



ACT
Government

Chief Minister, Treasury and
Economic Development

Freedom of Information Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI Reference: CMTEDDFOI 2022-367

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	Published
4. Additional information identified	No
5. Fees	N/A
6. Processing time (in working days)	49
7. Decision made by Ombudsman	N/A
8. Additional information identified by Ombudsman	N/A
9. Decision made by ACAT	N/A
10. Additional information identified by ACAT	N/A

From: no-reply@act.gov.au
To: [CMTEDD FOI](#)
Subject: Freedom of Information request
Date: Friday, 18 November 2022 10:31:31 AM

Caution: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe. [Learn why this is important](#)

Please find online enquiry details below. Please ensure this enquiry is responded to within fourteen working days.

Your details

All fields are optional, however an email address OR full postal address must be provided for us to process your request. An email address and telephone contact number will assist us to contact you quickly if we need to discuss your request.

Title: [REDACTED]
First Name: [REDACTED]
Last Name: [REDACTED]
Business/Organisation: [REDACTED]
Address: [REDACTED]
Suburb: [REDACTED]
Postcode: [REDACTED]
State/Territory: [REDACTED]
Phone/mobile: [REDACTED]
Email address: [REDACTED]

Request for information

(Please provide as much detail as possible, for example subject matter and relevant dates, and also provide details of documents that you are not interested in.)

Any and all available Worksafe ACT reports and information relating to plumbing excavation works during July 2022 at [REDACTED] address [REDACTED] also known as [REDACTED] in the complex and a [REDACTED] following document/s [REDACTED] and wish to inform [REDACTED] of the events leading to delays and issue with [REDACTED] plumbing works on the premises.

I do not want to access the following documents in relation to my request::

Thank you.
Freedom of Information Coordinator



ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI 2022-367



FREEDOM OF INFORMATION REQUEST

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 18 November 2022.

Specifically, you are seeking: *“Any and all available WorkSafe ACT reports and information relating to plumbing excavation works during July 2022 at address [REDACTED].”*

Authority

As an appointed Information Officer under section 18 of the Act, I am authorised to make a decision on access or amendment to government information in the possession or control of CMTEDD.

Timeframes

In accordance with section 40 of the Act, CMTEDD was required to provide a decision on your access application by 16 December 2022 however, following an extension and third-party consultations, the due date is now 31 January 2023.

Decision on access

Searches were completed for relevant documents and nine documents were identified that fall within the scope of your request. I have decided to full access to one document and partial access to eight documents.

My access decisions are detailed further in the following statement of reasons, in accordance with section 54(2) of the Act, and the document released to you is provided as **Attachment A** to this letter.

Statement of Reasons

In reaching my access decisions, I have taken the following into account:

- the Act;
- the content of the documents that fall within the scope of your request;
- the views of consulted third parties; and
- the *Human Rights Act 2004*.

Exemption claimed

My reasons for deciding not to grant access to the identified information are as follows:

Public Interest

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interests lies. As part of this process I must consider factors favouring disclosure and non-disclosure.

In *Hogan v Hinch* (2011) 243 CLR 506, [31] French CJ stated that when ‘used in a statute, the term [public interest] derives its content from “the subject matter and the scope and purpose” of the enactment in which it appears’. Section 17(1) of the Act sets out the test, to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and Schedule 2 of the Act.

Taking into consideration the information contained in the document found to be within the scope of your request, I have identified that the following public interest factors are relevant to determine if release of the information contained within the document is within the ‘public interest’.

Factors favouring disclosure in the public interest:

(a) *disclosure of the information could reasonably be expected to do any of the following:*

- (xiii) *Contribute to the administration of justice generally, including procedural fairness.*

Having considered the factors identified as relevant in this matter, I consider that release of the information contained in this document may contribute to the administration of justice generally by allowing you to have a copy of the document. I am satisfied that this factor favouring disclosure carries some weight. However, this factor is to be balanced against the factors favouring nondisclosure.

Factors favouring nondisclosure in the public interest:

(a) *disclosure of the information could reasonably be expected to do any of the following:*

- (ii) *Prejudice the protection of an individual’s right to privacy or other rights under the Human Rights Act 2004.*
- (xi) *Prejudice trade secrets, business affairs or research of an agency or person.*

Having reviewed the documents, I consider that the protection of an individual’s right to privacy, especially in the course of dealings with the ACT Government is a significant factor as the parties involved have provided their personal information for the purposes of working with the ACT Government. This, in my opinion, outweighs the benefit which

may be derived from releasing the personal information of the individual's involved in this matter.

Individuals are entitled to expect that the personal information they have supplied as part of this process will be dealt with in a manner that protects their privacy. Considering the type of information to be withheld from release, I am satisfied that the factors in favour of release can still be met while protecting the personal information of the individuals involved. I therefore weight the factor for nondisclosure more highly than the factor in favour of release in this instance. As a result, I have decided that release of this information (names, email addresses, phone numbers, signatures and identifying details) could prejudice their right to privacy under the *Human Rights Act 2004*.

I have also considered the impact of disclosing information which relates to business affairs. In the case of *Re Mangan and The Treasury* [2005] AATA 898 the term 'business affairs' was interpreted as meaning 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'. Schedule 2 section 2.2(a)(xi) allows for government information to be withheld from release if disclosure of the information could reasonably be expected to prejudice the trade secrets, business affairs or research of an agency or person. The information withheld from release could reasonably be expected to unfairly prejudice the business affairs and trade secrets of a third party, along with unwanted commercial implications.

Having applied the test outlined in section 17 of the Act and deciding that release of personal information contained in the document is not in the public interest to release, I have chosen to redact this specific information in accordance with section 50(2). Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that I believe is not in the public interest to release will ensure that the intent of the Act is met and will provide you with access to the majority of the information held by CMTEDD within the scope of your request.

Access to documents

Pursuant to section 38(6) of the Act, I am required to defer access to all the identified documents as an affected third party has objected to disclosure. This third party may apply for review of my release decision within 20 working days after my decision, or a longer period allowed by the Ombudsman. I will write to you to advise when access is no longer deferred.

Charges

Processing charges are not applicable for this request because the number of pages to be released to you is below the charging threshold of 50 pages.

Online publishing – Disclosure Log

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published on the CMTEDD disclosure log after 3 days after the date of my decision. Your personal contact details will not be published.

You may view CMTEDD disclosure log at <https://www.cmtedd.act.gov.au/functions/foi>.

Ombudsman Review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day of my decision, or a longer period allowed by the Ombudsman.

We recommend using this form [Applying for an Ombudsman Review](#) to ensure you provide all of the required information. Alternatively, you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Via email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) Review

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
Level 4, 1 Moore St
GPO Box 370
Canberra City ACT 2601
Telephone: (02) 6207 1740
<http://www.acat.act.gov.au/>

Should you have any queries in relation to your request please contact me by telephone on 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely



Emma Hotham
Information Officer
Information Access Team
Chief Minister, Treasury and Economic Development Directorate

31 January 2023



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST

Reference NO.

Any and all available WorkSafe ACT reports and information relating to plumbing excavation works during July 2022 at address [REDACTED]

CMTEDDFOI 2022-367

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-6	Email with photo attachments	11 Jul 2022	Partial release	Sch 2 s2.2 (a)(ii)	Yes
2	7	Email – notification of payment	1 Aug 2022	Full release	N/A	Yes
3	8-11	Infringement notice – IN-0000994	18 Jul 2022	Partial release	Sch 2 s2.2 (a)(ii)	Yes
4	12-16	Prohibition notice – N-0000004743	15 Jul 2022	Partial release	Sch 2 s2.2 (a)(ii)	Yes
5	17-20	Prohibition notice – N-0000004744	15 Jul 2022	Partial release	Sch 2 s2.2 (a)(ii)	Yes
6	21-22	Email with attachments	22 Aug 2022	Partial release	Sch 2 s2.2 (a)(ii) Sch 2 s2.2(a)(xi)	Yes
7	23-25	Inspectors Notebook	11 Jul 2022	Partial release	Sch 2 s2.2 (a)(ii) Out of scope	Yes
8	26-38	Email with attachments	13 Jul 2022	Partial release	Sch 2 s2.2 (a)(ii) Sch 2 s2.2(a)(xi)	Yes
9	39-40	Work Place Visit Report	11 Jul 2022	Partial release	Sch 2 s2.2 (a)(ii)	Yes
Total No of Docs						
9						

From: "Dillon, Craig" <Craig.Dillon@worksafe.act.gov.au>
Sent: 11/07/2022 5:52 AM
To: "Teer, Tamara" <Tamara.Teer@worksafe.act.gov.au>; "Merritt, Nathan" <Nathan.Merritt@worksafe.act.gov.au>
Subject: FW: [REDACTED]

OFFICIAL

FYI – As discussed

Kind regards

Craig Dillon – Senior Inspector – Construction Team
P: 132281 | Mobile [REDACTED] | E: craig.dillon@worksafe.act.gov.au
Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601



**PUT SAFETY FIRST
AT YOUR WORKSITE
GET HOME SAFE**

 **ACT** Government | **Suburban Land Agency**

WORKSAFEACT

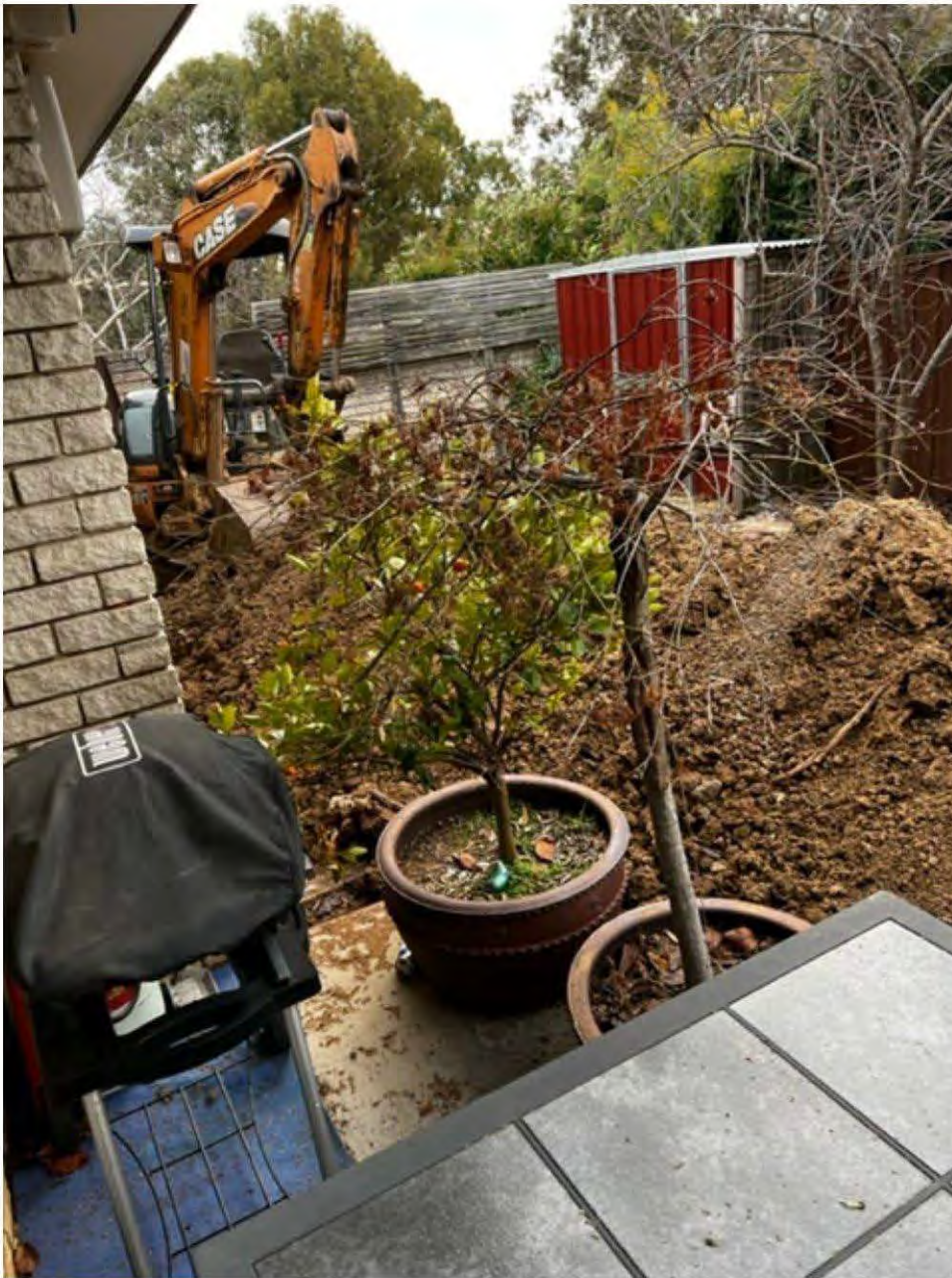
 **ACT** Government

I acknowledge the traditional custodians of the ACT the Ngunnawal people, and their continuing connection to land and community. I pay my respect to them, and to the Elders both past and present.

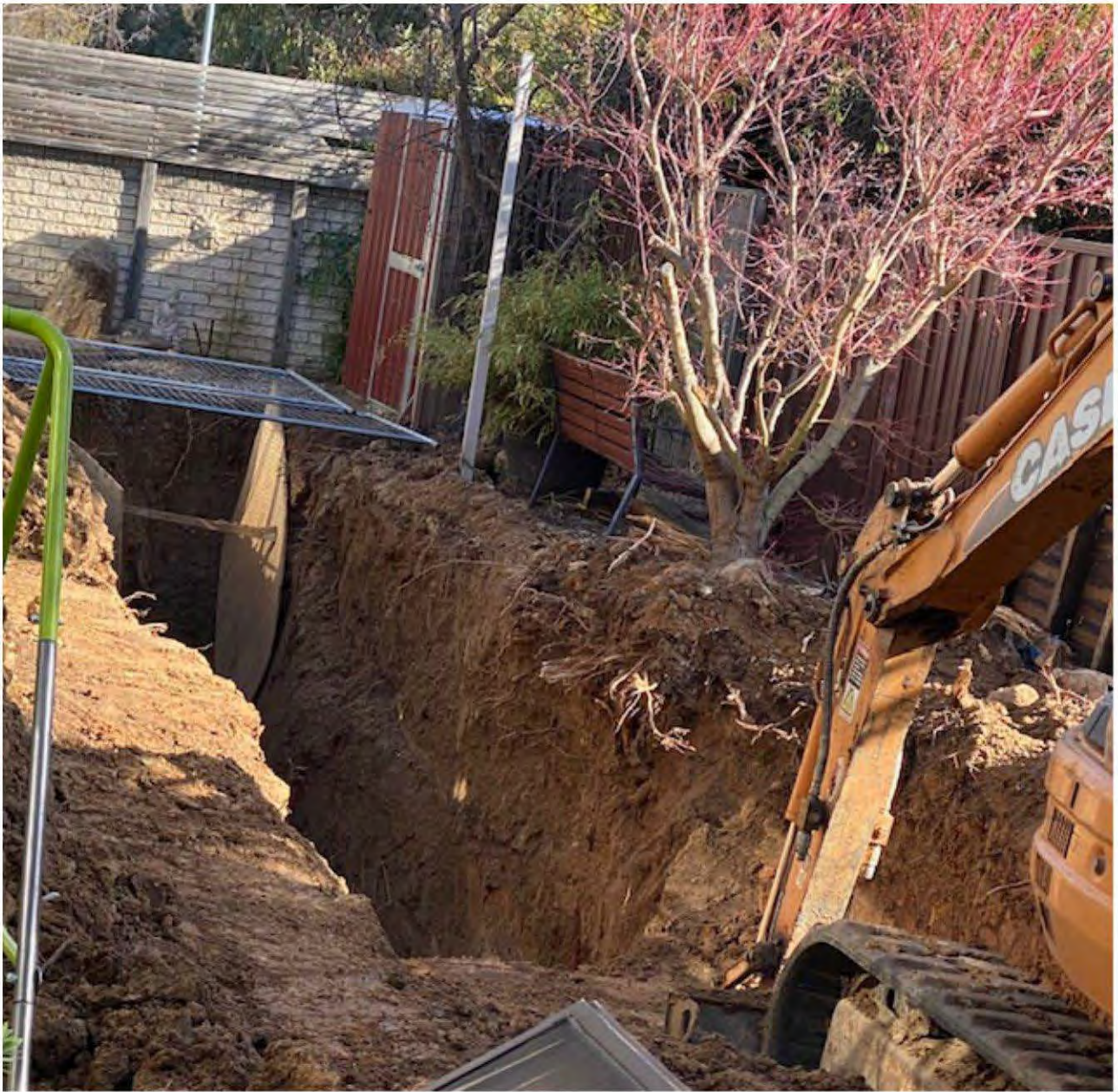
From: [REDACTED]
Sent: Monday, 11 July 2022 3:51 PM
To: Dillon, Craig <Craig.Dillon@worksafe.act.gov.au>
Subject: [REDACTED]

Caution: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe. [Learn why this is important](#)

[REDACTED]











Sch 2.2(a)(ii)

From: "Teer, Tamara"
Sent: 01/08/2022 2:35 AM
To: "Dillon, Craig" <Craig.Dillon@worksafe.act.gov.au>
Cc: "Merritt, Nathan" <Nathan.Merritt@worksafe.act.gov.au>
Subject: FW: IN-0000994 PAID

OFFICIAL

From: Chen, Niki <Niki.Chen@worksafe.act.gov.au>
Sent: Monday, 1 August 2022 8:48 AM
To: Teer, Tamara <Tamara.Teer@worksafe.act.gov.au>
Cc: Kobayashi, Midori <Midori.Kobayashi@worksafe.act.gov.au>
Subject: IN-0000994 PAID

OFFICIAL

Good morning Teer,

Just FYI that the IN-0000994 in the amount of \$3600 has been paid by [REDACTED] on 29/7/2022.

Thank you so much for your effort!

Regards,

Niki Chen | Finance Officer
E: niki.chen@worksafe.act.gov.au
Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601



ACT
Government

We acknowledge the traditional custodians of the ACT the Ngunnawal people, and their continuing connection to land and community. We pay our respects to them, and to the Elders both past and present.

WORKSAFEACT

INFRINGEMENT NOTICE

This is an Infringement Notice issued under section 120 of the Magistrates Court Act 1930

Information

Notice number IN-0000994

Payment due by Aug 15, 2022

Issued By Tamara Teer ID number P37224

who is an authorised person under section 120 (1) of the Magistrates Court Act 1930.

To whom this notice is issued

Name of registered company: Laser Plumbing Canberra Central

Business or trading name (if different):

ACN:

ABN: 78102725093

Recipient:

Date of service: Jul 18, 2022

Method of service (s209): E mail

Registered address

Address: suburb: state: postcode:

Description

The inspector believes you have contravened the **WHS Regulations** Section number - **300(1)**

Short description of contravention

On Monday 11th July 2022 at approximately 16:13 pm, Inspectors Teer and Merritt attended [REDACTED] in relation to a complaint around deep excavation.

At that location, Inspectors Teer and Merritt observed a multi residential established site where earth works were being conducted.

The building work signage located on the temporary fencing at the front of the site showed the principal contractor to be Laser Plumbing Canberra Central.

On arrival to the site Inspectors met with [REDACTED] who introduced himself as the Service Manager of Laser Plumbing.

Observations and discussions revealed:

An approximately 4 metre deep excavation cut, with no systems in place to prevent an excavation collapse. SWMS identified failure to manage site safety with an unsafe trench.

As a duty holder the PCBU must ensure that under Work Health and Safety ACT 2011 section 19(1) Primary duty of care:-

(1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of—

- (a) workers engaged, or caused to be engaged, by the person; and
- (b) workers whose activities in carrying out work are influenced or directed by the person, while the workers are at work in the business or undertaking.

Full description of the offence

From observations I formed the belief that you have contravened the Work Health and Safety Regulation 2011, section 300 Compliance with safe work method statement
(1) A person conducting a business or undertaking that includes the carrying out of high risk construction work must put in place arrangements for ensuring that high risk construction work is carried out in accordance with the safe work method statement for the work.

Time / date of contravention: 11/07/22 04:30

Address of place of contravention

Penalty **\$3,600**

See over for important information on your rights and responsibilities.

If you do not pay the Infringement Notice penalty or dispute liability for the offence within 28 days (or any further time allowed), a Reminder Notice may be served on you, or you may be prosecuted in Court for the offence. If a Reminder Notice is issued, the penalty is increased by the cost of serving the Reminder Notice.

YOU HAVE 28 DAYS FROM THE DATE OF THIS NOTICE TO:

A. PAY THE INFRINGEMENT NOTICE PENALTY.

EFT: Use your online banking service to make payment using the details below.

Account Name: Office of the Work Health and Safety Commissioner

BSB: 032777

Account Number: 002984

OR

B. REQUEST EXTENSION OF TIME TO PAY PENALTY. If you wish to apply for more time to pay the penalty, you must write to the Work Health and Safety Regulator. WorkSafe ACT will write to you about the outcome of your request, and if your request is refused, the reasons for that decision. If your request is refused the penalty must be paid within 7 days after the day you are told of the refusal, or 28 days after the date of service, whichever is the later; **OR**

C. APPLY FOR WITHDRAWAL OF THE INFRINGEMENT NOTICE. If you wish to apply for withdrawal of the Infringement Notice, you must write to the Work Health and Safety Regulator, within 28 days after the date of service. The application must set out the grounds on which you rely. WorkSafe ACT will write to you about the outcome of your request, and if your request is refused, the reasons for that decision. If your request is refused the penalty must be paid within 7 days after the day you are told of the refusal, or 28 days after the date of service, whichever is the later, **OR**

D. DISPUTE LIABILITY. If you wish to dispute liability for the offence, you must write to the Work Health and Safety Regulator, within 28 days after the date of service, or any longer time allowed by the Work Health and Safety Regulator. The notice must state that you dispute liability and set out the grounds on which you rely. The matter may be referred to the Magistrates Court. If the matter goes to Court, and the Court finds against you, you may be convicted and ordered to pay a penalty and costs, and be subject to other Court orders; **OR**

E. REQUEST EXTENSION OF TIME TO DISPUTE LIABILITY. If you wish to apply for longer time to dispute liability for the offence, you must write to the Work Health and Safety Regulator, requesting a stated longer time. WorkSafe ACT will write to you about the outcome of your request, and if your request is refused, the reasons for that decision. If your request is refused, you must pay the penalty or dispute liability within 7 days after the day you are told of the refusal, or 28 days after the day of service, whichever is later.

Further Information

If you have any questions you may contact the inspector who issued this notice.

If you pay the Infringement penalty within 28 days (or any further time allowed) then, unless the Infringement Notice is withdrawn and the penalty refunded:

- Your liability for the offence is discharged;
- You will not be prosecuted in court for the offence; and
- You will not be taken to have been convicted of the offence.

This Notice may be withdrawn before or after the penalty is paid. In the event that the Notice is withdrawn, WorkSafe ACT may determine that further prosecution is warranted.

In some circumstances you can seek to pay the amount owing through a payment plan over no more than six months.

Request for further review

You may have other rights of review in relation to this notice, if in doubt, you may wish to seek legal advice.

Further, if you have a complaint about the issue of this notice you can contact the ACT Ombudsman online at www.ombudsman.act.gov.au or by calling 02 5119 5518.

WorkSafe ACT contact details

See Footer

Translating and Interpreting Service

Phone: 131 450

PRIVACY NOTICE:

The personal information collected about you is being collected for the purpose of securing the safety of people at work by the authority of the Work Health and Safety Act 2011. The information can be disclosed, in accordance with the Work Health and Safety Act 2011, to other law enforcement agencies including the Australian Federal Police, ACT Planning & Land Authority and the Office for Children, Youth & Family Support.

PROHIBITION NOTICE

This is a Prohibition Notice issued under section 195 of the Work Health and Safety Act 2011

Information

Notice number N-000004743

Issued By: Tamara Teer ID number: P37224

To whom this notice is issued

Name of registered company: Laser Plumbing Canberra Central ABN: 78102725093

Registered Address: suburb: state: postcode:

Site address:

Method of service: Email

Served on:

Date of issue: 15/07/2022

A verbal instruction was issued on:

11/07/2022 04:07 PM

Description

The provision that the inspector believes is being, or is likely to be, contravened by the activity (s196(1)(c)) is **WHS Regulations** Section number - **306**

You are prohibited from carrying on the following activity, or the carrying on of the activity in a specified way:

Accessing the fenced trenched area on [REDACTED] at the Laser Plumbing site where there is an approximately 4 metre deep excavation cut, with no systems in place to prevent an excavation collapse.

until the inspector is satisfied that the matters that give or will give rise to the risk have been remedied (s195(2)). The inspector reasonably believes that grounds for the issue of this notice exist (s195(1)), i.e. (a) an activity is occurring at a workplace that involves, or will involve, a serious risk to the health or safety of a person emanating from an immediate exposure to a hazard; or (b) an activity may occur at a workplace that, if it occurs, will involve a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard.

Basis for belief (s196(1)(a))

A failure to identify the hazards associated with this particular trenching activity to the location on [REDACTED] [REDACTED] From evidence collected during the inspection Inspectors TEER and MERRITT have formed the belief that the trench was in excess of 1500mm triggering the requirements under section 306 (3) of the WHS Regulation.

Briefly, the activity that the inspector believes involves or will involve the risk, and the matters that gave or will give rise to the risk (s196(1)(b))

On Monday 11th July 2022 at approximately 16:13 pm, Inspectors Teer and Merritt attended [REDACTED] in relation to a complaint around deep excavation.

At that location, Inspectors Teer and Merritt observed a multi residential established site where earth works were being conducted.

The building work signage located on the temporary fencing at the front of the site showed the principal contractor to be Laser Plumbing Canberra Central.

On arrival to the site Inspectors met with [REDACTED] who introduced himself as the Service Manager of Laser Plumbing.

Observations and discussions revealed that there was approximately 4 metre deep excavation cut, no systems in place to prevent an excavation collapse.

As a duty holder the PCBU must ensure that under Work Health and Safety ACT 2011 section 19(1) Primary duty of care:-

- (1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of—
- (a) workers engaged, or caused to be engaged, by the person; and
 - (b) workers whose activities in carrying out work are influenced or directed by the person, while the workers are at work in the business or undertaking.

From observations and information I formed the belief that you have contravened the Work Health and Safety Regulation 2011, section 305 Management of risks to health and safety associated with excavation work—Act, s 19

- (1) A person conducting a business or undertaking must manage risks to health and safety associated with excavation work, in accordance with part 3.1 (Managing risks to health and safety).

This Notice may include directions concerning the measures to be taken to remedy the risk or contravention. You must comply with the direction

You must eliminate risks associated with excavation work, where this is not reasonably practicable you must minimise the risks so far as is reasonably practicable by:

- installing fencing around the excavation to prevent access, placing secure covers over the excavation to prevent access, removing anything that may fall into the excavation.
- benching, battering or shoring the excavation to a geotechnical engineers specification unless written advice from the engineer specifies that the sides of the excavation are safe from collapse.
- ventilating the excavation to ensure there is no accumulation of airborne contaminants and then monitoring the excavation.

The inspector recommends that you:

In complying with the direction, you may give consideration to further guidance available from:
- WorkSafe ACT code of practice – Excavation Work.

See over for important information on your rights and responsibilities.

Prohibition Notice issued under section 191 of the Work Health and Safety Act 2011 - further information

If you have any questions you may contact the inspector who issued this notice.

Display of Notices

A person to whom a notice is issued must, as soon as possible, display a copy of the notice in a prominent place at or near the workplace, or part of the workplace, at which work is being carried out that is affected by the notice (s 210(1)). A person must not intentionally remove, destroy, damage or deface a notice displayed under s 210(1) while the notice is in force (s 210(2)). The maximum penalty for failing to comply with these provisions is \$5,000 for an individual or \$25,000 for a corporation.

Compliance with direction or notice

The person to whom a Prohibition notice is issued must comply with the notice (s197). The maximum penalty for failing to comply with this requirement is \$100,000 for an individual or \$500,000 for a corporation.

Regulator may carry out action

If a person to whom a prohibition notice is issued fails to take reasonable steps to comply with the notice, and after giving written notice of its intentions and the persons liability for the costs, the regulator (WorkSafe ACT) may take any remedial action it believes reasonable to make the workplace or situation safe (s 211). The regulator may then recover the reasonable costs of taking this remedial action (s213).

Contents of Notice

This Notice may state one or more of the following: (a) a workplace, or part of a workplace, at which the activity is not to be carried out; (b) anything that is not to be used in connection with the activity; (c) any procedure that is not to be followed in connection with the activity (s196(3)).

Directions and recommendations

A direction may refer to a code of practice and may offer the person a choice of ways in which to remedy the contravention (s 204). A Prohibition notice may include recommendations. It is not an offence to fail to comply with recommendations in a notice (s205).

Changes to notice by inspector

An inspector may make minor changes to a notice for clarification, to correct errors or references, or to reflect changes of address or other circumstances (s206).

Privacy statement

WorkSafe ACT may obtain personal information about you in connection with this notice. The information may be collected and stored using the powers, and to carry out functions or activities, under the *Work Health and Safety Act 2011* and related work safety laws. Under that Act, the information can be disclosed to other ACT Government agencies or non-government organisations, and other Australian work safety enforcement agencies.

WorkSafe ACT is obliged to handle your information openly, transparently and in accordance with the Territory Privacy Principles set out in the *Information Privacy Act 2014*. For more information about how WorkSafe ACT will collect, use, share, and store your personal information and how you can access and correct the information, please see the Privacy Statement at www.act.gov.au/privacy.

Review of this *Work Health and Safety Act* notice

If you have any questions or need more information you may contact the inspector who issued this notice, or email worksafe@act.gov.au.

You, or another person whose interests are affected by the decision, may apply for an internal review of the decision to issue this notice.

A review may be sought within 14 days. You may also make an application for the reviewer to stay the operation of the Prohibition notice.

Please ensure you include the notice number in your application for a review, together with the applicant's name and address, and the reason you are seeking the review.

An application for a review can be made in writing to: The Work Health and Safety Commissioner WorkSafe ACT, GPO Box 158 Canberra City ACT 2601 or by email: worksafe@act.gov.au

You may then seek a review of an internal reviewer's decision in the ACT Civil and Administrative Tribunal (ACAT). Information about that process can be found at www.acat.act.gov.au.

The decision to issue this notice is also reviewable under the *Administrative Decisions (Judicial Review) Act 1989* on application to the ACT Supreme Court. Further, a person may make a complaint to the ACT Ombudsman about the issue of this notice.

WorkSafe ACT contact details

PO Box 158, Canberra ACT 2601

Email: [Worksafe @act.gov.au](mailto:Worksafe@act.gov.au)

Phone: (02) 6207 3000

Fax: (02) 6205 0336.

Translating and Interpreting Service

Phone: 131 450

PROHIBITION NOTICE

This is a Prohibition Notice issued under section 195 of the Work Health and Safety Act 2011

Information

Notice number N-0000004744

Issued By: Tamara Teer ID number: P37224

To whom this notice is issued

Name of registered company: Laser Plumbing Canberra Central ABN: 78102725093

Registered Address: suburb: state: postcode:

Site address:

Method of service: Email

Served on:

Date of issue: 15/07/2022

A verbal instruction was issued on:

11/07/2022 04:07 PM

Description

The provision that the inspector believes is being, or is likely to be, contravened by the activity (s196(1)(c)) is **WHS Regulations** Section number - **204**

You are prohibited from carrying on the following activity, or the carrying on of the activity in a specified way:

The use of the shoring that had been built for use at [REDACTED] which had not been approved by an competent person and not deemed suitable for use.

until the inspector is satisfied that the matters that give or will give rise to the risk have been remedied (s195(2)). The inspector reasonably believes that grounds for the issue of this notice exist (s195(1)), i.e. (a) an activity is occurring at a workplace that involves, or will involve, a serious risk to the health or safety of a person emanating from an immediate exposure to a hazard; or (b) an activity may occur at a workplace that, if it occurs, will involve a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard.

Basis for belief (s196(1)(a))

Collapse of excavation arising from installation or commissioning of the shoring.

Briefly, the activity that the inspector believes involves or will involve the risk, and the matters that gave or will give rise to the risk (s196(1)(b))

On Monday 11th July 2022 at approximately 16:13 pm, Inspectors Teer and Merritt attended [REDACTED]

[REDACTED] in relation to a complaint around deep excavation.

At that location, Inspectors Teer and Merritt observed a multi residential established site where earth works were being conducted.

The building work signage located on the temporary fencing at the front of the site showed the principal contractor to be Laser Plumbing Canberra Central.

On arrival to the site Inspectors met with [REDACTED] who introduced himself as the Service Manager of Laser Plumbing.

Observations and discussions revealed the shoring that had been built for use at [REDACTED] had not been approved by an competent person and not deemed suitable for use.

as a duty holder the PCBU must ensure that under Work Health and Safety Act 2011, section 21:- Duty of persons conducting businesses or undertakings involving management or control of fixtures, fittings or plant at workplaces

(1) In this section:

person with management or control of fixtures, fittings or plant at a workplace means a person conducting a business or undertaking to the extent that the business or undertaking involves the management or control of fixtures, fittings or plant, in whole or in part, at a workplace

(a) the occupier of a residence, unless the residence is occupied for the purposes of, or as part of, the conduct of a business or undertaking; or

(b) a prescribed person.

(2) The person with management or control of fixtures, fittings or plant at a workplace must ensure, so far as is reasonably practicable, that the fixtures, fittings and plant are without risks to the health and safety of any person.

From observations and information I formed the belief that you have contravened the Work Health and Safety Regulation 2011 section 204 Control of risks arising from installation or commissioning

(1) A person with management or control of plant at a workplace must not commission the plant unless the person has established that the plant is, so far as is reasonably practicable, without risks to the health and safety of any person.

This Notice may include directions concerning the measures to be taken to remedy the risk or contravention. You must comply with the direction

You must ensure the shoring structure is erected and installed as per the manufacturer specification without risk to the health and safety of any person.

The inspector recommends that you:

In complying with the direction, you may give consideration to further guidance available from:
- WorkSafe ACT code of practice 'Managing risks of plant in the workplace'

See over for important information on your rights and responsibilities.

Prohibition Notice issued under section 191 of the Work Health and Safety Act 2011 - further information

If you have any questions you may contact the inspector who issued this notice.

Display of Notices

A person to whom a notice is issued must, as soon as possible, display a copy of the notice in a prominent place at or near the workplace, or part of the workplace, at which work is being carried out that is affected by the notice (s 210(1)). A person must not intentionally remove, destroy, damage or deface a notice displayed under s 210(1) while the notice is in force (s 210(2)). The maximum penalty for failing to comply with these provisions is \$5,000 for an individual or \$25,000 for a corporation.

Compliance with direction or notice

The person to whom a Prohibition notice is issued must comply with the notice (s197). The maximum penalty for failing to comply with this requirement is \$100,000 for an individual or \$500,000 for a corporation.

Regulator may carry out action

If a person to whom a prohibition notice is issued fails to take reasonable steps to comply with the notice, and after giving written notice of its intentions and the persons liability for the costs, the regulator (WorkSafe ACT) may take any remedial action it believes reasonable to make the workplace or situation safe (s 211). The regulator may then recover the reasonable costs of taking this remedial action (s213).

Contents of Notice

This Notice may state one or more of the following: (a) a workplace, or part of a workplace, at which the activity is not to be carried out; (b) anything that is not to be used in connection with the activity; (c) any procedure that is not to be followed in connection with the activity (s196(3)).

Directions and recommendations

A direction may refer to a code of practice and may offer the person a choice of ways in which to remedy the contravention (s 204). A Prohibition notice may include recommendations. It is not an offence to fail to comply with recommendations in a notice (s205).

Changes to notice by inspector

An inspector may make minor changes to a notice for clarification, to correct errors or references, or to reflect changes of address or other circumstances (s206).

Privacy statement

WorkSafe ACT may obtain personal information about you in connection with this notice. The information may be collected and stored using the powers, and to carry out functions or activities, under the *Work Health and Safety Act 2011* and related work safety laws. Under that Act, the information can be disclosed to other ACT Government agencies or non-government organisations, and other Australian work safety enforcement agencies.

WorkSafe ACT is obliged to handle your information openly, transparently and in accordance with the Territory Privacy Principles set out in the *Information Privacy Act 2014*. For more information about how WorkSafe ACT will collect, use, share, and store your personal information and how you can access and correct the information, please see the Privacy Statement at www.act.gov.au/privacy.

Review of this *Work Health and Safety Act* notice

If you have any questions or need more information you may contact the inspector who issued this notice, or email worksafe@act.gov.au.

You, or another person whose interests are affected by the decision, may apply for an internal review of the decision to issue this notice.

A review may be sought within 14 days. You may also make an application for the reviewer to stay the operation of the Prohibition notice.

Please ensure you include the notice number in your application for a review, together with the applicant's name and address, and the reason you are seeking the review.

An application for a review can be made in writing to: The Work Health and Safety Commissioner WorkSafe ACT, GPO Box 158 Canberra City ACT 2601 or by email: worksafe@act.gov.au

You may then seek a review of an internal reviewer's decision in the ACT Civil and Administrative Tribunal (ACAT). Information about that process can be found at www.acat.act.gov.au.

The decision to issue this notice is also reviewable under the *Administrative Decisions (Judicial Review) Act 1989* on application to the ACT Supreme Court. Further, a person may make a complaint to the ACT Ombudsman about the issue of this notice.

WorkSafe ACT contact details

PO Box 158, Canberra ACT 2601

Email: [Worksafe @act.gov.au](mailto:Worksafe@act.gov.au)

Phone: (02) 6207 3000

Fax: (02) 6205 0336.

Translating and Interpreting Service

Phone: 131 450

From: "Teer, Tamara"
Sent: 22/08/2022 12:20 AM
To: "Merritt, Nathan" <Nathan.Merritt@worksafe.act.gov.au>
Cc: "Dillon, Craig" <Craig.Dillon@worksafe.act.gov.au>
Subject: RE: [REDACTED]

OFFICIAL

Hi Nathan,

This job is now closed and compliance now met.

2 x Prohibitions were issued:

306 - Observations and discussions revealed that there was approximately 4 metre deep excavation cut, no systems in place to prevent an excavation collapse.

204- . Observations and discussions revealed the shoring that had been built for use at [REDACTED] had not been approved by an competent person and not deemed suitable for use.

Also 2 x infringement notices were issued:

1 to Laser Plumbing - Paid - Not working to SWMS

Out of scope, Sch 2.2(a)(xi) [REDACTED]

NFA

Thanks

Tam

-----Original Message-----

From: Merritt, Nathan <Nathan.Merritt@worksafe.act.gov.au>

Sent: Monday, 22 August 2022 8:37 AM

To: Teer, Tamara <Tamara.Teer@worksafe.act.gov.au>

Subject: FW: [REDACTED]

OFFICIAL

Good Morning Tam

Could you please provide the relevant information for the email below?

regards

-----Original Message-----

From: Dillon, Craig <Craig.Dillon@worksafe.act.gov.au>

Sent: Friday, 19 August 2022 3:38 PM

To: Merritt, Nathan <Nathan.Merritt@worksafe.act.gov.au>

Subject: FW: [REDACTED]

OFFICIAL

Hi Nathan,

Can you please provide me with an update next week regarding this case.

I would like to understand if any notices were issued and if they have been closed out.

Kind regards

Craig Dillon – A/G Industry Enforcement and Compliance

P: 132281 | Mobile [Sch 2.2\(a\)\(ii\)](#) | E: craig.dillon@worksafe.act.gov.au Office of the Work Health and Safety Commissioner GPO
Box 158 Canberra ACT 2601

Sch 2.2(a)(ii)

10127

Tamara Teer

6/5/22 - 25/8/22

10127



WorkSafe ACT

Case Number: Notebooks

Item Number: 10127

Case Reference : Notebooks

Inspector : Tamara Teer

Received Date : 06/05/2022

Description:

Out of scope

16.13.

Sch 2.2(a)(ii)

- service manager

Sch 2.2(a)(ii)

16.14.

Spool
about 4 meter
Drop

Last Monday.
- Dial before you
Dig.

- SWMS TAKEN
BY TAMARA TEW

Out of scope

Sch 2.2(a)(ii)

Laser Plumbing

Sch 2.2(a)(ii)

Sch 2.2(a)(ii)

Sch 2.2(a)(ii)

exploratory -

Made their
Selves.

Shoelace is not

- Sch 2.2(a)(ii)

Director.

- JSA everyday no
toolbox.

Sch 2.2(a)(ii)

Sch 2.2(a)(ii)

Sch 2.2(a)(ii)

Out of scope

From: Sch 2.2(a)(ii)
Sent: 13/07/2022 4:26 PM
To: "Teer, Tamara" <Tamara.Teer@worksafe.act.gov.au>
Cc: Sch 2.2(a)(ii)
Subject:
Attachments: INC-00127 Record of Non-Conformance.pdf, Service Job #150717 Revised SWMS.pdf

Caution: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe. [Learn why this is important](#)

Good
Afternoon


Tamara

Thanks for your time on the phone today.

Please find attached the revised SWMS to be implemented at [redacted] prior to our return to site.

You will also find attached our internal record of non-conformance and corrective action plan.

Should you need anything else, please do not hesitate to contact me


Sch 2.2(a)(ii)





Sch 2.2(a)(ii), Sch 2.2(a)(xi)

Sch 2.2(a)(ii), Sch 2.2(a)(xi)

Sch 2.2(a)(xi)

Sch 2.2(a)(xi)

Sch 2.2(a)(xi)

Sch 2.2(a)(xi)

Sch 2.2(a)(xi)

Sch 2.2(a)(xi)

Sch 2.2(a)(xi)

Sch 2.2(a)(xi)

Sch 2.2(a)(xi)

Sch 2.2(a)(xi)

Initial Information

Inspection Number: 00127483

Lead inspector: Tamara Teer Inspector ID: P37224

Is there any accompanying inspectors: Yes

Nathan Merritt P53802

Nathan Merritt P53802

Type of visit: Proactive

Date visit commenced: 11/07/2022

Legislation visit conducted under: WHS

Purpose of visit: High-risk work

Entity information

Type of entity: Business Entity

Name of individual or registered company: Laser Plumbing Canberra Central

Trading as:

ACN:

ABN: 78102725093

Industry Group:

Address:

Contact Name: Laser Plumbing Canberra Central

Contact Number: Sch 2.2(a)(1)

Contact Email: Sch 2.2(a)(1)

Details of visit

Address:

Notification of entry to (as required by s164): PCBU

Were any potential breaches of the legislation identified? Yes

s.300

s.204

s.306

Inspector notes:

On Monday 11th July 2022 at approximately 16:13 pm, Inspectors Teer and Merritt attended [REDACTED], in relation to a complaint around deep excavation.

At that location, Inspectors Teer and Merritt observed a multi residential established site where earth works were being conducted.

The building work signage located on the temporary fencing at the front of the site showed the principal contractor to be Laser Plumbing Canberra Central.

On arrival to the site Inspectors met with **Sub 22(n)(1)** who introduced himself as the Service Manager of Laser Plumbing.

Observations and discussions revealed:

- There was approximately 4 metre deep excavation cut, no systems in place to prevent an excavation collapse.
- The shoring that had been built for use in the excavation cut, had not been approved by a competent person and not deemed suitable for use.
- Workers from working within an unsafe distance from an unprotected edge exposed to a falls risk of approximately 4 meters without an appropriate fall protection control measure installed as per the Laser Plumbing High Risk Work: Construction Work

Out of scope were contacted to conduct the extraction of slurry. Workers were working in a shaft with an excavated depth of approximately 4 meters without any appropriate control measures installed as per the **Out of scope**

Notices will be issued with the above Work Health and Safety issues.

Disclaimer: The issues identified during this inspection are only indicative of compliance with the Work Health and Safety Act 2011, the Work Health and Safety Regulations 2011, the Dangerous Substances Act 2004 and the Workers Compensation Act 1951 on the date of the inspection. If compliance is identified during this inspection, it does not remove the obligation of any person to comply with any further requirement of the above mentioned Acts and Regulations.

Previous action

Previous notice/s issued (either written or verbal)? Yes

Type of notice: Improvement;Infringement;Prohibition

Contacts

Lead inspector email address: tamara.teer@worksafe.act.gov.au

Recipient/s of this form

Email **Sub 2 2(a)(iii)**

Email 2:

Privacy Notice: The information collected for the purpose of the Work Health and Safety Act 2011 and is in accordance with the Information Privacy Act 2014. WorkSafe ACT prevents any unreasonable intrusion into person's privacy in accordance with the Privacy Act 1988 (C'With) and Information Privacy Act 2014. WorkSafe ACT provides identifiable information which can be disclosed to other law enforcement agencies and authorised organisation that have legal authority to request information under prescribed circumstances.