



ACT
Government

Economic Development



Land
Development
Agency

CANBERRA FIRST

ABN 204 199 255 79

TransACT House
470 Northbourne Avenue
Dickson ACT 2602

GPO Box 158 Canberra ACT 2601

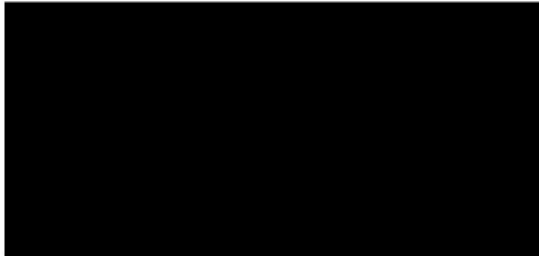
Phone: (02) 6205 0600

Fax: (02) 6207 5101

Email: lda@act.gov.au

Web: lda.act.gov.au

Our ref: LDA 15/15-16



Dear 

Request for Internal Review – Freedom of Information Request – City to the Lake - Parkes Way Options study

I refer to your email of 18 May 2016 to Mr Nicholas Hudson, seeking reconsideration of his decision under the provisions of the *ACT Freedom of Information Act 1989* (the Act) to redact indicative costings from the *City to the Lake – Parkes Way Improvement Project – Rapid Appraisal Report*.

In Mr Hudson's letter of 17 May 2016 he advised that if you disagreed with his decision, you should seek an internal review. In order to address your request for reconsideration, the Land Development Agency (LDA) has completed an internal review of the decision.

I am authorised, as a delegate of the Land Development Agency (LDA), to conduct this review under section 59 of the Act. I apologise for the time taken to provide you with my decision.

Scope of Request

I am satisfied that appropriate and thorough searches were undertaken by the Land Development Agency (LDA) in preparing the original decision.

I note your request for reconsideration did not take issue with the original decision in relation to its definition of the scope of your request. I consider that definition to be appropriate, and have adopted it for the purposes of this decision.

Decision on access

You have sought reconsideration of Mr Hudson's decision on the basis that release of indicative costings is in the public interest, as "these costings form an important part of the public debate prior to the decision on whether these projects should proceed."

After due consideration of your reasons for requesting a review, I have decided to affirm the original decision to deny access to these costings. I have detailed my reasons for affirming the original decision follow.

The LDA functions as a commercial entity within government undertaking the business of developing and selling land on the open market. The release of information that relates to the commercial aspect of a development could reasonably be expected to affect the success of the venture and the return to the Territory.

I have, however decided to overturn the decision made to redact information from pages 16-18, 20-21 and 23, and that additional information on page 24 can also be released. I consider that there is no detriment to the public in releasing the qualitative assessment results and conclusions.

Internal working documents

I have reviewed the use of the exemption provision "Internal working documents" (section 36), in the original decision. With the exception of the additional pages that I have decided to release, I consider that the use of this exemption to justify redacting costings and preliminary modelling is in line with the provisions set out in the Act.

Section 36 of the FOI Act provides:

- (1) *Subject to this section, 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.*
- (2) *In the case of a document of the kind referred to in section 8 (1), the matter referred to in subsection (1) (a) of this section does not include matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in section 8 (1).*
- (3) *This section does not apply to a document only because of purely factual material contained in the document.*
- (4) *This section does not apply to—*
 - a. *reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters; or*
 - b. *reports of a prescribed body or organisation established within an agency; or*
 - c. *the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.*

- (5) *Where a decision is made under part 3 that an applicant is not entitled to access to a document because of this section, the notice under section 25 shall state the ground of public interest on which the decision is based.*

As noted in the previous advice, Parkes Way is a joint Commonwealth and ACT asset, and the commercial information in document contains preliminary modelling to assist the budget deliberations of both governments. This modelling and design solutions discussed in the document have not yet been agreed, and the release of information that relates to the commercial aspect can affect the success of the venture and lead to a sub-optimal outcome.

Having reviewed the document and reconsidered some aspects of the qualitative assumptions, I am satisfied that this information can be released, however it would be contrary to the public interest to release the preliminary costings of the associated design options at this time. The release of this information could reasonably be expected to affect commercial aspects of the venture and may prejudice the ability of the governments to engage the community in an open conversation about options for Parkes Way.

I have decided, on balance, that the arguments in favour of release of this information are significantly outweighed by those in favour of the information being withheld.

Review of this decision

You are entitled under section 60(1) of the Act to seek review of this decision through ACT Civil and Administrative Tribunal. If you wish to file an application with ACAT for review of my decision, you should write to:

ACT Civil and Administrative Tribunal
Level 4, 1 Moore St
GPO Box 370
CANBERRA ACT 2601
Telephone: (02) 6207 1740
<http://www.acat.act.gov.au/>

Under section 54 of the Act you also have the right to complain to the Ombudsman about the processing of your request. If you wish to lodge a complaint you should write to:

ACT Ombudsman
GPO Box 442
Canberra ACT 2601
<http://www.ombudsman.act.gov.au/>

You have 28 days from the date you receive this letter to seek a review.

Should you have any queries in relation to this matter, please contact me on
(02) 6207 5553.

Yours sincerely 



Tom Gordon
Executive Director, Greenfield
Land Development Agency
10 June 2016