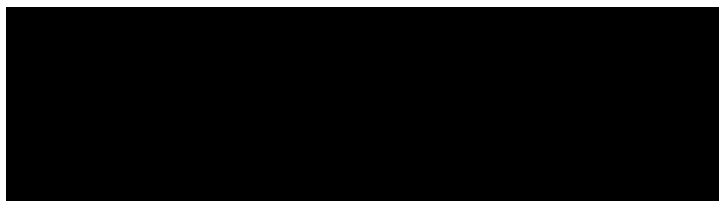




ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDD 54/15-16



Dear [REDACTED]

Freedom of Information Request

I am writing in relation to your request for documents relating to a proposed redevelopment at Manuka Oval, made under the ACT *Freedom of Information Act 1989* (the Act) and received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 6 April 2016.

In your request you are specifically seeking the following (in accordance with the definitions of terms included in your letter of 6 April 2016):

"... copies of the following material:

- 1. The ACT Government's Manuka Oval Master Plan as at 1 January 2014, whether in draft or final form.*
- 2. Records of discussions since 1 January 2014 between the ACT Government and Grocon concerning any land development at or in the vicinity of Manuka Oval;*
- 3. Records of discussions since 1 January 2014 between the ACT Government and the GWS Giants concerning any land development at or in the vicinity of Manuka Oval;*
- 4. Documents recording any agreements or understanding relating in any way to Manuka Oval entered into between the ACT Government and Grocon since 1 January 2014;*
- 5. Documents recording any agreements or understanding relating in any way to Manuka Oval entered into between the ACT Government and GWS Giants since 1 January 2014;*
- 6. Plans, concept plans, architect's drawings or sketches concerning any land development at or in the vicinity of Manuka Oval submitted by Grocon since 1 January 2014.*

Chief Minister, Treasury and Economic Development

7. *Plans, concept plans, architect's drawings or sketches concerning any land development at or in the vicinity of Manuka Oval submitted by GWS Giants since 1 January 2014*
8. *Records of discussions or drawings or sketches that relate to any proposed linking of Manuka Oval with the Kingston Foreshore originating from Grocon since 1 January 2014*
9. *Records of discussions or drawings or sketches that relate to any proposed linking of Manuka Oval with the Kingston Foreshore originating from GWS Giants since 1 January 2014.*
10. *Records of discussions or drawings or sketches that relate to any proposed linking of Manuka Oval with the Kingston Foreshore originating from any other person or entity other than the GWS Giants or Grocon since 1 January 2014.*
11. *Any discussions or papers since 1 January 2014 in relation to how unsolicited development proposals should be handled by the ACT Government, and any advice or advocacy since 1 January 2014 that any particular route, option, procedure or protocol should be followed in handling any proposal received from the GWS Giants or Grocon, couched either in general terms (in that the contents of the material make no explicit reference to any proposal received from the GWS Giants or Grocon) or explicitly (in that the contents of the material make it clear that the material address the handling of a proposal received from the GWS Giants or Grocon).*

I wish to apologise for the time it has taken to provide you with a decision on your request.

Decision Maker

I am authorised under section 22 of the Act to make decisions on access to documents and liability for charges.

Charges

I have decided, under section 29 of the Act, not to impose processing charges for this request.

Identification of Documents

Officers of CMTEDD have searched electronic and paper records for documents that may relate to your request.

Please note that CMTEDD has not engaged with Grocon in relation to Manuka Oval, therefore no documents have been located for points 2, 4, 6 or 8.

Consultation

In my letter of 31 May 2016 I explained that I would provide my decision on access to documents after consultation with relevant third parties who may wish to contend that documents should be exempt from release. Although I am not bound by third party submission, I have considered any submissions received in making my decision on access.

Decision on Access

In accordance with section 21 of the Act I have decided to fully release some documents to you and fully exempt from release the remaining documents.

Information contained in documents that I consider to be beyond the scope of your request has not been released.

My reasons for not providing access to particular documents are outlined in the following statement of reasons and in the attached schedule of documents.

Exemptions claimed

Section 43 - Documents relating to Business Affairs

Section 43 of the Act provides:

- (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.*
 - (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.*

Relates to folios 50, 58, 59 and 78

I have decided to exempt from release the above listed folios as they contain commercially sensitive information, including financial and operational information of an organisation. Certain information and documents pursuant to the request fall within the scope of exemptions under section 43.

The disclosure of the information referred to in documents captured in the scope of your FOI request would be a breach of confidence and has the potential to unreasonably affect GWS Giants adversely. The information requested contains details of GWS Giants' intellectual property, including business affairs and procedures as well as financial information.

Information is considered to have a commercial value to an agency or third party if it is valuable for the purposes of carrying on the commercial activity in which that agency or

other person is engaged. The commercial information in these documents relates directly to GWS Giants' main business activities and would be considered to have significant commercial value. Disclosure of this information would significantly diminish its commercial value during the evaluation of an unsolicited bid proposal by the Territory that is at a sensitive, preliminary stage.

Section 45 - Documents Containing Material Obtained in Confidence

Section 45 of the Act provides:

- (1) A document is an exempt document if its disclosure under this Act would constitute a breach of confidence.*
- (2) Subsection (1) does not apply to any document to the disclosure of which section 36 (1) (a) applies or would, but for section 36 (2), (3) or (4), apply, being a document prepared by—*
 - a) a Minister; or*
 - b) a member of the staff of a Minister or an officer of an agency in the course of his or her duties; or*
 - c) a prescribed authority in the exercise of its functions;*
 - d) for purposes relating to the affairs of an agency or the official affairs of a Minister unless the disclosure would constitute a breach of confidence owed to a person or body other than—*
 - e) a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or*
 - f) an agency or the Territory.*

Relates to folios 50, 58, 59 and 78

The above listed folios, captured by the scope of your FOI request, contain information that was provided to the Directorate in confidence by external parties. I have decided to exempt these documents from release under section 45(1) of the Act.

In making my decision I have considered that all preliminary discussions with the Territory and the Directorate and provision of materials at this stage of the unsolicited bid proposal were clearly undertaken in a mutual understanding of confidence. To answer otherwise would undermine the unsolicited bids process and discourage others from using that process in the future.

To establish this understanding of confidence, no formal confidentiality agreement is required. The understanding and the circumstances surrounding the communication, or the very nature of the information is sufficient in itself.

Your Right of Review

Internal Review

Under section 59 (1) of the Act, you may request a review of my decision. You have 28 days after receiving notice of my decision to ask for a review, or a further period as allowed by the Chief Executive Officer.

Your request should be addressed to:

Director-General
Chief Minister, Treasury and Economic Development Directorate
GPO Box 158
CANBERRA ACT 2601

Complaints to the Ombudsman

Under section 54 of the Act, you may complain to the Ombudsman about administrative matters relating to the processing of your Freedom of Information request. There is no fee for making a complaint. The Ombudsman will conduct an independent investigation into your complaint.

You can contact the Ombudsman either by telephone on 1300 362 072 or in writing to:

The Ombudsman
GPO Box 442
CANBERRA ACT 2601

Online FOI Policy

I have assessed your request for information under the ACT Government's Online Freedom of Information Publication Policy and have determined that my decision on your request will be published online. Personal Information or business information will not be made available under this policy.

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

Should you have any queries regarding this matter, please contact me on (02) 6207 2004.

Yours sincerely



Ian Cox
Executive Director
Innovate Canberra
19 July 2016