



**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 2021-046

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)	14
7. Decision made by Ombudsman	N/A
8. Additional information identified by Ombudsman	N/A
9. Decision made by ACAT	N/A
10. Additional information identified by ACAT	N/A

**From:** [EPSDFOI](#)  
**To:** [CMTEDD FOI](#)  
**Subject:** RE: FOI request - Please check if documents held  
**Date:** Friday, 12 March 2021 3:56:47 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image004.png](#)  
[image005.png](#)  
[FOI request 12.3.21.pdf](#)

---

OFFICIAL

Good afternoon team

Could you please check if you have any documents within scope of this application and advise if a partial transfer is required.

EPSDD holds documents relating to Development Applications that are in scope but I thought best to check as they are referring specifically to EPA decisions relating to development on the land.

Happy to discuss.

Kind Regards

**Angelina Aloisi | Freedom of Information and Records Officer**

Information and Knowledge Management

Environment, Planning and Sustainable Development Directorate | ACT Government

Phone: 02 6207 7912 | Email: [Angelina.Aloisi@act.gov.au](mailto:Angelina.Aloisi@act.gov.au)

Level 5, 480 Northbourne Avenue, Dickson | GPO Box 158 Canberra ACT 2601 | [www.environment.act.gov.au](http://www.environment.act.gov.au) | [www.planning.act.gov.au](http://www.planning.act.gov.au)

*Please consider the environment before printing this email*

*This email, and any attachments, may contain confidential information. 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.*

---

**From:** [REDACTED]  
**Sent:** Friday, 12 March 2021 11:28 AM  
**To:** EPSDFOI <[EPSDFOI@act.gov.au](mailto:EPSDFOI@act.gov.au)>  
**Cc:** [REDACTED]  
[REDACTED]  
**Subject:** FOI request

**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.

Dear Sir/Madam,

Please see **attached** our correspondence of today's date.

Kind regards,





12 March 2021

**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 (**the Land**).

We refer to multiple decisions made by the Environment Protection Authority (**EPA**) in relation to the development on the Land including those associated with various development applications in recent years (**the Decisions**).

Therefore we request, in the period 1 August 2010 to today's date, the following documents (in the possession, custody or control of the EPA) in respect of the Decisions:

1. all correspondence (including emails) sent to or received from:
  - a. the Health Protection Service (**HPS**);
  - b. the ACT Planning and Land Authority (**ACTPLA**);
  - c. the Children's Education and Care Assurance (**CECA**);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.

Yours faithfully,

[REDACTED]





**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

Our ref: CMTEDDFOI 2021-046

Your ref: [REDACTED]



via email: [REDACTED]

Dear [REDACTED]

## FREEDOM OF INFORMATION REQUEST

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 18 March 2021.

Specifically, you are seeking: “...documents in relation to Block 18, Section 11, Mitchell in the Australian Capital Territory (the Land) held by the Environment Protection Authority (EPA)”.

### Authority

I am an Information Officer appointed by the Director-General under section 18 of the Act to deal with access applications made under Part 5 of the Act.

### Timeframes

In accordance with section 40 of the Act, CMTEDD is required to provide a decision on your access application by 22 April 2021.

### Decision on access

Searches were completed for relevant documents and 80 documents were identified that fall within the scope of your request.

I have included as **Attachment A** to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

I have decided to grant full access to 66 documents and partial access to 14 documents relevant to your request.

My access decisions are detailed further in the following statement of reasons and 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; and
- the *Human Rights Act 2004*.

## Exemption claimed

My reasons for deciding not to grant access to the identified documents and components of these documents are as follows:

### Public Interest

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

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

Taking into consideration the information contained in the 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:*
- ii) contribute to positive and informed debate on important issues or matters of public interest;*

Having considered the factors identified as relevant in this matter, I consider that release of the information, within the scope of the request, may contribute to positive and informed debate on a matter of public interest pertaining to the Environment Protection Authority decisions relating to development on the land at Block 18, Section 11, Mitchell. I am satisfied that this factor favouring disclosure carries significant weight. However, this weight is to be balanced with the weight of factors favouring non-disclosure.

### Factors favouring nondisclosure in the public interest:

- (a) *disclosure of the information could reasonably be expected to do any of the following:*
- (ii) Prejudice the protection of an individual's right to privacy or other rights under the Human Rights Act 2004;*

Having reviewed the documents, I consider that the protection of an individual's right to privacy, especially during dealings with the ACT Government is a significant factor as the

parties involved have provided their personal information for the purposes of working with the ACT Government. This, in my opinion, outweighs the benefit which may be derived from releasing the personal information of the individual's involved in this matter.

Individuals are entitled to expect that the personal information they have supplied as part of this process will be dealt with in a manner that protects their privacy. Considering the type of information to be withheld from release, I am satisfied that the factors in favour of release can still be met while protecting the personal information of the individuals involved. I therefore weight the factor for non-disclosure more highly than the factor in favour of release in this instance. As a result, I have decided that release of this information (mobile phone numbers, direct landline numbers and some names and email addresses of individuals not employed by the ACT Public Service) could prejudice their right to privacy under the *Human Rights Act 2004*.

Having 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 I believe is not in the public interest to release will ensure that the intent of the Act is met and will provide you with access to the majority of the information held by CMTEDD within the scope of your request.

### **Charges**

Pursuant to *Freedom of Information (Fees) Determination 2018* processing charges are applicable for this request because the total number of pages to be released to you exceeds the charging threshold of 50 pages. However, the charges have been waived in accordance with section 107(2)(b) 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 3 days after the date of my decision. Your personal contact details will not be published.

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

### **Ombudsman Review**

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in 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 at:

The ACT Ombudsman  
GPO Box 442  
CANBERRA ACT 2601

Via email: [actfoi@ombudsman.gov.au](mailto:actfoi@ombudsman.gov.au)

**ACT Civil and Administrative Tribunal (ACAT) Review**

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

ACT Civil and Administrative Tribunal

Level 4, 1 Moore St

GPO Box 370

Canberra City ACT 2601

Telephone: (02) 6207 1740

<http://www.acat.act.gov.au/>

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

Yours sincerely

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

Angela Friend  
Information Officer  
Information Access Team  
Chief Minister, Treasury and Economic Development Directorate

9 April 2021



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

## FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST	Reference NO.
Request for documents in relation to Block 18, Section 11, Mitchell in the Australian Capital Territory (the Land)	CMTEDDFOI2021-046

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-2	Email – Referral-EPA-Noise	18 Jul 2014	Full release	N/A	Yes
2	3	Email – Referral-EPA-Noise	11 Jan 2016	Full release	N/A	Yes
3	4-5	Email – Referral-EPA-Noise	11 Jan 2016	Full release	N/A	Yes
4	6-7	Email – Referral-EPA-Noise	18 Jan 2016	Full release	N/A	Yes
5	8-9	Email – Referral-EPA-Noise	17 Jan 2016	Full release	N/A	Yes
6	10-11	Email – Referral-EPA-Noise	21 Jan 2016	Full release	N/A	Yes
7	12-13	Checklist	8 Mar 2016	Full release	N/A	Yes
8	14-24	Notice of decision	8 Mar 2016	Full release	N/A	Yes
9	25-26	Email – Referral-EPA-Reconsideration	21 Jul 2016	Full release	N/A	Yes
10	27-28	Email – Referral-EPA-Reconsideration	25 Jul 2016	Full release	N/A	Yes
11	29-30	Email – Referral-EPA-Noise	25 Jul 2016	Full release	N/A	Yes
12	31-32	Email – Referral-EPA-Reconsideration	11 Aug 2016	Full release	N/A	Yes
13	33-34	Email – Referral-EPA-Reconsideration	12 Aug 2016	Full release	N/A	Yes
14	35-36	Email – Referral-EPA-Reconsideration (a copy of the Air Quality Monitoring Reports already provided outside FOI).	12 Aug 2016	Full release	N/A	Yes

15	37-38	Email – Referral-EPA-Reconsideration	12 Aug 2016	Full release	N/A	Yes
16	39	Email – Notice of Decision – DA-201528763	19 Sep 2016	Full release	N/A	Yes
17	40-59	Email – 18/11 Mitchell DA201528763 with attachment	7 Nov 2016	Full release	N/A	Yes
18	60-63	Email – 18/11 Mitchell DA201528763	7 Nov 2016	Full release	N/A	Yes
19	64-65	Email – AT63/2016	8 Nov 2016	Full release	N/A	Yes
20	66	Email – AT63/2016	8 Nov 2016	Full release	N/A	Yes
21	67-68	Email – AT63/2016	9 Nov 2016	Full release	N/A	Yes
22	69-72	Email – AT63/2016	10 Nov 2016	Full release	N/A	Yes
23	73	Email – DA201732635	6 Nov 2017	Partial release	Sch 2 s2.2 (a)(ii)	Yes
24	74-75	Email – DA201732635	8 Nov 2017	Partial release	Sch 2 s2.2 (a)(ii)	Yes
25	80-119	Email – Referral-EPA-Noise	22 Feb 2018	Full release	N/A	Yes
26	120-121	Email – Referral-EPA-Noise	26 Feb 2018	Full release	N/A	Yes
27	122-123	Email – Referral-EPA-Noise	14 Mar 2018	Full release	N/A	Yes
28	124-125	Email – Referral-EPA-Noise	15 Mar 2018	Full release	N/A	Yes
29	126-127	Email – Revised Response: Referral-EPA-Noise	15 Mar 2018	Full release	N/A	Yes
30	128-129	Email – Revised Response: Referral-EPA-Noise	15 Mar 2018	Full release	N/A	Yes
31	130-131	Email – Referral-EPA-Noise	18 Apr 2018	Full release	N/A	Yes
32	132-134	Email – Referral-EPA-Noise	19 Apr 2018	Full release	N/A	Yes
33	135-136	Email – Referral-EPA-Noise	19 Apr 2018	Full release	N/A	Yes
34	137-138	Email – Referral-EPA-Noise	26 Apr 2018	Full release	N/A	Yes

35	139-141	Email – EPA ADVICE - Referral-EPA-Noise	27 Apr 2018	Full release	N/A	Yes
36	142-144	Email – EPA ADVICE - Referral-EPA-Noise	27 Apr 2018	Full release	N/A	Yes
37	145-147	Email – Referral-EPA-Noise	27 Apr 2018	Full release	N/A	Yes
38	148-149	Email – Referral-EPA-Noise	27 Apr 2018	Full release	N/A	Yes
39	150-154	Email – Referral-EPA-Noise	27 Apr 2018	Full release	N/A	Yes
40	155-157	Email – Referral-EPA-Noise	29 Apr 2018	Full release	N/A	Yes
41	158-160	Email – Referral-EPA-Noise	29 Apr 2018	Full release	N/A	Yes
42	161-164	Email – Referral-EPA-Noise	30 Apr 2018	Full release	N/A	Yes
43	165-168	Email – Referral-EPA-Noise	30 Apr 2018	Full release	N/A	Yes
44	169-172	Email – EPA ADVICE - Referral-EPA-Noise	1 May 2018	Full release	N/A	Yes
45	173-179	Email – EPA ADVICE - Referral-EPA-Noise	1 May 2018	Partial release	Sch 2 s2.2 (a)(ii)	Yes
46	180-187	Email – EPA ADVICE - Referral-EPA-Noise	1 May 2018	Partial release	Sch 2 s2.2 (a)(ii)	Yes
47	188-191	Email - CLARIFICATION: EPA ADVICE - Referral-EPA-Noise	16 May 2018	Full release	N/A	Yes
48	192-210	Email – NOTICE OF DECISION	23 May 2018	Full release	N/A	Yes
49	211-213	Email - 201733198	25 May 2018	Partial release	Sch 2 s2.2 (a)(ii)	Yes
50	214	Meeting Acceptance	29 May 2018	Full release	N/A	Yes
51	215-216	Email - 201733198	29 May 2018	Full release	N/A	Yes
52	217-220	Email – DA 201733198	1 Aug 2018	Partial release	Sch 2 s2.2 (a)(ii)	Yes
53	221-223	Email – DA 201733198	1 Aug 2018	Partial release	Sch 2 s2.2 (a)(ii)	Yes
54	224	Email – DA 201733198	28 Aug 2018	Full release	N/A	Yes



55	225-227	Email – DA 201733198	27 Aug 2018	Partial release	Sch 2 s2.2 (a)(ii)	Yes
56	228	Meeting Acceptance	28 Aug 2018	Full release	N/A	Yes
57	229	Email: Canceled	30 Aug 2018	Full release	N/A	Yes
58	230-231	Email – REFERRAL-EPA-201733198	17 Jan 2019	Full release	N/A	Yes
59	232-234	Email – REFERRAL-EPA-201733198	18 Jan 2019	Full release	N/A	Yes
60	235-236	Email – REFERRAL-EPA-201733198	19 Jan 2019	Full release	N/A	Yes
61	237-250	Email – REFERRAL-EPA-201733198 (with attachments)	20 Jan 2019	Full release	N/A	Yes
62	251-255	Email – REFERRAL-EPA-201733198	20 Jan 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
63	256-260	Email – REFERRAL-EPA-201733198	21 Jan 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
64	261-263	Email – REFERRAL-EPA-201733198	22 Jan 2019	Full release	N/A	Yes
65	264-266	Email – REFERRAL-EPA-201733198	21 Jan 2019	Full release	N/A	Yes
66	267-269	Email – REFERRAL-EPA-201733198	22 Jan 2019	Full release	N/A	Yes
67	270-273	Email – REFERRAL-EPA-201733198	23 Jan 2019	Full release	N/A	Yes
68	274	Email – REFERRAL-EPA-201733198	22 Jan 2019	Full release	N/A	Yes
69	275-277	Email – REFERRAL-EPA-201733198	23 Jan 2019	Full release	N/A	Yes
70	278-281	Email – REFERRAL-EPA-201733198	24 Jan 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
71	282-283	Email – REFERRAL-EPA-201733198 (attachment provided at pages 691-692)	24 Jan 2019	Full release	N/A	Yes
72	284-285	Email – REFERRAL-EPA-201733198	23 Jan 2019	Full release	N/A	Yes
73	286-287	Email – REFERRAL-EPA-201733198 (attachment provided at pages 691-692)	25 Jan 2019	Full release	N/A	Yes
74	288-293	Email – REFERRAL-EPA-201733198	29 Jan 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes

75	294-296	Email – REFERRAL-EPA-201733198	29 Jan 2019	Full release	N/A	Yes
76	297-308	Email – NOTICE OF DECISION – 201733198 with attachments	5 Feb 2019	Full release	N/A	Yes
77	309-312	Email – EPA Response: Referral-EPA-Noise	9 Apr 2018	Full release	N/A	Yes
78	313-321	Email – EPA Response: Referral-EPA-Noise	16 May 2018	Partial release	Sch 2 s2.2 (a)(ii)	Yes
79	322-332	Email – NOTICE OF DECISION - 201733198	17 Oct 2019	Full release	N/A	Yes
80	333-341	Email – B18 S11 Mitchell	13 Oct 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
Total No of Docs						
80						

**From:**"EPAPlanningLiaison"

**Sent:**18/07/2014 4:28 AM

**To:**"ESDD, Customer Services" <ESDDCustomerServices@act.gov.au>

**Subject:**RE: REFERRAL-EPA-NOISE-HAZARDOUS MATERIAL-201425699-2/6 FYSHWICK-01

ESDD Customer Services,

DA 201425699

BLOCK: 2	SECTION: 6	DIVISION: FYSHWICK
----------	------------	--------------------

This DA has been assessed by the following:

Contaminated Lands	X
Hazardous Materials	X
Sediment and Erosion Control	X
Noise	X
Air quality	X
Water Resources	

And EPA provide the following:

No comments	
Recommend Conditions of Approval	
Advice for the applicant	
Recommend Lease Conditions	
Recommend Not Supported	X
Further Information/amendments Required	

The Environment Protection Authority do not support the proposed lease variation in its current form.

The conclusions drawn against criteria C3/C4 are not supported. Child care/health facility and other proposed uses have a significant potential to be incompatible with and restrict surrounding industrial uses, therefore, clearly do not "support, facilitate or provide access to industrial uses".

The consultants conclusion that contamination, odour, and light emission will be addressed as a part of DA lodgement for design and siting is not supported. Prior to new uses being added to the lease it must be clearly demonstrated that the block is suitable for the proposed uses.

Furthermore, the site is currently occupied by a commercial complex. Commercial complexes prior to the introduction of natural gas to the ACT in the 1980's utilised boiler heating or similar systems. These systems were generally fuelled by diesel or heating oil which was mainly stored in underground fuel storage tanks.

EPA records also indicate that hazardous materials may have been located on the property associated with its operation or former operation as an Animal Health Laboratory. Laboratories have, in the past, been associated with site contamination which may pose a risk to human health and the environment.

The ANZECC 1992, Guidelines for the Assessment and Management of Contaminated Sites and the Contaminated Sites Environment Protection Policy 2009 list fuel storage and chemical storage as past activities associated with land contamination which may pose a risk to human health and the environment.

Prior to the site being used for other purposes an environmental assessment must be undertaken by a suitably qualified environmental consultant to determine whether past activities have impacted the site from a contamination perspective and to determine whether the site is suitable for the proposed uses. The assessment must be undertaken in accordance with EPA endorsed guidelines must be reviewed and endorsed by the EPA prior to the site being used for other purposes.



The proposed uses also include noisy uses. Given the site has an existing building a noise management plan would also be required before the lease variation could be supported.

Regards,

Robin Brown | Environment Protection Authority Planning Liaison

Phone 02 6207 5642

Environment Protection and Water Regulation | Environment and Planning | ACT Government

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | [www.environment.act.gov.au](http://www.environment.act.gov.au)



---

**From:** ESDD, Customer Services

**Sent:** Thursday, 10 July 2014 2:55 PM

**To:** EPAPPlanningLiaison; McKeown, Helen

**Subject:** REFERRAL-EPA-NOISE-HAZARDOUS MATERIAL-201425699-2/6 FYSHWICK-01

MANDATORY REFERRAL

**DEVELOPMENT APPLICATION NO:** 201425699

**BLOCK:** 2 **SECTION:** 6 **DIVISION:** FYSHWICK

**Description - LEASE VARIATION - See application form for full details.**

Pursuant to Section 148(1) of the Planning and Development Act 2007 the ACT Planning and Land Authority requests that you consider the abovementioned development application and provide any written advice no later than 15 working days after the date of this notice (**31/07/2014**).

In accordance with Section 150 of the Planning and Development Act 2007 If advice is not received within the prescribed time it will be taken that you have supported the application.

Please forward any written advice via email to Customer Services –  
[ESDDcustomerservices@act.gov.au](mailto:ESDDcustomerservices@act.gov.au)

Please use the following format in the subject line of the email when providing advice:

COMM-Agency Name-20080XXXX-Block XX Section XX SuburbXXXXX-01

Example: COMM-Heritage-200801234-Block 10 Section 10 Dickson-01

Regards

Customer Services

Phone 02 6207 1923

Client Services Branch | Environment and Planning Directorate | ACT Government

Dame Pattie Menzies House, 16 Challis Street, Dickson | GPO Box 1908 Canberra ACT 2601

[www.actpla.act.gov.au](http://www.actpla.act.gov.au) | [ESDDcustomerservices@act.gov.au](mailto:ESDDcustomerservices@act.gov.au)

**From:** "EPD, Customer Services" <EPDCustomerServices@act.gov.au>

**Sent:** 11/01/2016 2:56 PM

**To:** "EPAPlanningLiaison" <EPAPlanningLiaison@act.gov.au>; "McKeown, Helen" <Helen.McKeown@act.gov.au>

**Subject:** REFERRAL-EPA-NOISE-EROSION & SEDIMENT-201528763-18/11 MITCHELL-01

NOTE FOR REFERRAL: Childcare in industrial zone & psi does not support childcare use

MANDATORY REFERRAL

**DEVELOPMENT APPLICATION NO: 201528763**

**BLOCK: 18 SECTION: 11 DIVISION: MITCHELL**

**Description: LEASE VARIATION - Please see application form for description.**

Pursuant to Section 148(1) of the Planning and Development Act 2007 the ACT Planning and Land Authority requests that you consider the abovementioned development application and provide any written advice no later than **15 working days** after the date of this notice (**02/02/2016**).

In accordance with Section 150 of the Planning and Development Act 2007 If advice is not received within the prescribed time it will be taken that you have supported the application.

Please forward any written advice via email to Customer Services –  
[EPDcustomerservices@act.gov.au](mailto:EPDcustomerservices@act.gov.au)

Please use the following format in the subject line of the email when providing advice:

COMM-Agency Name-20080XXXX-Block XX Section XX SuburbXXXXX-01

Example: COMM-Heritage-200801234-Block 10 Section 10 Dickson-01

Regards

Customer Services

**Phone 02 6207 1923**

**Access Canberra | ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601

*Access Canberra is an ACT Government service that brings together customer and regulatory services, including the former Environment and Planning Directorates Customer Services Team. Access Canberra has been set up to make it easier for business, community organisations and individuals to work with ACT Government and deliver a more seamless experience.*

[www.planning.act.gov.au](http://www.planning.act.gov.au) | [EPDcustomerservices@act.gov.au](mailto:EPDcustomerservices@act.gov.au)





**From:**"EPAPlanningLiaison"

**Sent:**11/01/2016 4:05 AM

**To:**"Heckenberg, Mark" <Mark.Heckenberg@act.gov.au>;"Dix, Rodney" <Rodney.Dix@act.gov.au>;"Power, David" <DAVID.POWER@act.gov.au>

**Cc:**"Ryan, Peter" <Peter.Ryan@act.gov.au>;"Walters, Daniel" <Daniel.WALTERS@act.gov.au>

**Subject:**FW: REFERRAL-EPA-NOISE-EROSION & SEDIMENT-201528763-18/11 MITCHELL-01

**Importance:**High

160011	11.1.2016	DA	DA201528763-B18S11-MITCHELL-LEASE
--------	-----------	----	-----------------------------------

Childcare centre proposed to be added to lease purpose clause.

Comments please 22.1.2016.

Regards,

Robin Brown | Environment Protection Authority Planning Liaison

**Phone 02 6207 5642**

**Environmental Quality** | Construction Environment & Workplace Protection | Access Canberra | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | [www.environment.act.gov.au](http://www.environment.act.gov.au)

---

**From:** EPD, Customer Services

**Sent:** Monday, 11 January 2016 2:57 PM

**To:** EPAPlanningLiaison; McKeown, Helen

**Subject:** REFERRAL-EPA-NOISE-EROSION & SEDIMENT-201528763-18/11 MITCHELL-01

NOTE FOR REFERRAL: Childcare in industrial zone & psi does not support childcare use

MANDATORY REFERRAL

**DEVELOPMENT APPLICATION NO: 201528763**

**BLOCK: 18 SECTION: 11 DIVISION: MITCHELL**

**Description: LEASE VARIATION - Please see application form for description.**

Pursuant to Section 148(1) of the Planning and Development Act 2007 the ACT Planning and Land Authority requests that you consider the abovementioned development application and provide any written advice no later than **15 working days** after the date of this notice (**02/02/2016**).

In accordance with Section 150 of the Planning and Development Act 2007 If advice is not received within the prescribed time it will be taken that you have supported the application.

Please forward any written advice via email to Customer Services –  
[EPDcustomerservices@act.gov.au](mailto:EPDcustomerservices@act.gov.au)

Please use the following format in the subject line of the email when providing advice:

COMM-Agency Name-20080XXXX-Block XX Section XX SuburbXXXXX-01

Example: COMM-Heritage-200801234-Block 10 Section 10 Dickson-01

Regards

Customer Services

**Phone 02 6207 1923**

**Access Canberra | ACT Government**

**Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601**

*Access Canberra is an ACT Government service that brings together customer and regulatory services, including the former Environment and Planning Directorates Customer Services Team. Access Canberra has been set up to make it easier for business, community organisations and individuals to work with ACT Government and deliver a more seamless experience.*

[www.planning.act.gov.au](http://www.planning.act.gov.au) | [EPDcustomerservices@act.gov.au](mailto:EPDcustomerservices@act.gov.au)



**From:** "Jones, Greg" <Greg.Jones@act.gov.au>  
**Sent:** 18/01/2016 3:21 PM  
**To:** "EPAPlanningLiaison" <EPAPlanningLiaison@act.gov.au>  
**Cc:** "McCabe, Mark" <Mark.McCabe@act.gov.au>  
**Subject:** RE: REFERRAL-EPA-NOISE-EROSION & SEDIMENT-201528763-18/11 MITCHELL-01

Hi Robin

Thanks for the heads-up advice.

Can we please discuss before you send off your response, I would like to get a feel for what advice we have provided to the EPD contact officer and what their feedback/reaction has been. Also, if there are any measures we can suggest that may mitigate the problems.

Regards

Greg

---

**From:** EPAPlanningLiaison  
**Sent:** Monday, 18 January 2016 10:05 AM  
**To:** Jones, Greg  
**Cc:** McCabe, Mark  
**Subject:** FW: REFERRAL-EPA-NOISE-EROSION & SEDIMENT-201528763-18/11 MITCHELL-01

Hi Greg,

A quick heads up for you – this DA proposes a lease variation to block 18 section 11 Mitchell. The proposal is to add “child care” to the lease purpose clause.

I will be forwarding advice to the Planning Authority consistent with recent similar proposals recommending the proposal be refused.

If I don't hear from you before COB tomorrow I will assume you have no questions or concerns and forward the advice.

Regards,

Robin Brown | Environment Protection Authority Planning Liaison

**Phone 02 6207 5642**

**Environmental Quality** | Construction Environment & Workplace Protection | Access Canberra | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | [www.environment.act.gov.au](http://www.environment.act.gov.au)

---

**From:** EPD, Customer Services  
**Sent:** Monday, 11 January 2016 2:57 PM  
**To:** EPAPlanningLiaison; McKeown, Helen  
**Subject:** REFERRAL-EPA-NOISE-EROSION & SEDIMENT-201528763-18/11 MITCHELL-01

NOTE FOR REFERRAL: Childcare in industrial zone & psi does not support childcare use



## MANDATORY REFERRAL

**DEVELOPMENT APPLICATION NO: 201528763**  
**BLOCK: 18 SECTION: 11 DIVISION: MITCHELL**

**Description: LEASE VARIATION - Please see application form for description.**

Pursuant to Section 148(1) of the Planning and Development Act 2007 the ACT Planning and Land Authority requests that you consider the abovementioned development application and provide any written advice no later than **15 working days** after the date of this notice (**02/02/2016**).

In accordance with Section 150 of the Planning and Development Act 2007 If advice is not received within the prescribed time it will be taken that you have supported the application.

Please forward any written advice via email to Customer Services –  
[EPDcustomerservices@act.gov.au](mailto:EPDcustomerservices@act.gov.au)

Please use the following format in the subject line of the email when providing advice:  
COMM-Agency Name-20080XXXX-Block XX Section XX SuburbXXXX-01  
Example: COMM-Heritage-200801234-Block 10 Section 10 Dickson-01

Regards

Customer Services

**Phone 02 6207 1923**

**Access Canberra | ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601

*Access Canberra is an ACT Government service that brings together customer and regulatory services, including the former Environment and Planning Directorates Customer Services Team. Access Canberra has been set up to make it easier for business, community organisations and individuals to work with ACT Government and deliver a more seamless experience.*

[www.planning.act.gov.au](http://www.planning.act.gov.au) | [EPDcustomerservices@act.gov.au](mailto:EPDcustomerservices@act.gov.au)



**From:** "EPAPlanningLiaison"  
**Sent:** 17/01/2016 11:05 PM  
**To:** "Jones, Greg" <Greg.Jones@act.gov.au>  
**Cc:** "McCabe, Mark" <Mark.McCabe@act.gov.au>  
**Subject:** FW: REFERRAL-EPA-NOISE-EROSION & SEDIMENT-201528763-18/11 MITCHELL-01

Hi Greg,

A quick heads up for you – this DA proposes a lease variation to block 18 section 11 Mitchell. The proposal is to add “child care” to the lease purpose clause.

I will be forwarding advice to the Planning Authority consistent with recent similar proposals recommending the proposal be refused.

If I don't hear from you before COB tomorrow I will assume you have no questions or concerns and forward the advice.

Regards,

Robin Brown | Environment Protection Authority Planning Liaison

**Phone 02 6207 5642**

**Environmental Quality** | Construction Environment & Workplace Protection | Access Canberra | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | [www.environment.act.gov.au](http://www.environment.act.gov.au)

---

**From:** EPD, Customer Services  
**Sent:** Monday, 11 January 2016 2:57 PM  
**To:** EPAPlanningLiaison; McKeown, Helen  
**Subject:** REFERRAL-EPA-NOISE-EROSION & SEDIMENT-201528763-18/11 MITCHELL-01

NOTE FOR REFERRAL: Childcare in industrial zone & psi does not support childcare use

MANDATORY REFERRAL

**DEVELOPMENT APPLICATION NO: 201528763**  
**BLOCK: 18 SECTION: 11 DIVISION: MITCHELL**

**Description: LEASE VARIATION - Please see application form for description.**

Pursuant to Section 148(1) of the Planning and Development Act 2007 the ACT Planning and Land Authority requests that you consider the abovementioned development application and provide any written advice no later than **15 working days** after the date of this notice (**02/02/2016**).

In accordance with Section 150 of the Planning and Development Act 2007 If advice is not received within the prescribed time it will be taken that you have supported the application.

Please forward any written advice via email to Customer Services –  
[EPDcustomerservices@act.gov.au](mailto:EPDcustomerservices@act.gov.au)

Please use the following format in the subject line of the email when providing advice:  
COMM-Agency Name-20080XXXX-Block XX Section XX SuburbXXXXX-01  
Example: COMM-Heritage-200801234-Block 10 Section 10 Dickson-01

Regards

Customer Services

**Phone 02 6207 1923**

**Access Canberra | ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601

*Access Canberra is an ACT Government service that brings together customer and regulatory services, including the former Environment and Planning Directorate's Customer Services Team. Access Canberra has been set up to make it easier for business, community organisations and individuals to work with ACT Government and deliver a more seamless experience.*

[www.planning.act.gov.au](http://www.planning.act.gov.au) | [EPDcustomerservices@act.gov.au](mailto:EPDcustomerservices@act.gov.au)





**From:**"EPAPlanningLiaison"

**Sent:**21/01/2016 5:23 AM

**To:**"EPD, Customer Services" <EPDCustomerServices@act.gov.au>

**Cc:**"Jones, Greg" <Greg.Jones@act.gov.au>

**Subject:**RE: REFERRAL-EPA-NOISE-EROSION & SEDIMENT-201528763-18/11 MITCHELL-01

Environment & Planning Directorate,

Please see below revised comments:

DA 201528763

BLOCK: 18	SECTION: 11	DIVISION: MITCHELL
-----------	-------------	--------------------

This DA has been assessed by the following:

Contaminated Lands	X
Hazardous Materials	X
Sediment and Erosion Control	X
Noise	X
Air quality	X
Water Regulation	X

And EPA provide the following:

No comments	
Recommend Conditions of Approval	
Advice for the applicant	
Recommend Lease Conditions	
Recommend not supported	X
Further Information/amendments Required	

The proposed lease variation is not supported. The site is located in an industrial zone. The proposed activity has not been demonstrated to be compatible with activities permitted in the surrounding zoning.

Activation of the site for the proposed use would potentially sterilise the surrounding area from future industrial activities.

Furthermore, the report titled "Preliminary Site Investigation, Block 18, Section 11, Mitchell, ACT" dated 6 November 2015 by SMEC Australia Pty Ltd attached to this application has not indicated the site is fit for the proposed use and has identified areas of environmental concern recommending further assessment and possible remediation.

Regards,

Robin Brown | Environment Protection Authority Planning Liaison

**Phone 02 6207 5642**

**Environmental Quality** | Construction Environment & Workplace Protection | Access Canberra | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | [www.environment.act.gov.au](http://www.environment.act.gov.au)

---

**From:** EPD, Customer Services

**Sent:** Monday, 11 January 2016 2:57 PM

**To:** EPAPanningLiaison; McKeown, Helen

**Subject:** REFERRAL-EPA-NOISE-EROSION & SEDIMENT-201528763-18/11 MITCHELL-01

NOTE FOR REFERRAL: Childcare in industrial zone & psi does not support childcare use

MANDATORY REFERRAL

**DEVELOPMENT APPLICATION NO:** 201528763

**BLOCK:** 18 **SECTION:** 11 **DIVISION:** MITCHELL

**Description:** LEASE VARIATION - Please see application form for description.

Pursuant to Section 148(1) of the Planning and Development Act 2007 the ACT Planning and Land Authority requests that you consider the abovementioned development application and provide any written advice no later than **15 working days** after the date of this notice (**02/02/2016**).

In accordance with Section 150 of the Planning and Development Act 2007 If advice is not received within the prescribed time it will be taken that you have supported the application.

Please forward any written advice via email to Customer Services –  
[EPDcustomerservices@act.gov.au](mailto:EPDcustomerservices@act.gov.au)

Please use the following format in the subject line of the email when providing advice:  
COMM-Agency Name-20080XXXX-Block XX Section XX SuburbXXXXX-01  
Example: COMM-Heritage-200801234-Block 10 Section 10 Dickson-01

Regards

Customer Services

**Phone 02 6207 1923**

**Access Canberra | ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601

*Access Canberra is an ACT Government service that brings together customer and regulatory services, including the former Environment and Planning Directorates Customer Services Team. Access Canberra has been set up to make it easier for business, community organisations and individuals to work with ACT Government and deliver a more seamless experience.*

[www.planning.act.gov.au](http://www.planning.act.gov.au) | [EPDcustomerservices@act.gov.au](mailto:EPDcustomerservices@act.gov.au)







**ACT**  
Government

Environment and Planning

# CHECKLIST

## Dispatch Advice Checklist

DA Number: 201528763 Block(s): 18 Section: 11 District/Division: MITCHELL

Case Officer: RHONDA Contact Number: 71794 Decision Date: 8/3/16

Application Type: **MERIT TRACK DA**

Dispatch Plans: **NO** Dispatch by: **Make Selection**

☐ 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**

☒ A PDF copy 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 decision/approved plans folder.

Type of Decision: **REFUSED** 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)

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".**

DA Leasing Referral Required: **YES**

Deed Mgt. Referral Required: **Make Selection**

Land Reg. Referral Required: **Make Selection**

<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 checked="" type="checkbox"/>	ACT Health
<input type="checkbox"/>	ACT Heritage Council
<input checked="" 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"/>	Conservator of Flora and Fauna
<input type="checkbox"/>	Custodian of the land -
<input type="checkbox"/>	Emergency Services (Fire or Ambulance)
<input checked="" type="checkbox"/>	Environment Protection Agency
<input type="checkbox"/>	Gambling and Racing Commission
<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"/>	Office of Regulatory Services - 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 checked="" 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 checked="" type="checkbox"/>	Other – social infrastructure planning; DET - susan sullivan & CECA

Comments



**ACT**  
Government

Environment and Planning

# Notice of decision

Under Part 7 of the *Planning and Development Act 2007*

## Merit track

---

DA NO: 201528763		DATE LODGED: 4 January 2016
DATE OF DECISION: 8 March 2016		
BLOCK: 18	SECTION: 11	SUBURB: MITCHELL
STREET NO AND NAME: cnr Darling Street and Heffernan Street		
APPLICANT: Capital Crown Leasing Pty Ltd		
LESSEE: KONSTANTINOU DEVELOPMENTS PTY LTD		

### THE DECISION

This application was lodged in the merit track. Pursuant to section 113(2) of the *Planning and Development Act 2007*, the application must be assessed according to the provisions relevant to merit track applications.

I, Rhonda Myers, delegate of the planning and land authority, pursuant to section 162 of the Act, hereby **refuse** the proposal to vary the Crown lease to permit Community Use limited to Child Care Facility.

**PART 1** sets out the Reasons for the Decision

**PART 2** is Public Notification and Entity Advice.

**PART 3** contains administrative information relating to the determination.

### DELEGATE

Rhonda Myers  
Delegate of the planning and land authority  
Environment and Planning Directorate  
8 March 2016

### CONTACT OFFICER

Rhonda Myers  
Phone: (02) 6207 1794  
Email: Rhonda.myers@act.gov.au



## PART 1

### REASONS FOR THE DECISION

In accordance with section 119 of the Act, the application was refused because it did not comply with the legislated requirements for merit track applications. The application was inconsistent with:

- the relevant codes, being the Industrial Zones Development Code, Community and Recreation Facilities Location Guidelines General Code, and the Lease Variation General Code;
- the Territory Plan; and
- advice given by entities, the entities being the Environment Protection Authority and the Health Protection Service.

The development proposal is inconsistent with:

#### Mixed Use Industrial Zones objectives:

- a) *Support the diversification and expansion of the ACT's industrial base and employment growth* – this proposal is not for industrial development.
- b) *Facilitate investment in a wide range of industrial and related activities, with efficient land utilisation and provision of infrastructure* – this proposal is not an industrial or industry-related activity.
- c) *Provide convenient access for ACT and regional residents to industrial goods, services and employment opportunities* – this proposal is not for industrial development.
- g) *Accommodate industry-associated retailing, services and other commercial uses without jeopardising an adequate supply of industrial land* – this is a commercial use that due to the sensitivity of requirements for childcare, will likely jeopardise the capability for industrial use of surrounding land. It has not been demonstrated that this proposal will not jeopardise the ability to use the area for general industrial type uses.
- i) *Meet the need for a mix of lower rent bulky goods retailing, specialised industrial, commercial and service activities alongside general industry* – the proposal is for a commercial use, however, it is not demonstrated to be compatible with general industry.
- j) *Preserve and promote viable industries that can coexist with more commercially oriented uses* – this proposal does not demonstrate the ongoing preservation and promotion of viable industries as it is not demonstrated that child care facility can co-exist with general industrial type uses.
- k) *Make provision for small-scale services that support surrounding industrial activities, or which meet the needs of the local workforce* – it does not appear from the application that it is proposed to be a small scale service and it has not been demonstrated how the proposal meets the needs of the local workforce.

#### Industrial Zones Development Code:

*C3. Community uses are to be considered only where it is demonstrated that the proposed use does not jeopardise the use of surrounding land for industrial purposes.*

This has not been demonstrated as by its nature it has a social expectation to be a sensitive use with regards to air quality, noise, risk of illness/injury from contaminants. Building design can only mitigate to some extent as, amongst other requirements, there is a requirement for outside play areas for licensing. In an industrial zone, general industry and the like uses, including business and traffic noise exhaust fumes etc, may adversely impact the occupants of a child care facility. Therefore, there is potential to jeopardise the use of the surrounding area for industrial purposes. The application has not demonstrated otherwise.

*C4 An application for community uses demonstrates that the proposed use:*

- a) *services the needs of the local workforce, or*
- b) *requires a scale of building or level of amenity that is not compatible with other available land.*

It has not been demonstrated that the proposal services the needs of the local workforce or that the scale or level of amenity required by childcare facility has been provided to demonstrate that it is not compatible with other available land.

Industrial type uses are limited to particular locations such as Fyshwick, Hume, Mitchell and parts of Oaks Estate and Symonston due to their possible incompatibility with sensitive uses such as child care facility and residential use. However, it is considered that a child care facility could be located elsewhere on other available land and it has not been demonstrated otherwise.

*C33 Where the proposed use is adjacent to, or is, a noise producing activity, noise attenuation measures are utilised to protect the amenity of the area and promote compatibility of uses.*

It has not been demonstrated how noise attenuation measures to attenuate industrial noise, including heavy vehicle noise, could be applied to the site, particularly the required outside play areas that are part of childcare centre requirements. It is noted that there is a bulky landscape supplier located adjacent to this site. In addition to potential for air contaminants based on the nature of its operation, the vehicles associated with and mechanical equipment used to operate a bulk landscape premises are likely to be incompatible with a child care facility. There are also a number of mechanical workshops in the immediate area, which are also potentially incompatible with a child care facility. The surrounding leases permit uses in the realm of general industry, a use that may be restricted by the introduction of a child care facility in this location.

#### Community and Recreation Facilities Location Guidelines General Code

It has not been demonstrated that a child care facility at this location has *social separation from correctional facilities, and can be adequately buffered from sight, smell, fumes and noise of industrial uses and fumes from high traffic volumes.*

Of particular note were the following:

- Heffernan Street, adjacent to the site, is subject to on street parking and regular heavy vehicle use.
- A floodway channel is adjacent to the site that runs from Franklin through Mitchell to an operational dam to the south of Mitchell.
- Corkhill Bros Landscape Supplies, a landscaping materials retail facility with open air landscape materials storage, is adjacent to the block.
- There is a fire arms and ammunition dealer/shop in a building 65 metres from the site.
- There are multiple mechanical workshops and industrial manufacturers in the immediate area.
- Flemington Road, which is within 125 metres from the block, is a major transport route from Gungahlin and experiences high traffic volumes.
- A facility containing the Total Care linen treatment plant, a sterilisation service, and an ACT Fire Brigade technical and operations depot is approximately 260m from the block. There are operational chimneys which were viewed expelling an unknown smoke/steam-like substance at the time of inspection by the assessing officer.
- The National Archives facility, used for the purposes of discharging its functions under the *Archives Act 1983 (C'wth)* and which may include chemical treatment of materials, is approximately 270m from the block. The development on that site contains chimneys which may indicate that some chemical treatment may be, or may have been, carried out

at the premises.

- There is an operational dam (waterway) at the intersection of Flemington and Morriset Roads, within approximately 350m of the block.
- The block containing the Mitchell Recycling Plant, also known as Mitchell Tip, is less than 500m from the subject block.
- A block containing a correctional centre (for children) is within approximately 975m of the subject block.

#### Lease variation general code

*C1 A lease is varied only where all of the following are achieved:*

- a) the varied lease is consistent with the Territory Plan including all relevant codes*
- b) the land to which the lease applies is suitable for the development or use authorised by the varied lease.*

The proposal is inconsistent with the Territory Plan as is raised above.

The land to which the lease applies is not suitable for the development for the following reasons:

The conclusion of the Preliminary Site Investigation Report (PSI) prepared by SMEC is: "Based on the review of available data SMEC consider the Site to be currently unsuitable for the proposed child care facility. SMEC recommend consideration of the recommendations provided below in Table 6.1."

Some entities did not support the use of the land after review of the PSI.

*C3 An additional use is authorised by a lease only when all of the following are achieved if the additional use is granted and activated:*

*(a) sufficient car parking is provided on site or is available off site in accordance with the Parking and Vehicular Access General Code (PVAGC) – the indicative plans did not demonstrate how the proposal would meet the requirements of the PVAGC. A development application that included the proposed parking and block access points would be subject to assessment and the proposed dual access would be subject to agreement from Territory and Municipal Services Directorate. There is no available on street parking as it is already fully utilised. Suitability of alternative parking arrangements in the existing public parking on Winchcombe Court may be affected by the adjacent swale and safety issues that arise therewith. As the indicative plans are reliant upon a drop off/pick up area accessed through a "circular" driveway, in the absence of supporting evidence, the proposed parking configuration is not demonstrated as sufficient.*

*(b) any increase in traffic flow is within the capacity of the surrounding road network – the effect of the increase in and changes to traffic flow as a result of the introduction of a child care facility on this corner block was not demonstrated as being compatible with the capacity of the surrounding road network in particular Heffernan Street.*

*(e) no unreasonable risk to occupants of the block through any contamination of the block or on adjoining land – the PSI and an inspection of the surrounding existing uses in the area did not support compliance with this criteria. Of particular note were the operating bulk landscape supplier and manufacturing businesses on adjoining blocks, and the mechanical workshop and factory/manufacturing businesses in the immediate area. It is also noted that the Units Plan lease of an adjoining block has a purpose clause that permits "storage sale distribution and hire of building materials and equipment builders' hardware garden supplies sporting equipment coal and firewood" amongst other uses. Future activation of these uses, if they are not already activated, would be expected to have an impact on the operation of a child care facility or jeopardise the use of the land in a manner consistent with the existing permitted uses.*

*C4 Community facilities or recreational facilities that are authorised by a lease comply with the Community and Recreational Facilities Location Guidelines General Code.*

It has not been demonstrated that a child care facility at this location has social separation from correctional facilities, and can be adequately buffered from sight, smell, fumes and noise of industrial uses and fumes from high traffic volumes. Please refer to explanation above under the title Community and Recreation Facilities Location Guidelines General Code.

A number of entities did not support this proposal. Please refer to the Entity Comments in Part 2 of the decision for their advice. A copy of their advice is also included with the decision.

## **EVIDENCE**

**Application No. 201528763**

**File No. 1-2015/28734**

**The Territory Plan zone – IZ2**

**The Development Codes – Industrial Zones Development Code**

**The Precinct Codes – Mitchell Precinct Code**

**The General Codes – Lease Variation General Code, Community and Recreation Facilities Location Guidelines General Code**

**Current Crown Lease – Volume 1829 Folio 31**

**Representation**

**Entity advice**

## **PART 2**

### **PUBLIC NOTIFICATION AND ENTITY ADVICE**

#### **PUBLIC NOTIFICATION**

Pursuant to Division 7.3.4 of the Act, the application was publicly notified from 13 January 2016 to 4 February 2016. One written representation was received during public notification.

The main issues raised were as follows. Comments are provided as appropriate.

(a) **Heffernan Street traffic**

A site inspection was carried out noting the existing on street parking adjacent to the block on both sides of Heffernan Street was 95% occupied. It was also noted that the on street parking limited Heffernan Street to vehicles travelling single lane, with no ability of vehicles to pass each other in opposing directions on the street. The public parking on Winchcombe Court was also almost at capacity. It was noted that during the site inspection that another close by tenant raised concerns about the volume of heavy vehicle and other traffic on Heffernan Street and its potential impact on a child care facility.

(b) **Proximity of premises licensed under the Fire Arms Act 1996**

A fire arms and ammunition dealer/shop is located close to the premises. Neither the Territory Plan nor the Fire Arms Act place restrictions on the proximity of these types of facilities with each other. However, the concerns that the introduction of a child care facility in the immediate area may have an adverse affect on the operation of this dealership/shop are noted.

**ENTITY ADVICE**

Pursuant to Division 7.3.3 of the Act, the application was referred to entities and advice was received. The referral entities' comments are as follows. A response to the advice is provided as appropriate.

Environment Protection Authority

On 21 January 2016 advice was received from the Environment Protection Authority in relation to the proposal. The advice states that:

The proposed lease variation is not supported. The site is located in an industrial zone. The proposed activity has not been demonstrated to be compatible with activities permitted in the surrounding zoning.

Activation of the site for the proposed use would potentially sterilise the surrounding area from future industrial activities.

Furthermore, the report titled "Preliminary Site Investigation, Block 18, Section 11, Mitchell, ACT" dated 6 November 2015 by SMEC Australia Pty Ltd attached to this application has not indicated the site is fit for the proposed use and has identified areas of environmental concern recommending further assessment and possible remediation.

ACT Health, Health Protection Service

On 24 February 2016 advice was received from the Health Protection Service in relation to the proposal. The advice states that:

The HPS supports the recommendation of the Environment Protection Authority that further site investigation is undertaken by a suitably qualified environmental consultant prior to the variation of the lease.

The HPS is concerned at the proposal to alter the lease to allow a child care centre within an industrial zone. The proposed changes appear to offer potential for incompatible industries to be established within close proximity to a child care centre. The HPS is concerned that such industries adjacent to a future child care centre may pose health risks to vulnerable populations, including developing children.

ACT Education, Regulation and Compliance

On 4 March 2016 advice was received from ACT Education in relation to the proposal. The advice states that:

DET conducted a site visit to this block in October 2015 and provided in principle support for an education and care service being located on the site.

However, in their correspondence with the applicant they did express concern about the location of the site being a busy street corner. They did discuss the site location being in an industrial area but that the adjacent businesses were currently low intensity with some green zones.

DET notes that their legislation is not very prescriptive about where services can be located, as long as children's health and safety needs are met.

---

### TERRITORY AND MUNICIPAL SERVICES DIRECTORATE

On 29 January 2016 advice was received from Territory and Municipal Services in relation to the proposal. The advice states that further information is required to consider the proposal in particular:

1. The proponent needs to submit a traffic and parking assessment report to justify the suitability of a childcare centre from traffic management and safety perspective.
2. The traffic and parking assessment report must include potential transport options, impact on adjacent road network and safe pick up and drop off facilities requirement for a childcare centre on the subject site. Based on the analysis the traffic report must recommend optimum number of childcare spaces on the subject site and any traffic management and safety measures required such as off-street parking, pedestrian connection or crossing facilities etc.

Further information was not sought as approval of this proposal would be contrary to entity advice from other entities.

### SOCIAL INFRASTRUCTURE PLANNING – 29 February 2016

On 29 February 2016 advice was received from Social Infrastructure Planning in relation to the proposal. The advice states that:

The proponent would need to demonstrate that in line with the Territory Plan Industrial Zones Development Code that the proposed use does not jeopardise the use of surrounding land for industrial purposes (C3). Also would need to demonstrate that a child care centre in this location services the needs of the local workforce (C4).

The advice of the entity would indicate that they were not satisfied with the information provided for assessment. Further information was not sought as approval of this proposal would be contrary to entity advice from other entities.

### ActewAGL – Gas Networks

On 14 January 2016 advice was received from ACTEW Gas Networks in relation to the proposal. The advice states that

This application is supported subject to compliance with the following conditions:

- The location and area allocated for gas regulating and metering equipment is to comply with ActewAGL Gas Service and Installation Rules. The latest version of these rules can be downloaded from: <http://www.actewagl.com.au/About-us/The-ActewAGL-network/Natural-gas-network.aspx>
- Development is to comply with minimum separation requirements to underground assets
  - 300mm minimum clearance from major plastic and steel gas mains and steel gas services
  - 150mm minimum clearance from other plastic gas mains and services

### Icon Water (formerly ActewAGL Water)

On 19 January 2016 advice was received from Icon Water in relation to the proposal. The conditions of the ICON decision statement are: Changes to the lease for use of the land and further development of the block may require augmentation to the utilities water or sewer networks. Augmentation of the networks associated with further development of the block are to be funded by the developer.

## **PART 3**

### **ADMINISTRATIVE INFORMATION**

#### 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 and Planning Directorate Dickson Customer Service Centre at 16 Challis Street, Dickson, ACT.

#### RECONSIDERATION OF THE DECISION

If the applicant is not satisfied with the decision to refuse the application, they are entitled to apply to the planning and land authority for reconsideration within 20 working days of being told of this decision or within any longer period allowed by the planning and land authority.

To submit an application for reconsideration, documents must be provided electrically by email to [epdcustomerservices@act.gov.au](mailto:epdcustomerservices@act.gov.au) or provided at the customer service centre on a CD/DVD. The delegate of the Authority reconsidering the decision must be different from, and senior to, the original decision maker. An application for reconsideration does not prevent an application for a review of the same decision being made to the ACT Civil and Administrative Tribunal. Application forms and further information about reconsideration are available from the planning and land authority's website and Customer Service Centres.

#### REVIEW BY THE ACT CIVIL AND ADMINISTRATIVE TRIBUNAL (ACAT)

Decisions that are reviewable by the ACAT are identified in Schedule 1 of the *Planning and Development Act 2007*, except for those precluded under Schedule 3 of the *Planning and Development Regulation 2008* – Matters exempt from third-party ACAT review.

This Notice of decision has also been sent to all people who made representations in relation to the proposal.

## APPENDIX 1

### REVIEW OF THE DECISION

The following notes are provided in accordance with regulation 7 of the *ACT Civil and Administrative Tribunal Regulation 2009*. Refer to the Review by the ACT Civil and Administrative Tribunal (ACAT) section of the Notice of Decision for information about its relevance to this development application.

### CONTACT DETAILS

The review authority is the ACT Civil and Administrative Tribunal (ACAT).

Location	Contact details
ACT Civil and Administrative Tribunal Level 4, 1 Moore Street CANBERRA CITY ACT 2601	Website: <a href="http://www.acat.act.gov.au">www.acat.act.gov.au</a> Email: <a href="mailto:tribunal@act.gov.au">tribunal@act.gov.au</a> Telephone: (02) 6207 1740 Facsimile: (02) 6205 4855 Post: GPO Box 370, CANBERRA, ACT, 2601

### POWERS OF THE ACAT

The ACAT is an independent body. It can review on their merits a large number of decisions made by ACT Government ministers, officials and statutory authorities. 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.

### APPLICATIONS TO THE ACAT

To apply for a review, obtain an application form from the ACAT. You can also download the form from the ACT Legislation Register <http://www.legislation.act.gov.au/af/2009-278/current/pdf/2009-278.pdf>.

If you are applying on behalf of an organisation or association of persons, 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.

### TIME LIMITS FOR APPLICATIONS

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*; section 7 of the *ACT Civil and Administrative Tribunal Procedure Rules 2009 (No 2)*; and section 409 of the *Planning and Development Act 2007*).

### FEES

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.

Write to: The Chief Executive, Justice and Community Safety Directorate, GPO Box 158, CANBERRA ACT 2601. Ask the ACAT for more details.



### TIME LIMITS FOR REVIEWS OF DECISIONS

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.

### FORMS OF LEGAL, FINANCIAL AND OTHER ADVICE AND ASSISTANCE

The following organisations can provide advice and assistance if you are eligible:

- ACT Attorney-General, write to The Chief Executive, of Justice and Community Safety Directorate, GPO Box 158, CANBERRA, ACT, 2601;
- the ACT Legal Aid Office, telephone 1300 654314;
- Legal Advice Bureau, telephone (02) 6247 5700;
- ACT Council of the Ageing, telephone (02) 6282 3777; and
- Welfare Rights and Legal Centre, telephone (02) 6247 2177.

### AWARDING OF COSTS

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 if the party contravenes a direction of the ACAT and the ACAT considers it in the interests of justice to make such an order. 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.

### ACCESS TO DOCUMENTS ABOUT THE DECISION

You may apply for access to any documents you consider relevant to this decision under the ACT Freedom of Information Act 1989. Information about Freedom of information requests is available on the planning and land authority's web site or by contacting us by phone on (02) 6207 1923.

### PROCEDURES OF THE ACAT

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.

**TRANSLATION AND INTERPRETER SERVICES**

The ACT Government's translation and interpreter service runs 24 hours a day, every day of the week. Telephone 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-għajjnuna 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:
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:** "EPAPlanningLiaison"

**Sent:** 21/07/2016 10:58 PM

**To:** "Heckenberg, Mark" <Mark.Heckenberg@act.gov.au>; "Dix, Rodney" <Rodney.Dix@act.gov.au>; "Clayton, Des" <Des.Clayton@act.gov.au>; "Nilsen, Tom" <Tom.Nilsen@act.gov.au>

**Cc:** "Brown, Robin" <Robin.Brown@act.gov.au>

**Subject:** FW: REFERRAL-EPA-RECONSIDERATION-201528763-18/11 MITCHELL-01 [SEC=UNCLASSIFIED]

18.7.2016	DA	DA201528763-B18S11-MITCHELL-Application for reconsideration
-----------	----	---

Comments by 01/08/2016 please.

Note- All comments to be made in the database and notified to EPA Liaison email address please.

Regards

Irfan

Irfan Yousaf | a/g EPA Liaison Officer, Environmental Quality

Phone: +61 2 6205 4797 | Email: [irfan.yousaf@act.gov.au](mailto:irfan.yousaf@act.gov.au)

Construction, Environment and Workplace Protection | **Access Canberra** | ACT Government

GPO Box 158 Canberra ACT 2601 | <http://www.act.gov.au/accesschr>



---

**From:** EPD, Customer Services

**Sent:** Monday, 18 July 2016 2:09 PM

**To:** EPAPlanningLiaison

**Cc:** McKeown, Helen

**Subject:** REFERRAL-EPA-RECONSIDERATION-201528763-18/11 MITCHELL-01 [SEC=UNCLASSIFIED]

Good Afternoon,

The Environment and Planning Directorate has received an Application for Reconsideration for the following Development Application:

**Block:** 18      **Section:** 11      **Suburb:** MITCHELL

**Development Application Number:** 201

The Application for reconsideration is being applied against REFUSAL OF PROPOSAL.

Attached is a copy of the additional information supplied by the applicant in relation to the issues they seek to have reviewed.

Your advice by **05/08/2016** would be greatly appreciated to ensure the reconsideration application can be determined within the prescribed period of 20 working days from the date of lodgement.

Please forward any written advice to Customer Service at [epdcustomerservices@act.gov.au](mailto:epdcustomerservices@act.gov.au)

If you require any further information please contact customer service on 6207 1923.

Kind Regards

Jenna

**Phone 02 6207 1923**

Customer Services | Access Canberra

Environment, Planning and Land

Building Services

16 Challis Street, Dickson | 8 Darling Street, Mitchell

GPO Box 158 Canberra ACT 2601

*Access Canberra brings together customer and regulatory services*

[www.planning.act.gov.au](http://www.planning.act.gov.au) | [EPDcustomerservices@act.gov.au](mailto:EPDcustomerservices@act.gov.au)



**From:** "Pearson, Luke" <Luke.Pearson@act.gov.au>  
**Sent:** 25/07/2016 10:55 AM  
**To:** "EPAPlanningLiaison" <EPAPlanningLiaison@act.gov.au>  
**Subject:** RE: REFERRAL-EPA-RECONSIDERATION-201528763-18/11 MITCHELL-01 [SEC=UNCLASSIFIED]

Hi Robin,

We will discuss in more detail when your available.

**Luke Pearson** | Environment Protection Officer  
Phone: 02 6205 2274 | Email: [luke.pearson@act.gov.au](mailto:luke.pearson@act.gov.au)  
| **Construction, Environment & Workplace Protection** | Access Canberra | ACT Government  
GPO Box 158 Canberra City ACT 2601 | [www.act.gov.au/accesscbr](http://www.act.gov.au/accesscbr)



---

**From:** Dix, Rodney  
**Sent:** Friday, 22 July 2016 11:13 AM  
**To:** Pearson, Luke; Ryan, Peter  
**Subject:** FW: REFERRAL-EPA-RECONSIDERATION-201528763-18/11 MITCHELL-01 [SEC=UNCLASSIFIED]

Luke/Peter

Please review and provide comments as required.

Thanks

Rodney Dix | Manager  
Phone: +61 2 6207 2586 | Fax: +61 2 6207 6084 | Email: [rodney.dix@act.gov.au](mailto:rodney.dix@act.gov.au)  
Environment Protection | Access Canberra | ACT Government  
Level 2 North - Dame Pattie Menzies House | 16 Challis Street Dickson | GPO Box 158 Canberra ACT 2601 | [www.environment.act.gov.au](http://www.environment.act.gov.au)

---

**From:** Yousaf, Irfan **On Behalf Of** EPAPlanningLiaison  
**Sent:** Friday, 22 July 2016 8:58 AM  
**To:** Heckenberg, Mark; Dix, Rodney; Clayton, Des; Nilsen, Tom  
**Cc:** Brown, Robin  
**Subject:** FW: REFERRAL-EPA-RECONSIDERATION-201528763-18/11 MITCHELL-01 [SEC=UNCLASSIFIED]

18.7.2016	DA	DA201528763-B18511-MITCHELL-Application for reconsideration
-----------	----	---

Comments by 01/08/2016 please.

Note- All comments to be made in the database and notified to EPA Liaison email address please.

Regards  
Irfan

Irfan Yousaf | a/g EPA Liaison Officer, Environmental Quality



Phone: +61 2 6205 4797 | Email: [irfan.yousaf@act.gov.au](mailto:irfan.yousaf@act.gov.au)

Construction, Environment and Workplace Protection | **Access Canberra** | ACT Government

GPO Box 158 Canberra ACT 2601 | <http://www.act.gov.au/accesscbr>



---

**From:** EPD, Customer Services

**Sent:** Monday, 18 July 2016 2:09 PM

**To:** EPAPanningLiaison

**Cc:** McKeown, Helen

**Subject:** REFERRAL-EPA-RECONSIDERATION-201528763-18/11 MITCHELL-01 [SEC=UNCLASSIFIED]

Good Afternoon,

The Environment and Planning Directorate has received an Application for Reconsideration for the following Development Application:

**Block: 18      Section: 11      Suburb: MITCHELL**  
**Development Application Number: 201**

The Application for reconsideration is being applied against REFUSAL OF PROPOSAL.

Attached is a copy of the additional information supplied by the applicant in relation to the issues they seek to have reviewed.

Your advice by **05/08/2016** would be greatly appreciated to ensure the reconsideration application can be determined within the prescribed period of 20 working days from the date of lodgement.

Please forward any written advice to Customer Service at [epdcustomerservices@act.gov.au](mailto:epdcustomerservices@act.gov.au)

If you require any further information please contact customer service on 6207 1923.

Kind Regards

Jenna

**Phone 02 6207 1923**

Customer Services | Access Canberra

Environment, Planning and Land

Building Services

16 Challis Street, Dickson | 8 Darling Street, Mitchell

GPO Box 158 Canberra ACT 2601

*Access Canberra brings together customer and regulatory services*

[www.planning.act.gov.au](http://www.planning.act.gov.au) | [EPDcustomerservices@act.gov.au](mailto:EPDcustomerservices@act.gov.au)



**From:**"EPAPlanningLiaison"

**Sent:**25/07/2016 12:22 AM

**To:**"Pearson, Luke" <Luke.Pearson@act.gov.au>

**Subject:**FW: REFERRAL-EPA-NOISE-EROSION & SEDIMENT-201528763-18/11 MITCHELL-01 [SEC=UNCLASSIFIED, DLM=For-Official-Use-Only]

FYI – Previous comments as per below.

Regards,

Robin Brown | A/g Manager Environmental Quality

**Phone 02 6207 5642**

**Environmental Quality** | Construction Environment & Workplace Protection | Access Canberra | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | [www.environment.act.gov.au](http://www.environment.act.gov.au)

---

**From:** EPAPlanningLiaison

**Sent:** Thursday, 21 January 2016 4:24 PM

**To:** EPD, Customer Services

**Cc:** Jones, Greg

**Subject:** RE: REFERRAL-EPA-NOISE-EROSION & SEDIMENT-201528763-18/11 MITCHELL-01

Environment & Planning Directorate,

Please see below revised comments:

DA 201528763

BLOCK: 18	SECTION: 11	DIVISION: MITCHELL
-----------	-------------	--------------------

This DA has been assessed by the following:

Contaminated Lands	X
Hazardous Materials	X
Sediment and Erosion Control	X
Noise	X
Air quality	X
Water Regulation	X

And EPA provide the following:

No comments	
Recommend Conditions of Approval	
Advice for the applicant	
Recommend Lease Conditions	
Recommend not supported	X
Further Information/amendments Required	

The proposed lease variation is not supported. The site is located in an industrial zone. The proposed activity has not been demonstrated to be compatible with activities permitted in the surrounding zoning.

Activation of the site for the proposed use would potentially sterilise the surrounding area from future industrial activities.



Furthermore, the report titled "Preliminary Site Investigation, Block 18, Section 11, Mitchell, ACT" dated 6 November 2015 by SMEC Australia Pty Ltd attached to this application has not indicated the site is fit for the proposed use and has identified areas of environmental concern recommending further assessment and possible remediation.

Regards,

Robin Brown | Environment Protection Authority Planning Liaison

**Phone 02 6207 5642**

**Environmental Quality** | Construction Environment & Workplace Protection | Access Canberra | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | [www.environment.act.gov.au](http://www.environment.act.gov.au)

---

**From:** EPD, Customer Services

**Sent:** Monday, 11 January 2016 2:57 PM

**To:** EPAPanningLiaison; McKeown, Helen

**Subject:** REFERRAL-EPA-NOISE-EROSION & SEDIMENT-201528763-18/11 MITCHELL-01

NOTE FOR REFERRAL: Childcare in industrial zone & psi does not support childcare use

MANDATORY REFERRAL

**DEVELOPMENT APPLICATION NO: 201528763**

**BLOCK: 18 SECTION: 11 DIVISION: MITCHELL**

**Description:** LEASE VARIATION - Please see application form for description.

Pursuant to Section 148(1) of the Planning and Development Act 2007 the ACT Planning and Land Authority requests that you consider the abovementioned development application and provide any written advice no later than **15 working days** after the date of this notice (**02/02/2016**).

In accordance with Section 150 of the Planning and Development Act 2007 If advice is not received within the prescribed time it will be taken that you have supported the application.

Please forward any written advice via email to Customer Services –  
[EPDcustomerservices@act.gov.au](mailto:EPDcustomerservices@act.gov.au)

Please use the following format in the subject line of the email when providing advice:

COMM-Agency Name-20080XXXX-Block XX Section XX SuburbXXXXX-01

Example: COMM-Heritage-200801234-Block 10 Section 10 Dickson-01

Regards

Customer Services

**Phone 02 6207 1923**

**Access Canberra | ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601

*Access Canberra is an ACT Government service that brings together customer and regulatory services, including the former Environment and Planning Directorates Customer Services Team. Access Canberra has been set up to make it easier for business, community organisations and individuals to work with ACT Government and deliver a more seamless experience.*

[www.planning.act.gov.au](http://www.planning.act.gov.au) | [EPDcustomerservices@act.gov.au](mailto:EPDcustomerservices@act.gov.au)



**From:** "Pankhurst, Owen" <Owen.Pankhurst@act.gov.au>  
**Sent:** 11/08/2016 3:58 PM  
**To:** "Brown, Robin" <Robin.Brown@act.gov.au>  
**Cc:** "EPAPanningLiaison" <EPAPanningLiaison@act.gov.au>  
**Subject:** RE: REFERRAL-EPA-RECONSIDERATION-201528763-18/11 MITCHELL-01 [SEC=UNCLASSIFIED]  
**Importance:** High

Hi Robin

I'm assessing the reconsideration for Child Care Centre for the above DA. Can you let me know when EPA will respond to the referral below.

I have concern regarding the following section from the Noise Management Plan:

### 3.4 Outdoor Play Areas

It will be important to minimise noise intrusion from adjacent industrial sites. This is to both protect the children and staff, and to allow adjacent industrial sites to be able to operate in a manner consistent with an industrial area.

The measured noise level on the nearest boundary to the road was Leq(1 hour) 63 dBA, including a 2.5 dBA façade reflection. This is 8 dBA higher than desirable for a play area, which should be designed to achieve closer to Leq 55 dBA (equivalent to the now repealed Draft Noise Management Guidelines requirement of L10 58 dBA for a private open space). Therefore, *Rudds recommends that all play areas be protected from noise from both the road and adjacent sites by the incorporation of suitable noise barriers and by using the buildings themselves as acoustic shielding.*

I don't believe the indicative design achieves this, and I'm unconvinced that they could re-orientate the outdoor play area to the south and behind the building as it would then shade it and may mean its closer to the adjoining industrial site.

Please also let me know ASAP if you require further time to comment.

Sincerely

#### Owen Pankhurst

Assistant Manager - DA Leasing  
Lease Administration– Planning Delivery Division  
Environment & Planning Directorate  
Phone: (02) 6207 9055 - Fax: (02) 6207 1856 - Email: [owen.pankhurst@act.gov.au](mailto:owen.pankhurst@act.gov.au)

---

**From:** EPD, Customer Services  
**Sent:** Monday, 18 July 2016 3:05 PM  
**To:** EPAPanningLiaison  
**Cc:** McKeown, Helen  
**Subject:** REFERRAL-EPA-RECONSIDERATION-201528763-18/11 MITCHELL-01 [SEC=UNCLASSIFIED]

**PLEASE DISREGARD PREVIOUS EMAIL**

Good Afternoon,

The Environment and Planning Directorate has received an Application for Reconsideration for the following Development Application:

**Block: 18      Section: 11      Suburb: MITCHELL**  
**Development Application Number: 201528763**

The Application for reconsideration is being applied against REFUSAL OF PROPOSAL.

Attached is a copy of the additional information supplied by the applicant in relation to the issues they seek to have reviewed.

Your advice by **05/08/2016** would be greatly appreciated to ensure the reconsideration application can be determined within the prescribed period of 20 working days from the date of lodgement.

Please forward any written advice to Customer Service at [epdcustomerservices@act.gov.au](mailto:epdcustomerservices@act.gov.au)  
If you require any further information please contact customer service on 6207 1923.

Kind Regards

Jenna

**Phone 02 6207 1923**

Customer Services | Access Canberra

Environment, Planning and Land

Building Services

16 Challis Street, Dickson | 8 Darling Street, Mitchell

GPO Box 158 Canberra ACT 2601

*Access Canberra brings together customer and regulatory services*

[www.planning.act.gov.au](http://www.planning.act.gov.au) | [EPDcustomerservices@act.gov.au](mailto:EPDcustomerservices@act.gov.au)





**From:** "EPAPanningLiaison"  
**Sent:** 12/08/2016 5:41 AM  
**To:** "Power, David" <DAVID.POWER@act.gov.au>  
**Subject:** RE: REFERRAL-EPA-RECONSIDERATION-201528763-18/11 MITCHELL-01 [SEC=UNCLASSIFIED]  
**Importance:** High

Environment & Planning Directorate,

The proponent has not adequately demonstrated the risks to developing children from potential pollution sources have been sufficiently assessed or understood. Equally, the proponent has failed to sufficiently consider the potential for activation of the proposed use to impact industrial uses in the surrounding area. It is understood the strategic planning unit within the Environment & Planning Directorate have been completing work assessing child care centres in industrial zones which has considered prohibiting this use in industrial areas. Until this work has been completed by strategic planning, the Environment Protection Authority will not be in a position to be able to support child care centres in industrial zones.

Regards,

Robin Brown | Environment Protection Authority Planning Liaison

**Phone 02 6207 5642**

**Environmental Quality** | Construction Environment & Workplace Protection | Access Canberra | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | [www.environment.act.gov.au](http://www.environment.act.gov.au)

---

**From:** EPD, Customer Services  
**Sent:** Monday, 18 July 2016 2:09 PM  
**To:** EPAPanningLiaison  
**Cc:** McKeown, Helen  
**Subject:** REFERRAL-EPA-RECONSIDERATION-201528763-18/11 MITCHELL-01 [SEC=UNCLASSIFIED]

Good Afternoon,

The Environment and Planning Directorate has received an Application for Reconsideration for the following Development Application:

**Block: 18      Section: 11      Suburb: MITCHELL**  
**Development Application Number: 201**

The Application for reconsideration is being applied against REFUSAL OF PROPOSAL.

Attached is a copy of the additional information supplied by the applicant in relation to the issues they seek to have reviewed.

Your advice by **05/08/2016** would be greatly appreciated to ensure the reconsideration application can be determined within the prescribed period of 20 working days from the date of lodgement.

Please forward any written advice to Customer Service at [epdcustomerservices@act.gov.au](mailto:epdcustomerservices@act.gov.au)  
If you require any further information please contact customer service on 6207 1923.

Kind Regards

Jenna

**Phone 02 6207 1923**

**Customer Services** | Access Canberra

Environment, Planning and Land

Building Services

16 Challis Street, Dickson | 8 Darling Street, Mitchell

GPO Box 158 Canberra ACT 2601

*Access Canberra brings together customer and regulatory services*

[www.planning.act.gov.au](http://www.planning.act.gov.au) | [EPDcustomerservices@act.gov.au](mailto:EPDcustomerservices@act.gov.au)



**From:** "EPAPlanningLiaison"  
**Sent:** 12/08/2016 1:23 AM  
**To:** "Power, David" <DAVID.POWER@act.gov.au>  
**Subject:** FW: REFERRAL EPA RECONSIDERATION 201528763 18/11 MITCHELL 01 [SEC=UNCLASSIFIED]  
**Importance:** High

Hi Dave,

Can you please review the air quality assessment and assist.

Regards,

Robin Brown | Environment Protection Authority Planning Liaison

**Phone 02 6207 5642**

**Environmental Quality** | Construction Environment & Workplace Protection | Access Canberra | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | [www.environment.act.gov.au](http://www.environment.act.gov.au)

---

**From:** Yousaf, Irfan **On Behalf Of** EPAPlanningLiaison  
**Sent:** Friday, 22 July 2016 8:58 AM  
**To:** Heckenberg, Mark; Dix, Rodney; Clayton, Des; Nilsen, Tom  
**Cc:** Brown, Robin  
**Subject:** FW: REFERRAL-EPA-RECONSIDERATION-201528763-18/11 MITCHELL-01 [SEC=UNCLASSIFIED]

18.7.2016	DA	DA201528763-B18S11-MITCHELL-Application for reconsideration
-----------	----	---

Comments by 01/08/2016 please.

Note All comments to be made in the database and notified to EPA Liaison email address please.

Regards  
Irfan

Irfan Yousaf | a/g EPA Liaison Officer, Environmental Quality

Phone: +61 2 6205 4797 | Email: [irfan.yousaf@act.gov.au](mailto:irfan.yousaf@act.gov.au)

Construction, Environment and Workplace Protection | **Access Canberra** | ACT Government

GPO Box 158 Canberra ACT 2601 | <http://www.act.gov.au/accesscbr>



---

**From:** EPD, Customer Services  
**Sent:** Monday, 18 July 2016 2:09 PM  
**To:** EPAPlanningLiaison  
**Cc:** McKeown, Helen  
**Subject:** REFERRAL EPA-RECONSIDERATION-201528763-18/11 MITCHELL-01 [SEC=UNCLASSIFIED]

Good Afternoon,



The Environment and Planning Directorate has received an Application for Reconsideration for the following Development Application:

**Block: 18      Section: 11      Suburb: MITCHELL**  
**Development Application Number: 201**

The Application for reconsideration is being applied against REFUSAL OF PROPOSAL.

Attached is a copy of the additional information supplied by the applicant in relation to the issues they seek to have reviewed.

Your advice by **05/08/2016** would be greatly appreciated to ensure the reconsideration application can be determined within the prescribed period of 20 working days from the date of lodgement.

Please forward any written advice to Customer Service at [epdcustomerservices@act.gov.au](mailto:epdcustomerservices@act.gov.au)  
If you require any further information please contact customer service on 6207 1923.

Kind Regards

Jenna

**Phone 02 6207 1923**

Customer Services | Access Canberra

Environment, Planning and Land

Building Services

16 Challis Street, Dickson | 8 Darling Street, Mitchell

GPO Box 158 Canberra ACT 2601

*Access Canberra brings together customer and regulatory services*

[www.planning.act.gov.au](http://www.planning.act.gov.au) | [EPDcustomerservices@act.gov.au](mailto:EPDcustomerservices@act.gov.au)



**From:** "EPAPanningLiaison"  
**Sent:** 12/08/2016 6:41 AM  
**To:** "EPD, Customer Services" <EPDCustomerServices@act.gov.au>  
**Cc:** "Pankhurst, Owen" <Owen.Pankhurst@act.gov.au>  
**Subject:** RE: REFERRAL-EPA-RECONSIDERATION-201528763-18/11 MITCHELL-01 [SEC=UNCLASSIFIED]

Environment & Planning Directorate,

It is understood the strategic planning unit within the Environment & Planning Directorate have been completing work assessing child care centres in industrial zones which has considered prohibiting this use in industrial areas. Until this work has been completed by strategic planning and reviewed by the EPA, the EPA will not be in a position to be able to support child care centres in industrial zones.

Regards,

Robin Brown | Environment Protection Authority Planning Liaison

**Phone 02 6207 5642**

**Environmental Quality** | Construction Environment & Workplace Protection | Access Canberra | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | [www.environment.act.gov.au](http://www.environment.act.gov.au)

---

**From:** EPD, Customer Services  
**Sent:** Monday, 18 July 2016 2:09 PM  
**To:** EPAPanningLiaison  
**Cc:** McKeown, Helen  
**Subject:** REFERRAL-EPA-RECONSIDERATION-201528763-18/11 MITCHELL-01 [SEC=UNCLASSIFIED]

Good Afternoon,

The Environment and Planning Directorate has received an Application for Reconsideration for the following Development Application:

**Block: 18      Section: 11      Suburb: MITCHELL**  
**Development Application Number: 201**

The Application for reconsideration is being applied against REFUSAL OF PROPOSAL.

Attached is a copy of the additional information supplied by the applicant in relation to the issues they seek to have reviewed.

Your advice by **05/08/2016** would be greatly appreciated to ensure the reconsideration application can be determined within the prescribed period of 20 working days from the date of lodgement.

Please forward any written advice to Customer Service at [epdcustomerservices@act.gov.au](mailto:epdcustomerservices@act.gov.au)  
If you require any further information please contact customer service on 6207 1923.

Kind Regards

Jenna

**Phone 02 6207 1923**

**Customer Services** | Access Canberra

**Environment, Planning and Land**

**Building Services**

16 Challis Street, Dickson | 8 Darling Street, Mitchell

GPO Box 158 Canberra ACT 2601

*Access Canberra brings together customer and regulatory services*  
[www.planning.act.gov.au](http://www.planning.act.gov.au) | [EPDcustomerservices@act.gov.au](mailto:EPDcustomerservices@act.gov.au)





**From:** "EPAPanningLiaison"

**Sent:** 19/09/2016 4:47 AM

**To:** "Power, David" <DAVID.POWER@act.gov.au>; "Dix, Rodney" <Rodney.Dix@act.gov.au>; "Walters, Daniel" <Daniel.WALTERS@act.gov.au>

**Subject:** FW: Notice of Decision DA-201528763-Reconsideration-18/11 Mitchell [SEC=UNCLASSIFIED]

FYI – See attached.

In short – lease variation to add childcare to an IZ block in Mitchell knocked back by the planning authority.

Regards,

Robin Brown | Environment Protection Authority Planning Liaison

**Phone 02 6207 5642**

**Environmental Quality** | Construction Environment & Workplace Protection | Access Canberra | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | [www.environment.act.gov.au](http://www.environment.act.gov.au)

---

**From:** EPD, Customer Services

**Sent:** Monday, 19 September 2016 2:18 PM

**To:** TCCS\_SPATAS DA; EPAPanningLiaison; Moroney, Anne; EPD Strategic Planning Referrals

**Subject:** FW: Notice of Decision DA-201528763-Reconsideration-18/11 Mitchell [SEC=UNCLASSIFIED]

Good afternoon

Please find attached the Notice of Decision on Reconsideration for DA-201528763.

Kind Regards

Angelina

**Phone 02 6207 1923**

Customer Services | Access Canberra

Environment, Planning and Land

Building Services

16 Challis Street, Dickson | 8 Darling Street, Mitchell

GPO Box 158 Canberra ACT 2601

*Access Canberra brings together customer and regulatory services*

[www.planning.act.gov.au](http://www.planning.act.gov.au) | [EPDcustomerservices@act.gov.au](mailto:EPDcustomerservices@act.gov.au)



**From:** "Walters, Daniel" <Daniel.WALTERS@act.gov.au>  
**Sent:** 07/11/2016 4:19 PM  
**To:** "EPAPanningLiaison" <EPAPanningLiaison@act.gov.au>  
**Subject:** RE: Draft separation guidelines [SEC=UNCLASSIFIED, DLM=For-Official-Use-Only]  
**Attachments:** Separation Distance Guidelines for Air Emissions - 1Nov.pdf

Robin

Latest version attached, Brief to Minister remains with our DDG.

Regards

*Daniel Walters*

Senior Manager | Environment Protection Policy  
Environment and Planning Directorate | ACT Government

☎ **Ph:** (02) 6207 6334

☎ **Fax:** (02) 6207 6084

✉ **email:** [daniel.walters@act.gov.au](mailto:daniel.walters@act.gov.au)

🌐 **http:** [www.environment.act.gov.au/](http://www.environment.act.gov.au/)

Please consider our environment before printing this e-mail.

<https://www.yoursay.act.gov.au/urban-sounds>



---

**From:** EPAPanningLiaison  
**Sent:** Monday, 7 November 2016 4:16 PM  
**To:** Walters, Daniel  
**Subject:** Draft separation guidelines [SEC=UNCLASSIFIED, DLM=For-Official-Use-Only]

Hi Daniel,

As discussed, could you please forward the latest copy of the draft separation guidelines.

Regards,

Robin Brown | Environment Protection Authority Planning Liaison

**Phone 02 6207 5642**

**Environmental Quality** | Construction Environment & Workplace Protection | Access Canberra | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | [www.environment.act.gov.au](http://www.environment.act.gov.au)



# SEPARATION DISTANCE GUIDELINES FOR AIR EMISSIONS

MAY 2016



© Australian Capital Territory, Canberra 2016

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced without written permission from: Director General, Environment and Planning Directorate, ACT Government, GPO Box 158, Canberra, ACT 2601.

Telephone: 02 6207 1923 Website: [www.environment.act.gov.au](http://www.environment.act.gov.au)

Printed on recycled paper

### **Accessibility**

The ACT Government is committed to making its information, services, events and venues as accessible as possible.

If you have difficulty reading a standard printed document and would like to receive this publication in an alternative format, such as large print, please phone the ACT Government on 13 22 81 or email the Environment and Planning Directorate at [epd\\_communications@act.gov.au](mailto:epd_communications@act.gov.au)

If English is not your first language and you require a translating and interpreting service, please phone 13 14 50.

If you are deaf, or have a speech or hearing impairment, and need the teletypewriter service, please phone 13 36 77 and ask for the ACT Government on 13 22 81.

For speak and listen users, please phone 1300 555 727 and ask for the ACT Government on 13 22 81.

For more information on these services visit <http://www.relayservice.com.au>

# CONTENTS

<b>1. Introduction</b>	<b>2</b>
<b>2. Background</b>	<b>2</b>
<b>3. Role of the guidelines</b>	<b>3</b>
<b>4. Application of separation distances</b>	<b>3</b>
4.1 Separation distance application considerations	3
4.2 Activity boundary	4
4.3 Measurement point	4
4.4 Recommended separation distance	4
4.5 Buffer area	4
4.6 Sensitive land uses	5
<b>5. Amendments to separation distances</b>	<b>6</b>
<b>6. Separation distances for air emissions (air quality and odour)</b>	<b>7</b>
6.1 Surface roughness factor	7
<b>7. References</b>	<b>8</b>
<b>Appendix 1. Recommended separation distances for airborne emissions</b>	<b>9</b>
<b>Appendix 2. Vegetated buffer element design for agricultural spray drift</b>	<b>15</b>



# 1. INTRODUCTION

The Environment and Planning Directorate (EPD) has prepared these Separation Distance Guidelines for Air Emissions (the guidelines) for use as a tool in the development application process for new or expanding developments in the Australian Capital Territory (the Territory). These guidelines may be used by the Territory's planning and land authority, developers, planning consultants and the community.

These guidelines provide recommended separation distances between various emitters and sensitive land uses. They will ensure incompatible land uses are located in a way that minimises the impacts of odour and polluting air emissions when applied in the assessment of new development applications. While the guidelines will assist in the siting of new developments, they may also be used to ensure industrial activities in appropriate zones are protected from encroachment by residential and other sensitive land uses that would have a negative effect on the viability of industry.

EPD supports the use of these guidelines as one method of considering potential conflicts between incompatible land uses.

These guidelines are to be used in the assessment of new developments and are not to be applied retrospectively to existing industrial operations.

While the separation distances in these guidelines are recommended distances, there is the opportunity for a proponent to demonstrate that a separation distance, other than the recommended distance, is appropriate by using the mechanism in the guidelines. Therefore, the distances recommended in these guidelines are indicative and may be adjusted having regard to specific site circumstances.

These guidelines are not intended to address occupational health and safety issues, or circumstances, where there is a direct health issue. These guidelines do not address major hazards such as fire or explosion, nor do they address the cumulative impacts of industrial activities.

# 2. BACKGROUND

Good planning is a major contributing factor to the achievement of sustainable development and environmental protection. The Territory Plan provides for the separation of certain classes of activities through the use of land use zones in the ACT. This separation protects the amenity of residential areas and allows businesses in industrial and commercial areas, as well as agricultural and municipal activities, to operate without hindrance.

The separation of certain land use activities is the basis for the preparation of these guidelines. The guidelines are intended to assist informed decisions that address potential conflicts between residential and other sensitive land uses and industry due to air emissions.

The use of separation distances is not an alternative to compliance by industry with its statutory obligations; it is an aid to locating industry and sensitive land uses to minimise the impacts of odour, polluting air emissions, waste water or noise that may result from accident, power failure, equipment failure, unusual meteorological conditions or human error, as well as normal operation. Under the *Environment Protection Act 1997* (the Act), industrial emissions are regulated by the requirement to comply with the general environmental duty and any relevant statutory conditions.

Similarly, the use of separation distances is not an alternative to the provision of appropriate planning policies and zoning in the Territory Plan. The guidelines may inform the planning process and should be seen as one of a number of tools available to deal with the loss of amenity caused by close proximity of incompatible land uses.

The primary role of the guidelines is to aid in the assessment of development proposals. The application of the guidelines will assist in protecting the amenity in residential and other sensitive areas, and can be used by planning authorities to protect industry from encroachment by sensitive land uses.

The guidelines may be used by developers and planning consultants to assist in the planning and assessment of development proposals and amendments to development.



### 3. ROLE OF THE GUIDELINES

Adequate separation distances reduce the potential for conflict between industrial and sensitive land uses, and support the fact that industrial activities cannot be undertaken with optimum emission control conditions all the time.

These guidelines are designed to be:

- simple – proponents, community and government can easily determine compliance
- transparent – the separation distances are reproducible and consistent for all proposals with similar configurations
- quick and cheap – expert air quality advice should not be required
- generally more conservative than the separation distances predicted by air pollution modelling for a high percentage of proposals.

The recommended separation distances are based on the assumption that Best Available Technology Economically Achievable (BATEA) is implemented. BATEA involves the use of emission control technology, which, although representing a significant financial cost, will not be such that the viability of the enterprise is threatened. Using BATEA will help ensure an enterprise complies with the general environmental duty under the *Environment Protection Act 1997*.

Separation distances are not an alternative to source control and cleaner production methods. They are a means of reducing the effects of residual emissions and, in exceptional circumstances, the emissions from an enterprise operating under less than optimum conditions. It is important the application of separation distances is not seen as a substitute for BATEA.

While a separation distance is recommended for an industry, the ensuing buffer area can still be used for other compatible land uses.

### 4. APPLICATION OF SEPARATION DISTANCES

#### 4.1 SEPARATION DISTANCE APPLICATION CONSIDERATIONS

These guidelines apply to new industries/activities and redevelopment of existing industries/activities for which a development application is required under the *Planning and Development Act 2007*. The guidelines are not to be applied retrospectively to an existing industry/activity.

In cases where the site of some proposed activities is fixed, the activity occurs infrequently and the recommended separation distance cannot be achieved, extra precautions would be required to minimise the potential impact of the activity. There may still, however, be an environmental nuisance for a short period of time. An example of this would be the abrasive blasting of a steel bridge for corrosion protection.

The guidelines may be used as a tool to assist in the planning and assessment of development proposals by the planning and land authority, developers and planning consultants. Proposed residential development near an existing industry may be assessed using the guidelines to ensure that the development does not have unsatisfactory environmental impacts and does not unduly affect the existing industry.

The guidelines do not address the cumulative impact of several industries; rather they address the potential impact from a single industry. The cumulative impact would need to be assessed on an individual site basis.

When applying the guidelines, the following concepts must be taken into consideration.



## 4.2 ACTIVITY BOUNDARY

The activity boundary is the boundary drawn to enclose all activities, plant, buildings, other structures or other sources from which residual emission may arise.

The activity boundary includes all sources of potential emissions, such as stockpiles and storage facilities. These must be identified and included within the activity boundary from which separation distances are taken. This concept allows industrial developers to provide for a buffer area or part thereof on their own premises if circumstances permit. The activity boundary may not coincide with the property boundary. The concepts of activity boundary and separation distance are shown in Figure 1.

## 4.3 MEASUREMENT POINT

The measurement point is the point on or adjacent to the nearest sensitive land use or zone at which a separation distance is assessed.

## 4.4 RECOMMENDED SEPARATION DISTANCE

The recommended separation distance is the distance recommended in the guidelines for the activity or activities listed. This distance is measured from the activity boundary.

The separation distances are based on typical to large sized existing developments for that industry sector. If a proposed development has the potential to have a significantly larger impact than this, the recommended distances may not be sufficient. The recommended distance can then be estimated using the procedure in Section 5 'Amendments to Separation Distances'.

## 4.5 BUFFER AREA

The buffer area is the area from the activity boundary to the outer limit of the separation distance (Figure 1). The buffer area may have a natural or artificial feature that mitigates an adverse impact; for example, a hill. The ongoing ownership and maintenance of the buffer area must be considered. If the buffer area is not maintained there may be an increase in the potential impacts and a significant business risk to the proposed or new operation.

Where the distance between the measurement point and the activity boundary is less than the recommended separation distance, the Planning and Land Authority should request the proponent to demonstrate why the lesser distance would be appropriate in accordance with Section 5 'Amendments to Separation Distances' of these guidelines.

For the purpose of these guidelines, any land zoned for sensitive land uses under the Territory Plan should be treated as if the land were being used for that activity regardless of its current use. The nearest zone boundary to an actual or potential source of emissions is the measurement point in this case.

By careful layout within a site, and by locating the source of the residual emissions as far as practicable from the nearest sensitive land use, the impact on neighbouring landholders can be reduced. Careful examination of the proposed site, activities, plant and installation, in conjunction with the relevant planning and environmental legislation and details of existing land uses in the vicinity, is necessary if the separation distance requirements of a proposal are to be addressed adequately.

Industries themselves can be incompatible neighbours. For example, chemical works are incompatible with food preparation premises; a dusty concrete plant is incompatible with a paint shop requiring a dust free atmosphere. The reasons for their incompatibility are often highly individual and need to be addressed on a case-by-case basis to ensure sensible planning solutions are reached.

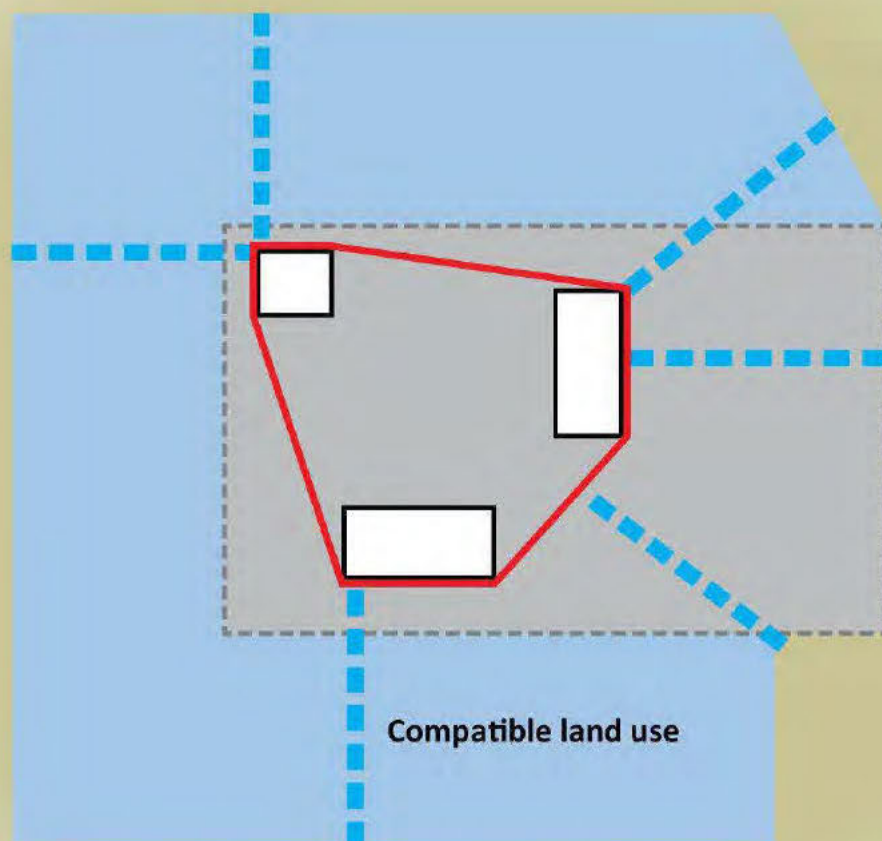
When setting up initial separation distances, the developer should make allowance for the possibility of future expansion on a site. Otherwise the expansion could be prevented by the lack of separation.

## 4.6 SENSITIVE LAND USES

These guidelines are intended to protect the amenity of sensitive land uses, such as, but not limited to:

- Caravan park
- Community centres
- Consulting rooms
- Educational establishments
- Childcare centres
- Hospitals
- Hotels
- Motels
- Nursing homes
- Tourism accommodation
- Residential (including detached dwellings, multiple dwellings, semi-detached dwellings)
- Parklands, recreation areas or reserves (regular public use)

Figure 1 Concepts of activity boundary and separation distance



Sensitive land use



Activity



Activity boundary



Property boundary



Separation distance



## 5. AMENDMENTS TO SEPARATION DISTANCES

If site specific circumstances appear to indicate a reason for departing from the recommended separation distance (e.g. scale of operation, local topography, state of the art technology etc.), a separation distance different from the recommended distances may be justified.

The onus will be on the party seeking an amendment to the recommended distance to demonstrate that the recommended separation distance is inappropriate for the particular situation.

As a guide, the following criteria should be addressed when seeking a site-specific variation from the recommended separation distance:

- the scale of operation of the proposal (e.g. the proposed plant is significantly smaller/larger than the normal operation for that activity and will produce substantially lower/higher emissions)
- evidence of pre-existing incompatible land use impacts extending beyond the recommended separation distance
- the standard of emission control technology to be used (e.g. will have a standard of emission control technology significantly better than the good level of control normally applied to that activity, i.e. Best Available Technology, rather than BATEA)
- evidence of the effectiveness of the proposed technology
- an environmental audit of residual emission (air, water, noise, waste) from an existing plant on the proposed site or a similar plant at another site, that has been carried out and made available to support an increase/decrease to the recommended separation distance
- details of how the residual emissions will be addressed
- details of any history of complaints arising from residual emissions from an existing plant, on the proposed site or a similar plant at another site
- details on how the proposed development may comply with industry guidelines (if available)
- existence of new applicable research
- existence of exceptional topographic, meteorological or other circumstances that will affect the emission or dispersion of residual emissions
- evidence from tools such as odour modelling, demonstrating that the potential odour impact is less/more than the adopted odour criteria for normal conditions and other conditions including times of higher emissions from accident, power failure, equipment failure, unusual meteorological conditions or human error.

Variation to the recommended separation distances should be included by proponents as either part of the development application process, or in a submission in relation to a development application. Such variations should address the criteria outlined above. It is suggested that those seeking a variation to recommended separation distances engage the services of experienced and appropriately qualified environmental consultants.



## 6. SEPARATION DISTANCES FOR AIR EMISSIONS (AIR QUALITY AND ODOUR)

The separation distances for odour or air pollutants are shown in Appendix 1. The distances given should be adjusted for the vegetation/surface roughness between the source and the receptor and the terrain effects around the site, particularly the effects of terrain features on the meteorology of the area.

The recommended separation distance for air quality purposes from Appendix 1 is multiplied by the appropriate surface roughness factor and the terrain weighting factor to give the final recommended separation distance.

- **Recommended distance = value in Appendix 1 x surface roughness factor (Table 1) x terrain weighting factor (Table 2)**

### 6.1 SURFACE ROUGHNESS FACTOR

The surface roughness factor varies according to the roughness of the land surface between the site and the receptor. The principal elements that determine surface roughness are vegetation density and surface topography. Recommended values of surface roughness are provided in Table 1. The values presented in this table are not to be added; only the value for the single category that best represents the site conditions should be used.

The roughness factors given in Table 1 assume that the selected roughness is continuous between the site and the receptor. Where roughness is variable or non-continuous, judgment should be used in selecting an appropriate composite factor.

The values given in Table 1 should be used with care; a number of qualifications apply to their use. For receptors located at larger separation distances, more than one surface roughness factor may apply over different sections of the separation. In this instance, the surface roughness factor applied should be selected after considering the relative weighting of the different factors. When selecting factors based on the presence of vegetation, some consideration should be given to the potential for the vegetation to be cleared during the life of the activity. For example, off-site vegetation is beyond the control of the operator, but may be regarded as permanent depending on the owner of the land (e.g. national park/reserves where no timber harvesting is undertaken).

**Table 1. Values of surface roughness factor**

Surface roughness features	Description	Factor
Settled areas	Metropolitan area or continuous residential, commercial and/or industrial areas.	1.00
Long grass, few trees	Open country with few or scattered trees. Topography would be predominantly flat to slightly undulating.	1.00
Undulating hills	Situations where topography consists of continuous rolling, generally low-level hills and valleys, but without sharply defined ranges, ridges or escarpments. (Assumes minimal vegetation.)	0.93
Level wooded country	Open forest country with tree density not sufficient to provide a continuous canopy, but sufficiently dense to influence air movement. There would be little or no lower storey vegetation. The density is such that the vegetation can be considered as a continuous belt.	0.85
Heavy timber	Generally tall forests with dense timber stands, providing a continuous canopy. There is limited understorey vegetation, mainly associated with regrowth.	0.77
Significant hills and valleys	Situations where one or more lines of hills sufficiently large enough to influence air movement exist between the receptor and the activity.	0.68

**Table 2 Values of terrain weighting factor**

Terrain	Weighting factor Downslope	Upslope
Broad valley/drainage (0.1–1%)	1.6	1
Sloping terrain (1–2%)	1.5	1
Flat (<0.1% in all directions)	1	1
Hilltop (>4%)	1.2	–
Narrow valley (1–2%)	1.2	0.5

**Notes**

1. These factors may not apply where prevailing winds are a significant influence on weather patterns, or where odour is emitted from elevated vent sources.
2. Downslope factors should be applied across an angle of 90° centred on the terrain feature. Upslope factors should be applied across an angle of 60° centred on the terrain feature.
3. % is percentage slope.

The location of the operation should be checked in relation to the topography. For example:

- If the operation is on a slight slope (<1%) within a broad valley, a terrain weighting factor of 1.0 should be used upslope and 1.6 downslope of the facility.
- If the operation is situated on a moderate slope (1–2%), a terrain weighting factor of 1.0 should be used upslope and 1.5 downslope of the facility.

Weighting factors should be applied for the range of distances applicable to site impacts.

However, the application of these weighting factors is dependent on the homogeneity of terrain between source and receptor. For example, if the terrain remains similar between the operation and receptor, the weighting factor can be applied for an indefinite distance. The weighting factor is, however, less reliable if significant terrain changes occur between source and receptor.

The terrain weighting factors apply to most locations. If, however, the site is not described by these factors, a terrain weighting factor of 1.0 should be used.

**Examples**

The recommended separation distance for Hot Mix Asphalt Preparation in Appendix 1 is 1,000 metres.

If the proposed plant has heavy timber between the plant and the receptor and the plant is located on a slight slope (<1%) within a broad valley the recommended distance is  $1000 \times 0.77 \times 1.0 = 770$  metres for upslope of the plant and  $1000 \times 0.77 \times 1.6 = 1,232$  metres downslope of the plant.

The recommended separation distance from Appendix 1 for Milk Processing Works is 100 metres.

If the proposed plant is located in residential/industrial area and the land is flat (<0.1%) the recommended distance is  $100 \times 1.0 \times 1.0 = 100$  metres.

## 7. REFERENCES

South Australian Environment Protection Authority, Guidelines for Separation Distances December 2007

Department of Natural Resources Queensland, Planning Guidelines Separating Agricultural and Residential Land Uses, 1997 DNRQ 97088.

Victorian Environment Protection Authority, Recommended separation distances for industrial residual air emissions, March 2013



# APPENDIX 1. RECOMMENDED SEPARATION DISTANCES FOR AIRBORNE EMISSIONS

The distances provided in this appendix are in metres.

Recommended separation distances		Meters
<b>Agriculture and other animal activities</b>		
Abattoirs or slaughterhouses	The conduct of slaughtering works for commercial purposes for the production of meat or meat products for human or animal consumption:	
	Other than poultry	500
	Poultry only	300
Agricultural chemical spray drift	Open ground conditions	300
	Vegetated buffer (see Appendix 2 for buffer conditions)	40
Cattle feedlot		See note #
Dairies	A dairy involving more than 100 milking cows at any one time	300
Dog kennels		200
Poultry farms	Keeping of poultry involving an enclosed shed area exceeding 1,000 square metres	750
Saleyards	Commercial conduct of yards at which cattle, sheep or other animals are gathered or confined for the purpose of their sale, auction or exchange, including associated transport loading facilities, being yards with a throughput >50,000 dry sheep equivalent units per year [dry sheep equivalent units: 1 sheep or goat = 1 unit; 1 pig (<40kg) = 1 unit; 1 pig (>40kg) = 4 units; 1 cattle (<40kg) = 3 units; 1	
	cattle (40 – 400kg) = 6 units; 1 cattle (>400kg) = 8 units].	500
	With throughput >25,000 but <50,000 dry sheep equivalent units per year	200
<b>Chemical and petroleum</b>		
Chemical storage and warehousing facilities	Storage of warehousing of chemicals or chemical products that are, or are to be, stored or kept in bulk or in containers having a capacity exceeding 200 litres at facilities with a total storage capacity exceeding 1,000 cubic metres.	500
Chemical works		500
Petroleum storage	Petroleum products are stored in tanks with a total storage capacity exceeding 2,000 cubic metres	250
Hydrocarbon production, refining, processing and recovery	Production, processing or recovery of other petroleum products/derivatives (other than refining oil or gas, producing hydrocarbon fractions or liquefying gas)	500

Recommended separation distances		Meters
Food and beverage production and animal and plant processing		
Bakery	> 40 tonnes/day	100
	< 40 tonnes/day	See note ~
Breweries	The conduct of works for the production of beer by infusion, boiling or fermentation, with a beer production capacity, where liquid waste is discharged onto land or into waters:	
	> 5,000 litres/day	500
	< 5,000 litres/day	See note ~
Coffee roasting	Roasting >200 tonnes per year of coffee beans	250
	Roasting <200 tonnes per year of coffee beans	See note ~
Milk processing works	Works where milk is separated evaporated or otherwise processed for the manufacture of evaporated or condensed milk, cheese, butter, ice cream or other similar dairy products at a rate of greater than 1 M litres per year.	100
Produce processing works	Processing agricultural crop material by deep fat frying, roasting or drying through the application of heat	150
Produce processing works	Processing any agricultural crop material where waste water is generated and disposed of otherwise than to a sewer or septic tank effluent disposal system	150
Tanneries or fellmongeries	The commercial preservation or treatment of animal skins or hides (excluding the processing of skins or hides by primary producers in the course of primary production activities outside built up areas and the processing of skins or hides in the course of taxidermy)	500
Wineries or distilleries	Processing of grapes or other produce to make wine or spirits where greater than 50 tonnes of grapes or other produce are processed per year with: Mechanically treated wastewater	300
	Wastewater storage lagoons without any aeration device: BOD >4000mg/LMechanically treated wastewater	1,000
	BOD >1000 & <4000mg/L BOD	750
	>100 & >1000mg/L BOD	500
	<100mg/L	300
	Bottling only	300
Wool scouring		500



Recommended separation distances		Meters
<b>Manufacturing and mineral processing</b>		
Abrasive blasting	Blasting outside	500
	Blast cleaning cabinets less than 5 cubic metres in volume or totally enclosed automatic blast cleaning units	100
Ceramic works	Works for the production of ceramics or ceramic products such as bricks, tiles, pipes, pottery goods, refractories or glass that are manufactured or are capable of being manufactured in furnaces or kilns fired by any fuel with a total capacity for the production of products exceeding 100 tonnes per year	500
Concrete batching works	Works for the production of concrete or concrete products that are manufactured or capable of being manufactured by mixing cement, sand, rock, aggregate or similar materials with a total capacity for production exceeding 0.5 cubic metres per production cycle.	100
Hot mix asphalt preparation	Conduct of works at which crushed or ground rock aggregates are mixed with bituminous or asphaltic materials for the purposes or producing road building mixtures	1,000
Pulp or paper works	Works at which paper pulp or paper is manufactured where production is:	
	>100 tonnes/year	2,000
	<100 tonnes/year	1,000
Scrap metal recovery	Works at which scrap metals are treated in any type of fuel burning equipment or electrically heated furnaces or are disintegrated by mechanical means for recovery of metal, but excluding commercial printing establishments at which type metal is melted or re-melted in thermostatically controlled pots for the purpose of type casting	500
Surface coating	Electroplating, electrolyse plating, anodising (chromating, phosphating and colouring), chemical etching or milling, or printed circuit board manufacture	100
Surface coating	Hot dip galvanising	300
Surface coating	Spray painting and powder coating with a capacity to use more than 100 litres/day of paint or 10 kilograms/day of dry powder	300
	Spray painting and powder coating with a capacity to use less than 100 litres/day of paint or 10 kilograms/day of dry powder	100
Timber preserving works	Treating or preserving timber using hazardous or toxic chemical substances	100
Wood processing works	The conduct of works other than works at a builders supply yard or a home improvement centre at which timber is sawn, cut, chipped, compressed, milled or machined (sawmills and joineries)	100

Recommended separation distances		Meters
<b>Material handling</b>		
Crushing, grinding or milling	Processing (by crushing, grinding, milling or separating into different sizes by sieving, air elutriation or in any other manner) of chemicals or rubber	300
Crushing, grinding or milling (excluding non-commercial processing for on-farm use)	Agricultural crop products	300
Crushing, grinding or milling	Rock, ores or minerals excluding lease or private mine or wet sand	500
Extractive industries	Operations involving extraction, or extraction and processing (by crushing, grinding, milling or separating into different sizes by sieving, air elutriation or in any other manner), of sand, gravel, stone, shell, shale, clay or soil:	
	with blasting	500
	no blasting	300
Composting works	Compost is produced at a rate of:	
	> 200 tonnes/year	1,000
	>20 & < 200 tonnes/year	300

Recommended separation distances		Meters
<b>Waste management</b>		
Biosolid depot	Receiving, drying, composting, mixing or processing biosolids	400
Incineration	Destruction of chemical wastes	1,000
	Destruction of medical wastes	500
	Cremation	150
	Solid municipal waste	500
Landfill	Municipal solid waste and commercial and industrial waste landfill activities	500
Materials recovery facility*	Collecting, dismantling, treating, processing, storing or recycling used or surplus materials	300
Permanent contaminated soil treatment facility	Permanent facility for the temporary storage, processing and treatment of contaminated soil (excludes on-site contaminated site soil treatment)	500
Sewage pumping stations	Facilities including, pumps and equipment, for pumping sewage to processing sites	100
Sewage treatment works	Mechanical/biological wastewater plants including aerated lagoons: <1,000 equivalent population	100
	>1,000 & <5,000	200
	>5,000 & <15,000	300
	>15,000	Individual assessment
	Facultative lagoons: <1,000 equivalent population	150
	>1,000 & <5,000	350
	>5,000 & <15,000	700
	>15,000	Individual assessment
Sewer vents	A ventilation system to ensure there is air movement in the sewer system, pits and drains to decrease gaseous build ups	50
Waste transfer station*	Collection, consolidation, temporary storage, sorting or recovering refuse or used materials prior to transfer for disposal or use elsewhere	300



Recommended separation distances		Meters
<b>Miscellaneous</b>		
Dying/finishing	Dying or finishing cotton, linen, woollen yarns or textiles	100
Fibre-reinforced plastic manufacturing		300
Gas distribution works	Regulating stations, boundary regulators, trunk receiving stations and similar types of gas infrastructure capable of causing air emissions	300
Marinas and boating facilities: repair or maintenance	Works for the repair or maintenance of vessels	300
Printing	Printing works emitting >100 kilograms per day of volatile organic compounds	500

# Department of Primary Industries and Resources (SA) and Local Government Association of South Australia 2006, EPA 252/06 *Guidelines for establishment and operation of cattle feedlots in South Australia*.

~ For food and beverage manufacturing where, no separation distances are specified. For these cases the it is recommended that there be no visible discharge of dust or emission of odours offensive to humans, beyond the boundary of the premises, subject to the adoption of BATEA.

\* Does not include the temporary storage at the place at which the waste (not being tyres or tyre pieces) is produced while awaiting transport to another place; or the storage, treatment or disposal of domestic waste at residential premises.

**Note:** These separation distances apply to air emissions only. Certain activities may require further separation for noise emissions.



## APPENDIX 2. VEGETATED BUFFER ELEMENT DESIGN FOR AGRICULTURAL SPRAY DRIFT

Separation distances should be determined on the basis of the sustainable agricultural land use with the potential to have the most impact on adjacent land uses and which is reasonably likely to be practised regardless of current use.

The separation distance of vegetated buffer area should be located within the site being developed for sensitive land uses, and be provided/funded by the proponent of that development.

While a separation distance of 300 metres is recommended for forward planning between sensitive receivers and agricultural areas, 'vegetated buffers' can offer an alternative to this separation requirement. Research into the behaviour of pesticide spray drift has shown that vegetation screens can prove effective barriers to spray drift where they meet **all** the following criteria:

- are of a minimum total width of 40 metres
- contain random plantings of a variety of tree and shrub species of differing growth habits at spacings of 4-5 metres for a minimum width of 20 metres
- include species with long, thin and rough foliage which facilitates the more efficient capture of spray droplets
- provide a permeable barrier which allows air to pass through the buffer. A porosity of 0.5 is acceptable (approximately 50% of the screen should be air space)
- foliage is from the base to the crown
- include species which are fast growing and hardy
- have a mature tree height 1.5 times the spray release height or target vegetation height, whichever is higher
- have mature height and width dimensions which do not detrimentally impact upon adjacent cropped land
- include an area of at least 10 metres clear of vegetation or other flammable material to either side of the vegetated area.

Vegetated buffers have other advantages in that they:

- create habitat and corridors for wildlife
- increase the biological diversity of an area, thus assisting pest control
- favourably influence the microclimate
- are aesthetically pleasing
- contribute to the reduction of noise and dust impacts.

Applications for development, where vegetated buffers are proposed, should include a landscape plan indicating the extent of the buffer, the location and spacing of proposed and existing trees and shrubs and a list of tree and shrub species to be planted. The application should also contain details concerning proposed ownership of the vegetated buffer and the means by which the buffer is to be maintained.

While the recommended vegetated buffer (which includes multiple rows of trees) will not capture 100% of the chemical spray drift, it may reduce spray drift to less than 1% at a sensitive land use when managed in terms of porosity, litter build up and noxious weed control to ensure effectiveness.

Farm management can also influence the effectiveness of the separation distance and vegetative buffer areas. The separation distance and vegetative buffer areas recommended assumes farmers and their employees and contractors carry out their activities in a reasonable manner and apply agricultural and veterinary chemicals registered by the Australian Pesticides and Veterinary Medicines Authority (APVMA), or for which a permit has been issued by the APVMA under the *Commonwealth Agricultural and Veterinary Chemicals Code Act 1994*, in accordance with directions specified on the label of the registered agricultural or veterinary chemical or directions specified in a permit.

Factors affecting separation distance and vegetative buffer area requirements for reducing agricultural chemical spray drift include:

- chemical composition/formulation e.g. toxicity, evaporation rates
- method of application/release height e.g. aerial application, air blast mister etc
- spray technology, e.g. nozzle type, droplet size
- frequency of application
- ability of the vegetation to capture spray droplets
- target structure
- weather conditions. e.g. wind speed and direction, air turbulence, inversions
- microclimate
- geographical conditions and barriers, e.g. topography.

In order to locate new sensitive receivers so that the impact of agricultural chemical spray drift on amenity and health is avoided and complaints from residents regarding the use of agricultural chemicals is unlikely, the following must be implemented:

- the separation distance between a sensitive receiver and agricultural land is a minimum of 300 metres or
- a vegetated buffer designed by a suitably experienced consultant that incorporates the criteria outlined above is located between the sensitive receiver and adjacent agricultural land. The vegetated buffer should:
  - » be provided with a suitable watering system
  - » include access strips on either side which are kept clear of vegetation and other flammable materials
  - » be of a height, density and width (40 metres minimum) acceptable to the EPA prior to the development of sensitive receivers within 300 metres of the agricultural land.





**From:** "EPAPanningLiaison"

**Sent:** 07/11/2016 5:51 AM

**To:** "Myers, Rhonda" <Rhonda.Myers@act.gov.au>

**Subject:** RE: 18/11 Mitchell DA201528763 - ACAT 63/2016 - child care in industrial area [SEC=UNCLASSIFIED]

**Attachments:** RE: Draft separation guidelines [SEC=UNCLASSIFIED, DLM=For-Official-Use-Only]

Hi Rhonda,

I have forwarded to David. Please find attached correspondence from Daniel Walters with the Draft separation Guidelines attached.

Regards,

Robin Brown | Environment Protection Authority Planning Liaison

**Phone 02 6207 5642**

**Environmental Quality** | Construction Environment & Workplace Protection | Access Canberra | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | [www.environment.act.gov.au](http://www.environment.act.gov.au)

---

**From:** Myers, Rhonda

**Sent:** Monday, 7 November 2016 3:51 PM

**To:** Brown, Robin

**Cc:** Messer, Sue; Pankhurst, Owen

**Subject:** 18/11 Mitchell DA201528763 - ACAT 63/2016 - child care in industrial area [SEC=UNCLASSIFIED]

Hi Robin,

Thank you for meeting with us this afternoon about 18/11 Mitchell DA201528763 - ACAT 63/2016 - child care in industrial area.

I note that we discussed the following, things for you to action are in purple for us in green:

Draft ACT Guidelines - Draft Separation Distance Guidelines for Air Emissions – is not a currently web published document and the version we have has been superseded. Robin, can you please send me a copy of the last draft version.

EPA do not support the lease variation. Greg Jones cleared the advice given by Robin as the DA entity referral. A proposal requesting support, including expert witness for the Territory, will go through Sue, (with the agreement of Maggie Chapman and Brett Phillips) to Robin, then David Power, Dave Middlemiss to Greg Jones. Greg Jones holds the positions of the Director, Construction, Environment and Workplace Protection AND Work Safety Commissioner. If Mr Jones does not have an expert to nominate, an independent witness to act on EPA's behalf on the EPA advice may/is likely be sought. Sue is to talk to Brett about approaching EPA to provide an expert witness. Robin to brief Greg on pending approach from us.

Does EPA have a list of preferred expert witnesses from outside the EPA? Yes and advice would be requested from Greg Jones as to who would be most suitable. To be sought via email pending response to Sue's request for witness. A meeting is to be organised between Daniel Walters, David Power, Robin, Strategic Planning (Anne Moroney), Sue, Owen and I to discuss the child care facilities in industrial areas policy work done earlier this year. I will co-ordinate the meeting.

Email brief to Robin about the case. Rhonda to draft for Sue.

Collation of existing case studies, legislation and policy papers that would have impact on the recommendations of the EPA. South Sydney council guidelines, NSW planning policy such as State Environment Plan doc 33. Robin to collate

Mitchell fire – published report – Robin to source

Worksafe – Dangerous goods register – would this provide supporting information/case studies identifying the location of dangerous goods and potential for incident.



Please contact me by reply email or on 6207 1794 if you wish to discuss this matter further.

Kind regards

Rhonda Myers

Assistant Manager | DA Leasing | Lease Administration

Planning Delivery | Environment, Planning and Sustainable Development Directorate | **ACT Government**

Dame Pattie Menzies House, 16 Challis Street Dickson | GPO Box 158 Canberra ACT 2601

P 02 6207 1794 | e [rhonda.myers@act.gov.au](mailto:rhonda.myers@act.gov.au) | web [www.planning.act.gov.au](http://www.planning.act.gov.au)

**From:** "EPAPanningLiaison"

**Sent:** 07/11/2016 5:50 AM

**To:** "Power, David" <DAVID.POWER@act.gov.au>

**Subject:** FW: 18/11 Mitchell DA201528763 - ACAT 63/2016 - child care in industrial area [SEC=UNCLASSIFIED]

David,

As discussed – please see below and advise.

Regards,

Robin Brown | Environment Protection Authority Planning Liaison

**Phone 02 6207 5642**

**Environmental Quality** | Construction Environment & Workplace Protection | Access Canberra | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | [www.environment.act.gov.au](http://www.environment.act.gov.au)

---

**From:** Myers, Rhonda

**Sent:** Monday, 7 November 2016 3:51 PM

**To:** Brown, Robin

**Cc:** Messer, Sue; Pankhurst, Owen

**Subject:** 18/11 Mitchell DA201528763 - ACAT 63/2016 - child care in industrial area [SEC=UNCLASSIFIED]

Hi Robin,

Thank you for meeting with us this afternoon about 18/11 Mitchell DA201528763 - ACAT 63/2016 - child care in industrial area.

I note that we discussed the following, things for you to action are in purple for us in green:

Draft ACT Guidelines - Draft Separation Distance Guidelines for Air Emissions – is not a currently web published document and the version we have has been superseded. *Robin, can you please send me a copy of the last draft version.*

EPA do not support the lease variation. Greg Jones cleared the advice given by Robin as the DA entity referral. A proposal requesting support, including expert witness for the Territory, will go through Sue, (with the agreement of Maggie Chapman and Brett Phillips) to Robin, then David Power, Dave Middlemiss to Greg Jones. Greg Jones holds the positions of the Director, Construction, Environment and Workplace Protection AND Work Safety Commissioner. If Mr Jones does not have an expert to nominate, an independent witness to act on EPA's behalf on the EPA advice may/is likely be sought. *Sue is to talk to Brett about approaching EPA to provide an expert witness. Robin to brief Greg on pending approach from us.*

Does EPA have a list of preferred expert witnesses from outside the EPA? Yes and advice would be requested from Greg Jones as to who would be most suitable. *To be sought via email pending response to Sue's request for witness.* A meeting is to be organised between Daniel Walters, David Power, Robin, Strategic Planning (Anne Moroney), Sue, Owen and I to discuss the child care facilities in industrial areas policy work done earlier this year. I will co-ordinate the meeting.

Email brief to Robin about the case. Rhonda to draft for Sue.

Collation of existing case studies, legislation and policy papers that would have impact on the recommendations of the EPA. South Sydney council guidelines, NSW planning policy such as State Environment Plan doc 33. *Robin to collate*

Mitchell fire – published report – *Robin to source*

Worksafe – Dangerous goods register – would this provide supporting information/case studies identifying the location of dangerous goods and potential for incident.

Please contact me by reply email or on 6207 1794 if you wish to discuss this matter further.

Kind regards

Rhonda Myers

Assistant Manager | DA Leasing | Lease Administration

Planning Delivery | Environment, Planning and Sustainable Development Directorate | **ACT Government**

Dame Pattie Menzies House, 16 Challis Street Dickson | GPO Box 158 Canberra ACT 2601

P 02 6207 1794 | e [rhonda.myers@act.gov.au](mailto:rhonda.myers@act.gov.au) | web [www.planning.act.gov.au](http://www.planning.act.gov.au)



**From:** "Jones, Greg" <Greg.Jones@act.gov.au>  
**Sent:** 08/11/2016 3:26 PM  
**To:** "EPAPanningLiaison" <EPAPanningLiaison@act.gov.au>; "Power, David" <DAVID.POWER@act.gov.au>  
**Cc:** "Gioffre, Tina" <Tina.Gioffre@act.gov.au>  
**Subject:** RE: AT63/2016 - 18/11 Mitchell - DA201528763 [SEC=UNCLASSIFIED]

Hi Robin

I suggest that either yourself or an external auditor provide the necessary statements based on relevant experience in the field.

Happy to discuss

Regards

Greg

---

**From:** EPAPanningLiaison  
**Sent:** Tuesday, 8 November 2016 2:37 PM  
**To:** Jones, Greg  
**Cc:** Gioffre, Tina  
**Subject:** FW: AT63/2016 - 18/11 Mitchell - DA201528763 [SEC=UNCLASSIFIED]  
**Importance:** High

Hi Greg,

For your action.

Regards,

Robin Brown | Environment Protection Authority Planning Liaison

**Phone 02 6207 5642**

**Environmental Quality** | Construction Environment & Workplace Protection | Access Canberra | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | [www.environment.act.gov.au](http://www.environment.act.gov.au)

---

**From:** Myers, Rhonda  
**Sent:** Tuesday, 8 November 2016 11:52 AM  
**To:** Brown, Robin; EPAPanningLiaison  
**Subject:** AT63/2016 - 18/11 Mitchell - DA201528763 [SEC=UNCLASSIFIED]

Hi Robin,

Further to our conversation yesterday afternoon, EPSDD have received advice that an appeal against the refusal of the development proposal was made to ACAT.

The appeal is based on the lessee's considered that "...extensive information was submitted with the reconsideration to address all reasons for the original refusal. It was considered that all reasons were more than adequately met. The reasons for refusal are considered to be based, for the most part, on Section 120 of the Planning and Development Act 2007."

The development application, which was refused and refused on reconsideration, was for a lease variation to permit child care facility. There is no proposed works as part of the development application. The decisions included consideration of advice from the EPA, which was not in support of the proposed variation. Matters were considered with regards to the suitability of the land for a child care facility and potential impact of a sensitive use preventing the Mitchell industrial zone (or parts thereof) from being able to carry out industrial uses without detriment or erosion of the existing rights of the industrial premises. Links to the decisions and the appeal as lodged by the lessee are attached.

As the decision relied heavily upon the expert advice of the EPA (and other agencies), we request the EPA to provide an expert witness for the appeal proceedings to act on behalf of the Territory.

Please contact me by reply email or on 6207 2869 to discuss this matter further.

Kind regards

Sue Messer

Manager | DA Leasing | Lease Administration

Planning Delivery | Environment, Planning and Sustainable Development Directorate | **ACT Government**

Dame Pattie Menzies House, 16 Challis Street Dickson | GPO Box 158 Canberra ACT 2601

P 02 6207 1794 | e [rhonda.myers@act.gov.au](mailto:rhonda.myers@act.gov.au) | web [www.planning.act.gov.au](http://www.planning.act.gov.au)

**From:** "Myers, Rhonda" <Rhonda.Myers@act.gov.au>

**Sent:** 08/11/2016 11:51 AM

**To:** "Brown, Robin" <Robin.Brown@act.gov.au>; "EPAPanningLiaison" <EPAPanningLiaison@act.gov.au>

**Subject:** AT63/2016 - 18/11 Mitchell - DA201528763 [SEC=UNCLASSIFIED]

Hi Robin,

Further to our conversation yesterday afternoon, EPSDD have received advice that an appeal against the refusal of the development proposal was made to ACAT.

The appeal is based on the lessee's considered that *"...extensive information was submitted with the reconsideration to address all reasons for the original refusal. It was considered that all reasons were more than adequately met. The reasons for refusal are considered to be based, for the most part, on Section 120 of the Planning and Development Act 2007."*

The development application, which was refused and refused on reconsideration, was for a lease variation to permit child care facility. There is no proposed works as part of the development application. The decisions included consideration of advice from the EPA, which was not in support of the proposed variation. Matters were considered with regards to the suitability of the land for a child care facility and potential impact of a sensitive use preventing the Mitchell industrial zone (or parts thereof) from being able to carry out industrial uses without detriment or erosion of the existing rights of the industrial premises. Links to the decisions and the appeal as lodged by the lessee are attached.

As the decision relied heavily upon the expert advice of the EPA (and other agencies), we request the EPA to provide an expert witness for the appeal proceedings to act on behalf of the Territory.

Please contact me by reply email or on 6207 2869 to discuss this matter further.

Kind regards

Sue Messer

Manager | DA Leasing | Lease Administration

Planning Delivery | Environment, Planning and Sustainable Development Directorate | **ACT Government**

Dame Pattie Menzies House, 16 Challis Street Dickson | GPO Box 158 Canberra ACT 2601

P 02 6207 1794 | e [rhonda.myers@act.gov.au](mailto:rhonda.myers@act.gov.au) | web [www.planning.act.gov.au](http://www.planning.act.gov.au)



**From:** "Power, David" <DAVID.POWER@act.gov.au>  
**Sent:** 09/11/2016 9:17 AM  
**To:** "EPAPanningLiaison" <EPAPanningLiaison@act.gov.au>  
**Subject:** RE: AT63/2016 - 18/11 Mitchell - DA201528763 [SEC=UNCLASSIFIED]

Can you get our original advice. I think this is similar to the one in Fyshwick that Purdons did

---

From: EPAPanningLiaison  
Sent: Tuesday 8 November 2016 15:47  
To: Jones, Greg  
Cc: Power, David; Gioffre, Tina  
Subject: RE: AT63/2016 - 18/11 Mitchell - DA201528763 [SEC=UNCLASSIFIED]

Hi Greg,

With your clearance I will look to organise an external consultant. Can you please confirm this is supported.

Regards,

Robin Brown | Environment Protection Authority Planning Liaison  
Phone 02 6207 5642  
Environmental Quality | Construction Environment & Workplace Protection | Access Canberra | ACT Government  
Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 |  
[www.environment.act.gov.au](http://www.environment.act.gov.au)<<http://www.environment.act.gov.au/>>

From: Jones, Greg  
Sent: Tuesday, 8 November 2016 3:27 PM  
To: EPAPanningLiaison; Power, David  
Cc: Gioffre, Tina  
Subject: RE: AT63/2016 - 18/11 Mitchell - DA201528763 [SEC=UNCLASSIFIED]

Hi Robin

I suggest that either yourself or an external auditor provide the necessary statements based on relevant experience in the field.

Happy to discuss

Regards

Greg

From: EPAPanningLiaison  
Sent: Tuesday, 8 November 2016 2:37 PM  
To: Jones, Greg  
Cc: Gioffre, Tina  
Subject: FW: AT63/2016 - 18/11 Mitchell - DA201528763 [SEC=UNCLASSIFIED]  
Importance: High

Hi Greg,

For your action.

Regards,

Robin Brown | Environment Protection Authority Planning Liaison  
Phone 02 6207 5642  
Environmental Quality | Construction Environment & Workplace Protection | Access Canberra | ACT Government  
Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 |  
[www.environment.act.gov.au](http://www.environment.act.gov.au)<<http://www.environment.act.gov.au/>>

From: Myers, Rhonda  
Sent: Tuesday, 8 November 2016 11:52 AM  
To: Brown, Robin; EPAPlanningLiaison  
Subject: AT63/2016 - 18/11 Mitchell - DA201528763 [SEC=UNCLASSIFIED]

Hi Robin,

Further to our conversation yesterday afternoon, EPSDD have received advice that an appeal against the refusal of the development proposal was made to ACAT.

The appeal is based on the lessee's considered that "...extensive information was submitted with the reconsideration to address all reasons for the original refusal. It was considered that all reasons were more than adequately met. The reasons for refusal are considered to be based, for the most part, on Section 120 of the Planning and Development Act 2007."

The development application, which was refused and refused on reconsideration, was for a lease variation to permit child care facility. There is no proposed works as part of the development application. The decisions included consideration of advice from the EPA, which was not in support of the proposed variation. Matters were considered with regards to the suitability of the land for a child care facility and potential impact of a sensitive use preventing the Mitchell industrial zone (or parts thereof) from being able to carry out industrial uses without detriment or erosion of the existing rights of the industrial premises. Links to the decisions and the appeal as lodged by the lessee are attached.

As the decision relied heavily upon the expert advice of the EPA (and other agencies), we request the EPA to provide an expert witness for the appeal proceedings to act on behalf of the Territory.

Please contact me by reply email or on 6207 2869 to discuss this matter further.

Kind regards

Sue Messer  
Manager | DA Leasing | Lease Administration  
Planning Delivery | Environment, Planning and Sustainable Development Directorate | ACT Government  
Dame Pattie Menzies House, 16 Challis Street Dickson | GPO Box 158 Canberra ACT 2601  
P 02 6207 1794 | e [rhonda.myers@act.gov.au](mailto:rhonda.myers@act.gov.au) <<mailto:rhonda.myers@act.gov.au>> | web  
[www.planning.act.gov.au](http://www.planning.act.gov.au) <<http://www.actpla.act.gov.au/>>

**From:** "EPAPanningLiaison"  
**Sent:** 10/11/2016 7:55 AM  
**To:** "Power, David" <DAVID.POWER@act.gov.au>  
**Cc:** "Jones, Greg" <Greg.Jones@act.gov.au>  
**Subject:** RE: AT63/2016 - 18/11 Mitchell - DA201528763 [SEC=UNCLASSIFIED]  
**Attachments:** RE: REFERRAL-EPA-NOISE-HAZARDOUS MATERIAL-201425699-2/6 FYSHWICK-01

Hi David,

See attached as requested.

Regards,

Robin Brown | Environment Protection Authority Planning Liaison  
Phone 02 6207 5642  
Environmental Quality | Construction Environment & Workplace Protection | Access Canberra | ACT Government  
Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | [www.environment.act.gov.au](http://www.environment.act.gov.au)

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

From: Power, David  
Sent: Wednesday, 9 November 2016 9:17 AM  
To: EPAPanningLiaison  
Subject: RE: AT63/2016 - 18/11 Mitchell - DA201528763 [SEC=UNCLASSIFIED]

Can you get our original advice. I think this is similar to the one in Fyshwick that Purdons did

---

From: EPAPanningLiaison  
Sent: Tuesday 8 November 2016 15:47  
To: Jones, Greg  
Cc: Power, David; Gioffre, Tina  
Subject: RE: AT63/2016 - 18/11 Mitchell - DA201528763 [SEC=UNCLASSIFIED]

Hi Greg,

With your clearance I will look to organise an external consultant. Can you please confirm this is supported.

Regards,

Robin Brown | Environment Protection Authority Planning Liaison Phone 02 6207 5642 Environmental Quality | Construction Environment & Workplace Protection | Access Canberra | ACT Government Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | [www.environment.act.gov.au](http://www.environment.act.gov.au) <<http://www.environment.act.gov.au/>>

From: Jones, Greg  
Sent: Tuesday, 8 November 2016 3:27 PM  
To: EPAPanningLiaison; Power, David  
Cc: Gioffre, Tina  
Subject: RE: AT63/2016 - 18/11 Mitchell - DA201528763 [SEC=UNCLASSIFIED]

Hi Robin

I suggest that either yourself or an external auditor provide the necessary statements based on relevant experience in the field.

Happy to discuss

Regards

Greg



From: EPAPlanningLiaison  
Sent: Tuesday, 8 November 2016 2:37 PM  
To: Jones, Greg  
Cc: Gioffre, Tina  
Subject: FW: AT63/2016 - 18/11 Mitchell - DA201528763 [SEC=UNCLASSIFIED]  
Importance: High

Hi Greg,

For your action.

Regards,

Robin Brown | Environment Protection Authority Planning Liaison Phone 02 6207 5642 Environmental Quality | Construction Environment & Workplace Protection | Access Canberra | ACT Government Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | [www.environment.act.gov.au](http://www.environment.act.gov.au)<<http://www.environment.act.gov.au/>>

From: Myers, Rhonda  
Sent: Tuesday, 8 November 2016 11:52 AM  
To: Brown, Robin; EPAPlanningLiaison  
Subject: AT63/2016 - 18/11 Mitchell - DA201528763 [SEC=UNCLASSIFIED]

Hi Robin,

Further to our conversation yesterday afternoon, EPSDD have received advice that an appeal against the refusal of the development proposal was made to ACAT.

The appeal is based on the lessee's considered that "...extensive information was submitted with the reconsideration to address all reasons for the original refusal. It was considered that all reasons were more than adequately met. The reasons for refusal are considered to be based, for the most part, on Section 120 of the Planning and Development Act 2007."

The development application, which was refused and refused on reconsideration, was for a lease variation to permit child care facility. There is no proposed works as part of the development application. The decisions included consideration of advice from the EPA, which was not in support of the proposed variation. Matters were considered with regards to the suitability of the land for a child care facility and potential impact of a sensitive use preventing the Mitchell industrial zone (or parts thereof) from being able to carry out industrial uses without detriment or erosion of the existing rights of the industrial premises. Links to the decisions and the appeal as lodged by the lessee are attached.

As the decision relied heavily upon the expert advice of the EPA (and other agencies), we request the EPA to provide an expert witness for the appeal proceedings to act on behalf of the Territory.

Please contact me by reply email or on 6207 2869 to discuss this matter further.

Kind regards

Sue Messer  
Manager | DA Leasing | Lease Administration Planning Delivery | Environment, Planning and Sustainable Development Directorate | ACT Government Dame Pattie Menzies House, 16 Challis Street Dickson | GPO Box 158 Canberra ACT 2601 P 02 6207 1794 | [e rhonda.myers@act.gov.au](mailto:rhonda.myers@act.gov.au)<<mailto:rhonda.myers@act.gov.au>> | web [www.planning.act.gov.au](http://www.planning.act.gov.au)<<http://www.actpla.act.gov.au/>>

**From:**"EPAPlanningLiaison"

**Sent:**18/07/2014 4:28 AM

**To:**"ESDD, Customer Services" <ESDDCustomerServices@act.gov.au>

**Subject:**RE: REFERRAL-EPA-NOISE-HAZARDOUS MATERIAL-201425699-2/6 FYSHWICK-01

ESDD Customer Services,

DA 201425699

BLOCK: 2	SECTION: 6	DIVISION: FYSHWICK
----------	------------	--------------------

This DA has been assessed by the following:

Contaminated Lands	X
Hazardous Materials	X
Sediment and Erosion Control	X
Noise	X
Air quality	X
Water Resources	

And EPA provide the following:

No comments	
Recommend Conditions of Approval	
Advice for the applicant	
Recommend Lease Conditions	
Recommend Not Supported	X
Further Information/amendments Required	

The Environment Protection Authority do not support the proposed lease variation in its current form.

The conclusions drawn against criteria C3/C4 are not supported. Child care/health facility and other proposed uses have a significant potential to be incompatible with and restrict surrounding industrial uses, therefore, clearly do not "support, facilitate or provide access to industrial uses".

The consultants conclusion that contamination, odour, and light emission will be addressed as a part of DA lodgement for design and siting is not supported. Prior to new uses being added to the lease it must be clearly demonstrated that the block is suitable for the proposed uses.

Furthermore, the site is currently occupied by a commercial complex. Commercial complexes prior to the introduction of natural gas to the ACT in the 1980's utilised boiler heating or similar systems. These systems were generally fuelled by diesel or heating oil which was mainly stored in underground fuel storage tanks.

EPA records also indicate that hazardous materials may have been located on the property associated with its operation or former operation as an Animal Health Laboratory. Laboratories have, in the past, been associated with site contamination which may pose a risk to human health and the environment.

The ANZECC 1992, Guidelines for the Assessment and Management of Contaminated Sites and the Contaminated Sites Environment Protection Policy 2009 list fuel storage and chemical storage as past activities associated with land contamination which may pose a risk to human health and the environment.

Prior to the site being used for other purposes an environmental assessment must be undertaken by a suitably qualified environmental consultant to determine whether past activities have impacted the site from a contamination perspective and to determine whether the site is suitable for the proposed uses. The assessment must be undertaken in accordance with EPA endorsed guidelines must be reviewed and endorsed by the EPA prior to the site being used for other purposes.



The proposed uses also include noisy uses. Given the site has an existing building a noise management plan would also be required before the lease variation could be supported.

Regards,

Robin Brown | Environment Protection Authority Planning Liaison

Phone 02 6207 5642

Environment Protection and Water Regulation | Environment and Planning | ACT Government

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | [www.environment.act.gov.au](http://www.environment.act.gov.au)



---

**From:** ESDD, Customer Services

**Sent:** Thursday, 10 July 2014 2:55 PM

**To:** EPAPPlanningLiaison; McKeown, Helen

**Subject:** REFERRAL-EPA-NOISE-HAZARDOUS MATERIAL-201425699-2/6 FYSHWICK-01

MANDATORY REFERRAL

**DEVELOPMENT APPLICATION NO:** 201425699

**BLOCK:** 2 **SECTION:** 6 **DIVISION:** FYSHWICK

**Description - LEASE VARIATION - See application form for full details.**

Pursuant to Section 148(1) of the Planning and Development Act 2007 the ACT Planning and Land Authority requests that you consider the abovementioned development application and provide any written advice no later than 15 working days after the date of this notice (**31/07/2014**).

In accordance with Section 150 of the Planning and Development Act 2007 If advice is not received within the prescribed time it will be taken that you have supported the application.

Please forward any written advice via email to Customer Services –  
[ESDDcustomerservices@act.gov.au](mailto:ESDDcustomerservices@act.gov.au)

Please use the following format in the subject line of the email when providing advice:

COMM-Agency Name-20080XXXX-Block XX Section XX SuburbXXXXX-01

Example: COMM-Heritage-200801234-Block 10 Section 10 Dickson-01

Regards

Customer Services

Phone 02 6207 1923

Client Services Branch | Environment and Planning Directorate | ACT Government

Dame Pattie Menzies House, 16 Challis Street, Dickson | GPO Box 1908 Canberra ACT 2601

[www.actpla.act.gov.au](http://www.actpla.act.gov.au) | [ESDDcustomerservices@act.gov.au](mailto:ESDDcustomerservices@act.gov.au)

**From:** "EPAPanningLiaison"  
**Sent:** 06/11/2017 4:59 AM  
**To:** "Power, David" <DAVID.POWER@act.gov.au>; "Dix, Rodney" <Rodney.Dix@act.gov.au>  
**Cc:** "Jones, Greg" <Greg.Jones@act.gov.au>  
**Subject:** FW: DA201732635 - Block 18 Section 11 Mitchell [SEC=UNCLASSIFIED]

Gents,

Please see below request for meeting and advise availability.

Regards,

Robin Brown | Environment Protection Authority Planning Liaison

**Phone 02 6207 5642**

**Environmental Quality** | Construction Environment & Workplace Protection | Access Canberra | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | [www.environment.act.gov.au](http://www.environment.act.gov.au)

---

**From:** 2.2(a)(ii) [mailto:2.2(a)(ii)@CanberraTownPlanning.com.au]

**Sent:** Monday, 6 November 2017 1:02 PM

**To:** Brown, Robin <Robin.Brown@act.gov.au>

**Cc:** 2.2(a)(ii) @arpm.net.au; EPAPanningLiaison@act.gov.au; 2.2(a)(ii)

2.2(a)(ii)@CanberraTownPlanning.com.au>

**Subject:** RE: DA201732635 - Block 18 Section 11 Mitchell

Hi Robin,

On behalf of the project proponent ArPM (cc'ed), I'm writing in relation to the childcare development proposal at Block 18 Section 11 Mitchell for which you attended a pre-application meeting on 28 September. We now seek a meeting with yourself to discuss the methodology proposed for required environmental reports (specifically the air quality reports) to accompany the DA.

Could you please advise your availability to discuss?

Regards,



2.2(a)(ii)  
Associate Director

2/20 Challis Street, Dickson 2602

Mobile

2.2(a)(ii)@canplan.com.au

canberratownplanning.com.au

**Please consider the environment before printing this email.**

This message and any attachments may be privileged, confidential or proprietary. If you are not the intended recipient of this email or believe that you have received this correspondence in error, please contact the sender through the information provided above and permanently delete this message.



**From:** "Ryan, Peter" <Peter.Ryan@act.gov.au>  
**Sent:** 08/11/2017 8:42 AM  
**To:** "EPAPanningLiaison" <EPAPanningLiaison@act.gov.au>  
**Subject:** RE: DA201732635 - Block 18 Section 11 Mitchell [SEC=UNCLASSIFIED]

Hi Robin

Any time that suits you I will be there.

Regards

*Peter Ryan*

---

Peter Ryan | Environment Protection Officer | Environment Protection Branch  
**Phone** 02 6207 6078 | email: [Peter.Ryan@act.gov.au](mailto:Peter.Ryan@act.gov.au)  
Environment Protection Authority | Access Canberra | ACT Government  
Dame Pattie Menzies House, 16 Challis Street Dickson |  
GPO Box 158 Canberra ACT 2601 | [www.environment.act.gov.au](http://www.environment.act.gov.au)

---

**From:** Dix, Rodney  
**Sent:** Tuesday, 7 November 2017 7:42 AM  
**To:** Ryan, Peter <Peter.Ryan@act.gov.au>  
**Subject:** FW: DA201732635 - Block 18 Section 11 Mitchell [SEC=UNCLASSIFIED]

Peter

Please review and provide comments as required.

Thanks

Rodney Dix | Manager  
Phone: +61 2 6207 2586 | Fax: +61 2 6207 6084 | Email: [rodney.dix@act.gov.au](mailto:rodney.dix@act.gov.au)  
Environment Protection | Access Canberra | ACT Government  
Ground Floor – TransACT House | 470 Northbourne Avenue Dickson | GPO Box 158 Canberra ACT 2601 |



---

**From:** EPAPanningLiaison  
**Sent:** Monday, 6 November 2017 3:59 PM  
**To:** Power, David <[DAVID.POWER@act.gov.au](mailto:DAVID.POWER@act.gov.au)>; Dix, Rodney <[Rodney.Dix@act.gov.au](mailto:Rodney.Dix@act.gov.au)>  
**Cc:** Jones, Greg <[Greg.Jones@act.gov.au](mailto:Greg.Jones@act.gov.au)>  
**Subject:** FW: DA201732635 - Block 18 Section 11 Mitchell [SEC=UNCLASSIFIED]

Gents,

Please see below request for meeting and advise availability.

Regards,

Robin Brown | Environment Protection Authority Planning Liaison

Phone 02 6207 5642

Environmental Quality | Construction Environment & Workplace Protection | Access Canberra | ACT Government

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | [www.environment.act.gov.au](http://www.environment.act.gov.au)

---

**From:** 2.2(a)(ii) [mailto:2.2(a)(ii)@CanberraTownPlanning.com.au]

**Sent:** Monday, 6 November 2017 1:02 PM

**To:** Brown, Robin <[Robin.Brown@act.gov.au](mailto:Robin.Brown@act.gov.au)>

**Cc:** 2.2(a)(ii) @arpm.net.au; [EPAPPlanningLiason@act.gov.au](mailto:EPAPPlanningLiason@act.gov.au); 2.2(a)(ii) 2.2(a)(ii)@CanberraTownPlanning.com.au>

**Subject:** RE: DA201732635 - Block 18 Section 11 Mitchell

Hi Robin,

On behalf of the project proponent ArPM (cc'ed), I'm writing in relation to the childcare development proposal at Block 18 Section 11 Mitchell for which you attended a pre-application meeting on 28 September. We now seek a meeting with yourself to discuss the methodology proposed for required environmental reports (specifically the air quality reports) to accompany the DA.

Could you please advise your availability to discuss?

Regards,



2.2(a)(ii)  
Associate Director

2/20 Challis Street, Dickson 2602

Mobile 2.2(a)(ii)

2.2(a)(ii) [canplan.com.au](http://canplan.com.au)  
[canberratownplanning.com.au](http://canberratownplanning.com.au)



**Please consider the environment before printing this email.**

This message and any attachments may be privileged, confidential or proprietary. If you are not the intended recipient of this email or believe that you have received this correspondence in error, please contact the sender through the information provided above and permanently delete this message.

---

**From:** EPAPlanningLiaison  
**Sent:** Thursday, 22 February 2018 5:26 PM  
**To:** Dix, Rodney; Power, David; Zhang, Jianmin  
**Cc:** Sargent, Narelle  
**Subject:** RE: REFERRAL-EPA-NOISE-201733198-18/11 MITCHELL-01 [SEC=UNCLASSIFIED]  
**Attachments:** ObjRef.obr

FYI Please note attached correspondence:

Regards,

Robin Brown | Environment Protection Authority Planning Liaison

**Phone 02 6207 5642**

**Environmental Quality** | Construction Environment & Workplace Protection | Access Canberra | **ACT Government**

GPO Box 158 Canberra ACT 2601 | [www.environment.act.gov.au](http://www.environment.act.gov.au)

---

**From:** EPAPlanningLiaison  
**Sent:** Thursday, 22 February 2018 10:29 AM  
**To:** Dix, Rodney <Rodney.Dix@act.gov.au>; Power, David <DAVID.POWER@act.gov.au>; Zhang, Jianmin <Jianmin.Zhang@act.gov.au>  
**Cc:** Sargent, Narelle <Narelle.Sargent@act.gov.au>  
**Subject:** FW: REFERRAL-EPA-NOISE-201733198-18/11 MITCHELL-01 [SEC=UNCLASSIFIED]

17283	22.2.2018	DA	DA201733198-B18S11-MITCHELL-PROPOSAL FOR CHILDCARE CENTRE-construction of footpaths, driveways, car park and dropoff area, landscaping and
-------	-----------	----	--

Comments please 8.3.2018

Regards,

Robin Brown | Environment Protection Authority Planning Liaison

**Phone 02 6207 5642**

**Environmental Quality** | Construction Environment & Workplace Protection | Access Canberra | **ACT Government**

GPO Box 158 Canberra ACT 2601 | [www.environment.act.gov.au](http://www.environment.act.gov.au)

---

**From:** Evatt, Ebony **On Behalf Of** EPD, Customer Services  
**Sent:** Thursday, 22 February 2018 9:28 AM  
**To:** EPAPlanningLiaison <[EPAPlanningLiaison@act.gov.au](mailto:EPAPlanningLiaison@act.gov.au)>; McKeown, Helen <[Helen.McKeown@act.gov.au](mailto:Helen.McKeown@act.gov.au)>  
**Subject:** REFERRAL-EPA-NOISE-201733198-18/11 MITCHELL-01 [SEC=UNCLASSIFIED]

**NOTE: CHILD CARE IN INDUSTRIAL ZONE.**

**DEVELOPMENT APPLICATION NO:** 201733198

**BLOCK:** 18 **SECTION:** 11 **DIVISION:** MITCHELL



**Description: PROPOSAL FOR CHILDCARE CENTRE - construction of a new 3 storey childcare centre, new driveways, car park and dropoff area, landscaping and associated site works.**

Pursuant to Section 148(1) of the Planning and Development Act 2007 the ACT Planning and Land Authority requests that you consider the abovementioned development application and provide any written advice no later than **15 working days** after the date of this notice (**15/03/2018**).

In accordance with Section 150 of the Planning and Development Act 2007 If advice is not received within the prescribed time it will be taken that you have supported the application.

Please forward any written advice via email to Customer Services – [EPDcustomerservices@act.gov.au](mailto:EPDcustomerservices@act.gov.au)

Please use the following format in the subject line of the email when providing advice:

COMM-Agency Name-20080XXXX-Block XX Section XX SuburbXXXXX-01

Example: COMM-Heritage-200801234-Block 10 Section 10 Dickson-01

Regards,  
Ebony Evatt  
Customer Services

**Phone 02 6207 1923**

**Access Canberra | ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601

*Access Canberra is an ACT Government service that brings together customer and regulatory services, including the former Environment and Planning Directorates Customer Services Team. Access Canberra has been set up to make it easier for business, community organisations and individuals to work with ACT Government and deliver a more seamless experience.*

[www.planning.act.gov.au](http://www.planning.act.gov.au) | [EPDcustomerservices@act.gov.au](mailto:EPDcustomerservices@act.gov.au)

*Land titles and revenue services are moving to Dame Pattie Menzies House, 16 Challis Street, Dickson and will be co-located with the Access Canberra Environment, Planning and Land Shopfront. These services will be available at this new location from 1 December 2016. For more information visit [www.act.gov.au/accessCBR](http://www.act.gov.au/accessCBR)*





**ACT**  
Government

Environment, Planning and  
Sustainable Development

ATTACHMENT A

*Planning and Development Act 2007*

# **REPORT ON CONSULTATION**

Draft Variation to the Territory Plan  
No. 352

Changes to various development  
tables, codes and definitions

October 2017

*This page is intentionally blank.*



## TABLE OF CONTENTS

1.	INTRODUCTION	1
2.	COMMENTS FROM THE PUBLIC	1
2.1	Details	1
2.2	Issues and responses	1
3.	COMPLIANCE WITH THE PLANNING AND DEVELOPMENT ACT 2007	16
3.1	Release for Public Comment (section 63)	16
3.2	National Capital Authority (section 61 (b) (i))	16
3.3	Conservator of Flora and Fauna (section 61 (b) (ii))	16
3.4	Environment Protection Authority (section 61 (b) (iii))	16
3.5	ACT Heritage Council (section 61 (b) (iv))	18
3.6	Land Custodian (section 61 (b) (v))	18
3.7	Notice of Submission to the Minister (section 70)	19
4.	APPENDICES	21
	<i>Appendix 1</i>	Draft variation 352 public release version
	<i>Appendix 2</i>	Copies of public comments received on draft variation 352
	<i>Appendix 3</i>	Summary table of comments and responses regarding prohibition of child care centres in industrial zones

*This page is intentionally blank.*

# 1. INTRODUCTION

This consultation report was prepared in accordance with section 69 of the *Planning and Development Act 2007* (the Act).

The report describes the consultation undertaken on the draft variation with the public, the National Capital Authority (NCA), the Conservator of Flora and Fauna, the Environment Protection Authority (EPA), ACT Heritage Council and Land Custodian, and responds to the issues raised.

## 2. COMMENTS FROM THE PUBLIC

### 2.1 Details

Draft variation 352 (DV352) was released for public comment on 9 June 2017. The closing date for comments was 24 July 2017, with extensions of time granted until 7 August 2017 upon request. The version of DV352 released for public comments is at **Appendix 1**.

A total of 13 written submissions were received.

The comments from the NCA are dealt with separately under section 3.2 of this report. Comments from the Conservator of Flora and Fauna, EPA, the ACT Heritage Council and land custodian Transport Canberra and City Services (TCCS) received and assessed prior to release of the DV352 are addressed in sections 3.3 - 3.6 respectively of this report.

Copies of submissions received from the public are provided at **Appendix 2**.

### 2.2 Issues and responses

The key issues raised are summarised below, and responses provided.

#### 2.2.1 Removal of public land overlay over part block 510 Stromlo (submitters 6, 7 and 12)

Submitter 6 supports this component of DV352.

Both submitters 7 and 12 had no objections provided the government does not allow windfall profits in the future from any change of lease.

##### Response

Noted.

Uses on the site are restricted by the Crown lease, NUZ River Corridor zoning and specific permitted uses in the Stromlo District Precinct Map. Any proposal for a change of the lease purpose clause would be a public process, would also be

thoroughly assessed and could incur substantial costs that would make any windfall profits unlikely.

## **2.2.2 Animal care facilities in industrial zones (Submitters 6, 7 and 12)**

The proposal to allow animal care facilities in industrial zones is supported by all three submitters.

Submitter no. 12 supports amendment to the industrial zones development code and lease variation general code to require that any animal care facility to be established in the industrial zones have a suitable noise management plan and an appropriate emergency management plan. The submitter notes that the requirement for an emergency management does not appear to be a mandatory rule (ie has an associated criterion). The submitter queried whether this was an oversight?

Submitter no. 12 also requested that no animal care facilities be approved until Transport Canberra and City Services Directorate (TCCS) has completed the mooted code of practice under the *Animal Welfare Act 1992*

### Response

The proposed changes to the industrial zones development code includes a criterion (C37A) that requires an emergency management plan that has not been endorsed by the Emergency Services Authority (ESA) to be referred to the relevant referral agency (ie ESA). This allows a development application that has been lodged without the endorsement of ESA to be referred by the development assessor in the planning and land authority to ESA to obtain the necessary endorsements. This is generally the case with other parts of this code and other codes where documentation needs to be endorsed by a relevant Government entity. A criterion (C6A) has been added to the lease variation general code in the recommended version of the draft variation to ensure consistency with other codes regarding endorsement of documentation by the relevant Government entities. This also aligns with the criterion proposed in the industrial zones development code relating to emergency management plans.

EPSDD has been liaising with Domestic Animal Services in TCCS and has been advised that the current Approved Code of Practice for Animal Boarding Establishments will also cover proposed animal care facilities (such as dog day care) in the industrial zones.

The Code of Practice specifies the minimum standards of accommodation, management and care which are appropriate to the physical and behavioural needs of dogs and cats housed in animal boarding establishments. The Code and its provisions are to be observed by owners and operators of boarding establishments and by people who work in them. At establishments where day boarding of animals is offered (such as dog day care), all aspects of the Code apply unless otherwise stated.

The Animal Boarding Establishments Code of Practice can be viewed at:  
<http://www.legislation.act.gov.au/di/2008-247/current/pdf/2008-247.pdf>



### **2.2.3 Child care facilities prohibited in industrial zones (Submitters 2, 3, 5, 6, 7, 8, 9, 12)**

All submitters (2, 3, 5, 6, 7, 8, 9 and 12) were opposed to the proposal to prohibit child care centres in industrial zones.

Due to the number and extent of issues and comments raised by submitters, a separate table of the comments and responses is provided at Appendix 3.

#### Response

See table of comments and responses at Appendix 3.

EPSDD has considered the comments and views expressed in the submissions regarding this issue. EPSDD acknowledges the reasons for the opposition to prohibiting child care centres in industrial zones and has resolved to remove this matter from DV352. EPSDD is still of the view that certain areas within industrial zones are not suitable for child care centres and will progress further policy work and investigation into this matter and present an alternative policy response. This will be the subject of a separate, single issue draft variation that will be released for further community engagement and consideration.

Consideration of supply and demand for industrial land and the appropriate mix of zoning and permitted uses may also be considered as part of a review of the ACT Planning Strategy. Consideration could also be given to compatible mixed use areas as well as those areas that are appropriate for heavy industrial uses and to be separated from vulnerable community sectors. This may result in subsequent changes to the Territory Plan.

*Note: The aspects of Submitter 5's comments specifically relating to their development application (DA) for block 18 section 11 Mitchell are not dealt with as part of this report on consultation as those matters relate to the DA and the DA process.*

### **2.2.4 Residential zones development code – boarding houses (Submitters 6 and 12)**

Submitter 6 supports this component of DV352.

Submitter 12 opposed the proposed changes to the provisions for boarding houses (introduction of criteria for rules R25 and R26). The submitter contends that any relaxation of the existing mandatory rules R25 for a boarding room and R26 for a communal room can only lead to undesirable overcrowding. The submitter suggests that if EPSDD really believes that demand at this level exists then EPSDD should introduce a new category of accommodation governed only by the proposed criterion C25 (with possibly the removal of the requirement for space for a desk) and criterion C26.

#### Response

Not agreed.

EPSDD believe that the criteria are sufficiently robust to safeguard against undesirable outcomes. EPSDD would not support a significant departure from the quantitative requirements, however there may be instances where a high quality outcome can be demonstrated where it is not possible to strictly adhere to the minimum dimensions.

#### **2.2.5 Single dwelling housing development code – allowable encroachments - pergolas (Submitters 6, 7 and 12)**

The proposed change was supported by all three submitters.

Submitter 12 suggests that the new provision “Encroachments into the minimum side or rear boundary setback...” needs slight redrafting to avoid the possibility that the “or” might be taken as an exclusive or permitting an encroachment only to the side setback or the rear setback, but not both for the one dwelling. The suggestion is to replace “or” with “and/or”.

##### Response

Agreed.

The suggested change is supported and will be included in the revised recommended variation.

#### **2.2.6 Single dwelling housing development code – noise affected blocks (Submitters 6 and 7)**

The proposed change was supported by both submitters.

##### Response

Noted.

#### **2.2.7 Single dwelling housing development code – water sensitive urban design (Submitters 6, 7, 8 and 12)**

Submitters 6 and 7 supported the proposed change.

##### Response

Noted.

Submitter 8 said that the requirement for pumps on water tanks should have criteria to cover solutions such as gravity feed to garden irrigation or multiple tanks where not all need to be fitted with a pump.

##### Response

The rule covers minimum storage and connection requirements. Using gravity feed for garden irrigation or the installation of additional or multiple tanks which provide storage capacity above the minimum mandatory requirements and

connections are acceptable provided that the minimum conditions in the rule are met.

Submitter 12 generally supported the proposed change but raised the following concerns:

- switching all outdoor taps to low-pressure rain water tank supply could increase fire damage to property;
- in some cases pumps very noisy for residents and neighbours
- installation of 5,000 litre tanks and pump can impose considerable additional costs on householders.
- Appropriate for a rigorous Cost Benefit Analysis to be undertaken to compare this approach with a suburb wide collective approach to the collection, storage and reuse of rainwater in new developments

#### Response

- Connection of outdoor taps to tank water should include the installation of a mains water diverter that automatically or manually connects the taps to mains water in the event the tank head pressure is too low or the pump fails
- properly maintained and installed rainwater tank pumps emit low levels of noise
- the average cost of a 5,000 litre slimline plastic tank, which is commonly used with larger developments cost around \$1,800 - \$2,000, which is a relatively small cost in proportion to the total development cost
- the use of collected rainwater both inside the house and outside continues to make economic sense for the full life of the property. The modelling of future water demand in the ACT takes account of the total stored water in rainwater tanks. Suburb wide collection using a third pipe to reticulate water back to householders is prohibitively expensive. Dispersed, at source systems, are most effective in achieving the multiple benefits of effective storage and use of rainwater.

#### **2.2.8 Multi unit housing development code – residential density – adaptable housing - Rule R14 (Submitters 6, 7, 8 and 12)**

The proposed change was supported by submitters 6, 7 and 12.

Submitter 8 raised concerns about the proposed changes:

- there is a risk that setting compliance with AS4299 as a mandatory standard may discourage development of this kind, or at least reduce the attractiveness of the measures prescribed in R14.
- built compliance with the standard, as opposed to being readily adapted, could discourage developers from producing these dwellings where there is not currently the demonstrated market demand.
- significant additional costs are being built into dwellings that may never be utilised, adding to the affordability challenges facing the ACT. Should there be a desire for R14 to reference actual built outcomes, an improved

approach may be to require dwellings to be built to a more realistic level, such as silver standard Livable Housing guidelines.

#### Response

Noted and agreed in part.

The rule has been revised to require only the additional dwelling/s permitted on a block as per Table A3 of the MUHDC for adaptable housing need/s to be built as adapted. The other dwellings will need to be shown as capable of being adaptable.

#### **2.2.9 Multi unit housing development code – site open space – RZ1 and RZ2 –stormwater runoff C38c) (Submitters 6, 7, 8 and 12)**

Submitters 6 and 8 support this component of DV352.

Submitters 7 and 12 said the provision should be retained as provisions in rules and criteria 87-89 do not apply to blocks smaller than 2000m<sup>2</sup>. Removal would mean vast majority of Canberra blocks would be subject to no rules about stormwater runoff.

Submitter 12 suggested that should EPSDD feel that such a rule be more appropriately located under *Element 8: Environment*, then [submitter 12] would encourage the drafting and insertion of a new rule (perhaps R86A) with the same policy intent as Criterion C38(c) in that part of the rules.

Submitter 12 also said that issues such as this suggest that there could well be benefit in a fundamental reconsideration of the purpose and function of the plot ratio rules, and whether these are now an effective or appropriate policy tool. Perhaps these policy objectives could be better achieved by plot permeability requirements.

#### Response

Noted.

EPSDD is of the opinion that paragraph b) in Criterion C38 that requires sufficient space for planting, particularly trees with deep root systems addresses the provision for on-site stormwater run-off infiltration. This is intended to correspond with and provide for a similar outcome to the requirement in the rule for not less than 20% of the total site area to be planting area. However to make it clearer paragraphs b) and c) of the existing C38 have been combined into one paragraph and amended in the recommended version of the draft variation to read as follows (see underlined text):

#### C38

Open space on the site achieves all of the following:

- a) sufficient space for the recreation and relaxation of residents
- b) sufficient space for planting, particularly trees with deep root systems, to accommodate on-site infiltration of stormwater run-off



- c) provision of outdoor areas that are readily accessible by residents for a range of uses and activities.

#### **2.2.10 Multi unit housing development code – Rule R42 courtyard wall setbacks (Submitters 6, 7 and 12)**

The proposed change was supported by all three submitters.

However submitters 7 and 12 believe that the new R42 should be mandatory, and that the associated criterion (C42) would encourage architects to continue to attempt to locate courtyard walls virtually on the property boundary. Both submitters recommended the removal of C42.

##### Response

The removal of C42 is not agreed. EPSDD is of the opinion that the provisions in the criterion are sufficiently robust to safeguard against undesirable outcomes. The criterion allows for minor departures that can still achieve a good outcome. EPSDD would not support significant departures that would result in courtyard walls being located on the property boundary.

The criterion is the same as the associated criteria for the provision on courtyard walls (Rules R26, R27 R28 and Criteria C26, C27, C28) in the single dwelling housing development code.

Criteria C42 and C42A in the recommended variation will be slightly revised to separate 'transparency' and 'articulation' into separate paragraphs as per the corresponding criteria in the single dwelling housing development code.

#### **2.2.11 Multi unit housing development code – courtyard walls Rule R42b) i) (Submitters 6, 7 and 12)**

The proposed change was supported by all three submitters.

##### Response

Noted.

#### **2.2.12 Multi unit housing development code – privacy and overlooking – Rules R59 and R60 and Criteria C59 and C60 (Submitters 6, 7, 8 and 12)**

Submitters 6 and 8 support this component of DV352.

Submitters 7 and 12 supported the proposed changes, but with qualifications about the language used in the criteria regarding evidence being provided.

Both submitters 7 and 12 propose that rather than include the terms “Evidence is provided that...” at the beginnings of Criteria C59 and C60, an overarching clause be included at the beginning of this Code and other planning Codes to the effect that “where a proponent wishes to assert that a proposal complies with a criterion rather than a rule, evidence of this claim must be provided.” This would ensure that the same standard of proof is required in relation to acceptance of compliance with any criterion. The absence of this formula before any other criteria might be taken, when the matter is considered legally, as indicating that no such test may be applied to other criteria.

### Response

Noted.

Similar wording to those for criteria C59 and C60 appear in criteria in other development codes, namely the Single Dwelling Housing Development Code (C43); the Industrial Zones Development Code (C39, C40 and C41); the Parks and Recreation Zone Development Code (C33, C34 and C35), and the Transport and Services Zone Development Code (C25 and C26).

It is expected that the provision of suitable evidence is provided as part of the submission of a development application when a proponent chooses to address the criteria of a relevant code.

The suggestion for an overarching clause be included at the beginning of this code and other codes in the Territory Plan as suggested by the submitters can be considered as part of a broader review of the Territory Plan and the codes.

Further consideration has been given to these rules and criteria to ensure that the provisions provide the level of certainty and clarity required for both applicants and assessors. As a result, the provisions have been amended in the recommended version of the draft variation to make the intent and interpretation of the provisions clearer.

### **2.2.13 Multi unit housing development code – private open space – Criterion C61 (Submitters 6, 7 and 12)**

Submitter 6 supports this component of DV352.

Submitters 7 and 12 were opposed to the removal of “proportionate” from this Criterion. The submitters argue that while “proportionate” is somewhat subjective, it is a more concrete concept than the proposed more subjective replacement “suitable”. The submitters said that at least proportionate is to be determined by reference to the size of the dwelling.

The submitters question why this subjective term in this criterion has been chosen for rectification from among the very many examples of subjective language used throughout this and other Planning Codes.

The submitters support the reduction in the use of subjective terms in the various codes as these can, as the Explanatory Statement notes, “vary significantly in application and interpretation”.

Both submitters expressed interest in being part of a working group charged with rewriting the codes to minimise use of subjective terms, provided that the Government would act on the outcomes so that effort was not wasted.

#### Response

Noted and agreed.

This proposed change in wording will be removed from the recommended draft variation and will be examined as part of a broader review of the Territory Plan and codes, especially where the simplification of language and the use of subjective terms can be considered.

#### **2.2.14 Multi unit housing development code – noise affected blocks Rule R67 (Submitters 6, 7, 8 and 12)**

The proposed change was supported by all four submitters.

#### Response

Noted.

#### **2.2.15 Remove references to Neighbourhood Plans – commercial zones development code and parks and recreation zone development code (Submitters 6, 7, 10, 11, 12, 13)**

Submitter 6 supports this component of DV352.

Submitters 7 and 10-13 were opposed to the proposed removal of references to Neighbourhood Plans from these development codes.

The argument was that precinct codes introduced since 2012 do not pick up key strategies contained in the neighbourhood plans nor do they link back to the relevant master plans. Furthermore, when references were removed from residential codes via Variation 306 in 2013, assurances were given to community groups that the relevant features of Neighbourhood Plans, where these existed, would be incorporated into Precinct Codes, but no attempt has been made to comply with this assurance.

The submitters wanted a link to the neighbourhood plans retained until suitable provisions are made to ensure critical strategic planning statements for suburbs are not lost, protecting these suburbs from unsympathetic inappropriate development proposals.

The preference was to strengthen the existing rules, by inserting a further set of words into the criteria that requires that both the master plans AND the key strategies in neighbourhood plans be taken into consideration.

## Response

Noted.

This change has been removed from the draft variation. The references to Neighbourhood Plans will remain in these two development codes until assessment has been completed on the linkages between the strategies in the Plans and the suburb precinct codes.

### **2.2.16 Hackett precinct map and code – additional merit track development – Block 9 Section 12 Hackett (Submitters 1, 6, 7, 12)**

Submitter 1 provided the following summary of reasons for objecting to the proposed change:

- in direct contravention of the applicable Territory code(s) and zone usage criteria
- reduce the access by the community to the premises
- set a legal precedent for invalid lease usage being used as a mechanism to obtain exclusive access to Crown lease land and facilities
- would seek to utilise the building for a purpose that does not benefit the wider community

Submitter 6 supports this component of DV352.

Submitters 7 and 12 recommend zoning of the block as Community Facility Zone (CFZ) which they consider is the appropriate classification for a place of worship.

Submitter 7 believes that a clause should be inserted into the lease providing that if a subsequent change to the lease purpose clause is sought then the lease must be surrendered back to the Government (which would remain free to re-grant the lease at such a cost as was felt appropriate under the future circumstances).

## Response

The change of zone for the block to Community Facility Zone (CFZ) as recommended by Submitters 7 and 12 is supported. The recommended version of the draft variation submitted to the Minister has been revised to make this change.

Rezoning to CFZ better reflects the use of the site for a place of worship, but also allows for a range of other community uses permitted in the CFZ should the lease be surrendered by the current lessees. 'Place of worship' is a bona fide defined community use under the Territory Plan.

The current use of the site meets the needs of a particular segment of the local community who has at times made the facility available to other community groups.

Whilst the historic use of the site as a place of worship is not in itself a valid justification for its continued use, it does illustrate that a place of worship can



operate from the site with no discernible amenity or environmental impacts, without community detriment, and without compromising the use of surrounding PRZ1 land for recreational purposes.

There is a significant amount of PRZ1 land in the immediate vicinity. The subject site is of 254m<sup>2</sup> in size, whilst the remaining amount of PRZ1 in the immediate area is over 43,000m<sup>2</sup>.

Due to the small size of the site (254m<sup>2</sup>) this would restrict the use of the site to small-scale community uses such as business agency, community activity centre, cultural facility, health facility, indoor recreation facility, office, place of worship, public agency and religious associated use. Other CFZ uses that would not be suitable for the site due to its size limitations have been excluded from the permitted uses in the Hackett Precinct Map.

In response to Submitter 7's comment regarding a further lease clause, it is not considered appropriate to insert a clause into the Crown lease for the surrender of the lease, as there is current legislation that adequately addresses these concerns.

The legislation, *Planning and Development Act 2007* and the Territory Plan, adequately provides for circumstances where community organisations wish to vary their lease to include additional or different uses. In these cases, any variation to the Crown lease would be subject to the Lease Variation Charge, after approval of a development application.

A Lease Variation Charge is an assessment of the added value attributed to the variation of the particular clause. If there is an added value an amount would need to be paid prior to the variation of the crown lease being registered against the title.

#### **2.2.17 Definitions – attached house and detached house (Submitters 6, 7, 8 and 12)**

The proposed change was supported by all four submitters.

##### Response

Noted.

#### **2.2.18 Definitions – minor use – shared areas of Community Title developments (Submitters 6, 7 and 12)**

The proposed change was supported by all three submitters.

##### Response

Noted.

### **2.2.19 Definitions – building line (Submitters 6, 7 and 12)**

The proposed change was supported by all three submitters.

Submitter 12 said the proposed definition appears to be mainly devoted to defining what is or is not part of a building. The submitter suggested that perhaps it would be simpler (and more helpful to those unfamiliar with the Territory Plan) to move these elements into the definition of Building, rather than leaving them in the definition of building line. At present one has to read the definition of building line to learn what kind of terrace, porch, landing, deck, or verandah is or is not part of a building, which in turn impacts on determination of the gross floor area for the plot ratio.

The submitter also said that this raises the issue of the effectiveness of the current definition of plot ratio and the need for some reconsideration of this issue.

#### Response

Noted.

The aim of the proposed amendments to the definition of 'building line' in this draft variation were to clarify the structures that were deemed to be part of a 'building' and those that were not considered part of a 'building' for the purposes of determining the location of the 'building line'.

The consideration, clarification and refinement of what a 'building' means is a separate body of work that can be included as part of the broader review of definitions in the Territory Plan.

Reviewing the definition of plot ratio can also be considered as part of the broader review work of the Territory Plan and planning policies.

### **2.2.20 Definitions – datum ground level and natural ground level (Submitters 4, 6, 7 and 12)**

Submitter 6 supports this component of DV352.

Submitter 7 supported the proposed change and submitter 12 noted the proposed change.

Submitter 4 has concerns with the last clause of the definition of datum ground line being: *"Where a), b) or c) is not available, datum ground level means the best estimate of the surface ground level at a), b) or c) as determined in a field survey authorised by a registered surveyor."*

The submitter argues that this clause will mean that the NGL is what the surveyor says, even if the surveyor has made a mistake either accidentally or accidentally on purpose. The submitter maintains that because the surveyor is often employed by the developer there is a conflict in interest and mistakes made accidentally on purpose might be fairly common.

The submitter says that on redeveloped blocks there is often a survey that is done after the block is re levelled and filled and it could be quite easy for the surveyor to mistake these changed ground levels as NGL.

The submitter also questions the scenario of where there are two different surveys which show different NGLs. The submitter argues that it is illogical to have a definition that says A is true and B is true, when A and B are different.

#### Response

Not agreed.

The definition requires that a registered surveyor undertake the field survey. A registered surveyor is a professional surveyor who is registered under the *Surveyors Act 2007*. A registered surveyor who contravenes the Act through malpractice (such as fraud) can have their registration cancelled. It is highly unlikely a registered professional surveyor would risk losing their license to make a deliberate mistake or be pressured into doing so under duress by a developer especially where this carries the prospect of a punishable offence.

The wording of the definition including the final paragraph have been revised in the recommended version of the draft variation to make clearer the requirements for establishing surface ground level.

#### **2.2.21 Definitions – front boundary, side boundary and rear boundary (Submitters 6, 7 and 12)**

The proposed change was supported by all three submitters.

Submitter 12 suggested an alternate definition for rear boundary as: that boundary other than the front boundary which is closest to parallel to the front boundary. Side boundary would then be any boundary that was not the front boundary or the rear boundary.

#### Response

The suggested alternate definition is not agreed.

The suggested alternate definition for rear boundary would not account for blocks where the boundaries are not parallel, or closest to parallel. Also there are instances where due to the configuration and location of a block, such as a corner block, battleaxe block etc there may be two frontages and no rear boundary, which would cause difficulties with determining other boundaries as side boundaries.

#### **2.2.22 Definitions – habitable room (Submitters 6, 7, 8 and 12)**

The proposed change was supported by all four submitters.

#### Response

Noted.

### **2.2.23 Definitions – setback (Submitters 6, 7 and 12)**

Submitter 6 supports this component of DV352.

Submitters 7 and 12 supported the proposed change, but suggested an alternate definition:

“Setback means the horizontal distance between a *block* boundary and the outside face of any *building* on the block”, and then defining Building to include the elements subsequently listed.

Submitter 12 said that this would have the advantage that one would not have to consult the definition of setback to determine what constituted part of a building, which as noted above has impacts in the determination of the plot ratio.

#### Response

Noted.

The aim of the proposed amendments is to make it easier to read what a ‘setback’ means and what structures and elements of a building are included for the purposes of determining a setback.

The consideration, clarification and refinement of what a ‘building’ means is a separate body of work that can be included as part of the broader review of definitions in the Territory Plan.

Reviewing the definition of plot ratio can also be considered as part of the broader review work of the Territory Plan and planning policies.



#### **2.2.24 Other comments – GFA definition (Submitter 8)**

The GFA (gross floor area) definition should be amended to exclude all basement area from GFA. If development is underground it has very minimal impact on the neighbours despite its size. Excavating a basement is a costly process and if a developer wants to deliver additional amenity - particularly in the way of storage - then it should be encouraged. If elements of a building can be placed underground then it may be possible to encourage more open space on the surface which would benefit neighbours. The definition of Attic should be amended to include up to 45° and record GFA from a height of 1.5m between ceiling and floor.

#### **Response**

Reviewing the definitions of GFA and Attic can be considered as part of the broader review work of the Territory Plan and planning policies that EPSDD will be undertaking with regard to the Minister's Statement of Planning Intent priorities.

### **3. COMPLIANCE WITH THE PLANNING AND DEVELOPMENT ACT 2007**

#### **3.1 Release for Public Comment (section 63)**

DV352 was released for public comment on 9 June 2017. The closing date for comments was 24 July 2017, with extensions of time granted until 7 August 2017. The version of DV352 released for public comments is at **Appendix 1**.

A total of 13 written submissions were received within the consultation period. One submission was from a sporting club, four submissions were from individuals or industry professionals, five submissions were from community groups or organisations, and two submissions were from industry representative groups or organisations.

A consultation notice under s 63 of the Act was published in the ACT Legislation Register on 9 June 2017. A notice was placed in the Government's online notice board on 9 June 2017.

#### **3.2 National Capital Authority (section 61 (b) (i))**

The NCA had no comments on DV352.

##### Response

Noted.

#### **3.3 Conservator of Flora and Fauna (section 61 (b) (ii))**

The Conservator had no issues of concern on DV352

##### Response

Noted.

#### **3.4 Environment Protection Authority (section 61 (b) (iii))**

The EPA made the following comments:

##### **“Animal care facilities in commercial and industrial zones:**

It is relevant to point out that noise and other pollutants emitted into the air from animals are exempt under the Environment Protection Act 1997. Generally, it is considered appropriate that a noise and odour impact assessment and management plan would be required to be approved prior to planning approval being granted for an activity that was likely to cause an impact from the presence of animals.

Specifically in relation to the proposed 'dog day care', given the numbers and density of dogs and proximity to sensitive uses, it is likely that significant noise mitigation measures will be required to separate dog noise from residential and other sensitive receivers. Odour from these types of facilities may also impact on surrounding users.

It is not clear in the documentation what controls or agencies will be relied upon to ensure noise and odour is considered at the planning stage or what regulatory approaches are available following any complaints. It is suggested that the documentation be updated to provide further information in relation to these matters. The documentation also appears to rely upon the merit track assessment process for approval of this type of facility. It is noted that the Land Development Agency typically release new blocks in commercial zones with all of the merit track assessable uses in the lease purpose clause.

It is further suggested that advice should be included in the draft variation documentation outlining what planning approvals would be required for blocks that already permit the use in the lease.

#### **Child care centres in industrial zones:**

The proposal to prohibit child care centres in industrial zones is supported. It is recognised that child care centres present complex issues from a planning and assessment perspective when co-locating these sensitive facilities in close proximity or on land that permits hazardous and offensive activities.

#### **Block 510 Stromlo:**

No comments.

#### **Hackett Precinct Map:**

No comments."

#### Response

Animal care facility will be restricted to industrial areas only under this draft variation. This will remove any potential conflict with sensitive uses (including any residential uses) which are permitted in other zones.

The requirements for a noise management plan and an emergency management plan have been included in proposed changes to the lease variation general code and the industrial zones development code.

The requirement for a waste management plan is already included in the lease variation general code (Criterion C3) and the industrial zones development code (Rule R50/Criterion C50).

The Animal Welfare Act 1992 (administered by Transport Canberra and City Services (TCCS) Directorate) also has a number of requirements that need to be met concerning the welfare and the duty of care by the proprietor for the animals in an animal care facility. TCCS is considering the development of a specific Code of Practice under the Animal Welfare Act 1992 to provide guidance on the minimum standards of accommodation, care and management to be provided to dogs kept

at an animal care facility, including hygiene, waste, noise, health, transport, and exercise.

### **3.5 ACT Heritage Council (section 61 (b) (iv))**

The ACT Heritage Council made the following comments:

“The Council does not object to any amendments to the Territory Plan proposed by DV352, as no heritage places or objects will be affected by proposed changes relating to Rural Block 510, Stromlo and Block 9, Section 12, Hackett; and as Heritage Act 2004 provisions will continue to guide the management of heritage places and objects within the ACT.”

#### Response

Noted.

### **3.6 Land Custodian (section 61 (b) (v))**

The Land Custodian made the following comments relating to block 510 Stromlo:

“The Transport Canberra and City Services (TCCS) Directorate supported the Conservator’s request for the adjustment to the public land overlay (Pd – a special purpose reserve) for Block 510 Stromlo on 2 February 2017”

#### Response

Noted.



### **3.7 Notice of Submission to the Minister (section 70)**

In accordance with s 70 of the P&D Act, a public availability notice will be placed on the ACT Legislation Register stating that DV352 has been submitted to the Minister and that the documents are available for public inspection.

*This page is intentionally blank.*

## **4. APPENDICES**

*This page is intentionally blank.*



**APPENDIX 1**  
**Draft variation 352 public release version**

*This page is intentionally blank.*

**APPENDIX 2**  
**Copies of public comments received on draft variation 352**

*This page is intentionally blank.*



### **APPENDIX 3**

## **Summary table of comments and responses – prohibition of child care centres in industrial zones**

**DV352 – Table of issues raised in public submissions regarding prohibition of child care centres in industrial zones**

Issue	EPSDD response
No evidence provided to substantiate the concerns in DV352	There is sufficient information contained in the Explanatory Statement section 2.1.2 B to communicate the concerns regarding potential health and safety impacts on vulnerable people and the potential conflict of land uses in industrial areas to substantiate the policy changes proposed in DV352.
While the proposed changes may restrict operation of child care centre within blocks with those designations it does not restrict the operation of child care centres immediately adjacent if the block is zoned Community Facility Zone (CFZ). Any proposed development or use on the industrial blocks may impact in the manner described in the DV.	<p>Noted and agreed.</p> <p>There is only one isolated case where this occurs in industrial areas in the ACT, which is block 11 section 23 Fyshwick on CFZ within the Fyshwick industrial estate. Despite the stated concerns regarding potential negative health and safety impacts, the site is unique in that it is afforded some physical separation from nearby IZ2 mixed use industrial activities as it is buffered by roads and open space to the north west, south and south east of the site. The open space is zoned PRZ1 which allows very limited uses, none of which would be considered to have a negative impact on vulnerable receptors.</p>
Child care centres are permitted in Commercial CZ3 services zones – there is considerable overlap of permitted uses in CZ3 and IZ2 zones. There are places in CZ3 zones where child care centres are located adjacent to vehicle service centres	CZ3 zones are also of concern to EPA especially where child care centres are located adjacent to service stations and some industrial trades activities. However the CZ3 zones do not allow high impact uses such as 'general industry', 'hazardous industry', 'hazardous waste facility', 'incineration facility', 'liquid fuel depot', 'offensive industry', 'recycling facility', 'waste transfer station' which are only permitted in the IZ1 and IZ2 zones. The CZ3 zones also allow for other sensitive uses such as residential and commercial accommodation use.

<p>Proposal is likely to negatively impact on many property owners that hold Crown leases that permit the development of child care centres in industrial zones, as well as the broader community that requires access to convenient child care</p>	<p>There is no indication that adding child care centre to crown leases in industrial zones provides any market benefit as design and siting locations of child care centres are strategically determined by market demand.</p> <p>Leases that already contain a permitted use in the lease purpose clause can still apply to activate the use through a development application in the Impact Track even for a prohibited use in the Territory Plan.</p>
<p>Child care centres are already subject to strict licensing requirements</p>	<p>The Education and Training Directorate's (ETD) licensing requirements are focussed on the operation of the child care centre, whereas the Territory Plan is responsible for determining the appropriate zone, physical location and the design and siting of the building for a child care centre.</p> <p>While child care centres in industrial zones may be licensed by ETD, the EPA is not part of the ETD's license assessment process. Regardless, many of the industrial activities in industrial zones are also not licensed by the EPA. In some cases, they may be undertaking activities that don't meet a certain threshold for the requirement for them to be licensed (for example volume of work) but they are still conducting an activity that brings risk. By having industrial zones that are separate from other zones means that the regulatory burden on those polluting industries can be reduced.</p>
<p>The EPA [Environment Protection Authority] has responsibility for protection of human health and the environment from pollution – form part of DA and assessment process</p>	<p>Agreed.</p> <p>The EPA specifically focuses on the impacts on human health from pollution generated in industrial areas from various industrial uses. The EPA has serious concerns with both negative short term and potentially harmful long term impacts on the health of vulnerable people from</p>

	pollution and contaminants. The EPA has frequently opposed applications for child care centres on sites where potential negative impacts on the human health of small children and babies are of concern.
The Community and Recreation Facilities Location Guidelines General Code provides specific guidance on the location of child care centres. These Guidelines promote appropriate objective assessment of proposed locations and their suitability. The need to buffer such development from the potentially harmful effects of industrial uses (noise and fumes) is specifically mentioned.	The Community and Recreation Facilities Location Guidelines General Code recommends separation (buffering) from sight, smell, fumes and noise of industrial uses and from roads with high traffic volumes and separated from safety hazards. However this Code does not contain rigid standards and is considered as a guide for planning and facility providers in assisting with determining suitable sites and locations for facilities.
All potential impacts could be appropriately mitigated on a case-by-case assessment through the introduction of rules or criteria that specifically address health and safety considerations of vulnerable people and the imposition of development approval conditions	Discussions were previously held with EPA regarding introducing specific rules and criteria to address the health and safety considerations of vulnerable people. However the provisions would have been too onerous for any potential application to meet the stringent conditions. Permitted industrial uses proposed near a child care centre in an industrial zone could be required to demonstrate significantly greater pollution control measures that would not necessarily have been required when located in an industrial zone and where separated from sensitive receptors.
DV removes the possibility of an objective assessment of each case on its own merit.	See above response
DV fails to acknowledge the potential benefits of locating child care centres in industrial areas including <ul style="list-style-type: none"> <li>- Industrial land adds to the supply of land for construction of new child care centres</li> </ul>	The ACT has sufficient land available for child care centres through existing sites and the land release program to meet current and forecast demand without needing to identify specific sites in industrial areas for these purposes.



<ul style="list-style-type: none"> <li>- Locating child care centres close to employment centres is desirable and convenient for both parents and staff</li> </ul>	<p>Child care centres are permitted to be located in all residential and commercial zones in the ACT. There are at present child care centres located within close proximity to the industrial areas in surrounding suburbs.</p> <p>Whilst it is acknowledged that it is desirable and convenient for both parents and staff to be able to access child care near their place of work, there is also the duty of care consideration to protect children from the negative health impacts from potentially harmful pollutants.</p>
<p>Industrial areas should be planned to allow for appropriate community facilities such as shops and child care in controlled zoning</p>	<p>Noted.</p> <p>Consideration of supply and demand for industrial land and the appropriate mix of zoning and permitted uses may be considered as part of a review of the ACT Planning Strategy. Consideration could also be given to compatible mixed use areas as well as those areas that are appropriate for heavy industrial uses and to be separated from vulnerable community sectors. This will be considered as part of the further policy work to be undertaken on this matter, and may still result in changes to the Territory Plan via a separate draft variation.</p>
<p>In NSW, the new Education and Child Care State Environmental Planning Policy (SEPP) is proposing to permit child care facilities in all IN2 Light Industrial and R2 Low Density Zones – contrary to the changes in DV352</p> <p>The SEPP is supported by a Guideline that provides guidance on the consideration of location criteria, design and siting requirements etc in accordance with planning controls that need to be considered by development proponents and local councils and encourage design</p>	<p>The new SEPP is being introduced to increase the land available for centre-based child care by allowing child care centres in both IN2 Light Industrial and Low density residential areas.</p> <p>By contrast, the ACT does not have limited land availability constraints for child care centres. The ACT already allows child care centres in all the residential zones and commercial zones.</p> <p>The IN2 Light Industrial zone in NSW only permits 'light industry' which means carrying out an 'industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes,</p>

quality.	<p>smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise...'</p> <p>This is not comparable to the industrial zones in the ACT, both of which allow general industry defined as an industry 'not being a light, hazardous, offensive or mining industry, in which the processes carried on, the transportation involved or the machinery or materials used have the potential to interfere with the amenity of the locality by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit, oil or otherwise'. The Commercial CZ3 services zone in the Territory Plan is more comparable with the NSW IN2 as it permits 'light industry' type uses but does not permit 'general industry'.</p>
Submitter 5 had the following comments relating to their site in Mitchell and the consequential impacts of DV352:	
<ul style="list-style-type: none"> <li>- concerned about how the changes in the DV (with interim effect for the prohibition of child care facilities) would affect their recent approval to change the use to their lease for a block in Mitchell to include child care centre</li> </ul>	<p>The use is allowed in the lease as a result of the ACAT decision, but to activate the use will require the lodgement of a development application in the Impact Track under the current interim effect conditions. However as a result of changes to the recommended draft variation submitted to the Minister, the proposed prohibition of child care centres in industrial zones will be removed from the DV and the DA will be able to progress in the merit track.</p>
<ul style="list-style-type: none"> <li>- DV352 should not have interim effect (already child care centres operating in Fyshwick and Symonston)</li> </ul>	<p>EPSDD has resolved to remove the prohibition of child care centres from industrial zones from the recommended draft variation in response to community feedback. Further policy development on this issue will be undertaken by EPSDD to identify areas where child care centres may not</p>

	<p>be permitted.</p> <p>EPSDD is still of the view that certain areas within industrial zones are not suitable for child care centres and will progress further policy work and investigation into this matter and present an alternative policy response. This will be the subject of a separate, single issue draft variation that will be released for further community engagement and consideration.</p>
<ul style="list-style-type: none"> <li>- Child care centres in industrial areas was debated in a recent ACAT [ACT Civil and Administrative Tribunal] matter for their Mitchell site – experts provided evidence that if Crown leases adhered to EPA and other rules, regulations and guidelines then a child care centre could operate safely</li> </ul>	<p>The ACAT decision applied to this particular case only.</p> <p>As stated above, notwithstanding the removal of the prohibition from the recommended draft variation submitted to the Minister, EPSDD is still of the view that certain areas within industrial zones are not suitable for child care centres. Further policy work and investigation into this matter will be undertaken and an alternative policy response proposed in a separate draft variation that will be released for further community engagement and consideration.</p>
<ul style="list-style-type: none"> <li>- Light rail will travel past Mitchell and will more than likely include children and other sensitive receptors. If concern for Mitchell was genuine then Mitchell should effectively have a bubble put on top of it</li> </ul>	<p>It is acknowledged that Mitchell as an industrial area is undergoing change due to factors such as the development of the new areas of Franklin and Harrison in close proximity and also the route of the light rail running north-south to the east of Mitchell. An investigation into the industrial areas in the ACT may form part of the review, including the changing nature of Mitchell. However it is considered that there is still a role for Mitchell as an industrial hub for construction-related activities (for example) on the north side of Canberra, including emerging suburbs and the light rail project.</p>

- Residents of Franklin and Harrison (adjacent Mitchell) should immediately be informed of the risks associated with living near an industrial estate	Noted. However this is not a matter for this draft variation.
- Mitchell no longer a highly toxic industrial environment – has effectively been sterilised with introduction of Harrison and Franklin less than 50 metres away	Investigations into industrial areas including Mitchell could consider rezoning or limiting some uses in the northern parts of Mitchell and gradation of uses to the south for more high impact uses without sterilising the whole industrial suburb.
- Material provided as part of ACAT matter demonstrated the need for long day care services in Mitchell	There are currently at least seven long day child care centres in the Gungahlin town centre, two in Harrison and one in Franklin, that are accessible and within a reasonable distance to/from Mitchell which could meet demand for child care from the local workforce.
- No evidence provided that price of industrial land surrounding a child care centre would be affected	The inadvertent and incremental sterilisation of surrounding industrial uses could have an effect on limiting the potential for the range of permitted uses on surrounding industrial land. Primary use of industrial land should be for industrial uses and related purposes – to encourage the expansion and diversification of the ACT economy and employment away from reliance on the federal public service. The industrial areas in the ACT are also well placed as a transport and distribution network hub for the Australian Capital Region. Limiting the availability of land for industrial purposes as a result of the sterilisation of surrounding uses by one or two landowners could have a significant impact on the viability of future industrial land use and flow-on effects for the ACT economy.
Child care centres are highly regulated, more so than other permitted community uses in the industrial zone (ie	Not agreed. Child care centres accommodate the most vulnerable people in the



educational establishment). Clearly targeting just the one specific use without appropriate thought	community, often for long hours when children are in full time care. The changes were proposed in response to concerns about the potentially harmful effects of industrial pollutants and safety risks on vulnerable users (in this case small children).
The Education Directorate had no comments on the DV therefore do not have same concerns as ACTPLA – otherwise would not have approved and licensed child care centre currently operating in Fyshwick and Symonston.	Although the Education and Training Directorate (ETD) provides some limited input in the development application process under the Community and Recreation Facilities Location Guidelines General Code, ETD does not determine suitability of land for a use. ETD's primary responsibility in the licensing process is to assess the completed childcare centre. It is the role of the planning and land authority to determine whether land is suitable for a proposed use. This includes consideration of co-located uses that might impact on the health and safety of young children who will be exposed to this environment for significant periods of time at a developmental stage of life.
If DV352 is approved then child care centres in Fyshwick and Symonston should be closed immediately, and parents made aware of risks (especially Fyshwick – larger estate, more uses)	The child care centres currently operating in Fyshwick and Symonston are in areas with no current hazardous industrial activities. The north-western area of Fyshwick currently has predominately commercial storage and retail facilities. In Symonston the Amtech Estate specifically allows for advanced technology and scientific production based activities and currently prohibits some high impact industrial uses in the estate as prescribed in the Symonston precinct map and code.  EPSDD does not want potential or future industrial development in the industrial areas to be unnecessarily compromised so further investigation and policy work will be conducted to develop some alternatives to address these issues.

Rather than an out-right prohibition of childcare centres in industrial zones suggestions made by submitters included:	
<ul style="list-style-type: none"> <li>- further consultation is held with the child care sector to develop suitable rules and criteria which can be included in the Territory Plan and which will address the potential impacts identified in the DV352 document</li> </ul>	Discussions were previously held with EPA regarding introducing specific rules and criteria to address the health and safety considerations of vulnerable people. However the provisions would have been too onerous for any potential application to meet the stringent conditions.
<ul style="list-style-type: none"> <li>- banning child care centres only from IZ1, while leaving this as a possible use in IZ2. Might need to reconsider some industrial zoning to ensure that there was always some IZ2 land suitable for a child care facility within reasonable distance of all IZ1 areas</li> </ul>	<p>IZ2 still permits 'general industry', 'liquid fuel depot', 'defence installation' etc which are still considered to be potentially hazardous to children's health and safety.</p> <p>However this suggestion could be further considered during the review work to be undertaken.</p>
<ul style="list-style-type: none"> <li>- consequence might be that development approval might have to be refused to facilities that produce noxious, hazardous or carcinogenic fumes or wastes. Even in absence of child care facilities, protection of the health and safety of workers or visitors in these zones should be a vital consideration</li> </ul>	This is contrary to the purposes of providing industrial zoned land. The Territory Plan allows for these types of uses within the industrial zones only, separated from more sensitive receptor areas.
<ul style="list-style-type: none"> <li>- area size and location of more noxious industries and industrial areas away from mixed use industrial zones (consider additional zones to provide adequate separation from other light industrial areas)</li> </ul>	Noted. A review (as outlined in responses above) will involve engagement with key industry and community stakeholders where these suggestions can be considered. Providing a gradation of industrial zones as suggested may allow for mixed compatible uses to occur whilst providing separation and long term protection for more hazardous industrial uses.

<ul style="list-style-type: none"> <li>- inclusion of new mandatory rules in the industrial zones development code that would require demonstrable evidence that a proposal delivers a high level of safety, security, environmental health and amenity for child care centres without sterilising opportunities for industrial uses within its proximity. Should include a Noise Management Plan, Emergency Management Plan etc</li> </ul>	<p>Discussions were previously held with EPA regarding introducing specific rules and criteria to address the health and safety considerations of vulnerable people. However the provisions would have been too onerous for any potential application to meet the stringent conditions.</p>
<ul style="list-style-type: none"> <li>- in many cases it would be possible to achieve suitable noise outcomes with appropriate noise mitigation, careful siting of the centre and understanding the requirement that the occupants of neighbouring land parcels meet their own noise emission obligations under the Environment Protection Regulation</li> </ul>	<p>The noise level permitted (the highest in the ACT) under the Environment Protection Regulations in industrial zones is significantly higher than that in other zones, creating the potential for prolonged exposure at a developmental stage of life and as such presents a greater risk to the health and safety of children attending the centre. This is particularly the case with outdoor play areas where noise intrusion would be difficult to control.</p>
<ul style="list-style-type: none"> <li>- compatible facilities (such as child care centres) should be clustered at every opportunity in accordance with the Community and Recreation Facilities Location Guidelines General Code</li> </ul>	<p>Noted. Clustering of community uses and providing opportunities for multipurpose areas is supported. As discussed above the Planning Strategy review provides a forum to consider clustering and appropriate zoning and uses.</p>
<ul style="list-style-type: none"> <li>- consider NSW draft SEPP and Guideline to assist in developing a Territory Plan Variation that seeks to achieve high-quality design for child care facilities in industrial areas without impacting adjoining industrial land and/or development</li> </ul>	<p>See response on NSW draft SEPP above.</p>

<ul style="list-style-type: none"> <li>- policy work in NSW and findings in ACAT decision should be grounds to remove the interim effect statement placed on DV352 and grounds for reconsideration of prohibition</li> </ul>	<p>EPSDD has resolved to remove the prohibition of child care centres from industrial zones from the recommended draft variation in response to community feedback. Further policy development on this issue will be undertaken by EPSDD to identify areas where child care centres may not be permitted.</p>
--	---