

Investigation into the transparency of commercial land valuation decisions in the ACT

ACT REVENUE OFFICE

AUGUST 2020

Report by the ACT Ombudsman,
Michael Manthorpe, under s 18 of the *Ombudsman Act 1989*

REPORT NO. **3 | 2020**

EXECUTIVE SUMMARY

This report has been prepared by the ACT Ombudsman to highlight potential issues with the transparency of decisions to increase commercial land valuations in the ACT. It follows the investigation of a complaint to the Office of the ACT Ombudsman (the Office) about a particular valuation decision and ongoing engagement by the Office with the ACT Revenue Office (ACTRO).

The initial complaint investigation involved issues specific to one block of land, which had some unusual characteristics and a complicated history. However, during our investigation, the Office identified broader concerns regarding the transparency of the valuation process for commercial land.

These concerns involve ACTRO's failure to document reasons for increases in the Unimproved Value (UV)¹ of commercial property and to provide property owners with the reasons. Such increases impact the property owner's rate payments.

We acknowledge that for residential properties, it may not be practical, or necessary, for ACTRO to record or provide individual reasons for decisions to increase an UV. This is because such assessments occur on a 'group basis', following application of a mass appraisal benchmarking method. ACTRO now provides improved information about the valuation process for residential properties on its website.²

However, where decisions are made to increase an UV on an individual basis, as can be the case for commercial properties, the principles of good public administration require that the reasons for such a decision be recorded and be available to the affected person.

The Office recognises the efforts made by ACTRO since 2019, to improve its communications around valuation processes and the ongoing program of tax reform by the ACT Government. Nonetheless, concerns about a lack of transparency in valuation decision-making, particularly for commercial properties, has been publically reported on since 2008, and we consider more needs to be done to address these concerns.

We have not made any findings or observations about the correctness or reliability of any individual valuation decisions made in the ACT. Rather, our report highlights that community confidence in the accuracy of these decisions follows from good administrative practices recording reasons for decisions, making these available to those impacted and being more open and transparent as to the administrative processes that surround these technical assessments.

This report makes nine recommendations for improvement in terms of good decision-making and greater transparency. We welcome ACTRO's response, included in full as **Appendix A**, and its agreement to all nine recommendations. Once implemented, these actions will help ensure ACTRO's processes for commercial property valuations are fair, transparent and reflect best practice.

¹ *Rates Act 2004* s 6—The unimproved value of a parcel of land held under a lease from the Commonwealth is the capital amount that might be expected to have been offered on a date, for the lease of the parcel.

² See https://www.revenue.act.gov.au/rates?result_1060955_result_page=8.

Summary of recommendations

Recommendation 1

ACTRO develop and maintain a policy which provides transparency and guidance about how the commercial land valuation process occurs, including where a regrading program is undertaken for a particular suburb. The policy should outline the high level policy framework.

Recommendation 2

The new policy should be complemented by an updated procedures manual, including data entry and quality assurance processes, to provide guidance to decision-makers and promote more consistent decision-making and documentation. The new procedures should outline requirements in terms of valuation analysis and documentation of decisions.

Recommendation 3

Where decisions are made to increase the Unimproved Value (UV) of a commercial property block on an individual basis, the details and reasons for the change are clearly recorded.

Recommendation 4

ACTRO develop a mechanism for commercial property owners to obtain reasons for UV increases upfront, before the objections process. This should be done as a priority for property owners impacted by significant increases (that is, more than 20 per cent).

Recommendation 5

ACTRO provide clear advice to the community via its website and in relevant correspondence regarding:

- the threshold for accepting an objection
- the information that must be provided in order to 'sustain' an objection.

Recommendation 6

Once finalised, ACTRO (CMTEDD) publish the recommended policy as per its open access obligations under the *Freedom of Information Act 2016* (FOI Act) or provide reasons why publishing the policy is not appropriate.

Recommendation 7

ACTRO (CMTEDD) review whether it is meeting its open access obligations under the FOI Act and consider more pro-active release of policy documentation consistent with the objects of the FOI Act.

Recommendation 8

ACTRO review its website information on property valuation in the ACT. As part of this review, ACTRO consider providing tailored information for commercial and residential property owners on separate web pages. Information provided should meet accessibility standards and be clear and easy to understand.

Recommendation 9

ACTRO publish on its website a summary of the changes that have led to revaluations in particular suburbs following an annual revaluation exercise.

INTRODUCTION AND SCOPE OF THE INVESTIGATION

Role of ACTRO

- 1 ACTRO is responsible for the administration of taxation laws in the ACT. It incorporates the ACT Valuation Office (ACTVO), which includes experts appointed as authorised valuers under the *Taxation Administration Act 1999* (the Tax Act) and is responsible for providing independent valuation advice to ACTRO.
- 2 ACTRO is administratively part of the Chief Minister, Treasury and Economic Development Directorate (CMTEDD). It is made up of the Commissioner for ACT Revenue (the Commissioner), who is appointed by the Minister under s 73 of the Tax Act, and staff assisting the Commissioner.

Complaint from Ms Karen Paxton

- 1 Ms Karen Paxton made a complaint to the Office in early 2019, regarding the valuation of her land—that is, Block 44, Section 11, Fyshwick, ACT (Block 44).
- 2 She complained that ACTRO had not provided her with justification for the 305 per cent increase in the UV of her commercial property.
- 3 The unimproved land value of Block 44 as at 1 January 2017 was determined by ACTRO to be \$61,000. This was an increase of approximately 305 per cent from the \$20,000 value for the period 2013–2016. This increase was also significantly larger than the percentage increases to other unimproved land values in this area. Four other properties experienced an increase of between 14 to 21 per cent, with the UVs for the remaining 40 properties (89 per cent of commercial properties in this area of Fyshwick) remaining unchanged.
- 4 Ms Paxton lodged an objection to the valuation of Block 44 on 24 August 2018, following receipt of her rates notice for 2018 (having missed the deadline to object in 2017). It was difficult for her to put forward a case that an error had been made, because she was not aware of the basis on which the new valuation decision had been made.
- 5 As a result, the Objection process largely remained on hold for some time, while Ms Paxton used other processes, including Freedom of Information (FOI) to try and identify the rationale behind the increase in the UV of her property.
- 6 ACTRO made a decision to partly allow Ms Paxton’s objection on 7 June 2019, agreeing that the valuation should be reduced to \$40,000 as at 1 January 2018.
- 7 A rates notice issued by ACTRO for 2019–20 subsequently increased the valuation to \$61,000. But, as discussed below, ACTRO subsequently advised that this was an administrative error and issued a new notice reflecting an UV of \$40,000.

Freedom of information request

- 1 In September 2018, Ms Paxton lodged an access application under the *Freedom of Information Act 2016* (FOI Act) to obtain more information about the reasons for the decision to increase the UV for her property to assist her with the objection process.
- 2 On 12 September 2018, CMTEDD decided not to grant full access to the information they had identified in scope of Ms Paxton’s application on the grounds that it was contrary to the public interest to disclose under Schedule 1, section 1.3 of the FOI Act—that is, because the information was prohibited from release by a secrecy provision of a law, specifically the Tax Act.
- 3 A subsequent review by this Office of CMTEDD’s decision determined that the information redacted by CMTEDD did not contain the ‘rationale’ for the decision that Ms Paxton was seeking. Furthermore, discussions with ACTRO established that there was no documentation in existence (that is, held by ACTRO) to outline the reasons for the decision to increase the UV of the property.³

Inquiry into Land Valuation by the ACT Standing Committee on Public Accounts

- 1 On 29 November 2018, the Legislative Assembly for the ACT made a resolution that the Standing Committee on Public Accounts (the Committee) should inquire into commercial rates in Canberra, referring related issues to the Committee (2019 Commercial Rates Inquiry). Ms Paxton’s experience was one of the cases examined by the Committee.
- 2 In April 2019, the Committee tabled its report, making 25 recommendations for reforming the system. Of particular relevance to this report, it recommended that:

Recommendation 11 – The Committee recommends that the ACT government amend the Rates Act 2004 so as to clarify the timing of – and relationship between – the method used to value properties under mass appraisal and the method used to value individual or groups of properties where it is perceived that there has been a significant change in the value of a particular area.

Recommendation 20 - The Committee recommends that the ACT government redesign commercial rates notices to give commercial ratepayers more information, transparency and certainty. In doing so, the ACT government should give consideration to the inclusion of the following:

 - i. more information about flexible payment options for ratepayers charged retrospectively due to revaluations;*
 - ii. more information about the valuation of land and how that value was calculated;*
 - iii. more information about the applicable tax threshold;*
 - iv. a list of past payable rates for context; and*
 - v. an indication of likely future rates, with a disclaimer that this estimation is subject to change.*

Recommendation 23 - The Committee recommends that the ACT government investigate ways to overcome the long-term anomalies relating to Block 44, Section 11, Fyshwick.
 - 3 The ACT Government published its response to the above report on 30 July 2019 and:
 - noted Recommendation 11, indicating that legislative change was not necessary, but that the government would review the information available
 - agreed to Recommendation 20, indicating that it had improved the layout and readability of rates notices and that information was available on the ACTRO website
 - noted recommendation 13, stating that it could not comment further on this individual taxpayer matter on privacy grounds.

³ https://www.ombudsman.act.gov.au/_data/assets/pdf_file/0016/100681/Karen-Paxton-and-Chief-Minister,-Treasury-and-Economic-Development-Directorate-2019-ACTOFI-1-9-January-2019.pdf

POSITIVE DEVELOPMENTS SINCE OUR INVESTIGATION

- 1 As part of our investigation, we wrote to ACTRO in September 2019 asking for:
 - advice about its implementation of the relevant 2019 Commercial Rates Inquiry recommendations
 - an explanation for the 2019 increase in Ms Paxton’s property evaluation given that her recent objection application had been partially successful.
- 2 We noted that a 2008 inquiry into land valuation had also recommended that the ACT Government review *‘the information that it provides to property owners at the time of valuation and via ACTRO’s website about valuations and the objections/appeals process, with a view to making it more user-friendly (Recommendation 5).⁴*
- 3 ACTRO responded advising that:
 - the ACT Government had tabled its response to the 2018 Commercial Rates Inquiry⁵
 - the rates assessment notices for 2019–20 had been redesigned to improve the layout, and ACTRO would continue to make improvements over time
 - the ACTRO website had been significantly remodelled
 - Ms Paxton’s 2019 assessment had been sent in error and a revised notice would be sent based on the amended unimproved value determined via the objections process.
- 4 Following our investigation, Mr Kim Salisbury, the Commissioner for ACT Revenue, advised the Office in March 2020 that ACTVO had amended its processes to improve documentation related to valuation processes, in response to Ms Paxton’s complaint and the related ACT Ombudsman investigation. He also provided the Office with:
 - an updated *Rating and Taxation Procedures Manual (version 3.0)* formally approved on 1 September 2019, but not provided earlier
 - additional advice about relevant processes, including that:
 - ACTRO had averaged 350 objections a year since 2015–16—with 451 received in 2017–18; and approximately 100-150 of these relating to unimproved values and approximately 23 per cent being re-determined following the objections process
 - the threshold for accepting an objection is low
 - valuation reports provided as part of the objections process for a commercial property will outline the methodology applied taking into account the unique features of the property
 - ACTRO has provided early indications of significant changes in unimproved values to those landowners expected to be affected with letters sent by the Commissioner in 2018 (to Braddon property owners) and in 2019 (to property owners with more than a 20 per cent increase)
 - ACTRO has updated its website, providing additional information on valuations
 - an assurance review of the ACTVO commenced in April 2020.

⁴ See *2008 Report for the Inquiry into Land Valuation* at <https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-commercial-rate-in-canberra>

⁵ See *Government Response to the Standing Committee on Public Accounts Report Inquiry into Commercial Rates* at *ibid.*

FINDINGS AND RECOMMENDATIONS FOR FURTHER ACTION

- 1 Ms Paxton’s complaint raised specific concerns about the valuation of her commercial property and the rateability of her block, for which she is continuing to seek resolution.
- 2 Our investigation into her original complaint identified broader concerns about decision-making and transparency of commercial property valuations, specifically that ACTRO:
 - provides minimal explanation around valuation methods and decision-making
 - does not document the details of the valuation decision-making process, as identified through the FOI process
 - does not provide property owners with reasons for increases in valuations
 - requires property owners to raise a formal objection to obtain detailed information about the valuation of their property.
- 3 While the developments referenced above contribute to improved transparency of overall valuation processes, the Office has residual concerns about the transparency of individual valuation decisions and the policy framework that applies to such decisions.
- 4 Our findings in specific areas are outlined below. We have made nine recommendations, all of which have been agreed to by ACTRO. ACTRO’s response is at Appendix A.

The policy framework and the documentation of reasons

- 1 Ms Paxton’s case raised broader concerns about the policy framework under which decisions to increase the UV of a commercial property are made and how the reasons for making a decision are documented.
- 2 In 2019, when asked about the valuation methods used and the policy framework, the Office was provided with a copy of the *ACT Valuation Office Rating and Taxation Valuation Procedures Manual* (version 0.1). It was of concern that this document:
 - was dated 25 July 2017
 - appeared to be a draft only with no approval date
 - provided minimal explanation about valuation methods and decision-making.
- 3 The ACTRO/ACTVO provided us with an updated version of this document in March 2020 (version 3.0, approved on 1 September 2019). However, this document does not appear to have been amended since the 2017 version, with the exception of certain service standards listed being extended.
- 4 As a result, it is unclear where the revised procedures implemented since Ms Paxton’s case referred to by ACTRO are outlined and whether they would address the Office’s concerns. Version 3.0 remains a short document that focuses on the timetable for the annual revaluation process and quality assurance processes around entering new data values into relevant databases.
- 5 There appears to be no policy document that is publically available, which outlines valuation principles, methods or requirements for documenting such determinations. This is despite the fact that s 12(1) of the *Rates Act 2004* requires that ‘The commissioner must record particulars of each determination of the unimproved value of a parcel of land’. We consider this to mean that a record must be made of the specific details that informed the decision.
- 6 In relation to methodology, version 3.0 of the procedures manual states only that:

*The ACTVO is responsible for selecting and advising the most appropriate method of valuation and may utilise several mass valuation techniques where appropriate. However, the reliability associated with mass valuation systems diminishes over extended periods of time. To reduce the risk of inconsistency, individual UV’s must be periodically reassessed (regraded) using relevant and comparable market evidence.*⁶
- 7 Furthermore, while this document indicates that ‘All market analysis is to be fully documented and rationalised...It is important therefore that a broader range of analysed market evidence is provided and that each UV can be supported by relevant market evidence’, the information provided during our investigation indicated this does not always occur in practice, including in Ms Paxton’s case.
- 8 We were given an undated document, titled ‘Commercial rates and valuations in the ACT’, which provides limited, additional information regarding valuation methodology. This is not a formal policy document—nor was it referenced by ACTRO when asked to provide policy guidelines considered in making the determination to increase the UV of Ms Paxton’s property.
- 9 We understand that recommended UV determinations are communicated by ACTVO to ACTRO via email by March each year. A statement of valuation is provided in June recommending these UVs be adopted by ACTRO for the purposes of statutory rating and land tax purposes.
- 10 This statement or letter does appear to include some methodology information, with limited information about manual regrading exercises. It identifies economic trends and suburbs impacted by UV changes, at a high level. However, this letter is not a formal policy document

⁶ *ACT Valuation Office Rating and Taxation Valuation Procedures Manual* (version 3.0), p. 4.

available to guide staff and encourage consistent practice, nor does it address the failure to document decision-making processes.

- 11 In feedback to a draft of this report, ACTRO did provide further explanation of the commercial valuation process. It explained that recommendations to increase a UV will only be made where there is a sufficient body of sales evidence to support a change, or it is identified that a particular UV is not consistent with that for similar properties.
- 12 In terms of recording the reasons for decisions, ACTRO also confirmed that current practice is for valuers to input into a worksheet the recommended UV for each block. The proposed values are then peer reviewed by accredited valuers in the ACTVO team, prior to being entered in the valuation database and uploaded to the ACTRO system, known as Community, for review by ACTRO staff.
- 13 Our Office has reviewed the worksheet currently used by valuers for this purpose. It is positive that it now requires staff to:
 - indicate the percentage variation between the proposed new UV and the previous UV
 - provide comments regarding property sales and other factors that have influenced the recommended change in UV.
- 14 These improvements will facilitate quality assurance checks of the revised UVs and give the Commissioner increased visibility over significant changes to the UVs for individual properties.⁷
- 15 We suggest more guidance be given to staff about the use of this tool, which should be part of the procedures manual we have recommended to be developed. For example, the record should capture:
 - the identity of the valuer and the recommendation date
 - the identity of the peer reviewer and the review date
 - at least a high level summary of the main reasons why the chosen rate was applied to a particular commercial property, leading to an amended UV assessment (for example, recent area property sales, lease variation or UV inconsistent with similar properties).
- 16 We suggest the annual revaluation letter discussed above specifically highlight any commercial properties where there has been more than a 20 per cent increase in UV and the high level reasons why this occurred, to ensure the Commissioner can order further quality assurance checks if considered necessary.

Recommendation 1

ACTRO develop and maintain a policy which provides transparency and guidance about how the commercial land valuation process occurs, including where a regrading program is undertaken for a particular suburb. This policy should outline the high level policy framework.

Recommendation 2

The new policy should be complemented by an updated procedures manual, including data entry and quality assurance processes, to provide guidance to decision-makers and promote more consistent decision-making and documentation. The new procedures should outline requirements in terms of valuation analysis and documentation of decisions.

⁷ ACTRO has advised it runs a series of checks and reasonableness tests over the values. Any values that are outside the parameters are referred back to ACTVO for review. Following this, the values are referred to the Commissioner for consideration in determining values for the year.

Recommendation 3

Where decisions are made to increase the Unimproved Value (UV) of a commercial property block on an individual basis, the details of the new valuation and the reasons for the change are clearly recorded.

Information provided to the property owner regarding valuation increases

- 1 ACTRO has advised the ACT does not have the resources to complete an independent valuation report for every property each year—with approximately 170,000 property crown leases in existence the ACT, including around 6,000 commercial properties.
- 2 As a result, individual reasons are not provided to property owners upfront; with the objection process relied on instead to provide natural justice to impacted property owners in a retrospective manner.⁸
- 3 The Office acknowledges that in the context of residential properties, it may not be practical, or necessary, for the ACTRO to provide individual reasons for decisions to increase an unimproved valuation. This is because such decisions are not made on an individual basis, but rather occur following application of a mass appraisal benchmarking method. As discussed below, ACTRO has improved the information available on its website regarding this method of increasing property values.
- 4 In the context of commercial properties, the Office remains concerned about the efficiency and fairness of the current process, particularly for precinct upgrades given:
 - the group approach to property valuations is not utilised, as discussed further below, and changes are undertaken on an individual basis
 - in recent years, UV increases have been substantial for some commercial properties⁹, resulting in significant financial impacts for property owners due to related increases in rate payments¹⁰
 - people are not provided with the reasons for these individual decisions and detailed reasons are not routinely recorded
 - the objection process is lengthy, with ACTRO advising that its performance target is 85 per cent of objections are determined within six months¹¹
 - there is no provision within the legislative framework for rate payments to be delayed while an objection is considered—with interest accruing if the rate payments, for which property owners are liable, remain outstanding during the potentially lengthy objection process
 - while ACTRO advises that approximately 23 per cent of objections are allowed or part-allowed and volumes remain low overall, figures provided to us in January 2019, indicate that for commercial properties a significant percentage of objections are allowed:
 - of the 39 commercial objections received in 2017–18, 49 per cent were allowed or part-allowed
 - 17 of these related to precinct regrades, of which 11 (65 per cent) were part-allowed.

⁸ If a person disagrees with the valuation of their land for a rates assessment, they can lodge an objection to the valuation—see: https://www.revenue.act.gov.au/rates?result_1060955_result_page=7.

⁹ See discussion in Legislative Assembly on 29 November 2018
<http://www.hansard.act.gov.au/hansard/2018/pdfs/20181129.pdf> pp: 81-90.

¹⁰ It is noted that it is the three-year Average Unimproved Value (AUV) that is used in the calculation of rates.

¹¹ Canberra times has reported that the median period for processing an objection was 54 days in 2017–18, increasing to 148 days in 2018–19—up to a maximum of 274 days) see:
<https://www.canberratimes.com.au/story/6000034/most-property-owners-arent-challenging-big-rates-rises-heres-why/>

- 5 ACTRO has previously advised the Office that ‘benchmark blocks’ are not used to determine changes to UVs in commercial properties given potentially significant variances. There is provision for a ‘blanket increase’ to be made to all properties if there is evidence of a change in the value of general commercial properties across the territory. As the ACT Government indicated in its response to the 2019 Commercial Rates Inquiry, this has not occurred for the past five years due to an insufficient volume of sales evidence to support such change.¹²
- 6 Individual commercial property values in the ACT have increased where:
 - a regrading program has occurred for a particular suburb
 - lease variations impact property valuations
 - the value of the block is identified as out of line with surrounding unimproved values.
- 7 Where such increases occur, the property owners are not advised of the reasons for this, even where the increase is significant. Property owners are expected to use the objections process to obtain such reasons.
- 8 In Ms Paxton’s case, she attempted to first obtain these reasons via the FOI process, but this did not prove useful as they were not documented or recorded by ACTRO.
- 9 In March 2020, ACTRO advised it had made changes to improve the documentation related to valuation processes that should result in ‘future FOI applications meeting reasonable expectations as to documentation of how UVs were determined’.
- 10 These changes are discussed above in terms of decision-making transparency, but we consider them insufficient, in terms of improving the information made available to commercial property owners about UV increases. This is because, in previous FOI matters raised with our Office, ACTRO has decided that release of valuation related information was contrary to the public interest to disclose on the grounds that disclosure was prohibited under law (specifically, the Tax Act).
- 11 Regardless, the Office does not consider it best practice to require an impacted property owner to submit an access application and/or a formal objection in order to obtain this information. We do not consider it consistent with the principles of good public administration to rely on the objections or FOI processes to ‘fix’ the failure to provide reasons upfront.
- 12 We consider that individual reasons should be made available to the impacted property owner when they are advised of this decision. Best practice would be for reasons to be provided with notification of the decision, although we acknowledge this may not be practical given the volume of rates decisions. At a minimum, there should be a process for reasons to be requested ahead of the objections process.
- 13 We note that in the context of the area of Fyshwick discussed above, this would have involved reasons being provided in relation to five properties only. We consider that provision of reasons upfront would potentially have reduced the number of objections, as well as the corresponding time and effort to go through the objections process—with property owners potentially satisfied the increases were justified if they can understand the evidence on which the decision was based.

¹² See n 6 at p. 4.

- 14 Providing reasons is a basic principle of good administrative decision-making. To do so invites accountability and transparency. It promotes public confidence in government processes, where a complex technical assessment can have a significant financial impact on an individual member of the community. Of particular relevance to this investigation, reasons can help an impacted community member to identify errors that may have occurred and lead to a more focussed objections process.
- 15 Giving reasons provides quality assurance, ensuring that decision-makers carefully consider their decision and provide critical visibility where a senior decision-maker must make a decision based on the recommendations of technical experts. Given the high percentage of commercial objections that are allowed, a revised process incorporating the giving of reasons could also deliver efficiencies.
- 16 We acknowledge that rates notices have been re-designed to provide advice about the UV of the relevant property and the average unimproved value (AUV) that is used to calculate rates and explain how to lodge an objection. This does not address the Office's concerns about the lack of individual reasons being provided. While links to the ACTRO website are included, the information available here, in terms of commercial valuation processes and methodologies remains limited, as is discussed below.

Recommendation 4

ACTRO consider options for making reasons for UV increases available to commercial property owners upfront, prior to the objections process. This should be done as a priority for property owners impacted by significant increases (that is, more than 20 per cent).

The objection process

- 1 The Office maintains that it is difficult for a property owner to demonstrate why an objection should be allowed, if they are not advised of the reasons for the decision.
- 2 This issue may also be magnified due to the requirements of s 101(3) of the *Taxation Administration Act 1999* (ACT), which states that:
 - (3) *The burden of showing that an objection should be sustained lies with the taxpayer making the objection.*
- 3 As noted above, ACTRO indicated in March 2020, that:
 - the ‘threshold for accepting an objection is low’
 - there is an opportunity for the property owner to provide input.
- 4 This minimal requirement low bar to lodge an objection does not address the issue that the onus to demonstrate that an objection should be upheld falls on the property owner (taxpayer).
- 5 Advice provided by ACTRO to Ms Paxton also indicated that usual ‘practice’ was to make a decision without further consultation once a ‘taxpayer had provided their grounds in support of their objection’.¹³ C correspondence with Ms Paxton re-iterated the impact of s 101(3)¹⁴, as does ACTRO’s website.¹⁵ The website also recommends that ‘an objection to a statutory valuation include clearly articulated reasons of contention and actual, comparable sales evidence’.¹⁶

Recommendation 5

ACTRO provide clear advice to the community via its website and in relevant correspondence regarding:

- the threshold for accepting an objection
- the information that must be provided in order to ‘sustain’ an objection.

¹³ Email of 21 December from Manager, Objections and Appeals, ACT Revenue Management to Ms Paxton (our ref. document 20 AFOI-RR/18/10026).

¹⁴ Email of 27 August 2018 from Objections Officer, ACT Revenue Office to Ms Paxton (our ref. document 28 AFOI-RR/18/10026).

¹⁵ See https://www.revenue.act.gov.au/rates?result_1060955_result_page=7.

¹⁶ See https://www.revenue.act.gov.au/rates?result_1060955_result_page=8

Open Access obligations

- 1 ACT directorates are required to make open access information publically available under s 24 of the FOI Act, unless it is contrary to the public interest. Open access information includes policy documents that contain ‘interpretations, rules, guidelines, statements of policy, practices or precedents’ or explain ‘how an Act or administrative scheme is to be administered’.¹⁷
- 2 Our examination of the Open Access Portal¹⁸ did not identify the procedure manual referenced above or any published ACTRO policies—with only links to client website information provided, and limited administrative circulars made available dated 2015 and 2017.¹⁹ Similarly, publications on the ACTRO website appear to include only a privacy policy, as well as links to 55 administrative circulars dated between 1997 and 2019 published under the various headings of *Duties, The First Home Owners Grant, General, Land Tax and Payroll Tax*.²⁰
- 3 While a full review of CMTEDD’s open access publication processes is outside the scope of this review, this does raise concerns that open access obligations are not being met.²¹
- 4 It is positive that CMTEDD indicated in its response to a recent self-assessment audit, that overall, they take a pro-disclosure approach, with staff trained in open access requirements and encouraged to consider open access when creating documents. Based on the information available, this is not evident in terms of the availability of policies related to valuation and rates matters, which are of significant public interest.

Recommendation 6

Once finalised, ACTRO (CMTEDD) publish the recommended policy as per its open access obligations under the *Freedom of Information Act 2016* (FOI Act) or provide reasons why publishing the policy is not appropriate.

Recommendation 7

ACTRO (CMTEDD) review whether it is meeting its open access obligations under the FOI Act, and consider a more pro-active approach to releasing policy documentation in alignment with the objects of the FOI Act.

¹⁷ FOI Act, s 23(2)(a).

¹⁸ <https://www.act.gov.au/open-access>

¹⁹ See https://www.revenue.act.gov.au/_data/assets/pdf_file/0004/1102954/GEN003.2-payment-policy.pdf and https://www.revenue.act.gov.au/_data/assets/pdf_file/0016/1071403/GEN001.1.pdf

²⁰ See <https://www.revenue.act.gov.au/privacy> and <https://www.revenue.act.gov.au/publications/circulars>

²¹ The ACT Ombudsman monitors the compliance of ACT directorates with their open access obligations, with self-assessment audits and desk top audits completed in 2019, and further formal audit activities being considered for 2021. Further information about these activities will be included in our annual report for 2019–20.

Information made publically available via valuation processes

- 1 ACTRO has made a number of changes to its website to improve the information available to the community regarding rates and valuation processes.
- 2 This includes a page summarising property valuation processes in the ACT, which now provides community members with a significant amount of additional information, though not in an accessible format.²²
- 3 While we appreciate that this a complex area, some of the information provided is quite technical and could be more accessible to the community if:
 - provided in plain English
 - separate sections or web pages were developed to target types of property owners (e.g. commercial, residential), so individuals do not need to read complicated information that is not relevant to their situation
 - links are provided to relevant documents and/or contact channels for providing assistance (particularly in sections included in expansion boxes, where these appear lacking).
- 4 Despite these positive changes, we consider the ACTRO website provides insufficient information on how commercial properties (as opposed to residential properties) are valued. The mass appraisal benchmarking method for residential properties is explained, but no such explanation is apparent regarding commercial property valuations, or how regrading programs for particular suburbs are conducted. Answers to Frequently Asked Questions suggest that the mass appraisal method is the only method used.
- 5 We consider that publication of summary information regarding the results of the commercial revaluation process for particular commercial precincts would also help provide greater transparency to the ACT community regarding UV increases.
- 6 We consider that a simple fact sheet or web page could be developed for public consumption, using the information contained in the annual revaluation statement.. A proactive approach to publishing this information may also have a positive impact for ACTRO, by reducing the number of commercial property owners who seek individual reasons and/or lodge an objection, particularly where the published information demonstrates the increase was largely consistent with overall outcomes in the same commercial precinct.

Recommendation 8

ACTRO review its website information on property valuation in the ACT. As part of this review, ACTRO consider providing tailored information for commercial and residential property owners on separate web pages. Information provided should meet accessibility standards and be clear and easy to understand.

Recommendation 9

ACTRO publish on its website a summary of the changes that have led to revaluations in particular suburbs following an annual revaluation exercise.

²² See above at n 2.

APPENDIX A - RESPONSE FROM ACT REVENUE OFFICE



Your Ref: A1983797
Our Ref: TRSY2020/3484

Mr Michael Manthorpe PSM
ACT Ombudsman
GPO Box 442
Canberra ACT 2600

Dear Mr Manthorpe

This letter acknowledges the findings and recommendations of the Ombudsman Investigation into the Transparency of Commercial Land Valuations in the ACT (Report 3/2020).

The Report recommendations make valuable suggestions as to how information, accountability and processes can be improved with respect to property values for rating purposes in the ACT. The recommendations are consistent with improvements that the ACT Revenue Office is implementing. All of the recommendations in the Report are agreed.

Recommendation 1

ACTRO develop and maintain a policy which provides transparency and guidance about how the commercial land valuation process occurs, including where a regrading program is undertaken for a particular suburb. This policy should outline the high level policy framework.

Response: Agreed. Current information on the ACTRO website will be reviewed, updated, expanded and recast in policy terms in accordance this recommendation.

Recommendation 2

This new policy should be complemented by an updated procedures manual, to provide guidance to decision-makers, particularly with respect to data entry and quality assurance processes, to promote more consistent decision-making and documentation. The new procedures should outline requirements in terms of valuation analysis and documentation of decisions.

Response: Agreed. The current procedures manual will be updated and expanded in accordance with this recommendation.

Recommendation 3

Where decisions are made to increase the Unimproved Value (UV) of a commercial property block on an individual basis, the details of, and reasons for, the change are clearly recorded.

Response: Agreed. This recommendation has already been implemented and ACTRO will regularly review, and consider further improvements to, valuation records to ensure relevant details are clearly recorded.

Recommendation 4

ACTRO develop a mechanism for commercial property owners to obtain reasons for UV increases upfront, before the objections process. This should be done as a priority for property owners impacted by significant increases (that is, more than 20 per cent).

Response: Agreed.

Recommendation 5

ACTRO provide clear advice to the community via its website and in relevant correspondence regarding:

- *the threshold for accepting an objection.*
- *the information that must be provided in order to ‘sustain’ an objection.*

Response: Agreed.

Recommendation 6

Once finalised, ACTRO (CMTEDD) publish the recommended policy as per its open access obligations under the Freedom of Information Act 2016 (FOI Act) or provide reasons why publishing the policy is not appropriate.

Response: Agreed.

Recommendation 7

ACTRO (CMTEDD) review whether it is meeting its open access obligations under the FOI Act, and consider more pro-active release of policy documentation consistent with the objects of the FOI Act.

Response: Agreed.

Recommendation 8

ACTRO review its website information on property valuation in the ACT. As part of this review, ACTRO consider providing tailored information for commercial and residential property owners on separate web pages. Information provided should meet accessibility standards and be clear and easy to understand.

Response: Agreed.

Recommendation 9

ACTRO publish on its website a summary of the changes that have led to revaluations in particular suburbs following an annual revaluation exercise.

Response: Agreed.

Noting the scope of the recommendations, their complexity to implement and the increased resourcing requirements, the ACT Revenue Office will work to have all the recommendations implemented for the 2021-22 rates billing cycle. Following this, the ACT Revenue Office would welcome observations from the Ombudsman on the implementation of the recommendations.

The recommendations seek to align process in the ACT more closely with those in NSW. It is important to recognise that the ACT Revenue Office has a relatively newly established and small (six person) in-house valuation capability and does not have access to the systems or resources on the scale of those available to the NSW Valuer-General.

The Australian Valuation Office had been the ACT Revenue Office's contract valuer since self-government. When this Commonwealth agency was abolished, the ACT Revenue Office had to put in place interim arrangements to ensure that annual values were provided for rating purposes. An in-house valuation capability is now being established and this a work in progress. The ACT Revenue Office is very aware of the need to improve current property valuation processes, documentation and engagement with the community. The Ombudsman recommendations give helpful guidance on where efforts can be most productively directed.

Currently the 'Objection process' provides comprehensive information to property owners explaining the basis for the valuation of their property for taxation purposes. While retaining this mechanism as the primary avenue for property owner engagement with the ACT Revenue Office, the Ombudsman recommendations seek to inform, clarify and support the 'Objection process'. Again, these recommendations are helpful and welcome.

It is important to highlight that the Ombudsman did not find cause to investigate, or make findings or observations about the 'correctness or reliability' or valuations used for rating purposes.

Yours sincerely,



Kim Salisbury
Commissioner for ACT Revenue

3 August 2020