



**ACT**  
Government

Economic Development

Dear

**Re: Freedom of Information Request – Internal Review Canberra Brickworks**

I refer to your request for internal review on behalf of the submitted under section 59 of the *ACT Freedom of Information Act 1989* (the Act) received by the Economic Development Directorate (EDD) on 9 June 2014.

I am the officer authorised under section 59 of the Act to review the decision on access to documents previously identified, pertaining to the development of the Canberra Brickworks and environs in Yarralumla, as per your request dated 12 March 2014.

**Decision**

I have taken into account your concerns as outlined in your request for review and carefully assessed all identified documentation in relation to the original request. As reflected in the attached schedule of documents I have decided to release some of the identified documents to you. However, some of the documents remain exempt for the following reasons:

1. The document is considered an Executive document;
2. The documents are considered Internal Working documents; and
3. The redacted information is considered relating to business affairs.

**Statement of reasons**

The following exemption provisions and subsequent reasons apply to the exempt and redacted documentation:

**Section 35 - Executive documents**

- (1) *A document is an exempt document if it is—*
- (a) *a document that has been submitted to the Executive for its consideration or is proposed by a Minister to be so submitted, being a document that was brought into existence for the purpose of submission for consideration by the Executive; or*
  - (b) *an official record of the Executive; or*
  - (c) *a document that is a copy of, or of a part of, or contains an extract from, a document referred to in paragraph (a) or (b); or*
  - (d) *a document the disclosure of which would involve the disclosure of any deliberation or decision of the Executive, other than a document by which a decision of the Executive was officially published.*

- The documents which are exempt from release under this provision is done so under sections 35(1)(a) of the Act. Folios 563-541 and 713-712 are considered Executive documents as they were brought into existence for the purpose of supporting a submission to the Executive. These documents include information collated for the purpose of providing that information, consultant advice, interpretations and deliberations and therefore not wholly factual. Releasing these documents would disclose the deliberation process of the Executive and is therefore considered exempt.

### **Section 36 - Internal working documents**

*(1) A document is an exempt document if its disclosure under this Act—*

- (a) would disclose matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency or Minister or of the Territory; and*
- (b) would be contrary to the public interest.*

- The document exempt from release under this provision is done so under section 36 (1) (a) and (b) of the Act. It would not be in the public interest to release this document as it was part of a deliberative process. Folios 835-740 and their duplication at folios 651-565 are documents that contain misleading assumptions and consultant advice that is now considered out of date and misleading and therefore not in the public interest to be released.

### **Section 43 – Business affairs documents**

*(1) A document is an exempt document if its disclosure under this Act would disclose—*

- (a) trade secrets; or*
- (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or*
- (c) information (other than trade secrets or information to which paragraph (b) applies) concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, being information—*
  - (i) the disclosure of which would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or*
  - (ii) the disclosure of which under this Act could reasonably be expected to prejudice the future supply of information to the Territory or an agency for the purpose of the administration of a law or the administration of matters administered by an agency.*

- The redacted material which is exempt from release under this provision is done so under sections 43(1)(c)(1) of the Act. Folios 738 and 731B contain information that, if released, would adversely affect the business, commercial or financial affairs of the agency.

### **Publicly available documents**

Under section 11 of the Act, a person is not entitled to access to documents held by the Directorate if they are publically available. Folios 711-686 – *Canberra Brickworks and Environs Planning and Development Strategy, September 2013* are now available on the Land Development Agency (LDA) website at:

[http://www.lda.act.gov.au/uploads/ckfinder/files/pdf/3\\_Commercial/Canberra\\_Brickworks/Canberra%20Brickworks%20and%20Environs%20Planning%20Strategy%202013.pdf](http://www.lda.act.gov.au/uploads/ckfinder/files/pdf/3_Commercial/Canberra_Brickworks/Canberra%20Brickworks%20and%20Environs%20Planning%20Strategy%202013.pdf)

as part of the LDA Community Consultation on the Canberra Brickworks.

### **Review rights**

#### **ACT Civil and Administrative Tribunal**

You have the right to seek a review of any decision made by the Directorate under section 59 of the Act. If you are still not satisfied after the agency has conducted an internal review, you can then seek an independent review of the decision by the ACT Civil and Administrative Tribunal (ACAT). You have 28 days from the date of the internal review decision to appeal to the Tribunal. The postal address of the Tribunal is:

ACT Civil and Administrative Tribunal  
GPO Box 370  
CANBERRA CITY ACT 2601

#### **Ombudsman**

Under section 54 of the Act, if you are concerned about the processing of your request or related administrative matters, you may complain to the Ombudsman, who may conduct an independent investigation into your complaint. There is no fee for this, and the contact details are as follows:

The Ombudsman  
GPO Box 442  
CANBERRA ACT 2601

#### **Online Freedom of Information (FOI) Policy**

Please be aware that under the ACT Government's Online FOI Publication Policy, information released to you under this FOI review will be released on the internet. A copy of the policy, with details about what information may be published on the internet, is available online at:

[http://www.cmd.act.gov.au/data/assets/pdf\\_file/0016/250333/FOI\\_Web\\_Release\\_Policy\\_-\\_Final.pdf](http://www.cmd.act.gov.au/data/assets/pdf_file/0016/250333/FOI_Web_Release_Policy_-_Final.pdf)

Should you have any further queries with regard to your request please do not hesitate to contact the FOI Coordinator on (02) 6205 2669 or email [EDDFreedomOfInformation@act.gov.au](mailto:EDDFreedomOfInformation@act.gov.au)

Yours sincerely

Chris Reynolds  
Executive Director, Land Development  
Land Development Agency

23 June 2014