



## DEFENCE FOI 189/22/23 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the application by Senator David Van [the applicant] under the *Freedom of Information Act 1982* (FOI Act) for access to:

1. *The report commissioned by Defence in 2022 and submitted by heritage architect firm, Lovell Chen, of Melbourne, of options for adaptive reuse of the Defence property at 310 St Kilda Rd.*
2. *The statement of work (terms of reference) or equivalent provided to Lovell Chen with respect to the (feasibility) study of adaptive reuse options for the property at 310 St Kilda Rd.*
3. *Defence's cost benefit analysis or assessment or business case or value for money assessment or equivalent document that assessed the options to support capability needs with respect to 310 St Kilda Rd prepared and submitted for decision since and including March 2022.*
4. *The covering brief for the above assessment, including all notes by reviewers of the brief, to the delegate who signed off on the decision*
5. *The statement of work provided to MMP Projects who are currently undertaking works within 310 St Kilda Rd, Southbank.*

### FOI decision maker

2. I am the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

### Documents identified

3. I identified three (3) documents as matching the description of the request.

### Exclusions

4. Personal email addresses, signatures, PMKeyS numbers and mobile telephone numbers contained in documents that fall within the scope of the FOI request, duplicates of documents, and documents sent to or from the applicant are excluded from this request. Defence has only considered final versions of documents.

### Decision

5. I have decided to:

- a. partially release three (3) documents in accordance with section 22 [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, on the grounds that the deleted material is considered exempt under sections 47E(d) [public interest conditional exemptions – certain operations of agencies], 47F [public interest conditional exemptions - personal privacy] and 47G [public interest conditional exemptions – business] of the FOI Act; and
- b. refuse items 3 and 4 of your request under section 24A [documents cannot be found, do not exist or have not been received] of the FOI Act.

**Material taken into account**

6. In making my decision, I had regard to:
- a. the terms of the request;
  - b. the content of the identified documents in issue;
  - c. relevant provisions in the FOI Act;
  - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines); and
  - e. advice received as part of a third party business consultation process.

**Reasons for decision**

**Section 24A – Requests may be refused if documents cannot be found, do not exist or have not been received**

7. Section 24A(1) of the FOI Act states:
- (1) An agency or Minister may refuse a request for access to a document if:*
- (a) all reasonable steps have been taken to find the document; and*
  - (b) the agency or Minister is satisfied that the document:*
    - (i) is in the agency's or Minister's possession but cannot be found; or*
    - (ii) does not exist.*
8. In relation to items 3 and 4 of the request, Defence has not undertaken any:
- a. *cost benefit analysis;*
  - b. *assessment;*
  - c. *business case;*
  - d. *value for money assessment; or*
  - e. *equivalent.*
9. As a result, no covering brief has been prepared.
10. To ensure all reasonable steps were taken to find documents, the Defence Records Management System, Objective, was searched for files containing the keywords:
- a. "Lovell Chen"
  - b. "Adaptive Reuse 310 St Kilda Road"
  - c. "Feasibility Study 310 St Kilda Road"
  - d. "Cost Benefit 310 St Kilda Road"
  - e. "Cost Analysis 310 St Kilda Road"
  - f. "Business Case 310 St Kilda Road" and
  - g. "Value for Money 310 St Kilda Road"
11. No records were found matching the applicant' scope other than those that have been supplied.
12. Based on the above, I am satisfied that all reasonable steps have been taken to locate the documents sought by the applicant. I am therefore satisfied that the documents cannot

be found or do not exist, and refuse items 3 and 4 of the request under section 24A(1) of the FOI Act.

**Section 47E - Public interest conditional exemptions – certain operations of agencies**

13. Section 47E(d) of the FOI Act states:

*A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:*

....

*(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

14. In relation to subsection 47E(d) of the FOI Act, paragraph 6.123 of the Guidelines states:

*The predicted effect must bear on the agency's 'proper and efficient' operations, that is, the agency is undertaking its expected activities in an expected manner...*

15. Upon examination of the documents, I identified information of individuals' details including their name and contact information. I considered that the material could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of Defence

16. The name of an individual, as well as direct contact information in the document, have not been released. It is submitted that the release of this specified information, which is not publicly available, would create an opportunity for third parties to ascertain commercially valuable information through an improper communication channel. Defence has dedicated avenues of communication for interacting with the public which are best supported for contact in these instances.

17. In addition, the release of this information could reasonably be expected to affect the ability of the individual to undertake their role. The release of names could see individuals targeted as their roles in Defence are not widely known and could attract attention through publication.

18. In conclusion, I am satisfied that parts of the document is conditionally exempt under sections 47E(d) of the FOI Act.

**Section 47F – Public interest conditional exemptions - personal privacy**

19. Section 47F of the Act states:

*(1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*

*(2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:*

- (a) the extent to which the information is well known;*
- (b) whether the person to whom the information relates is known to be (or to have been)-associated-with the matters dealt with in the document;*
- (c) the availability of the information from publicly accessible sources;*
- (d) any other matters that the agency or Minister considers relevant.*

20. Upon examination of the documents, I identified information, specifically a name of an individual other than the applicant.

21. At 6.140 the Guidelines state an agency must have regard to certain matters in determining whether disclosure of the document would involve an unreasonable disclosure of personal information. I found that the:

- a. specific personal information listed is not well known
- b. individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt with in the documents; and
- c. information is not readily available from publicly accessible sources.

22. The release of the names identified in the documents could reasonably be expected to cause harm to their privacy.

23. Taking into account the above factors, I consider that the release of the personal information of individuals other than the applicant would be an unreasonable disclosure of personal information.

24. Accordingly, I am satisfied that the information is exempt under section 47F(1) of the FOI Act.

#### **Section 47G - Public interest conditional exemptions – business**

25. Upon examination of the documents, I identified business information belonging to a service provider to Defence.

26. Section 47G of the FOI Act states:

- (1) *A document is conditionally exempt if its disclosure under this Act would disclose information 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, in a case in which the disclosure of the information:*
  - (a) *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*
  - (b) *could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.*

27. I identified pricing information, contained in a document, which could, by way of example, assist the third party's competitors or diminish the third party's competitive position in providing these service offerings.

28. As such, I am satisfied that the information contained in one document is conditionally exempt under section 47G of the FOI Act. My public interest considerations are detailed below.

#### **Public interest considerations - Sections 47E(d), 47F and 47G**

29. Section 11A(5) of the FOI Act provides that, if a document is conditionally exempt, it must be disclosed 'unless (in the circumstances) access to the document at the time would, on balance, be contrary to the public interest'.

30. In assessing whether disclosure is, on balance, contrary to the public interest, I considered the Guidelines together with a range of factors set out in section 11B(3) of the FOI Act, which favours access to a document to:

- (a) *promote the objects of this Act (including all the matters set out in sections 3 and 3A);*
- (b) *inform debate on a matter of public importance;*
- (c) *promote effective oversight of public expenditure;*
- (d) *allow a person to access his or her own personal information.*

31. I note that disclosure of the requested documents may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However, disclosure of the specific conditionally exempt material would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

32. While I consider that release of the material removed under sections 47E, 47F and 47G of the FOI Act may be of some interest to the applicant, I consider the public interest is better served in protecting the specific material from disclosure. Disclosure of the conditionally exempt material would not inform public debate on any matter of public importance in any meaningful way. Furthermore, the public interest is better served in protecting the privacy of individuals whose personal details are contained within these documents from release to the public at large.

33. Paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors that I find particularly relevant to this request are that the release of this information could reasonably be expected to prejudice or harm:

- a. *the protection of an individual's right to privacy;*
- b. *the agency's ability to obtain similar information in the future;*
- c. *the interests of an individual or group of individuals; and*
- d. *the management function of an agency.*

34. It is for these reasons that I find that the public interest factors against disclosure outweigh the factors for disclosure and deem the information exempt under sections 47E(d), 47F and 47G of the FOI Act.

35. In coming to the above decision, I considered factors outlined in section 11B(4) – [irrelevant factors] of the FOI Act. None of these factors were taken into account in making my decision.

**Third party consultation**

36. I decided to consult with third parties regarding their information which was contained in the documents. In response to this consultation, some of the third parties have objected to the release of their business information.

Ricky  
Accredited Decision Maker  
Security and Estate Group