



**ACT**  
Government

Economic Development



Land  
Development  
Agency

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Our ref: LDA 17/15-16

Dear [REDACTED]

### **Request for Internal Review – Freedom of Information Request – valuations for the paddle boat hire business on the lake**

I refer to your request for an internal review under section 59 of the ACT *Freedom of Information Act 1989* (the Act), received by the Land Development Agency (LDA) on 11 July 2016. You have sought a review of Mr Nicholas Hudson's decision on access to valuations procured by the LDA for the recently acquired paddle boat business on Lake Burley Griffin.

I am authorised under section 22 of the Act and have been appointed to make a decision on this internal review.

I wish to apologise for the time it has taken to provide a decision on your request, but I wanted to ensure a thorough examination of the issues you raised.

#### **Document search and scope of request**

I am satisfied that thorough searches were undertaken by the LDA in preparing the original decision, and that the interpretation of the scope of your request was appropriate.

#### **Decision on internal review (access)**

You have sought reconsideration of Mr Hudson's decision to exempt valuation reports from release. You have provided the following reasons in support of your request:

- valuation information was released for the Mr Spokes bicycle hire business which was acquired on similar terms;
- the application of section 43 of the Freedom of Information Act to exempt the valuation reports, on the basis of disclosure of valuation methodology, was allegedly incorrect; and
- confidentiality agreements should not apply to release of material in the valuation reports that does not reference specific valuation figures.

I have considered your arguments and assessed the valuation reports that were considered for release. As advised to you in my letter of 2 August 2016, I have also consulted with the valuers who prepared the valuation reports for the LDA. While I am

not bound by third party submissions, I have given consideration to the submissions received as part of my decision making process.

After careful consideration of all relevant information, I have decided to affirm the release decision made and exemptions applied in regards to the original decisions. I concur with Mr Hudson's decision that the valuation reports should be exempt under sections 43 and 45 of the Act, the details of which were provided to you in Mr Hudson's letter of 22 June 2016. I consider that the use of these exemptions to justify non-release of the reports is in line with the provisions set out in the Act.

While I agree with the decision made on release, I consider that clearer supporting information could have been provided to justify the use of the exemption provisions. I have also decided that an additional exemption applies to the valuation report. I will provide further information in the following paragraphs to support my decision.

### **Section 43 – Documents Relating to Business Affairs**

I consider that section 43 of the Act, documents relating to business affairs, has been applied appropriately to the valuation reports. The valuation reports contain proprietary knowledge with respect to methodology and process. Such information is provided only after the payment of a fee, and public release of the information may devalue the advice provided. I consider that release of information that discloses valuation methodology is also likely to allow others to gain a competitive advantage.

I have also considered the business affairs of the LDA in deciding to uphold the original decision. The LDA functions as a commercial entity within government, and its business is developing and selling land in a competitive market. Valuers provide information to the LDA with the understanding that it is to be used for LDA's deliberation and decision process only. The LDA relies on being able to obtain accurate, informed and honest advice from valuers to aid in its decision making process. If the LDA is unable to rely on the quality and openness of the valuations it obtains, this is likely to affect the LDA's ability to remain competitive and deliver the best possible financial return for the Territory.

The valuation reports also contain operational and financial information relating to the Lake Burley Griffin Paddle Boat Hire business. I have decided that release of this information could potentially be expected to unreasonably affect the former owner/operators in respect of their current or future business affairs, by revealing their cost structure and operational arrangements. The financial and operational information in the reports would not typically be publicly released and is only in the possession of the LDA due to the acquisition process.

Further, the paddle boat business is now owned by the LDA. In making my decision to confirm the application of section 43 in exempting these reports from release, I have considered the potential impact of release on the LDA's business affairs.

I note that you have queried why valuation information was released for the Mr Spokes bicycle hire business but the same decision was not made for this matter. All valuation reports are different and release decisions are made on a case-by-case basis. Although a

decision to release may have been made in the past, this is not a factor in my consideration process and I have made my decision on release with reference to the exemption provisions detailed in this letter.

### **Section 45 – Documents Containing Material Obtained in Confidence**

I note that you have stated that confidentiality agreements should not apply to release of material in the valuation reports that does not reference specific valuation figures. I consider that section 45 of the Act, documents containing material obtained in confidence, has been applied appropriately to the valuation reports. The valuation reports were provided to the LDA for internal purposes only, and the LDA was expressly advised that the reports were not to be relied upon by external parties. I consider that in addition to releasing information about the business affairs of the valuers, the terms of the LDA's engagement with the valuers means that release of the valuation reports would constitute a breach of confidence.

Further, the valuation reports contain detailed information about the Lake Burley Griffin Paddle Boat Hire business. This information was provided to the valuers with the understanding it would assist in providing an informed assessment of the value of the business. It was not intended for release to or review by the public. Release of such information, in addition to being a breach of confidence, is likely to impair the LDA's ability to seek comprehensive and accurate valuations. If external parties cannot be assured of the confidentiality of their business information, they are unlikely to be willing to provide such information in future.

I note that you have not queried the decision by Mr Hudson not to release the specific amounts paid to the business owners. Nevertheless I have also considered this decision as part of my review, and affirm the original decision. I consider that due to the existence of a confidentiality agreement between the parties, the use of the section 45 exemption is appropriate.

### **Further exemptions**

#### **Section 36 - Internal Working Documents**

Section 36 of the 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.*

In addition to the exemption provisions under section 43 and 45, I consider that the valuation reports are also exempt under section 36 of the Act. Valuation reports inform the consideration and deliberation process of the LDA when calculating a reasonable purchase price. These reports are an element of the decision making process, but it would be misleading to suggest that these reports are the sole source of information in determining the final valuation amount.

As previously detailed, I consider that disclosure of the information in the documents could reasonably be expected to interfere with the LDA's ongoing capacity to effectively undertake land valuation processes by undermining the valuation process. It is clearly in the public interest that the LDA should be able to seek and receive advice in confidence from experts as part of its valuation determination processes. It is reasonable to expect that the freedom of such exchanges and the preparedness of external parties to engage with the LDA in the future would be undermined by those interchanges subsequently becoming public.

#### **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 enquiries concerning this matter, please do not hesitate to contact me on (02) 6205 4817.

Yours sincerely



Liz Lopa  
Executive Director  
Urban Renewal  
August 2016

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