



12 February 2018

Mr P.C. Walker
184 Warriewood Road
Mona Vale NSW 2103

By email: cabalkarma@gmail.com

By courier

Dear Mr Walker

**Walker P C v NSW Department of Premier and Cabinet (NCAT file
2017/226200)**

Thank you for your letter of 16 January 2018 stating that you wish to amend your administrative review application dated 17 November 2017 to include the following:

- "1. A complete list of all "KPMG Reports – Analysis and Modelling on Council Mergers", further to the list provided 7 June 2017, to include such Reports dated November and December 2015 and January, February and March 2016.
2. The production of the above Reports."

At the directions hearing on 16 January 2018, you indicated that:

- (a) you have formed the view that such additional reports exist and have not previously been supplied to you in response to your request for access to "*Report by Consultancy KPMG – Analysis and Modelling on Council Mergers*"; and
- (b) you formed that view on the basis of your review of Records 1-20 and 23-25, which were provided to you on 28 November 2017.

I have reviewed Records 1-20 and 23-25 and note the following:

1. Records 1-20 all bear dates in August 2015 and Record 25 is dated 8 July 2015. It is unclear to me how you have formed the view that the contents of those records provide a basis on which to conclude that *later* reports dated November and December 2015 and January, February and March 2016 exist and have not previously been disclosed to you.
2. Records 23 and 24 are undated, but contain no reference to reports dated November and December 2015 and January, February and March 2016. Again, it is unclear to me how you have formed the view that the contents of these records provide a basis

on which to conclude that such reports exist and have not previously been disclosed to you.

Annexure A to the Department's decision of 7 June 2017 listed all of the publicly available information determined to be within the scope of your access application, including the following:

1. A report titled "Local Government Reform: Merger Impacts and Analysis" published on the Stronger Councils website on 18 December 2015. This document is dated December 2015.
2. A document titled "Outline of Financial Modelling Assumptions for Local Government Merger Proposals – Technical Paper" published on the Stronger Councils website on 20 January 2016. This document is dated 19 January 2016.
3. Thirty-five merger proposal documents published on the Stronger Councils website on 6 January 2016, together with additional merger proposal documents subsequently published on that website. These documents bear dates between January 2016 and March 2016.

The Department's letter of 7 June 2017 provides some background information in relation to these documents. I am instructed to inform you that, whilst Annexure A to that letter lists all proposal documents published on the Stronger Councils website, Records 13, 19, 20, 23, 30, 36, 39, 51 and 52 in Annexure A (which record merger proposals made by local councils, rather than by the Minister for Local Government) are not reports by KPMG providing analysis and modelling in relation to the proposed mergers.

All of the documents listed in Annexure A are accessible on the websites specified in that Annexure. In addition, a hard copy of all documents listed in Annexure A is enclosed with the hard copy of this letter.

Additional documents

I am instructed that the Department has identified that it holds 27 other "KPMG – Options Analysis" documents, in addition to those identified as Records 1-20 in Annexure B of the Department's decision of 7 June 2017. These documents are all dated August 2015, so they do not meet the description of the reports sought in your letter of 16 January 2018. However, the Department has determined that they fall within the scope of your original access application.

I am instructed to inform you that the Department is prepared to consent to the further variation of its decision of 7 June 2017 so as to enable those documents to be disclosed to you.

Further searches

Despite what is said above, the Department has:

- (a) treated your letter of 16 January 2018 as, in effect, challenging the adequacy of the Department's searches conducted in response to your access application; and
- (b) conducted further searches to determine whether the Department holds any other records within the scope of the Access Application.

Enclosed, by way of service, is an affidavit of Ms C Chang which I anticipate filing in the Tribunal tomorrow. Ms Chang's affidavit describes the further searches carried out by the Department in response to your letter of 16 January 2018.

In light of the above, kindly inform me whether you maintain that the Department holds additional documents within the scope of your access application which have not been provided to you.

If you do maintain that claim, please note that in circumstances where an applicant seeks to challenge the sufficiency of an agency's search for documents within the scope of an access application, the onus falls on the applicant to demonstrate that there are reasonable grounds for believing that further information of the kind requested exists and has not yet been supplied: *Stanley v Roads and Maritime Services (NSW)* [2014] NSWCATAD 123 at [157]. If you wish to proceed, please provide additional information to explain why you consider that additional reports exist and have not previously been provided to you.

Please do not hesitate to contact Sasha Lowes on (02) 9224-5249 if you have any queries in relation to this matter.

Yours faithfully



Sasha Lowes
Solicitor
for Crown Solicitor