

**Education Directorate**

**To:** Minister for Early Childhood Development  
Minister for Education and Youth Affairs

Tracking No.: FILE2021/33

**Date:** 25/2/2021

**From:** Director-General

**Subject:** Minister's Weekly Brief

**Recommendation**

That you note the information in this brief and Attachment A-C.

Yvette Berry ML



*Noted / Please Discuss*

*01/04/21*

Minister's Office Feedback

**Key Topics/Emerging Issues**






**Major Projects**



  
**19. Campbell Primary School**

Phase 2 (Construction Phase) recommendation has been approved by the delegate. Major Projects Canberra will issue the letter of award and execute the contract with the contractor in late February 2021. Construction works will commence in early March 2021.





Signatory Name: Katy Haire Phone: 59158

Action Officer: Katy Penglis Phone: 59155

**Attachments**

Attachment	Title
Attachment A	
Attachment B	
Attachment C	



Education Directorate

To: Minister for Early Childhood Development  
Minister for Education and Youth Affairs

Tracking No.: FILE2021/33  
SUB21/2854

Date: 26 May 2021

From: Director-General

Subject: Minister's Weekly Brief week ending 28 May 2021

Recommendation

That you note the information in this brief and attachments

Noted / Please Discuss

Yvette Be

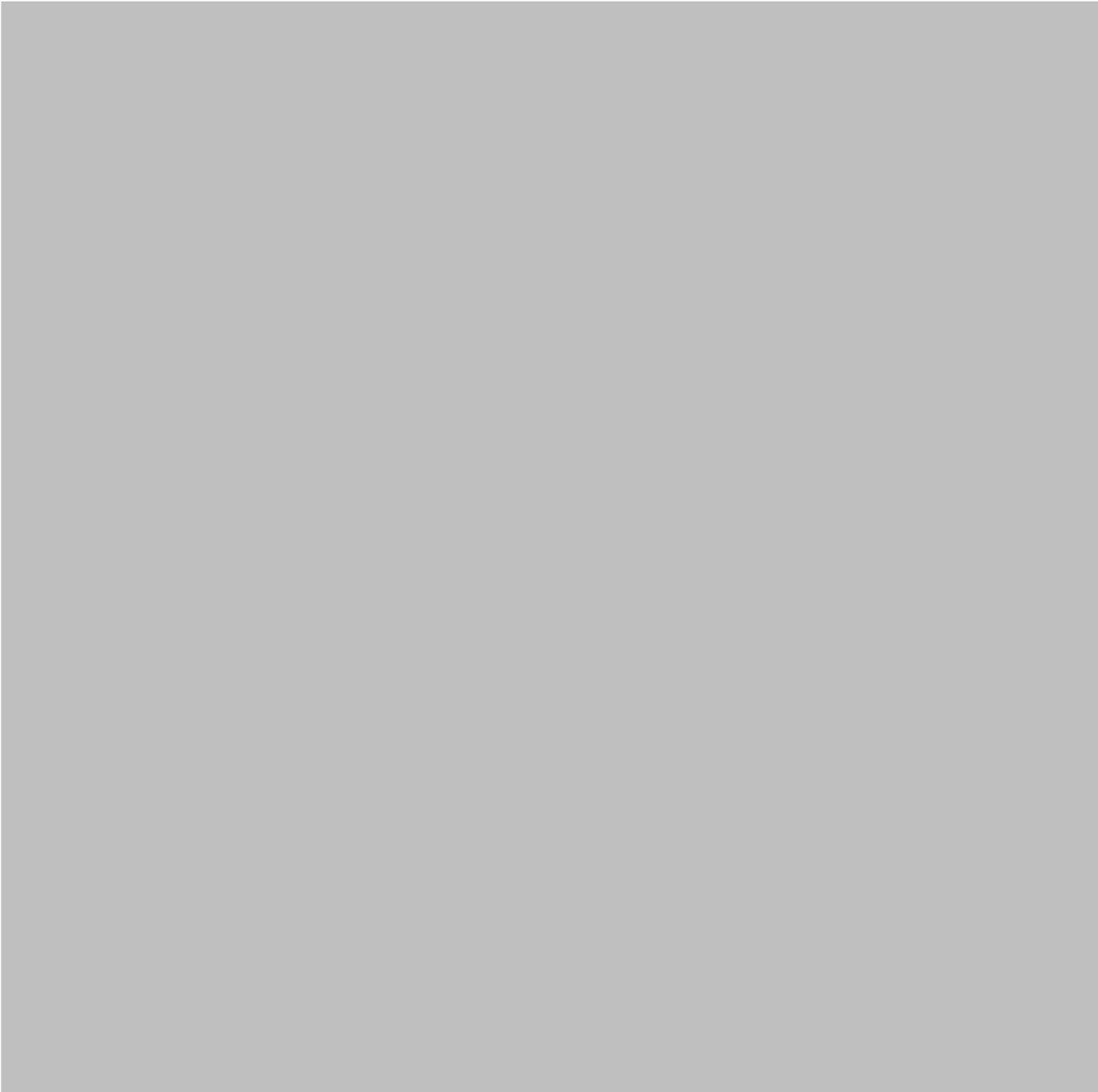
...17...06/21

Minister's Office Feedback

KEY TOPICS/EMERGING ISSUES



OFFICIAL



**FOR NOTING**



OFFICIAL



**16. ACT Auditor General's Office Performance Audit Program 2021-22 and forward year**

Consultation is underway with ACT Government Directorates on the draft Audit program 2021-22. There are a number of topics which include (and are supported by) Education for the forward years:

Education specific

- Campbell Primary school procurement (underway);



Signatory Name: Katy Haire Phone: 59158

Action Officer: Kirsten Hurford-Clark Phone: 73230

**Attachments**

Attachment	Title
Attachment A	
Attachment B	
Attachment C	



OFFICIAL

MINISTERIAL BRIEF



Education Directorate

To: Minister for Early Childhood Development  
Minister for Education and Youth Affairs

Tracking No.: FILE2021/33

Date: 29 July 2021

From: Director-General

Subject: Minister's Weekly Brief – Week ending 30 July 2021

Recommendation

That you note the information in this brief and attachments



Noted / Please Discuss

Yvette Berry MLA

... 25/08/21

Minister's Office Feedback

Key Topics/Emerging Issues








## FOR NOTING

### **13. Auditor-General Performance Audit – Campbell Primary School Procurement**

The Auditor-General's Office is in the process of finalising the fieldwork stage of the performance audit considering the activities of the Directorate and Major Projects Canberra in procuring building and construction services for the modernisation of Campbell Primary School.

Interviews with staff from the Directorate have concluded and no further information or documentation has been requested from the Directorate at this stage. There is no precise timeframe yet but the Audit office has suggested this will be over the next few months. An update will be provided once available.

In the meantime, the Directorate is meeting with Major Projects Canberra on 10 August 2021 to consider opportunities to strengthen the process for procurements that are jointly managed.





Signatory Name: Katy Haire Phone: 59158  
Action Officer: Caitlin McGarvey Phone: 52360

**Attachments**

Attachment	Title
Attachment A	
Attachment B	
Attachment C	



OFFICIAL

MINISTERIAL BRIEF



Education Directorate

**To:** Minister for Education and Youth Affairs Tracking No.: FILE2021/1997

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**Date:** 30/04/2021

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**From:** Executive Group Manager, Business Services

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**Subject:** Campbell Primary School (CPS) Construction Services Procurement – Auditor-General’s audit background

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**Critical Date:** Nil

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**Critical Reason:** Nil

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- DG .../.../...
- EGMBS .../.../...

**Recommendations**

That you:

1. note background information with respect to the CPS Building Services procurement processes and a subsequent Freedom of Information (FOI) request.

**Noted / Please Discuss**

2. note information regarding a new external audit to be undertaken by the Auditor-General in relation to CPS Building Services procurement processes.

**Noted / Please Discuss**

Yvette Berry MI

... 25/05/21

Minister’s Office Feedback

## OFFICIAL

**Background**

1. Funding of \$18,819 million was allocated in the 2019-20 budget to upgrade and modernise CPS.
2. A Request for Expressions of Interest (REOI) went to market on 30 July 2019 and closed on 27 August 2019. Six construction consortiums responded to the REOI. The Evaluation Team reviewed the six submissions and selected two preferred tenderers, Manteena Pty Ltd (Manteena) and Lendlease Pty Ltd (Lendlease), to proceed to Request for Tender (RFT) procurement phase.
3. An RFT was issued to both tenderers on 30 October 2019, with a closing date of 19 December 2019. In the RFT phase both tenderers participated in three individual Early Contractor Involvement (ECI) sessions. These sessions enabled the tenderers to pitch their concept design to further develop their submissions based on feedback provided by the Tender Evaluation Team (TET) which was made up of staff from the Education Directorate (the Directorate) and Major Projects Canberra (MPC).
4. In early December 2019, determination by the Tree Protection Unit was made that required two significant trees to be retained. As a result, the tender period was extended to 23 January 2020 to allow for a redesign by both tenderers. As part of the RFT evaluation, the TET reached consensus agreement that the two tenderers, Manteena and Lendlease, both presented strong technical proposals and were low risk for the Territory.
5. [REDACTED]
6. Following the initial tender and [REDACTED] a new TET undertook a BAFO process for further assessment, with a view to establish final ranking to determine a preferred tenderer. A best and final offer was issued 7 April 2020 and responses were received on 6 May 2020.
7. Following evaluation of the BAFO submissions, the TET recommended entering a contract for Phase 1 (design) with Manteena. The delegate considered that the other tenderer (Lendlease) offered the best value for money and a decision to enter a contract with Lendlease was made on 25 June 2020.

**Issues**

8. On 12 November 2020, the Directorate received a request under the *Freedom of Information Act 2016* (the FOI Act) from Manteena (through a private law firm) seeking access to information relating to the procurement of construction services for Throsby and Campbell primary schools. The FOI request was partially transferred to MPC for response.

## OFFICIAL

9. The FOI decisions by the Directorate and MPC, which were finalised on 12 February 2021, are now being reviewed by the ACT Ombudsman in accordance with the provisions of the FOI Act at the request of Manteena. The matters under review relate to decisions by the Information Officer about the application of legal professional privilege and nondisclosure of information about Lendlease, including the value of their bid and the TET's assessment of their submission. Information relating to these aspects was deemed by the Information Officer to be contrary to the public interest to disclose.
10. On 16 April 2021 the Directorate received notification from the ACT Auditor-General of his decision to conduct a performance audit of CPS building services procurement, involving both the Directorate and MPC. This followed an initial meeting between the Directorate, MPC and the Audit Office on 15 April 2021.
11. The objective of the audit is to assess the effectiveness of the procurement processes for CPS's building and construction services. In particular, the Auditor-General will consider whether:
  - the CPS building services procurement process was conducted in accordance with the ACT Government procurement requirements; and
  - effective probity arrangements were put in place and complied with for the procurement process.
12. The Auditor-General's office has reviewed key information and documentation and will be undertaking fieldwork over May and June, including interviews with key staff in the Directorate and MPC involved in the procurement process. The audit is expected to be completed and tabled in the Legislative Assembly in the fourth quarter of 2021.
13. The full audit objectives, scope, criteria and timeframes are included in the Engagement Letter at Attachment A.
14. The Directorate is working closely with MPC to ensure a coordinated effort in assisting the Auditor-General's audit process. This also enables both directorates to support staff during and following the audit process.
15. The audit details have been shared with the Audit Committee and the final report will be subject to the Audit Committee's consideration.

**Financial Implications**

16. Nil

**Consultation**Internal

17. Individual staff members expected to be involved in audit interviews have been informed of the audit and advised of support available to them throughout the process.

## OFFICIAL

Cross Directorate

18. The Directorate is working closely with MPC to cooperate with the audit and support provision of documentation requested.

External

19. Nil

**Work Health and Safety**

20. Nil

**Benefits/Sensitivities**

21. This audit may identify process improvements that could support strengthening of future procurement processes, particularly those undertaken with MPC for design and construction projects.
22. The Directorate is already working MPC to identify and implement process improvements based on a desktop analysis of the procurement documentation.

**Communications, media and engagement implications**

23. Media, community and industry stakeholder interest is expected following the release of the performance audit report in Q4 2021. Talking points will be provided at this time.

Signatory Name: Kristen Laurent

Phone: Ext. 56749

Action Officer: Chris Aquilina

Phone: Ext. 74386

**Attachments**

Attachment	Title
Attachment A	Auditor-General's engagement letter (incl. objectives, scope and criteria of audit)

**Education Directorate**

**To:** Minister for Education and Youth Affairs Tracking No.: FILE2021/4593

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**Date:** 16/09/2021

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**From:** Executive Group Manager, Business Services

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**Subject:** Update - Campbell Primary School capital works procurement processes – Ombudsman review of FOI decision and Auditor-General performance audit

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**Critical Date:** Nil

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**Critical Reason:** Nil

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- DG .../.../...
- EGM BS .../.../...

**Recommendations**

That you:

1. Note the information contained in this brief

**Noted / Please Discuss**

... .. / .....

Minister's Office Fe

**Background**

1. The purpose of this brief is to update you on the following matters relating to the procurement of capital works improvements for Campbell Primary School:
  - a. The Ombudsman's review of decisions made under the *Freedom of Information Act 2016* by Major Projects Canberra (MPC) and the Education Directorate. The unsuccessful tenderer for the project, Manteena Pty Ltd

## OFFICIAL

(Manteena), sought records from both agencies through a law firm and requested the Ombudsman's review of the release decisions. The Ombudsman's reviews of MPC's and the Directorate's FOI decisions are at different stages in the process. Background information is provided at Attachment A.

2. The procurement process at the centre of this FOI request is also the focus of a performance audit by the Auditor-General. Background information is contained in brief FILE2021/1997.

**Issues**Review of FOI decision

3. MPC was provided with the Ombudsman's decision letter on 9 September 2021, which requires the release of tender evaluation scores for the successful tenderer, Lendlease Pty Ltd (Lendlease), to Manteena, and publication of the record on the disclosure log. The Ombudsman has notified Lendlease of the decision. It is assumed that the Ombudsman's decision in relation to a similar record in the Directorate's case will be comparable, noting that the record of concern for the Directorate also contains Lendlease's price submitted, and the Ombudsman's draft consideration letter indicated that this was also proposed to be released.
4. Whilst there are review options available through the ACT Civil and Administrative Appeals Tribunal (ACAT) or under the *Administrative Decisions (Judicial Review) Act 1989*, based on [REDACTED] and the conversation with Lendlease, it seems unlikely that either MPC or Lendlease will pursue review of the Ombudsman's decision.

Performance audit

5. A draft of this audit report is expected to be shared with the Directorate in the coming weeks and you will be briefed at that time.

**Financial Implications**

6. Nil direct. Although the Directorate had argued that releasing the tender evaluation team's scores and price may have an impact on Lendlease's interest in doing business with the Directorate in future, which may affect the Directorate's ability to achieve value for money outcomes.

**Consultation**Cross Directorate

7. MPC – the Directorate and MPC FOI teams have worked cooperatively throughout the process. MPC will inform ACT Procurement about the outcome of the Ombudsman's review.



## OFFICIAL

**Work Health and Safety**

8. Nil

**Benefits/Sensitivities**

9. Negative media coverage may occur if the Ombudsman's decision is as anticipated. Publication of the documents would not occur on the Directorate's disclosure log until 20 working days after the Ombudsman's decision is published on their website.
10. The Auditor-General's report may generate strong interest in the Legislative Assembly and in the media.

**Communications, media and engagement implications**

11. Potential for negative media coverage. Talking points about the procurement process would be refreshed prior to information being made publicly available.

Signatory Name: Kristen Laurent

Phone: Ext: 56749

Action Officer: Paula Murray

Phone: Ext: 59691

**Attachments**

<b>Attachment</b>	<b>Title</b>
Attachment A	Ombudsman Review of FOI Decision – Background Information

**Ombudsman Review of FOI Decision – Background Information**

1. The decisions made under the FOI Act by MPC and the Directorate were released to the FOI applicant (law firm obo Manteena) on 12 February 2021. Both agencies received notification from the Ombudsman on 19 March 2021 of a request for review of decision submitted by Manteena.
2. In relation to the Directorate's decision and release, objections were raised about six records and a contention made that information relevant to the request was missing which was disproved. The objections raised related to:
  - a. non-release of a record which was released by MPC, thereby negating the objection;
  - b. application of legal professional privilege protections; and
  - c. non-release of the tender evaluation team's assessment of Lendlease's Best and Final Offer (BAFO) submission, in terms of scores awarded and price submitted by Lendlease. The Directorate's decision was that the factors favouring non-disclosure outweighed factors favouring disclosure as release of the information was considered prejudicial to Lendlease's business affairs and the competitive commercial interests of the Directorate.
3. Despite there being a number of documents in common in the releases of both agencies, and a consistent approach applied to the release decision, objections raised by Manteena were different for each agency i.e. a record held by both agencies was objected to in one agency's decision but not the other.
4. The Directorate's response to the Ombudsman's notice and invitation to provide a further submission in relation to Manteena's objections was submitted on 7 April 2021. MPC's response was also submitted around that time.
5. MPC received a draft consideration letter from the Ombudsman on 17 May 2021 proposing to vary the decision. Of particular concern to MPC was the proposed release to Manteena of tender evaluation scores for Lendlease. MPC [REDACTED] [REDACTED] response which was sent on 18 June 2021.
6. Subsequently, the Ombudsman suggested to MPC that Lendlease should be notified about the matter because the Ombudsman's decision may be of concern to Lendlease, and they should be afforded the opportunity to request to be a participant in the review. Lendlease had not been consulted by either agency about the FOI request as there was no intention to release any information by or about their business to Manteena. MPC contacted Lendlease on 16 August 2021 to advise

## OFFICIAL

them of the review and Lendlease made a written submission to the Ombudsman on 26 August 2021.

7. The draft consideration letter for the Directorate received on 24 August 2021 proposed to vary the decision in relation to two documents and identified that Lendlease should be notified about the review to enable them to participate, should they wish.
8. The Directorate's response sent on 1 September 2021 provided further information about the decision for one of the records and requested reconsideration by the delegate. It also re-stated the Directorate's objections to the proposed release of the tender evaluation team's scores for Lendlease's BAFO and the price they had submitted, including identifying that Manteena's scores and price should also be publicly released if information relating to Lendlease is to be disclosed.
9. Lendlease was contacted by the Directorate via email on 7 September 2021 about the review and invited to apply to the Ombudsman to participate in the review. The issue was also discussed with Ben Owen, Lendlease's ACT General Manager by telephone on 10 September 2021. Mr Owen advised that the Lendlease's primary concern is that the scores would be released in isolation and without supporting information about the reasons for decisions, which may result in the information being misconstrued or not considered in context.

**From:** [BERRY](#)  
**To:** [Hobbs, Rebecca](#)  
**Subject:** FW: AG Report No. 13 of 2021 - Campbell Primary School Modernisation Project Procurement  
**Date:** Thursday, 23 December 2021 10:45:04 AM  
**Attachments:** [image002.png](#)  
[Report No. 13 of 2021 - Campbell Primary School Modernisation Project Pr....pdf](#)

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**From:** Milne, Sophie <Sophie.Milne@parliament.act.gov.au>  
**Sent:** Thursday, 23 December 2021 8:04 AM  
**To:** #LA, Members <#LAMembers@act.gov.au>; ACT Auditor General <act\_auditor\_general@act.gov.au>; Bailey, Kim.P <Kim.P.Bailey@act.gov.au>; CMTEDD, Assembly Coordination <AssemblyCoordination@act.gov.au>; Commisso, Taylah <Taylah.Commisso@act.gov.au>; Gilks, Rachel <Rachel.Gilks@act.gov.au>; Italiano, Celeste <Celeste.Italiano@parliament.act.gov.au>; Milne, Sophie <Sophie.Milne@parliament.act.gov.au>; Shannon, Anne <Anne.Shannon@parliament.act.gov.au>; Thompson, SamuelR <SamuelR.Thompson@parliament.act.gov.au>; Rafferty, Janice <Janice.Rafferty@parliament.act.gov.au>  
**Subject:** AG Report No. 13 of 2021 - Campbell Primary School Modernisation Project Procurement

Members

Please find attached (this time!) the **Auditor-General’s Report No 13 of 2021** which was provided to the Speaker yesterday pursuant to Section 17 (5) of the Auditor General Act 1996.

**Sophie Milne**  
EA and Papers Officer | Office of the Legislative Assembly  
T (02) 6205 0173 | F (02) 6205 3109 | E [Sophie.Milne@parliament.act.gov.au](mailto:Sophie.Milne@parliament.act.gov.au)



[www.parliament.act.gov.au](http://www.parliament.act.gov.au)

**From:** [Mombler Louise](#)  
**To:** [Hobbs Rebecca](#)  
**Cc:** [Brent Freya](#)  
**Subject:** Re: Campbell Primary School modernisation procurement  
**Date:** Thursday 23 December 2021 1:43:27 PM

Absolutely- thank you

Get [Outlook for iOS](#)

**From:** Hobbs Rebecca <Rebecca.Hobbs@act.gov.au>  
**Sent:** Thursday December 23 2021 1 01 03 PM  
**To:** Mombler Louise <Louise.Mombler@act.gov.au>  
**Cc:** Brent Freya <Freya.Brent@act.gov.au>  
**Subject:** RE Campbell Primary School modernisation procurement

OFFICIAL

Hey Louise

Below is the cleared response. Can you please send it to Education Media team as an FYI once it s gone to [redacted] ?

Thanks

Bec

+++++

The ACT Government acknowledges the Performance Audit Report and will consider the recommendations seriously as part of our commitment to transparency and accountability.

All relevant directorates are currently considering the report. The ACT Government will respond to the audit s recommendations in early 2022. The government response will be tabled in the Legislative Assembly.

**From:** Mombler Louise <Louise.Mombler@act.gov.au>  
**Sent:** Thursday 23 December 2021 10 15 AM  
**To:** Hobbs Rebecca <Rebecca.Hobbs@act.gov.au>; Brent Freya <Freya.Brent@act.gov.au>  
**Subject:** FW Campbell Primary School modernisation procurement

Ladies .. it has arrived

**From:** [redacted]  
**Sent:** Thursday 23 December 2021 10 03 AM  
**To:** Mombler Louise <[Louise.Mombler@act.gov.au](mailto:Louise.Mombler@act.gov.au)>  
**Subject:** Campbell Primary School modernisation procurement

**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.

Hi Louise

I hope you are well. I have some questions for Minister Berry regarding the audit report into the Campbell Primary School Modernisation Project procurement.

My questions are

- Do you accept the findings of the Auditor-General that the procurement process lacked probity and that tenderers were not dealt with fairly impartially and consistently?
- Do you support the six recommendations the Auditor-General has made?
- Will the Education Directorate be providing probity awareness training as per recommendation 5?

I would appreciate a response before 4.30pm. Let me know if there are any issues.

Kind regards

[redacted]



From: [Redacted]  
To: [Momber, Louise](#)  
Cc: [Hobbs, Rebecca](#); [Brent, Freya](#); [Ferguson, David](#)  
Subject: Re: [Media] Campbell Primary School modernisation procurement  
Date: Thursday 23 December 2021 2:56:28 PM  
Attachments: [image001.png](#)  
[image002.png](#)

**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.**

Hi Louise,  
Thank you for this response.  
Kind regards,  
[Redacted]

On Thu, Dec 23, 2021 at 2 53 PM Momber, Louise <[Louise.Momber@act.gov.au](mailto:Louise.Momber@act.gov.au)> wrote

Hi [Redacted]

Response below.

**Please attribute to an ACT Government spokesperson**

The ACT Government acknowledges the Performance Audit Report and will consider the recommendations seriously, as part of our commitment to transparency and accountability.

All relevant directorates are currently considering the report. The ACT Government will respond to the audit s recommendations in early 2022. The government response will be tabled in the Legislative Assembly.

(ENDS)

**Louise Momber** | Media Adviser

0411 429 607 | Pronouns - she/her



I acknowledge the traditional custodians of the land, the Ngunawal people, and pay my respect to their Elders past, present and emerging.

**Office of Yvette Berry MLA** | Member for Ginninderra  
Deputy Chief Minister

Minister for Education and Youth Affairs

Minister for Early Childhood Development

Minister for Housing and Suburban Development

Minister for the Prevention of Domestic and Family Violence

Minister for Women

Minister for Sport and Recreation

Phone: 61 2 6205 0233 | Email: [berry@parliament.act.gov.au](mailto:berry@parliament.act.gov.au)

[Facebook](#) | [Twitter](#) | [www.yvetteberry.com.au](http://www.yvetteberry.com.au)

**From:** [Redacted]  
**Sent:** Thursday, 23 December 2021 10 03 AM  
**To:** Momber, Louise <[Louise.Momber@act.gov.au](mailto:Louise.Momber@act.gov.au)>  
**Subject:** Campbell Primary School modernisation procurement

**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.**

Hi Louise,  
I hope you are well. I have some questions for Minister Berry regarding the audit report into the Campbell Primary School Modernisation Project procurement.

- My questions are
- Do you accept the findings of the Auditor-General that the procurement process lacked probity and that tenderers were not dealt with fairly, impartially and consistently?
  - Do you support the six recommendations the Auditor-General has made?
  - Will the Education Directorate be providing probity awareness training, as per recommendation 5?

I would appreciate a response before 4.30pm. Let me know if there are any issues.

Kind regards,  
[Redacted]



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**From:** Sloane, Brenton  
**Sent:** Thursday, 23 December 2021 3:54 PM  
**To:** Momber, Louise <Louise.Momber@act.gov.au>; EDU Media <EDU.Media@act.gov.au>  
**Cc:** Hobbs, Rebecca <Rebecca.Hobbs@act.gov.au>  
**Subject:** RE: [Media] Campbell PS modernisation procurement

OFFICIAL

Thanks Louise.

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**From:** Momber, Louise <[Louise.Momber@act.gov.au](mailto:Louise.Momber@act.gov.au)>  
**Sent:** Thursday, 23 December 2021 3:15 PM  
**To:** EDU Media <[EDU.Media@act.gov.au](mailto:EDU.Media@act.gov.au)>  
**Cc:** Hobbs, Rebecca <[Rebecca.Hobbs@act.gov.au](mailto:Rebecca.Hobbs@act.gov.au)>  
**Subject:** [Media] Campbell PS modernisation procurement

Hi Team,

Just as an FYI – we had an enquiry from [REDACTED] - about the Campbell PS modernisation procurement.

See our official response below.

Thanks,

Louise

## **RESPONSE**

### **Please attribute to an ACT Government spokesperson**

The ACT Government acknowledges the Performance Audit Report and will consider the recommendations seriously, as part of our commitment to transparency and accountability. All relevant directorates are currently considering the report. The ACT Government will respond to the audit's recommendations in early 2022. The government response will be tabled in the Legislative Assembly.

-



**ENQUIRY**

- Do you accept the findings of the Auditor-General that the procurement process lacked probity and that tenderers were not dealt with fairly, impartially and consistently?
- Do you support the six recommendations the Auditor-General has made?
- Will the Education Directorate be providing probity awareness training, as per recommendation 5?

**Louise Momber** | Media Adviser

0411 429 607 | Pronouns - she/her

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I acknowledge the traditional custodians of the land, the Ngunnawal people, and pay my respect to their Elders past, present and emerging.

**Office of Yvette Berry MLA** | Member for Ginninderra

Deputy Chief Minister  
Minister for Education and Youth Affairs  
Minister for Early Childhood Development  
Minister for Housing and Suburban Development  
Minister for the Prevention of Domestic and Family Violence  
Minister for Women  
Minister for Sport and Recreation  
Phone: +61 2 6205 0233 | Email: [berry@parliament.act.gov.au](mailto:berry@parliament.act.gov.au)  
[Facebook](#) | [Twitter](#) | [www.yvetteberry.com.au](http://www.yvetteberry.com.au)

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OFFICIAL: Sensitive

**From:** Metherell, Skye <Skye.Metherell@act.gov.au> **On Behalf Of** Education DLO  
**Sent:** Friday, 24 December 2021 1:53 PM  
**To:** Laurent, Kristen <Kristen.Laurent@act.gov.au>  
**Cc:** Matthews, David <David.Matthews@act.gov.au>  
**Subject:** Signed brief: Campbell Primary School Modernisation Project audit report

OFFICIAL: Sensitive

Hi Kristen,  
Please note the Minister has signed this brief, I have attached it here as I cannot access the TRIM container.  
Please let me know if you need anything further.  
Thanks,  
Skye

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**From:** Laurent, Kristen <[Kristen.Laurent@act.gov.au](mailto:Kristen.Laurent@act.gov.au)>  
**Sent:** Wednesday, 22 December 2021 10:58 AM  
**To:** Hobbs, Rebecca <[Rebecca.Hobbs@act.gov.au](mailto:Rebecca.Hobbs@act.gov.au)>  
**Cc:** Matthews, David <[David.Matthews@act.gov.au](mailto:David.Matthews@act.gov.au)>; Education DLO <[EDUDLO@act.gov.au](mailto:EDUDLO@act.gov.au)>  
**Subject:** FW: Campbell Primary School Modernisation Project audit report  
**Importance:** High

OFFICIAL: Sensitive

Good morning Bec  
Please see attached the brief we have prepared for the Minister in relation to the Campbell Primary School Procurement Performance Audit. As you can see from the email below the report has now been provided to the Speaker's Office. David and I are available if you have any questions throughout the day.  
Kind regards

Kristen Laurent | **Executive Branch Manager Governance and Community Liaison**  
Phone: 6206 6749 | Mobile: 0466 244 203 Email: [kristen.laurent@act.gov.au](mailto:kristen.laurent@act.gov.au)  
Education Directorate | ACT Government  
GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

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**From:** Stanton, Brett <[Brett.Stanton@act.gov.au](mailto:Brett.Stanton@act.gov.au)>  
**Sent:** Wednesday, 22 December 2021 10:17 AM  
**Subject:** Campbell Primary School Modernisation Project audit report

OFFICIAL: Sensitive

Good morning  
This is a quick email to let you know that the report has been provided to the Speaker's Office. We will let you know once the report is tabled.  
Thank you  
Brett

Communications from the ACT Audit Office may contain protected information for the purposes of Part 5A of the Auditor-General Act 1996 (ACT).

**Education Directorate**

**To:** Minister for Education and Youth Affairs Tracking No.: FILE2021/5564

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**Date:** 22/12/2021

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**From:** Executive Group Manager Business Services

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**Subject:** Performance Audit Report: Campbell Primary School Modernisation Project Procurement

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**Critical Date:** 22/12/2021

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**Critical Reason:** The Performance Audit Report was provided to the Speaker of the ACT Legislative Assembly today for tabling in the ACT Legislative Assembly.

- DG .../.../...

**Recommendations**

That you:

1. Note the information contained in this brief;

**Noted / Please Discuss**

Yvette Berry MLA

...../...../.....

Minister's Office Feedback

**Background**

1. The procurement process for the design and construction services for the Campbell Primary School Modernisation Project was undertaken by Major Projects Canberra (MPC) and the Education Directorate (EDU) between July 2019 and September 2020.
2. Following a Request for Expressions of Interest process, two tenderers were invited to participate in a Request for Tender; Lendlease Building Pty Ltd and Manteena

Commercial Pty Ltd. Lendlease was awarded the contract for services in September 2020 and work commenced under the contract in January 2021.

3. In April 2021 the Auditor-General commenced a performance audit, following a representation made to the ACT Audit Office in November 2020 in relation to the conduct of the procurement process. The performance audit (the Audit) considered the probity of the procurement process, as well as governance and administrative arrangements. You were briefed on this performance audit in April 2021 (FILE2021/1997).
4. Prior to this, the Directorate initiated an external probity audit in relation to the Campbell Primary School Modernisation Project procurement process. This report was provided to the Auditor General's Office as part of the Performance Audit process.
5. A number of Education staff were interviewed under oath or affirmation as part of this process:
  - a. the Executive Branch Manager Infrastructure and Capital Works (EBM ICW) who was Acting Executive Group Manager Business Services and delegate throughout the procurement process;
  - b. the Director-General – as the decision-maker in accepting the recommendation from the A/g Executive Group Manager Business Services at that time to engage in contract negotiations with Lendlease;
  - c. Education representatives on the Tender Evaluation Teams; and
  - d. Senior officer who was Acting EBM ICW during the procurement process.
6. The Performance Audit Report titled *Campbell Primary School Modernisation Project Procurement* (the Audit Report) was provided to the Speaker of the ACT Legislative Assembly today for tabling in the Legislative Assembly pursuant to Subsection 17(5) of the *Auditor-General Act 1996*.

## Issues

7. The Report concludes that the procurement process for the Campbell Primary School Modernisation Project lacked probity and that tenderers were not dealt with fairly, impartially and consistently. A summary of key findings is provided at Attachment A.
8. The Report includes six recommendations which are primarily directed to Major Projects Canberra in consultation with Procurement ACT and focus on process improvement at a whole of government level.
9. The Directorate initiated contact with MPC in June this year to discuss opportunities to strengthen the procurement processes jointly managed by (MPC) and the Education Directorate. While this was delayed due to COVID, the Directorate met with MPC on 13 December 2021 to discuss next steps in progressing this work.

10. Key areas of focus will include:

- a. the policy framework for probity guidelines;
- b. greater emphasis on understanding of perceived conflicts of interest;
- c. guidance in relation to the appropriate formation and composition of Tender Evaluation Teams;
- d. guidance and thresholds for seeking independent probity advice; and
- e. guidance to delegates on how they record their decisions, including consideration of legal advice.

### **Financial Implications**

11. At this stage no financial implications are anticipated in relation to implementation of the Audit recommendations. It is expected this can be managed within existing resources.

### **Consultation**

12. Visibility of the draft and final proposed reports has been restricted to a small number of specified Executives in Education and MPC for the purposes of:

- a. Verifying the accuracy and completeness of information;
- b. Providing additional information; and
- c. Commenting on the Auditor-General's interpretation of material, conclusion and the practicalities of implementing proposed recommendations.

13. The draft and final proposed reports are protected information by virtue of section 35 of the *Auditor-General Act 1996*, and as such disclosure of these reports are prohibited.

### Internal

14. The Director-General, Deputy Director-General, Executive Group Manager Business Services, Executive Branch Manager Governance and Community Liaison and Executive Branch Manager Infrastructure and Capital Works each received a copy of the draft and final proposed reports. This group provided Education's comments on the draft report.

15. The Executive Branch Manager Infrastructure and Capital Works also provided an individual response.

### Cross Directorate

16. The Directorate has fully cooperated with the ACT Audit Office throughout the Performance Audit.

17. Education is working with MPC to implement the Report recommendations, as well as identifying other opportunities to strengthen the procurement processes jointly

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managed by MPC and the Education Directorate. This will also occur in cooperation with Procurement ACT.

External

18. In February 2020, with the assistance of the [REDACTED] the Directorate commissioned an external probity audit into the procurement process for the modernisation of Campbell Primary School. The probity audit report, along with the Audit Report, identifies opportunities to strengthen procurement processes jointly managed by MPC and EDU.

**Work Health and Safety**

19. The Directorate has offered support to staff required to be interviewed as part of the performance audit. Ongoing support is being provided to the EBM ICW.

**Benefits/Sensitivities**

20. [REDACTED]
21. Manteena Pty Ltd may initiate legal action against the Territory. The Directorate will seek legal advice as needed from the ACT Government Solicitor in relation to potential liability and representation.
22. In September 2021 you were briefed on the ACT Ombudsman review of decisions made by MPC and Education in relation to a Freedom of Information request from Manteena (FILE2021/4539). MPC was provided with the Ombudsman's decision letter on 9 September 2021, which required the release of tender evaluation scores for Lendlease and Manteena and publication on the disclosure log. Further details on tender scoring are included in the Audit Report. We are still awaiting advice of the Ombudsman's decision in relation to Education's FOI decision-making.

**Communications, media and engagement implications**

23. The Report is expected to attract media attention. Talking points have been prepared and are provided at Attachment B.
24. The Principal of Campbell Primary School and the Director of School Improvement North/Gungahlin will be advised of the report and supported to respond to any queries or concerns from their school community in the New Year given the construction process is still underway.

Signatory Name: David Matthews

Phone: 70384

Action Officer: Kristen Laurent

Phone: 56749

### Attachments

<b>Attachment</b>	<b>Title</b>
Attachment A	Performance Audit Report Summary
Attachment B	Media Talking Points

# Performance Audit Report: Campbell Primary School Modernisation Project Procurement

## Summary

Refer to pages 1-8 of the Report.

## The Procurement Process (Chapter 2)

		Paragraph reference
February 2020	The first Tender Evaluation Team (TET) prepared a draft Tender Evaluation Report (TER) which included scores against each of the criteria (Manteena 79, Lendlease 52), a brief description of the tenderers' assessment against each criterion and a proposed recommendation. The draft TER recommended Manteena as the preferred tenderer and that the TET be authorised to enter into contract negotiations to identify areas of de-scoping and cost savings. The Acting Executive Group Manager indicated their disinclination to agree with the draft TER.	2.44
	The Report found that the Acting Executive Group Manager engaged in the procurement process prior to the TET having the opportunity to conclude its evaluation and make a recommendation and that this was not consistent with probity better practice or the Tender Evaluation Plan and allowed the Acting Executive Group Manager to influence the recommendation of the TET.	2.51
	The draft TER recommended that a 'value management process' be entered into with Manteena. The Acting Executive Group Manager requested consideration of a Best and Final Offer (BAFO) process. The Report noted the conduct of a BAFO process was inherently more beneficial to Manteena. Legal advice was sought from the ACT Government Solicitor's Office, which identified that the conduct of a BAFO process was permissible provided certain criteria and requirements were met.	2.82
18 March 2020	The first TET produced an amended draft TER. The score and ranking of the two tenderers was the same as in the draft TER, but there were differences in the qualitative assessment of each tender proposal. The first TET was subsequently asked to re-evaluate the tenders, but at least one member of the TET identified they did not wish to participate in the re-evaluation process and the first TET was disbanded.	2.94
27 March 2020	The Acting Executive Group Manager agreed to the appointment of a second TET. In the TER from the second TET Manteena was give a score of 69.1 and Lendlease was given a total score of 68.4. The report identified that the two tenderers 'both presented strong	2.107



	technical proposals and were low risk for the Territory' and that 'the scores based on each submitted tender were too close to clearly recommend a preferred tenderer'. The report concluded a BAFO process be entered into.	
June 2020	Tenderers were asked to revise their tenders against three of the six weighted criteria from the original RFT process. A further TER prepared by the second TET gave Manteena a score of 76.1 and Lendlease a score of 67.4. The report stated 'Manteena have presented a strong and cost-efficient design proposal that provides best value for money, and the lowest risk profile' and sought approval to enter into a contract for Phase 1 of the project with Manteena. The Acting Executive Group Manager instead provided an Executive Brief to the Director-General that sought approval to enter into a contract for Phase 1 of the project with Lendlease.	2.141
	The Report states that in making the alternative recommendation to the Director-General, the Acting Executive Group Manager was seeking to over-rule the advice of the TET. It found there was inadequate documentation to support the recommendation.	2.141
	The Report found that the Acting Executive Group Manager effectively re-weighted and re-prioritised the evaluation criteria with which the Territory approached the market and sought tenders.	2.165

### Governance and administrative matters (Chapter 3)

The Report concludes that during the course of the audit a number of administrative shortcomings in the procurement process were identified. These relate to:

- the absence of explicit and specific clarity on roles and responsibilities of managers and supervisors with an 'oversight' and 'quality assurance' role which the Report suggests allows for potential influence or interference to occur (3.43);
- the absence of ongoing review of the Risk Management Plan which the Report suggests is a missed opportunity to help manage the increasing risks associated with the procurement and limited consideration of probity considerations on the Risk Management Plan) (3.49, 3.61);
- not all participants in the procurement process having completed a *Confidentiality and Conflict of Interest Undertaking form* and therefore Major Projects Canberra is not rigorously and comprehensively ensuring all potential conflicts of interest are acknowledged as appropriate (3.70);
- communication processes with tenderers, characterised in the Report as "informal, uncontrolled and poorly documented" and undermining the probity of the procurement process (3.80); and
- the tender debrief process which the Report found was not conducted in an open, transparent and accountable manner (3.89, 3.90).

## **Auditor-General Report into Campbell Primary School Modernisation Project Procurement**

### **Talking Points**

#### **General**

- The ACT Government welcomes the Auditor-General's Performance Audit Report into 'Campbell Primary School Modernisation Project Procurement' as part of the accountability and transparency framework for the ACT public service.
- The Education Directorate, Major Projects Canberra and other relevant agencies have fully cooperated with the audit and have worked constructively with the Auditor-General and the ACT Audit Office throughout this process.
- The ACT Government will respond to the Audit's recommendations in early 2022, but broadly welcomes the recommendations.
- The Education Directorate acknowledges the findings made by the Auditor-General and will make any necessary improvements to ensure public confidence in our future procurement processes.

#### **Decision making**

- The procurement of vital school infrastructure is appropriately subject to scrutiny to ensure both value for money and effective public administration.
- In this instance the delegate formed a view about how best value for money could be achieved, as is permitted under the procurement guidelines.
- Notwithstanding, the Education Directorate acknowledges the findings made by the Auditor-General regarding probity and process issues and the need for robust supporting documentation on decision making.
- The Education Directorate has taken appropriate steps to confirm decision making for major procurement activities. The delegate for current capital works procurement being undertaken by the Education Directorate is the substantive Executive Group Manager, Business Services.

#### **What Next**

- The Education Directorate will take further action to ensure the probity of our procurement processes and will fully implement the Government's response to the audit.
- This includes specific consideration of probity management and the provision of additional independent probity advice and training for tender evaluation panels.

#### **Campbell Primary School (if asked)**

- The Education Directorate is confident in the quality of the modernisation work that is currently being undertaken at Campbell Primary School. These works are due for completion in early 2022.

#### **Legal Matters (if asked)**

- The Education Directorate is unable to comment or speculate about any potential legal proceedings.
- The Education Directorate and Major Projects Canberra have publicly released information on the Campbell Primary School Modernisation Project in response to FOI requests.

