Statement. Your formal sign off on the indicators will occur via the usual clearance process for the SOI pack around May-June.

OK.

CMTEDD strategic indicators

16. CMTEDD's strategic indicator 3c, *it is easy to do business with the ACT Government*, is currently based on the metrics for 2.1b. The proposed changes to the ease AIs do not preclude this strategic indicator from continuing; however the methodology will need to change.
17. The simplest approach is to maintain a single measure and align the target with 'ease of interacting person-to-person'; being the highest target of the two ease measures for 2023-24 (see Attachment D for the proposed changes to the budget statement input). This would result in a decrease from the current target of 95% to 90%. Noting this is a strategic indicator, the target could be retained at 95% as an aspirational target.
18. Separating the indicator into two (or four) results based on service channel or client type-specific is not recommended at this time due to the uncertainty of how the changes in methodology and targets may impact on Access Canberra meeting targets.

Financial Implications

18. The utilisation of an external survey provider (currently Micromex) for business clients is expected to increase the contract cost in 2023-24. The survey questions will be reviewed in mid-2023 to capture only necessary information. Actual costs will not be known until the scale of the survey are finalised; but are anticipated to be able to be met from within existing resources.

Consultation

Internal

19. The GRC Board has endorsed the approach outlined within this brief.
20. The CMTEDD internal audit officer's feedback on the approach has been considered in preparing the proposed changes.
21. CMTEDD Corporate and Coordination Services advice has informed the approach to changes on the Access Canberra accountability indicators and the CMTEDD Strategic Indicator.
22. The proposed changes to the AIs has been shared with the CMTEDD Chief Finance Officer, Chief Digital Officer, the Deputy Director-General, CMTEDD Policy and Cabinet and the Head of the Better Regulation Taskforce due to the connection with existing programs in these areas.

Cross Directorate

23. Annual survey outcomes will be shared with key inter-directorate service delivery partners to work together on opportunities for improvement.

External

24. Nil

Work Health and Safety

25. Nil

Benefits/Sensitivities

26. Changes to the AIs will allow Access Canberra to better measure how we are meeting the community's expectations and provide more meaningful insights into our service delivery.
27. Amendment of the indicators measuring ease of dealing with Access Canberra will give a clearer insight into the experience of business clients in particular. This will assist in responding to questions relating to client groups in annual report hearings, estimates, etc.
28. Business processes supporting timely and accurate reporting will be developed in some areas where they have not previously been required to report for performance measurement.

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29. Communication will be fundamental in explaining the new AIs, both as a standalone set of indicators and the necessary “series break” in reporting from the superseded indicators.

Communications, media and engagement implications

30. A communications strategy is in development. External stakeholders will be considered in preparing messaging around the statement of expectation for selected authorities and the potential survey activity following interactions with Access Canberra. You will be briefed separately closer to the release of the Budget and material prepared to support the change in AIs.

31. An internal communications plan is in development to ensure Access Canberra staff understand their role in supporting achievement of the measures from 1 July 2023.

Signatory Name: Margaret McKinnon Phone: 72790

Action Officer: Linda Muscat Phone: 75014

Attachments

Attachment	Title
Attachment A	2023-24 Budget Statement output 2.1 input
Attachment B	2023-24 Accountability Indicator Verification form
Attachment C	Occupational licence types and target timeframes for new timeliness indicator
Attachment D	CMTEDD Strategic Indicators input

Attachment A

Accountability Indicator Targets and Results

Indicator	2023-24 Target	2023-24 Result	2024-25 Target	2024-25 Est Result
<p>a) Access Canberra proactively communicates its priorities for risk-based regulation</p> <p>i) Statutory authorities have a public statement of expectation</p> <p>ii) Regulatory activities undertaken in line with the public statements are reported annually</p>	<p>i) 100%</p> <p>ii) 100%</p>	<p>i) 100%</p> <p>ii) 100%</p>	<p>i) 100%</p> <p>ii) 100%</p>	<p>100%</p> <p>100%</p>
<p>b) Percentage of the community who find it easy to interact with Access Canberra person-to-person</p> <p>i) Percentage of individuals that find it easy to interact with Access Canberra person to person</p> <p>ii) Percentage of business clients that find it easy to interact with Access Canberra person to person</p>	<p>i) 90%</p> <p>ii) 90%</p>	<p>i) 86%</p> <p>ii) 86%</p>	<p>i) 90%</p> <p>ii) 90%</p>	<p>90%</p> <p>90%</p>
<p>c) Percentage of the community who find it easy to interact with Access Canberra online.</p> <p>i) Percentage of individuals that find it easy to interact with Access Canberra online</p> <p>ii) Percentage of business clients that find it easy to interact with Access Canberra online</p>	<p>i) 85%</p> <p>ii) 85%</p>	<p>i) 85%</p> <p>ii) 87%</p>	<p>i) 85%</p> <p>ii) 85%</p>	<p>85%</p> <p>85%</p>
<p>d) Percentage of occupational authorisations issued within the published timeframe</p>	90%	90%	90%	90%
<p>e) Reduction of regulatory burden on business by undertaking risk-based coordinated inspection activity</p>	80%	77%	80%	80%

Chief Minister, Treasury and Economic Development Directorate

To:	Minister for City and Government Services	Tracking No.: 25/0149551
Date:	26/03/2025	
Through:	Yu-Lan Chan, Acting Chief Operating Officer, Access Canberra	
From:	Louise Bassett, Executive Branch Manager, Fair Trading and Compliance	
Subject:	Working with Vulnerable People scheme pressures	
Critical Date:	07/04/2025	
Critical Reason:	To provide an update to the Minister on service pressures	

Recommendations

That you:

1. Note that currently over 165,000 Canberrans are registered under the Working with Vulnerable People (WWVP) Scheme, which is four times the original policy estimate and accounts for over fifty per cent of the ACT's adult population;

Noted/Please Discuss

2. Note the information contained in this brief relating to the increasing pressures within the WWVP Scheme operations including the impact of renewals over the next three years;

Noted/Please Discuss

3. Note that the Scheme is being used by employers as a default employment check including for non-regulated occupations;

Noted/Please Discuss

4. Note that Access Canberra is exploring options to improve the management of the WWVP Scheme, including as part of the Business and Regulatory Improvement Program; and

Noted/Please Discuss

- Note that Access Canberra has included, as part of the Business and Regulatory Improvement Program (BRIP), a budget business cases to address the increasing service pressures in 2025-26.

Noted/Please Discuss

Tara Cheyne MLA

14/4/25

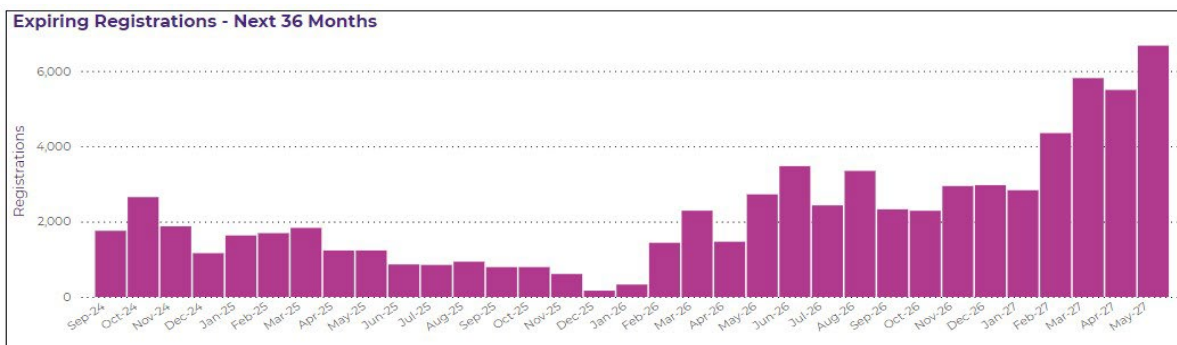
Minister's Office Feedback

Please CC Minister Orr, Head of Service, CMO, Minister Pettersson and the Treasurer. Suggest this needs Strategic Board oversight from an ACT Government perspective, as there is a clear opportunity for us to establish rigour around what positions genuinely need a WWVP.

I have sought advice re 14b. Urban Treescapes workers who need to access private property for tree assessments or to undertake work have a WWVP as do the tree planting team (given their regular engagement with schools and community groups). Others do not.

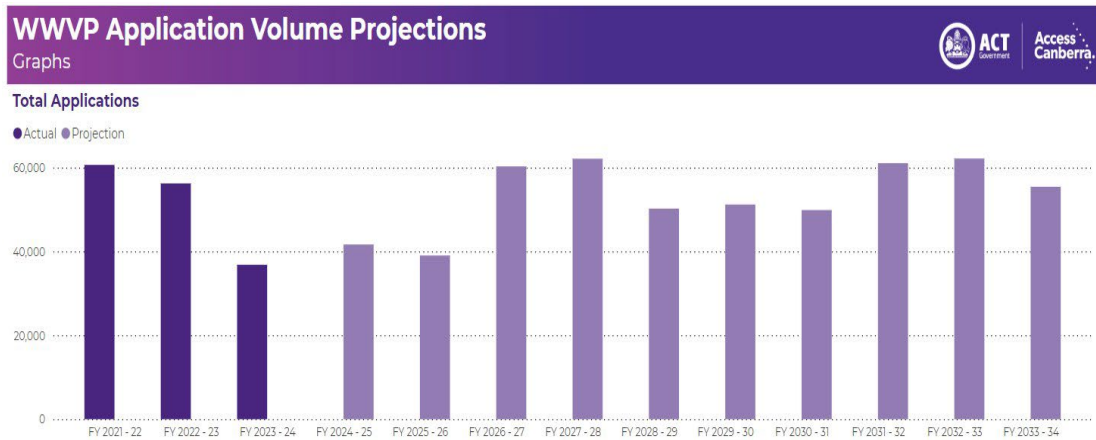
Background

- The 2021 Census estimates the ACT's adult population to be approximately 346,000 people (with total population being approximately 454,500). Currently over 164,000 Canberrans are registered under the WWVP Scheme – four times more than the original policy estimate.
- As a result of the Scheme's adoption being significantly greater than originally forecast, the volume of processing work and background checking undertaken, particularly for additional risk assessments, continuous monitoring, and the additional costs associated with obtaining police checks, the scheme has consistently outstripped funded resourcing.
- Over the next three years there will be a steady increase in the volume of renewals, and if current trends continue, also an increase in new registrations year on year, which will peak in mid-2027. As shown in Appendix 1.



Appendix 1

- The long-term projection of WWVP application volumes forecast over 50,000-60,000 applications each year from 2026-27 onwards and shown in [Appendix 2](#).



[Appendix 2](#)

- The ACT Government, along with all other jurisdictions, has agreed to expand our existing National Disability Insurance Scheme (NDIS) worker background screening, to cover aged care workers. Funding for this financial year will be provided through the Federation Funding Agreement (FFA) and will assist the ACT to progress activities to support the implementation of national aged care worker screening. Former Minister for Disability, as policy Minister, had signed the FFA for the ACT and a copy is provided at [Attachment A](#).
- The introduction of aged care worker background screening will further exacerbate pressures on the Scheme in the next 18-24 months ([Attachment B – Signed brief - WWVP scheme pressures](#)).
- There is ongoing work between Access Canberra and the Digital, Data and Technology Solutions team to address system integration and long-standing ICT operational challenges, alongside system changes to provide for new identity management requirements from the Australian Criminal Intelligence Commission, national harmonisation of worker screening and continuous monitoring.

Issues

- Access Canberra receives funding for 8 Full Time Equivalent (FTE) to administer the Scheme (plus 2 FTE delivering compliance activity). Currently, the WWVP team are managing approximately 450 risk assessments in total, for both new applicants and existing registration holders.
- Access Canberra implemented interim measures over successive financial years to manage increased service demand and to service processing timeframes.
- In 2023-24, Access Canberra took measures to return to within budgeted parameters including reducing the staffing profile of the WWVP team by 42 per cent. The consequence of returning to the budgeted FTE was an increase in backlogs and processing times, particularly for matters that require a complex risk assessment.

11. In 2024-25, Access Canberra has received one-year supplementary funding through the BRIP for the 2024-25 financial year, to increase the FTE to 11. This is one year funding only.
12. In spite of the additional FTE, with increases in the volume of new applications and increasing demand for renewals, there are still processing delays and the number of more complex additional risk assessments pending completion continues to increase.
13. Access Canberra is aware that some of the excessive demand for registrations can be attributed to employer behaviour in both the public and private sectors. For example, some ACT Public Service (ACTPS) workplaces apply a blanket approach to WWVP registration requirement instead of assessment of roles based on their actual duties, and the conduct of regulated activities.
14. This can also extend to contractual requirements where ACTPS contracts require contractors to have employees with WWVP registration for work in areas that are not regulated under the Scheme. This can have a flow-on impact on private sector behaviour by employers therefore requiring their employees or potential employees to register under the scheme. Examples include:
 - a. Labourers in the construction industry seeking registration as part of pre-employment checks by their prospective employer.
 - b. Transport Canberra and City Services (TCCS), City Presentation require WWVP registration for the operational role of 'Urban Treescapes Tree Worker', which does not involve contact with vulnerable people and is not a regulated activity under the WWVP legislation.
15. Expanded criminal history check, which includes spent/non-conviction information, is a part of background screening for a WWVP registration, enabled by Spent Convictions legislation and the Intergovernmental Agreement for a National Exchange of Criminal History Information for People Working with Children (ECHIPWC). The requirement of WWVP registration imposed by employers for activities that are not regulated by the WWVP scheme contravenes the Spent Convictions law. This has Human Rights implications and can jeopardise the ACT's ability to participate in the ECHIPWC – which is critical for national consistency and information sharing.
16. The NDIS worker screening scheme is subject to national reporting on jurisdictions' processing timeframes. In 2022-2024, the ACT's median processing time has expanded from three to eight business days which is significantly longer than the national average (one day), resulting in complaints from NDIS employers.
17. Access Canberra is proactively implementing incremental changes to streamline risk assessments and manage excess demand for registrations. The pro-active steps Access Canberra is preparing to take include:

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- a. Access Canberra will make efforts to identify industries and employers who use a WWVP registration instead of exercising their own due diligence for pre-employment checks for activities and roles that are not regulated under the Scheme. Engagement will be conducted with these industries to educate them about the role of the Scheme and when registration may be necessary.
 - b. Briefing within ACT Government Directorates and the Office of Industrial Relations and Workforce Strategy recommending a review of ACTPS positions that have been identified as unnecessarily requiring a WWVP registration and removing that requirement.
 - c. The Construction Occupations Registrar will write to addressees from the newsletter distribution list to advise Access Canberra will not prioritise, and may indeed refuse to consider, applications made by people who nominate services or roles that are not regulated under the Scheme.
 - d. Access Canberra will also develop a targeted communication campaign addressing the use of WWVP registrations by specific organisations, workplaces and industries that is inconsistent with the purpose and requirements of the WWVP policy. This includes some volunteer organisations that erroneously inform their potential volunteers that they must hold a registration.
 - e. Access Canberra will consider, on a case-by-case basis, cancelling applications made by customers who are not able to nominate either a specific activity or intended type of activity/role that is listed as a regulated activity.
 - f. Access Canberra has already engaged with the ACT Council of Social Service (ACTCOSS) and Volunteering ACT to provide systematic support and information to their member organisations about the Scheme to clarify requirements. Access Canberra intends to request volunteer applications to be accompanied by evidence from the volunteer organisation in support of the application. This is planned to start from 1 July 2025.
 - g. Access Canberra will also work with the policy agency Community Services Directorate (CSD) to contemplate shorter registration for volunteers – for example less than two years – in line with other jurisdictions, to reduce continuous monitoring burden and to remove unnecessary registrations that are not active from the Scheme.
 - h. Access Canberra will work with policy colleagues on legislative amendments that will allow refusal of registration and more streamlined processes that maintain procedural fairness, but that reduce workload on the team.
18. As a jurisdiction without an avenue for real-time verification of WWVP registrations, the ACT is out of step with community expectations and services offered by all other States and Territories. A key initiative Access Canberra will pursue is the

establishment of a self-service portal which will allow employers and other service users to check registration details for their workers. This will also lead long term to the cessation of card printing and significant savings, as appropriate digital options become available. In 2022-23 alone the card printing expenses (excluding labour cost) reached \$257,961.

Financial Implications

19. Access Canberra maintains a cost pressure in the WWVP Scheme staffing profile, to ensure processing times are reasonable and complex risk assessments are undertaken.
20. Additional funding of \$900,000 has been provided from the FFA to support introduction of background screening for aged care workers. This has been split between policy (CSD) and operations (Access Canberra). This is a neutral benefit as it will be accompanied by a concomitant increase in volume of applications and renewals in the next 24 months.
21. Longer term support for jurisdictions from the Commonwealth Department of Health and Aged Care is still under negotiation, following scoping work and cost modelling conducted in late 2023 and early 2024.

Consultation

22. CSD on proposed legislation amendments and the implementation of Aged Care Worker Screening.
23. Access Canberra Data and Intelligence and Communications teams.

Work Health and Safety

24. The WWVP risk assessment team is at higher risk from psychosocial hazards due to being exposed to traumatic material, including information concerning physical and sexual abuse. This psychosocial risk will likely increase with the added increased likelihood of exposure to occupational violence from applicants waiting for assessment outcomes.

Benefits/Sensitivities

25. Without adequate resources and efforts to dampen demand for the Scheme, Access Canberra will not be in a position to meet reasonable processing timeframes for registration and renewal. The volume of applications that are for workers in non-regulated activities puts at risk the effort that should be applied to manage the Scheme's primary responsibility, screening of and monitoring workers conducting regulated activities, and the protection of vulnerable people in the ACT.
26. The continued WWVP caseload will likely see an increase in complaints and problematic behaviours towards WWVP team members. This is also greatly increasing the likelihood of the WWVP process being subject to external scrutiny

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through the Administrative and Civil Tribunal, Human Rights Commission, Ombudsman.

Communications, media and engagement implications

- 27. Access Canberra has engaged with ACTCOSS and Volunteering ACT and will continue providing relevant updates.
- 28. The Access Canberra webpages about the WWVP scheme have been reviewed and will be updated.
- 29. Industry consultation will continue to improve understanding of the requirements of the scheme and when registration is required.
- 30. Access Canberra is developing a Communication Plan which will be finalised with priority on industry communications within the next four weeks.

Signatory Name: Louise Bassett Phone: 62057743

Action Officer: Kathy Bandala Phone: 62054187

Attachments

Attachment	Title
Attachment A	Aged Care Worker Screening – Signed
Attachment B	WWVP scheme pressures - Signed



Chief Minister, Treasury and Economic Development Directorate

To: Minister for Government Services and Regulatory Reform

Tracking No.: 23/83483

Date: 04/01/2024

From: Deputy Director-General, Access Canberra

Subject: Working with Vulnerable People scheme pressures

Critical Date: 15/01/2024

Critical Reason: Service pressures in administering the Working With Vulnerable People scheme

Recommendations

That you:

- 1. Note the information contained in this brief relating to the pressures within the Working with Vulnerable People (WWVP) scheme operations;

Noted / Please Discuss

- 2. Note that Access Canberra is exploring options to improve our management of the WWVP scheme, including as part of the Business and Regulatory Improvement Program; and

Noted / Please Discuss

- 3. Note the service standard offer to applicants (time taken to process applications) will increase due to resourcing pressures.

Noted / Please Discuss

Tara Cheyne MLA *Tara Cheyne* 5/1/24

Minister's Office Feedback

For discussion at first brief of 2024 please, noting I haven't had ongoing visibility of processing times since service reports were ceased.

Background

1. The *Working with Vulnerable People (Background Checking) Act 2011* (the **WWVP Act**) was introduced to reduce the risk of harm or neglect to vulnerable people.
2. The original policy significantly underestimated the actual uptake of registrations under the Scheme (the **Scheme**). Actual uptake and operational efforts have been three times greater since commencement. Currently approximately one in four Canberrans are registered under the Scheme, making it the second biggest 'licensing' scheme in the Territory.
3. In 2022-23, Access Canberra issued 55,466 WWVP registrations making it the busiest year since the inception of the Scheme.

Issues

Current State

4. Access Canberra is budgeted for 10 FTE to administer the Scheme. However, noting the uptake of registrations since the Scheme's inception in 2010 for various reasons (including population growth, legislative scope growth and an increased vulnerable population), demand for WWVP registration has outpaced budgeted resourcing capacity.
5. To address the increased service demand and meet the service standards expected of Access Canberra in terms of WWVP processing times, Access Canberra has:
 - a. made a series of management decisions over successive financial years increasing unbudgeted FTE in the WWVP team; and
 - b. submitted budget bids and received temporary budget funding to bolster its administration of the Scheme. These budget allocations have been exhausted.

Service Pressures

6. The interim measures implemented by Access Canberra to address increased service demand and to reduce processing times have resulted in significant budgetary impacts. It has also resulted in workforce challenges including managing staff who are often on consecutive temporary contracts for long periods of time.
7. Long-term contracting arrangements have also been complicated by insecure workforce conversions and recent Fair Work law changes that place limitations on the length and extension of temporary contracts, as well as the impacts of consecutive temporary contracts for an individual from a staff retention and wellbeing perspective.
8. Since 2020-21, Access Canberra has absorbed \$2.785 million in overspend as a direct result of additional staffing costs relating to the administration of the Scheme.
9. Due to its budgetary position, it is no longer viable for Access Canberra to maintain current service standards through additional (unfunded) staff and meet budgetary obligations. Accordingly, further measures will need to be taken to return to within

budgeted parameters including reducing the overall staffing numbers in processing WWVP registrations.

10. In July 2023, the WWVP team reduced its staff profile by 36% (from 36 to 23 FTE) in anticipation of the forecast reduced rate of registration and renewals for 2023-24. Unfortunately, these projections did not hold true. This has resulted in increased processing times, increased backlogs in risk assessments (complex matters), and additional workload pressures on existing WWVP staff.
11. The most complex matters which involve objectively serious conduct are assessed by the WWVP risk assessment team. The risk assessment process involves understanding the nature of risk, its characteristics, including the risk level. It seeks to establish the likelihood and consequence of risk and, in the context of WWVP, the potential impact a person might have on a vulnerable person when working in a regulated activity. Risk assessments by their very nature take some time to complete.

Future Service Standard

12. Current projections for the WWVP Scheme forecast:
 - a. 23,000 new applications per year from 2023-24.
 - b. 10,000 renewals in 2024-25 (50% of expiring renewals).
 - c. 770 additional risk assessments in 2023-24.
 - d. 1,161 registrations will require risk assessments in 2025-26.
13. The Access Canberra Accountability Indicator for WWVP processing times aims to have registration approvals completed within 28 days.
14. Since July 2023, only 70% of WWVP approvals were achieved within the Accountability Indicator timeframe. This is attributed as a direct result of the volume of WWVP applications received exceeding the volume of registrations that Access Canberra has capacity to process, given the available WWVP staffing profile from July 2023.
15. In 2022-23, the average processing time for WWVP applications was 13 days. As staffing levels are reduced within this team to the budgeted 10 FTE, the average processing times could increase to up to 40 days or more. By 1 July 2024, through natural attrition, it is expected that the WWVP team's FTE will have reduced to 15 FTE.
16. Service pressures for the Scheme have also been exacerbated by the introduction of the NDIS worker screening in February 2021. This has added over 12,000 additional NDIS related WWVP applications to the Scheme. This has increased workloads relating to worker screening and continuous monitoring of registered people, under the Inter-Governmental Agreement on Nationally Consistent Worker Screening for the NDIS. No additional funding was received by Access Canberra as part of this policy initiative.

17. Pressures on processing WWVP registrations will be further compounded by the proposed addition of aged care screening in coming years (refer Minister for Health briefing, **GBC23/710**).

Financial Implications

18. Access Canberra's WWVP budget for 2023-24 is \$1.749 million, which represents 10 FTE (8 FTE in WWVP Assessments and 2 FTE in WWVP Compliance).
19. Since 2020-21, Access Canberra has absorbed \$2.785 million in overspend as a direct result of staffing cost of administering the WWVP Scheme.

Consultation

Internal

20. Access Canberra Finance were consulted on this brief.

Cross Directorate

21. ACT Insurance Authority (ACTIA) has provided advice on risk to the Territory around the WWVP Scheme.

External

22. Nil in connection with this Brief at this time.

Work Health and Safety

23. Continuing high WWVP caseloads have a direct impact on Access Canberra strategic risks, performance indicator results, staff, and workplace wellbeing.
24. Any increases in processing backlogs or service pressures on the WWVP team to undertake the same amount of work with fewer staff is likely to lead to further workplace pressures for Access Canberra. This is likely to result in staff seeking roles elsewhere. It also increases the risk of potential human errors in processing WWVP registrations due to increased workload pressures. This could also lead to increased work health and safety risks.
25. The WWVP's risk assessment team is at higher risk from psychosocial hazards because of the likelihood of exposure to occupational violence relating to applicants waiting for assessment outcomes. In addition, the WWVP team is also more likely to be exposed to traumatic material, including information concerning physical and sexual abuse, as part of the WWVP registration assessment process.

Risks/Sensitivities

26. The current WWVP case load directly impacts Access Canberra's Strategic Risk profile and has the potential to increase the residual (Extreme) and inherent (High) risk ratings for Strategic Risk 1 (Regulatory Failure) and Strategic Risk 3 (Delivery of Government Priorities). These risks continue to be actively monitored by Access Canberra through

the Strategy, Data and Governance Branch. However, sustained or increasing caseloads in WWVP will mean that risk ratings for these Strategic Risks will remain at elevated levels until such time that the WWVP caseloads are brought down to more manageable levels. The management of Access Canberra's strategic risk settings remains a high priority for the organisation.

27. The continued WWVP caseload will likely see an increase in problematic behaviours towards WWVP team members, such as increased complaints from applicants and registration holders who are yet to receive an outcome from an application and/or risk assessment. In some cases, a risk assessment has been open for up to two years. This also greatly increasing the likelihood of the WWVP process being subject to external scrutiny through the ACT Ombudsman and claims to ACTIA due to, among other things, alleged loss of wages from the applicant.
28. Delays to WWVP processing timeframes may impact on an applicant's ability to access work unsupervised.

Communications, media and engagement implications

29. Failing to meet published service standards in completing approvals or risk assessments generates increased number of complaints and potential media scrutiny for any community sector impacts.
30. Talking points and QTBs will be prepared by Access Canberra in response to any media inquiries about WWVP processing timeframes and service standards.

Signatory Name:	Giuseppe Mangeruca	Phone:	6207 0252
Action Officer:	Giuseppe Mangeruca	Phone:	6207 0252

Chief Minister, Treasury and Economic Development Directorate

To: Minister for Planning and Sustainable Development

Tracking No.: 25/0004722

Date: 24/01/2025

From: Nick Lhuede, Construction Occupations Registrar, Executive Branch Manager, Construction and Planning Regulation, Access Canberra

Through: Margaret McKinnon, Acting Deputy Director-General, Access Canberra

Subject: Building Levy Review

Critical Date: 24/01/2025

Critical Reason: To assist in budget related processes

Recommendation

That you note the information contained in this brief.

Noted / Please Discuss

Chris Steel MLA



26/1/25

Minister's Office Feedback

Background

1. The Building Levy is charged under section 150 of the *Building Act 2004* (the Building Act). It consists of a base percentage applied to the estimated cost of works for building and construction work that requires a Building Approval.

Issues

2. Access Canberra undertook a comprehensive review of the Building Levy in 2023 at the request of the ACT Treasury, [Sch 1 1.6](#) .
3. The review was also carried out in the context of the Business and Regulatory Improvement Program in Access Canberra, as part of a broader program to address ongoing resourcing and funding deficits, and to develop options to achieve a more sustainable operating model for Access Canberra in the long-term.
4. The results of the review were provided to the relevant Ministers at the time – Minister Cheyne as Minister for Business and Better Regulation, the Treasurer and Minister Vassarotti as Minister for Sustainable Building and Construction. As you now have portfolio responsibility for building and construction regulation and policy, it may be useful for you to be aware of the findings of the review (see [Attachment A](#)). I can advise that Minister Cheyne’s office has approved the sharing of the annotated brief.
5. The report of the review was not made public and became part of Government discussions in the previous term of government.
6. Environment, Planning and Sustainable Development Directorate (EPSDD) also has a copy of this report.
7. Further information on the status of recommendations can be provided on request.

Financial Implications

8. The Building Levy raised approximately \$24.6 million in the 2022-23 financial year (the most recent information available).

Consultation

Internal

9. The Strategy, Data and Governance branch within Access Canberra was consulted in the development of this brief.

Cross Directorate

10. EPSDD has a copy of the Building Levy review report and is working with Access Canberra in relation to the levy.

External

11. Nil required at this stage.

Work Health and Safety

12. Nil arising from this brief.

Benefits/Sensitivities

- 13. The cost of living, interest rate changes, and costs of construction are sensitive topics in the current economic climate.

Communications, media and engagement implications

- 14. Nil arising from this brief.

Signatory Name: Nick Lhuede Phone: x 78606

Action Officer: Belinda Josey Phone: x 70382

Attachments

Attachment	Title
Attachment A	NOTED – 20230208 – Minister Brief – BBR – Cheyne – Building Levy Review

Chief Minister, Treasury and Economic Development Directorate

To:	Minister for Business and Better Regulation	Tracking No. 23/08016
Date:	08/02/2023	
From:	Deputy Director-General, Access Canberra	
Subject:	Building Levy Review – Interim Report	
Critical Date:	10/02/2023	
Critical Reason:	To meet Cabinet and 2023-24 Budget timeframes	

Recommendations

That you:

1. Note the information in this brief and the *Building Levy Review - Interim Report* at Attachment A.

Noted / Please Discuss

2. Note a review of the Building Levy was an outcome of the Expenditure Review Committee in the 2021-22 Budget process.

Noted / Please Discuss

3. Indicate whether industry consultation is required at this stage of the Building Levy Review process.

Consultation is required / Consultation is not required / Please Discuss

*back to understand
specific timeframes + interest with
Treasury
Min + U.*

4. Agree to share this brief and the *Building Levy Review - Interim Report* with the Minister for Sustainable Building and Construction and the Treasurer due to their respective portfolio interests.

Agreed / Not Agreed / Please Discuss

5. Sch 1 1.6

Agreed / Not Agreed / Please Discuss

Tara Cheyne MLA Joe Clynne 12/2/23

Minister's Office Feedback

please also share with BKA.

Background

1. The Building Levy (the Levy) is a fee payable by a landowner for all building and construction work that requires a Building Approval; and is charged under section 150 of the *Building Act 2004* (the Building Act). The applied Levy has evolved over the years to adjust to the economic and regulatory environment.
2. As the Levy is considered a regulatory fee it is directed to Territorial revenue. However, there is a reasonable expectation (given explanatory notes accompanying fee determinations) that the revenue collected from the Levy is used to fund building and construction related regulatory activities in the ACT.
3. In the recent past, the Levy has been increased several times to offset the costs of providing additional resourcing to Access Canberra for building and construction regulatory activities. In total, an additional 26.5 FTE ongoing have been funded between 2018-19 and 2021-22, with an additional 5 FTE funded for two years in the 2022-23 Budget.
4. As a result, and in direct response to a 2021-22 Business Case initiated by Access Canberra (CMTEDD E23 – Building Quality Regulation), the Expenditure Review Committee (ERC) recommended that the Levy be reviewed. This was to be brought forward by you, as the Minister of Business and Better Regulation, to assess the:
 - a. impacts of the increased Levy, and

- b. ongoing resourcing needs of Access Canberra.
5. The Minister for Sustainable Building and Construction has policy responsibility for building quality and the setting of fees (including the Levy) under the Building Act.
6. The Building Levy Review (the Review) Sch 1 1.6 and delivered by an inter-directorate working group. The *Building Levy Review – Interim Report* is provided at Attachment A.

Issues

A summary of the main findings is outlined below.

7. The Levy has two levers used to determine the amount payable with a building approval application:
 - a. The base percentage applied to the estimated cost of works; and
 - b. The determination used to estimate the cost of works.
8. Since 2017, the base percentage of the Levy increased by 0.17 percentage points for Class 1 and Class 2 Buildings; and 0.16 percentage points for all other building classes. The cost of building works determination was last amended in 2020, although substantial change for most building classes has not occurred since 2015.
9. The impact of Levy increases between 2017 and 2022 on an average \$500,000 house build was \$850 (with a total Levy payable being \$6,250); and \$17,000 on a \$10 million townhouse development (with the total Levy payable being \$125,000).
10. The Levy may, when compounded with other challenges facing the building and construction industry, create an additional financial impost or be a considerable stressor. These challenges include the availability and price of materials, skilled labour and workforce shortages, transition to sustainable design and build, economic conditions, and climate change (all of which can contribute poor building work quality and place demands on the regulator). Recognition of some of the challenging conditions was given via a 20 per cent discount on licence fees under the *Construction Occupations (Licensing) Act 2004* in 2021-22 due to the COVID-19 health emergency impacts on the industry.
11. The ACT Government's significant building and construction regulatory reform agenda also requires process and behavioural changes across the industry. This work is necessary to improve building quality and industry integrity, uphold regulatory protections, and support the sustainability and liveability of the built environment in the ACT.
12. The Levy generated approximately \$22 million in the 2021-22 financial year with Access Canberra being appropriated a little over \$16 million for its regulatory activities relating to the building and construction sector. However, analysis conducted as part

of the review reveals that this does not account for the *full costs* incurred by Access Canberra for building and construction regulatory activities.

- * 13. When the broader scope of construction and building related regulatory activities that are required to uphold the regulatory framework are considered, the costs are closer to \$21 million indicating that Access Canberra's appropriation in this space is insufficient. The misalignment between costs incurred and funding received for relevant functions is a contributing factor in Access Canberra's ongoing budget shortfalls and cost pressures.
14. The government's reform pipeline will have significant impacts on the regulatory capacity and costs of Access Canberra. Once the exact nature of the impacts are understood, additional resourcing and budget supplementation for the effective operationalisation and oversight of the regulatory framework will require further consideration.
15. Based on the present state, high-level projections indicate that the ongoing resourcing for Access Canberra's Construction and Planning Regulation and Strategic Business and Trade Inspectorates (referred to as the Construction Section within the report) is deemed adequate for the current scope of functions for the next 3-5 years. However, this assumes no changes in policy settings or regulatory scope and that population growth remains as forecast in the ACT Budget Outlook 2022-23 while construction activity (dwelling units approved per year) continues to be consistent with the patterns of previous years. *... ongoing? with current resourcing*
16. Analysis of resourcing adequacy did not consider other business areas of Access Canberra with regulatory responsibilities for this industry as this was outside the scope of the original ERC request. This can be revisited in the future if funding arrangements shift, or if further exploration of the secondary and tertiary activities is required. *noting some FTE due to scope?*
17. It is recognised that Access Canberra has been prioritised by government in the past with substantial investment in specific building and construction related regulatory activities. The input of 26.5 FTE ongoing across the four consecutive financial years from 2018- 2022 has had positive effects on industry practices and the quality and integrity of the buildings that Canberrans occupy. ✓
18. The government provided a further 5 FTE for two years in the 2022-23 Budget for additional building inspectors and technical experts. The option to offset these costs with a 0.06 percentage point increase from 1 July 2023 to the Levy was considered and not supported by government during the course of the budget process. Instead, it was proposed that Building Levy Review could inform any future decisions to offset the operational costs of Access Canberra through the Levy. ✓
19. Whilst the funding provided for these 5 FTE was only for two years, Access Canberra anticipates that there will be an ongoing need for these resources. This builds in-house

capability to respond to complex regulatory matters and mitigate the risks associated with ageing multi-unit developments.

20. This Review has shown that the Levy generates enough revenue to cover the costs of Access Canberra's regulatory functions in the building and construction space. However, there is a gap between the revenue collected in the Levy and what is reflected in Access Canberra's appropriation. In addition, several other matters were uncovered that fell outside the scope of the Review. The government may wish to further explore the following to assist in substantiating a position on the Levy's use and sustainability:
- a. awareness amongst landowners that the Levy is a government fee that is payable after Building Approval prior to the commencement of work;
 - b. survivability of employing businesses in the ACT construction industry to determine if the Building Levy impacts financial viability;
 - c. appropriateness of the Levy, the burden of payment on landowners, underlying policy of the Levy and approach to Levy distribution.

21.

Sch 1 1.6

Financial Implications

22. Nil at this time. The Review itself does not involve any changes to the settings or application of the Levy. Any future recommendations for government based on the findings of the Review may require financial consideration through ERC or the budget process.

Consultation

23. This brief was developed in consultation with the Executive Branch Manager, Planning and Sustainable Development and Senior Director, Building Reform, within the Environment, Planning and Sustainable Development Directorate (EPSDD).
24. The Building Levy Review Working Group is comprised of:
- a. Executive Branch Manager, Strategy and Planning, Access Canberra (Chair)
 - b. Executive Branch Manager, Construction, Utilities and Environment Protection, Access Canberra
 - c. Executive Branch Manager - Economic and Financial Analysis, Treasury
 - d. Senior Director - Building Reform, EPSDD

OFFICIAL

- e. Senior Director, Economic and Regulatory Policy, Treasury
 - f. Senior Director, Business and Regulatory Reform and Design, Access Canberra
 - g. Senior Director, Finance and Budgets, Access Canberra
25. The *Building Levy Review - Interim Report* has been reviewed and endorsed by the Business and Regulatory Improvement Program Sponsors Group, consisting of the following members:
- a. Deputy Director-General, Access Canberra (Chair)
 - b. Chief Digital Officer, Data, Digital and Technology Services
 - c. Deputy Under Treasurer, Economic, Revenue, Insurance, Property and Shared Services
 - d. Deputy Director-General, Policy, and Cabinet; and
 - e. Deputy Director-General, City Services, Transport Canberra and City Services (TCCS)

Internal

26. Subject matter experts were consulted throughout the drafting of the Report with findings and analysis shaped by:
- a. Senior Director, Macro Economics, Treasury
 - b. Senior Director, Strategic Policy, Economic Development
 - c. Executive Branch Manager, Design and Strategy, Chief Minister
 - d. Senior Director, Digital Policy, Chief Minister
 - e. Coordinator General, Office for Climate Change, Chief Minister

Cross Directorate

27. Subject Matter Experts from EPSDD were consulted throughout the drafting of the Report with findings and analysis shaped by:
- a. Senior Director, Climate Change, Sustainability and Energy Policy
 - b. Senior Director, Housing Strategy and Unit Title Reform

External

28. Consultation on the Review with industry bodies was delayed to avoid conflicting or confounding views on large scale reform consultations already scheduled with the building and construction industry, specifically around the Planning Review, National Construction Code 2022 implementation, developer regulation and swimming pool safety reforms.
29. Given the Review does not recommend policy reform or changes to the Levy's settings or methodology, it is not considered critical to the Review outcomes to consult on this matter at this time. However, consultation could help to substantiate the impact analysis and may be desired for transparency; or should further enquiry on the options for funding regulatory activity be undertaken.

30. Your direction on whether industry consultation is required at this time and the approach of engagement is sought, noting that consultation at this stage will push back the release of the Final Report. *will discuss.*

Work Health and Safety

31. Nil.

Benefits/Sensitivities

32. Some peak bodies representing the building and construction industry have previously raised the impacts of the Levy on industry activity and queried the methodology around the distribution of Levy revenue. This could be alleviated through more accountable and transparent reporting mechanisms for the Levy.
33. The Levy is payable by the landowner after approval prior to building commencement and may contribute to cost-of-living pressures. However, any detailed consideration or evaluation of this impact is outside the scope of the Review.

Communications, media and engagement implications

34. Nil at this stage. A Communications and Engagement Strategy will be developed in the instance that:
- a. The Review is to be released to a wider audience outside of Government
 - b. Findings and analysis prompts changes to the settings of the Levy or revenue distribution. At this time, consultation would occur with industry stakeholders through EPSDD on any proposed changes to the settings.
 - c. Transparency and accountability reporting mechanisms are strengthened.

Signatory Name: David Pryce Phone: x 59898
Action Officer: Jodie Vaile/Linda Muscat Phone: x 71915/x75014

Attachments

Attachment	Title
Attachment A	Building Levy Review – Interim Report



Building Levy Review

Interim Report- February 2023

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KEY REVIEW FINDINGS

- The ACT Building Levy has two levers used to determine the fee at the Building Application. The first (a base percentage applied to the estimated cost of works) was last adjusted in 2022. The second component (the estimation applied to the cost of works) was last substantially altered in 2015.
- Recent increases to the Levy between 2017 and 2022 have resulted in the Levy amount rising by \$850 (a total of \$6,250) when paid on an average \$500,000 house build and \$17,000 (a total cost of \$125,000) on a \$10 million townhouse development.
- The costs of construction-related regulation have been increasing year on year due to activity growth within the industry as well as a more prominent regulatory focus on building quality. At present, the costs across Access Canberra are not met by the organisation's current level of appropriation for building related regulation.
- The revenue generated by the Levy is consistently higher than both the appropriation and the costs incurred by Access Canberra.
- If there were no significant changes in policy or industry specific circumstances, resourcing levels for Access Canberra's construction section (Construction and Planning Regulation and Strategic Business and Trade Inspectorates only) are adequate for the next three to five years.

EXECUTIVE SUMMARY

The Building Levy (the Levy) is a Territorial fee, which is set as a percentage of total cost of works and is payable by a landowner when undertaking building work/s that require a Building Approval. In recent years, a series of increases to the Levy were implemented that allowed for additional resourcing to be provided to Access Canberra in order to intensify regulatory oversight and action within the ACT building and construction sector.

This internal review of the Building Levy was requested by government in response to these recent increases. It is intended the analysis and findings inform future consideration of Levy settings and resourcing of building and construction regulatory activity. The two main components to be addressed in this review include:

- the impacts of the increased Levy
- the ongoing resourcing needs of Access Canberra.

The building and construction industry is a significant contributor to the ACT economy and has a meaningful impact on the health and wellbeing of Canberrans, given the importance the built environment has on shelter, safety, belonging and sense of security. The ACT is changing; experiencing the highest intercensal population growth in the nation, which is expected to reach 500,000 by the end of the decade. Additional pressures on construction activity have been experienced due to the restricted availability and increased price of building materials. Transition to climate-wise and sustainable practice in input, output and outcomes of the industry will dictate new ways of working and potentially impact costs.

These contextual changes are occurring on top of the ACT being the most expensive jurisdiction to build a house in Australia in 2018-19, being an average \$440,800, and our houses having the largest average floor area in Australia.¹ Both cost of work and floor area directly impact the Levy payable for building work.

The Levy formula is manipulated via two variables. Recent resource funding for Access Canberra (the regulator) has been offset by increasing one of these, the base percentage that is applied to the cost of building work. However, the cost of works estimation, for which the percentage calculation is based, can also be used to alter the Levy payable. The cost of works estimation rates (ie \$/m² set by building class) have not changed significantly since 2015.

¹ Australian Bureau of Statistics (ABS) - [Characteristics of new residential dwellings - A 15-year summary - 2020](#)

The Building Levy contributes approximately \$6,250 to the cost of a \$500,000 contract in 2022, which is \$850 higher than what it would have contributed to the same contract value in 2017. Developers constructing multi-unit dwellings have seen an \$17,000 increase to the levy cost for a \$10 million development. Increasing from \$108,000 in 2017 to \$125,000 in 2022.

The resourcing required by Access Canberra to regulate the building and construction industry is directly affected by the level of activity within the sector. Forecasts for the Territory to 2026 indicate that total building and construction activity in the ACT will see moderate growth with an equivalent local market activity expansion of 6.1%.² However, the period between 2022-2024 is forecast to see reductions in new dwelling commencements due to lower consumer confidence and economic conditions such as inflationary pressures, higher interest rates, tighter loan conditions and historically stagnant wage growth.

High-level projections indicate that Access Canberra's current Construction section resourcing levels (inclusive of Construction and Planning Regulation and Strategic Business and Trade Inspectorates only) are at a stable baseline for the next three to five years; assuming there is no above-average population growth, building and construction industry stimulus above existing levels or significant shift in regulatory posture. Anticipated policy changes supporting regulatory reform and industry transitions are not accounted for in the resource modelling due to uncertainty of the scale of regulatory impact.

Future policy proposals, such as developers' regulation, swimming pool safety reforms, rental property energy efficiency standards, integrated energy plan (including gas transition) and the Planning Act review, will impact the regulatory functions of Access Canberra and may require separate consideration of resourcing and/or the operating model. This is reliant on the expectation that Access Canberra is proactively engaged on policy reform work or new commitments.

To date, funding for building and construction related regulatory activities has provided for resources within the Construction Section (Construction and Planning Regulation and Strategic Business and Trade Inspectorates) at Access Canberra. However, noting the overarching intent for the Building Levy to support regulatory compliance and monitoring across the whole sector covered by the building and construction regulatory framework, this review identified a wider range of services provided by teams across the organisation which are directly, and indirectly, involved in regulation associated with the ACT's building regulatory system (including the *Building Act 2004*).

The Levy has raised more than \$21 million each year since 2018.
Average funding to Access Canberra (for its construction section staffing cost only) has been \$13,579,862 in the last four financial years.
Average cost of all its building and construction regulatory services has been \$18,163,676 in the last four financial years.

The below table provides a summary of the costs, revenue, and funding between 2018 and 2022, and shows that Access Canberra's funded costs as a proportion of total revenue has grown by 48% due to additional resourcing for the Construction section. The increased cost to Access Canberra reflects the general increase in residential building activity as well as the ACT government's active commitment to improve building quality across the Territory. As a result, Access Canberra's regulatory focus has expanded.

Access Canberra's cost of providing the full scope of building and construction regulatory services is on average 30% higher than funded.

² MBA- ACT Building and Construction Industry Forecast- 2022

Financial Year	Class 1 & 2 Base Rate	Building Levy Revenue (\$) (A)	Total Cost of Activities (\$) (B)	Total Funding AC Received (\$) (C)	Difference (\$) (B-C)	AC funding as % of Levy revenue
2018-2019	1.07%	21,311,868	14,789,981	10,551,222	(4,238,759)	50%
2019-2020	1.17%	22,505,239	18,220,763	13,755,354	(4,465,410)	61%
2020-2021	1.17%	21,716,839	18,702,501	13,999,728	(4,702,773)	64%
2021-2022	1.25%	21,698,215	20,941,458	16,013,146	(4,928,312)	74%
Average	N/A	21,808,040	18,163,676	13,579,862	(4,583,813)	N/A

This review explores two discrete domains in relation to building and construction regulation and establishes that; in isolation, the impact of increases to the Building Levy are of a small magnitude for most homeowners. However, other factors affecting the industry result in a compounding effect on the cost to build – such as material price increases, workforce challenges, sustainable design, and shift in consumer preference. This compounding effect is likely to be experienced by developers to a greater magnitude due to the increased value of builds and being closer to the effect of these factors.

There are a range of planned policy reforms in the coming year/s which will affect the volume and complexity of Access Canberra’s regulatory activities. Any changes to regulatory schemes will require separate budgetary consideration once policy settings and reform impacts are known. An assessment of Access Canberra’s Construction Section resourcing (but not the wider regulatory activity) as at 1 July 2022 indicates that the additional staff provided to Access Canberra’s Construction Section in recent years is at a sustainable level. However, this assumes that the construction forecasts to 2026 remain stable, population growth is as expected, and there is no significant shift in regulatory posture or policy.

BACKGROUND AND PURPOSE

The ACT Government requested the Levy be reviewed following increases to the Levy implemented with additional funding provided to Access Canberra for building and construction regulation. The review is required to:

- Evaluate the impacts of the increased Levy, and
- Assess the ongoing resourcing needs of Access Canberra

The review was completed internal to government under the auspices of Access Canberra's *Business and Regulatory Improvement Program* providing alignment to the broader organisational sustainability and business improvement work being undertaken. A Working Group consisting of members from Access Canberra, Environment, Planning and Sustainable Development Directorate (EPSDD) and Treasury undertook the review.

It also captures Access Canberra's regulatory effort within this sector and dissects operational and funding processes to provide greater clarity and transparency for the ACT Government as well as across stakeholders. The scope of this review agreed by the Working Group expanded on the original request to include:

- The purpose and history of the Levy.
- The revenue collected through the Levy.
- The scope and cost of the regulatory activities provided by Access Canberra, for works undertaken in accordance with the *Building Act 2004*, and the funding provided.
- Understanding factors that may influence industry activity and the regulation of the industry in the short to medium term.
- Expected future resourcing needs for Construction and Planning Regulation and Strategic Business and Trade Inspectorates of Access Canberra.

The Working Group recognises the broad impacts of the Levy on various stakeholder groups and the interconnected landscape of building and construction regulation in the ACT. However, this review is limited in its scope and does not provide detailed analysis of:

- The appropriateness of the use of a Levy, its operational mechanisms, or the current rate.
- Development, planning and the regulation of the ACT leasehold system as a foundational component of the broader regulatory context that affects this industry.
- The regulatory functions of WorkSafe ACT with respect to the building industry or the Levy as applied to WorkSafe ACT (if any).
- The nature and policy responsibilities of EPSDD
- Utilisation of the revenue generated by the Levy to other services across the Territory.
- Regulatory activity or action relating to building work pursued on behalf of the Commissioner for Fair Trading (ie fit and finish, misleading advertising, contract disputes)
- Access Canberra's Regulatory Framework or an evaluation of its regulatory approaches.
- Expected resourcing needs for all other business areas in Access Canberra
- The Levy's impact on cost-of-living pressures or the housing market.
- The ACT Building and Construction Training Levy also payable upon Building Application applied under the *Building and Construction Industry Training Levy Act 1999*:
 - This Levy is used to support and enhance the skill base of new and existing workers in the industry described in the annual Training Plan. The collected funds are managed by the ACT Building and Construction Industry Training Fund Authority. The Levy is set at 0.2% of the cost of works on building and construction projects above \$10,000 payable by the Project Owner.

SECTION ONE- THE BUILDING LEVY

History of the Levy

The ACT Government has charged a fee on building work for many decades. Prior to 1999, a building application fee was applied to all building applications which was replaced by the Levy effective from 4 January 1999. The prescribed fee at the time was permitted under section 34 and section 65 of the *Building Act 1972* and coincided with the transition to a private certification scheme. At the time, it was said that the Levy's introduction was to offset the costs associated with compliance and monitoring of this model.³

At inception, the Levy was paid based on the value of "commercial and residential building work".⁴ The base fee at introduction was \$64.00 with an additional percentage amount applied to buildings with a value of above \$10,240. Government statements at the time that the Levy's intent was "to cover the regulatory, electrical audit and repository costs and is consistent with the electrical and building components on the old Building Application Fee".⁴

The Levy has evolved over the years to adjust to the economic and regulatory environment. From 1 July 2000, the building value of work thresholds were restructured from nine value brackets to eight. Significant reforms in the early 2000's resulted in a transition to the *Building Act 2004* (Building Act). The Levy is permitted under section 150 of this Act and administered under section 28. The Levy calculation methodology remained as a base fee with an additional percentage amount, based on the value of the building work. In 2011, the Levy methodology changed with the Levy set at a single percentage of cost of works in all instances. This revision provided a streamlined approach to fee collection, by replacing the need to collect a variety of other fees.

Several states in Australia impose a building and construction levy to fund broad regulation or specific regulatory activity. In Victoria (Building Permit Levy) and Western Australia (Building Services Levy) this is applied as a blunt percentage at 0.128% and 0.137% respectively. In NSW, the Building Work Levy is charged on a sliding scale based on the number of stories for Class Two buildings. Work to repair, renovate or apply protective treatment is charged based on the cost of works. In these jurisdictions the levy is paid by the developer or contractor of work.

Current Levy Settings

Further reform of the Levy was introduced in 2017. The new costing methodology, which still applies today, saw building work separated into two distinct categories:

- Total cost of building work in relation to class 1 and class 2 buildings (i.e., residential buildings, including houses and units).
- Total cost of building work in relation to any other building class.

The Levy as applied from 2017 onwards can be seen in Table 1 indicating that the Levy has increased by 0.17 percentage points for Class 1 and Class 2 Buildings and 0.16 percentage points for all other building classes.

Period in Place	Instrument Number	Class 1 and 2 Building	All other Building Classes
2017-2018	DI2017-148	1.08%	0.98%
2018-2019	DI2018-156	1.07%	0.97%
2019-2021	DI2019-112	1.17%	1.07%
2021-2022	DI2021-73	1.17%	1.07%
1 July 2022	DI2022-119	1.25%	1.14%

³ Hansard- Legislative Assembly for the ACT, Week 4 Hansard - 29 March 2001.

⁴ ACT Building Act 1972- [Revocation and Determination of Fees- Explanatory Statement](#)- DI1998-277

The Levy has always been applied at the point of submission or building approval. Currently, this is payable to Access Canberra prior to building commencement. The Levy itself is owed by the landowner, although the building approval is generally lodged by the certifier or builder. It is a level of misconception that “industry” is responsible for paying the Levy, noting a developer can be a landowner. Anecdotally, Access Canberra can report that some homeowners are unaware of the Levy and unprepared for the request to pay this fee.

Cost Comparison of the Levy

The impact of Levy increases on the total cost of building work overtime is best demonstrated by case study applying the Levy at various time points to the estimated cost of building work increments.

Table 2 shows a \$850 increase to the Levy cost between 2017 and 2022 as applied to Class 1 and 2 Buildings, at the price point of \$500,000. For multi-unit development costing \$50 million, the impact on cost of works is \$85,000 more in 2022 than in 2017.

Table 2: Cost comparison of the Levy for Class 1 and Class 2 Buildings in different years and building work price points.

Year	Cost of Building Work (\$)				
	150,000	250,000	500,000	10 million	50 million
2017 (1.08%)	1,620	2,700	5,400	108,000	540,000
2020 (1.17%)	1,755	2,925	5,850	117,000	585,000
2022 (1.25%)	1,875	3,125	6,250	125,000	625,000
Difference in Levy \$ 2017-2022	255	425	850	17,000	85,000

Table 3 shows a \$800 increase to the Levy cost between 2017 and 2022 for all other classes, at the price points of \$500,000. For commercial building costing \$50 million, the impact on cost of works is \$80,000 more in 2022 than in 2017.

Table 3: Cost comparison of the Levy for all other Buildings classes (excluding Class 1 and 2) in different years and building work price points.

Year	Cost of Building Work (\$)				
	150,000	250,000	500,000	10 million	50 million
2017 (0.98%)	1,470	2,450	4,900	98,000	490,000
2020 (1.07%)	1,605	2,675	5,350	107,000	535,000
2022 (1.14%)	1,710	5,700	5,700	114,000	570,000
Difference in Levy \$ 2017 - 2022	240	400	800	16,000	80,000

Building Levy Revenue

The revenue collected by the Levy is influenced by two components, with either lever manipulated to alter the funds generated. The first being the percentage applied to the cost of works, which is indexed to the Wage Price Index (WPI) unless by exception (ie a decision is made by Government to apply a different indexation method). The percentage can also be changed through the budget process which occurred in 2015-16 and 2019-20 and 2022-23 when it was increased to facilitate major reforms in the sector and boost regulatory activities. The second component of the Levy is the schedule used to estimate the cost of building works as prescribed under the *Building (General) Regulation 2008*, section 11.

It is recommended practice that the cost of building works be reviewed and updated on a regular basis, with the current determination set in 2020 (NI2020-336). However, for most classes of Building, including Class 1

and 2, the estimated cost of building works has not changed since 2015 (NI 2015-312) Class 1 buildings remained at a fee of \$1500 per square metre and Class 2 buildings were charged in the range of \$1,700 - \$2,500 per square metre according to number of stories. The approach used to set this scheduled rate is based on standard industry cost guide estimation. This method of calculation is in line with other jurisdictions and is said to include the project management, design, and site establishment costs.

The cost of building work is determined using the formula R multiplied by M (RM), where R is equal to the schedule of building according to the Building Code of Australia and M is equal to the floor area of the building work measured to the outside of the walls in square metres. A contract price may be accepted by exception by the Construction Occupation Registrar as the basis for calculation.⁵

The amount collected by the Levy varies each year depending on the level of activity of the industry and the determination of estimated cost of building works. Since 2015, the Levy has raised an average of \$19.533 million (Table 4) remaining above \$21 million since 2018. The Levy is forwarded to consolidated Territorial revenue and is classified as a regulatory fee in the annual financial statements. Therefore, there is not a direct attribution of the funding of regulatory activities undertaken by Access Canberra to Levy revenue; However, past decisions of the ACT Government have ensured that resourcing to Access Canberra for some building and construction regulatory activity is acknowledged as being offset by the Levy and is in line with the intent of the Levy.

The regulatory functions that have been offset through the Levy to date are those provided by the Construction section of Access Canberra. However, the current appropriation approach does not recognise the full extent of building and construction regulatory activity undertaken by Access Canberra. As such, there is a short fall between the funding provided to Access Canberra for building and construction regulation (Table 7 sets out the full list of services) and the full costs incurred. Further analysis of Access Canberra's costs is provided in Sections Three and Four of this report.

Table 4: Building Levy collection by financial year from 2015 to 2022 compared to the costs of Access Canberra's regulatory activities from 2018-2022 and funding. All amounts are expressed in dollars.

Financial year	Levy Collected (\$)	Total Cost of Regulatory Activity (\$)	Funding provided for Regulatory Activity (\$)
2015-2016	15,409,768	-	-
2016-2017	14,560,506	--	-
2018-2019	21,311,868	14,789,981	10,551,222
2019-2020	22,505,239	18,220,763	13,755,354
2020-2021	21,716,839	18,702,501	13,999,728
2021-2022	21,698,215	20,941,458	16,013,147
Total	117,202,435	72,654,704	54,319,451
4-year Average	21,808,040	18,163,676	13,579,863

⁵ ACT Building (General) Regulation 2008 - [Building \(General\) \(Cost of Building Work\) Determination 2020 \(No 1\)- 2020](#)

SECTION TWO- THE INDUSTRY

The building and construction industry is a large contributor to Australia’s GDP with supply chain linkages throughout the economy; over three-quarters of the value generated by the industry can be credited to the residential and non-residential building sector.⁶

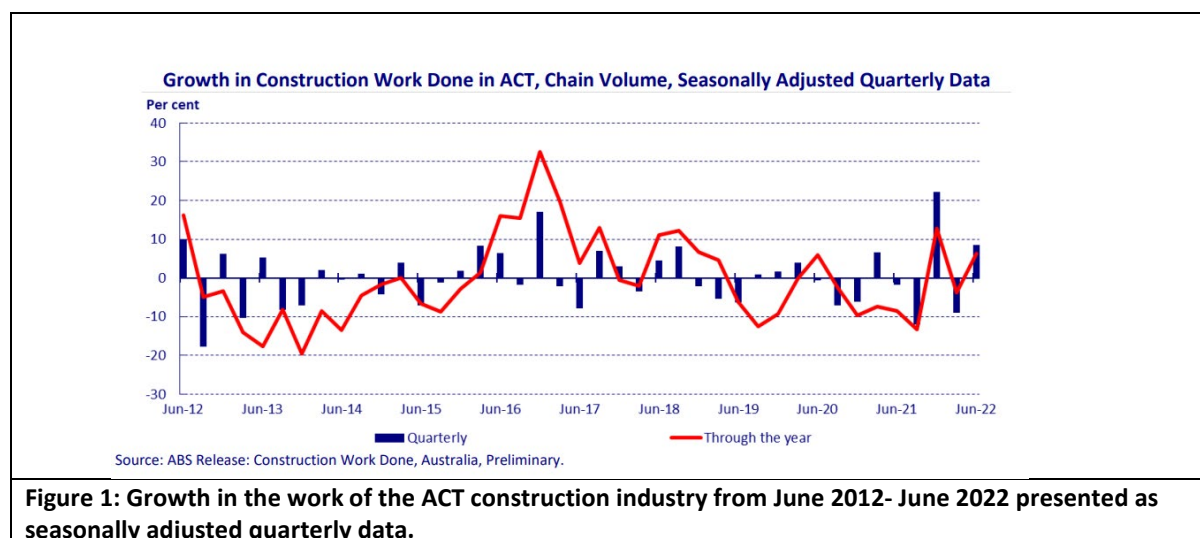
National

The COVID pandemic years of 2020 and 2021 saw high demand in residential construction across the country with housing approvals almost doubling between June 2020- April 2021.⁷ This was encouraged by historically low interest rates, economic stimulus packages within industry and the COVID-19 travel restrictions that resulted in additional disposable income for some households. However, from March 2021 to May 2022 building approvals across the country reduced by 33% indicating a self-correction. It has been suggested that this now makes building approvals consistent with monthly trends that were seen prior to 2020.⁸ Robust residential building activity over the next ten years is expected, however monetary policy to address rising inflation are aiming to curb mortgage activity and subsequent spending activity.⁸ It is projected by Deloitte that the Australian building industry will see an average annual real growth of 3.6% between 2022-2031.⁷ Growth in the sector will continue to be supported by policies such as the HomeBuilder Scheme, First Homeowner Loan Deposit Scheme and National Housing Finance and Investment Cooperation (NHFIC).

ACT

The building and construction industry is a large economic driver in the ACT contributing roughly \$3.06 billion⁹ and with industry reporting it accounts for up to 6.8% of all jobs in August 2022.¹⁰ Error! Bookmark not defined. Growth has been variable over the past ten years peaking in 2016-2017 (Figure 1).¹¹ The past 12 months from July 2021 to July 2022 has seen a general increase in the residential building sector, bar home renovations:¹⁰

- Home renovations reduced by 6.2%
- Multistorey building approvals increased by 120%
- New home building approvals grew by 37%



The ACT Budget 2022-23 reported the total value of approvals in May 2022 as \$1.9 billion for residential

⁶ ABS - [Australian System of National Accounts](#)- 5204005- 2021-22

⁷ Rumbens & Scaife –[Deloitte Economics](#)- 2021

⁸ Fitchsolutions- [Australia Infrastructure Report Summary](#)- Q4 2022

⁹ CMTEDD- [Gross State Product](#)- 2021-22

¹⁰ MBA-[ACT Building Construction](#)- September-2022.

¹¹ ACT Government- CMTEDD- [Construction Work Done](#) - June Quarter 2022

buildings, the highest since May 2019 (\$2 billion).¹² The industry appears healthy over the medium term given the strong dwelling investment pipeline for the ACT in low as well as medium-high density residential.¹² Master Builders ACT forecasts to 2026 indicate that total building and construction activity in the ACT will see moderate growth with an equivalent in local market activity expansion of 6.1%.² However, the period 2022 to 2024 is forecast to see reductions in new dwelling commencement likely due to consumer confidence and economic conditions such as inflationary pressures, higher interest rates, tighter loan conditions and historically stagnant wage growth (Table 5).²

Table 5: Master Builder forecast for new dwelling commencement to 2026

2019	2020	2021	2022	2023	2024	2025	2026
4,300	4,770	5,910	5,810	5,590	5,000	5,550	6,000
No data	+10.9%	+23.9%	-1.7%	-3.8%	-10.6%	+11.0%	+8.1%

The ACT’s building boom of 2018 and 2019 was largely fueled by medium to high density work which has been the prominent build type since the composition transition and densification acceleration in 2015 (Figure 2).¹³

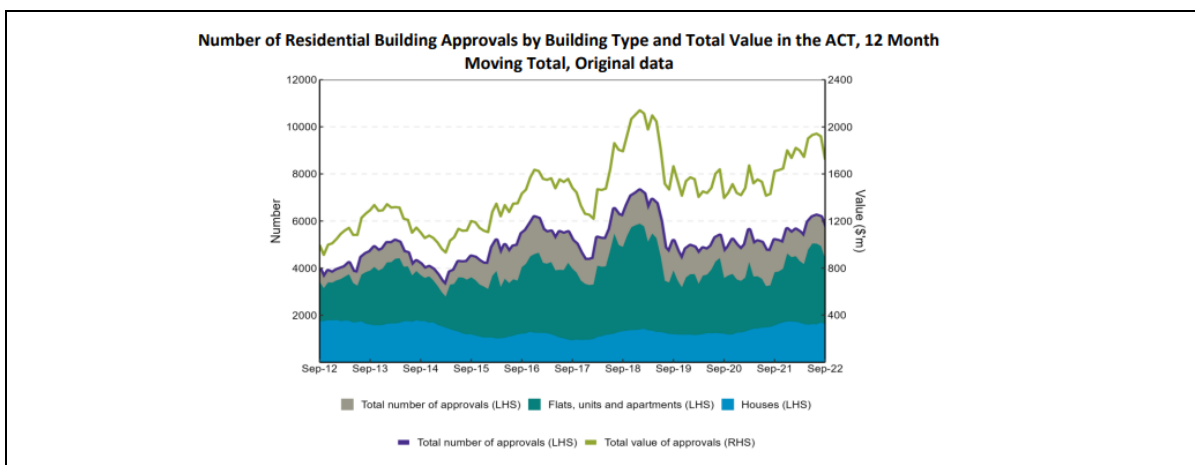


Figure 2: Residential Building approvals September 2012 to September 2022 in the ACT

¹² ACT [Budget Outlook - 2022-23](#)

¹³ ACT Government- CMTEDD- Building Approvals- [Building Approvals - September 2022](#)

Nationally, trends suggest a possible preference shift to low density living given experiences of the pandemic,⁷ however, in the ACT this is unlikely to be realised given that detached housing stock is greatly constrained by the tight land market and limited land release. This is supported by industry projections out to 2026 that show a greater proportion of new dwellings in the medium to high density section of the market (Figure 3).^{2Error!} Bookmark not defined. Market affordability and financial constraints may also necessitate apartment and unit living.¹⁴ However, demand is high for both single residential blocks and mixed-use land with single residential blocks seeing unprecedented demand during 2021–22, with strong sales in Taylor and Whitlam.¹⁵

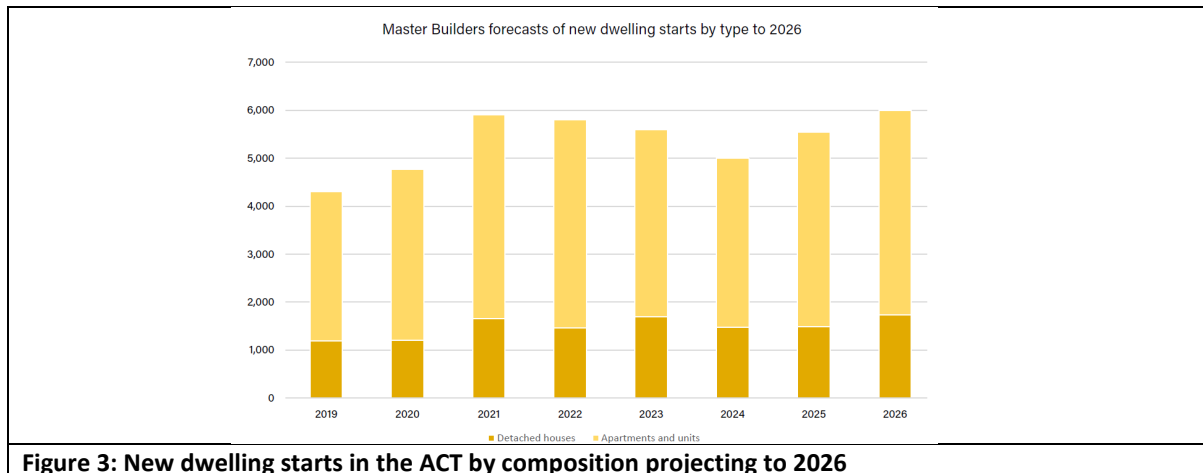


Figure 3: New dwelling starts in the ACT by composition projecting to 2026

Future Challenges

There are several existing and emerging pressures that may affect building and construction activity and/or the industry in the medium term. Firstly, the Levy may influence building and construction activity (intentions or completions) when combined with other financial stressors or outlays. Secondly, these challenges will affect industry capabilities and performance and therefore increase the demand on regulatory resources. Shortage of skilled staff, lack of material resources, states of transition and changes in the external environment are known drivers of non-compliance as well as indicators of the viability and integrity of the industry.¹⁶ These challenges will therefore impact the intensity and extent of regulatory activity and compliance action.

Skilled labour

The ACT industry, like most jurisdictions, has faced a chronic under supply of skills-based workers. The ACT relies heavily on interstate workers, particularly for specialist trades. This was exacerbated during 2020-2021 when domestic and international border restrictions applied. Labor force data from the ABS demonstrates the industry reached a high of 21,600 in May 2020.¹⁷ However, it was affected during the COVID-19 pandemic with the CEO of Master Builders ACT stating that the local industry is building 20% more with a 25% reduction in workforce (although recent data suggests workforce levels have returned).¹⁸ In November 2022, ABS labor force data had building and construction employment at 19,800 bouncing back from a low of 14,100 in February 2021.¹⁷ Persistent skills shortages have resulted in sharp wage increases adding additional pressure to the sector. The normalisation in interstate mobility and overseas migration is expected to ease the severity of the shortage. This will be supported by the ACT government's commitment to skills and training through Australian apprenticeships and post trade pathways.¹⁹ Access Canberra building and construction trade inspectorates require technical capabilities that intersect with the industry; the shortage of skilled and

¹⁴ HIA Economics State and National Outlooks- Housing Forecasts - August 2022

¹⁵ Suburban Land Agency - [Annual Report](#) - 2021-22

¹⁶ Standing Committee on Economic Development and Tourism- [Inquiry ACT Building Quality](#)- July 2020

¹⁷ ABS- [Labour Force, Industry, Occupation and Sector](#)- 6291005- November 2022

¹⁸ Master Builders ACT - [CEO](#) - September 2021

¹⁹ ACT Government- [Skilled to Succeed](#)- April 2022

knowledgeable workers place additional pressure on the retention and recruitment of staff.

Availability and price of materials

Throughout the period 2020-22, the industry suffered a prolonged supply shock due to constrained availability of materials and freight delays resulting in significant price increases in the sector. Disruptions impacted the building intentions as well as the commencement and completion of building work leading to backlogs of work. Building and construction costs are increasing at the fastest rate since 1980.²⁰ The 12 months from September 2021 has seen the input prices associated with residential construction increase by 16% resulting in house construction prices rising by 20.5%.²¹ Supply and shipping delays and the rising costs of timber, metal, and joinery products are largely responsible (Figure 4).²¹ This is consistent with the MBA reporting that in the first half of 2022, building product inflation increased by 17.3%.²² Particularly affected have been those builders with fixed-price contracts that have meant additional costs are absorbed. In the last quarter of 2022, inflationary spikes are improving given the more stable supply of materials and easing commodity prices.¹⁴ Overall, this is not likely to result in a tangible fall in building cost especially given the surge in energy prices. Higher costs may be associated with time and cash flow issues that may lead to use of non-conforming products, poor workmanship, unfinished work, contract deviation, or insolvency. All of these impacts have complex consumer impacts that are difficult to navigate.

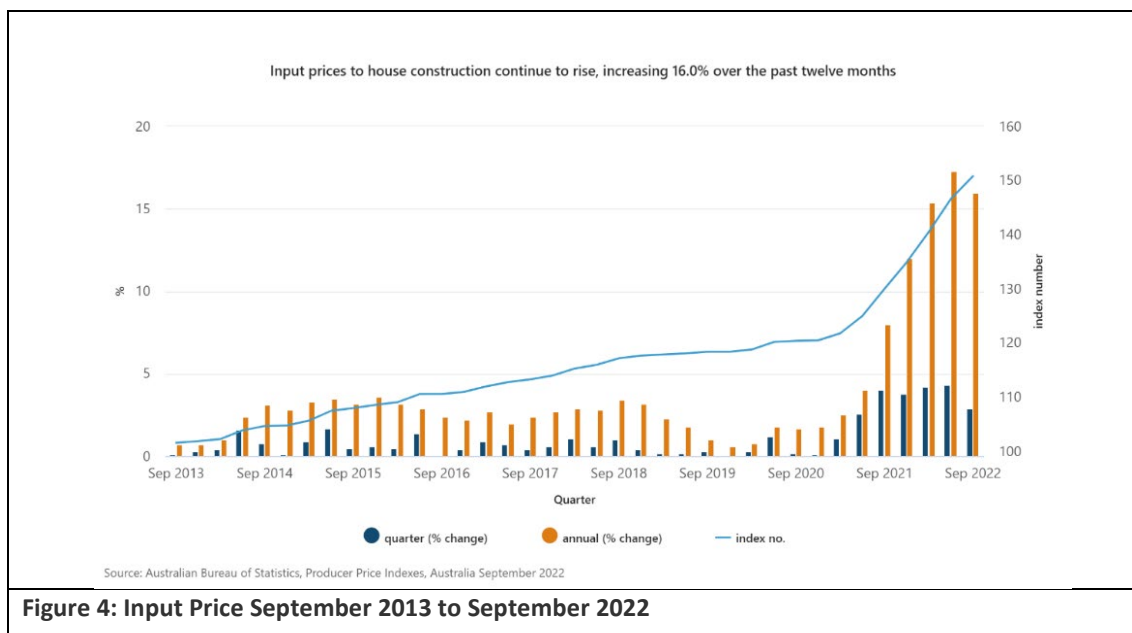


Figure 4: Input Price September 2013 to September 2022

Population

The ACT had the largest percentage population growth at the 2021 Census with a 14% increase (since 2016) to a total of 454,499 people.²³ Higher levels of net overseas migration and net interstate migration over this period were the key factors for this increase. During the pandemic this slowed considerably with overseas immigration all but stopped and interstate migration constrained. The ACT's population growth rate is expected to progressively return to its pre-pandemic rate, reaching 2% by 2024-25¹² with a projected population of 500,000 by the end of the decade.²⁴ Housing supply will need to increase with an additional 30,000 dwellings built by 2027 to accommodate this taking the total dwelling numbers to around 210,000.²⁴ The geographical accommodation of the growing population will be founded in strategic urban and regional planning impacting building activity, building composition and geographical spread of housing across the ACT. At present, the Belconnen district remains the most populous with the areas in the northern outskirts having

²⁰ MBA NSW- [Building Material Costs – 2022](#)

²¹ ABS- [Producer Price Indexes -Summary- 2022](#)

²² MBA- [National Office Monthly Report - September 2022](#)

²³ ABS [Australian Census 2021- Location – Summary - 28 June 2022](#)

²⁴ Media Release- [Comprehensive Housing Package to Tackle Affordability & Supply- 30 July 2022](#)

the largest growth between 2011 and 2021.²⁵

Economic

The Australian economy is facing challenges – a sharp global economic slowdown, high inflation, rising interest rates and falling real wages.²⁶ Unemployment is expected to remain below 5% whilst the WPI is forecast to grow at a faster rate of 3¼ per cent in 2022-23.¹² Consumer Price Inflation (CPI) saw the highest annual movement in more than 30 years at 7.8%.²⁷ These conditions may impact overall building activity, the supply chain, and the financial viability of businesses within the industry. Over the coming years, the ACT economy is expected to see a 3% growth rate and is considered to be in a better position than other jurisdictions in terms of the impacts of inflation.¹² Together, these factors may impact the viability of the industry whilst influencing consumer behaviour.

Housing stock composition

The type of build will affect the design, specialist skills and complexity of development across the Territory. This will be driven by strategic planning, land availability and to a lesser extent consumer preference. The ACT's Planning Strategy has 70% of all new residential development occurring in the city's existing footprint necessitating greater densification and multi-unit residential living.²⁸ The majority of greenfield development is coordinated by the ACT Government and subsidised by the private market. The indicative public land release will see 16,417 dwelling sites made available to 2027.²⁴ Multi-unit development activity remains steady and is projected to remain that way.²⁹ Again, more than half of sites in the multi-unit construction pipeline are released by the ACT Government. However, in the coming years it can be expected that private infill developments will make up an increasing contribution to the supply of multi-unit developments across Canberra. An estimated 90% of all multi-unit construction activity is occurring in established suburbs as urban infill development with the majority happening in the Inner North, Gungahlin, and Belconnen town centres.²⁹ Currently, the majority of properties in the development pipeline are considered as high density residential. Across the ACT, there are 37 high-rise multi-unit residential in the planning pipeline each with more than 100 units. This is consistent with the national trend with the number of apartments being built in high-rise buildings each year almost tripling in less than a decade.³⁰

Climate change

The built environment including the current and future housing stock will need to be more resilient and compatible with the land and climate driving the type and level of building activity. Modelling has identified that the changing climate means ACT is likely to see more frequent and severe bushfires, longer and more frequent heatwaves that are hotter both during the day and at night, more frequent and prolonged periods of drought and more frequent and severe storms over a longer summer season, with flash flooding and violent winds. To transition Canberra to a climate-wise and net zero city, ACT government policies including the [ACT Climate Change Strategy 2019-2025](#) and [Canberra's Living Infrastructure Plan](#) are supporting both adaptation and mitigation strategies. Adopters and leaders within industry, and consumer preferences, will also stimulate action. Existing dwellings will require modification to ensure they provide reliable and suitable shelter. New developments will need to meet climate wise and energy performance standards driven by locally specific design knowledge to provide comfort and protection. Climate change adaptation and mitigation strategies will mandate legislative reform and changes to the regulatory obligations of the industry. This will be paired with a skills and knowledge shift resulting in the retraining of some workers. The impact of climate change has the potential to affect insurance premiums and lending criteria as risks are passed on, adding additional pressure to all stakeholder groups. Changing weather patterns will impact when and how work is completed with consideration to materials, machinery, optimum structural conditions and work health and safety.³¹

²⁵ ABS- [Estimated Resident Population](#) - ASGS2021- July 2022

²⁶ Australian Federal Budget- [Budget October](#)- 2022–2023

²⁷ ABS- [Consumer Price Index, Australia](#)- Summary- December Quarter 2022.

²⁸ ACT Government- [ACT Planning Strategy](#)- 2018

²⁹ EPSDD- [ACT Land and Property Report](#)- July to December 2021

³⁰ Shergold and Weir- [Building Confidence](#)- February 2018

³¹ Delta Q – Climate Change- [Impact on Building Design and Energy](#)- 3 July 2020

Simultaneously, the industry itself will need to transform its operations and processes to reduce its carbon footprint from operational and embodied sources.³² Likewise for the regulator who will need to train and shift focus on new regulatory regimes, particularly when new technologies aid the transition to more sustainable practices.

Regulatory reform

The nature and development of residential living will be shaped by the legislative and regulatory framework of the Territory. Knowledge, resource, and financial costs will be felt across stakeholder groups due to the changing requirements of planning, constructing, and completing work. The ACT government is committed to improving quality, livability, and sustainability of buildings across the Territory. Meeting obligations, familiarising with new standards, as well as training and reskilling the workforce will require effort and attention within industry and across government including at Access Canberra.

The ACT Government reform agenda includes a number of components that relate to Access Canberra's role as the regulator for the building and construction industry. Key imminent reform items include:

- Registration scheme for engineers
- Swimming pool safety reforms
- Implementation of National Construction Code (NCC) 2022
- Canberra's pathway to electrification and transitioning away from the use of fossil-fuel gas by 2045
- Developer Regulation
- Review of the ACT's Energy Efficiency Rating Disclosure Scheme
- Review of building work insurance settings
- Implementation of a residential building dispute scheme
- Implementation of the AMR scheme for construction occupations
- Review of certification services and any role for a government service
- Measures to lift the sustainability of buildings, for example, Minimum Energy Efficiency Standards for rental homes; commitments in the ACT Climate Change Strategy 2019-25
- Planning System Review and Reform Project
- ACT's Zero Emissions Vehicles Strategy 2022-30

Building Quality

Building quality and effective regulation of the industry has been examined on a national scale, most notably in the Building Confidence Report that set out 24 recommendations to improve the effectiveness of compliance and enforcement systems for the building and construction industry across Australia.³⁰ The ACT Standing Committee on Economic Development and Tourism's enquiry into Building Quality in the ACT culminated with the final report in 2020. Submissions from private members of the community and industry groups called for increased funding for the ACT regulator to assist in delivering improved outcomes for those impacted by building quality matters.¹⁶ A common complaint identified through the submissions was the inability of the regulator to provide quick, considered, and proportionate responses to building and construction matters. To date, the government has undertaken extensive work to improve the ACT's building regulatory system and lift practices across the building and construction industry, including boosting the number of inspectors for investigations. This will continue given the importance of compliance with building standards for health, safety, amenity, and sustainability in maintaining quality of life.

A common issue across jurisdictions is the difficulty in aligning definitions and classifications of building quality across consumers, industry, and regulators. Quality must be considered on a continuum and cannot be limited to the absence of defective work (nothing that defect severity also exists on a spectrum). This presents tensions across stakeholders and is something that cannot be dismissed given the effect on all parties. To address this asymmetry, a mix of proactive and reactive activities are required to raise awareness and manage expectations of the regulator as to what can and can't be done to rectify perceived poor quality or non-compliance. The Construction Occupations Registrar (the Registrar) can address matters of defective work

³² International Energy Agency - [Global Status Report for Buildings and Construction](#) - 2019

under the ACT's building regulatory system which incorporates the National Construction Code. Other protections and warranties may be offered through the Australian Consumer Law and are addressed by the Commissioner for Fair Trading (also within Access Canberra).

The Registrar is an independent statutory officer appointed under Section 103 of the [COLA](#). Much of the activity undertaken by Access Canberra in this industry is at the delegated authority of the Registrar. The Registrar is tasked with responsibilities including performing audits, enforcing site inspections during the various phases of a build, and managing licence compliance of practitioners that seek to enhance building quality. The Registrar's functions also include an educational role, including to provide practitioners with information about developments in the construction industry including key regulatory obligations, responsibilities, and reforms. The Registrar's remit extends beyond building codes and standards to a variety of plumbing, gas fitting, gas appliance, electrical work, energy efficiency assessments and other inter-related work.

Instances of poor building quality and issues with structural integrity are of significant public interest and attention. As of May 2022, there have been 22 cases in the ACT that have progressed through investigation, mediation, and compliance-related engagement. In some instances, legal challenges have resulted in resolution through the ACT Civil and Administrative Tribunal, the Magistrates' Court, or the Supreme Court. Public attention to such matters has different impacts depending on the stakeholder perspective. For consumers, this has the potential to affect trust and confidence in the safety of the places they occupy and cause emotional stress. It also has secondary impacts on perceptions held regarding the competency and integrity of the industry and the regulator. Within industry, it can act as a deterrent for non-compliant design and building work. For the regulator, incidences of non-compliance can signal activities and practices that require regulatory attention. Costs associated with major defect rectification is estimated to be between 15-30% of the build costs with resolution likely to take more than twelve months.³³

Ministers Statement of Expectations 2022³⁴

There is expectation that the Registrar uses the available statutory powers to protect homeowners from the stressors and harms that can be associated with instances of poor building quality. This is outcome driven with priority focus areas that include holding licensees to account, taking appropriate regulatory action, and working to improve community confidence in the ACT industry.

The overarching intent of Registrar activities is to instil greater community confidence in the ACT construction sector. The Minister has set these expectations recognising the historical building quality issues of the industry.

³³ Construct NSW- [Improving Consumer Confidence. Research report on serious defects in recently completed strata buildings across New South Wales](#)- September 2021.

³⁴ Construction Occupations (Licensing) (Registrar)- [Statement of Expectations 2022](#)- NI2022-571- 2022

SECTION THREE – REGULATORY RESOURCING

A key intent of this report is to describe and quantify the resourcing requirements of Access Canberra to deliver its regulatory activities under the ACT's building regulatory system, now and into the future. Consideration of Levy revenue for building and construction regulatory activities has focussed on the direct services provided by the Construction Branch in Access Canberra. However, it is apparent there is a wider range of services administered by Access Canberra that directly, and indirectly, support regulation of the industry.

Regulatory settings in the ACT

Access Canberra is the government regulator responsible for building and construction quality, including administering licensing and registration schemes for related occupations and work. EPSDD is the policy agency responsible for the ACT's building regulatory system. Together, these organisations support, drive and deliver:

- High quality design and building
- Compliance with building standards
- Integrity and accountability in the ACT's building and construction industry which supports building quality and building safety outcomes

Compliance with building standards for health, safety, amenity, and sustainability is an important part of maintaining quality of life for Canberrans and the liveability of the Territory. The regulatory system as a whole is reliant on fit for purpose technological systems that support the efficient use of resources and enhance evidence-informed regulatory decision making. Case management systems that provide a secure and reliable platform for data capture, storage, sharing, and reporting are essential capabilities for an intelligence-led regulatory approach. Conversely, legacy systems greatly hamper the effectiveness of the regulator as well as posing a risk to the greater regulatory framework and the integrity and quality of the industry.

Regulation is the use of different tools to influence behaviour or events to encourage and ensure compliance with the law. The ACT's building regulatory system consists of the following Acts, associated regulations and instruments:

- [Architects Act 2004](#)
- [Building Act 2004](#)
- [Building and Construction Industry \(Security of Payment\) Act 2009](#)
- [Building and Construction Industry Training Levy Act 1999](#)
- [Construction Occupations \(Licensing\) Act 2004](#) (COLA)
- [Dangerous Substances Act 2004](#), Chapter 3A
- [Electrical Safety Act 1971](#)
- [Gas Safety Act 2000](#)
- [National Construction Code](#) (consisting of the Building Code of Australia and the Plumbing Code of Australia)
- [Water and Sewerage Act 2000](#)

Access Canberra

Access Canberra was established in 2015. One of the key objectives was to concentrate, coordinate and streamline the provision of regulatory activities across the Territory. A core function of Access Canberra is the operationalisation and administration of policy. This is fulfilled through education, engagement and ensuring compliance with legislative responsibilities and obligations. Access Canberra operates a risk-of-harm minimisation model, which prioritises the allocation of resources to situations where the risks posed by non-compliance and misconduct are greatest to the community. The three strategic regulatory objectives of

Access Canberra's Building and Construction Regulatory Services Framework are protection, confidence, and responsiveness.³⁵ The regulatory posture of Access Canberra is applied to the activity of the ACT building and construction industry.

Regulatory activities undertaken by Access Canberra

This report so far has described the financial settings and impacts of the Levy and in general posited that the scope of deliverables by Access Canberra as part of its building and construction regulatory activities is greater than is recognised in its funding settings. The following section details how broader activity is in line with the intent of Levy-supported outcomes.

Definitions

Building and construction related regulatory activities conducted at Access Canberra can be separated into three categories.

1. Primary

This category of activity is under the direct remit of the Registrar and includes core functions under ACT's Building Regulatory System. These activities include:

- Proactive monitoring and inspections
- Mandatory inspections of installations and work
- Complaint management
- Reactive preliminary assessments and inspections
- Occupational Licensing, suitability assessments and examinations
- Construction Audits
- Investigations of non-compliance:
 - Occupational Discipline on regulated entities
 - Issuance and enforcement of regulatory actions
 - Prosecution and legal action
 - Monitoring of compliance
- Industry Education and Engagement
- Data and information management to support policy development and operational functions
- Architects' registration
- Processing Certificate of Occupancy or Use (COU), Certificate of Electrical Safety, Notice of Work.

2. Secondary

These can be considered as ancillary services or activities that support or enable regulatory operations and performance. For the most part these activities allow Access Canberra to effectively meet its commitments, responsibilities, and obligations and includes administrative processes such as responding to enquires, processing building applications, maintaining records, booking appointments and inspections. This category also includes supplementary functions such as sediment control and management of contaminated land.

3. Tertiary

This includes additional activities that still contribute to the regulation of the building and construction industry but operate on the periphery. These activities largely contribute to industry transparency, the safeguarding of consumer rights and the maintenance of consumer protections. Activities include investigations pursued by the Commissioner for Fair Trading under the [Fair Trading \(Australian Consumer Law\) Act 1992](#), and conducting pre-sale inspections as required by [Civil Law \(Sale of Residential Property\) Act 2003](#), or as required by the [Land Titles Act 1925](#). Given, these activities are not directly administered under the ACT's Building Regulatory System, they are not appraised within this review.

³⁵ Access Canberra Accountability Commitment Series-[Building, Planning and Construction Regulatory Services -2020](#)

Costing and quantifying activities at Access Canberra

Access Canberra has costed activities attributed to the primary and secondary categories described above. These costings were prepared based on average FTE, or a percentage of FTE based on effort; over the past three to four financial years and are inclusive of administrative on-costs.

Regulatory outputs are used to justify the scale and scope of activities undertaken by Access Canberra in this space (as published in the relevant CMTEDD Annual Report). It is acknowledged that this is an incomplete measure as it only explores one aspect of regulatory performance and therefore does not reveal the full extent of regulatory activity nor the impacts of regulatory activity.

Although these activities have been costed and quantified, this review does not assess the adequacy of resourcing for any business area outside of Access Canberra's Construction Section (Construction and Planning Regulation and Strategic Business and Trade Inspectorates). The purpose of this section is to demonstrate that not all regulatory activities relating to the building and construction industry are recognised as such with costs outstripping the current funding arrangement said to be offset by the Levy.

Construction and Planning Regulation and Strategic Business and Trade Inspectorates

As previously stated, the Levy does not directly contribute funding to any prescribed activities. However, given the *intent* of the Levy, the ACT Government notionally attributes a portion of funding to Access Canberra to offset the costs of regulatory oversight and regulatory activity. These are generally activities that are undertaken on behalf of the Registrar which can be considered in the Primary definition given above. The scope of activities includes:

- Reactive and proactive compliance monitoring and audits
- Mandatory inspections for gas, plumbing and electrical installations and work.
- Assessment and licensing of a variety of building and construction occupations and related work health and safety credentials.
- Investigations, formal enforcement, and occupational discipline

A quantitative snapshot of these activities undertaken in the financial year of 2021-22 is provided at Table 6. Since the provision of additional funding through the budgetary process, there has been a 7% increase in the number of proactive inspections and audits between 2019 to 2022 as well as a 3% increase in active construction licences maintained by Access Canberra. The same period has seen a 26% reduction in regulatory enforcement activities due to the impacts of COVID-19 and Public Health Guidance. Overall, these activities translate in greater costs to Access Canberra as detailed in Table 7.

Activity	2021-22
Inspection/audit	
Construction	1,048
Electrical	30,552
Plumbing	20,190
Gas	2,823
Total	54,613
Construction Occupation Licensing	
Electrician	5,151
Gas Appliance Worker	171
Gasfitter	1,712
Plumber	2,248
Drainer	1,348
Plumbing Plan Certifier	20

Building Assessor	59
Building Surveyor	97
Works Assessor	2
Builders (all classes)	4,582
Total	15,390
Regulatory Enforcement	
Notice of Intention to issue a Rectification Order	9
Rectification Order	7
Emergency Rectification Order	1
Demerit points	71
Direction to undertake building work	4
Stop work notice	66
Infringement Notice	7
Total	165
Total activities	70,168

Currently, these activities are completed by the Construction and Planning Regulation and Strategic Business and Trade Inspectorates streams of the organisation noting some regulatory functions have moved over the years to better align the organisational structure. This is accounted for in the costings used. The cost of activities has risen \$5,461,925 between 2018-19 and 2021-22; most recently reaching \$16,013,147 in 2021-22 (Table 7). This was primarily due to a budgeted increase of 26.5 FTE in the examined years that were required to oversee the ACT Government's building quality reforms.

The breadth and scale of activities undertaken by Access Canberra in support of the regulation of the building and construction industry are not *all* recognised as such, and are therefore not offset by the Levy, with funding appropriated through other means.

Table 7: Total cost (\$) for building and construction related activities at Access Canberra from 2018-19 to 2021-22

	2018-19	2019-20	2020-21	2021-22
Construction and Planning Regulation and Strategic Business and Trade Inspectorates	10,551,222	13,755,354	13,999,729	16,013,147
Land, Planning and Management Services	3,316,011	3,435,012	3,625,182	3,672,296
Resolution Support Team	299,691	365,747	287,020	337,128
Communications and Engagement	0.00	0.00	69,295	174,885
Environment Protection Authority	623,05	664,651	721,276	744,002
Total Cost	14,789,981	18,220,764	18,702,502	20,941,458

Land, Planning and Management Services

Access Canberra's Land, Planning and Management Services (LPMS) has its own dedicated building shopfront in Mitchell. It is almost exclusively used by those who work on the building and construction matters. There are several activities undertaken at Mitchell that directly related to the provisions of the Building Act including the issuing of COUs and processing of building approvals (the point of Levy collection). The shopfront has a wide range of functions that can be classified as primary and secondary regulatory activities (as well as tertiary activities not included here). Many of these are enabling services that facilitate further regulatory activity in

the space such as:

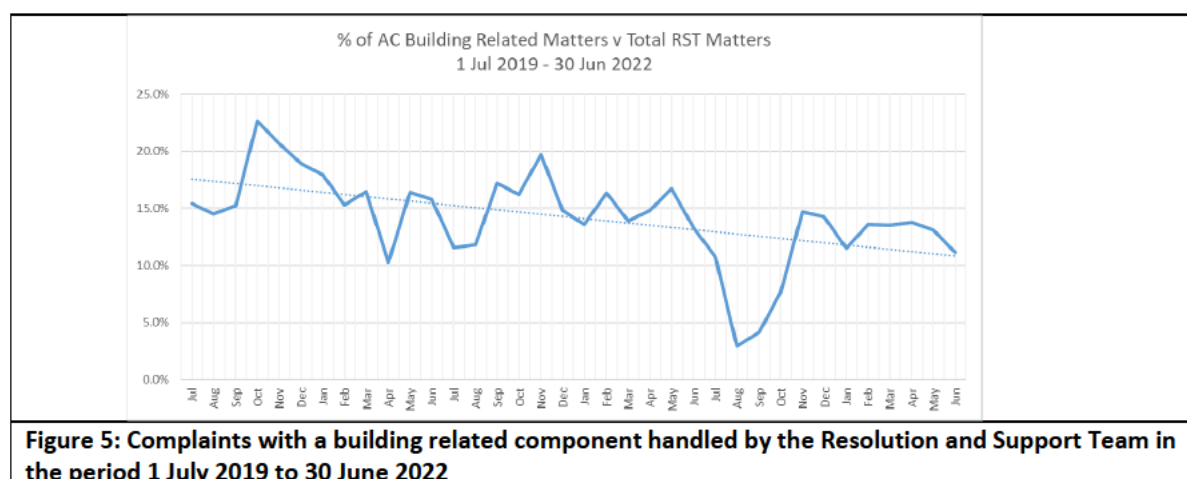
- Organising inspections and appointments
- Managing lodgements
- Providing information and responding to enquiries through the contact centre and building counter
- Conducting file searches
- Processing building registrations, electrical, plumbing and conveyancing transactions

LPMS' value to the regulation of this industry is illustrated in Table 8 which shows the volume of regulatory administration and enabling services completed. In total, costing \$3.672 million in 2021-22, and increase of \$356,285 from 2018-19 (Table 7) with the staffing required to service these activities remaining relatively stable.

Activity	2019-20	2020-21	2021-22
Building approval registrations processed	4,358	5,248	4,777
Certificates of Occupancy and Use issued	4,298	3,732	3,651
Certificates of Electrical Safety received	45,888	55,096	44,642
Total	54,544	64,076	53,070

Resolution and Support Team

The Resolution and Support Team (RST) is the single-entry point for the community to report complaints, provide feedback and raise regulatory concerns that are related to the responsibilities of Access Canberra. There has been a slight reduction in building and construction related complaints in the past three financial years from 15% in 2019-20 to 12% in 2021-22 (Figure 5). These complaints include those relating to general building and planning matters, construction noise & sediment control as well as those based on the Construction Industry ANZSIC. Complaints plummeted in August of 2021 during the early stages of the ACT COVID-19 lockdown. The costs of complaint handling by RST have increased from \$299,691 in 2018 to \$337,128 in 2021-22 (difference of \$37,437- refer Table 7).



Environment Protection Authority

The Environment Protection Authority (EPA) is the principal regulator for the [Environment Protection Act 1997](#) (EP Act). The EP Act includes the objective to protect and enhance the quality of the environment. This includes requiring people engaging in polluting activities to make progressive environmental improvements and ensuring that contaminated land is managed having regard to human health and the environment. The

EP Act prescribes major land developments on sites above 0.3ha to hold environmental agreements, which include requirements for approved erosion and sediment control plans. The EP Regulation makes it an offence to not install sediment and erosion control on a prescribed site. The EPA has established [Guidelines for Construction and Land Development](#) to give practical advice on preventing erosion and sedimentation from building sites. A set of information sheets details requirements for identifying and managing contaminated sites. The EPA undertakes inspections, education, and enforcement activities on a daily basis across Canberra's building sites to ensure compliance with the EP Act, and guidelines.

Since 2019, the EPA has seen a 58% increase in the number of erosion and sediment control plans due to a corresponding increase in site development approvals (Table 9). However, due to the COVID-19 Public Health Emergency and on-site restrictions the total number of Inspections reduced by 38% over the same period. The total number of contaminated sites on the register increased by 31% from 2019 to 2022 from 184 in 2019-20 to 242 as of 30 June 2022. The costs of providing building and construction related activities by the EPA has increased by \$120,945.35 since 2018 to a total of \$744,002.01 in 2021-22 with stable staffing (Table 7).

Activity	2021-22
Sediment control	
Plans endorsed	114
Inspections of development sites	891
Total	1005
Contaminated sites	
Audits reviewed and endorsed	9
Environmental assessment reports reviewed and endorsed	43
Inspections of contaminated sites	54
Total	106

Communications and Engagement

Industry communication is fundamental to Access Canberra's Accountability Commitment framework and its *engage, educate, and enforce* model for compliance. This recognises that enhancing skills and knowledge are key to maximising compliance with regulatory responsibilities and obligations. This includes development and circulation of proactive correspondence to the industry, with the Registrar's Construction Notes reaching up to 9,268 construction licence holders. It also includes presentations, newsletters, media appearances and communications following notable industry events, including the October 2022 shoring wall collapse in Dickson where advice was sent to 974 Class A builders. A dedicated communications officer position was established in 2020 to tailor resources and material for the building and construction industry at a total cost of \$174,884.89 in 2021-22 (Table 7).

Rectification Costs

Over the period 2019-2022, there have been two major cases of rectification in the ACT that can be used to exemplify the costs of pursuing and enforcing regulatory decisions related to poor building quality. One case relates to a large retaining wall at a single residential building and the second to a multi-unit apartment complex. The total net costs incurred by Access Canberra for physical rectification in these two cases is equal to \$727,710.52 (Table 10).

Item	Cost (\$)
Kingston Apartments	
Cost to Access Canberra	561,359.18
Recovered Costs	(167,280.68)
Net cost for Kingston Apartments	394,078.50
Gordon Retaining Wall	
Cost to Access Canberra	333,632.02
Total Cost of Rectification	894,991.20

Future resourcing needs

The substantial government investment and commitment in Building and Construction regulation has had positive effects on the practices within the industry and the quality and integrity of the buildings that Canberrans occupy. However, given the macro level impacts that have been identified, the ongoing broader resourcing need to support and transition this sector in the next decade is difficult to quantify. There are a great number of interdependencies and unknowns that have the potential to cause disruption affecting the scale and breadth of regulatory activities required. Internally, Access Canberra may realign roles and functions affecting the structure and total number of FTE required to be an effective and responsive regulator. Access Canberra also faces challenges presented by the tight labour market including the recruitment and retention of technical expertise given that the desired skill set overlaps with those required in the industry. Internal contingency and succession planning will attempt to safeguard against staff attrition; however, this may be a considerable factor in resourcing going forward.

The suitability of ICT systems is a consideration in the greater assessment of regulatory resourcing. Whilst not explored in detail here, it should be noted that the current systems used at Access Canberra that support building and construction regulation are in many cases approaching, if not already reached, end-of-life timeframes. This range of unsupported and legacy systems require extensive manual handling and processing inefficiencies. The current state of these systems reduces operational effectiveness, increase the resourcing requirements and also place time burdens on the accurate collection, processing, and reporting of information.

Transformations and shifts within the industry will have flow on effects to the regulator. The densification of the Territory will likely result in a higher number of complaints or disputes relating to noise and encroachment affecting the wellbeing and quality of life of Canberrans. The composition of Access Canberra's workforce will be affected given the varying knowledge base and skill required to inspect the different dwelling types. The transition away from the use of fossil fuels to more sustainable practices will again require some staff to shift and/or expand their technical expertise. It is expected government reforms affecting the building and construction industry will require additional resourcing secured through the budget process. Internally, Access Canberra may restructure to ensure activities and outcomes align with Access Canberra's strategic intent and regulatory framework. This includes the expansion of data capabilities that underpins an intelligence led approach as well as increasing engagement resourcing to maximise stakeholder buy in and reach across industry. These rely on the systems and platforms that allow regulatory activities to be conducted and captured and subsequently reported and analysed to add value to future regulatory priorities.

However, due to the complexity of builds, there is greater likelihood that multi-unit complexes aged between 6-10 years will be subject to regulatory action under the ACT's legislative timeframe for rectification. This is known as the "ten-year reach back" period permitted under the Building Act Section 142, where the limitation of liability for building action cannot be greater than ten years. The Registrar must commence proceedings for builder liability and rectification of issues within ten years of completion of work. It is suggested that 70-80% of structural defects are apparent within six years of completion with 90% detected within ten years. This results in a potentially large time lag for those in the industry and the regulator. Pursuing complaints and investigations for multi-unit developments are invariably more complex and expensive than single dwelling issues and often require a higher level of regulatory intervention to determine the issues. Since 2010, there has been more than 320 multi-unit projects completed, indicating a likely increase in the volume and complexity of building related complaints over the next five years. This is expected to peak between 2022 and 2026 to coincide with the historic high of multi-unit development completion that was experienced. If eventuated, this will result in resources being reactively focussed and allocated to matters of highest risk, particularly if additional resourcing is not provided to implement regulatory reforms.

Rectification and costs associated with legal advice and representation for major non-compliance are best considered as ad-hoc and therefore cannot be tied to a baseline. Currently these are usually absorbed as cost pressures and not considered in Access Canberra's base appropriation. On occasion, a Treasurer's Advance has been granted, however it is recognised that this may not be the most suitable avenue given the nature and intent of this payment mechanism. Legal advice is provided through the Government Solicitors Office (GSO)

and the cost of this is met by Access Canberra. Regardless, unfunded legal costs impose a substantial temporary cost pressure, which can result in challenges in pursuing legal proceedings. With limited inhouse technical expertise and high cost of external consultation, Access Canberra must default to a pragmatic approach to resourcing these matters rather than meeting commitments and responsibilities under its Regulatory Accountability Frameworks.

Access Canberra has been funded an additional 26.5 FTE ongoing through budgets across four financial years, 2018-2022, for Building and Construction regulation. In addition, five FTE were funded in 2022-23 for two years to ensure appropriate technical expertise is available in house to mitigate the risks of ageing multi-unit developments. Overall, the boost in resourcing has had positive, tangible impacts on the manifestation of building defects. As a regulator, Access Canberra is confident that historical issues are being addressed and new builds are of better quality due to a reduction in the rate or overall occurrence of defects.

Access Canberra Resourcing Projections 2022-2025

Ongoing resourcing for the Construction and Planning Regulation and Strategic Business and Trade Inspectorates (i.e., the Construction Section) at Access Canberra have been projected to 2025. These projections cannot be extrapolated to other business areas highlighted in this report nor used as evidence for future resourcing for Access Canberra as a whole. This work is based on dwelling approvals per year and observed population growth of the ACT (Appendix 1.)

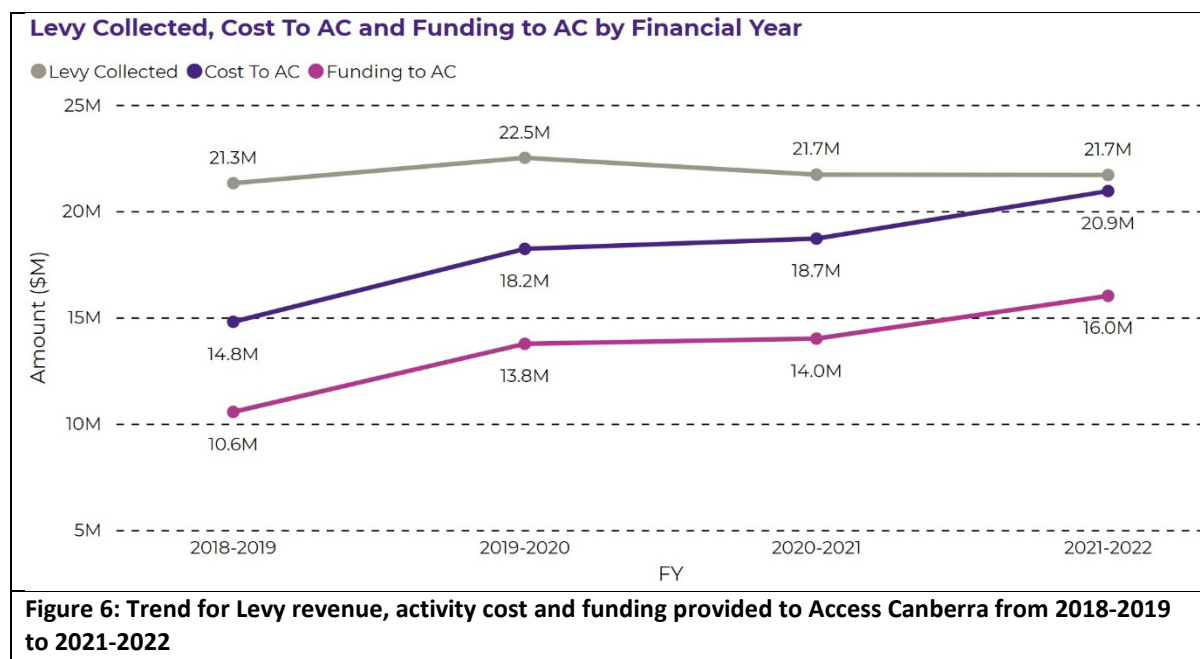
- In the period between 1 July 2016 and 1 July 2022³⁶, the total FTE for this business area increased by 42% from 65 FTE to 92 FTE. This was in direct response to increasing work volume, implementation of new policy and the government's commitment to improving building quality in the ACT.
- Modelling suggests that the period 2022-2025 will not require an increase in FTE based on background level of construction work alone or average observed population growth. *Changes in the regulatory or legislative environment may result in the need for additional FTE to maintain the level of work output and oversight across the industry; especially within the identified areas of expansion and responsibility as outlined in the Minister Statement of Expectations 2022.*

³⁶ Note, the FTE calculations do not include the temporary 5 FTE funded for 2022-23 and 2023-24.

SECTION FOUR - THE CURRENT SITUATION

The analysis so far indicates that the funding allocated to Access Canberra for building and construction regulation is consistently below both its outlay and the revenue collected by the Levy. This was previously observed in the Inquiry into ACT Building Quality in 2020 with submissions noting that the amount collected under the Levy appears to be significantly more than is allotted to regulatory functions.¹⁶ Given this, industry continues to advocate for a permanent increase in regulatory resources to enhance building quality through education and enforcement. Concurrently, industry members also support a decrease in the Levy as a red tape reduction initiative because of the lack of transparency in current utilisation of building and construction regulation funding. This is somewhat reasonable, as the term “Levy” creates a degree of expectation that the revenue raised is used to support relating regulatory activities.

There is a gap between Levy revenue generated and the appropriation for Access Canberra’s building and construction regulation costs. This is neatly demonstrated in Figure 6, whereby activity (as more broadly defined in this Review) expenditure is greater than funding received. It is apparent that there is an annual average shortfall of approximately \$4.584 million across the last four financial years. In the same period, Access Canberra’s costs have grown by \$6.15million, due to the growth in average FTE required to deliver activities. This represents a substantial cost pressure to Access Canberra’s existing funding envelope and is a core policy issue that requires further consideration. This review is the first in depth evaluation of the extent of the misalignment.



Appropriate funding is key to ensuring the regulator has the appropriate technical expertise, resourcing, and system capability to support its regulatory program – in line with its own, and industry’s expectations. The current funding deficit for building and construction related regulation impacts Access Canberra’s operational agility and responsiveness in this regulatory space. It also affects the operational ability in other regulatory domains and the provision of government services. Historically, the amount generated by the Levy has been greater than regulatory costs of Access Canberra but the gap between the two is narrowing over time. This creates another potential funding issue for government to consider given regulatory costs may in the near future outstrip the amount generated by the Levy.

Analysis completed of other regulators in the recent years can help to contextualise the challenges faced by Access Canberra. The 2022 review of the Queensland Building and Construction Commission (QBCC) observed that the agency has a “difficult mission: it performs a wide range of functions within an increasingly complex regulatory environment in which regulated entities are facing growing economic challenges, and it is pursuing

a regulatory approach that also requires a high level of capability".³⁷ This assessment has parallels given Access Canberra's broad scope of activities in the building and construction space, the regulatory approach the organisation employs, and the industry tensions as detailed in Section Two of this report. Likewise in 2019, an evaluation of the New Zealand Building Levy proposed that the activities funded using the Building Levy were expanded to incorporate a system wide approach including the recognition that industry stewardship is a vital component of effective regulation.³⁸ This recognises the importance of reasonable oversight, continuous improvement, and long-term sustainability of the regulator.

In recent years, only the base percentage has been altered to offset the costs of additional regulatory resourcing for Access Canberra. At the current determination, the Levy adds an additional \$6,250 to a \$500,000 residential build and presents an extra \$570,000 for a multi-unit high rise at a build cost of \$50million. The other component of the Levy the cost of works determination, not significantly altered since 2015, should also be set appropriately for the benefit of the greater regulatory system.

Given the misconceptions and varied level of awareness about the Levy, it is recommended that stakeholder groups be better engaged with. Greater transparency as to how the funds of the Building Levy is spent would alleviate some industry concerns and demonstrate the government's commitment to maintaining quality and integrity within the industry. This will also help to shape greater public trust in the government's ability to provide regulatory oversight and protection. In the ACT, the Safer Families Levy is an exemplar for accountable budgetary and reporting mechanisms. A similar approach could also be applied to the Building Levy ensuring building and construction related projects are funded and these allocations for building and construction related regulation would be published as part of the Budget. Utilisation of this method would provide flexibility, with funding linked to meeting the policy intent and create greater visibility of how the Government is enhancing building and construction safety and through it, the greater wellbeing of Canberrans.

Safer Families Comparison

The Safer Families Levy is payable by all ACT rate payers. Like the Building Levy the revenue raised is directed to consolidated revenue. However, there is agreement amongst government that the amount collected through this Levy is spent on expenditure that acts to enhance the protection and safety of Canberran families. Each year funding for specific initiatives is brought forward by the Minister for the Prevention of Domestic and Family Violence and considered through the budget process for ERC and Cabinet consideration. Safer Families proposals usually take the form of an omnibus package or individual proposals with the expenditure offset through the revenue generated by the Safer Families Levy. Generally, the government will spend more on these initiatives than the Levy collects.

The outcomes and achievements from the Safer Families initiatives are reported in budget papers, directorate annual reports, and through annual Safer Families statements by the Minister for the Prevention of Domestic and Family Violence. This information gives greater clarity to the community of why the Levy is collected and how the revenue collected is used in practice. This detail is provided in the 2022-23 ACT Budget Outlook [Appendix H](#).¹²

³⁷ ANZSOG- [Queensland Building and Construction Commission -Report - 2022](#)

³⁸ Ministry of Business, Innovation & Employment- [Building legislative reform discussion paper- 2019](#)

CONCLUSION.

Ongoing poor building quality and non-compliance within the construction industry necessitated additional resources within the Construction section of Access Canberra between the years of 2018 and 2022. The substantial investment by the government into expanding regulatory capacity resulted in a corresponding increase in the Building Levy.

An average \$500,000 residential build cost results in a Building Levy fee of approximately \$6,250 for the homeowner; this is \$850 more than what would have been payable in 2017 prior to the increases. For developers, the financial outlay is more significant. A development with a build cost of \$10 million would have paid \$108,000 in 2017 and has increased by \$17,000 in 2022 to \$125,000.

The financial impact of the increases may be experienced as compounding several challenges currently facing the industry; including a tight employment market, large price increases, and changing technology and environmental requirements to improve building sustainability. These should be considered in the greater context of building quality, industry health and viability, non-compliance with regulatory requirements and consumer behaviour. Although these challenges have been identified, it is difficult to anticipate how they will intersect and impact building and construction over the coming years. Each of these challenges may have secondary effects on the magnitude of regulatory activity and action taken in subsequent years.

The revenue generated from the Levy assists the Government to support the funding of building and construction regulation in the ACT. This is something that is welcomed by industry and community members alike. Access Canberra as the regulator for this industry is funded for a portion of its activities in this space. The Levy collected approximately \$22 million in 2021-22 with Access Canberra receiving a little over \$16 million within its broader appropriation for building and construction regulation. When considering the full scope of activities related to building and construction, the cost incurred by Access Canberra in this year was closer to \$21 million. There is potential for further consideration of the full scope of activities conducted in support of the Building and Construction regulatory framework within Access Canberra's appropriation.

Although, substantial funding has been received in the previous financial years to improve the capacity of the regulator to respond to poor building quality or noncompliance within the industry, funding decisions have not recognised some of the primary, secondary and tertiary activities undertaken by Access Canberra to support a safe, healthy, and sustainable built environment. A competent regulator with an ability to respond effectively and proportionately requires appropriate resourcing to provide and promote positive outcomes for the industry and the people of Canberra. This, when paired with greater transparency, can promote public trust and confidence in the regulator.

The building reform pipeline will affect the regulatory priorities, capacity, and costs of Access Canberra. There is an expectation that any expansion of scope, scale or responsibility would result in consideration of further budget supplementation to baseline resourcing (refer to Regulator Reforms section). High-level internal resourcing projections were completed out to 2025 which indicated that the current ongoing staffing of the Construction and Planning Regulation and Strategic Business and Trade Inspectorates business areas is at a stable baseline. These projections do not account for shifts in the regulatory, social, or economic environment that may require specific attention or activity from Access Canberra nor does it include the other secondary and tertiary activities identified throughout this review.

The expectations of stakeholders and their sentiments towards the Levy could be improved by increasing the transparency of how this revenue is used. This, along with the gap between the costs associated with the regulation of the Construction and Building sector in the ACT and the collection of revenue, is something that could be further explored.

APPENDIX 1

Access Canberra Resourcing

Ongoing FTE funding for Construction and Planning Regulation and Strategic Business and Trade Inspectorates from Business Cases 2018-19 to 2021-22. In 2022-23, funding was provided for 5 FTE for a two-year period.

Financial Year	Additional FTE
2018-19	2
2019-20	16
2020-21	1
2021-22	7.5
Total	26.5

Projections Methodology

The volume of construction work in the ACT has increased substantially from an average of 2644 dwelling units approved per year in the period 1 July 2000 to 30 June 2010, to 5040 per year in the decade from 1 July 2010 to 30 June 2020. This represents an increase of 91%. However, baseline construction work is projected to decrease somewhat to 2025.

The volume of construction work in the ACT has been approximated using the number of dwelling units approved in the ACT at a given point in time, as captured in the ABS series A422863J since July 1983.³⁹ Projections of this series have been produced into the future, based upon ACT Treasury projections in the 2023-24 Budget Outlook of population growth.¹² Relative to the average of the preceding decade, the volume of construction work in terms of dwelling units approved in the ACT is projected to be, with 80% confidence:

- Between 26% lower and 7% higher in 2022-23,
- Between 59% lower and 6% lower in 2023-24,
- Between 50% lower and 6% higher in 2024-25, and
- Between 42% lower and 14% higher in 2025-26.

This is due to much lower-than-average observed population growth in the Territory in the preceding two financial years and projected lower-than-average population growth in the next 3 financial years.

³⁹ ABS- [Number of Dwelling Units approved by Sector, ACT- 87310019-2022](#)

