



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 2023-279

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	Waived
6. Processing time (in working days)	47
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



ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI 2023-279 s36



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 9 August 2023, in which you sought access to:

"...We make a request for documents pursuant to Freedom of Information Act 2016 (ACT) in relation to Block 18, Section 11, Mitchell in the Australian Capital Territory (Land). We refer to the decision of 8 August 2022 in relation to DA 201733198 (NOD) and the corrections of 1 March 2023 and 26 July 2023 to condition 1(a) of the NOD, involving the development of a proposed childcare centre on the Land (Decisions). Therefore, we request, in the period 8 August 2022 to today's date (8 August 2023), the following documents (in the possession, custody or control of the Environment Protection Authority (EPA)) in respect of the Decisions (except for documents lodged by Konstantinou Developments Pty Ltd, Canberra Town Planning, and [REDACTED], including their employees and staff):

1. *all correspondence (including emails) sent to or received from:*
 - a. *the Health Protection Service;*
 - b. *the ACT Planning and Land Authority; and*
 - c. *the Children's Education and Care Assurance, from officers of these relevant organisations;*
2. *all correspondence (including emails) sent to or received from the relevant minister;*
3. *any reports prepared or commissioned by the EPA;*
4. *any memoranda;*
5. *any recommendations;*
6. *any proposals;*
7. *any records of inspections;*
8. *any minutes or other records of meetings;*
9. *any notes of attendees of any meeting, including any personal notes by attendees;*
10. *any diary entries of attendees of meetings;*
11. *any working papers prepared by, or on behalf of, the EPA; and*
12. *copies of any of the documents sought in paragraph 1 to 11 above where the original documents are no longer in the possession, custody or control of the EPA. Please note that the definition of documents in this Freedom of Information request is as is outlined in the definition of 'documents' as defined in the Legislation Act 2001 (ACT)..."*

On 16 October 2023, I made a decision to grant **partial access** to the available information within scope of your request. The release contained eleven documents

within scope of your request. Six documents were released in full, four were partially released and one document was fully exempted from release.

On 18 October 2023, you wrote to the CMTEDD FOI team advising that part of your request was missing from the response provided to you. Following your email, I requested that a subsequent search be undertaken to ascertain if any information had been missed in the previous response. During this search, two additional documents were identified as within the scope of your request and my decision in relation to their release is outlined below.

Authority

As an appointed Information Officer under section 18 of the Act by the Director General of CMTEDD, I am authorised to make a decision on access or amendment to government information in the possession or control of CMTEDD. This decision is made pursuant to section 36 of the Act.

Decision on access

I have decided to grant **full access** to the additional information, and the corresponding material is released to you as **Attachment A**.

In accordance with section 54(2) of the Act a statement of reasons outlining my decisions is below.

Statement of reasons

As a decision maker, I am required to determine whether the information within scope is in the public interest to release. To make this decision, I am required to:

- assess whether the information would be contrary to public interest to disclose as per Schedule 1 of the Act
- perform the public interest test as set out in section 17 of the Act by balancing the factors favouring disclosure and factors favouring non-disclosure in Schedule 2

The public interest information under schedule 2 of the Act

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

Taking into consideration the information 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 these documents 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:*
- (i) *promote open discussion of public affairs and enhance the government's accountability;*
 - (viii) *reveal the reason for a government decision and any background or contextual*

information that informed the decision.

Having considered the factors identified as relevant in this matter, I consider that release of the information within the scope of the request may promote open discussion of public affairs and enhance the government's accountability. The release of the documents identified will provide contextual information to the public.

I did not identify any factor favouring nondisclosure and have decided to release this additional information to you in full.

Charges

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

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 in the CMTEDD disclosure log. Your personal contact details will not be published.

Visit the CMTEDD 2023 Disclosure Log: [Disclosure Log 2023 - CMTEDD \(act.gov.au\)](https://www.act.gov.au/cmtedd/disclosure-log).

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 that my decision is published on CMTEDD disclosure log, 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:

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
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 the CMTEDD FOI team by telephone on 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely,

Handwritten signature of Emma Hotham, consisting of the letters 'EH' in a stylized, cursive font.

Emma Hotham

Information Officer

Information Access Team

Chief Minister, Treasury and Economic Development Directorate

9 November 2023

Records of meetings – EPA notes

Child care centres

08 September 2022 10:01

- Clare Brookes, Robin, Dave, Su
- Meeting on 21/9/2022
- Developers will contact Education.
 - Education could contact them proactively and invite them to liaise with the EPA about how to ensure that the facility will protect health.
- They can't provide an approval only once built.
-

Records of meetings EPA – notes:

Mitchell Childcare Centre

24 May 2023 17:35

- Meeting on 25/5/2023
- Su, Will, Dave, Robin
- Clare
- EPA to review package of material to enable review, and consideration of latest approach by developer.
- EPA to write back to Clare with position on current stage
 - Likely to be consistent with previous position as material matters are not understood to have changed.
- Clare to liaise internally to decide whether joint legal advice is needed (CECA and EPA)
 - Will liaise with Will to advise.

From: [CMTEDD FOI](#)
To: [EPSDFOI](#)
Subject: RE: FREEDOM OF INFORMATION REQUEST
Date: Wednesday, 9 August 2023 9:47:00 AM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)

OFFICIAL

Hi Ange,

Yes, CMTEDD will accept a partial transfer for point 3 of this request.

Thank you

Jess Pupulkovski | Freedom of Information Coordinator | Information Access Team

Phone: 02 6207 7754 | Email: CMTEDDFOI@act.gov.au

Corporate | Chief Minister, Treasury and Economic Development Directorate | ACT Government

Level 5, 220 London Circuit, Canberra ACT 2601 | GPO Box 158 Canberra ACT 2601 | act.gov.au

From: EPSDFOI <EPSDFOI@act.gov.au>
Sent: Wednesday, 9 August 2023 8:31 AM
To: CMTEDD FOI <CMTEDDFOI@act.gov.au>
Subject: FW: FREEDOM OF INFORMATION REQUEST

Good morning team

Please see the below correspondence and attached access application seeking documents held by the EPA.
Please advise if partial transfer is accepted.

Thank you

Angelina Aloisi (*she/her*) | Information Governance Officer

Phone: 6207 7912 | Email: Angelina.Aloisi@act.gov.au

Information Governance | Governance, Compliance and Legal

Environment, Planning and Sustainable Development Directorate | ACT Government

480 Northbourne Avenue, Dickson | GPO Box 158, Canberra ACT 2601 | www.act.gov.au

From: [REDACTED]
Sent: Tuesday, 8 August 2023 11:24 PM
To: EPSDFOI <EPSDFOI@act.gov.au>
Cc: [REDACTED]
Subject: FW: FREEDOM OF INFORMATION REQUEST-Confirmation of Scope

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](#)

Hi Angelina,

Thank you for your email.

We are seeking information held by both EPSDD and EPA and would be grateful if you could forward a copy of the application to CMTEDD for a response from both Directorates.

Kind regards,

From: EPSDFOI <EPSDFOI@act.gov.au>

Sent: Tuesday, August 8, 2023 3:13 PM

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: FREEDOM OF INFORMATION REQUEST-Confirmation of Scope

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

Good afternoon [REDACTED]

In relation to your access application (attached) submitted to Environment, Planning and Sustainable Development Directorate (EPSDD) today, can you please confirm/advise if you are specifically only seeking information held by the Environment Protection Authority (EPA)?

We wish to confirm this as the EPA is part of Access Canberra within Chief Minister Treasury and Economic Development Directorate (CMTEDD) and if you are exclusively seeking information held by EPA, we will seek a full transfer of your application to CMTEDD under section 57 of the *Freedom of Information Act 2016*.

Alternately, if you are seeking information held by both EPSDD and EPA, we will forward a copy of the application to CMTEDD and a response will be provided by both Directorates.

Please Note: Under section 34(4) of the *Freedom of Information Act 2016*, processing of your application has been suspended and will resume once we have received clarification from you to enable us to identify the documents you are seeking. If no response is received within 6 weeks of this request (by 20 September 2023), EPSDD will no longer deal with your application and a new application will be required.

Kind regards

Angelina Aloisi (*she/her*) | Information Governance Officer

Phone: 6207 7912 | Email: Angelina.Aloisi@act.gov.au

Information Governance | Governance, Compliance and Legal

Environment, Planning and Sustainable Development Directorate | ACT Government

480 Northbourne Avenue, Dickson | GPO Box 158, Canberra ACT 2601 | www.act.gov.au

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](#)

Dear Sir/Madam,

Please see **attached** our Freedom of Information Request dated today's date.

Kind regards,



This email, and any attachments, may be confidential and also privileged. If you are not the intended recipient, please notify the sender and delete all copies of this transmission along with any attachments immediately. You should not copy or use it for any purpose, nor disclose its contents to any other person.




8 August 2023

By Email: epsdfoi@act.gov.au

FOI – Information Management Team
Environment Protection Authority
GPO Box 158,
CANBERRA CITY ACT 2601


Dear Sir/Madam,

FREEDOM OF INFORMATION REQUEST

We make a request for documents pursuant to *Freedom of Information Act 2016* (ACT) in relation to Block 18, Section 11, Mitchell in the Australian Capital Territory (**Land**).

We refer to the decision of 8 August 2022 in relation to DA 201733198 (**NOD**) and the corrections of 1 March 2023 and 26 July 2023 to condition 1(a) of the NOD, involving the development of a proposed childcare centre on the Land (**Decisions**).

Therefore, we request, in the period 8 August 2022 to today's date, the following documents (in the possession, custody or control of the Environment Protection Authority (**EPA**)) in respect of the Decisions (except for documents lodged by Konstantinou Developments Pty Ltd, Canberra Town Planning, and Trinity Law, including their employees and staff):

1. all correspondence (including emails) sent to or received from:
 - a. the Health Protection Service;
 - b. the ACT Planning and Land Authority; and
 - c. the Children's Education and Care Assurance,from officers of these relevant organisations;
 2. all correspondence (including emails) sent to or received from the relevant Minister;
 3. any reports prepared or commissioned by the EPA;
 4. any memoranda;
 5. any recommendations;
 6. any proposals;
- 

7. any records of inspections;
8. any minutes or other records of meetings;
9. any notes of attendees of any meeting, including any personal notes by attendees;
10. any diary entries of attendees of meetings;
11. any working papers prepared by, or on behalf of, the EPA; and
12. copies of any of the documents sought in paragraph 1 to 11 above where the original documents are no longer in the possession, custody or control of the EPA.

Please note that the definition of documents in this Freedom of Information request is as is outlined in the definition of 'documents' as defined in the *Legislation Act 2001 (ACT)*.

If you have any questions associated with the request, we would be grateful if you could contact [REDACTED] of our office in the first instance. Please be so kind to advise of any fees associated with the request.





ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDD FOI 2023-279



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 **23 August 2023**. Specifically, you have sought access to the following information:

"We make a request for documents pursuant to Freedom of Information Act 2016 (ACT) in relation to Block 18, Section 11, Mitchell in the Australian Capital Territory (Land). We refer to the decision of 8 August 2022 in relation to DA 201733198 (NOD) and the corrections of 1 March 2023 and 26 July 2023 to condition 1(a) of the NOD, involving the development of a proposed childcare centre on the Land (Decisions). Therefore, we request, in the period 8 August 2022 to today's date (8 August 2023), the following documents (in the possession, custody or control of the Environment Protection Authority (EPA)) in respect of the Decisions (except for documents lodged by Konstantinou Developments Pty Ltd, Canberra Town Planning, and [REDACTED], including their employees and staff):

1. *all correspondence (including emails) sent to or received from:*
 - a. *the Health Protection Service;*
 - b. *the ACT Planning and Land Authority; and*
 - c. *the Children's Education and Care Assurance, from officers of these relevant organisations;*
2. *all correspondence (including emails) sent to or received from the relevant Minister;*
3. *any reports prepared or commissioned by the EPA;*
4. *any memoranda;*
5. *any recommendations;*
6. *any proposals;*
7. *any records of inspections;*
8. *any minutes or other records of meetings;*

9. any notes of attendees of any meeting, including any personal notes by attendees;
10. any diary entries of attendees of meetings;
11. any working papers prepared by, or on behalf of, the EPA; and
12. copies of any of the documents sought in paragraph 1 to 11 above where the original documents are no longer in the possession, custody or control of the EPA. Please note that the definition of documents in this Freedom of Information request is as is outlined in the definition of 'documents' as defined in the Legislation Act 2001 (ACT). "

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 is required to provide a decision within 30 working days. Therefore, a decision and response are due on **20 September 2023**. Following third-party consultation, in accordance with section 38 of the Act, and following a further granted extension of three working days, the due date is now **17 October 2023**.

Decision on access

Searches were completed for relevant information and eleven documents were identified that fall within scope of your request. I have decided to grant access in full to six documents and partial access to four documents and refuse to release one document, as I consider them to contain information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

I have included as **Attachment A** to this decision the document schedule. This provides a description of the access decision for the documents. The documents released to you are provided as **Attachment B** to this letter.

In accordance with section 54(2) of the Act a statement of reasons outlining my decisions is below.

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 ACT Ombudsman Guidelines dealing with access applications;
- the views of third parties;
- the *Human Rights Act 2004*;
- the *Information Privacy Act 2014* (ACT).

Exemption claimed

As a decision maker, I am required to determine whether the information within scope is in the public interest to release. To make this decision, I am required to:

- assess whether the information would be contrary to public interest to disclose as per Schedule 1 of the Act, and
- perform the public interest test as set out in section 17 of the Act by balancing the factors favouring disclosure and factors favouring non-disclosure in Schedule 2.

I have determined that some of the information within the scope of your application contains information that is taken to be contrary to the public interest to disclose under Schedule 1 of the Act.

1.2 Information subject to legal professional privilege

Information that would be privileged from production or admission into evidence in a legal proceeding on the ground of legal professional privilege.

Document 9 contains information that would be privileged from production or admission into evidence in a legal proceeding on the ground of legal professional privilege. The information relates to legal advice received and sought by the ACT Government in relation to this matter and it is not considered to be in the public interest to release. This information can only be released if the parties involved agree to waive that privilege. The parties have not waived privilege.

The public interest information under schedule 2 of the Act

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

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 documents 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 these documents 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:*
 - (i) *promote open discussion of public affairs and enhance the government’s accountability;*
 - (viii) *reveal the reason for a government decision and any background or contextual information that informed the decision.*

Having considered the factors identified as relevant in this matter, I consider that release of the information within the scope of the request may promote open discussion of public affairs and enhance the government’s accountability. The release of the documents identified will provide contextual information to the public.

Factors favouring nondisclosure in the public interest (Schedule 2 section 2.2):

- (a) *disclosure of the information could reasonably be expected to do any of the following:*
 - (i) *prejudice the protection of an individual’s right to privacy or any other right under the Human Rights Act 2004.*

I consider that the protection of an individual’s right to privacy, is a significant factor in the release of this information. Some contact details of individuals named in the documentation have been removed, as I consider that the release of this information

could impact their right to privacy. I have also redacted signatures of people who prepared the report at document 11.

I note that the release of information concerning individuals working within the ACT Public Service is generally not considered to prejudice the protection of an individual's right to privacy. However, where mobile phone numbers may be used for home and work purposes, this information is redacted, as it could or would reasonably be expected to prejudice an individual's right to privacy under the *Human Rights Act 2004*.

Having considered relevant factors under Schedule 1 and applied the test outlined in section 17 of the Act and deciding that release of personal information contained in the documents 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 is not in the public interest to release will ensure that the intent of the Act has been met.

Charges

Fees for this access application are waived under section 107 (e) of the Act.

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 in the CMTEDD disclosure log. Your personal contact details will not be published. You may view CMTEDD disclosure log at <https://www.cmtedd.act.gov.au/functions/foi/disclosure-log-2023i>.

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 that my decision is sent to you, 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

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

Chief Minister, Treasury and Economic Development Directorate

16 October 2023



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST

Reference NO.

We make a request for documents pursuant to Freedom of Information Act 2016 (ACT) in relation to Block 18, Section 11, Mitchell in the Australian Capital Territory (Land). We refer to the decision of 8 August 2022 in relation to DA 201733198 (NOD) and the corrections of 1 March 2023 and 26 July 2023 to condition 1(a) of the NOD, involving the development of a proposed childcare centre on the Land (Decisions). Therefore, we request, in the period 8 August 2022 to today's date (8 August 2023), the following documents (in the possession, custody or control of the Environment Protection Authority (EPA)) in respect of the Decisions (except for documents lodged by Konstantinou Developments Pty Ltd, Canberra Town Planning, and Trinity Law, including their employees and staff):

Our ref: CMTEDD FOI 2023-279

1. all correspondence (including emails) sent to or received from:
 - a. the Health Protection Service;
 - b. the ACT Planning and Land Authority; and
 - c. the Children's Education and Care Assurance, from officers of these relevant organisations;
2. all correspondence (including emails) sent to or received from the relevant Minister;
3. any reports prepared or commissioned by the EPA;
4. any memoranda;
5. any recommendations;
6. any proposals;
7. any records of inspections;
8. any minutes or other records of meetings;
9. any notes of attendees of any meeting, including any personal notes by attendees;
10. any diary entries of attendees of meetings;
11. any working papers prepared by, or on behalf of, the EPA; and
12. copies of any of the documents sought in paragraph 1 to 11 above where the original documents are no longer in the possession, custody or control of the EPA. Please note that the definition of documents in this Freedom of Information request is as is outlined in the definition of 'documents' as defined in the Legislation Act 2001 (ACT).

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-15	20220809 - ACTPLA to agencies, NOTICE OF DECISION-201733198-S197D-18_11 MITCHELL-01	9 August 2022	Full release		Yes
2	16-18	20220919 - EPA meeting request to CECA for 20220921 - with Environmental protections for childcare centres	19 September 2022	Full release		Yes
3	19-140	20230329 - CECA to EPA and HPS - seeking advice on envt and health issues	29 March 2023	Partial release	Outside scope; Sch 2, 2.2(a)(ii)	Yes
4	141-185	20230405 - CECA to EPA - info on proposed service requesting inclusion in EPA advice	5 April 2023	Full release	Outside scope	Yes
5	186-197	20230501 - CECA to EPA with proponent request for advice	1 May 2023	Partial release	Outside scope; Sch 2, 2.2(a)(ii)	Yes

6	198-202	20230523 - CECA to EPA - follow up on previous request to provide technical support	23 May 2023	Partial release	Outside scope; Sch 2, 2.2(a)(ii)	Yes
7	203	20230524 - EPA meeting request to CECA for 20230525 - with attachments - Early Childhood - request for CECA endorsement - EPA discussion	24 May 2023	Full release		Yes
8	204	20230525 - Message CB to EPA re advice - Screen Capture	25 March 2023	Full Release		Yes
9	205-206	20230811 - EPA Planning Liaison to ACTPLA request to withdraw decision	11 August 2022	Exempt	Sch 1, 1.2	No
10	207	20230921 - EPA meeting request to CECA to discuss input provided to decision	21 September 2022	Full Release		Yes
11	208-224	Environmental Risk Sciences report	9 November 2022	Partial Release	Sch 2, 2.2(a)(ii)	Yes
Total No of Docs						
11						

From: "AC, EPD Customer Services" <ACEPDCustomerServices@act.gov.au>
Sent: 09/08/2022 12:08 PM
To: "devapp@actewagl.com.au" <devapp@actewagl.com.au>; "Building Approvals Icon Water" <BASubmission_watersewer@iconwater.com.au>; "BASubmission_Electricity" <BASubmission_Electricity@evoenergy.com.au>; "evoenergyconnections@jemena.com.au" <evoenergyconnections@jemena.com.au>; "TCCS_PC DA" <TCCS.DA@act.gov.au>; "EmergencyManagement" <EmergencyManagement@act.gov.au>; "EPAPlanningLiaison" <EPAPlanningLiaison@act.gov.au>; "Brookes, Clare" <Clare.Brookes@act.gov.au>; "Partridge, Leah" <Leah.Partridge@act.gov.au>; "Williams, Jo" <Jo.Williams@act.gov.au>; "King, Meg" <Meg.King@act.gov.au>; "EDU, School Planning" <EDUSchoolPlanning@act.gov.au>
Subject: NOTICE OF DECISION-201733198-S197D-18/11 MITCHELL-01
Attachments: DISPATCHADVICECHECKLIST 201733198 S197D-01.obr, NOTICE OF DECISION 201733198 S197D SIGNED.obr, DISPATCHADVICECHECKLIST 201733198 S197D 01.doc, NOTICE OF DECISION 201733198 S197D SIGNED.pdf

OFFICIAL

Good morning,

Please see attached Notice of Decision for Block 18 Section 11 Suburb MITCHELL Development Application No: **201733198-S197D**

For further information please contact: 6207 6383.

Online Form: https://www.accesscanberra.act.gov.au/app/forms/epd_feedback

Best Regards,

Hannah Bui | DA Notification | Phone: (02) 620 71923
EPDCustomerServices@act.gov.au
www.act.gov.au/accesscbr
Access Canberra | ACT Government
8 Darling Street, Mitchell | GPO Box 158 Canberra ACT 2601



I acknowledge and pay my respects to Elders and Traditional Custodians of this land, the Ngunnawal people - past and present, and acknowledge their continuing culture and connection to Country and community.



CHECKLIST

Dispatch Advice Checklist

DA Number: 201733198 S197D

Unit(s): Block(s): 18 Section: 11 District/Division: MITCHELL

Case Officer: JESMIN ABDULLAH Contact Number: 62052235 Decision Date: 8-Aug-22

Application Type: **S197 AMENDMENT TO DA**

Dispatch Plans: **NO** Dispatch by: **E-MAIL**

Plans have been moved to the sub-folder in the approved plans folder however have not been stamped as relevant conditions are yet to be satisfied. The plans are not to be dispatched.

Dispatch Entity Referral Advice: **YES**

An Objective alias for the relevant mandatory entity referral advice received from ActewAGL, Actew Corporation, Environment Protection Agency and/or Asset Acceptance, as per S149 of the *Planning and Development Act 2007*, has been moved to the approved plans folder.

Type of Decision: **APPROVED WITH CONDITIONS** Decision By: **DELEGATE OF THE AUTHORITY**

Representations: **YES**

Appeal Rights

Applicant: **YES**

Person who made Representation: **NO**

Encroachment

Is an application for encroachment (minor) to be dispatched to the applicant? **NOT APPLICABLE**
(If yes, create application for encroachment (minor) document from Intelledox and attach to Notice of decision)

Draft crown leases/Instruments of Variations

Does the NOD require the draft crown leases or Instruments of Variation put with the NOD? **NOT APPLICABLE**
(If yes, DA officer to include any attachments with the NOD where the DA includes a Lease Variation)

Checklist
Dispatch Advice Checklist

Entities to be advised
Referral Required: **YES**

NB: Section 174 of the Act states that "The planning and land authority must give a copy of the decision on the development application to each entity to which the application was referred".

<input type="checkbox"/>	DA Leasing Referral Required ACTPLADALEasing@act.gov.au
<input type="checkbox"/>	Deed Mgt. Referral Required
<input type="checkbox"/>	Land Reg. Referral Required
<input type="checkbox"/>	Action Buses (refer to Asset Acceptance)
<input checked="" type="checkbox"/>	ICON Water (formerly ActewAGL Water)
<input checked="" type="checkbox"/>	ActewAGL (All other entities)
<input type="checkbox"/>	ACT Health
<input type="checkbox"/>	ACT Heritage Council
<input type="checkbox"/>	ACT Valuation Office
<input checked="" type="checkbox"/>	Asset Acceptance
<input type="checkbox"/>	Australian Communications and Media Authority
<input type="checkbox"/>	Australian National University
<input type="checkbox"/>	City Renewal Authority
<input type="checkbox"/>	Conservator of Flora and Fauna (Referred under S147A or S148)
<input type="checkbox"/>	Commonwealth Department of the Environment (Only Applicable to Impact Track Applications Referred Under S127A.
<input type="checkbox"/>	Custodian of the land -
<input checked="" type="checkbox"/>	Emergency Services (Fire or Ambulance)
<input checked="" type="checkbox"/>	Environment Protection Agency
<input type="checkbox"/>	Gambling and Racing Commission
<input type="checkbox"/>	Gateway Team
<input type="checkbox"/>	Heritage
<input type="checkbox"/>	Housing and Community Services
<input type="checkbox"/>	Land Development Agency
<input type="checkbox"/>	Land and Property Services
<input type="checkbox"/>	Leasing General Leasing Encroachments and Licences
<input type="checkbox"/>	Megan Corrigan-Access Canberra All Multi-Dwelling decisions and any that relate to permanent structures, on unleased Territory land, associated with permits for outdoor eating.
<input type="checkbox"/>	Owners Corporation Lease variation for single units please use relevant letter template
<input type="checkbox"/>	National Capital Authority
<input type="checkbox"/>	Police
<input type="checkbox"/>	Queanbeyan City Council
<input type="checkbox"/>	Register General's Office
<input type="checkbox"/>	Surveying and Spatial Data
<input type="checkbox"/>	Territory Plan Variation Unit
<input type="checkbox"/>	Transport Planning
<input type="checkbox"/>	Tree Protection
<input type="checkbox"/>	WorkCover
<input type="checkbox"/>	Yass City Council
<input type="checkbox"/>	ACT Place Names - Placenames@act.gov.au
<input checked="" type="checkbox"/>	Other Education - CECA

Comments



NOTICE OF DECISION

Made under part 7 of the *Planning and Development Act 2007*

S197 Amendment

Pursuant to section 197 of the *Planning and Development Act 2007*, approval is sought to amend development approval No. 201733198 dated 21 May 2018 and thereafter Reconsideration Decision dated 31 January 2019 by:

- 1 **reducing childcare places from 130 to 110;**
- 2 **reducing car parking spaces from 28 to 25;**
- 3 **reconfiguration of ground floor internal layout;**
- 4 **first floor layout reconfiguration and increase in gross floor area, and associated alteration to building envelope;**
- 5 **deletion of second floor and associated alteration to building envelope and roof form; and**
- 6 **reduction of total gross floor area of development from 1087m² to 1006m².**

I, George Cilliers, delegate of the planning and land authority, pursuant to section 198 of the *Planning and Development Act 2007 (Act)*, **approve subject to conditions**, to amend the development approval only for the amendments nominated above, in accordance with the application made under section 197 of the Act, in accordance with the plans, drawings and other documentation approved and endorsed as forming part of this approval.

DA Number:	201733198/S197D
Block:	18
Section:	11
Suburb:	Mitchel
Application lodged:	5 April 2022
Assessment track:	Merit

This decision contains the following information:

- Part A Conditions of Approval
- Part B – reasons for the Decision
- Part C public notification & entity advice
- Attachment 1 – Administrative information

A copy of the development application and this approval may be inspected at the planning and land authority's office from 9:00 am to 4.00 pm, Monday to Friday at 480 Northbourne Avenue, Dickson, ACT 2602

CONTACT / ENQUIRIES

Phone: (02) 6207 6383

Online Form:

https://www.accesscanberra.act.gov.au/app/forms/epd_feedback

George Cilliers

Delegate of the Planning
and Land Authority

8 August 2022

NOTICE OF DECISION

DA 201733198 / D

PART A – CONDITIONS OF APPROVAL

This application is approved subject to the following conditions being satisfied. Some conditions of the approval require attention before work commences or before approved drawings will be released.

1. CHILDREN'S EDUCATION AND CARE ASSURANCE (CECA) WORKS NOT TO COMMENCE

- a) No construction works, with the exception of demolition and excavation, in relation to this development approval is to commence until the lessee/applicant has obtained approval from CECA in accordance with the *Education and Care Services National Law Act (ACT) 2010* (National Law) and the *Education and Care Services National Regulations* (National Regulations).
- b) The lessee/applicant must address and comply with any additional conditions imposed by CECA.

Note: Any substantial changes to the development required for compliance with CECA will need to be submitted for the consideration of the planning and land authority with an application to amend the approval under Section 197 of the Planning and Development Act 2007.

2. ACT HEALTH PROTECTION SERVICE

- a) The lessee/applicant must ensure that all water outlets supplied by rainwater are clearly labelled as being provided with non-potable water and must also ensure that they are located in areas inaccessible to children OR provided with tamperproof fittings.
- b) The lessee/applicant must ensure that a food business license is obtained from the Health Protection Service prior to completion of the development.

3. EVOENERGY WORKS NOT TO COMMENCE

- a) No construction works, with the exception of demolition and excavation, in relation to this development approval is to commence until the lessee/applicant has obtained a Statement of Acceptance from Evoenergy in relation to electricity networks.
- b) The lessee/applicant must address and comply with any additional conditions imposed by Evoenergy.

Note: Any substantial changes to the development required for utility services compliance will need to be submitted for the consideration of the planning and land authority with an application to amend the approval under Section 197 of the Planning and Development Act 2007.

4. ORIGINAL DECISION

The amended approval is to be read in conjunction with the original and reconsideration decision and its associated conditions and advisory notes.

5. COMPLIANCE WITH ENTITY REQUIREMENTS

The development must satisfy the requirements of the following entities as stated in each of their advice.

- Evoenergy (Electricity);
- Icon Water;

NOTICE OF DECISION

DA 201733198 / D

- Jemena (Gas);
- Emergency Services Authority (ESA);
- Children's Education and Care Assurance (CECA).

Copies of advice from the relevant entities are attached to the Notice of Decision and are relevant to this condition.

6. ENVIRONMENT PROTECTION

All works must be carried out in accordance with "*Environment Protection Guidelines for Construction and Land Development in the ACT, March 2011*", available at www.environment.act.gov.au or by calling 132281.

ADVISORY NOTES

This application is approved with the following advisory notes. It is recommended that careful consideration be given to advisory notes prior to commencing work.

1. EDUCATION AND CARE SERVICES

The applicant is advised that an approved provider must obtain service approval in order to operate an education and/or care service on the subject site under the *Education and Care Services National Law 2010* (the National Law). The applicant is advised that any proposed provider should contact the relevant Regulatory Authority for the ACT (Director-General, Education Directorate) as soon as possible.

The applicant is advised that s 49(1)(a) of the National Law provides that "the Regulatory Authority must refuse to grant a service approval if - (a) the Regulatory Authority is satisfied that the service, if permitted to operate, would constitute an unacceptable risk to the safety, health or wellbeing of children who would be educated or cared for by the education and care service." The statements from the Environment Protection Authority and Health Protection Service mentioned at E6 and E7 of the Original decision dated 21 May 2018, appear to raise issues about risks to the safety, health or wellbeing of children.

2. SIGNAGE

- a) This development application does not include an assessment of any proposed signage.

Any proposed signage at the site must be the subject of a separate DA for approval by planning and land authority, unless exempt in accordance with the *Planning and Development Regulations 2008*.

- b) All signage installed at the site, including advertising signage and hoarding, should comply with the Australian Association of National Advertisers (AANA) Code of Ethics and the ACT Government's Hoarding Signage Advertising Guidelines available online at <https://www.planning.act.gov.au/build-buy-renovate/for-industry/industry-resources/hoarding-signage-guidelines>.

3. ENVIRONMENT PROTECTION – NOISE

Noise from equipment which may be installed or used at the site, including air conditioning units, must comply with the noise standard at the block boundary at all times as per the *Environment Protection Regulation 2005*. Please consider the type and location of noise generating equipment prior to installation. Written assurance should be sought from the supplier/installer of the equipment that it complies with the Noise Zone Standard as per the *Environment Protection Regulation, 2005*.

NOTICE OF DECISION

DA 201733198 / D

PART B – REASONS FOR THE DECISION

Pursuant to section 198 of the *Planning and Development Act 2007*, the changed development proposal and the original development proposal would not be in different assessment tracks, and the development, after the amendment, was assessed as substantially the same as the development for which approval was originally given.

The objectives of the IZ2 zone have been considered. In general, the assessment found the development was not inconsistent with the zone objectives.

- The development was assessed against the relevant Territory Plan codes and in the form modified by the imposed conditions was considered to meet the applicable requirements of the Industrial Zones Development Code.
- Entity advice – Refer to further comments below in **PART C**.
- Issue raised in representations

2 representations were received during the notification period. The main issues identified included reduced solar access to the adjoining office building and proposed use of childcare in the vicinity of an existing firearm business. The proposal was assessed against the relevant rules and criteria of the Industrial Zones Development Code and was referred to the relevant entities.

The changed development proposal reduces the extend of the already approved development, resulting in a reduced overall potential impact.

The application to amend the original development approval, in respect to the proposed amendments, was assessed as being satisfactory to meet the requirements for approval. Conditions have been imposed to ensure the development satisfies the Territory Plan, addresses assessment issues including relevant entity advice and generally follows standard process and practices.

EVIDENCE

The following evidence formed part of the assessment of this application:

Development Application:	201733198/S197D
Territory Plan Zones:	IZ2 Industrial Mixed Use Zone
Development Codes:	Industrial Zones Development Code
Precinct Code:	Mitchell Precinct Map and Code
Crown Lease:	Volume 1831 and Folio 29
Legislative requirements:	Sections 119 and 120 of the <i>Planning and Development Act 2007</i>
Representations and Entity advice:	As addressed in PART C of this Decision

PART A and **PART C** provide further details and considerations informing the reasons for the decision.

NOTICE OF DECISION

DA 201733198 / D

PART C – PUBLIC NOTIFICATION AND ENTITY ADVICE

PUBLIC NOTIFICATION

Pursuant to Division 7.3.4 of the Act, the application was publicly notified from 12 April 2022 to 5 May 2022. Two written representations were received during public notification period.

The issues raised in the representations were considered in the assessment and making of the decision for this development application. Please refer to 'Reasons for the Decision' in **PART B** for further clarification.

ENTITY ADVICE and REQUIREMENTS

Pursuant to Division 7.3.3 of the *Planning and Development Act*, the application was referred to the below entities. Where an entity requested conditions to be imposed on this development, those conditions have been incorporated into **PART A** of this Decision.

A summary of entity comments can be found below.

1. CHILDREN'S EDUCATION AND CARE ASSURANCE (CECA)
CECA provided advice stating that the proposal is not supported.
A copy of the CECA's advice is attached to this Notice of Decision.
Please refer to **PART A** for conditions consistent with the CECA advice.
2. ACT EMERGENCY SERVICES AGENCY (ESA)
ESA provided advice stating that previous advice on the original approval still valid on this amendment application.
3. ENVIRONMENTAL PROTECTION AUTHORITY (EPA)
EPA provided advice stating that the proposal is not supported.
A copy of the EPA's advice is attached to this Notice of Decision.
The advice is not incorporate in this decision as the consent decision of the ACT Civil and Administrative Tribunal (ACAT) (AT14/2019) revoked condition A1 of the original decision regarding compliance with the requirements of EPA.
4. TRANSPORT CANBERRA AND CITY SERVICES (TCCS)
TCCS provided advice stating that the proposal is supported.
5. ICON WATER
Icon Water provided advice stating that the proposal is supported subject to conditions.
A condition requiring the development to satisfy relevant entity requirements has been imposed in **PART A**.
A copy of the Icon Water advice is attached to this Notice of Decision.
6. EVOENERGY (ELECTRICITY)
EvoEnergy (Electricity) provided advice stating that the proposal is not supported.
A condition requiring the development to satisfy relevant entity requirements has been imposed in **PART A**.
A copy of the Evoenergy advice is attached to this Notice of Decision.

NOTICE OF DECISION

DA 201733198 / D

7. EVOENERGY (GAS)

EvoEnergy (Gas) provided advice stating that the proposal is supported subject to conditions.

Refer to **PART A** for conditions regarding compliance with entity advice.

A copy of the EvoEnergy (Gas) advice is attached to this Notice of Decision.

NOTICE OF DECISION

DA 201733198 / D

ADMINISTRATIVE INFORMATION RELATING TO NOTICE OF DECISION

DATE THAT THIS APPROVAL TAKES EFFECT

Unless a condition of approval provides for otherwise, this approval does not impact on the date the original decision and approval takes effect.

Inspection of the Application and Decision

A copy of the application and the decision can be inspected between 8:30am and 4:30pm weekdays at the Environment, Planning and Sustainable Development Directorate Dickson Customer Service Centre at 480 Northbourne Avenue, Dickson, ACT.

Submission of revised drawings or documentation

If a condition of approval requires the applicant to lodge revised drawings and / or documentation with the planning and land authority for approval pursuant to section 165 of the Act, the submission must be made by completing an application in e-development.

Reconsideration of the Decision

If the DA applicant is not satisfied with the decision made by the planning and land authority, they are entitled to apply to the planning and land authority for reconsideration within 20 working days of being told of this decision pursuant to section 191 of the Act. A longer timeframe may apply only if granted in writing by the planning and land authority pursuant to section 184 of the Act.

More information is available online at <https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/development-applications/appeal-a-da-decision>.

Please contact Access Canberra Customer Services if you wish to lodge a reconsideration application.

Review by the ACT Civil and Administrative Tribunal (ACAT)

1. Decisions that are reviewable (sometimes referred to as appeals) by the ACAT are identified in Schedule 1 of the [Act](#), except for matters that are exempted under Schedule 3 of the [Planning and Development Regulation 2008](#) (matters exempt from third party review).
2. The notice of decision and this advice have been sent to all people who made a representation in relation to the application.
3. The ACAT is an independent body. It can review a large number of decisions made by ACT Government ministers, officials and statutory authorities on their merits. The ACAT can agree with, change or reject the original decision, substitute its own decision or send the matter back to the decision maker for reconsideration in accordance with ACAT recommendations.
4. More information on appeal rights is available online at <https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/development-applications/appeal-a-da-decision>.
5. The ability to review the Authority's decision is a matter of law. **If** you think you have a right of review, you may apply to the ACAT for a review of the decision. Application forms can be obtained from the ACAT at the website listed below. You can also download the form from the ACT Legislation Register. It is recommended you seek independent advice in regards to such reviews eg a legal practitioner.

NOTICE OF DECISION

DA 201733198 / D

6. If you are applying on behalf of an organisation or association, whether incorporated or not, the Tribunal in deciding whether to support this application will consider the effect of the decision being reviewed on the interests of the organisation or association in terms of its objects or purposes. A copy of the relevant documents will be required to be lodged with the Tribunal.
7. The time limit to make a request for a review is 28 days from the date of this notice of decision. The time limit can be extended in some circumstances (refer to sections 10 (2), 10(3), 25(1)(e) and 25(2) of the *ACT Civil & Administrative Tribunal Act 2008*; and rule 38 of the *ACT Civil and Administrative Tribunal Procedures Rules 2020*).
8. Applications to the ACAT, including an application to be joined as a party to a proceeding, require payment of a fee (the Tribunal Registry will advise of the current fee), unless you are receiving legal or financial assistance from the ACT Attorney-General. You can apply to have the fee waived on the grounds of hardship, subject to approval (refer to section 22T of the *ACT Civil and Administrative Tribunal Act 2008*). Decisions to grant assistance are made on the grounds of hardship and that it is reasonable, in all the circumstances, for the assistance to be granted. Applications should be made in writing to: the Director General, Justice and Community Safety Directorate, GPO Box 158, CANBERRA ACT 2601. You can ask the ACAT for more details.
9. The ACAT is required to decide appeals in land and planning and tree protection cases within 120 days after the lodging of the appeal, unless that period is extended by the ACAT upon it being satisfied that it is in the interests of justice to do so.
10. The following organisations may be able to provide you with advice and assistance if you are eligible:
 - ACT Law Society, telephone 6274 0300ACT
 - Legal Aid Office, telephone 1300 654 314
 - ACT Council of the Ageing, telephone 02 6154 9740
 - Welfare Rights Centre, telephone 1800 226 028
 - Environmental Defender's Office (ACT), telephone 02 6243 3460.
11. You will have to pay any costs involved in preparing or presenting your case. The ACAT also has the power to award costs against a party in the circumstances specified in s 48 of the *ACT Civil and Administrative Tribunal Act 2008*. This power is in addition to the power of the ACAT to strike out a party and to dismiss an application for failure to comply with the ACAT's directions.
12. You may apply for access to any documents you consider relevant to this decision under the *ACT Freedom of Information Act 2016*. Information about Freedom of information requests is available on the planning and land authority's web site at <https://www.environment.act.gov.au/about/access-government-information> or by contacting us by phone on 02 6207 1923.
13. The procedures of the ACAT are outlined on the ACAT's website, including in the Guide to the Land and Planning Division and the Guide to the Hearing. Contact the ACAT for alternative ways to access information about the ACAT's procedures.

Review by the ACT Supreme Court

1. The Authority's decision may also be subject to judicial review by the ACT Supreme Court under the *Administrative Decisions (Judicial Review) Act 1989* (ADJR Act).
2. Under the ADJR Act, an *eligible person* may make an application for review of a decision.

NOTICE OF DECISION

DA 201733198 / D

3. An *eligible person* must demonstrate that their interests are adversely affected by the decision and that the application raises a significant issue of public importance.
4. Section 5 of the ADJR Act sets out the grounds on which a decision can be reviewed.
5. The time limit to make an application for review is 28 days from the date the Notice of Decision is provided to the applicant and those people who made a representation.
6. The ACT Supreme Court is a costs jurisdiction where costs generally follow the event. This means that the unsuccessful party is required to pay the costs of the successful party.
7. For more information on ACT Supreme Court processes and fees, please visit <https://courts.act.gov.au/home>.

Other approvals

A notice of decision under the *Planning and Development Act 2007* grants development approval only. Other approvals may be required, including:

1. Building Approval

Most building work requires building approval under the *Building Act 2004* to ensure it complies with building laws such as the *Building Code of Australia*. The lessee should engage a private building certifier to determine whether building approval is required and assess and approve the building plans before construction commences. A list of certifiers can be obtained from the [Environment, Planning and Sustainable Development Directorate](#).

2. Tree damaging activity approval

A Tree Management Plan under the *Tree Protection Act 2005* is required for approval where it is proposed to undertake groundwork within the tree protection zone of a protected tree or likely to cause damage to, or remove, any trees defined as protected trees by that Act. More information is available from the Transport Canberra and City Services Directorate at <https://www.tccs.act.gov.au/city-living/trees>.

3. Use of verges or other unleased Territory Land

In accordance with the *Public Unleased Land Act 2013*, road verges and other unleased Territory land must not be used for the carrying out of works, including the storage of materials or waste, without prior approval of the Territory. More information is available from the Transport Canberra and City Services Directorate at https://www.tccs.act.gov.au/city-living/public_land_use.

4. Works on unleased Territory Land

In accordance with the *Public Unleased Land Act 2013*, no work can be undertaken on unleased Territory land without the approval of the Territory. Such approval must be obtained from the Senior Manager, Place Coordination and Planning, Transport Canberra and City Services Directorate by way of:

- (a) a certificate of design acceptance prior to the commencement of any work; and
- (b) a certificate of operational acceptance on completion of all works to be handed over to TCCS.

Works on unleased Territory land may include the construction or upgrading of driveway verge crossings, public footpaths, roads, street lighting, stormwater works, waste collection amenities, street signs and line marking, road furniture and landscaping.

NOTICE OF DECISION

DA 201733198 / D

Contact details for relevant agencies

ACT Civil and Administrative Tribunal

Level 4, 1 Moore Street
CANBERRA CITY ACT 2601
GPO Box 370, CANBERRA, ACT 2601

www.acat.act.gov.au
tribunal@act.gov.au
02 6207 1740
02 6205 4855 (Fax)

ACT Supreme Court

4-6 Knowles Place,
CANBERRA CITY ACT 2601
GPO Box 1548, CANBERRA CITY, ACT
2601

www.courts.act.gov.au
02 6205 0000

Environment, Planning and Sustainable Development Directorate

480 Northbourne Avenue
DICKSON ACT 2602
GPO Box 158, CANBERRA 2601

www.planning.act.gov.au
02 6207 1923

- *Planning and land authority*
 - list of certifiers for building approval
 - demolition information
 - asbestos information
- *Environment Protection Authority*
 - environment protection
 - water resources
 - Conservation, Planning and Research
 - threatened species/wildlife management
- *WorkSafe ACT*
 - asbestos information
- *ACT Heritage Council*
 - Aboriginal, historic and natural heritage management
- *Tree Protection Unit*
 - *Development Applications (DA) issue:*
 - *Tree Damaging Activity Applications (TDAA) issue:*

EPAPanningLiaison@act.gov.au
6207 5642

worksafe@worksafe.act.gov.au
132 281

www.environment.act.gov.au
132 281

TCCS.TreeProtectionACTPLARef@act.gov.au

TCCS.TreeProtection@Act.gov.au

Transport Canberra and City Services

- landscape management and protection plan approval
- use of verges or other unleased Territory land
- works on unleased Territory land - design acceptance
- driveway inspections or building applications
- damage to public assets

www.tccs.act.gov.au

132 281

02 6207 0019 (development coordination)

tccs.dcdevelopmentcoordination@act.gov.au

Health Directorate

www.health.act.gov.au
hps@act.gov.au
02 5124 9700

NOTICE OF DECISION

DA 201733198 / D

Education Directorate	www.education.act.gov.au 02 6205 5429
Utilities	
• Telstra (networks)	02 8576 9799
• TransACT (networks)	02 6229 8000
• Icon Water	02 6248 3111
• Electricity reticulation	02 6293 5749

Translation and interpretation services

The ACT Government's translation and interpreter service runs 24 hours a day, every day of the week by calling 131 450.

ENGLISH	If you need interpreting help, telephone:
ARABIC	: إذا احتجت لمساعدة في الترجمة الشفوية ، إتصل برقم الهاتف :
CHINESE	如果你需要传译员的帮助，请打电话：
CROATIAN	Ako trebate pomoć tumača telefonirajte:
GREEK	Αν χρειάζεστε διερμηνέα τηλεφωνήστε στο
ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
MALTESE	Jekk għandek bżonn l-għajnuna t'interpretu, ċempel:
PERSIAN	: اگر به ترجمه شفاهی احتیاج دارید به این شماره تلفن کنید:
PORTUGUESE	Se você precisar da ajuda de um intérprete, telefone:
SERBIAN	Ako vam je potrebna pomoć prevodioca telefonirajte:
SPANISH	Si necesita la asistencia de un intérprete, llame al:
TURKISH	Tercümana ihtiyacınız varsa lütfen telefon ediniz:
VIETNAMESE	Nếu bạn cần một người thông-ngôn hãy gọi điện-thoại:

TRANSLATING AND INTERPRETING SERVICE
131 450
Canberra and District - 24 hours a day, seven days a week

From: "Wild-River, Su" <Su.Wild-River@act.gov.au>
Sent: 19/09/2022 5:30 PM
To: "Brookes, Clare" <Clare.Brookes@act.gov.au>; "Partridge, Leah" <Leah.Partridge@act.gov.au>; "Brown, Robin" <Robin.Brown@act.gov.au>; "Power, David" <DAVID.POWER@act.gov.au>
Subject: Environmental protections for childcare centres
Attachments: NOTICE OF DECISION-201733198-S197D-SIGNED.pdf

Hi Colleagues,

The EPA has initiated this meeting as an opportunity for us to outline the input we provided to the attached decision. The goal is to support the Education Directorate's future considerations in relation to the project.

Cheers,

Su

Microsoft Teams meeting

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 413 884 324 600

Passcode: ESe8WL

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ACT
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ACT
Government

Environment, Planning and
Sustainable Development

NOTICE OF DECISION

Made under part 7 of the *Planning and Development Act 2007*

S197 Amendment

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DA Number:	201733198/S197D
Block:	18
Section:	11
Suburb:	Mitchel
Application lodged:	5 April 2022
Assessment track:	Merit

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- Part B – reasons for the Decision
- Part C public notification & entity advice
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CONTACT / ENQUIRIES

Phone: (02) 6207 6383

Online Form:

https://www.accesscanberra.act.gov.au/app/forms/epd_feedback

George Cilliers

Delegate of the Planning
and Land Authority

8 August 2022

NOTICE OF DECISION

DA 201733198 / D

Education Directorate	www.education.act.gov.au 02 6205 5429
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CROATIAN	Ako trebate pomoć tumača telefonirajte:
GREEK	Αν χρειάζεστε διερμηνέα τηλεφωνήσετε στο
ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
MALTESE	Jekk għandek bżonn l-għajnuna t'interpretu, ċempel:
PERSIAN	: اگر به ترجمه شفاهی احتیاج دارید به این شماره تلفن کنید:
PORTUGUESE	Se você precisar da ajuda de um intérprete, telefone:
SERBIAN	Ako vam je potrebna pomoć prevodioca telefoniрајте:
SPANISH	Si necesita la asistencia de un intérprete, llame al:
TURKISH	Tercümana ihtiyacınız varsa lütfen telefon ediniz:
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From: "Brookes, Clare" <Clare.Brookes@act.gov.au>
Sent: 29/03/2023 5:36 PM
To: "Power, David" <DAVID.POWER@act.gov.au>; "Hudson, Lyndell (Health)" <Lyndell.Hudson@act.gov.au>
Subject: FW: Request for Written CECA Endorsement - DA201733198-S197D (Block 18 Section 11 Mitchell)
Attachments: MITC011018 Letter to CECA - March 2023.pdf

OFFICIAL

Good Afternoon David/Lyndell

I am writing to request your assistance with a Development Application we have received for an early childhood education and care service in Mitchell.

We have previously discussed our concerns about this proposal with your teams and the potential environmental/health risks which may be posed to children attending a service in this location, particularly as quality early childhood programs involve extensive periods of outdoor play. Robin Brown and Andrew Stedman have both been involved in previous discussions.

I would very much appreciate your advice on the response to these issues provided by Canberra Town Planning (attached). Our concerns relate not only to the risk posed by the current surrounding businesses, but for the potential for future industrial operations in this area.

Please let me know if it would be helpful to meet to discuss our concerns. I have good availability on Friday if that would be convenient.

Kind Regards

Clare Brookes (she/her)
Senior Director, Education and Care Regulation and Support | Education | ACT Government
P 02 6205 0615 M [Sch 2.2\(a\)\(ii\)](#)

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From: "Brookes, Clare" <Clare.Brookes@act.gov.au>
Sent: 05/04/2023 2:02 PM
To: "Stedman, Andrew (Health)" <Andrew.Stedman@act.gov.au>; "Brown, Robin" <Robin.Brown@act.gov.au>
Cc: "Hudson, Lyndell (Health)" <Lyndell.Hudson@act.gov.au>; "Power, David" <DAVID.POWER@act.gov.au>
Subject: FW: Request for Written CECA Endorsement DA201733198 S197D (Block 18 Section 11 Mitchell)
Attachments: AGON Environmental Mitchell Childcare Centre final.pdf, MITC011018 Letter to CECA March 2023.pdf

OFFICIAL

Good Afternoon Andrew/Robin

Please find attached additional information regarding the proposed early childhood education and care service at Mitchell. I would be grateful if you could include reference to this information in your advice.

Kind Regards

Clare Brookes (she/her)
Senior Director, Education and Care Regulation and Support | Education | ACT Government
P 02 6205 0615 M 0481 003 833

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From: "Brookes, Clare" <Clare.Brookes@act.gov.au>
Sent: 01/05/2023 1:28 PM
To: "Mudford, William" <William.Mudford@act.gov.au>; "Wild-River, Su" <Su.Wild-River@act.gov.au>
Subject: FW: Request for Written CECA Endorsement - DA201733198-S197D (Block 18 Section 11 Mitchell)
Attachments: MITC011018 Letter to CECA - March 2023.pdf

OFFICIAL

Dear Su and William

Please find attached request for advice on the Mitchell Early Childhood Education and Care Service. I will send out an invitation to discuss this application later this week.

Many thanks for your assistance.

Kind Regards

Clare Brookes
 Senior Director, Education and Care, Regulation and Support | Education | ACT Government
 P 02 6205 0615 M [Sch 2.2\(a\)\(ii\)](#)

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From: Brookes, Clare
Sent: Wednesday, 29 March 2023 5:36 PM
To: Power, David <DAVID.POWER@act.gov.au>; Hudson, Lyndell (Health) <Lyndell.Hudson@act.gov.au>
Subject: FW: Request for Written CECA Endorsement - DA201733198-S197D (Block 18 Section 11 Mitchell)

OFFICIAL

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Kind Regards

Clare Brookes (she/her)
 Senior Director, Education and Care Regulation and Support | Education | ACT Government
 P 02 6205 0615 M [Sch 2.2\(a\)\(ii\)](#)

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From: "Brookes, Clare" <Clare.Brookes@act.gov.au>
Sent: 23/05/2023 1:21 PM
To: "Mudford, William" <William.Mudford@act.gov.au>
Cc: "Wild-River, Su" <Su.Wild-River@act.gov.au>; "Power, David" <DAVID.POWER@act.gov.au>; "Brown, Robin" <Robin.Brown@act.gov.au>
Subject: RE: Request for Written CECA Endorsement - DA201733198-S197D (Block 18 Section 11 Mitchell)

OFFICIAL

Good Afternoon Team

Just following up on this request as we are being chased by the developer.

Kind Regards

Clare Brookes (she/her)
Senior Director, Education and Care Regulation and Support | Education | ACT Government
P 02 6205 0615 M [Sch 2.2\(a\)\(ii\)](#)

Level 3, Hedley Beare Centre for Teaching and Learning, 51 Fremantle Drive Stirling 2611 |
GPO Box 158 Canberra ACT 2601
www.det.act.gov.au

From: Brookes, Clare
Sent: Wednesday, 10 May 2023 3:46 PM
To: Mudford, William <William.Mudford@act.gov.au>
Cc: Wild-River, Su <Su.Wild-River@act.gov.au>; Power, David <DAVID.POWER@act.gov.au>; Brown, Robin <Robin.Brown@act.gov.au>
Subject: RE: Request for Written CECA Endorsement - DA201733198-S197D (Block 18 Section 11 Mitchell)

OFFICIAL

Good Afternoon Will

We are still waiting for EPA'S response. I know that everyone has been very busy working on the response to the proposed amendments to the new Territory Plan.

Kind Regards

Clare Brookes (she/her)
Senior Director, Education and Care Regulation and Support | Education | ACT Government
P 02 6205 0615 M [Sch 2.2\(a\)\(ii\)](#)

Level 3, Hedley Beare Centre for Teaching and Learning, 51 Fremantle Drive Stirling 2611 |
GPO Box 158 Canberra ACT 2601
www.det.act.gov.au

From: Mudford, William <William.Mudford@act.gov.au>
Sent: Wednesday, 10 May 2023 2:26 PM
To: Brookes, Clare <Clare.Brookes@act.gov.au>
Cc: Wild-River, Su <Su.Wild-River@act.gov.au>; Power, David <DAVID.POWER@act.gov.au>; Brown, Robin <Robin.Brown@act.gov.au>
Subject: RE: Request for Written CECA Endorsement - DA201733198-S197D (Block 18 Section 11 Mitchell)

OFFICIAL

Hi Clare,

Where did this get to? We are happy to provide technical support on this matter and stand ready to meet with you.

Kind regards

Will

William Mudford

Director | Strategic Environment Protection Framework

Office of the Environment Protection Authority

Access Canberra | Chief Minister, Treasury and Economic Development Directorate | ACT Government

Phone: 02 6205 0863 | Email: william.mudford@act.gov.au

480 Northbourne Avenue, Dickson | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au/accessCBR



We acknowledge the Traditional Custodians of the ACT, the Ngunnawal people. We acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region.

From: Brookes, Clare <Clare.Brookes@act.gov.au>

Sent: Monday, 1 May 2023 1:29 PM

To: Mudford, William <William.Mudford@act.gov.au>; Wild-River, Su <Su.Wild-River@act.gov.au>

Subject: FW: Request for Written CECA Endorsement - DA201733198-S197D (Block 18 Section 11 Mitchell)

OFFICIAL

Dear Su and William

Please find attached request for advice on the Mitchell Early Childhood Education and Care Service. I will send out an invitation to discuss this application later this week.

Many thanks for your assistance.

Kind Regards

Clare Brookes

Senior Director, Education and Care, Regulation and Support | Education | ACT Government

P 02 6205 0615 M [Sch 2.2\(a\)\(ii\)](#)

Level 3, Hedley Beare Centre for Teaching and Learning, 51 Fremantle Drive Stirling 2611 |

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From: Brookes, Clare

Sent: Wednesday, 29 March 2023 5:36 PM

To: Power, David <DAVID.POWER@act.gov.au>; Hudson, Lyndell (Health) <Lyndell.Hudson@act.gov.au>

Subject: FW: Request for Written CECA Endorsement - DA201733198-S197D (Block 18 Section 11 Mitchell)

OFFICIAL

Good Afternoon David/Lyndell

I am writing to request your assistance with a Development Application we have received for an early childhood education and care service in Mitchell.

We have previously discussed our concerns about this proposal with your teams and the potential environmental/health risks which may be posed to children attending a service in this location, particularly as quality early childhood programs involve extensive periods of outdoor play. Robin Brown and Andrew Stedman have both been involved in previous discussions.

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Please let me know if it would be helpful to meet to discuss our concerns. I have good availability on Friday if that would be convenient.

Kind Regards

Clare Brookes (she/her)

Senior Director, Education and Care Regulation and Support | Education | ACT Government

P 02 6205 0615 M Sch 2.2(a)(ii)

Level 3, Hedley Beare Centre for Teaching and Learning, 51 Fremantle Drive Stirling 2611 |

GPO Box 158 Canberra ACT 2601

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From: "Wild-River, Su" <Su.Wild-River@act.gov.au>
Sent: 24/05/2023 5:17 PM
To: "Brookes, Clare" <Clare.Brookes@act.gov.au>; "Power, David" <DAVID.POWER@act.gov.au>; "Brown, Robin" <Robin.Brown@act.gov.au>; "Mudford, William" <William.Mudford@act.gov.au>
Subject: Early Childhood - request for CECA endorsement - EPA discussion
Attachments: FW: Request for Written CECA Endorsement - DA201733198-S197D (Block 18 Section 11 Mitchell), RE: Request for Written CECA Endorsement - DA201733198-S197D (Block 18 Section 11 Mitchell)

Hi Colleagues,

Apologies that I missed this in the mix of emails, and thanks Clare and William for the reminders.

Can we please have a quick catch up tomorrow to discuss the request for CECA endorsement.

Cheers

Microsoft Teams meeting

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Passcode: jCMN47

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Brookes, Clare 5/25 1:15 PM

204

CB

Good Afternoon William, Sean has requested that you seek advice separate to CECA Give me a call if you would like to discuss this further.



Sch 1 1.2

Sch 1 1.2

From: "Wild-River, Su" <Su.Wild-River@act.gov.au>
Sent: 21/09/2022 12:38 PM
To: "Brown, Robin" <Robin.Brown@act.gov.au>
Subject: FW: Environmental protections for childcare centres
Attachments: NOTICE OF DECISION-201733198-S197D-SIGNED.pdf

-----Original Appointment-----

From: Wild-River, Su
Sent: 19 September 2022 17:30
To: Wild-River, Su; Brookes, Clare; Partridge, Leah; Brown, Robin; Power, David
Subject: Environmental protections for childcare centres
When: 21 September 2022 15:30-16:30 (UTC+10:00) Canberra, Melbourne, Sydney.
Where: Microsoft Teams Meeting

Hi Colleagues,

The EPA has initiated this meeting as an opportunity for us to outline the input we provided to the attached decision. The goal is to support the Education Directorate's future considerations in relation to the project.

Cheers,

Su

Microsoft Teams meeting

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 413 884 324 600

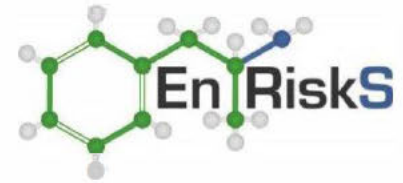
Passcode: ESe8WL

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9 November 2022

Agon Environmental
68 Northbourne Ave
Canberra, ACT 2600

Environmental Risk Sciences Pty Ltd
P.O. Box 2537
Carlingford Court, NSW 2118

Phone: +61 2 9614 0297
Fax: +61 2 8215 0657
inquiry@enrisks.com.au
www.enrisks.com.au

Attention: John O'Brien

Re: Corner Darling and Heffernan Streets, Mitchell, ACT

Environmental Risk Sciences Pty Ltd (enRiskS) has been engaged by Agon Environmental Pty Ltd to undertake a human health risk assessment in relation to air quality at a site being proposed for construction of a childcare centre the corner of Darling and Heffernan Streets in Mitchell ACT ("the site").

The site is currently vacant but has been proposed for this purpose for some time.

An original DA for the childcare centre was referred to the ACT Government Health Protection Service (HPS). In their referral letter dated 11 December 2018, the HPS concluded that the submitted documentation did not meet the requirements, as follows:

- "...have not demonstrated that an unacceptable risk to the health and safety of and safety of children and vulnerable users thereof will not be created by the use of the site as a childcare centre";
- "...the air quality sampling undertaken to date has not covered a sufficient period of time to determine seasonal variations and to determine if the results are minimum, average or maximum concentrations that would typically be found at this site for a variety of analytes"; and
- "This has resulted in the Human Health Risk Assessment being limited in its insight into any potential health risks posed".

EMM Consulting has undertaken an air quality sampling program to meet the requirements of the second dot point above. That program has been described in the following report:

- EMM Consulting, Air quality monitoring report. Dated 30 June 2022 (included at **Attachment A**).

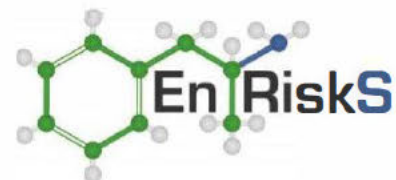
The HHRA provided in this letter report provides the assessment of that information to meet the requirements for the other 2 dot points listed.

1 Objective

The objectives of this HHRA are:

- Review the available data for air quality for this site
- Undertake an assessment of the air quality at this site to assess potential health risks to staff and children at the proposed childcare centre and to compare the data provided to regional air quality in this part of Canberra.

This HHRA had not addressed environmental issues nor potential for off-site risks at surrounding properties.



2 Methodology

The methodology adopted for this HHRA has been in accordance with the relevant National protocols/guidelines including:

- enHealth, Environmental Health Risk Assessment, Guidelines for Assessing Human Health Risks from Environmental Hazards (enHealth 2012a)
- enHealth, Australian Exposure Factor Guide (enHealth 2012b)
- ASC NEPM National Environmental Protection Measure – Assessment of Site Contamination including:
 - Schedule B4 Guideline on Site-Specific Health Risk Assessment Methodology (NEPC 1999 amended 2013a)
 - Schedule B7 Guideline on Derivation of Health-Based Investigation Levels (NEPC 1999 amended 2013b)
- Environment ACT, Air Environment Protection Policy (Environment ACT 1999).

Where required, additional guidance will be obtained from relevant Australian and International guidance consistent with current industry best practice, such as that available from the USEPA and the World Health Organisation (WHO).

3 Background

A childcare centre is proposed for the site. The plans for the site are provided in **Figures 1 and 2**. The proposed play area is on the first floor.

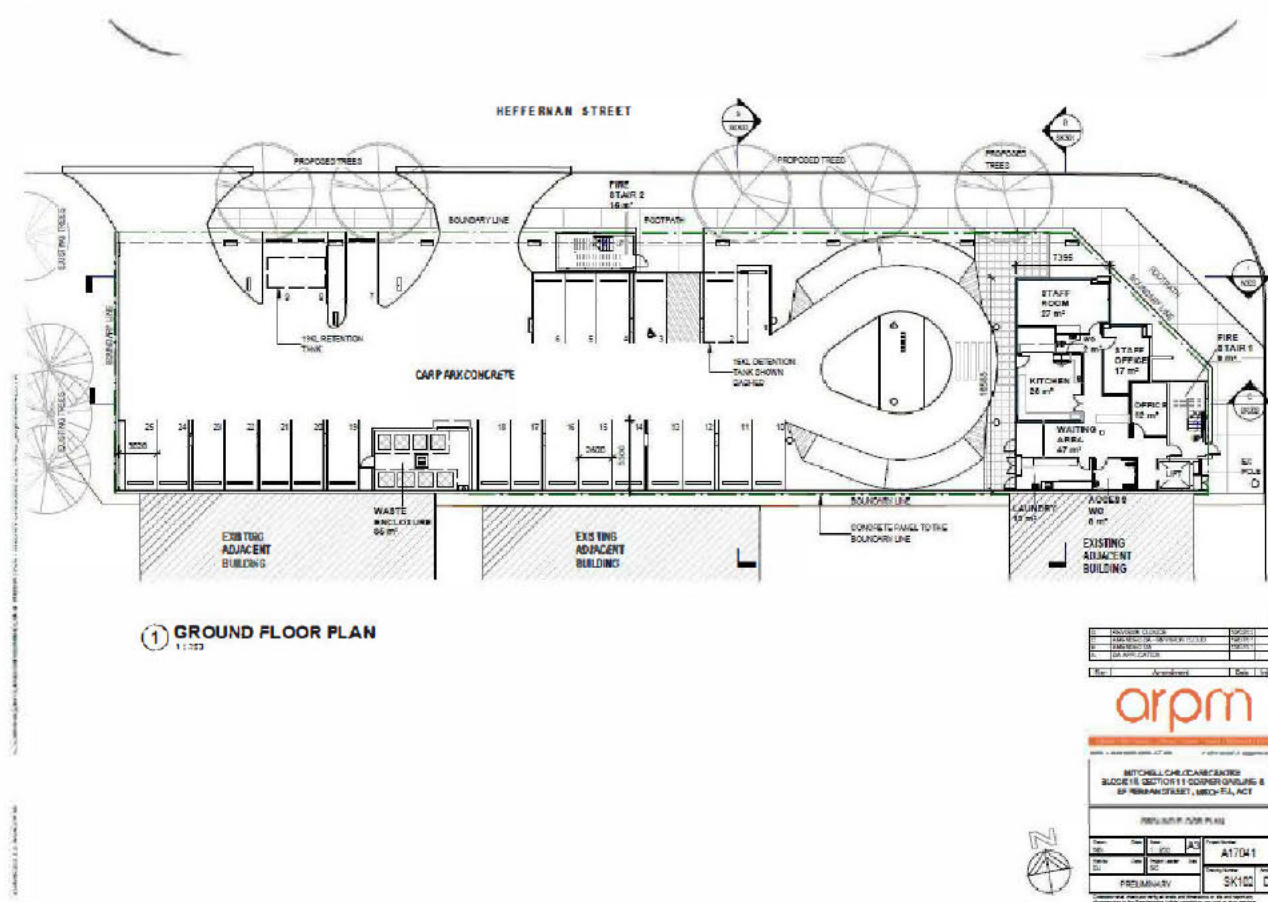


Figure 1: Ground floor plan (proposed)

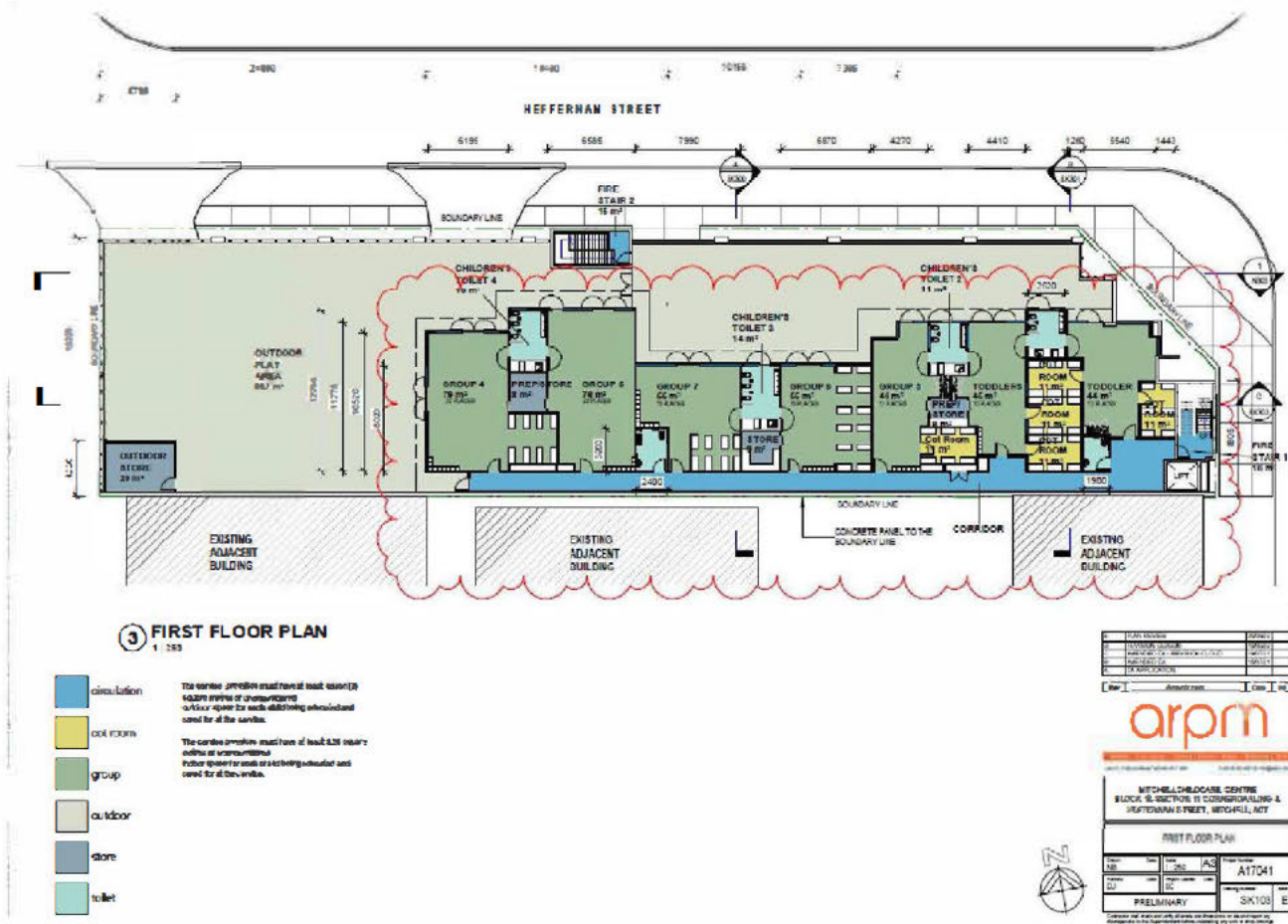


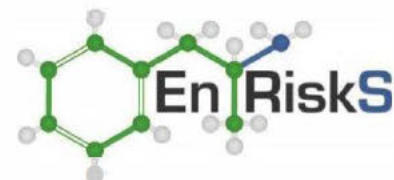
Figure 2: First floor plan (proposed)

This site is in a generally industrialised area in Mitchell. This is shown in Figure 3.



Figure 3: Site context

Site of interest



4 Sampling program

EMM undertook sampling at the site. They placed appropriate monitoring equipment in the western part of the site where the outdoor play area will be located.

They used:

- FDS PM monitoring system for PM₁₀ and PM_{2.5}
- Polludrone multi parameter sensor for NO₂, SO₂, O₃ and CO
- Summa canister sampling for volatile organic compounds (VOCs).

The program involved continuous sampling for all parameters apart from VOCs for 6 weeks. Sampling commenced on 1 April and was completed on 16 May 2022. For VOCs, spot samples were collected over 12 hours (approx.) on 12 April, 21 April, 3 May, 9 May and 1 June 2022 (a duplicate sample was collected on the final sampling event).

The data collected were compared to data from the Florey Air Quality Station operated by the ACT Government¹. This station is one of 3 operated by the ACT Government. It is located around 8 km to the west of the site of interest. The next closest station is Civic Air Quality Station which is located around 8 km to the south of the site of interest close to the Canberra CBD.

Previous ambient air quality monitoring was undertaken by Pacific Environment in 2017 in a report:

- Pacific Environment, Ambient Air Quality Monitoring Report – Mitchell, ACT. DRAFT. Dated 24 January 2018.

The air quality monitoring undertaken in this program covered a 2 week period in December 2017. This was considered insufficient for this proposal by regulators but these results have also been discussed in this report to provide additional information about air quality at this site.

5 Results

5.1 Criteria pollutants

Criteria air pollutants are those that are targeted by the National Environment Protection (Ambient Air Quality) Measure (NEPC 2021a). They are common air pollutants that need to be managed well to maintain acceptable air quality in any urban area.

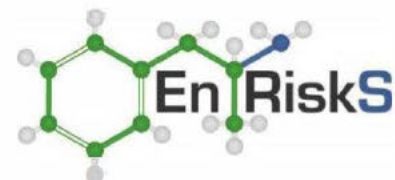
There are many sources of these criteria air pollutants including all combustion sources – fires, bushfires, cooking, vehicles, wood fired heaters, open fireplaces, ship engines, power stations etc – and non combustion sources like windblown dust or salt spray.

The pollutants included are PM₁₀, PM_{2.5}, NO₂, SO₂, CO and ozone (O₃). The most recent published version of the National Environment Protection (Ambient Air Quality) Measure was published in 2021 (NEPC 2021a).

The following matters are important to note to put this assessment in appropriate context:

- these national guidelines are actually not intended for application as regulatory standards at a single facility. They are designed for assessment of regional air quality within air sheds (i.e. across Sydney or Canberra as a whole, for example) (NEPC 2021b).
- a childcare centre is not an activity that results in additional emissions to air. This assessment covers the acceptability of the existing air quality in and around this site in relation to the development of a childcare centre. The area is already used for commercial/industrial purposes, so a wide range of people are already exposed to the air in this location.

¹ <https://www.health.act.gov.au/about-our-health-system/population-health/environmental-monitoring/air-quality/air-quality>



5.1.1 Sulfur oxides (SO₂)

Sulfur oxides are formed during combustion when chemicals present in fuels (such as coal, gas, petrol etc) containing sulfur react with oxygen to form sulfur oxides. Burning of coal in power stations in Europe resulted in acid rain affecting forests. The acid rain was primarily a result of the formation of sulfur oxides as the coal was burnt. Sulfur oxides are also released from volcanos. Wildfires and other types of fires are also sources to the atmosphere of these chemicals (USEPA 2018a).

Sulfur dioxide (SO₂) is the main sulfur oxide that can have impacts on people. Exposure to elevated levels can result in irritation of the respiratory system and can make breathing difficult. The most affected by exposure to these chemicals are people with asthma. This impact on asthma means this pollutant is important to assess in regard to potential for children to be exposed (USEPA 2018a).

Guidelines for SO₂ are available from NEPC (NEPC 2021a) as well as state based supporting information such as that available from NSW EPA (NSW EPA 2017). Guidelines listed in these documents indicate concentrations of sulfur dioxide considered to be acceptable by national health authorities (i.e. based on protecting health for the entire population (including sensitive sub-populations) if they are present at a location 24 hours a day, 7 days a week for a lifetime). These guidelines are based on protection from adverse health effects following both short term (acute) and longer term (chronic) exposure for all members of the population including sensitive populations like asthmatics, children and the elderly.

Table 1 lists the results for this monitoring program for sulfur dioxide and **Figure 4** shows the monitoring of SO₂ over the monitoring period. This parameter is not assessed at the Florey air monitoring station (or any of the monitoring stations operated by ACT Government) and it was not assessed in the previous monitoring program from 2017.

Table 1: SO₂ levels in this area

Parameter	SO ₂ (µg/m ³)	
	On-site monitoring 1-hour average	Florey Air Monitoring Station 1-hour average
Guideline (NEPM 2021)	262	262
Average over the 6 week monitoring period	6.2	Not a parameter measured by ACT Government at any station (Florey, Civic or Monash)
Maximum 1 hour average	170	

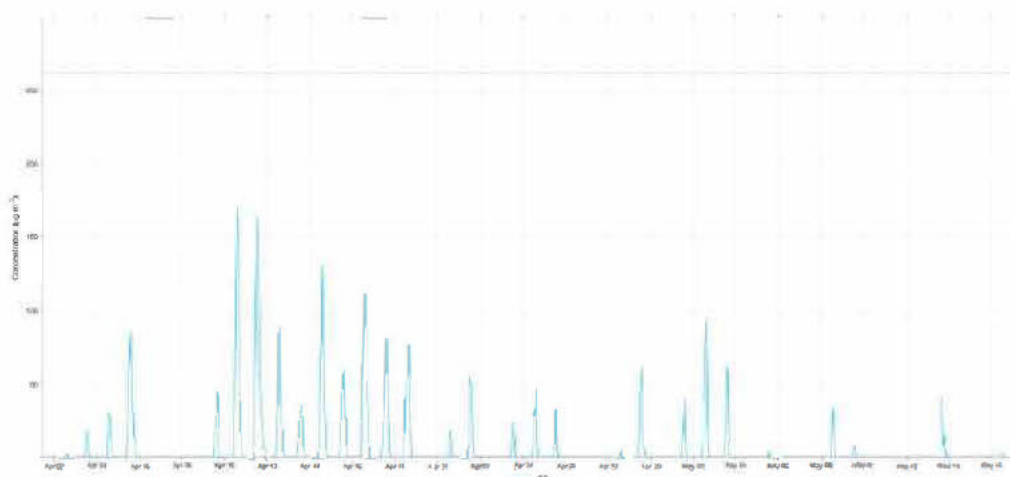
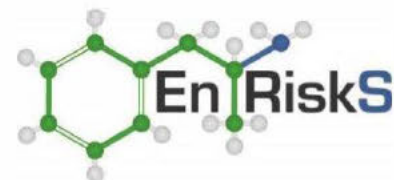


Figure 4: Hourly average SO₂ concentrations (2 April-15 May 2022) – Mitchell ACT (Figure 3.9 from EMM report)



This assessment shows that the levels of SO₂ are often quite low and all measurements across the entire monitoring period are well below the NEPM guideline (shown by the red line on the Figure), so risks to children due to the presence of SO₂, should they spend time at this location, are considered to be negligible.

5.1.2 Nitrogen Oxides (NO₂)

Nitrogen oxides (NO_x) refer to a collection of highly reactive gases containing nitrogen and oxygen, most of which are colourless and odourless. Nitrogen oxide gases form whenever materials are burnt (i.e. petrol, gas, wood etc.). Motor vehicles, along with industrial, commercial and residential (e.g. gas heating or cooking) combustion sources, are all primary producers of nitrogen oxides.

In terms of health effects, nitrogen dioxide is the only oxide of nitrogen that may be of concern (WHO 2000). Nitrogen dioxide is a colourless and tasteless gas with a sharp odour. Nitrogen dioxide can cause inflammation of the respiratory system and increase susceptibility to respiratory infection. Exposure to elevated levels of nitrogen dioxide has also been associated with increased mortality, particularly related to respiratory disease, and with increased hospital admissions for asthma and heart disease patients (WHO 2013a). Asthmatics, the elderly and people with existing cardiovascular and respiratory disease are particularly susceptible to the effects of elevated nitrogen dioxide (Morgan et al. 2013; NEPC 2010). The health effects associated with exposure to nitrogen dioxide depend on the duration of exposure as well as the concentration.

Guidelines for NO₂ are available from NEPC (NEPC 2021a) as well as state based supporting information such as that available from NSW EPA (NSW EPA 2017). They indicate concentrations of nitrogen dioxide considered to be acceptable by national health authorities (i.e. based on protecting health for the entire population (including sensitive sub-populations) if they are present at a location 24 hours a day, 7 days a week for a lifetime). These guidelines are based on protection from adverse health effects following both short term (acute) and longer term (chronic) exposure for all members of the population including sensitive populations like asthmatics, children and the elderly.

Table 2 lists the results for this monitoring program for nitrogen dioxide and **Figure 5** shows the monitoring for NO₂ over the monitoring period.

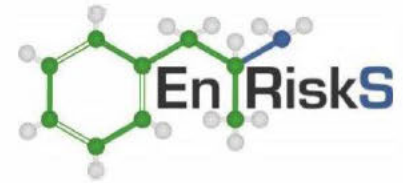
Table 2: NO₂ levels in this area

Parameter	NO ₂ (µg/m ³)			
	On-site monitoring		Florey Air Monitoring Station	
	1-hour average	Annual average ¹	1-hour average	Annual average ¹
Guideline (NEPM 2021)	150	28	150	28
Average over the 6 week monitoring period	NA	3.9	NA	7.5
Maximum 1 hour average	37.8	NA	37.2	NA

Notes:

- The average concentration over the 6 week monitoring period has been compared to the annual average NEPM guideline. This is a conservative approach because an average over a shorter time period will be the same or higher than the average over a whole year. If the average over 6 weeks is lower than the annual average guideline this is a good indicator that the annual average at the site will definitely be in compliance.

EMM Consulting (2022) also notes that the annual average for NO₂ ranged from 7.6 to 9.7 µg/m³ for the years 2014 to 2021 at the government monitoring stations. The results for the 6 week monitoring period in 2022 are lower than (and consistent with) these longer term results. In addition, the results for on-site monitoring and the closest government station for 1 hour and longer average concentrations were quite similar. It is expected that the annual average for NO₂ at the site will be less than the guideline of 28 µg/m³. The maximum 1 hour average at both locations during this monitoring period was 25% of the relevant guideline value i.e. in compliance.



The previous on-site monitoring undertaken by Pacific Environment in 2017 reported a maximum 1 hour average concentration of $90 \mu\text{g}/\text{m}^3$ and a mean 1 hour average concentration of $30.5 \mu\text{g}/\text{m}^3$. These results are higher than those found in the 2022 monitoring event but these concentrations were also in compliance with the most recent NEPM guidelines from 2021 (NEPC 2021a).

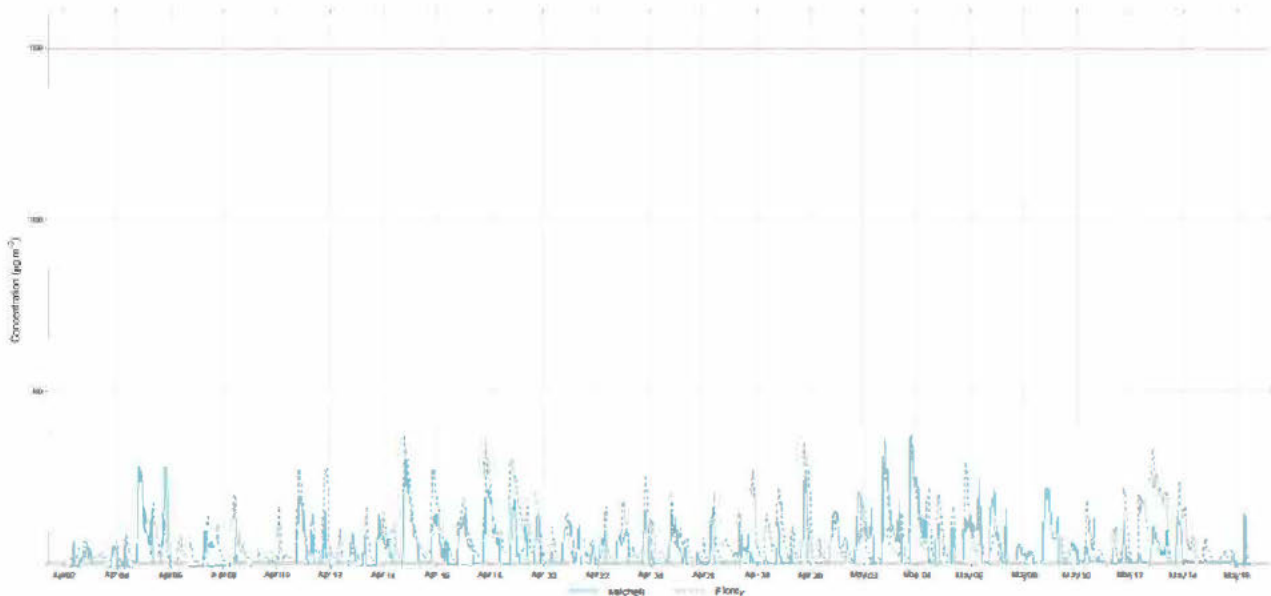


Figure 5: Hourly average NO₂ concentrations (2 April-15 May 2022) – Mitchell ACT (Figure 3.7 from EMM report)

This assessment shows that the levels of NO₂ are:

- quite low across the entire period
- very similar to the levels at Florey station across the entire period
- all measurements across the entire monitoring period are well below the NEPM guideline (shown by the red line on the Figure).

Therefore, risks to children due to the presence of NO₂, should they spend time at this location, are considered to be negligible.

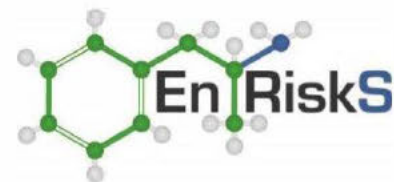
5.1.3 Particles

Particles (or particulate matter (PM)) are a widespread air pollutant with a mixture of physical and chemical characteristics that vary by location (and source). Unlike many other pollutants, particulates comprise a broad class of diverse materials and substances, with varying shape, chemical, physical and thermodynamic properties, with sizes that vary from less than 0.005 microns or micrometres² (μm) to greater than 100 microns (μm).

Particles are always present in the air.

Sources of particles include bushfires, other types of fires, cooking (gas and wood fired), BBQs (gas and wood fired), vehicle emissions, wood fired heaters (and gas fired), windblown dust, salt spray (when near ocean) as well as large facilities using combustion like power stations.

² Micrometres or microns refers to 0.000001 m (i.e. 1 millionth of a metre).



The main focus of studies about health effects due to particles in air is the smaller particles. These fine particles are small enough to reach deep into the lungs, so they are the most relevant for assessing potential health effects.

Particles are measured in 2 size categories – PM₁₀ (particles less than 10 microns in size) (PM₁₀)³ and PM_{2.5} (particles less than 2.5 microns in size).

However, it is important to note that the measurement of PM₁₀ includes:

- Particles sized between 2.5 microns⁴ but less than 10 microns
- Particles less than 2.5 microns (i.e. fine and ultrafine particles)

The measurement of PM_{2.5} includes:

- ultrafine particles (those less than 1 microns⁵ or 0.1 microns)
- fine particles between 1 and 2.5 microns.

Numerous epidemiological studies⁶ have reported significant positive associations between particulate air pollution measured as PM₁₀ or PM_{2.5} and adverse health outcomes. Effects noted in large studies undertaken in cities in Europe and the US include mortality as well as a range of adverse cardiovascular and respiratory effects (USEPA 2012, 2018b; WHO 2013b). In particular, the links between levels of PM_{2.5} and health effects have been shown to be clear and robust. The health effects for both PM₁₀ and PM_{2.5} were considered in the derivation of the NEPM air guidelines for particles.

Guidelines for particles are available from NEPC (NEPC 2021a) as well as state based supporting information such as that available from NSW EPA (NSW EPA 2017). They indicate concentrations considered to be acceptable by national health authorities (i.e. based on protecting health for the entire population (including sensitive sub-populations) if they are present at a location 24 hours a day, 7 days a week for a lifetime). These guidelines are based on protection from adverse health effects following both short term (acute) and longer term (chronic) exposure for all members of the population including sensitive populations like asthmatics, children and the elderly.

PM_{2.5}

Table 3 (PM_{2.5}) lists the results for this monitoring program for PM_{2.5} and **Figure 5** shows the monitoring for PM_{2.5} over the monitoring period (24 hour averages).

³ Micrometres or microns refers to 0.000001 m (i.e. 1 millionth of a metre).

⁴ Micrometres or microns refers to 0.000001 m (i.e. 1 millionth of a metre).

⁵ Micrometres or microns refers to 0.000001 m (i.e. 1 millionth of a metre).

⁶ Epidemiology is the study of diseases in populations. Epidemiological evidence can only show that this risk factor is associated (correlated) with a higher incidence of disease in the population exposed to that risk factor. The higher the correlation the more certain the association. Causation (ie that a specific risk factor actually causes a disease) cannot be proven with only epidemiological studies. For causation to be determined a range of other studies need to be considered in conjunction with the epidemiology studies.

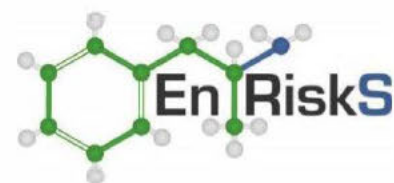


Table 3: PM_{2.5} levels for this site

Parameter	PM _{2.5} (µg/m ³)			
	On-site monitoring		Floreys Air Monitoring Station	
	24-hour average	Annual average ¹	24-hour average	Annual average ¹
Guideline (NEPM 2021)	25 (current)/ 20 (2025)	8 (current)/ 7 (2025)	25 (current)/ 20 (2025)	8 (current)/ 7 (2025)
Average over the 6 week monitoring period	NA	3.9	NA	5.3
Maximum 24 hour average	9.6	NA	16.8	NA

Notes:

- 1 The average concentration over the 6 week monitoring period has been compared to the annual average NEPM guideline. This is a conservative approach because an average over a shorter time period will be the same or higher than the average over a whole year. If the average over 6 weeks is lower than the annual average guideline, this is a good indicator that the annual average at the site will definitely be in compliance.

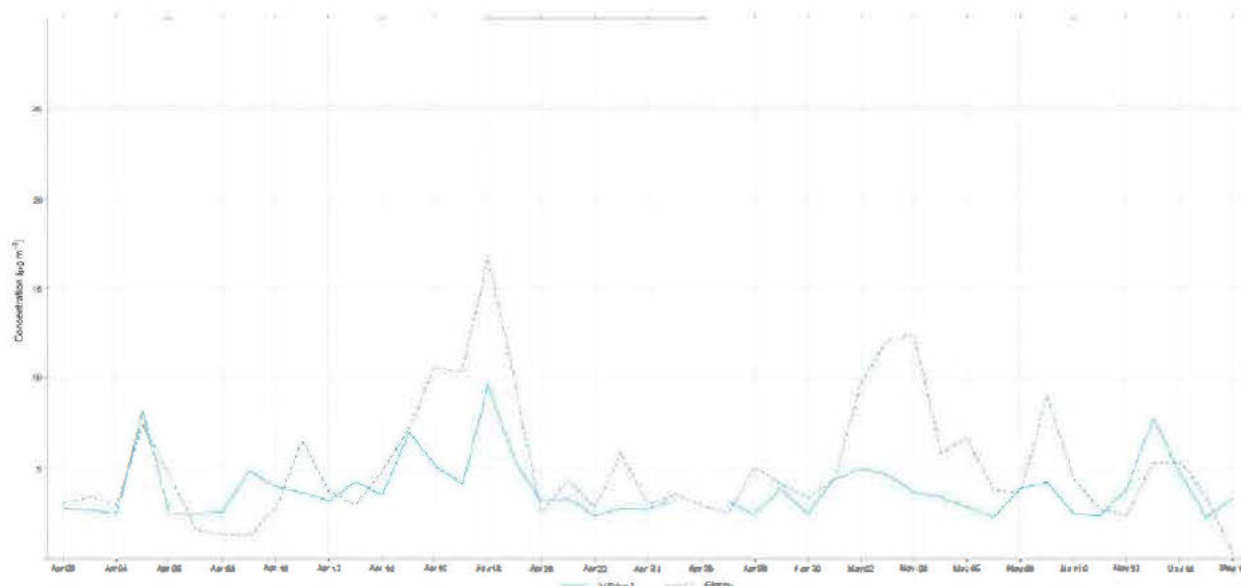


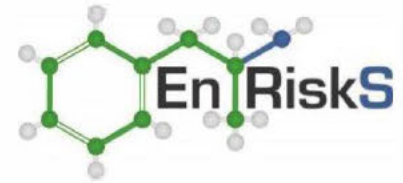
Figure 6: 24 hour average PM_{2.5} concentrations (2 April-15 May 2022) – Mitchell ACT (Figure 3.5 from EMM report)

EMM Consulting (2022) also notes that the annual average for PM_{2.5} at the government monitoring stations ranged from 5.5 to 7.2 µg/m³ for the years 2014 to 2021 which were not dominated by bushfires and 14.5 to 18.5 µg/m³ in 2019 and 2020 (i.e. when bushfires in summer made a significant impact on levels of particles). The results for the 6 week monitoring period in 2022 are lower than (and consistent with) these longer term results. In addition, the results for on site monitoring and the closest government station for 24 hour and longer average concentrations were quite similar. It is expected that the annual average for PM_{2.5} at the site will be less than the guideline of 8 µg/m³. The maximum 24 hour average at both locations during this monitoring period was 40-60% of the relevant guideline value – i.e. in compliance.

The previous on-site monitoring undertaken by Pacific Environment in 2017 did not report results for PM_{2.5} but did monitor for PM₁₀ which is discussed below.

This assessment shows that the levels of PM_{2.5} are:

- relatively low across the entire period
- usually lower than the values reported at the Floreys station across the entire period



- all measurements across the entire monitoring period are well below the NEPM guideline (shown by the red line on the Figure).

Therefore, risks to children due to the presence of PM_{2.5}, should they spend time at this location, are considered to be negligible.

PM₁₀

Table 4 (PM₁₀) lists the results for this monitoring program for PM₁₀ and **Figure 7** shows the monitoring for PM₁₀ over the monitoring period (24 hour averages).

Table 4: PM₁₀ levels for this site

Parameter	PM ₁₀ (µg/m ³)			
	On-site monitoring		Florey Air Monitoring Station	
	24-hour average	Annual average ¹	24-hour average	Annual average ¹
Guideline (NEPM 2021)	50	25	50	25
Average over the 6 week monitoring period	NA	3.9	NA	5.3
Maximum 24 hour average	9.6	NA	16.8	NA

Notes:

- 1 The average concentration over the 6 week monitoring period has been compared to the annual average NEPM guideline. This is a conservative approach because an average over a shorter time period will be the same or higher than the average over a whole year. If the average over 6 weeks is lower than the annual average guideline, this is a good indicator that the annual average at the site will definitely be in compliance.

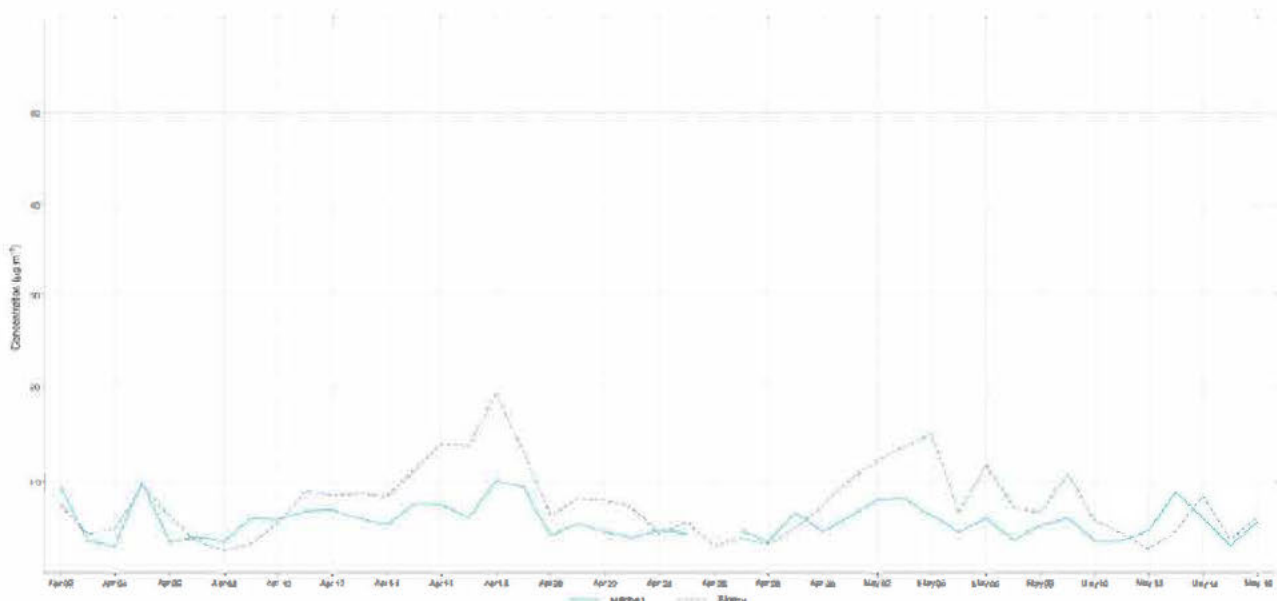
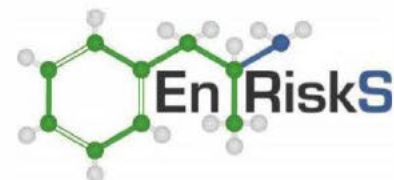


Figure 7: 24 hour average PM₁₀ concentrations (2 April-15 May 2022) – Mitchell ACT (Figure 3.2 from EMM report)

EMM Consulting (2022) also notes that the annual average for PM₁₀ at the government monitoring stations ranged from 9.7 to 12.1 µg/m³ for the years 2014 to 2021 which were not dominated by bushfire smoke and 22.9 to 24.7 µg/m³ in 2019 and 2020 (i.e. when bushfires in summer made a significant impact on levels of particles). The results for the 6 week monitoring period in 2022 are lower than (and consistent with) these longer term results. In addition, the results for on-site monitoring and the closest government station for 24 hour and longer average concentrations were quite similar. It is expected that the annual average for PM₁₀ at the site will be less than the guideline of 25 µg/m³. The maximum 24 hour average concentration for PM₁₀



at both locations during this monitoring period was 20-40% of the relevant guideline value – i.e. in compliance.

The previous on-site monitoring undertaken by Pacific Environment in 2017 reported a maximum 24 hour average concentration of 12 $\mu\text{g}/\text{m}^3$ and a mean 24 hour average concentration of 2.8 $\mu\text{g}/\text{m}^3$. These results are similar to those found in the 2022 monitoring event. All concentrations from 2017 and 2022 were in compliance with the most recent NEPM guidelines from 2021 (NEPC 2021a).

This assessment shows that the levels of PM_{10} are:

- low across the entire period
- usually lower than the values reported at the Florey station across the entire period
- all measurements across the entire monitoring period are well below the NEPM guideline (shown by the red line on the Figure).

Therefore, risks to children due to the presence of PM_{10} , should they spend time at this location, are considered to be negligible.

5.1.4 Carbon monoxide

Motor vehicles are the dominant source of carbon monoxide in air (NSW DECCW 2010). Carbon monoxide is produced during combustion when there is a limited supply of oxygen.

It is well known that excess levels of carbon monoxide in enclosed spaces can cause significant impacts. This may occur when indoor gas or other types of heaters are not operating correctly and are left on overnight.

The sorts of effects that can be expected due to exposure to CO are those linked with carboxyhaemoglobin (COHb) in blood – i.e. where CO replaces oxygen in the blood preventing oxygen from being transported around the body. In addition, association between exposure to carbon monoxide and cardiovascular hospital admissions and mortality, especially in the elderly for cardiac failure, myocardial infarction and ischemic heart disease; and some birth outcomes (such as low birth weights) have been identified (NEPC 2010).

Guidelines for CO are available from NEPC (NEPC 2021a) as well as state based supporting information such as that available from NSW EPA (NSW EPA 2017). They indicate concentrations considered to be acceptable by national health authorities (i.e. based on protecting health for the entire population (including sensitive sub-populations) if they are present at a location 24 hours a day, 7 days a week for a lifetime).

Table 5 lists the results for this monitoring program for CO and **Figure 8** shows the monitoring for CO over the monitoring period (8 hour averages).

Table 5: CO levels for this site

Parameter	CO ($\mu\text{g}/\text{m}^3$)	
	On-site monitoring 8-hour average	Florey Air Monitoring Station 8-hour average
Guideline (NEPM 2021)	10,000	10,000
Average over the 6 week monitoring period	100	300
Maximum 1 hour average	600	1,200

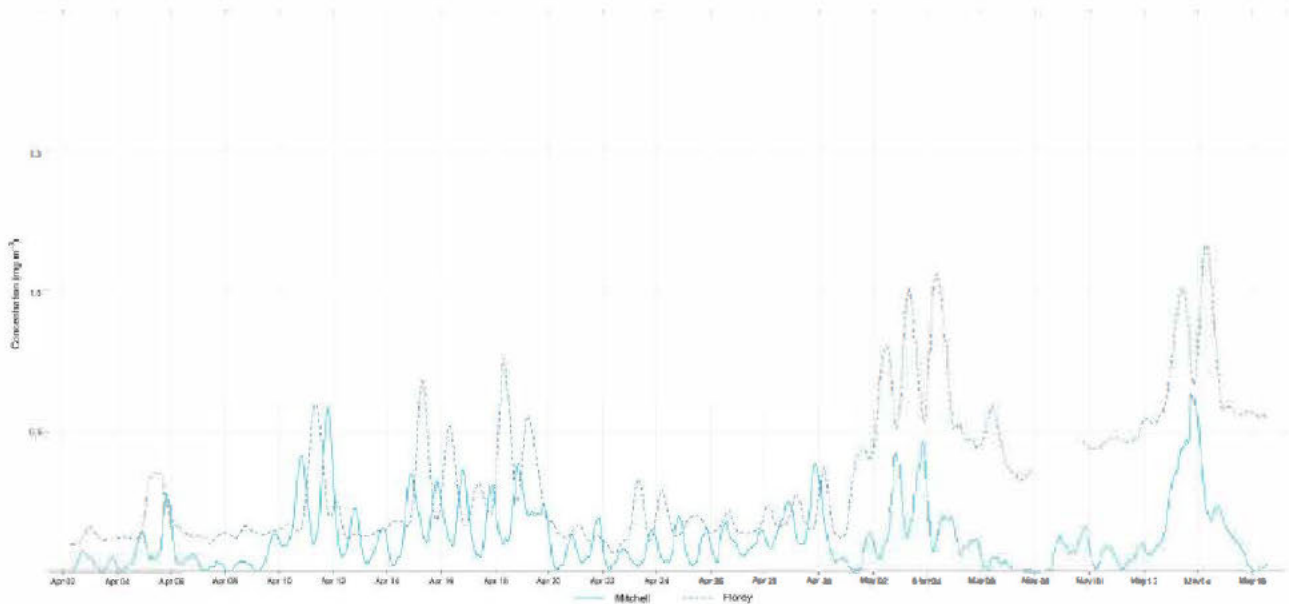
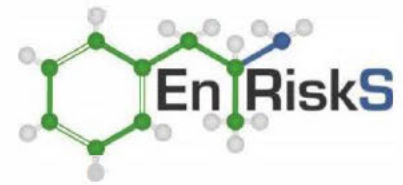


Figure 8: Rolling 8 hour average CO concentrations (2 April-15 May 2022) – Mitchell ACT (Figure 3.10 from EMM report)

This assessment shows that the levels of CO are:

- low across the entire period
- usually lower than the values reported at the Florey station across the entire period
- all measurements across the entire monitoring period are well below the NEPM guideline.

Therefore, risks to children due to the presence of CO, should they spend time at this location, are considered to be negligible.

5.1.5 Summary

All of the criteria pollutants are commonly found in outdoor air in urban areas. There are national guidelines for these major pollutants that are protective of human health in regard to regional air quality i.e. they are guidelines that are to be applied to ensure that average air quality for people in Australia is appropriate for the entire population including sensitive subpopulations.

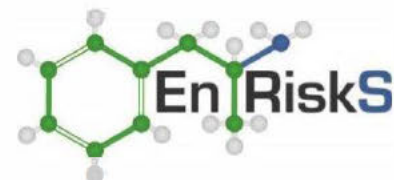
All of the levels measured at this site were in compliance with the national guidelines and in line with levels for regional air quality in Canberra as indicated by the measurements at Florey air monitoring station and in line with levels normally found in urban air in Australia. This means risks to human health in regard to criteria pollutants at this site are negligible in relation to this proposed development.

5.2 VOCs

5.2.1 2022

Summa canisters are analysed in accordance with USEPA TO-15 methodology. This method reports results for a wide range of volatile organic compounds including petroleum and chlorinated hydrocarbons which are often the compounds of most interest in urban areas. In this case, the methods listed on the laboratory reports included:

- ASTM D1945/D1946
- CRC Care TR23 PVI



■ USEPA TO-15

with each method being applied to the relevant sub group of VOCs. The total list of chemicals analysed in this work was in excess of 80 compounds.

The canisters were deployed for approximately 12 hours across daytime hours to ensure appropriate understanding of VOC levels at times when staff or children could be present at the site.

The only chemicals with detections were nitrogen, oxygen and acetone. All other chemicals were not reported above the limit of reporting. The limits of reporting were in line with generally expected levels for use in ambient air sampling provided by Australian laboratories.

Nitrogen and oxygen are the major components of the atmosphere we all breathe. These measurements indicate that they were present at expected levels – 80% nitrogen, 20% oxygen (approx.).

Acetone was measured above the limit of reporting on 1 occasion at a concentration of 68 $\mu\text{g}/\text{m}^3$.

A screening risk assessment involves comparing the measured level of a chemical to a guideline that is based on protecting a person who might be exposed at a location 24 hours a day, 7 days per week for a lifetime. This is considered a conservative first step as it doesn't involve any site specific assumptions about how a site will be operated. If the measured concentration at a site is smaller than such a guideline, then no further assessment is required.

There is no guideline for acetone protective for human health available in Australian guidance documents, but such guidelines are available for acetone from US guidance. Texas Commission for Environmental Quality (TCEQ) provides a guideline of 16,000 $\mu\text{g}/\text{m}^3$ (TCEQ 2013). USEPA regional screening levels provided a residential air guideline of 32,000 $\mu\text{g}/\text{m}^3$ up until November 2021 where a change in the source document (due to data limitations) required that this value be withdrawn (USEPA 2021).

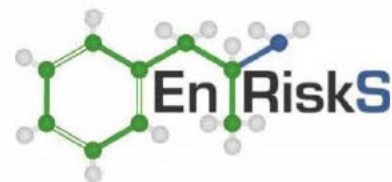
Using the guideline from TCEQ, the measured concentration at this location on a single occasion is more than 200 times lower than the guideline value. This guideline was developed based on a person being exposed 24 hours a day, 7 days per week for a lifetime. Therefore, the risk posed by this level of acetone at this location is negligible.

5.2.2 2017

The previous on-site monitoring undertaken by Pacific Environment in 2017 reported results for sampling using Summa canisters on a single occasion to look for the presence of VOCs. The samples were collected in duplicate over 22 hours (i.e. during the day and night). The sampling in 2017 reported detections for acetone (as occurred during this 2022 monitoring event) as well as ethanol and isopropanol.

Isopropanol is often used to test for leaks in the sampling equipment when taking such samples, so it is possible that the actual sampling procedure may have been the source of the low levels that were detected in these duplicate samples— i.e. 1-2 $\mu\text{g}/\text{m}^3$. The USEPA regional screening levels for air in residential areas provide a guideline of 210 $\mu\text{g}/\text{m}^3$ for isopropanol. As noted previously, this guideline assumes a person spends all day, every day at the site of interest. The measured concentrations of isopropanol during this sampling were around 100 times below the guideline value so, regardless of the source, the levels measured are well in compliance with a health protective guideline.

Ethanol is present in petrol and is regularly detected in urban air. The concentrations reported in these duplicate samples were 2.6-21.5 $\mu\text{g}/\text{m}^3$. Sampling at a university in Melbourne (indoors and outdoors) reported detections for ethanol in all locations sampled (Goodman et al. 2018). Outdoor concentrations of ethanol ranged from 0.5 to 3.8 $\mu\text{g}/\text{m}^3$. Indoor concentrations across a range of locations ranged from 9.8 to 628 $\mu\text{g}/\text{m}^3$. A guideline for ethanol protective for human health is provided by the Californian Office of Environmental Health Hazard Assessment (OEHHA) (OEHHA 1999). The guideline is 100,000 $\mu\text{g}/\text{m}^3$. The



levels measured in air at the site in Mitchell in 2017 were 0.02% of the guideline value and in line with expected concentrations in indoor and outdoor air.

Acetone was measured in 2017 at concentrations around $8 \mu\text{g}/\text{m}^3$ – lower than the measured concentration in 2022. As noted in the Pacific Environment report, it is possible that acetone is in air due to cross contamination issues in a laboratory where this solvent can be widely used. It is also commonly found in urban air (Goodman et al. 2018). The study in Melbourne reported concentrations indoors ranging from 6 to $86 \mu\text{g}/\text{m}^3$ and outdoor concentrations ranging from 0.5 to $3.8 \mu\text{g}/\text{m}^3$. As noted above, the TCEQ guideline for acetone that is protective of human health is $16,000 \mu\text{g}/\text{m}^3$ so the concentrations reported at Mitchell were 0.05% of the guideline (i.e. in compliance) and in line with levels normally found in such locations.

5.2.3 Summary

Low levels of a small number of volatile organic compounds were detected in samples taken at the site of interest in Mitchell, ACT. The only detected chemicals were acetone, ethanol and isopropanol. All of these chemicals are commonly found in outdoor air in urban areas at the concentrations reported for this site. All of the levels measured at this site were well below guidelines protective for human health if a person was to be present at the site 24 hours a day, 7 days a week for a lifetime. This means risks to human health in regard to VOCs at this site are negligible in relation to this proposed development where people will only be present during the day on weekdays.

6 Conclusions

Environmental Risk Sciences Pty Ltd (enRiskS) has been engaged by Agon Environmental Pty Ltd to undertake a human health risk assessment in relation to air quality at a site being proposed for construction of a childcare centre – the corner of Darling and Heffernan Streets in Mitchell ACT (“the site”).

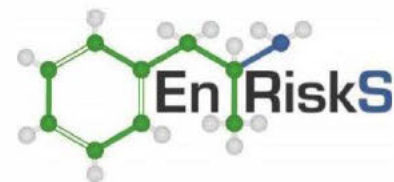
All of the criteria pollutants discussed in this report are commonly found in outdoor air in urban areas. There are national guidelines for these major pollutants that are protective of human health in regard to regional air quality i.e. they are guidelines that are to be applied to ensure that average air quality for people in Australia is appropriate for the entire population including sensitive subpopulations. All of the levels measured at this site were in compliance with the national guidelines and in line with levels for regional air quality in Canberra (at the same time) as indicated by the measurements at Florey air monitoring station and in line with levels normally found in urban air in Australia. This means risks to human health in regard to criteria pollutants at this site are negligible in relation to this proposed development.

Low levels of a small number of volatile organic compounds were detected in samples taken at the site of interest in Mitchell, ACT. The only detected chemicals were acetone, ethanol and isopropanol. All of these chemicals are commonly found in outdoor air in urban areas at the concentrations reported for this site. All of the levels measured at this site were well below guidelines protective for human health if a person was to be present at the site 24 hours a day, 7 days a week for a lifetime. This means risks to human health in regard to VOCs at this site are negligible in relation to this proposed development where people will only be present during the day on weekdays.

7 Limitations

Environmental Risk Sciences Pty Ltd has prepared this report for the use of AGON Environmental Pty Ltd in accordance with the usual care and thoroughness of the consulting profession. It is based on generally accepted practices and standards at the time it was prepared. No other warranty, expressed or implied, is made as to the professional advice included in this report.

It is prepared in accordance with the scope of work and for the purpose outlined in this report.



The methodology adopted and sources of information used are outlined in this report. Environmental Risk Sciences has made no independent verification of this information beyond the agreed scope of works and assumes no responsibility for any inaccuracies or omissions. No indications were found that information contained in information provided for use in this assessment was false.

This report was prepared in July 2022 and finalised in November 2022 and is based on the information provided and reviewed at that time. Environmental Risk Sciences disclaims responsibility for any changes that may have occurred after this time.

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9 Closure

Thank you for the opportunity to provide a proposal for this work. If you require any additional information or if you wish to discuss any aspect of this proposal, please do not hesitate to contact Jackie or Therese on (02) 9614 0297.

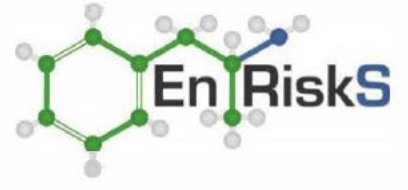
Yours sincerely,

Sch 2.2(a)(ii)

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Attachment A: EMM Consulting (2022)