



Department of Environment, Land, Water and Planning

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BY EMAIL

Ms Joanne Bush
Administrative Officer, Legislative Council Standing Committees
Parliament of Victoria
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Ref:

Dear Ms Bush

INQUIRY INTO THE PROPOSED LONG-TERM LEASE OF THE LAND TITLES AND REGISTRY FUNCTIONS OF LAND USE VICTORIA – QUESTIONS ON NOTICE AND TRANSCRIPT

I refer to your email of 20 June 2018 to myself, Ian Ireson, James Kingsland and Terry Garwood of the Department of Environment, Land, Water and Planning, requesting:

- any required changes to the transcripts of the above persons' evidence given to the Environment and Planning Committee on at its hearings into the above matter on 6 June 2018;
- responses to questions taken on notice during that hearing; and
- a copy of the presentation given during that hearing.

Required changes to transcripts

I am requesting changes to the transcript of evidence given which are indicated in attachment 1 – annotated transcript for Mr John Bradley. Changes to page 15.

Mr Ireson has requested several changes to the transcript of evidence given which are indicated in attachment 2 – annotated transcript for Mr Ian Ireson. Changes to pages 15, 18, 20 and 23.

I can confirm that no changes are required to the transcripts of evidence given by Mr Terry Garwood and Mr James Kingsland.

Responses to questions on notice

1. *What selection criteria or other measures are in place to seek to guarantee that the successful private operator will maintain the transferring employees' conditions after the initial two-year period? (DR RATNAM, pages 16-17)*

Following the Employment Guarantee Period, which guarantees the employment conditions of transferring staff until 1 November 2021, the successful private operator will need to agree terms and conditions with employees consistent with the *Fair Work Act 2009 (Cth)*.

The State will ensure that the successful bidder complies with the following conditions:

- All Land Use Victoria (LUV) staff whose functions are identified by the State as transferring to the Private Operator as part of the Commercialisation Package are to be offered employment by the successful Bidder on a voluntary basis on terms no less favourable than the employees' current terms and conditions (including accrued personal leave balances);

- Employees will have a guaranteed employment period with the Private Operator (subject to the right to terminate for serious misconduct) until 1 November 2021. In the case of employees who are already on a fixed or maximum term contract, the guaranteed employment period will be for the remainder of the employee's current term;
- The successful Bidder is responsible for, and bears all costs related to, recruiting for any functions where a LUV employee has elected not to transfer to the Private Operator; and
- If an Employee is terminated by reason of redundancy within four years of them transferring to the Private Operator, the State will provide the Employee with a limited right to return to employment with the State.

2. *A confirmed breakdown of numbers of staff in the relevant areas, both present and projected (that is, "current state" vs "future state"). (Mr DALLA-RIVA, pages 18-19)*

The current staff numbers for the groups involved in the commercialisation are:

- Registration – 94 staff comprising 81 VPS staff and 13 agency staff;
- Systems – 44 staff; and
- LANDATA (excluding the Laverton group) – 18 staff,

a total of 156 staff.

The number of positions required by the Private Operator for Stage 2, which is anticipated to occur in approximately October 2019, is:

- Registration – 48 staff;
- Systems – 44 staff; and
- LANDATA – 18 staff,

a total of 110 staff.

3. *Detail around the scope of the Auditor-General's function in relation to the private operator. (MR DAVIS, pages 22-23)*

Auditor-General's power to carry out a performance audit

The Private Operator will come within the definition of *associated entity* under the *Audit Act 1994*, which is a feature of the Act that incorporates the "follow the dollar" powers inserted into the Act in 2016. Accordingly, a performance audit by the Auditor-General of the functions of Land Use Victoria under section 15 of the Audit Act will extend to the Private Operator in the following circumstances:

- the audit is in respect of matters related to the services provided by the Private Operator under the concession deed; and
- where the examination of the Private Operator relates to the services for which the Private Operator receives payment from the State, as described below.

Under the terms of the proposed concession deed, the State will agree to pay the Private Operator a service fee based on transaction volumes for the services provided by the Private Operator. Therefore, the performance audit rights of the Auditor-General in respect of the Private Operator (as an associated entity) extends to the operations of the Private Operator related to the performance of almost all services provided under the concession deed.

Given that the Auditor-General's powers are contingent upon the receipt by the Private Operator of a payment for services by the State, it is arguable that the performance audit powers will not extend under the Act to those items for which the Private Operator will receive revenue directly from users for retail, non-statutory services. This will include services provided directly to users through the LANDATA retail website. Such services account for less than 2% of the revenue of the commercialisation package.

For the same reason, the Auditor-General's audit rights may not cover new non-statutory services developed by the Private Operator for which the Private Operator charges fees directly to users.

Auditor-General's power to call for information

The Auditor-General's statutory powers to call for information will also apply to the Private Operator, in respect of a performance audit that meets the criteria described above.

The Auditor-General is not, however, permitted to include in a report to Parliament information of a business, commercial or financial nature the disclosure of which could unreasonably expose the Private Operator to any material disadvantage, unless the Auditor General is satisfied the public interest requires that information in the report.

State's audit rights under the concession deed

For the sake of completeness, I note that the proposed terms of the concession deed include a right for the State (and its nominated auditors) to audit and inspect the Private Operator's records. This is separate to the audit rights of the Auditor-General under the Audit Act. The State's audit rights include the right to audit financial and operational records and the resources used by the Private Operator in performance of the concession in order to verify the performance of the Private Operator or compliance by the Private Operator with its obligations under the transaction documents. The State must comply with certain confidentiality obligations in respect of the information obtained in the exercise of these audit rights, noting however that the State is entitled to publish performance related information and information regarding breaches of the concession.

4. *Whether the successful private operator would be able to use alternative electronic conveyancing products (MR DAVIS, page 23)*

The proposed concession deed for the transaction requires the Private Operator to ensure that, during the concession term, the only business and functions the Private Operator performs are to undertake the services set out in the concession deed. These are registration administration services, search services and IT services to maintain and enhance Land Use Victoria's critical business systems.

The Private Operator must ensure that it does not carry out any business or functions that are not related or ancillary to the above services. The Private Operator would not be permitted to become an Electronic Lodgement Network Operator and use alternative electronic conveyancing software.

- 4 a. *Could we also ask Mr Ireson to confirm whether the term "ring defence" on page 23 is accurate?*

The term "ring defence" should be changed to "ring fencing".

Presentation

A copy of the presentation is attached to this letter – attachment 3 DELWP Parliamentary inquiry presentation – Land Use Victoria 6 June 2018.

Should any of these matters require clarification, please contact Terry Garwood, Deputy Secretary, Local Infrastructure, at [REDACTED]@delwp.vic.gov.au or on [REDACTED].

Yours sincerely

[REDACTED]

John Bradley
Secretary

26 16 / 2018

Attached:

1. Annotated and signed transcript of Mr John Bradley
2. Annotated and signed transcript of Mr Ian Ireson
3. Presentation given by the Department of Environment, Land, Water and Planning to the Inquiry on 6 June 2018.