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Minister for the Arts

Minister for Business and Better Regulation

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Member for Ginninderra

RESPONSE TO QUESTION ON NOTICE**Questions on Notice Paper No 34****15 September 2023****Question No.1389**

Asked by Ms Lawder MLA –

1. Has the Government investigated reports in the past 12 months of domestic solid fuel/wood heaters being used in Dunlop/elsewhere, where they are supposed to be banned.
2. Has the Government received development or building approval requests for domestic solid fuel/wood heaters in Dunlop/elsewhere, where they are banned, in the past five years; if so, how many have been (a) received and (b) granted.
3. Is a development application or building approval required to install domestic solid fuel/wood heaters.
4. Would an approval be granted for domestic solid fuel/wood heaters in a suburb where they are supposedly banned; if so, why.
5. Have any illegal or unapproved domestic solid fuel/wood heaters been identified in Dunlop/elsewhere in the past 12 months; if so, how many.
6. How were homes with a domestic solid fuel/ wood heater, referred to in part (5), identified, eg, was the information provided by members of the public, or does the ACT Government do routine checks to identify the existence of domestic solid fuel/wood heaters in areas where they are banned.
7. What was the result of identifying illegal domestic solid fuel/wood heaters, eg, were there fines issued or domestic solid fuel/wood heaters removed.
8. What is the process if a homeowner refuses to remove a domestic solid fuel/wood heater in Dunlop/elsewhere where they are supposedly banned.



9. How long does a homeowner have, after being notified that their domestic solid fuel/wood heater is illegal, to comply with an instruction to remove it.

MS CHEYNE MLA - The answer to the Member's question is as follows:

Dunlop, East O'Malley and all suburbs in the Molonglo Valley with the exception of Wright have clauses contained within their Crown leases that require development approval be obtained from the Planning and Land Authority (the Authority) prior to the installation of a solid fuel heating system.

In other suburbs, the installation of a solid fuel burning system is exempt from requiring development approval provided that the chimney or flue complies with section 1.25 of the *Planning and Development Regulation 2008*, which is primarily concerned with limiting the height of a chimney or flue and does not consider the associated appliance.

Concerns about the approval status of solid fuel burning appliances can be investigated by Access Canberra in accordance with building and planning laws.

1. Yes, Access Canberra has investigated complaints regarding domestic solid fuel/wood heaters being used in Dunlop.
2. This specific dataset is not captured as wood heaters are generally incorporated as part of a larger development application rather than a standalone development type. To provide this specific information would require manually reviewing each historical development application and would not be a reasonable diversion of resources for the sole purpose of answering this question.
3. A development application is not required for a wood heater when the development meets the exemption criteria as set out under Schedule 1 of the *Planning and Development Regulation 2008*.

However, a development application is required in certain areas of the ACT including Molonglo Valley (excluding Wright), east O'Malley and Dunlop. Within these areas, the installation cannot be exempt from development application as there is a provision in the Crown lease that specially requires written Territory approval for the installation of solid fuel heaters.

A building approval is required for the installation of all wood heaters. This is to make sure the heater is safely installed in accordance with the Australian Standards and manufacturers specifications.

4. Development approval is only given if the Authority is satisfied that the development meets the legislative requirements. The development application is assessed independently by the Authority to make sure the heater does not significantly contribute to pollution and does not cause adverse environmental or health impacts.
5. Access Canberra identified five unapproved domestic solid fuel/wood heaters in properties in Dunlop in the past 12 months.
6. Investigations of the properties in Dunlop were carried out based on reports received from a member of the public.

7. Section 205 of the *Planning and Development Act 2007* provides that a Development Approval (DA) can be obtained retrospectively for a development that was undertaken without approval. Therefore, Access Canberra sent advisory letters to the lessees highlighting the breach and their obligations to obtain approvals for the solid fuel heater providing them a timeframe to submit appropriate applications to the planning and land authority for assessment. Subsequently, two of the five heaters have been removed from the properties to bring the lease into compliance. Access Canberra is following up with the remaining lessees to ensure they lodge the DA applications within the specified timeframes.
8. Access Canberra investigates planning complaints pursuant to section 344 of the *Planning and Development Act 2007* (the Act) to determine whether a breach of the Act has occurred. If the investigation determines a breach has occurred, Access Canberra will issue an advisory letter to the lessee highlighting the breach and how to bring the non-compliance into compliance. The advisory letter will provide the lessee a timeframe (generally 15 working days and can be extended upon request from the lessee) to respond to the letter by explaining how the lessee will rectify the issue (for example by obtaining relevant approvals or moving the unapproved structure).

A lessee has the right to apply to the Authority for approvals retrospectively. If Access Canberra does not receive a response to the advisory letters from the lessee, Access Canberra can initiate a controlled activity order pursuant to Division 11.3.2 of the Act. The lessee will then be issued with a show cause notice pursuant to section 353 of the Act for which the lessee has a statutory timeframe of 10 working days after the day the person is given the notice to respond to the authority in writing with reasons explaining why the controlled activity order should not be made.

The Authority must consider any reasons given in accordance with the show cause notice and may decide whether to issue a controlled activity order against the lessee or not, pursuant to section 355 of the Act, noting that controlled activity orders are appealable in the ACT Civil and Administrative Tribunal (ACAT).

9. Please refer to my response to Question 8.

Approved for circulation to the Member and incorporation into Hansard.



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