

OMBUDSMAN TASMANIA

DECISION



Right to Information Act Review **Case Reference:** R2210-003

Names of Parties: Robert Hogan and the University of Tasmania

Reasons for decision: s48(3)

Provisions considered: s35

Background

1 The University of Tasmania (the University) announced a decision to relocate its longstanding campus in Sandy Bay to central Hobart in 2019. This decision sparked a high level of public interest and debate. Mr Robert Hogan is strongly opposed to the University's decision, is a member of the Save UTAS Campus group and has launched a website regarding the campus move.

2 On 23 August 2022, Mr Hogan made an application for assessed disclosure under the *Right to Information Act 2009* (the Act) to the University for the following information:

Both (1) the Hobart STEM Precinct Business Case for submission to Infrastructure Australia and (2) the agenda paper mentioned at Item 5.3 of the UTAS Council Minutes for 23 September 2016.

All research and research reports on which the STEM Precinct Business Case was based.

(If not otherwise identified under this heading, please include the research listed under contract research for 2016 at: <http://www.lisadenny.com.au/contract-research.html> as: "Socio-economic profiling, education demand, employment outcomes for STEM students, report for the University of Tasmania")

The business case supporting the 'City-Centric Campus' model, mentioned at Item 6.1 of the UTAS Council Minutes for 5 April 2019.

3 On 1 September 2022, Mr Brendan Parnell, a delegate under the Act for the University, advised in an email to Mr Hogan that the information requested appears to be publicly available so he had determined to disclose without processing [Mr Hogan's] application further. Mr Parnell provided links to the information deemed publicly available and asked Mr Hogan to lodge any requests for information related to Ms Lisa Denny's research directly with Ms Denny.

4 On 2 September 2022, Mr Hogan responded to Mr Parnell in an email by clarifying and further explaining the information he sought. Mr Parnell

responded on the same day by saying he would make enquiries to see if any further information was available and reiterated his belief that the University would not be in a position to release any of Lisa Denny's reports.

- 5 On 8 September 2022, Mr Hogan sent an email to Mr Parnell, which again clarified the information he sought (quoted verbatim):

To clarify again what I am seeking:

In Annexure 1, at 2016, 23 September, Item 5.3, it states that "Council

- approved the submission of a Hobart STEM Precinct Business Case to Infrastructure Australia at the end of September 2016, based on the paper included in the agenda papers"*

(dash point 1) I am seeking a copy of (1) the agenda paper mentioned here and (2) the Business Case as submitted to Infrastructure Australia (if this is not the same as 1). You provided me with a link to the Infrastructure Australia (IA) evaluation of the UTAS STEM Business Case. While it refers heavily to the UTAS STEM Business Case, it is not to be confused with the STEM Business Case as submitted by UTAS.

(dash point 2) Leaving to one side Lisa Denny's research, I am also seeking any other research and reports which underpinned UTAS' STEM Business Case. This would, for instance, include any research involved in the presentation of the benefit/cost analysis on p5 of the IA evaluation, as IA attributes this to the UTAS STEM Business Case

At 2019, 5 April, Item 6.1 states that "Council approved the business case which supports the 'City-Centric Campus' model as a basis for the future development of the University's Southern Campuses.

(dash point 3) I am seeking a copy of the business case mentioned here.

- 6 On 20 September 2022, Mr Parnell released a decision to Mr Hogan. In his decision, Mr Parnell said he confirmed acceptance of Mr Hogan's application on 14 September 2022 and confirmed the scope of his request as follows:

- Copies of documentation related to the proposed relocation of UTAS into the Hobart CBD.*
- The Hobart STEM Precinct Business Case as submitted to Infrastructure Australia and (2) agenda paper as presented to the UTAS Council for item 5.3 at its meeting of 23 September 2016.*
- All research and reports on which UTAS' STEM Business Case presented, to the UTAS Council on 23 September 2016, was based.*
- The business case presented to UTAS Council for agenda item 6.1 of the UTAS meeting of 5 April 2019.*

- 7 Mr Parnell noted he had provided information directly relevant to Mr Hogan's application that had previously been made publicly available by routine disclosure as follows:
- *Minutes of Council meetings for the period 1 January 2014 to 22 March 2022 relevant to the Hobart CBD move - https://www.utas.edu.au/_data/assets/pdf_file/0006/1591161/University-of-Tasmania-Council-minutes-extract-Hobart-City-Move.pdf*
 - *STEM Precinct Business Case submission to Infrastructure Australia - UTAS-STEMsummary_0.pdf (infrastructureaustralia.gov.au)*
 - *Socio-economic impacts of the proposed location (prepared by Lisa Denny and Michael Guerzoni dated May 2018) https://www.utas.edu.au/_data/assets/pdf_file/0004/1589377/Report-Potential-Socio-Economic-Impacts-Southern-Campus-Relocation-May-2018.pdf*
- 8 Mr Parnell outlined information he considered to be within the scope of Mr Hogan's request in an attached schedule, which included nine documents. Three were released in full and six were found to be exempt under s35 of the Act, either in whole or in part. He determined that material sought by Mr Hogan, *other than as disclosed, is a draft business case and recommendations prepared by University officers and employees for consideration by University Committees and therefore the very nature of this information was deliberative, opinion based, advice and consultative.* He further determined *it is not a final decision nor contain [sic] purely factual information and not in the public's interest for it to be released.*
- 9 Mr Hogan applied for internal review of this decision on 19 October 2022. In his request for internal review, in relation to the issue of scope, Mr Hogan asserted that *Mr Parnell has misstated the scope of [his] request.* He further asserted *Mr Parnell conflated the one sentence summary required on the first page of [his] application with the actual, more precise, request provided on the second page.* Mr Hogan commented that *given Mr Parnell never sought to negotiate or vary the scope of [his] request, [he believes] it should have been stated verbatim as it appeared on the second page of [his] application.* In addition, he said *the RTI Act, anyway, makes no provision for a decision maker to unilaterally vary the scope of an application.* I will comment on this in the Analysis.
- 10 On 10 November 2022, Ms Jane Beaumont, a delegate under the Act, released a further decision to Mr Hogan, which affirmed Mr Parnell's decision. Ms Beaumont found the *business cases, including the research and reports they were based [on], were prepared for the purpose of a deliberative process.* Further reasoning by Ms Beaumont will be outlined in the Submissions.
- 11 Ms Beaumont referred to Mr Hogan's assertion of a *misunderstanding by the University's delegated officer* and correctly stated Mr Hogan's application for assessed disclosure, providing the details of the application verbatim.
- 12 On 8 December 2022, Mr Hogan sought external review of the University's decisions. This office accepted his application under s44 of the Act on the basis

he was in receipt of an internal review decision, the fee had been paid and his application for external review was submitted within 20 working days after receipt of that decision.

- 13 Mr Hogan applied to have his external review request expedited and I agreed to do so. This was on the basis that Mr Hogan was seeking the information in the broader public interest. It was also on the basis that the rezoning application for the Sandy Bay site was allegedly imminent and the *Legislative Council Select Committee Inquiry into the Provisions of the University of Tasmania Act 1992* was currently underway and there was a consequent urgent need to inform the public about the alleged actions or inactions of the University in this instance.
- 14 On 4 May 2023, my office sought clarification from the University regarding some of the unredacted information provided and on 10 May 2023 Mr Parnell provided a revised schedule of documents.

Issues for Determination

- 15 I must determine whether the information is eligible for exemption under s35 or any other relevant section of the Act.
- 16 As s35 is contained in Division 2 of Part 3 of the Act, my assessment is subject to the public interest test in s33, including consideration of the matters in Schedule 1. This means that, should I determine that the information is prima facie exempt under this section, I must then determine whether it is contrary to the public interest to disclose it.

Relevant legislation

- 17 The University has relied on s35, the exemption for information relating to internal deliberative information, in its decision to exempt information. I attach a copy of this section to this decision at Attachment I.
- 18 Copies of s33 and Schedule 1 of the Act are also attached.

Submissions

The University

- 19 The University did not make any submissions beyond the reasoning in its decisions, which was brief. Mr Parnell's comments are mainly outlined above in the Background. His comments regarding s35 in his decision dated 20 September 2022 are as follows:

If the University is unable to deliberate and include those deliberations in written communication, which includes consideration of recommendations from University employees, it will inhibit and harm the ability of the University to function effectively. It is therefore not in the public interest to release information used for internal deliberation as

the University moved towards making a decision and/or embarking upon a course of action.

- 20 Mr Parnell made further comments specifically addressing the public interest test, which are outlined in that part of the Analysis below.
- 21 Ms Beaumont's comments under the heading Section 35 in her decision dated 10 November 2022 are as follows:

Section 35 of the RTI Act states information is exempt information if it consists of an opinion, advice or recommendation, a record of consultations or deliberations, in the course of, or for the purposes of deliberative processes and, does not include purely factual information, a final decision or a reason which explains a decision, order or ruling.

I have viewed the relevant agenda papers and business cases and note the papers are recommendations to consider. The information contains draft information and estimates and was provided for a consultative process. It is a record of deliberations only, much of it in draft form for the purpose of a deliberative process, was not purely factual in nature and was not a final decision. For the University to be able to function effectively, it needs to be able to deliberate on information and not have a situation where deliberative information, that may well be misleading given it is not factual information, is not made public while the final decisions and final reports are available for public scrutiny. The final STEM business case is the final decision and has been made public and available for viewing here [link provided].

It is my view that after taking into account all relevant matters, it is contrary to the public interest to disclose the information sought.

I therefore affirm the Original Decision that this is deliberative information that is not in the public interest. In particular on the basis that the final STEM Precinct Business Case, as presented to Infrastructure Australia, has been made publicly available and does provide context to the decision making process at the time. I acknowledge that you may disagree with the Decision Maker's view that only the final STEM Precinct Business Case falls within the scope of your request, however I am of the view that the decision to exempt prior drafts of the document and deliberation on those drafts should remain exempt from release.

- 22 Ms Beaumont's further comments regarding the public interest test will also be outlined below in that part of the Analysis.

Mr Hogan

- 23 In Mr Hogan's internal review application he began by providing some background information regarding his application for assessed disclosure and his reasons for requesting the information in his application:

... to keep an RTI application to UTAS as manageable for UTAS as possible, I sought copies of documents relating to what I considered the two most critical agenda items in the redacted extract, which were also those likely to have the most public interest and value in informing public debate, namely:

- Both (1) the Hobart STEM Precinct Business Case for submission to Infrastructure Australia and (2) the agenda paper mentioned at Item 5.3 of the UTAS Council Minutes for 23 September 2016. I also requested the research on which the Business Case was based and a specific paper by Lisa Denny if this was not otherwise included in that research, as I believed that this paper may still be relevant.

• I requested these documents because: the Hobart STEM proposal has been such a vital element in UTAS' push to move into the Hobart CBD (being included, for example, in the Hobart City Deal); and the documents must include assumptions/calculations regarding increased student accessibility, and resultant economic benefits, from a UTAS move to the CBD. UTAS has repeatedly presented increased student accessibility as one of its main arguments for moving to the CBD, but has at no stage presented any supporting evidence to the public, as distinct from glib assertions, on this matter.

- The Business Case supporting the 'City-Centric Campus' model, mentioned at Item 6.1 of the UTAS Council Minutes for 5 April 2019.

• This appears to be the critical document in UTAS' formal decision to move to the Hobart CBD announced on that date.

- 24 Mr Hogan then commented on specific parts of Mr Parnell's decision. His first comments related to what he describes as Mr Parnell misstating the scope of his request, which is outlined above in the Background. In relation to Documents released, Mr Hogan said:

I informed Mr Parnell that I had the three documents he lists at 1-3 as having been publicly released and sought to clarify that they were not within in the scope of my request by my emails of 2 and 8 September (Attachment B). In the light of my emails, I do not understand how Mr Parnell could apparently confuse the UTAS Council Minutes with UTAS agenda papers, Infrastructure Australia's (IA's) evaluation of the UTAS STEM Business Case with the Business Case itself or a paper co-authored by Lisa Denny in 2018 with papers I was seeking from 2016.

- 25 In relation to Documents not released, Mr Hogan said:

Of the documents that Mr Parnell lists as exempt from release, the document listed at 4 may or may not be the STEM Business Case presented to the UTAS Council at Item 5.3 of its 23 September 2016 meeting. It may be the Business Case was in draft at this stage, and was only subsequently finalised. This is unclear from Mr Parnell's decision letter.

Documents 5 to 9, I take to be relevant to the UTAS Council's decision of 5 April 2019 to adopt the 'City Centric Campus' model, although none of them appear to have been explicitly mentioned in the redacted extract of the Council Minutes provided to me. If they formed part of, or the whole of, the Business Case for Item 6.1, Mr Parnell should have made this clear. In the absence of such clarification I take the Business Case for item 6.1 to be a different document.

- 26 Mr Hogan then commented on Documents requested by me but not explicitly mentioned:

I assume there was an agenda paper for Item 5.3 of the UTAS Council meeting of 23 September 2016, to which the STEM Business Case was attached. If so, this should be specifically listed in the Schedule (and considered in the Decision).

The Schedule does not identify the research on which the STEM Business Case was based. Under the Decision heading of his letter, Mr Parnell refers to the "research" and "reports" by Lisa Denny that I requested. I requested only one specific report by Lisa Denny. From the IA evaluation I believe that UTAS' STEM Business Case must have been a substantive document based on reports by consultants and/or other research. I believe Mr Parnell should have identified these inputs to the STEM Business Case, as well as the one specific paper by Ms Denny that I requested, in the Schedule, with decisions appropriately recorded for each.

Most strikingly of all, and as noted above, Mr Parnell has not explicitly addressed my request for the Business Case presented to the UTAS Council at Item 6.1 of its 5 April 2019 meeting. The document was precisely identified and like all UTAS Council agenda papers should have been readily available from the UTAS Council secretariat.

- 27 Following this, Mr Hogan commented on The Decision and RTI Act Section 35, his most relevant comments being:

As noted, Mr Parnell wrongly asserts that documents 1-3 In the Schedule to his letter fall within the scope of my request.

He asserts that the rest of the documents (4-9) he identified in the Schedule are exempt under section 35 of the RTI Act, as they are deliberative in nature. He further claims that "The final decisions and reports with respect to the STEM Business Case and the Southern campus was, in this instance, the information as has been released by routine disclosure [that is, documents 1-3] and that information has been communicated to you." This is arrant nonsense.

I requested final agenda papers presented to the UTAS Council upon which critical decisions had been made. Those critical decisions are of great public interest.

If there is 'hair splitting' on the STEM Business Case presented to the UTAS Council at item 5.3 on 23 September 2016, because it was not in the final form submitted to IA, this should have been explicitly addressed in Mr Parnell's decision letter, if not in earlier correspondence with me. Nevertheless I maintain my request for this document as it is the document on which the Council made its critical decision. I request that, if the document was modified in any way prior to submission to IA, I also be provided with a copy of this document.

With respect to documents 5- 9, as I have stated, it is not clear to me how these documents relate to the Business Case presented to the UTAS Council under Item 6.1 of its 5 April 2019 meeting (and thus whether they fall within the scope of my request). Nevertheless, from the brief descriptions provided by Mr Parnell these documents appear to be final documents, which were likely presented to the UTAS Council. As such, they cannot be considered deliberative documents within the meaning of section 35 of the RTI Act. If anything, they are more analogous to Cabinet documents, which are exempted under section 26 of the RTI Act. However, the UTAS Council is the governing body of a public institution; it is not the Cabinet.

This same argument applies to my request for the Business Case considered at Item 6.1 of the 5 April 2019 UTAS Council meeting. This is clearly not a deliberative document within the meaning of the RTI Act. It is the document on which the UTAS Council made probably the most important decision ever made by that body – that is, to relocate to the Hobart CBD. As such this document is clearly of immense public interest and should be in the public domain.

- 28 Finally, Mr Hogan responded to Mr Parnell's comments that Mr Hogan refused to meet with University representatives. Mr Hogan said this is *simply incorrect* and further said he tried to meet with a representative of the University but the offer was then withdrawn due to the representative's potential timing issues. He also said he has indicated his willingness to meet with University representatives the next time he is in Hobart but that the University had put in place several conditions relating to the meeting, including providing questions in advance, time limitations and a requirement that he attend the meeting alone. Mr Hogan considered the last requirement *entirely unreasonable* but noted he will seek to address the issue of a meeting with the University before his next visit to Hobart.
- 29 In an email to my office dated 9 February 2023, Mr Hogan made further comments regarding the redactions in the information he had received. He said:

Counting the appendices, a large majority c2/3) [sic] of the SBFC [sic] has been redacted, with a number of appendices entirely redacted. I have stated my views on blanket redactions previously, but the extent of redactions here is just ridiculous (a traffic study?).

- 30 On 14 March 2023, Mr Hogan lodged a supplementary submission regarding this external review. In relation to the decisions by Mr Parnell and Ms Beaumont as they relate to Mr Hogan's request for the STEM Precinct Business Case, he said:

Despite my correcting his error in emails on 2 and 8 September 2023, in his initial decision of 20 September 2022, Brendan Parnell continued to equate IA's publicly available 6 [Mr Hogan's emphasis] page Project Business Case Evaluation (listed as Document 2 in Mr Parnell's Schedule 1) with the 148 [Mr Hogan's emphasis] page STEM Precinct Business Case UTAS submitted to IA (the document that I had actually requested). [footnote inserted by Mr Hogan with link to the IA document]. He also erroneously suggested that I was seeking earlier drafts of the STEM Precinct Business Case (although he did not identify these drafts in his Schedule 1, even though he indicated that he had exempted them under s35 of the Right to Information Act 2009 (RTI Act) in the body of his decision letter). While I clearly addressed Mr Parnell's errors in my application for internal review [footnote inserted by Mr Hogan referring to Attachment 1 of his email, which was his application for internal review], Ms Beaumont repeated the errors in her review letter...

I note there should have been no room for misunderstanding on what I was requesting...

In taking the line they did on the STEM precinct Business Case (equating IA's evaluation document with UTAS' submission), despite my repeated clarifications, I believe that Mr Parnell and Ms Beaumont were not sufficiently attentive to what I was requesting and/or were being wilfully obtuse or obstructive. I find this particularly disappointing in Ms Beaumont's case given her senior position within UTAS.

I note that UTAS subsequently released the STEM Business Case in full, presumably as UTAS staff knew IA were about to release the document and, perhaps also, because they understood they were under scrutiny by the Ombudsman's office. In releasing the STEM Business Case, and referring me to this document on 16 January 2023, UTAS staff confirmed that they knew quite well what document I had been seeking all along.

I also note that UTAS never informed me that it had submitted an Addendum to the STEM Precinct Business Case to IA, which could be considered contrary to s13(8) of the RTI Act.

31 In relation to the decisions by Mr Parnell and Ms Beaumont as they relate to Mr Hogan's request for *the Agenda Paper*, which is Document 4 in Schedule 1 of Mr Parnell's decision, he said he no longer sought this document so it will not be considered in this review.

32 In relation to the decisions by Mr Parnell and Ms Beaumont as they relate to Mr Hogan's request for *the Southern Future Business Case*, he first noted that his request for *The business case supporting the 'City-Centric Campus' model, mentioned at Item 6.1 of the UTAS Council Minutes for 5 April 2019* is now known to have been called the 'Southern Future Business Case – SBFC' [sic]. He then said:

While I requested a specific document that was quite clearly in the final form given to it for consideration by the UTAS Council, which should have been readily identifiable and obtainable from the Council Secretariat, Mr Parnell identified five documents that he seemed to consider relevant (Schedule 1, Documents 5-9) including "9. Draft Southern Futures Business Case dated approx. March 2019." Along with the other documents, he exempted Document 9 under s35 of the RTI Act.

Ms Beaumont seems to have realised in her review decision that the document I requested was a final document submitted to the UTAS Council, but continued with the fiction that it was exempt under s35 of the RTI Act as a deliberative document. However, she did not address the fact that Mr Parnell failed to list a final version of the 'SBFC' [sic] in Schedule 1, and that he had not provided a reason for exemption.

I note that UTAS has released the 'SBFC' [sic], albeit in a heavily redacted form. There are no draft markings. Again, in referring me to this document on 16 January 2023, UTAS staff confirmed that they knew quite well what document I had been seeking all along.

33 Mr Hogan then made points in relation to the *Redactions to the SFBC published on-line* [sic] by UTAS. In relation to the University's statement that the Southern Future Business Case had now been released in full, Mr Hogan said the statement was misleading in two main respects:

(1) The document has not been released in full and redactions go well beyond the level suggested by UTAS.

Some 10% of the main body of the SBFC [sic] (that is, excluding appendices) has been redacted, based on a page count, including critical information on the key assumptions in the analysis presented by UTAS.

66% of the SBFC [sic] has been redacted when appendices are counted. These appendices are referenced throughout the main body of the SBFC [sic], and so should be regarded as part of that document.

The suggestion that material has been exempted because it was “prepared in draft” is not sustainable, given that UTAS indicates that this document as the one presented to the UTAS Council, for decision on 5 April 2019, which means it should be considered as a final document.

I note that making the document publicly available on-line [sic], UTAS has avoided the obligation to justify redactions under the RTI Act [Mr Hogan’s emphasis]. If it had provided me with a ‘fresh’ decision it would have been required to provide reasons for redactions as exemptions under the terms of the RTI Act.

(2) UTAS downplays the contemporary relevance of the SBFC.

The SBFC [sic] served as the basis for the single most important decision in UTAS’ history (and a major decision for the future of Tasmania), namely the decision to relocate the southern campus of UTAS from Sandy Bay to the Hobart CBD. **As such there is a very high degree of public interest in the document [Mr Hogan’s emphasis].** Numerous requests for the document have been made, as well as my RTI request, and all had been rebuffed until on-line [sic] provision of the document.

The document, **anyway, continues to have major contemporary relevance [Mr Hogan’s emphasis].**

... I therefore seek provision of the complete SBFC [sic] (that is, including appendices), with only such exemptions as are absolutely necessary and justifiable [Mr Hogan’s emphasis].

34 Mr Hogan then provided a very detailed examination of the individual redactions of the Southern Future Business Case according to the relevant page numbers. This will be examined further under the Analysis.

35 Finally, Mr Hogan provided some *General comments on redactions*, as follows:

In anticipation of UTAS seeking exemptions for parts of the SBFC [sic], I make the following comments:

(1) *The SBFC (including appendices) should not be considered as an internal deliberative document. It is analogous to a Cabinet Submission or part of a Cabinet Submission, which is covered by s26 of the RTI Act. However, while s26 of the RTI Act falls under the heading, “Division 1 – Exemptions not subject to the public interest test”, no such exemption is made for the governing body of public authorities. I also note **anyway** that s26 provides for the release of “purely factual material”.*

(2) *It is impossible to determine whether UTAS has had any regard to the RTI Act for any of the redactions in the on-line document. Were UTAS to go through a formal decision-making process under the RTI and identify and provide reasons for exemptions, it is unlikely that much, let alone all, of the information could be validly withheld from disclosure under the RTI Act. The broad-brush approach of exempting material in its entirety goes against the presumption of disclosure found in s3(4)(b) of the RTI*

Act. This section provides that the discretions provided for in the RTI Act should be exercised to provide “the maximum amount of official information.”

- (3) It is clear that much of the redacted material goes to the heart of the future of the southern campus of UTAS and, possibly, its impact on its surrounding areas. UTAS is the most significant provider of tertiary education in Tasmania, meaning that it has a near monopoly and its actions have greater impact than the actions of an institution which has competition. Accordingly, the public interest factor of Schedule 1.1(a) of the RTI Act “the general public need for government information to be accessible” should be very heavily weighted in this matter in line with *Humphries* [footnote inserted by Mr Hogan with a link to the *Humphries* decision].

Analysis

Comments relating to Scope

- 36 As I similarly noted in my previous decision *Robert Hogan and the University of Tasmania*,¹ (referred to as the *Hogan Council Minutes* decision), although not reviewable by way of the external review process under the Act, I wish to comment on the way in which the University defined the scope of Mr Hogan’s request in its initial decision.
- 37 As outlined above in the Background, Mr Hogan asserted that Mr Parnell *misstated* the scope of his request in that he *conflated the one sentence summary required on the first page of [his] application with the actual, more precise, request provided on the second page*. Mr Hogan further asserted that his application *should have been stated verbatim* given Mr Parnell *never sought to negotiate or vary the scope of [his] request*.
- 38 In this regard, it appears Mr Parnell has indeed combined the brief one sentence summary under the heading *General topic of information applied for*, contained in Mr Hogan’s application for assessed disclosure, with the more detailed description under the heading *Details of the information sought*. Mr Parnell did not provide the details of the information sought in Mr Hogan’s application for assessed disclosure verbatim, which is the usual and preferred practice in decisions. He instead provided general details of the information sought by Mr Hogan, using similar wording to the words in Mr Hogan’s application, and it appears Mr Parnell also used some of the wording in Mr Hogan’s email dated 2 September 2022, which was sent by Mr Hogan to clarify the scope of his request. This summarisation by Mr Parnell appears to have led to the omission of part of Mr Hogan’s application relating to *research and research reports on which the STEM Precinct Business Case was based*, namely the third paragraph of his request.

¹ (2 June 2023) at [31-33], available at www.ombudsman.tas.gov.au/right-to-information/reasons-for-decisions.

- 39 Although this created some confusion and frustration for Mr Hogan, it appears that this part of Mr Hogan's request was still considered in the decision, as Mr Parnell referred to a research report prepared by Lisa Denny and Michael Guerzoni dated May 2018 as part of the information that had been made publicly available. In the University's further submissions providing input on a draft of this decision, it referred to Mr Hogan's emails clarifying the scope of his request as *alterations to the scope* and *an amended version of the original scope*. This appears to be the misunderstanding at the root of this issue, as I do not consider that Mr Hogan's emails altered the scope of his request, they merely clarified what he was seeking.
- 40 This issue was also corrected on internal review by Ms Beaumont who stated the request verbatim. Although there is no legislative requirement to state an information request verbatim in a decision, it is best practice and avoids situations such as this. I accept the University was not acting inappropriately; however, I encourage it to act more carefully in future to ensure the process is as straightforward as possible for applicants and there is not any perception that part of a request for information has been overlooked.

Section 35 – Internal deliberative information

- 41 The only relevant exemption in this matter is s35. For information to be exempt under s35(1), I must be satisfied that it consists of:
- (a) an opinion, advice or recommendation prepared by an officer of a public authority; or
 - (b) a record of consultations or deliberations between officers of public authorities; or
 - (c) a record of consultations or deliberations between officers of public authorities or Ministers.
- 42 Once the requirement of one of those subsections is met, I must then be further satisfied that the information was prepared or recorded in the course of, or for the purpose of, the deliberative processes related to the official business of the University.
- 43 The outlined exemption above does not apply to the following:
- purely factual information²;
 - a final decision, order or ruling given in the exercise of an adjudicative function³; or
 - information that is older than 10 years.⁴

² Section 35(2).

³ Section 35(3).

⁴ Section 35(4).

- 44 As to the meaning of 'purely factual information' in s35(2), as I have previously, I refer to *Re Waterford and the Treasurer of the Commonwealth of Australia (No 1)*⁵ where the Commonwealth Administrative Appeals Tribunal (AAT) observed that the word 'purely' in this context has the sense of 'simply' or 'merely' and that the material must be 'factual' in quite unambiguous terms.
- 45 The meaning of the phrase 'in the course of, or for the purpose of, the deliberative processes' has also been considered by the AAT. In *Re Waterford and Department of Treasury (No 2)* it adopted the view that these are an agency's 'thinking processes - the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action'.⁶
- 46 The University has mainly relied upon paragraphs (a) and (b) of s35(1) given, as outlined above, Mr Parnell referred to the material sought by Mr Hogan as *a draft business case and recommendations* which are by nature *deliberative, opinion based advice and consultative*. Mr Parnell further noted the information is *not a final decision nor contain [sic] purely factual information*. Ms Beaumont made similar comments in her decision.
- 47 Section 35 is subject to the public interest test contained in s33 and by extension, the relevant matters in Schedule 1 of the Act. In order for the exemption to apply, the University must establish that the release of information would be contrary to the public interest.
- 48 The University has claimed exemption pursuant to s35 (in part or in full) in relation to the information contained in the following six documents and their attachments, which I will now consider individually in my analysis below. The documents are numbered 4-9 in accordance with the numbering in the University's schedule, as documents 1-3 were released in full.

Document 4. Finance Committee Report dated 21 September 2016 - considerations regarding the draft Hobart STEM Precinct Business Case for submission to Infrastructure Australia and estimated funding requirements

- 49 Mr Hogan advised in his supplementary submission on 14 March 2023 that he no longer seeks this document so it will not be considered in this external review.

Document 5. Executive Summary of BEIC and Finance Committee joint meeting dated 22 March 2019

- 50 This is a six page document and is a Finance Committee and Built Infrastructure Committee Paper prepared by the Vice-Chancellor. The University determined this document to be exempt in full under s35. In his decision, Mr Parnell referred to the exempt documents as *a draft business case and recommendations prepared by the University officers and employees for consideration by University Committees*, which by the very nature of this information

⁵ *Re Waterford and the Treasurer of the Commonwealth of Australia (No 1)* (1984) AATA 518 at 14.

⁶ *Re Waterford and Department of Treasury (No 2)* (1985) 5 ALD 588.

was deliberative, opinion based, advice and consultative. He further determined that the information is not a final decision nor contain [sic] purely factual information. Ms Beaumont made the same determination, saying the documents were prepared for the purpose of a deliberative process.

- 51 This is an internal document and, given it contains recommendations and a record of consultations undertaken in the course of the deliberative process relating to the relocation of the University campus, it is prima facie exempt under s35(1)(a).

Document 6. Southern Future Report of Feedback dated 15 March 2019

- 52 This is a document which summarises feedback results and is almost identical to Appendix 2 to Document 9, below. The University redacted the document in part under s35. Mr Parnell noted in an email dated 26 April 2023, that *these are very similar documents but not entirely the same. It appears one will be a draft version and the version attached to this email has another 7 pages of tables on FAQs.* In a further email dated 10 May 2023, Mr Parnell noted he had run a document compare over the two and, other than the 7 pages of tables, there are three minor changes that [he] consider[s] inconsequential. These are the title, addition of the word “also”, and replacement of the heading “Student impact” with “Student perspectives”.

- 53 The only redaction is on page 16 of the Summary of Feedback (page 208 of Document 9 below). The University has not discharged its onus under s47(4) of the Act and it is unclear how this would be exempt under s35. This is a finalised summary of feedback undertaken through a public process, the University has not adequately explained why this would be an internal ‘thinking’ document. This information is to be released in full to Mr Hogan.

Document 7. Finance Committee and Built Infrastructure Committee Paper dated 22 March 2019

- 54 This is a half-page document which appears to be the executive summary of discussions which occurred in a joint meeting of the Built Environment and Infrastructure Committee and the Finance Committee on 22 March 2019. The University found this document to be exempt in full under s35.
- 55 Given this document is a record of a discussion, including deliberations and consultations undertaken in the course of the deliberative process relating to the draft business case, it is prima facie exempt under s35(1)(b).

Document 8. Southern Infrastructure Plan Timeline of Events dated 27 March 2019

- 56 This document is a two page document and refers to *contextual information* presented at the 5 April 2019 University Council meeting. The University found this document to be exempt in full under s35.
- 57 This is prima facie exempt under s35(1)(b), as it contains a record of deliberations in the course of the deliberative process relating to the future location of the Southern University Campus/es.

Document 9. Draft Southern Futures Business Case dated approximately March 2019

- 58 This is a 67 page document with ten appendices. The University has found this to be exempt in part, and it is labelled as a *Draft* document in the Schedule attached to Mr Parnell's decision. Mr Parnell in his decision refers to the document as *a draft business case* and further says *it is not a final decision*.
- 59 However, Mr Hogan also sought the final version which was submitted to Infrastructure Australia. Most of this document was released as a routine disclosure by the University, but the parts that it redacted in that document should have been considered by the University in responding to Mr Hogan's request. As the version presented to the University Council and the final version appear to be identical, I will deal with them together here. It is not necessary to consider any argument regarding the draft nature of one version due to this.
- 60 Section 35 only relates to internal deliberative processes and the business case was submitted to Infrastructure Australia as a finalised submission. While it is a Commonwealth Government body, Infrastructure Australia is not a public authority under the Act and a document sent externally cannot be said to be an internal thinking document. The University has not discharged its onus under s47(4) to show that s35 is applicable and has not claimed that any other exemption is relevant.
- 61 No part of Document 9 can accordingly be exempt under s35 and it should be released in full (including appendices) to Mr Hogan. I note that appendices 3-6 are already publicly available in any case.

Public Interest Test

- 62 As noted, s35 is subject to the public interest test in s33, so I now turn to assess whether it would be contrary to the public interest to release the information I have found to be prima facie exempt in Documents 5, 7 and 8. I am required to have regard to, at least, the matters in Schedule I in making this assessment.
- 63 In relation to these matters, Mr Parnell, in his decision dated 20 September 2022, said:

With respect to Schedule I, it is my view that:

- You have been provided the information you seek in this application either through your previous applications or by routine disclosure. In particular, the information with respect to the relocation of the University into the Hobart CBD. Therefore, the information for decision making on this matter has been met and the public interest test is satisfied.*
- The information of earlier versions of the STEM Business Case and Committee considerations is not in the public interest as it is deliberative information and therefore does not provide*

contextual information that is capable of aiding understanding in decision making.

- *You have been provided opportunities to consult with senior University representatives and I note that these offers have been refused. This has shown the University has been accessible to you and would have contributed to debate on a matter of public interest.*

Given this background, and the routine disclosure of information with respect to the University move from Sandy Bay to the Hobart CBD, I am of the view that the objectives of the RTI Act have been met.

64 Ms Beaumont, in her decision dated 10 November 2022, made the following comments under the heading *Public Interest* (quoted verbatim):

Section 33 states that information is exempt information if it falls within a division 2 exemption and if the principal officer considers, after taking into account all relevant matters, that it is contrary to the public interest. Schedule 1 and 2 provides those matters that are relevant and irrelevant respectively, and I have considered them in making my decision.

I have considered your correspondence of 19 October and note your views with respect to how you consider the public interest should be applied. It is my opinion that those matters given particular weight and relevance by the Decision Maker are relevant to the circumstances in not releasing the information sought.

I am of the view that the following information are predominantly documents of opinion prepared for consideration by the Council members:

- *Draft and deliberative STEM Precinct Business cases excluding the final document that was delivered to Infrastructure Australia.*
- *All research and reports on which the STEM Business Case was based.*
- *Business case referenced at Item 6.1 of Council Minutes dated 5 April 2019*

These business cases, including the research and reports they were based, were prepared for the purpose of a deliberative process. Deliberative process is, at its most basic, the thinking processes of a public authority. It is "the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action" (Waterford and Department of Treasury (No 2) (1985) 5 ALD 588).

When a public authority thinks, or deliberates about something, it will generally make judgments, evaluate evidence, weigh up different options, or consider competing arguments as part of making a decision.

Opinions and advice provided in reports are not in the public interest on the basis it reflects the way in which information was considered at that time. The deliberative status of information is not lost simply because a public authority completes its deliberations. Section 35(4) states that this section does not apply for after 10 years from the date of creation of the information.

A business case is interpretative of factual information and this was generated internally for the purposes of deliberation. The interpretations in the business case cannot be said to be purely factual information rendering the exemption not applicable. As such, it is my view that having applied the public interest test found in section 33, this information is not in the public interest and is exempt.

For these reasons I affirm the Original Decision with respect to the exemption contained in section 33 and supported by Schedules 1 and 2.

- 65 Mr Hogan did not make specific submissions regarding the public interest factors; however, he did make reference to the public interest in the following comments in his internal review submission dated 19 October 2022:

However, to keep an RTI application to UTAS as manageable for UTAS as possible, I sought copies of documents relating to what I considered the two most critical agenda items in the redacted extract, which were also those likely to have the most public interest and value in informing public debate, namely [the documents in Mr Hogan's original application for assessed disclosure],

... I requested final agenda papers presented to the UTAS Council upon which critical decisions had been made. Those critical decisions are of great public interest.

... This same argument applies to my request for the Business Case considered at Item 6.1 of the 5 April 2019 UTAS Council meeting. This is clearly not a deliberative document within the meaning of the RTI Act. It is the document on which the UTAS Council made probably the most important decision ever made by that body – that is, to relocate to the Hobart CBD. As such this document is clearly of immense public interest and should be in the public domain.

- 66 Mr Hogan made similar comments in his supplementary submission dated 14 March 2023, which are outlined in the Submissions above. Of particular relevance here are the following comments:

It is clear that much of the redacted material goes to the heart of the future of the southern campus of UTAS and, possibly, its impact on its

surrounding areas. UTAS is the most significant provider of tertiary education in Tasmania, meaning that it has a near monopoly and its actions have greater impact than the actions of an institution which has competition. Accordingly, the public interest factor of Schedule 1.1(a) of the RTI Act “the general public need for government information to be accessible” should be very heavily weighted in this matter in line with *Humphries* [footnote inserted by Mr Hogan providing the link to *Humphries*].

As indicated in my request for priority consideration, recent developments, have amplified and heightened the level of public interest in the information contained in the SBFC (and its appendices), adding weight in favour of UTAS making disclosure.

- 67 Having considered the matters in Schedule 1 of the Act, I am of the view that matters (a) – the general public need for government information to be accessible, (b) – whether the disclosure would contribute to or hinder debate on a matter of public interest, (c) – whether the disclosure would inform a person about the reasons for a decision, (d) – whether the disclosure would provide the contextual information to aid in the understanding of government decisions, and (f) – whether the disclosure would enhance scrutiny of government decision-making processes and thereby improve accountability and participation favour release. As I similarly said in the *Hogan Council Minutes decision*, I am satisfied that the information, if released, would address Mr Hogan’s and the general public’s need for accessible government information, would contribute to public debate, would provide contextual information to help understand the University’s decision to move to a city campus, and would enhance scrutiny of the University’s decision-making processes and thereby improve accountability and community participation. The proposed relocation of the University from its Sandy Bay campus to the city has sparked immense public debate, which appears to have recently reached a peak, as identified by Mr Hogan in his application for priority consideration. As I also discussed in my previous decisions of *Alexandra Humphries and University of Tasmania*⁷ and the *Hogan Council Minutes decision*, this is a matter of legitimate public interest and as a public educational institution, the University receives significant public funding and its business activities are not its primary purpose. Scrutiny of such a significant decision, and the evidence underpinning it, is expected and appropriate. These factors therefore substantially weigh in favour of release.
- 68 In relation to matters (c) and (d), I note that Documents 5 and 7 appear to be the most relevant to these points given they provide background reasoning relating to the University’s decision to move to a city campus, particularly in the earlier stages of the decision-making process. Document 8 provides contextual information which is also relevant to matters (c) and (d), but to a lesser degree.

⁷ (24 February 2022), available at www.ombudsman.tas.gov.au/right-to-information/reasons-for-decisions.

- 69 Although Mr Parnell's comments appear to make reference to matters (b), (c) and (d) of Schedule I, his reasoning is opaque as he has used those matters to support his decision not to disclose the information and the logic in this is unclear.
- 70 The information the University sought to exempt in Documents 5, 7 and 8 does not appear to have a different character to other information released in the documents or elsewhere and the University has not adequately explained why it considers the release of this information to be contrary to the public interest. Document 5 is a summary of the larger business case in Document 9 and almost all of the information has been released already. The information in Documents 8 is largely inconsequential and again, mostly re-states information that has already been released publicly by the University in its fresh decision of the *Hogan Council Minutes* matter, particularly the recommendations.⁸ The information in Document 7 is also largely inconsequential and the essence of it is also contained in the Council Minutes entry from 5 April 2019, which has also been released publicly by the University.⁹ It is unclear why the University is maintaining that the release of such information would be contrary to the public interest and I remind it that discretions conferred in the Act are intended to be exercised so as to release the maximum amount of official information.
- 71 Notwithstanding this, as I have said previously¹⁰, s35 exists to address circumstances in which it is not appropriate to disclose information which shows the internal 'thinking process' of a public authority, as this can inhibit preliminary discussions or the exploration of alternative options prior to a final decision being made. This appears to be the reasoning upon which the University has largely made its decision to exempt the information under s35 and it is always a valid consideration in relation to this exemption.
- 72 Overall, however, I consider that it is not contrary to the public interest to release all of the information I have found to be prima facie exempt.
- 73 Accordingly, Documents 5, 7 and 8 are to be released in full to Mr Hogan.

Preliminary Conclusion

- 74 For the reasons given above, I determine that exemptions claimed by the University under s35 are not made out.

Submissions to the Preliminary Conclusion

- 75 As the above preliminary decision was adverse to the public authority, it was made available to the University under s48(1)(a) to seek its input before finalising the decision. On 27 June 2023, Ms Jane Beaumont responded by providing detailed submissions.

⁸ University Council minutes 2019-2022, available at www.utas.edu.au/about/campuses/southern-transformation/building-our-hobart-university-presence-since-2007, accessed 8 June 2023.

⁹ See Note 15.

¹⁰ See Pattinson and Department of Education (2 August 2022), available at www.ombudsman.tas.gov.au/right-to-information/reasons-for-decisions

76 Ms Beaumont first made the following general comments:

As you know, the University has been trying to change its approach to transparency and pushing information into the public domain – particularly as a result of the significant interest from the community with the University move with the city centric campus model. This change has taken longer than anticipated to implement given the large number of internal and external stakeholders to consult and the breadth of information available. With the majority of information sought through the Right to Information Act (RTI Act) process being made available (and some with redactions) on our University website in December 2022, we are now going live with a new transparency portal this week. This will provide structure and a design that is easiest for community access...

77 Ms Beaumont then provided some background and context which has limited relevance to what is under consideration in this decision so it will not be included here. She moved on to provide *Specific comments as regards the preliminary decision*. First, Ms Beaumont made submissions relating to my comments regarding scope, outlined above. These essentially relate to the misunderstanding of the distinction between *clarifying* the request with *amending* the request, which I have addressed above in the Analysis.

78 Following this, Ms Beaumont made submissions regarding some additional comments I had originally included. As I will provide further analysis and commentary after the University's submissions are set out, I have removed these comments from this final decision.

79 In addition, Ms Beaumont provided the following in response to comments made by Mr Hogan in his supplementary submission dated 14 March 2023:

The University denies any allegation that it routinely released the STEM Business case so that it could avoid the obligation to justify the redactions, or that it was under scrutiny by the Ombudsman's office or that it knew that Infrastructure Australia was about to release the document. These comments are false and speculative in the absence of any evidence in support and should not be given any weight in the final external review decision. The University made the decision to routinely release the STEM Business case as part of the Transparency Project to release as much information as possible onto the public website regarding the city move.

80 Ms Beaumont then provided the following submissions under the heading *Exemptions and Public Interest* [emphasis original]:

12. The preliminary decision has determined the following in respect of documents 4-9:

Document 4 – No longer sought by Mr Hogan;

Document 5 – Executive Summary of BEIC and Finance Committee joint meeting dated 22 March 2019 – The preliminary decision found this information to be *prima facie* exempt on the basis it contains recommendations and a record of consultations undertaken in the course of the deliberative process. The University agrees with this finding.

Document 6 – Southern Future Report of Feedback dated 15 March 2019 (redaction claimed on page 16 of the summary of feedback) – The preliminary decision found this exemption was not made out on the basis this is a finalised summary of feedback undertaken through a public process and the University has not adequately explained why this would be an internal thinking document. To be released in full. The University refutes the finding that the exemption is not made out. Document 6 is an alternative version of Document 9. It includes an additional 7 pages of tables including feedback from staff and students. The University submits this document is exempt on the basis of section 35 1)b), because it was iterative of Document 9, the feedback was provided as a record of consultations or deliberations between officers of the public authority. The word “officer” is defined very widely in section 5 – “In relation to the public officer, includes a member of the public authority, a member of the staff of the public authority, and any person employed by or for the public authority” (emphasis italicised). For this exemption to apply, the relevant record of consultation must have occurred in the course of or for the purposes of the deliberative processes related to the official business of a public authority. This is a reference to the agency’s thinking processes – the processes of reflection for example, on the wisdom and expediency of a proposal, a particular decision or a course of action. It is usual that there has to be some decision to be made or course of action to be adopted at the end of the process of deliberation. Deliberative material has to be pre decisional and must [sic] contain purely factual information. The views of the University’s community of staff and students were an intricate part of deliberating whether a move into the city should occur and this occurred prior to a decision being made, and was not purely factual information. This document is *prima facie* exempt under section 35 1) b).

Document 7 – Finance Committee and Built Infrastructure Committee paper dated 22 March 2019 – The preliminary decision has found Document 7 *prima facie* exempt under s35 (1) b). The University agrees with this finding.

Document 8 – Southern Infrastructure Plan Timeline of Events dated 27 March 2019 – The preliminary decision has found Document 8 *prima facie* exempt under s35 (1) b). The University agrees with this finding.

Document 9 – Draft Southern Futures Business Case dated approximately March 2019 – the preliminary decision has found that the draft is the same as the final version and Document 9 is not exempt and should be released in full. This document has already been released by the University with redactions and is in the public domain. The University does not agree with the finding that the full document should be released, and maintains the exemptions claimed in respect of the redacted information. The redactions include reference to contracted advisors, EFTSL modelling including Price Waterhouse Coopers forecasting, modelling of space needs, construction costs and comparisons to Sandy Bay and Appendices 3-10 include building reports, impact reports, a library survey, travel behaviour, design principles, and a Sandy Bay realisation assessment. The University submits this information is *prima facie* exempt on the basis it is deliberative material, pre decisional and not purely factual information.

13. As to the public interest test, the preliminary decision found matters (a), (b) (c), (d) and (f) of Schedule 1 weighed substantially in favour of release and documents 5, 7 and 8 are to be released in full to Mr Hogan.

14. The University maintains the section 35 exemption in respect of documents 5, 6, 7, 8 and 9 on the basis that these documents were not final decisions. The final decisions on the city centric campus are set out in several public documents including the public University Minutes (refer link below my signature block). Our view is that in respect of section 35 exemptions for documents 5, 6,7, and 8, and 9 it is contrary to the public interest to release deliberative information on the following basis –

a) The release of deliberative information can undermine the ability of the University to engage in open and candid discussions and hamper the exploration of a variety of perspectives. It will create a reluctance to record opinions, preliminary or draft advice or recommendations, and to internally test those opinions and obtain feedback through the preparation of summaries and draft reports and business cases. It is the final decision (as made public), which outlines the context and reasoning for reaching a decision, which can and should be open to public scrutiny. That will provide an accurate record and the evidence to underpin a decision.

b) Well-considered decision-making is key to the University making decisions that best serve the interests of its students, staff, and the Tasmanian community. Well-considered necessitates deliberation and the testing of opinions, interpretation of complex data and information, expert advice, and obtaining fearless feedback. It will often mean presenting this information internally, sometimes incomplete or including sensitive or confidential information, in order to ensure it is tested before

making a final conclusion. If it is not possible to heavily test information internally through deliberative processes, then it is not possible to have a well-functioning and informed decision-making process. Poor process will equal poor decisions, and poor decisions will not serve the best interests of the public.

c) In respect of Document 9, the University submits that it is contrary to the public interest to release the redacted information because it consists of early advisory work that was confidential and which was then superseded by further advisory work specific to the Sandy Bay development which has been released on the University public website.

d) For the above reasons, it is our view that this is why section 35 exists and why the release of the deliberative information in respect of documents 5, 6, 7, 8 and 9 would not contribute to debate on a matter of public interest or inform the public about the reasons for a decision. The public interest test in relation to deliberative information requires a balancing of the public interest in citizens being informed of the processes of their government and its agencies on the one hand, against the public interest in the proper workings of government and its agencies on the other. The University submits that the public interest is weighted against disclosure due to the factors listed above.

Further Analysis

81 In determining the issues before me, I have taken into account the submission from Ms Beaumont and have continued to consider Mr Hogan's submissions.

Section 35

82 In relation to whether the relevant information is prima facie exempt under s35, the University agrees with my findings relating to Documents 5, 7 and 8, which I found to be prima facie exempt under s35. However, it disagrees with my findings regarding Documents 6 and 9 and has provided further submissions, outlined above, which I will consider here.

83 In relation to Document 6, the University maintains that this is exempt under s35(1)(b). It argues it is *an alternative version of Document 9 and includes an additional 7 pages of tables including feedback from staff and students*. It further argues it is exempt because it was *iterative of Document 9, the feedback was provided as a record of consultations or deliberations between officers of the public authority*.

84 I am unsure why the University is continuing to argue for the exemption of the majority of this document, as it has released two versions of it (including all of the 7 pages of tables bar one small redaction) on its own website. Any discussion of all but that one small redaction is unnecessary, as this information is in the public domain. As the only part of Document 6 which has not been released is identical to Appendix 2 in Document 9, I will deal with them together in my discussion of Document 9.

- 85 In relation to Document 9, the University disagrees with my finding that this is not exempt under s35 and maintains the exemptions claimed in respect of the redacted information. It asserts that the redactions relating to contracted advisors, EFTSL modelling including Price Waterhouse Coopers forecasting, modelling of space needs, construction costs and comparisons to Sandy Bay and Appendices 3-10 include building reports, impact reports, a library survey, travel behaviour, design principles, and a Sandy Bay realisation assessment... should all be exempt under s35 on the basis it is deliberative material, pre decisional and not purely factual information.
- 86 The University has not addressed the issues I raised in relation to the applicability of s35, that this was a finalised business case submitted externally to Infrastructure Australia. It is not an internal document. Further, the majority of the appendices sought to be exempted by the University are consultant reports which were not prepared by public officers and could not be exempt under s35 in any case. The University has the onus to show that information should not be disclosed under s47(4) and has not done so here.
- 87 It has also provided no indication that the release of the information would be exempt for any other reason, such as causing competitive disadvantage to the University or a third party under ss37 or 38.
- 88 I further note that Appendices 3-6 of Document 9 are publicly available online and it is entirely unclear why the University is continuing to argue that these should be exempt from disclosure.
- 89 Accordingly, I find that Document 9 is not exempt under s35 and it is to be released in full to Mr Hogan.

Public Interest Test

- 90 The documents that I found to be prima facie exempt are Documents 5, 7 and 8 and I will reconsider those documents here in light of the University's further submissions.
- 91 The University ultimately disagrees with the conclusion I reached after applying the public interest test in my preliminary decision. At the outset the University has mainly relied upon the argument that the documents were *not final decisions*. Its argument focuses on the potential for the release of internal deliberative information to *undermine the ability of the University to engage in open and candid discussions and hamper the exploration of a variety of perspectives*, that it will create *a reluctance to record opinions, preliminary or draft advice or recommendations, and to internally test those opinions and provide feedback*, and that *well-considered decision-making... necessitates deliberation and the testing of opinions and is key to the University making decisions that best serve the interests of its students, staff and the Tasmanian community*. It further says that for these reasons the release of the information in question *would not contribute to debate on a matter of public interest or inform the public about the reasons for a decision*.
- 92 As I said in my preliminary decision, it is always valid to consider the purpose of s35 in ensuring that information revealing the 'thinking process' of a public

authority is not disclosed in certain circumstances given it *can inhibit preliminary discussions or the exploration of alternative options prior to a final decision being made*¹¹. However, the balance must always be struck between these considerations and other matters which will weigh in favour of release.

- 93 As I set out in my preliminary decision, matters (a), (b), (c), (d) and (f) all weigh in favour of release and I stand by the reasoning I provided in relation to those matters. In this regard, I note the University has not addressed the reasoning I provided and it particularly has not addressed my comments regarding the information in Documents 5, 7 and 8 having already largely been publicly released or being largely inconsequential.
- 94 I therefore maintain my preliminary determinations that it is not contrary to the public interest to release all of the information I have found to be prima facie exempt and Documents 5, 7 and 8 are to be released in full to Mr Hogan.

Additional Comments

- 95 While I accept that reasonable minds may differ regarding the application of exemptions, I feel it is necessary to make additional comments about the reasoning provided by the University to justify its exemptions in this matter. This reasoning was very broad and did not seem to really consider whether exemption was required for each part of each document in the manner needed to properly address the considerations under the Act. My finding that the University has not discharged its onus under s47(4) regarding Document 9 appears to stem from this approach, which included the University continuing to argue for the exemption of some information that is already publicly available. I urge the University to provide greater explanation and justification regarding exemptions it seeks to claim in future.
- 96 Despite this, I do commend the University's stated commitment to greater transparency and its release of significant amounts of information on a routine basis regarding the proposed campus move.

Conclusion

- 97 For the reasons given above, I determine that exemptions claimed by the University under s35 are not made out.

Dated: 30 June 2023



Richard Connock
OMBUDSMAN

¹¹ Pattinson and Department of Education (2 August 2022), available at www.ombudsman.tas.gov.au/right-to-information/reasons-for-decisions

Attachment I - Relevant legislative provisions

Section 35 – Internal Deliberative Information

- (1) Information is exempt information if it consists of –
 - (a) an opinion, advice or recommendation prepared by an officer of a public authority; or
 - (b) a record of consultations or deliberations between officers of public authorities; or
 - (c) a record of consultations or deliberations between officers of public authorities and Ministers –

in the course of, or for the purpose of, the deliberative processes related to the official business of a public authority, of a Minister or of the Government.

- (2) Subsection (1) does not include purely factual information.
- (3) Subsection (1) does not include –
 - (a) a final decision, order or ruling given in the exercise of an adjudicative function; or
 - (b) a reason which explains such a decision, order or ruling.
- (4) Subsection (1) ceases to apply after 10 years from the date of the creation of the information referred to in that subsection.

33. Public interest test

- (1) In this Division, information is exempt information if the principal officer of the public authority or Minister considers, after taking into account all relevant matters, that it is contrary to the public interest to disclose the information.
- (2) The matters which must be considered in deciding if the disclosure of the information is contrary to the public interest are specified in Schedule 1 but are not limited to those matters.
- (3) The matters specified in Schedule 2 are matters that are irrelevant in deciding if the disclosure of the information is contrary to the public interest.

SCHEDULE 1 - Matters Relevant to Assessment of Public Interest

Sections 30(3) and 33(2)

- I. The following matters are the matters to be considered when assessing if disclosure of particular information would be contrary to the public interest:
 - (a) the general public need for government information to be accessible;

- (b) whether the disclosure would contribute to or hinder debate on a matter of public interest;
- (c) whether the disclosure would inform a person about the reasons for a decision;
- (d) whether the disclosure would provide the contextual information to aid in the understanding of government decisions;
- (e) whether the disclosure would inform the public about the rules and practices of government in dealing with the public;
- (f) whether the disclosure would enhance scrutiny of government decision-making processes and thereby improve accountability and participation;
- (g) whether the disclosure would enhance scrutiny of government administrative processes;
- (h) whether the disclosure would promote or hinder equity and fair treatment of persons or corporations in their dealings with government;
- (i) whether the disclosure would promote or harm public health or safety or both public health and safety;
- (j) whether the disclosure would promote or harm the administration of justice, including affording procedural fairness and the enforcement of the law;
- (k) whether the disclosure would promote or harm the economic development of the State;
- (l) whether the disclosure would promote or harm the environment and or ecology of the State;
- (m) whether the disclosure would promote or harm the interests of an individual or group of individuals;
- (n) whether the disclosure would prejudice the ability to obtain similar information in the future;
- (o) whether the disclosure would prejudice the objects of, or effectiveness of a method or procedure of, tests, examinations, assessments or audits conducted by or for a public authority;
- (p) whether the disclosure would have a substantial adverse effect on the management or performance assessment by a public authority of the public authority's staff;
- (q) whether the disclosure would have a substantial adverse effect on the industrial relations of a public authority;
- (r) whether the disclosure would be contrary to the security or good order of a prison or detention facility;
- (s) whether the disclosure would harm the business or financial interests of a public authority or any other person or organisation;
- (t) whether the applicant is resident in Australia;
- (u) whether the information is wrong or inaccurate;

- (v) whether the information is extraneous or additional information provided by an external party that was not required to be provided;
- (w) whether the information is information related to the business affairs of a person which if released would cause harm to the competitive position of that person;
- (x) whether the information is information related to the business affairs of a person which is generally available to the competitors of that person;
- (y) whether the information is information related to the business affairs of a person, other than a public authority, which if it were information of a public authority would be exempt information.