



ACT
Government

Chief Minister, Treasury and
Economic Development

Freedom of Information Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI Reference: CMTEDDFOI 2020-096

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	Published
4. Additional information identified	No
5. Fees	N/A
6. Processing time (in working days)	35
7. Decision made by Ombudsman	N/A
8. Additional information identified by Ombudsman	N/A
9. Decision made by ACAT	N/A
10. Additional information identified by ACAT	N/A

From: [REDACTED]
To: EPSDFOI
Subject: Re: North Curtin Horse Paddocks- West Basin Land Swap (FOI 20/27026)
Date: Thursday, 28 May 2020 2:56:57 PM

CAUTION: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Ms Aloisi

Thank you for your letter in which you suggest refinements which might be made to the FOI request I lodged on 13 May 2020.

I am, in light of the issues you raise happy to make the following refinements to that request.

1. That the request relate to all documents included within the scope of the request from 1 January 2019 with the exception of documents submitted to or generated by the Procurement Board, in relation to which I do not refine the original request.
2. That documents that would be privileged, pursuant to the FOI Act, from release on the ground of legal professional privilege be excluded from the request.
3. That drafts where a final version is available be excluded from the request.
4. That emails of an administrative nature be excluded from the request.; and
5. That information that is Cabinet information be excluded but only where that information may be lawfully withheld from release pursuant to the FOI Act.

Yours sincerely

[REDACTED]

On Tue, May 26, 2020 at 12:58 PM EPSDFOI <EPSDFOI@act.gov.au> wrote:

UNCLASSIFIED

Dear [REDACTED]

I refer to your application received on 13 May 2020 (below email), by the Environment, Planning and Sustainable Development Directorate (EPSDD), relating to the declaration of national land for Block 4 Section 106, part Block 5 Section 121 Curtin and revocation of national land for part Block 1 Section 89 Acton land agreement with the Commonwealth Government.

The ACT Procurement Board is supported by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD). For this reason, and as CMTEDD also previously managed various land management matters, a partial transfer has been arranged. CMTEDD will respond to you directly on any documents they hold that are relevant to your application.

I have been in contact with my colleagues at CMTEDD, who advise they hold a large volume of documents relating to your request. On behalf of both agencies, I write to request that you consider the following refinement in terms of the broad scope of your application:

1. Reduction in timeframe as it currently covers from 1 January 2012 (approximate commencement of negotiations) to 23 March 2020 (finalisation of the agreement as per the National Capital Authority media release found at https://www.nca.gov.au/sites/default/files/Media%20Release_Canberra%27s%20Diplomatic%20Estate-New%20Site.pdf)
2. Documents to consider for exclusion: We ask you consider the exclusion of the following documents.
 - o Information that is classified as Cabinet information. That is,
 - Information that has been submitted, or that a Minister proposes to submit, to Cabinet for its consideration and that was brought into existence for that purpose; or that is an official record of Cabinet; or that is a copy of, or part of, or contains an extract from, information mentioned above; or the disclosure of which would reveal any deliberation of Cabinet (other than through the official publication of a Cabinet decision).
 - o Legal Professional Privilege information. That is,
 - Information that would be privileged from production or admission into evidence in a legal proceeding on the ground of legal professional privilege.
 - o Drafts where a final version of the document is available
 - o Emails of an administrative nature (such as calendar invites, meeting acceptances and internal coordination emails)

A targeted application may result in less processing time, a reduction in additional documents being

processed that are not of interest to you, and is expected to reduce the likelihood of charges which apply after 50 pages.

Please Note: Processing of your application will be suspended under section 34(4) of the *Freedom of Information Act 2016*, and will resume once we have received clarification from you to enable us to identify the documents you are seeking.

Should you have any questions, please do not hesitate to contact us on 6207 1923.

Kind Regards

Angelina Aloisi | Freedom of Information and Records Officer

Information and Knowledge Management

Environment, Planning and Sustainable Development Directorate | ACT Government

Phone: 02 6207 7912 | Email: Angelina.Aloisi@act.gov.au

Level 2, Dame Pattie Menzies House South Building | GPO Box 158 Canberra ACT 2601|

www.environment.act.gov.au | www.planning.act.gov.au

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From [REDACTED]
Sent: Wednesday, 13 May 2020 3:19 PM
To: EPSDFOI <EPSDFOI@act.gov.au>
Cc [REDACTED]
Subject: North Curtin Horse Paddocks- West Basin Land Swap

CAUTION: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear EPSDFOI

I am writing to formally request, pursuant to the FOI Act, all documents, of whatever description, in the possession of the ACT Government, related to or concerning in any way the negotiation of and finalisation of the agreed land swap between the ACT and Commonwealth Governments, involving the Curtin Horse Paddocks and land at West Basin.

Included in the request is any and all documents concerning the valuation of the land included in the land swap and any and all documents emanating from or considered by the Procurement Board which are relevant to the land swap.

Thank you for your furtherance of this request.

Yours sincerely

[REDACTED]

13 May 2020

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ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI 2020-096



FREEDOM OF INFORMATION REQUEST

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 21 May 2020, in which you sought access to North Curtin Horse Paddocks and West Basin Land Swap.

Specifically, you are seeking:

- *All documents, of whatever description, in the possession of the ACT Government, related to or concerning in any way the negotiation of and finalisation of the agreed land swap between the ACT and Commonwealth Governments, involving the Curtin Horse Paddocks and land at West Basin.*
- *Included in the request is any and all documents concerning the valuation of the land included in the land swap and any and all documents emanating from or considered by the Procurement Board which are relevant to the land swap*

Refinements to the above scope:

- *That the request relates to all documents included within the scope of the request from 1 January 2019 with the exception of documents submitted to or generated by the Procurement Board, in relation to which I do not refine the original request;*
- *That documents that would be privileged, pursuant to the FOI Act, from release on the ground of legal professional privilege be excluded from the request;*
- *That drafts where a final version is available be excluded from the request;*
- *That emails of an administrative nature be excluded from the request; and*
- *That information that is Cabinet information be excluded but only where that information may be lawfully withheld from release pursuant to the FOI Act.*

Authority

As an appointed Information Officer under section 18 of the Act, I am authorised to make a decision on access or amendment to government information in the possession or control of CMTEDD.

Timeframes

In accordance with section 40 of the Act, CMTEDD was required to provide a decision on your access application by 23 June 2020 however, following on from third party consultations, the due date is now 14 July 2020.

Third Party Consultation

In making this decision, third party consultation was completed in accordance with section 38 of the Act. The views of the relevant third parties were taken into consideration when making this decision.

Decision on access

Searches were completed for relevant documents and eight documents were identified that fall within the scope of your request.

I have included as **Attachment A** to this decision the schedule of relevant documents. This provides a description of the documents that fall within the scope of your request and the access decision for those documents.

I have decided to grant access in full to two documents and partial access to one document. I have decided to refuse access to five documents as I consider them to be:

- information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

My access decisions are detailed further in the following statement of reasons and the documents released to you are provided as **Attachment B** to this letter.

In accordance with section 54(2) of the Act a statement of reasons outlining my decisions is below.

Statement of Reasons

In reaching my access decisions, I have taken the following into account:

- the Act;
- the content of the documents that fall within the scope of your request;
- the views of the relevant third parties;
- the *Human Rights Act 2004*.

Exemption claimed

My reasons for deciding not to grant access to the identified documents and components of these documents are as follows:

Information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act

Public Interest

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interests lie. As part of this process I must consider factors favouring disclosure and non-disclosure.

In *Hogan v Hinch* (2011) 243 CLR 506, [31] French CJ stated that when 'used in a statute, the term [public interest] derives its content from "the subject matter and the scope and purpose" of the enactment in which it appears'. Section 17(1) of the Act sets out the test,

to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and Schedule 2 of the Act.

Taking into consideration the information contained in the documents found to be within the scope of your request, I have identified that the following public interest factors are relevant to determine if release of the information contained within these documents is within the 'public interest'.

Factors favouring disclosure in the public interest:

- (a) *disclosure of the information could reasonably be expected to do any of the following:*
- ii) contribute to positive and informed debate on important issues or matters of public interest;*

Having considered the factors identified as relevant in this matter, I consider that release of the information, within the scope of the request, may contribute to positive and informed debate on a matter of public interest which is the ACT and Commonwealth Governments' land transaction for Curtin and West Basin and enhance the government's accountability. I am satisfied that this factor favouring disclosure carries significant weight. However, this weight is to be balanced with the weight of factors favouring non-disclosure.

Factors favouring nondisclosure in the public interest:

- (a) *disclosure of the information could reasonably be expected to do any of the following:*
- ii) prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004;*
 - x) prejudice intergovernmental relations;*

When considering the documents and factors in favour of non-disclosure, I have considered the personal information contained in the documents. I consider it unreasonable to release information that could reveal the name and contact details of the person or persons that have been in contact with the ACT Government in the documents. I believe the release of this information may prejudice the protection of these individuals' right to privacy or any other right under the *Human Rights Act 2004*. I am satisfied that this factor favouring non-disclosure should be afforded significant weight as it relates to the individuals' privacy.

I also consider that the release of the documents could prejudice intergovernmental relations. The documents identified provide details of several sensitive land issues that are subject to ongoing negotiations and deliberations. Information contained in these documents was provided in confidence to assist parties to negotiate an amicable solution for various land matters. The release of these documents could adversely affect these negotiations and deliberations by damaging continued level of trust and co-operation in the relations between the officers conducting negotiations. I consider that maintaining good working relations between the ACT and the Commonwealth are crucial to the ongoing negotiations on this issue and on future matters. I am satisfied that the release of

the documents could prejudice intergovernmental relations and the Directorate's ability to obtain confidential information by impairing the future flow of information between the ACT and the Commonwealth. As a result, this will prejudice the deliberative process of the Directorate. I am satisfied that all factors favouring non-disclosure carry very significant weight.

Having applied the test outlined in section 17 of the Act and deciding that release of personal information contained in the documents is not in the public interest to release, I have chosen to redact or exempt this specific information in accordance with section 50(2). Noting the pro-disclosure intent of the Act, I am satisfied that redacting or exempting only the information that I believe is not in the public interest to release will ensure that the intent of the Act is met and will provide you with access to the majority of the information held by CMTEDD within the scope of your request.

Charges

Processing charges are not applicable for this request because the number of pages to be released to you is below the charging threshold of 50 pages.

Online publishing – Disclosure Log

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published on the CMTEDD disclosure log 3 days after the date of my decision. Your personal contact details will not be published.

You may view CMTEDD disclosure log at

<https://www.cmtedd.act.gov.au/functions/foi/disclosure-log-2020>.

Ombudsman Review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in CMTEDD disclosure log, or a longer period allowed by the Ombudsman.

We recommend using this form [Applying for an Ombudsman Review](#) to ensure you provide all of the required information. Alternatively, you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Via email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) Review

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

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

Should you have any queries in relation to your request please contact me by telephone on 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely



Philip Dachs
Information Officer
Information Access Team
Chief Minister, Treasury and Economic Development Directorate

14 July 2020



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST	Reference NO.
Documents in relation to land swap between the ACT and Commonwealth Governments	CMTEDDFOI 2020-096

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-3	Email - Media Enquiry West Basin	27 Feb 2019	Partial Release	Sch 2 s2.2 (a)(ii)	Yes
2	4-11	Draft Project Plan	Feb 2020	Exempt	Sch 2 s2.2(a)(x)	Yes
3	12-13	Letter	21 Feb 2020	Exempt	Sch 2 s2.2(a)(x)	Yes
4	14-17	Email	3 Mar 2020	Exempt	Sch 2 s2.2(a)(x)	Yes
5	18-20	Email	4 Mar 2020	Exempt	Sch 2 s2.2(a)(x)	Yes
6	21-24	Minutes - Government Procurement Board Meeting	17 Mar 2020	Partial Release	Out of Scope	Yes
7	25-27	Email and attachment - Response to Question on Notice Paper No 43, 3 April 2020, Question No. 2981	16 Apr 2020	Full Release	N/A	Yes
8	28-30	Issue	16 Jun 2020	Exempt	Sch 2 s2.2(a)(x)	Yes
Total No of Docs						
8						

From: "Engele, Sam" <Sam.Engele@act.gov.au>
Sent: 27/02/2019 5:09 PM
To: "Starick, Kate" <Kate.Starick@act.gov.au>; "Clapham, David" <David.Clapham@act.gov.au>
Subject: FW: MEDIA ENQUIRY [REDACTED]: West Basin [SEC=UNOFFICIAL]

FYI – the CM’s response to the [REDACTED] media enquiry.

Sam

SAM ENGELE | Executive Group Manager | Policy and Cabinet

Phone 02 6205 0230 | Mobile 0413 113 039

Email Sam.Engele@ACT.gov.au

Chief Minister, Treasury and Economic Development Directorate | ACT Government

1 Constitution Av, Canberra

GPO Box 158 Canberra ACT 2601 | www.act.gov.au



From: Van Aalst, Sally
Sent: Wednesday, 27 February 2019 5:06 PM
To: Engele, Sam <Sam.Engele@act.gov.au>
Cc: Croke, Leesa <Leesa.Croke@act.gov.au>
Subject: FW: MEDIA ENQUIRY [REDACTED]: West Basin [SEC=UNOFFICIAL]

Hi Sam and Leesa – I received the below back. Edits made by the CM. I will keep this on file. Sally

The CM made his own edits:

Here are responses to your questions, all answers can be attributed to the Chief Minister:

1. Can you confirm that the Federal Government had wanted the West Basin land swap, [REDACTED] Out of scope [REDACTED] to be negotiated as a single package, rather than individual deals?

No. The Commonwealth is not that organised or coordinated. There is no one in the Commonwealth who has the authority to negotiate a single package. There have been discussions about matters between ACT Government and various Commonwealth officials on individual elements. However, no “single package” has been put forward and no agreement has been reached at this point in time.

2. Can you recall when this proposal was first put to the ACT Government? Until that point, had the two parties been negotiating the deals individually?

N/A. Negotiations around West Basin have, obviously, been long standing.

3. Was the ACT Government prepared to negotiate on a single package of deals involving the West Basin, [REDACTED] Out of scope [REDACTED]? Or was/is it still the government's preference that the deals are negotiated individually?

The ACT Government’s view is that a city deal could be put in place to resolve land, planning and other matters relating to Canberra’s role as the National Capital. To this effect I have written to current the Prime Minister and Treasurer.

4. Can you please detail (even in broad terms) any counter offers the ACT government put to the Federal Government, after it was presented with a proposal for a single, packaged deal? How recently was that offer put to the Federal Government?

Inter-governmental negotiations are complex and are not best undertaken through the media. Negotiations are ongoing and have involved various discussions. To date, the discussions have not resulted in terms that the ACT Government can agree upon.

5. Is the ACT Government of the view that negotiations have been delayed because of the Federal Government's insistence that the deals be negotiated as a package?

No. See above.

6. Does the ACT Government have any indication if a federal Labor Government would have a difference approach to the land deals?

Instability in the Federal Government has been hampering discussions with the Commonwealth. The constant changing of priorities, leadership and ministers within the Federal Government makes negotiations a challenge. It is clear to us that a Federal Labor Government provides the best opportunity for these matters to progress anytime soon.

7. I'm hoping you could provide some more information on negotiations between the ACT Government and the Federal Government on the [Out of scope] What specifically was/is being negotiated between the two parties?

The ACT Government is working with [Out of scope] officials to ensure the infrastructure required for a development, including intersection upgrades such as the [Out of scope], social infrastructure (schools, sportsgrounds etc) and capital works like water and sewerage connection, are delivered. Officials are also determining how to align Commonwealth and ACT planning processes.

8. Is the ACT Government interested in buying the site?

It isn't our first preference. At this stage it is unlikely, but not impossible, that our view would change. The ACT Government previously declined to enter into detailed negotiations with the Commonwealth to acquire the site because the proposed commercial terms at that time were ludicrous.

From: [Sch 2.2(a)(ii)]
Sent: Monday, 25 February 2019 11:40 AM
To: Dynon, Kaarin <Kaarin.Dynon@act.gov.au>
Subject: Re: MEDIA ENQUIRY [Sch 2.2(a)(ii)] West Basin

Hey Kaarin,

As discussed, I'm hoping you could provide some more information on negotiations between the ACT Government and the Federal Government on the [Out of scope] What specifically was/is being negotiated between the two parties? Is the ACT Government interested in buying the site?

Thanks Kaarin. See you soon.

On Fri, 22 Feb 2019 at 17:31, [Sch 2.2(a)(ii)] wrote:
Hi Kaarin,

As discussed, I wanted to put some questions to the CM on the stalled negotiations between the ACT Government and the Federal Government regarding West Basin, **Out of scope**
part of the **Out of scope**.

It has long been our firm understanding that the two parties were discussing these projects/deals in isolation. I gather that's not the case.

If you could provide responses to the following before Monday COB that would be appreciated.

- Q.** Can you confirm that the Federal Government had wanted the West Basin land swap, **Out of scope** **Out of scope** to be negotiated as a single package, rather than individual deals?
- Q.** Can you recall when this proposal was first put to the ACT Government? Until that point, had the two parties been negotiating the deals individually?
- Q.** Was the ACT Government prepared to negotiate on a single package of deals involving the West Basin, **Out of scope**? Or was/is it still the government's preference that the deals are negotiated individually?
- Q.** Can you please detail (even in broad terms) any counter offers the ACT government put to the Federal Government, after it was presented with a proposal for a single, packaged deal? How recently was that offer put to the Federal Government?
- Q.** Is the ACT Government of the view that negotiations have been delayed because of the Federal Government's insistence that the deals be negotiated as a package?
- Q.** Does the ACT Government have any indication if a federal Labor Government would have a difference approach to the land deals?

Thanks Kaarin,

Sch 2.2(a)(ii)



Sch 2.2(a)(ii)



MINUTES

30/2019-20

Government Procurement Board Meeting

8:00-10:00am Tuesday 17 March 2020

Ground Floor Boardroom, Nature Conservation House, Belconnen

1. Attendees:

Louise Gilding (Deputy Chair), Damon Hall, Bettina Konti, Susan Hall, Suzy Nethercott-Watson, Nicole Masters (Observer), Charlotte Smith (Secretariat)

2. Apologies

Virginia Shaw, Glenn Bain (Ex-Officio)

3. Declarations of Interest

Out of scope

4. Procurement Plans

4.1 West Basin Phase 2 (8.30am)

Attendees:

- Craig Gillman, Chief Operating Officer, City Renewal Authority
- Peter Rea, Director, Infrastructure, City Renewal Authority


The Board thanked the attendees for the papers and overview provided.

The Board:

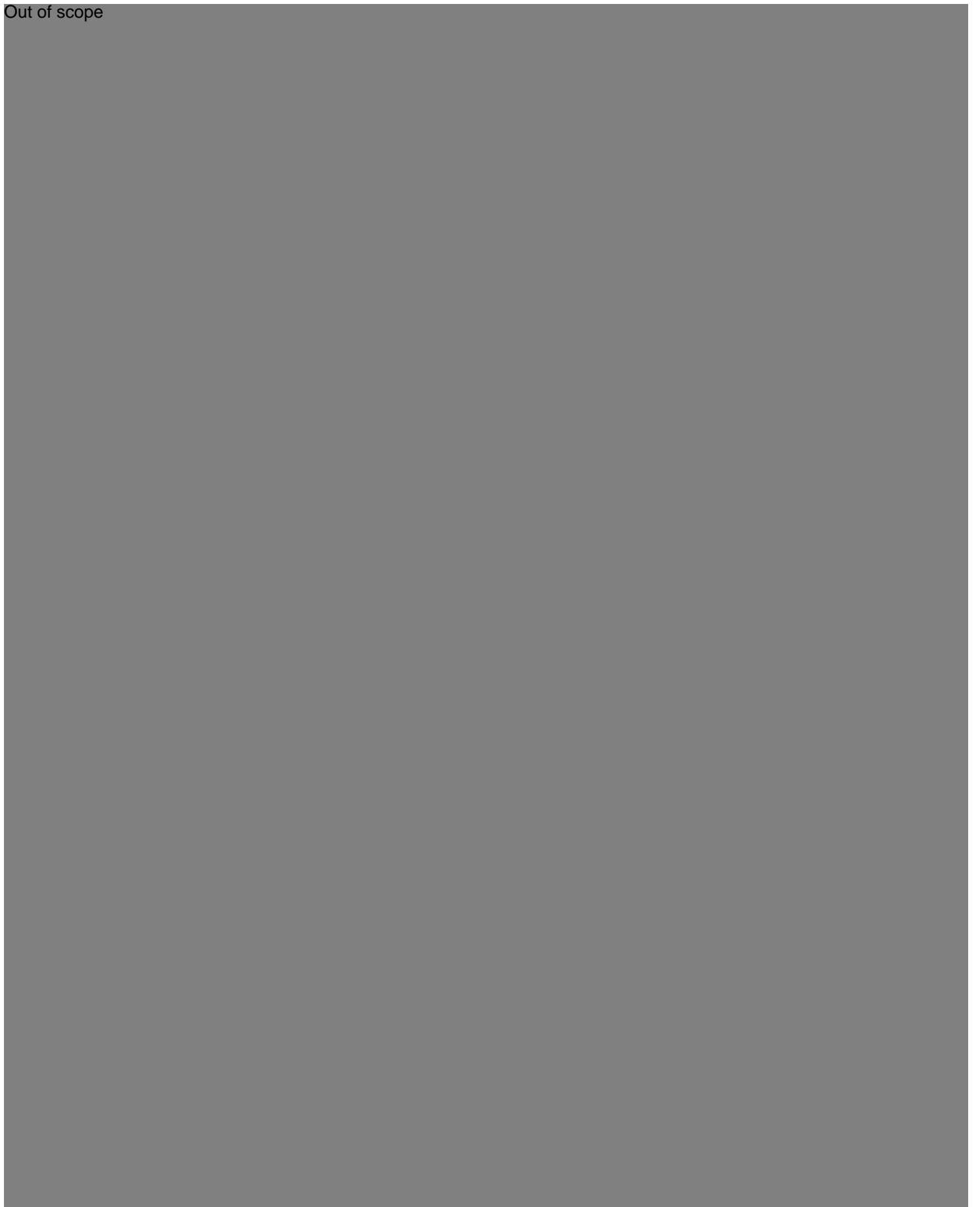
- **Noted** the City Renewal Authority advised that this procurement is not a new procurement and formed part of an open tender process undertaken in 2015 for West Basin in its entirety. The Board also **noted** this information is not reflected in the documentation provided.
- **Noted** the City Renewal Authority advised the term of the original contract is extended for each stage of the project. The contract has been extended twice by 12 months from November 2018 to November 2020. The Board also **noted** this information is not reflected in the documentation provided.
- **Noted** the procurements for previous stages of the West Basin were provided to the Board for their consideration and feedback.
- **Noted** the City Renewal Authority is intending to go out for public tender for stage 3 of this project.
- **Noted** the City Renewal Authority is anticipating for an agreement to be reached with the National Capital Authority shortly.
- **Noted** the City Renewal Authority are seeking endorsement from the Board for this additional contract, that has a construction program of 36 months expected to commence works in June 2020.
- **Suggested** the documentation is revised to include the detail that the proponents provided in their discussion with Board members.

The Board **endorsed** this proposal, with the proponents giving consideration and responding to the comments above.


Out of scope



Out of scope



Out of scope



From: "Momcilovic, David" <David.Momcilovic@act.gov.au> on behalf of "CMCD DLO" <CMCDDLO@act.gov.au>
Sent: 16/04/2020 12:51 AM
To: "LA Notice Paper" <Notice.Paper@parliament.act.gov.au>
Subject: Please find attached response to Question on Notice Paper No 43, 3 April 2020, Question No. 2981
Attachments: 2981 - North Curtin Land Swap with NCA - LE COUTEUR.PDF

UNCLASSIFIED

Response attached.

Kind regards

David

David Momcilovic | Directorate Liaison Officer
Office of the Chief Minister, Andrew Barr MLA
Chief Minister, Treasury and Economic Development Directorate & Major Projects Canberra
Mobile: 0434 942 942 | **E-mail:** CMDDLO@act.gov.au
ACT Legislative Assembly, 196 London Circuit Canberra City ACT 2601 | www.act.gov.au



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Chief Minister

Treasurer

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

RESPONSE TO QUESTION ON NOTICE

Questions on Notice Paper No 43

3 April 2020

Question No. 2981

MS LE COUTEUR: To ask the Chief Minister—

- (1) In relation to the North Curtin land swap with the National Capital Authority (NCA), including Curtin Horse Paddocks, which blocks will be transferred to the NCA.
- (2) When will the transfer occur.
- (3) Does the agreement with the NCA include transfer of planning control to the NCA; if so, what is the process by which this will occur and when is it likely to happen.

MR BARR MLA - The answer to the Member's question is as follows:

- (1) The ACT Government has not entered into a land swap with the NCA. The Commonwealth, in consultation and agreement with the ACT Government, has exercised its power to declare land in North Curtin as 'National Land' under the *Australian Capital Territory (Planning and Land Management) Act 1988* for a new diplomatic estate.

The blocks that have been declared 'National Land' are listed in the [Gazettal Notice](#). They are Block 4 Section 106 and part Block 5 Section 121 CURTIN.

- (2) The declaration commenced on 24 March 2020 (the day after the day it was published in the Federal Register of Legislation - The publication date was 23 March 2020).
- (3) As specified in the [Gazettal Notice](#), the Commonwealth has given the NCA approval to manage the blocks declared as 'National Land' on its behalf.

We understand that the NCA will now progress an amendment to the National Capital Plan to permit development on the North Curtin site, including the portion of Block 5 Section 121 CURTIN that the ACT Government will remain responsible for. The timing and content of this amendment is a matter for the NCA.

Approved for circulation to the Member and incorporation into Hansard.



Andrew Barr MLA
Chief Minister

Date: 15.4.20

This response required 0hrs 48 mins to complete, at an approximate cost of \$100.13.

