



**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**STANDING COMMITTEE ON ENVIRONMENT,
CLIMATE CHANGE AND BIODIVERSITY**

(Reference: [Inquiry Into Annual and Financial Reports 2022 - 2023](#))

Members:

DR M PATERSON (Chair)
MS J CLAY (Deputy Chair)
MR E COCKS

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 22 NOVEMBER 2023

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Secretary to the committee:
Mr J Bunce (Ph: 620 50199)

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

APPEARANCES

Chief Minister, Treasury and Economic Development Directorate	<u>80</u>
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Amended 20 May 2013

The committee met at 4.04 pm.

Appearances:

Cheyne, Ms Tara, Assistant Minister for Economic Development, Minister for the Arts, Minister for Business and Better Regulation, Minister for Human Rights and Minister for Multicultural Affairs

Chief Minister, Treasury and Economic Development Directorate

Wild-River, Dr Su, Delegate for Lakes and Clinical Waste Controller Senior Director, Environment Protection Authority, Construction, Utilities and Environment Protection, Access Canberra

McKinnon, Ms Margaret, Acting Deputy Director-General, Access Canberra

THE CHAIR: Good afternoon. Welcome to this public hearing of the Standing Committee on Environment, Climate Change and Biodiversity for our inquiry into the annual and financial reports. The committee will hear from the Minister for Business and Better Regulation, Tara Cheyne—I thank you for joining us—and officials.

The committee wishes to acknowledge the traditional custodians of the land we are meeting on, the Ngunnawal People. The committee wishes to acknowledge and respect their continuing culture and the contribution they make to the life of the city and this region. And we would like to acknowledge and welcome other Aboriginal and Torres Strait Islander People who might be joining us.

Hansard are transcribing our hearing and we are broadcasting live and webstreaming. If you take a question on notice, if you can say, “I will take that on notice,” that helps us track down the answers. In this first session, we are hearing from the Minister for Business and Better Regulation—welcome, Ms Tara Cheyne, and thank you—and officials from Access Canberra. We might just do this once at the beginning, and, if Mr Lhuede joins us, he will remember to acknowledge the privilege statement when he comes up—

Ms Cheyne: He has some experience in it.

THE CHAIR: Yes. He has been here before. He forgot last time, so sometimes you need to be reminded. I remind you of the obligations in the privilege statement. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Could you all verbally confirm that you have read, understand and agree to the privilege statement?

Dr Wild-River: I have read, understand and agree to the privilege statement.

Ms McKinnon: I agree and acknowledge the privilege statement.

Ms Cheyne: I have read and acknowledge and will abide by the privilege statement.

THE CHAIR: Excellent. We will jump straight into questions. Minister, we have EPA monitoring at the Kippax oval and, of course, we have development going out

there. Can you give me an update on where we are up to with the contamination and the monitoring of that?

Ms Cheyne: Yes, to an extent. I will ask Dr Wild-River to give you some information. I am aware of the reporting about Kippax Fair. I think questions about it would best be directed to the Suburban Land Agency. In terms of the monitoring of the oval behind it, that is definitely within our remit and we can assist with where that is up to. You might be aware that, in preparing the site for sale, it was identified that the site does have a level of contamination, which we think has been historic from dry-cleaning, when dry-cleaning operated in a particular way. As a result, there has been work underway to, as you rightly pointed out, monitor that site to determine how the contamination is going, essentially, and if it poses any risk. Dr Wild-River will be able to update you further.

Dr Wild-River: I do not have very much more than that. We are following the contaminated site management protocols with this site. That requires that you basically step up controls until you determine that a matter is resolved to the extent that it needs to be, before there are any new sensitive land uses, and continue monitoring. You step down the controls as a matter is resolved in the environment. As to where we are up to with that, a site management plan is required to be developed. That has to be done by a suitably qualified person. Once that site management plan is drafted, there is a process of approval by the EPA. It is endorsed by the EPA. We are not at that stage yet. That is the next stage. Once we are satisfied with the site management plan, that would become a condition of approval and it would go on the notice of decision. Then it would guide all future work to develop it.

THE CHAIR: Is there any communication that happens at various stages of that process? Is there any communication with the local community? Obviously, with the developers—

Ms Cheyne: There was a letterbox drop in March, I believe, particularly given that there had been some significant, and rightly so, community frustration about the time it was taking to release the site. You might be aware that it was originally supposed to be released in the 2021-22 financial year, but, in preparing it for release, the detailed environmental studies happened, which is normal, and that is when they identified the contamination in the groundwater and in the soil vapour. The pleasing thing to note and to stress is that contamination levels are low and that a further environmental audit is now being undertaken to validate these findings. I believe that environmental audit is over a two-year period, requiring quarterly monitoring of the site. That is due to end in, I think, April next year. That means the release of the site has been delayed until that work is completed. That is my understanding.

THE CHAIR: Has there been any feedback from the community on this?

Ms Cheyne: Apart from, “I can’t wait for the site to be released and for Kippax Fair to be upgraded”—that is not everyone’s view, of course, but that is certainly the majority view that I hear—I know that there are others who would prefer the site not to be released. It certainly has been identified for a long time and has been through more than an iterative conversation with the community. I have certainly seen, in the media and in representations to me, that Kippax Fair are very interested in the site.

THE CHAIR: But no particular feedback about the contamination?

Ms Cheyne: No; I do not believe so. I will check with Dr Wild-River, and please correct me if I am wrong, but, with the contamination being so low and in underground water and soil vapour, the day-to-day impact on the community and the risks, I understand, are very low. Why this due diligence has been undertaken is that disturbing these grounds is what needs to be checked in terms of the contamination. So monitoring of the levels, seeing if they are decreasing, increasing or just staying stable, is important if those grounds are going to be disturbed, and knowing what the contamination levels are doing helps inform the site management plan that any developer will need to work with in developing the site, to ensure the safety of the community. That is a very long way of saying no, I have not had any contact from anyone about the contamination, but that is because, in the way it is contained at the moment, I cannot imagine it would be affecting anybody.

THE CHAIR: Thank you, Minister.

Dr Wild-River: That is right. I can provide a little bit more technical detail on that. Regarding the site for the community hub, which might be what you are interested in—

THE CHAIR: Yes.

Dr Wild-River: the EPA has been recently advised by EPSDD that the groundwater and soil vapour tested for the volatile chlorinated hydrocarbons—from, we assume, the drycleaner, as it is usually found in drycleaning fluid. The testing has been undertaken since 2020, and a further round has recently been completed. The outcomes of that round of testing are currently being finalised in a report. That will inform a human health risk assessment and a site audit report and a statement for the site. Then, as I was saying before, they will confirm the permissible uses for the site. We cannot really allow the community centre until we are sure that it is going to be safe for people. Once we get that information, that will confirm whether that is an appropriate land use for it to move to—

Ms Cheyne: That is for the community hub site—the Kippax car park, not the oval.

Dr Wild-River: Yes. That will also inform the future design and construction considerations for those parts, which will then be subject to further decision-making by government. We are expecting those reports to be submitted in early 2024, but we do have preliminary advice. We tend to get preliminary advice before final advice to get on track. The accredited site auditor and human health risk assessor have given preliminary advice that site contamination does not pose any adverse health outcomes to humans in its current form. That includes the Kippax Library, the outdoor plaza, the playground and the bus interchange.

THE CHAIR: Thank you. Mr Cocks.

MR COCKS: Thank you. I want to turn to some of the advice that the EPA has provided to the Commissioner for Sustainability and the Environment. On page 251 of

volume 1 of the annual report, it says that the Environmental Protection Authority responded to the Commissioner for Sustainability and the Environment's investigation into wood heater policy in the ACT, released in May 2022, and *State of the lakes and waterways in the ACT*, released in January 2023, and that the EPA response was provided both through meetings and in written submissions. Are you able to tell me: what was the advice provided, firstly regarding wood heater policy?

Dr Wild-River: I have put this into a different document, but, in terms of the wood heater policy—

Ms Cheyne: To start with, I would say that the Commissioner for Sustainability and the Environment, as I understand it, as she is developing her report, engages with the EPA to say, “This is what I’m finding. This is what I am learning. Do you have anything to add?” and things like that. That is pretty standard. There will be meetings, I understand. Then, written responses might also be required following those meetings, but also, as you are aware, we are required to respond to those reports when they are released. You have seen the response to the wood heater policy recently—

MR COCKS: Yes.

Ms Cheyne: EPA also had a role in formulating that response. Dr Wild-River can share with you what she or her team may have provided during that consultation.

MR COCKS: Thank you.

Dr Wild-River: We met while she was doing the report and were aware of that report as it was being written. The EPA is not the primary agency to respond on the policy matters. Because the wood heater and the air protection policies are developed by EPSDD and the environmental protection policy team, our main input was to confirm that, as regulators, we have been appropriately regulating within the bounds of the policy. There were comments in the report that were to do with regulatory practice. That is the remit that we bring to that. The report, for instance, recommended that a more—I cannot remember the term that was used—“rigorous or digital” or something like that. You get the feeling they are talking about machines to test the air quality coming out of wood heaters.

The published and approved regulatory practice for testing compliance of wood heaters involves the team going out and observing wood smoke and its behaviour as it comes out of chimneys. The commissioner was interested in us finding what was described as a more rigorous approach to that. We looked into that, as did our policy colleagues, to try to determine whether there is a better way than the way that we are doing it.

Following her first report on wood heaters, which was a couple of years ago, she had already flagged this as an issue and we had already looked at and improved our practice. In the past, the officers had to look for a certain number of minutes. I think it was 20 minutes and then they dropped it to 10 minutes so that they do not have to look for the wood smoke for as long. In our investigations of methodologies that are suitable for this kind of matter, we were not able to identify anything better than that. It might seem like a simplistic methodology, but it is actually best practice. There are

many things—

MR COCKS: So visual inspection means more observation?

Dr Wild-River: Yes. It is a visual inspection. They are using all their senses—obviously their sense of smell and things like that as well. What they are looking for is whether the plume of smoke is actually polluting anyone. If the plume of smoke is going into the air and it is quite clear that it is actually dissipating and not getting to anyone, then that is compliant with the policy. It is over to EPSDD as to whether the policy is suitable and fit for purpose. We were able to confirm that our approach to regulating is as per the policy and that we, as regulators, have not been able to find anything better. We have taken this to our peak bodies as a query, and we have raised it at national forums and asked upper EPAs and other local governments around Australia and New Zealand whether they have a better method, and so far we have not been able to identify one, either through research online or through asking our colleagues.

MR COCKS: I would assume it was similar input for *State of the lakes and waterways in the ACT*?

Dr Wild-River: Yes; it was. We took the reports very seriously and we combined them with our own understanding of what is going on in the ACT and we adjusted our practices to raise the bar and do better. You might recall that, in the 2022-23 budget, the EPA was provided with two additional staff and they were specifically tasked with being proactive. One of the things that I am really proud of in the annual report we have presented to you this year is a very significant increase in the amount of work we were able to put into preventing sedimentation into waterways. We were aware of it as an issue, but we really targeted that, in part to respond to the commissioner's report, which showed that sedimentation from building sites, including small building sites, was a real issue. You will see in the report that we issued 51 infringement notices, mostly for poor management of sediment on small building sites. That work was enabled by the two additional staff that we were able to get in that budget. We really targeted them on that problem which had been identified by the commissioner and we were able to achieve some really good outcomes from that increased inspection regime.

Ms Cheyne: In addition to those infringement notices, obviously Access Canberra has an accountability compliance approach, in terms of engage, educate, enforce, and so what has been also super useful about having the extra resources and the information that the commissioner provided in *State of the lakes and waterways in the ACT* is that there needed to be a bit more proactive work with the building sites. You will see that the number of physical inspections of them was 891 in the previous financial year and this year there were 1,509. Amazing. Kudos to the team. Inspectors provided 1,403 points of advice to enhance environmental performance. That is a really good example of the commissioner undertaking her investigation and engaging with the EPA in providing the information they had. The commissioner was able to bring together a whole range of sources. That resulted in a very detailed report that the EPA took very seriously. The EPA adjusted its compliance approach as a result.

You will see that there were several times where the EPA went to a site and lots of

things needed changing and sometimes there were just one or two things, but it was particularly sediment control run-off, which I think would be of particular interest to you, Mr Cocks in your electorate.

MR COCKS: Absolutely.

Ms Cheyne: I hope that you are also getting the feedback that it is less of an issue now. But there is still more work to do—

MR COCKS: Yes. That goes to my last question on this line. It sounds like it has been quite effective—being able to scale up those functions. Are there opportunities to build on that further?

Dr Wild-River: Yes; there are. Two extra staff are not really very much. The team is working on a strategic environment protection framework, seeking to raise the bar further and ensure that we are meeting community expectations for a modern environmental regulator. We have identified some matters that we are looking at. They are new opportunities—areas that we could be doing even better.

In addition to the building site business education program that we did, you will see in the annual report that there is also a little report about one that we did in Beard, at an industrial estate. It was a pilot. We are looking at the proactive area of businesses that do not require environmental authorisations but do have the potential to pollute the environment. It is a subset to really focus proactive effort on; otherwise they do not get regulation for environmental protection. That was a smaller program, but we still managed to get to quite a high number of businesses and provided advice to around 10 per cent of them about ways that they could do better on a whole range of things. There were quite a lot of contaminants. Technically, in the act they are contaminants if they are left where they may cause harm. So, if you leave an open can of oil next to a stormwater drain, if it rains it will go into the stormwater and cause pollution. Similarly, we were able to advise on some ways they could prevent noise pollution and other air pollution. That was really positive.

We have been approached by the motor vehicles association to look at some motor vehicle workshops that are in residential areas—ones that might be causing noise, odour and other things in residential areas. That is another area of potential work. We have been working with the motor vehicle association to develop an approach that would be appropriate.

Minister, thank you for highlighting the accountability framework. The education part of it is absolutely at the forefront. We have been getting really good results from that. We reluctantly take enforcement action and always try to lead with a communication and education message.

MR COCKS: There is a whole bunch more I could dive into, but—

THE CHAIR: You are welcome to. Honestly. I have a couple of supps on this one, but I do not mind if we stay on this.

Ms Cheyne: I can give a bit more context about it which might help guide your

questions as well. The strategic framework work that is being undertaken is critically important for us. Minister Vassarotti is the lead because she has the policy responsibility and I am the supporting minister on this. Obviously, the framework is so important because it sets out where the ACT government is targeting its efforts—bang for our buck—but also the resources that we need for what we want to do.

We have had conversations in these hearings, at least while I have been in the role, about complaints to the EPA and most of them are about noise. Noise greatly affects people in the moment and I appreciate it affect people's quality of life. There are some absolutely horrific examples. Also, I think there is a question of ongoing harm and whether the EPA can target its efforts and make sure that we do not have catastrophes that have a permanent consequence, for example. Noise probably does not have a permanent consequence for a person. These are all the things that we are having another look at and working out where we need to target our resources. It has been very helpful for us that the EPA has received just a small resource increase and has shown what it can do with that. That will help guide the government's future budget considerations once the framework is finalised.

MR COCKS: There is a senior policy officer identified to develop a three-year action plan to achieve reforms to deliver, enhance and modernise the environmental protection framework in the ACT. Is that associated with that work?

Ms Cheyne: Yes. That is the officer that is in the EPSDD leading that work.

MR COCKS: Excellent. That was a 12-month position, I understand. Is that work still ongoing?

Dr Wild-River: It is. As Ms Cheyne said, it is a collaborative piece of work. EPSDD and Access Canberra have been both working together with that officer. They report to both agencies. Access Canberra has found additional resources within an existing availability and has been able to extend that officer until the middle of next year so that they can deliver that three-year action plan. We are also delivering quite a lot of short-term actions that are already consistent with existing policy, so that we can get some things moving. Then we are working on a statement of our vision to really meet expectations.

MR COCKS: You mentioned the educational type activities reaching out to mechanics. In particular, it sounded like you are focused on those operating in residential areas.

Dr Wild-River: That has been the call from the motor vehicles association—to look at home businesses. It does seem like a really good area to focus on. A big issue for environment protection in the ACT is the policy to increase the population within existing residential areas. It is great for the environment because it protects the green belts, but it brings polluting activities in close contact with residential areas. That is one of the big drivers for increased pressure on environmental protection work. It is what you see playing out in the Holt matter, the Kippax matter, that we were looking at earlier, because you are getting near residences on places that have maybe previously been contaminated. We need to check those carefully every time.

People rely on the suburbs to be havens—quiet—and to be a place to safely go home. It seems to be important to really focus on keeping those places free of pollution, even nuisance pollution like noise. It does seem like a good thing to focus on, especially as we get those areas more built up with population centres.

Ms McKinnon: You can use that balance again about sustained harm to the environment, but heat pumps on roofs are going to be an emerging issue in terms of neighbours and noise. We will have to figure out how to deal with that in a sustained way.

THE CHAIR: I might continue on this line. We were talking in estimates about the resource increase and going to 1,509 site inspections in a year, which is up from 891 in the previous year, so almost double, which is great. Was that all done with two additional FTEs?

Dr Wild-River: In part, we were trying to show what could be done in such a small team with a modest resource increase. We are still building a business case for what is needed to genuinely meet the environmental demand in the ACT. What we see in all the indicators is that the demand is growing, so expect us to ask for more. At the same time, we kept everybody going in the core business, which is a mix of preventative and reactive. We do a lot of work to prevent harm and we comment on 93 to 94 per cent of all development applications that are referred to us, which you can see in the report is hundreds every year. All that work is preventative. We comment on development applications so that harm does not happen in the future, and that is very effective. That is the most bang for buck.

When the Legislative Assembly approved those two extra staff, they highlighted that they were to be focused on proactive investigative work, so that is what we did. We said, “We have the new staff members. Where can we get the most bang for buck from these two people for this year?” We put them on those small building site inspections and showed what could be done. A well-resourced EPA can really deliver the outcomes that Canberra needs in this space and a modest increase can give a lot of outcomes.

THE CHAIR: We would love to see a well-resourced EPA.

Dr Wild-River: We would love that as well.

THE CHAIR: We are nearly at time. I will just mention some evidence we had in a previous hearing from Access Canberra. Under the new planning system, Access Canberra has four FTEs to do proactive inspections—

Ms Cheyne: Thanks. As minister, I know.

THE CHAIR: The *Hansard* does not, though, Minister, so I will just lay it out. They have the four FTEs to do proactive inspections. It sounds like they will not be reactive inspections; they will be a proactive workforce. You are still working through how you are going to deploy that workforce. Is there any cross-over? It strikes me that inspections of building sites and inspections of DAs may be happening. I do not know if it is the same skillset, but it might be people going to the same sites at about the

same time. Do those workforces talk to each other at all?

Ms McKinnon: While we have not landed on an exact operating model, it is exactly that: seamless between the EPA and Mr Lhuede, as the Construction Occupation Registrar. I think those four resources will become split between those two and have a concerted workplan. We do not have: “You go out on a Monday, and you go out on a Wednesday.”

Ms Cheyne: If I may, Mr Lhuede and Dr Wild-River, while they are both here, do not operate in silos. They work hand in glove in sharing information and working together. There are opportunities with all this work going forward. Those resources for planning, as you know, have only just been approved—

THE CHAIR: Yes.

Ms Cheyne: That is why we are working through what exactly that looks like. It is certainly very welcome and will assist as we go forward.

THE CHAIR: Great. That brings us to the end of a very short session. Thank you for your time. I do not think we had any questions on notice, which is always a good result for the public servants behind the scenes. If we want to lodge questions on notice, we will do so within five working days.

The committee adjourned at 4.36 pm.