



The Honourable Victor Dominello MP
Minister for Customer Service

Ms Jillian Robertson
Clayton Utz
Level 15, 1 Bligh Street
Sydney nsw 2000

Via email: jrobertson@claytonutz.com

Dear Ms Robertson,

I refer to your application made under the *Government Information (Public Access) Act 2009* ('GIPA Act') to the Office of the Minister for Customer Service dated 08 October 2019, which was acknowledged as a valid application on 24 October 2019.

In your application you made the following request for information:

The Applicant seeks access to records of the following government information for the period between 1 January 2018 to present:

- a. *Any documents pertaining to, or in connection with, the SEPP 55 Amendment including but not limited to correspondence and briefing notes relating to the drafting and making of that amendment;*
- b. *Any documents pertaining to, or in connection with, the LMSS Act including but not limited to correspondence and briefing notes relating to the drafting and making of the LMSS Act;*
- c. *Any documents pertaining to, or in connection with, the valuation of the Former Smelter Site including but not limited to any valuation reports;*
- d. *Any documents pertaining to, or in connection with, the cost of maintaining the Containment Cell or maintenance of remediation of the Former Smelter Site including but not limited to correspondence, briefing notes and reports;*
- e. *Any communications with the Deed Administrator, including any reports received from the Deed Administrator pertaining to, or in connection with, the Former Smelter Site;*
- f. *Any documents pertaining to, or in connection with, any discussions or negotiations with, and any proposals or offers made regards:*
 - i. *The sale, transfer, disposal to or acquisition of any part of the Former Smelter Site by Green Capital;*
 - ii. *The grant of any interest in the Former Smelter Site to Green Capital; and*
 - iii. *The development of the Former Smelter Site by Green Capital;*
- g. *Any documents pertaining to, or in connection with, the consideration by any agency of the capacity or authority to sell, transfer or otherwise dispose of any part of the Former Smelter Site to Green Capital; and*

- h. Documents falling within the categories in paragraphs 1.1(a) to 1.1(g) above to the extent they were or are government information held by the former NSW Minister for Finance, Services and Property.*

Decision about access

I have today decided your application, under section 58(1)(d) of the GIPA Act, by refusing to provide access to Records A1 and A2.

Statement of reasons

There is a presumption in favour of disclosing government information. You have a legally enforceable right to be provided with access to the information sought, unless there is an overriding public interest against disclosure of the information.

In relation to Record A1 and A2, I have applied the public interest test and have decided that there is an overriding public interest against disclosure of the information sought. Accordingly, access to that information is refused.

Section 14(1) of the GIPA Act provides that it is to be conclusively presumed that there is an overriding public interest against disclosure of any of the government information described in Schedule 1 to the GIPA Act.

Clause 2(1) of Schedule 1 of the GIPA Act provides:

(1) It is to be conclusively presumed that there is an overriding public interest against disclosure of information (referred to in this Act as **Cabinet information**) contained in any of the following documents:

- (a) a document that contains an official record of Cabinet,
- (b) a document prepared for the dominant purpose of its being submitted to Cabinet for
- (c) Cabinet's consideration (whether or not the document is actually submitted to Cabinet),
- (d) a document prepared for the purpose of its being submitted to Cabinet for Cabinet's approval for the document to be used for the dominant purpose for which it was prepared (whether or not the document is actually submitted to Cabinet and whether or not the approval is actually given),
- (e) a document prepared after Cabinet's deliberation or decision on a matter that would reveal or tend to reveal information concerning any of those deliberations or decisions,
- (f) a document prepared before or after Cabinet's deliberation or decision on a matter that reveals or tends to reveal the position that a particular Minister has taken, is taking, will take, is considering taking, or has been recommended to take, on the matter in Cabinet,
- (g) a document that is a preliminary draft of, or a copy of or part of, or contains an extract from, a document referred to in paragraphs (a)–(e).

Record A1

Record A1 is an email containing the title of an attachment (Record A2), which is a brief for the Minister for a Cabinet meeting in August 2019. The title reveals an extract of a Cabinet

submission, which is a document that was prepared for the dominant purpose of submission to Cabinet.

Accordingly, I consider that the information is therefore subject to a conclusive presumption that there is an overriding public interest against its disclosure on the basis that it is Cabinet information within the meaning of clause 2(1)(b) and (f) of Schedule 1 of the GIPA Act and I have therefore decided to refuse to provide access to Record A1 on this basis.

Record A2

Record A2 is the attachment of Record A1, which is a brief for the Minister for Cabinet Meeting in August 2019. The brief is in relation to a Cabinet submission that a Minister was taking to Cabinet. It also refers to a previous decision of Cabinet.

Accordingly, I consider that the information is therefore subject to a conclusive presumption that there is an overriding public interest against its disclosure on the basis that it is cabinet information within the meaning of clause 2(1)(d) and (e) of Schedule 1 of the GIPA Act and I have therefore decided to refuse to provide access to Record A2 on this basis.

Fees and charges

The GIPA Act entitles agencies (including ministerial offices) to charge for the processing of an application, even in circumstances where a decision is made that the agency does not hold information falling within the scope of the application.

I have decided that no further charges should be imposed for this application.

Rights of review

This decision is reviewable under section 80 of the GIPA Act. If you are aggrieved by my decision, you may seek review under Part 5 of the GIPA Act. You are entitled to seek an external review by the Information Commissioner or by the NSW Civil and Administrative Tribunal.

Inquiries

Please contact me on telephone (02) 8574 6607 or via email tiana.morse@minister.nsw.gov.au if you have any questions in relation to your application.

Kind regards,



Tiana Morse
Office of the Hon Victor Dominello MP
Minister for Customer Service

08-11-19.

By registered post

08 October 2019

The Hon. Victor Dominello, MP
Minister for Customer Service
GPO Box 5341
SYDNEY NSW 2001

Dear Sir/Madam

Application for information relating to the Lake Macquarie Former Smelter Site

This is an access application by Fiddletown Investments Limited, a company incorporated in the British Virgin Islands (BVI) with BVI company number 1963544, which is a wholly owned subsidiary of Avenue Asia Special Situations Fund V, L.P. (the **Applicant**) for access to government information under Part 4 of the *Government Information (Public Access) Act 2009 (GIPA Act)*. This application is made to The Hon. Victor Dominello MP as the NSW Minister for Customer Service.

Enclosed is a cheque in the amount of \$30.00 for the application fee.

The Applicant submits that there is no overriding public interest against disclosure of the government information sought by this application.

The Applicant consents to the Minister for Customer Service disclosing the applicant's name and details of the information applied for to any third party as part of any consultation process, and to the information being published on the disclosure log for the Minister of Customer Service.

Finally, if you expect any processing charge under s 64 of the GIPA Act to exceed \$500, please let us know in advance of incurring those charges.

1. Request for government information

1.1 The Applicant seeks access to records of the following government information for the period between 1 January 2018 to present:

- (a) any documents pertaining to, or in connection with, the SEPP 55 Amendment including but not limited to correspondence and briefing notes relating to the drafting and making of that amendment;
- (b) any documents pertaining to, or in connection with, the LMSS Act including but not limited to correspondence and briefing notes relating to the drafting and making of the LMSS Act;
- (c) any documents pertaining to, or in connection with, the valuation of the Former Smelter Site including but not limited to any valuation reports;
- (d) any documents pertaining to, or in connection with, the cost of maintaining the Containment Cell or maintenance of remediation of the Former Smelter Site including but not limited to correspondence, briefing notes and reports;
- (e) any communications with the Deed Administrator, including any reports received from the Deed Administrator pertaining to, or in connection with, the Former Smelter Site;
- (f) any documents pertaining to, or in connection with, any discussions or negotiations with, and any proposals or offers made regarding:
 - (i) the sale, transfer, disposal to or acquisition of any part of the Former Smelter Site by Green Capital;

- (ii) the grant of any interest in the Former Smelter Site to Green Capital; and
- (iii) the development of the Former Smelter Site by Green Capital;
- (g) any documents pertaining to, or in connection with, the consideration by any agency of the capacity or authority to sell, transfer or otherwise dispose of any part of the Former Smelter Site to Green Capital; and
- (h) documents falling within the categories in paragraphs 1.1(a) to 1.1(g) above to the extent they were or are government information held by the former NSW Minister for Finance, Services and Property.

2. Definitions

2.1 The following definitions apply to this access application:

Containment Cell has the same meaning as in the LMSS Act.

Deed Administrators means John Lindholm and includes any persons acting for or on behalf the Deed Administrators.

Former Smelter Site has the same meaning as in the LMSS Act.

Green Capital means Greencapital Aust Pty Ltd (ABN 92 608 167 246) and includes any persons acting for or on behalf of Green Capital.

LMSS Act means the *Lake Macquarie Smelter Site (Perpetual Care of Land) Act 2019* and includes for the avoidance of doubt the *Lake Macquarie Smelter Site (Perpetual Care of Land) Bill 2019*.

SEPP 55 Amendment means the *State Environmental Planning Policy Amendment (Remediation of Land) 2018* (2018 No 506).

2.2 A reference to a defined term in the GIPA Act in this access application, has the same meaning as defined in that Act, such as:

- (a) "record" (Schedule 4, clause 10); and
- (b) "government information" (section 4(1)).

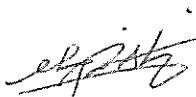
3. Form of Documents

3.1 We request that, to the extent possible, access to the records be provided electronically to Jillian Robertson at the following email address: jrobertson@claytonutz.com or, alternatively, in hard copy form addressed to:

Attn: Jillian Robertson
Clayton Utz
Level 15, 1 Bligh St
Sydney NSW 2000

Please acknowledge receipt of this access application and let us know if you require any further clarification or information relating to it.

Yours faithfully



Fiddletown Investments Limited