

CASINO CANBERRA



The Chair
The Hon. Vicki Dunne MLA (Chair)
Standing Committee on Public Accounts (**Committee**)
Legislative Assembly for the Australian Capital Territory

By email to: Brian.Lloyd@parliament.act.gov.au

Dear Madam,

Questions regarding Auditor-General Report No. 7 of 2016 – Certain Land Development Agency Acquisitions (Auditor's Report)

Thank you for your letter dated 10 October 2018, in which the Committee has asked us a series of questions relating to the Auditor's Report.

I have taken instructions in relation to the questions asked and I am instructed to respond on behalf of Casino Canberra/Aquis Entertainment Limited (**Casino**) in the terms below.

The questions asked:

Q1: What communication – on what dates and between whom – took place between Aquis and ACT Government which allowed Aquis to be aware of the government's plan for Corrandeek Pond so that this could be included in the proposal?

1.1 In December 2014, one of our consultants, Mr Rob Purdon, advised the Casino (among other things) that:

- TAMS advised that stormwater management would not directly affect the Casino site¹.
- EDD advised that there has been on-going discussions with the owners of Block 24 (adjacent to the Casino) which extends either side of the ROW². The Territory has been considering a new stormwater detention pond north of the ROW and is also considering compulsory acquisition of Block 24 from the existing private lessees. It is understood that the private lessees only have development approval for about 600m² of space on Block 24, and that the ownership of the site is held by several parties without common agreement as to future development of the site.
- I understand that a Cabinet paper is being prepared to consider compulsory acquisition of Block 24.
- It seems from my discussions with the above there would be some possibility of a negotiated outcome between the Territory from the adjacent

¹ By "Casino site" we understood this to be a reference to the Casino's current leasehold interest.

² As we understand it, this is a reference to the "right of way" (or "right of access") which the Casino has over Block 24, Section 65, City, which provides access to the Casino from Coranderrk Street.

private lessee and the Casino regarding a win-win outcome for a substantial development project should Aquis want to get involved.

- 1.2 **Attached** is a copy of a Minute of Meeting dated 18 December 2014 we received from our consultant (Mr Rob Purdon).
- 1.3 In early March 2018, the Casino's (current) CEO, Ms Jessica Mellor, had an exchange of emails with Mr Daniel Stewart of the Land Development Authority, to the following effect:

From: Jessica Mellor [email address deleted]
Sent: Tuesday, 3 March 2015 12:42 PM
To: Stewart, Daniel
Subject: Existing Convention Centre

Hi Dan

Thanks for your time yesterday- it was a very encouraging exchange and I see there being a lot of synergies between our interests.

I am hoping that we can work towards solidifying some ideas in relation to the expansion of the Convention Centre sooner rather than later, and have briefed Cox Architecture to consider some further alternatives following our discussion.

This will also tie into the Economic benefits study being undertaken by Deloitte. To aid their study, they have asked whether there is any information available in relation to the current space being 'at capacity', or evidence (even anecdotal) of potential conferences being turned away?

Anything that you are able to assist in providing, or any other relevant people you could put us in touch with would be beneficial.

I also look forward to hearing from you in relation to any progress on the acquisition of the APG site next door.

Kind regards

JESSICA MELLOR
EXECUTIVE DIRECTOR
STRATEGY & PROJECT DEVELOPMENT

M [mobile number deleted]
W www.aquisdevelopments.com

21 Binara Street, Canberra ACT 2601

From: Stewart, Daniel [<mailto:Daniel.Stewart@act.gov.au>]
Sent: Thursday, 5 March 2015 1:20 PM
To: Jessica Mellor
Subject: RE: Existing Convention Centre

Hi Jess

My apologies for not getting back to you sooner. I will track down the information and contacts you are seeking and send them through as soon as possible. Conversations on the additional site are underway and, so far at least, are progressing well.

Kind regards
Dan Stewart

From: Jessica Mellor [email address deleted]
Sent: Thursday, 5 March 2015 3:18 PM
To: Stewart, Daniel
Subject: RE: Existing Convention Centre

Thanks Dan, look forward to hearing from you again shortly.

Jess

From: Stewart, Daniel <Daniel.Stewart@act.gov.au>
Sent: Tuesday, 10 March 2015 3:01 PM
To: Jessica Mellor [email address deleted]
Cc: Rake, Gary <Gary.Rake@act.gov.au>
Subject: RE: Existing Convention Centre

Hi Jess

Gary Rake has offered to be the contact for Deloitte regarding additional data. I have copied him to this email and his phone number is (02) 6207 7279.

Cheers
Dan

1.4 I am instructed by Ms Mellor that:

- having reviewed the email exchange above:
 - she did understand, in general terms, that the ACT Government had commenced taking steps to acquire Block 24, Section 65, City (**Adjoining Block**), as part of the City to the Lake Project;
 - she recalls that Mr Stewart did advise her, in early March 2015, that conversations with the owner of the Adjoining Block were “progressing well”. However, given the time that has passed, she does not recall the specific terms of the discussions she had with Mr Stewart in and around early March 2015; and
- having reviewed her records, she does not recall any other specific conversations with officials from the ACT Government in relation to the Adjoining Block in the lead up to the Casino lodging the Re-development Proposal.

Q2: Why did Aquis wish to build the replacement storm-water pond?

2.1 Given how the Casino building is currently positioned, it does not have “street frontage”. That being the case, it has always been considered that the Casino’s “street frontage”, and vehicular access to the Casino, was something that would need to be addressed with any Casino redevelopment proposal.

- 2.2 Accordingly, as part of the design brief that was given to architects, who were requested by the Casino to come up with a unique “concept design” for the redevelopment (and who were contending to be the architect for the redevelopment), the Casino was seeking a design concept that embodied appropriate access (or a “front door”) to the Casino.
- 2.3 In this regard, the “right of way”, which the Casino has over the Adjoining Block, was an important component of any design concept for a redeveloped Casino. It was also considered that gaining further rights over the Adjoining Block (i.e. additional to the “right of way”), would, if it was possible, be beneficial for public entry/ vehicular access to a redeveloped Casino. Ultimately, the architects who came up with the “winning” design, Cox Architects, did incorporate the Adjoining Block in their design for the redeveloped Casino - and this design dealt with the entry/ vehicular access issues and the relocation of the pond.
- 2.4 Importantly, and as the Committee will fully appreciate, the Casino’s Re-development Proposal was lodged with the ACT Government under the terms of the Territory’s *Investment Proposal Guidelines for Investors (Guidelines)* (as it then was).
- 2.5 Under those Guidelines, it was stated that the ACT Government had adopted seven (7) general principles to support decision-making throughout any process of engagement under the Guidelines. The principles being³:

1. Encourage *unique and innovative opportunities and ideas from the private sector that provide economic development opportunities for the ACT;*

2. Ensure that decisions deliver public value from an economic, social and environmental perspective;

3. Ensure that the process is not used as an avenue to circumvent existing ACT Government processes;

4. Balance rewarding genuinely unique and innovative proposals against what might otherwise be achieved through an open procurement process;

5. Focus primarily on ideas that align with current ACT Government strategic priorities, but recognise that there may be opportunities to realise value beyond the current focus of Government;

6. Recognise that the management of proposals requires timeliness and due diligence; and

7. Demonstrate integrity in the management of commercially sensitive information through the appropriate actions of ACT Government Officials.

- 2.6 Having regard to (among other things):

- the information that had been obtained by the Casino while it explored the feasibility of lodging the Re-development Proposal;
- detailed advising from our consultants;

³ A copy of the Guidelines was included in our letter dated 28 June 2018 to the Committee.

- the review of various design concepts;
- the frontage/ vehicular access issues confronting the Casino; and
- the Principles stated in the Guidelines,

the Casino determined, after extensive internal deliberations (and with a view to maximising the attractiveness and amenity of a re-developed Casino), that a re-development proposal that incorporated the replacement storm water pond on the Adjoining Block (while also addressing the Casino's frontage/ vehicular access issues), would:

- incorporate an additional unique and innovative element to the Re-development Proposal (i.e. in addition to all the other unique and innovative elements to the proposal);
- deliver public value from an economic and environmental perspective to the ACT;
- align with what the Casino had understood to be a major strategic priority of the ACT Government (i.e. the City to the Lake Project); and
- in short, maximise the chances of success for the Redevelopment Proposal – given the core Principles stated in the Guidelines.

Q3: How it came to be that the Proposal included a request for *“appropriate property rights of the land known as Block 24, Section 65”*, referenced later in the Proposal where it states:

“Aquis will also need some assistance to ensure it has appropriate property rights over some adjoining land described as Block 24, Section 65 which we understand the Government has recently acquired”.

- 3.1 Given the Casino had determined to incorporate the stormwater pond as part of its Re-Development Proposal – and it was proposed that the pond would be located on the Adjoining Block – it followed that the Casino would need to acquire *“appropriate property rights”* to that land.
- 3.2 At this stage, however, the Casino did not know what the exact status of the acquisition was. Nor did the Casino consider that it needed to be more specific about this element of the Re-development Proposal at this point in the submission process.
- 3.3 It is also very relevant for the Committee to note that the Casino was, and is, prepared to do a Casino re-development without the stormwater pond (noting that our vehicular access/frontage issues can be addressed by making appropriate use of the “right of way” over the Adjoining Block).

Q4: What was Aquis' understanding of the ownership and possible uses of Block?

- 4.1 The Casino's understanding was consistent with what was stated in the attached Minutes of Meeting.
- 4.2 The Casino also understood that "approved uses" of land are able to be changed (and are not "fixed" for all time).

Q5: Why Aquis wanted property rights over Block 24, Section 65?

- 5.1 Our answers to Q2 and Q3 provides a full response to this question.

Q6: On what basis Aquis expected that property rights to Block 24, Section 65 would be granted to it by the ACT Government?

- 6.1 The Casino did not consider that rights in the Adjoining Block would definitely be granted to it by the ACT Government. Obviously enough, the Casino expected that the acquisition of any rights over the Adjoining Land would be closely tied to the overall fate of the Re-development Proposal.
- 6.2 However, the Casino did consider that incorporating the re-location of the stormwater pond into the Re-development Proposal, enhanced the prospects of the Re-development Proposal being seen to be consistent with the Principles stated in the Guidelines (while also addressing frontage/ vehicular access issues).
- 6.3 In the circumstances (and assuming the ACT Government was otherwise in a position to grant property rights to the Casino over the Adjoining Block), at the time the Casino lodged its Re-Development Proposal with the ACT Government, the Casino considered there to be reasonable prospects (*if* the Re-development Proposal was viewed favourably) that:
 - the ACT Government may move onto (among other things) negotiating appropriate property rights over the Adjoining Block as part of the Re-development Proposal process; and
 - the Casino may be able to obtain those rights.
- 6.4 *Why did the Casino consider there to be reasonable prospects of this?*

Insofar as the Casino was proposing to deliver an important piece of public infrastructure on the Adjoining Block, and this was something that was aligned with a key priority of the ACT Government (i.e. the City to the Lake project), the Casino reasonably took the view that this element of the Re-Development Proposal would likely be attractive to the ACT Government (*if* the Re-development Proposal was viewed favourably). Furthermore, this was all in the context of the Casino proposing to undertake a \$300m development project that would deliver significant jobs and growth to the ACT, and re-vitalise an area of the city that, on any view, is long overdue for revitalisation.
- 6.5 At the time of lodging its Re-development Proposal, the Casino:

- did not have a definitive view as to what “appropriate property rights” might look like (nor did the Casino need to have a firm view on this, at this early stage of the process). This was reflected in the Re-development Proposal, where it was stated that:

Aquis will also need some assistance to ensure it has appropriate property rights over some adjoining land described as Block 24, Section 65 which we understand the Government has recently acquired. ***Aquis will work with the Government to find a mutually acceptable way forward***⁴;

- considered that if the stormwater pond was not going to be seen as a “positive” for the Re-development Proposal (from the ACT government perspective) – this was not going to be something, in and of itself, that would affect the Casino’s preparedness to proceed with the Re-development Proposal.

Q7: On what basis did Aquis believe the ACT government owned Block 24, Section 65 in August 2015, when settlement for the ACT Government’s acquisition of the block occurred on 8 September 2015?

7.1 Relevantly, on page 14 of the Re-development Proposal it was stated that:

Aquis will also need some assistance to ensure it has appropriate property rights over some adjoining land described as Block 24, Section 65 **which we understand the Government has recently acquired**. Aquis will work with the Government to find a mutually acceptable way forward.

7.2 I am instructed by Ms Mellor that:

- to the best of her recollection, she was advised by one of the Casino’s consultants, shortly prior to the Redevelopment Proposal being lodged with the ACT Government, that it was understood the ACT Government had recently acquired the Adjoining Block; and
- she does not have a specific recollection of this conversation (including as to whom, among the Casino’s consultants, may have provided her with this advice).

Q8: In connection with this, the Committee also wishes to know – what communications took place between Aquis and the ACT Government, when and between whom, so that this could be included in the Proposal?

8.1 Please refer to the responses to Q1 and Q7 above.

Confidentiality

As mentioned in earlier correspondence:

- the Casino’s Re-development Proposal was lodged with the ACT Government under the Guidelines (which expressly stated that the ACT Government would conduct the investment proposal process in a manner that would “maintain confidentiality”);

⁴ Refer p. 14 of the Re-development Proposal. Noting the second sentence in this extract, was not included in the quotation you included in Q3.

- subsequent to the lodgment of the Re-development Proposal, the Casino was requested to lodge a detailed business case providing further detail in relation to the proposal (which it has done); and
- the entirety of the Re-development Proposal is considered to be a valuable strategic document of the Casino which provides details with respect to an innovative commercial development (including detail in relation to the scope, timeframe, risks and costs of the Proposal). Only the Casino (as the author of the Proposal) has the exclusive right to reproduce, publish and communicate the Re-development Proposal (subject to any permitted uses granted) to third parties.

We consider the information we have provided in this letter, in relation to our internal deliberative processes in connection with the submission of the Re-development Proposal, to also be our "confidential information".

Should you have any further queries in relation to this letter, please do not hesitate to contact me by email or by telephone on 6243-3704.

Yours faithfully,

A handwritten signature in black ink that reads "Shane Maundrell". The signature is written in a cursive, flowing style.

Shane Maundrell
Compliance Manager and In-house Legal Counsel
26 October 2018