Yvette Berry MLA
Deputy Chief Minister
Minister for Education and Early Childhood
Minister for Homes, Homelessness and New Suburbs
Minister for Sport and Recreation

Member for Ginninderra

Our ref: CMTEDD2025/2983

Mr Tom Duncan
Clerk of the Legislative Assembly
GPO Box 1020
Canberra ACT 2601

Dear Mr Duncan Tom

I write to advise that I am claiming privilege on documents provided by the ACT Head of Service in accordance with the Standing Order 213A to produce documents relating to ACT Government projects.

Claims of privilege – statement of reasons

On 24 June 2024, the Legislative Assembly of the ACT resolved to order the production of "Government projects—business cases and cost-benefit analyses" and directed the Chief Minister to "provide a statement to the Clerk for Members when making any claims of privilege, stating the specific harm to the public interest resulting from the publication of the document for which privilege is being claimed".

Executive and public interest privilege has been claimed over certain documents identified in the return. As required under Standing Order 213A, the return has been prepared showing the reasons for each claim of privilege made in relation to each document included in this return and this statement is to be read in conjunction with the return.

It is important to first briefly consider the Executive privilege over the documents identified in the return, prior to addressing the specific harm to the public interest resulting from the publication of those documents.

Executive privilege

The Australian Capital Territory does not maintain a Cabinet as a separate political entity to the Executive, rather the Executive performs the functions of a Cabinet and Executive Council. The doctrine of 'Cabinet confidentiality' is applied in the Australian Capital Territory to give the Executive the same status as the Cabinet.

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As outlined in the *ACT Cabinet Handbook* (2025) Cabinet operates by convention and practice. The Cabinet operates through collective, consensus-based decision making. The convention of collective ministerial responsibility for decisions is central to a Cabinet-led system of government.

The convention of collective responsibility is in turn underpinned by strict confidentiality surrounding Cabinet papers and discussions in Cabinet. The business cases identified in the table below were created for the purpose of submission to Cabinet for its deliberation and the attachments to the business cases were to inform the preparation of those business cases. Confidentiality allows Ministers to discuss proposals frankly while developing a collective position. This confidentiality extends to Cabinet committee and subcommittee meetings.

In accordance with the Cabinet Handbook, Cabinet committees have specified decision-making powers. The same requirements for the conduct of meetings, preparation of advice and security of information apply to Cabinet committees.

Expenditure Review Committee (ERC)

The ERC is a Cabinet committee responsible for overseeing all government spending proposals that may affect the ACT Government Budget. The ERC membership is comprised of Minister's with key fiscal portfolios:

- Chief Minister;
- Deputy Chief Minister;
- Minister for Finance; and
- Treasurer.

The ERC supports a holistic approach to fiscal strategy, expenditure and assessment of proposals which have financial implications for the ACT Budget, including business cases. The ERC makes recommendations for Cabinet consideration. However, ERC may make decision in certain circumstances.

The business cases are deliberative having been prepared for submission to the ERC and/or Cabinet. Business cases contain detailed information on proposals such as benefits, costs, risks and opportunities as well as analyses of options that provide Cabinet with multiple strategies to help inform budget priorities. They typically include detailed cost estimates, offsets and savings strategies. Often, a range of funding sources are explored, which may be internal and/or external to the ACT Government. This information is prepared to inform Cabinet's collective deliberation.

The business cases in question were prepared solely for Cabinet's deliberation and their disclosure would reveal the internal deliberations of Cabinet. Therefore, claims of privilege are made to maintain the confidentiality of those deliberations of Cabinet and to uphold the principle of collective ministerial responsibility.

Project	**Reasons for claim of privileged and potential harms to the public interest**
The Canberra Hospital Expansion	The disclosure of the business cases associated with the Canberra Hospital Expansion would be contrary to the convention of the collective responsibility of Cabinet.
Northside Hospital	The Northside Hospital is yet to be procured and currently being developed under a Very Early Contract Invitation (VECI) model.

	Following the appointment of the Delivery Partner, Multiplex in March 2025, to deliver the VECI model, service prioritisation and site master planning has commenced to inform concept options for the new Northside Hospital. The release of financial information contained in the three business cases scheduled in the return would compromise the ability of the Territory to obtain value for money in future stages of the project, particularly given the very early stage of delivery. The business cases contain sensitive commercial information that would not be released to market as part of a procurement process. Releasing this information publicly prior to future procurement stages would be expected to result in higher pricing from the market that is not reflective of competitive processes but instead aligns with confidential Territory budgets and negotiating parameters. Given the significant value of this project, the likely harms to the public interest in the form of reduced value for money are significant. The disclosure of the three scheduled business cases would be contrary to the convention of the collective responsibility of Cabinet.
Canberra Institute of Technology	The disclosure of the scheduled business cases would be contrary to the convention of the collective responsibility of Cabinet.
Canberra Stadium	The new Canberra Stadium is still in early planning stages. The release of financial information contained in the business case would compromise the ability of the Territory to obtain value for money in future stages of the project, particularly given the very early stage of delivery. The business case contains information that would not be released to market as part of a procurement process. Releasing this information publicly prior to future procurement stages would be expected to result in higher pricing from the market that is not reflective of competitive processes but instead aligns with confidential Territory budgets and negotiating parameters. That is, there is an evident public interest in that the Territory be able to secure value for money in commercial transactions into which it enters and not to give a competitive advantage to those with whom it contracts. Given the significant value of this project, the likely harms to the public interest in the form of reduced value for money are significant. The disclosure of the scheduled business case would be contrary to the convention of the collective responsibility of Cabinet.
Convention Centre redevelopment	Budget funding has been provided to support feasibility and design work, for redevelopment of the Convention Centre, which is currently underway. However, construction readiness, design and construction has yet to commence, all of which will be subject to future procurements. The release of financial information contained in the business case would compromise the ability of the Territory to obtain value for money in future stages of the project, particularly given the very early stage of delivery. The business case scheduled in the return contains information that would not be released to market as part of a procurement process. Releasing this

	information publicly prior to future procurement stages would be expected to result in higher pricing from the market that is not reflective of competitive processes. That is, there is an evident public interest in that the Territory be able to secure value for money in commercial transactions into which it enters and not to give a competitive advantage to those with whom it contracts. Given the potentially significant value of this project, the likely harms to the public interest in the form of reduced value for money are significant. The disclosure of the scheduled business case would be contrary to the convention of the collective responsibility of Cabinet.
Redevelopment of Telstra Tower	Negotiations are working towards finalisation of an operational agreement with Telstra. The business case contains a range of information that if published would be detrimental to commercial negotiations and compromise future community consultations. This includes operating and capital cost estimates, revenue estimates and return on investment analyses and other commercial terms that would be likely to compromise the Territory's ability to obtain value for money in settling these agreements, thereby harming the public interest. The disclosure of the scheduled business case would be contrary to the convention of the collective responsibility of Cabinet.
Canberra Aquatic Centre	This project is yet to be procured. Technical due diligence and planning activities at this site are about to begin, before progressing to the detailed design and associated approvals for the facility to enable construction procurement to commence for a delivery partner. The release of financial information contained in the business case would compromise the ability of the Territory to obtain value for money in future stages of the project, particularly given the very early stage of delivery. The business case scheduled in the return contains information that would not be released to market as part of a procurement process. Releasing this information publicly prior to future procurement stages would be expected to result in higher pricing from the market that is not reflective of competitive processes. That is, there is an evident public interest in that the Territory be able to secure value for money in commercial transactions into which it enters and not to give a competitive advantage to those with whom it contracts. Given the significant value of this project, the likely harms to the public interest in the form of reduced value for money are significant. The disclosure of the scheduled business case would be contrary to the convention of the collective responsibility of Cabinet.
Canberra Theatre Redevelopment	This project is yet to be procured. In May 2025 Multiplex was appointed as the Delivery Partner for Early Contract Involvement for the project. Multiplex is now working with Infrastructure Canberra (iCBR) and the Cultural Facilities Corporation (CFC) to achieve a value for money outcome for the Territory.

	Over the coming months, the integrated team of iCBR, CFC and Multiplex will further progress more detailed planning including project approvals, pricing and the construction program. The release of financial information contained in the business cases and associated economic analysis scheduled in the return would compromise the ability of the Territory to obtain value for money in future stages of the project, particularly given the very early stage of delivery. The business cases scheduled in the return contain information that would not be released to market as part of a procurement process. Releasing this information publicly prior to future procurement stages would be expected to result in higher pricing from the market that is not reflective of competitive processes. That is, there is an evident public interest in that the Territory be able to secure value for money in commercial transactions into which it enters and not to give a competitive advantage to those with whom it contracts. Given the significant value of this project, the likely harms to the public interest in the form of reduced value for money are significant. The disclosure of the scheduled business cases and associated economic analysis would be contrary to the convention of the collective responsibility of Cabinet.
Raising London circuit	The disclosure of the scheduled business cases would be contrary to the convention of the collective responsibility of Cabinet.
Big Canberra Battery	The business cases scheduled in the return associated with this project contain final pricing and contractual information from the preferred supplier. The Territory has agreed not to publish the costs and revenues of this contract, whether separately or as a net position as doing so would result in the publication of confidential information for the supplier. Release of this information could have a significant impact on the business affairs of the preferred supplier and cause harm by making sensitive commercial information available to competitors. The ACT Government has procured the supplier under assurances of confidentiality over commercially sensitive information. If the Territory cannot maintain this confidence it is likely to impact the Territory's ability to obtain confidential information from private sector suppliers in any future project, and/or result in the Territory paying a premium in future projects to account for the additional risk borne by suppliers doing business with the Territory. The disclosure of the scheduled business cases would be contrary to the convention of the collective responsibility of Cabinet
Electrification of the Government's gas assets	Electrification of the ACT Government's gas assets is not a single project but a programme of works that are procured on a rolling basis. The business cases scheduled in the return include specific references to sites and budgets for electrification. Publication of this information is commercially sensitive.

	The release of this information would harm the public interest through reduced value for money in a range of future procurements related to electrification of the government's gas assets. That is, there is an evident public interest in that the Territory be able to secure value for money in commercial transactions into which it enters and not to give a competitive advantage to those with whom it contracts. The disclosure of the scheduled business cases would be contrary to the convention of the collective responsibility of Cabinet.
Materials Recovery Facility	A contract with Veolia was signed on 30 January 2025. Veolia will deliver the design and construction of the new facility, including an extension of Recycling Road. Following the build, Veolia will then operate the facility under a long-term contract of 20 years. The business cases and financial proforma scheduled in the return include detailed information that underpins cost and revenue assumptions associated with the contract, including projected revenues from the processing of recyclable materials sourced not only from the Territory but also from participating New South Wales councils. This information is not publicly available and contains commercially sensitive data, including proprietary financial modelling and third-party revenue forecasts. Disclosure of this information would likely result in significant commercial harm to the commercial partners involved, as it would reveal confidential elements of its pricing strategy and operational cost structure that could be utilised by competitors. The parties involved in this procurement have been engaged under assurances of confidentiality over commercially sensitive information. If the Territory cannot maintain this confidence it is likely to impact the Territory's ability to obtain confidential information from private sector suppliers in any future project, and/or result in the Territory paying a premium in future projects to account for the additional risk borne by suppliers doing business with the Territory. The disclosure of the scheduled business cases would be contrary to the convention of the collective responsibility of Cabinet.
Food and organics and Garden Organics processing facilities	Procurement planning is underway for the proposed FOGO facility, with an approach to market released on 1 July 2025 and closing on 12 August 2025. The procurement will be through a two-stage process, with an initial Request for Expression of Interest (REOI) followed by a Request for Proposal (RFP) issued to respondents shortlisted through the Expression of Interest phase. The release of financial information contained in the business cases scheduled in the return would compromise the ability of the Territory to obtain value for money particularly given the procurement is currently open to market. The business cases scheduled in the return contain information that is not intended for release to market and releasing this information publicly prior to procurement being completed would be expected to result in higher pricing from the market that is not reflective of competitive processes.

	That is, there is an evident public interest in that the Territory be able to secure value for money in commercial transactions into which it enters and not to give a competitive advantage to those with whom it contracts. Given the significant value of this project, the likely harms to the public interest in the form of reduced value for money are significant. The disclosure of the scheduled business cases would be contrary to the convention of the collective responsibility of Cabinet.

If any claims of privilege in this return are disputed, submissions will be made by the government to support detailed consideration of the claims by the independent arbiter as provided for under Standing Order 213A. In the event that a claim is disputed, I ask that any request for submissions be copied to the Head of Service in addition to the Chief Minister.

Yours sincerely

Yvette Berry MLA