OFFICE OF THE INFORMATION COMMISSIONER (W.A.)	**File Refs: F0982000; F0992000** **Decision Ref: D0562000**

Participants:

Wayne Stewart Martin
Complainant

- and -

Ministry for Planning
Respondent

- and -

Wayne Stewart Martin
Complainant

- and -

Department of Land Administration
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - documents relating to Gracetown Development Investigations - Stage 1 - clause 1(1)(b) - whether the disputed documents contain policy options or recommendations prepared for possible submission to an Executive body - clause 1(1)(d) - whether the disputed documents were prepared to brief a Minister in relation to matters prepared for possible submission to an Executive body - clause 6 - deliberative processes – whether disclosure would, on balance, be contrary to the public interest.

Freedom of Information Act 1992 (WA) Schedule 1 clauses 1(1)(b), 1(1)(d), 1(5) and 6(1).

Re Environmental Defender's Office WA (Inc) and Ministry for Planning [1999] WAICmr 35.
Re Waterford and Department of the Treasury (No. 2) (1984) 5 ALD 588.
Ministry of Planning v Collins (1996) 93 LGERA 69.
Manly v Ministry of Premier and Cabinet (1995) 14 WAR 550.

DECISION

The decisions of the Ministry for Planning and the Department of Land Administration are set aside. In substitution it is decided that the disputed documents are not exempt.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

1 November 2000

REASONS FOR DECISION

1. This is an application for external review by the Information Commissioner arising out of decisions made by the Ministry for Planning ('the agency') and the Department of Land Administration ('DOLA'), to refuse Mr W S Martin QC ('the complainant') access to documents requested by him under the *Freedom of Information Act 1992* ('the FOI Act').

2. In August 1998, the Minister for Planning ('the Minister') submitted to Cabinet, for its consideration and endorsement the Leeuwin Naturalist Ridge Statement of Planning Policy ('the Leeuwin Planning Policy'). The agency informs me that the Leeuwin Planning Policy was a broad based policy, designed to lay the cornerstone for the orderly planning of the whole of the region, in light of a likely increase in the population of the region. Among other things, the policy suggests a balance between human habitation, agricultural needs and environmental needs.

3. I understand that a number of options for coastal node development were canvassed in the Leeuwin Planning Policy, including the possibilities of developing Gracetown and Yallingup. However, the planning merits of such options had not been addressed in the policy document. Cabinet endorsed the Leeuwin Planning Policy, and it was subsequently published, but Cabinet did not endorse the nature of coastal node development and did not endorse the suggestion that Gracetown and Yallingup be developed. Rather, Cabinet requested a further Cabinet Minute be submitted to it by June 1999, to address the planning, environmental and financial issues associated with options relating to Gracetown and Yallingup.

4. On 2 February 2000, the complainant made two identical access applications to both the agency and DOLA, seeking access under the FOI Act to documents relating to the possible expansion of Gracetown. The applications were made for and on behalf of the Gracetown Progress Association, of which the complainant is a member.

5. The agency refused him access to all the requested documents on the ground that they are exempt under clauses 1 and 6 of Schedule 1 to the FOI Act. DOLA granted the complainant access to one document, but refused him access to 11 others, on the ground that those 11 documents are exempt under clauses 1, 4 and 6 of Schedule 1 to the FOI Act.

6. The complainant sought internal review of both decisions. Following internal review, the agency granted him access to additional documents, but refused access to others on the ground that those documents are exempt, for the reasons previously given. DOLA also granted the complainant access to additional documents, but refused him access to others under clauses 1 and 6. On 17 May 2000, the complainant lodged two complaints with the Information Commissioner seeking external review of the decisions of both the agency and DOLA.

REVIEW BY THE INFORMATION COMMISSIONER

7. Following receipt of these complaints, meetings were held with representatives of the agency and DOLA, and also with the complainant to determine whether these complaints could be resolved by conciliation and negotiation between the parties. As a result of those discussions, some additional documents were released to the complainant by both agencies.

8. In the course of my dealing with these matters, it became clear that the disputed documents of each agency are identical. As the documents were prepared on behalf of the agency, the FOI coordinator at DOLA requested that I deal with both complaints together, in order to avoid any unnecessary duplication of work. I agreed with that suggestion and the agency was invited to provide additional reasons in support of its claims for exemption. The agency responded with submissions and also added a claim for exemption under clause 10(4). An edited copy of those submissions was provided to the complainant, for his consideration and response.

9. On 18 September 2000, after considering the material before me, I informed the parties in writing of my preliminary view of these complaints, including my reasons. It was my preliminary view that the documents may not be exempt under clauses 1(1)(b) or (d), 6(1) or 10(4) of Schedule 1 to the FOI Act.

10. I received a further submission in writing from the agency and a response from DOLA. The agency withdrew its claim for exemption under clause 10(4), but maintains that the disputed documents are exempt under clauses 1(1)(b) and (d) and clause 6(1) of Schedule 1 to the FOI Act. DOLA also maintains its claims that the disputed documents are exempt under clause 6(1). However, no further submissions were made by DOLA in support of that claim. In addition, DOLA claims that the disputed documents are exempt under clauses 1(1)(b) and (d) for the reasons given by the agency. The complainant was given an edited copy of the agency's and DOLA's submissions and he responded in writing to those submissions.

THE DISPUTED DOCUMENTS

11. The disputed documents are:

- **Document 1** Summary of Preliminary Findings – Gracetown Development Investigations - Stage One Report (Draft) (dated October 1999)

- **Document 2** Gracetown Development Investigation Report Stage 1- Final Draft (dated November 1999)

- **Document 3** Gracetown Development Investigation Report Stage 1 – Final Draft – December (dated December 1999)

- **Document 4** Gracetown Development Investigation Report Stage 1, Final Report - February 2000.

- **Document 5** Gracetown Development Investigation Report Stage 1, Technical Appendices (undated).

THE EXEMPTIONS

(a) Clause 1 – Cabinet and Executive Council

12. The agency and DOLA claim that each of the disputed documents is exempt under clauses 1(1)(b) and 1(1)(d) of Schedule 1 to the FOI Act. Clause 1, so far as is relevant, provides:

> ***"1. Cabinet and Executive Council***
>
> ***Exemptions***
>
> *(1) Matter is exempt matter if its disclosure would reveal the deliberations or decisions of an Executive body, and, without limiting that general description, matter is exempt matter if it -*
>
> …
>
> *(b) contains policy options or recommendations prepared for possible submission to an Executive body;*
>
> …
>
> *(d) was prepared to brief a Minister in relation to matters -*
>
> *(i) prepared for possible submission to an Executive body;*
>
> *(ii) the subject of consultation among Ministers relating to the making of a government decision of a kind generally made by an Executive body or the formulation of a government policy of a kind generally endorsed by an Executive body;*
>
> ***Limits on exemptions***
>
> *(2) Matter that is merely factual, statistical, scientific or technical is not exempt matter under subclause (1) unless -*
>
> *(a) its disclosure would reveal any deliberation or decision of an Executive body; and*
>
> *(b) the fact of that deliberation or decision has not been officially published.*

> …
> *(5) Matter is not exempt by reason of the fact that it was submitted to an Executive body for its consideration or is proposed to be submitted if it was not brought into existence for the purpose of submission for consideration by the Executive body."*

13. The term "Executive body" is defined in clause 1(6) to mean: Cabinet; a committee of Cabinet; a subcommittee of a committee of Cabinet; or Executive Council. Clearly, the purpose of the exemption in clause 1 is to protect the confidentiality of, *inter alia*, Cabinet discussions and consultations between Ministers: see my decision in *Re Environmental Defenders Office WA (Inc) and Ministry for Planning* [1999] WAICmr 35. Amongst other things, the maintenance of Cabinet solidarity and collective responsibility for its decisions are generally accepted as essential to the Westminster system of government. The FOI Act recognises that in clause 1 and in the range of documents that are protected from potential disclosure by this exemption.

The agency's submission

14. The agency claims that the disputed documents were created as a direct response to a request from Cabinet and that they contain policy options or recommendations and that, critical to the question of whether or not the exemptions in clause 1(1)(b) and (d) apply, is the purpose for which the disputed documents were created. The agency submits that the disputed documents were prepared for submission to Cabinet (and that the draft copies were prepared for possible submission to Cabinet) as the disputed documents will form part of a Cabinet submission which will deal with the planning, environmental and financial issues associated with the possible expansion of Gracetown and Yallingup. On that basis the agency claims that the disputed documents are exempt under clause 1(1)(b).

15. The agency also claims that it was always contemplated that the disputed documents would be perused by the relevant Ministers in order to gain an understanding of the critical issues relating to the Gracetown options and that, therefore, they were prepared to brief a Minister in relation to matters prepared for possible submission to Cabinet, and are exempt under clause 1(1)(d).

16. The agency made a number of claims in support of its submission. I have summarised those claims as follows:

- the purpose for which the disputed documents were created might not be evident on their face and the context in which documents are created should be taken into account;
- in the context of this matter, Cabinet required further information associated with the rationalisation of Gracetown and Yallingup and the Chief Executive Officer of the agency advises me that the disputed documents were created in response to Cabinet's request;
- Cabinet is not able to obtain information of the kind contained in the disputed documents itself and must, therefore, act through its agents,

including government agencies to whom the task of obtaining such information is delegated;

- agencies may contract with others for work to be done but that does not change the fact that the work is the result of explicit instructions from Cabinet;
- the commissioning by DOLA or the Western Australian Planning Commission ('the WAPC') of a report in this instance could only have been done at the direction of Cabinet;
- the fact that other people consider documents before Cabinet considers them does not detract from the fact that the disputed documents were prepared in response to a request from Cabinet;
- although it is unlikely that draft documents will be presented to Cabinet, at the time the draft documents were prepared, the documents were prepared with the view that they could be submitted to Cabinet; and
- nothing in clause 1 requires that documents be addressed or directed to Cabinet to be exempt.

17. The agency accepts that the disputed documents are not specifically addressed to Cabinet, but claims that nothing in clause 1 requires that a document be addressed to Cabinet for it to be exempt under that clause, nor is it a requirement that a document disclose, on its face, that it was created for the purpose of its submission to Cabinet, for the exemption to apply to it. The agency advises me that the documents were created in response to a request from Cabinet, that it was always the intention of the agency to submit the documents to the Minister so that he could brief Cabinet and that, following that, the documents would be submitted to Cabinet to assist Cabinet to make a decision about the next stage of the development process.

Consideration

18. In the circumstances of this matter, I accept the view that the purpose for which the disputed documents were created is a critical issue. I also accept that it is important to take into account the context in which a document is created to determine, among other things, the purpose for which it was created. In that regard, the complainant also submitted that I must make my own enquiry into that factual issue and form my own conclusion and not simply rely on the assertions made by the agency.

19. I have of course done that. Taking into account the agency's recent submissions, I have re-examined all of the documents before me to determine whether there is any material in them to support the agency's claims concerning the purpose for which the disputed documents were brought into existence. I have re-examined the agency's files relating to the relevant planning issues, and the documents previously released to the complainant by DOLA and by the agency, and I have re-examined the contents of the disputed documents themselves.

20. In my view, nothing in that material supports the agency's claims about the purpose for which the disputed documents were brought into existence. To the contrary, the material before me suggests the disputed documents were brought

into existence for a different purpose. In relation to that, I have noted the following sequence of events.

(i) On 24 May 1999, various senior officers of the agency, DOLA and LandCorp met to discuss the direction that, by June 1999, Cabinet be apprised of the planning, environmental and financial issues associated with the proposed expansion of Gracetown and Yallingup. An agency file note (marked as folios 90 and 91) of that meeting records that the group recognized a need for further planning work to be done in and around the Gracetown townsite and the group resolved to establish a Technical Working Group ('the TWG') for that purpose.

(ii) The TWG was given specific terms of reference by the meeting, including the responsibility to review the planning and environmental requirements for the future development of the Gracetown site; to develop planning and environmental guidelines for the development of the area; to provide preliminary advice on infrastructure costs for the development of the area, including roads, water supply, sewerage, drainage and power; and to establish the financial viability of further development of the Gracetown site. It is recorded in the file note that the TWG was required to report to a further meeting of CEO's by the end of August 1999, to enable a Cabinet Minute to proceed on matters relating to the Gracetown townsite and its future development.

(iii) The TWG met on 15 June 1999. A file note of that meeting, dated 16 June 1999, records that the TWG decided that the work it was required to undertake should be undertaken in two stages. The first stage would establish the main planning, environmental and financial parameters. This was to be achieved by the preparation of a Study Brief for the appointment of an independent consultant to carry out the work required.

(iv) A Study Brief entitled *"Gracetown Development Investigation Area (Stage One)"* was prepared by the agency and circulated to the members of the TWG for agreement. In July 1999, the Study Brief was sent to 5 consultants inviting submissions of expressions of interest in conducting the first stage of the planning investigations and a consultant was subsequently appointed.

(v) In the introduction to the Study Brief document dated October 1999, it is stated that:

> *"… the* [Western Australian Planning Commission] *is required to advise State Cabinet with respect to proposals to rationalise the Gracetown and Yallingup townsites as well as the planning, environmental and financial issues, including any allocation of funds, associated with the rationalisation of these towns and other implementation measures"* and that "[t]*he conclusions and recommendations of the consultants will be used in determining the Commission's advice to Cabinet*".

(vi) Other information in the Study Brief records that the consultants were required to liaise and meet with members of the TWG, to prepare and present proposals, and to submit draft and final reports to the TWG for discussion and comment.

21. The agency claims that the disputed documents contain policy options or recommendations that the agency intended would be presented to Cabinet, in response to the request from Cabinet in 1998 for information. The Concise Oxford Dictionary, 8th Edition, defines the word "policy" as *" a course or principle of action adopted or proposed by a government, party, business, or individual etc"*. I have examined the disputed documents and compared them with another policy document, the Leeuwin Planning Policy. In my view, none of the disputed documents contains policy options or information of the kind set out in the Leeuwin Planning Policy.

22. I accept that the disputed documents contain options and recommendations. However, I consider that those options and recommendations relate to the practicalities of developing the area, including particular planning and environmental considerations, the provision of essential services and the financial viability of development, rather than to policy. In my view, the information in the disputed documents deals mainly with various alternative planning considerations relating to the possible expansion of Gracetown. Whilst the documents may contain information upon which a future planning or development policy could be based, or information that could be incorporated into a future policy statement like the Leeuwin Planning Policy, I consider those possibilities to be too remote to bring the documents within the terms of the exemption in clause 1(1)(b).

23. Even if the disputed documents contain policy options or recommendations, I am not persuaded that those policy options or recommendations were prepared for possible submission to an Executive body. I can find nothing in the Study Brief, the disputed documents themselves, or in any of the other documents before me to support the claims of the agency and DOLA that the information contained in the disputed documents was brought into existence for the purpose of submission or possible submission for consideration by an Executive body. There is no material identified to me by the agency that makes that intention explicit, nor is there any other material from which such an intention could be implied.

24. Similarly, I can find nothing in the Study Brief or in any of the other documents before me to support the agency's claim that it must have been contemplated from the outset that the disputed documents would be prepared to brief the Minister in relation to matters of the kind described in clause 1(1)(d). Whilst I have given some weight to the advice from the agency that that was its intention, I consider that the weight of other documentary material before me contradicts that advice.

25. It does not follow from the fact that activities were undertaken and information gathered as a result of a direction of Cabinet, or at the request of Cabinet, that it was intended or contemplated that the documents created in that process, or all

of the information contained in them, would be submitted to Cabinet. Whilst it would no doubt be intended that the relevant Ministers would ultimately be briefed on the outcome of the exercise and that a submission to Cabinet based on the information gathered would be prepared, it does not mean that these particular documents or the information in them were ever intended to be submitted to Cabinet or were prepared for that purpose.

26. In my view, the disputed documents were created for consideration by the TWG and the WAPC, and not for the purpose of possible submission to an Executive body or to brief the Minister. In my opinion, the material before me clearly establishes that the final report of the consultants, Documents 4 and 5, together with advice from the TWG, were intended for use by the WAPC to formulate its advice to Cabinet following a meeting to be held at some time in the future between the relevant Ministers. There is nothing in that material to suggest that Documents 4 and 5 would be, or were at the time of their creation intended to be, submitted for consideration by Cabinet or to brief a Minister. In my view, they were prepared for consideration by the TWG and the WAPC.

27. Neither the agency nor DOLA has provided me with any probative material that persuades me that Documents 4 and 5 were prepared to brief a Minister. I accept that the TWG and/or the various agency representatives may have subsequently prepared briefing material for their respective Ministers based on those documents. However, the subsequent use to which the information contained in the disputed documents may be put is not the issue. The relevant question is the purpose for which those documents were created. I accept the agency's submission that the fact that other people consider documents before Cabinet considers them does not detract from the fact that the documents were prepared in response to a request from Cabinet. However, the fact that they were prepared as a result of a Cabinet direction does not mean they were prepared for submission or possible submission to Cabinet, or to brief a Minister, and if they were not prepared for submission or possible submission to Cabinet, or to brief a Minister, then the number of people who see or do not see them is irrelevant in any case.

28. In respect of Documents 1, 2 and 3, I am not persuaded that any of those documents was created for the purposes stated by the agency and DOLA. The Study Brief required the consultants to present their preliminary investigations, a summary paper and preferred options to the TWG for discussion and agreement. Document 1 is dated October 1999 and is, in my opinion, clearly a summary of the consultant's preliminary findings. Part 9.0 of the Study Brief document makes it clear that a summary paper was to be presented to the TWG, not to the Minister, to Cabinet or an Executive body. In my view, Document 1 was created for that stated purpose.

29. Point 9.0 of the Study Brief document records that the consultants were to present a final report to the TWG. Point 11.0 in the Study Brief records that the consultants were required, periodically, to present reports to the TWG for discussion and comment. Documents 2 and 3 are the first and second drafts of Document 4. Document 2 is an earlier version of Document 3. There is also before me a letter dated 3 December 1999, from the consultants sent with a copy

of Document 3 to Mr. Rob Paull, a member of the TWG. All of that material strongly indicates that Documents 2 and 3 were brought into existence for the purpose of the consultants providing them to the TWG for perusal and comment prior to finalization.

30. During my investigations into these complaints, inquiries by my office established that copies of Documents 1, 2 and 3 were not held on file at the Central Office of the agency but, rather, that they were held in loose storage at the Bunbury Regional Office of the agency where, I understand, the meetings of the TWG were conducted. Further, the preliminary nature of the material in those documents, the fact that they were subject to revision by the consultants after consideration by the TWG and were so revised, that they are draft documents and not documents of a kind that an agency would contemplate submitting to either a Minister or to Cabinet, and the fact that the documents were not held on the relevant agency files at Central Office of the agency all reinforce the conclusion I have reached that Documents 1, 2 and 3 were not brought into existence for the purposes stated by the agency.

31. I am not satisfied that any of the disputed documents contain policy options or recommendations prepared for possible submission to an Executive body, nor that they were prepared to brief a Minister. Accordingly, for the reasons given above, I find that the disputed documents are not exempt under clause 1(1)(b) or (d) of Schedule 1 to the FOI Act.

(b) Clause 6 – Deliberative process

32. The agency and DOLA also claim that the disputed documents are exempt under clause 6(1). Clause 6(1) provides:

> ***"6. Deliberative processes***
>
> ***Exemptions***
>
> *(1) Matter is exempt matter if its disclosure -*
>
> *(a) would reveal -*
>
> *(i) any opinion, advice or recommendation that has been obtained, prepared or recorded; or*
>
> *(ii) any consultation or deliberation that has taken place,*
>
> *in the course of, or for the purpose of, the deliberative processes of the Government, a Minister or an agency;*
>
> *and*
>
> *(b) would, on balance, be contrary to the public interest."*

33. Clearly, the requirements of both paragraphs (a) and (b) must be satisfied in order to establish exemption under clause 6(1). Further, in the case of this exemption, the complainant is not required to demonstrate that disclosure of deliberative process matter would be in the public interest; he is entitled to access unless the agency can establish that disclosure of the particular deliberative process matter would be contrary to the public interest.

34. I have discussed and considered the purpose of the exemption in clause 6 and the meaning of the phrase "deliberative processes" in a number of my formal decisions. I agree with the view of the Commonwealth Administrative Appeals Tribunal ('the Tribunal') in *Re Waterford and Department of the Treasury (No 2)* (1984) 5 ALD 588 that the deliberative processes of an agency are its "thinking processes", the process of reflection, for example, on the wisdom and expediency of a proposal, a particular decision or course of action: see also the comments of Templeman J in *Ministry for Planning v Collins* (1996) 93 LGERA 69 at 72.

Clause 6(1)(a) – nature of the information

35. Having examined the disputed documents and considered the context in which the documents were created, I accept that the disputed documents contain opinion and advice that has been obtained, prepared and recorded in the course of, and for the purposes of, the deliberative processes of the TWG and the deliberative processes of the WAPC in discussing and considering the various planning alternatives, options and environmental issues identified by the consultants, prior to the WAPC formulating its advice to Cabinet. I also accept that disclosure of the documents would reveal that opinion and advice. Accordingly, I consider that the disputed documents contain information of the kind described in paragraph (a) of clause 6(1).

Clause 6(1)(b) – contrary to the public interest

The agency's submission

36. The agency outlined the steps in the planning process to me. They are:

    (i) Identification of need.
    (ii) Identification of government priority and commitments.
    (iii) Formulation of ideas stratagems.
    (iv) Consultation with key stakeholders, private and government agencies.
    (v) Formulation of draft documents.
    (vi) Public release and opening of public submission period.
    (vii) Review of submission.
    (viii) Further consideration, revision, perhaps a formal hearing procedure.
    (ix) Endorsement by Ministers and Cabinet.
    (x) Publication of final document "the strategy".

37. The agency claims that, in this instance, the process has not progressed beyond stage (i). The agency claims that, whilst the disputed documents go some way towards providing Cabinet with the information it needs to identify and decide

government priorities and commitments, Cabinet has not yet received a report in response to its request of August 1998.

38. The agency acknowledges that there is a significant public interest in favour of disclosing information about planning issues to the local community to allow that community to have input into the planning process. However, the agency submits that public consultation is an integral part of the planning process and that, if Cabinet decides to proceed with proposals for Gracetown, then the planning process will proceed to stage (ii) and, at that stage, a comprehensive public consultation process will be undertaken.

39. The agency submits that the complainant's concerns that the public consultation will be too late to change or prevent the development proposal is not the case because stage (ii) of the planning process is designed to explore, in a more concrete manner, the prospects of any development and that development proposals can be changed or abandoned at this stage. The agency claims that public reaction to and comments on the proposal would be an important factor leading to such a decision.

40. The agency submits that the complainant's concerns ignore the difficulties associated with public consultation at this early stage because, without Cabinet endorsement, the proposal will not proceed. Public consultation at this point would, the agency submits, be fruitless because there are no proposals, prototypes or plans that could be put to the public for comment. The agency accepts that documents must be made available to the public sufficiently early in the decision-making process to allow public participation, but submits that, unless Cabinet decides that the possibility of expanding Gracetown should be considered further, there is, in effect, no decision-making process in which the public needs to participate.

41. The agency claims that disclosure would harm the decision-making processes of the agencies involved in considering the options for Gracetown, as well as the decision-making processes of the responsible Ministers and, ultimately, those of Cabinet. The agency submits that disclosure would lead to the public speculating about whether a decision had been made about the development of Gracetown and that speculation is likely to lead to public concern, lobbying, agitation and intense media pressure on the relevant agencies, the relevant Ministers and Cabinet.

42. The agency submits that community speculation of that kind would be contrary to the public interest for three reasons. Firstly, public pressure of that kind will involve considerable diversion of agency, Ministerial and Cabinet resources to respond to public concerns. As there is not yet a firm proposal dealing with Gracetown, the diversion of resources would be unjustified and contrary to the public interest. Secondly, the planning process must take into account many factors including human impact on the land, environmental issues, services and amenities that must be weighed in a delicate balancing act to determine the best solution for the whole community. The agency submits that it would be unfortunate if uninformed public pressure were to deflect agencies or the government from pursuing the proper planning of coastal development with the result that future development is of an ad hoc nature. Thirdly, when an agency

is directed to implement a government policy, that is the time to subject its decision-making processes to scrutiny to ensure accountability.

Public interest

43. I have consistently expressed the view when considering the application of the exemption in clause 6(1) that it may be contrary to the public interest to prematurely disclose deliberative process documents while deliberations in an agency are continuing, if there is evidence that disclosure of such documents would adversely affect the agency's decision-making process, or that disclosure would, for some other reason, be demonstrably contrary to the public interest. In either of those circumstances, I consider that the public interest may be served by non-disclosure because the public interest may be best served by allowing deliberations to occur unhindered and with the benefit of access to all material available so that informed decisions may be made.

44. Clearly, there is a public interest in people being able to exercise their rights of access under the FOI Act, which was enacted in recognition of, and to further the public interest in more open and accountable government and increased public participation in government. I also recognize a public interest in local communities being informed of mooted development proposals being considered by government, which have the potential to significantly affect the future of the particular community.

45. The agency asserts that the decision-making processes of relevant agencies, Ministers and Cabinet would be harmed by public speculation, lobbying, agitation and media pressure that will result from disclosure of the disputed documents. However, I consider those claims to be unsupported speculation and conjecture and I have not attached much weight to them. Other than the assertion made by the agency, there is nothing either in the documents themselves or put before me by the agency to lead me to such a conclusion. I do not accept that merely claiming that disclosure would have the consequences outlined by the agency is sufficient to discharge the onus that is on the agency to justify its decision to refuse access under clause 6(1).

46. In *Manly v Ministry of Premier and Cabinet* (1995) 14 WAR 550 at p573, Owen J discussed the nature of the proof required in support of a claim for exemption and said:

> *"How can the [Information] Commissioner, charged with the statutory responsibility to decide on the correctness or otherwise of a claim to exemption, decide the matter in the absence of some probative material against which to assess the conclusion of the original decision maker that he or she had "real and substantial grounds for thinking that the production of the document could prejudice that supply" or that disclosure could have an adverse effect on business or financial affairs? In my opinion it is not sufficient for the original decisionmaker to proffer the view. It must be supported in some way. The support does not have to amount to proof on the balance of probabilities. Nonetheless, it must be persuasive in the sense that it is*

based on real and substantial grounds and must commend itself as the opinion of a reasonable decisionmaker."

47. Further, in the event that public speculation, lobbying and media pressure were to result from disclosure, it is clearly within the control of the agency, if not the Minister, to release a media statement or other information to make it clear that no decision has been made on the future of Gracetown. It is also not apparent to me that, were those consequences to follow from disclosure, they must necessarily harm the decision-making processes.

48. I accept the agency's argument that the public interest in community participation in the decision-making process may be satisfied, to some extent, by the public consultation process which the agency states will occur if the proposal proceeds any further. However, I do not consider the fact that there may be consultation some time in the future to mean the public interest in the local community being informed about the proposal under consideration is satisfied.

49. Further, I do not accept that disclosure will force the government to undertake public consultation earlier than it normally would, or that it could otherwise hinder or affect the process of informing the local community of what is under consideration for their town. I cannot see how, in a democracy, it could be harmful for a government to be informed of the views of the people most directly affected by a proposal, albeit that those may not be the only considerations to be taken into account when deciding whether or not to consider that proposal further.

50. Further, in my opinion, it cannot be contrary to the public interest for a government agency to use its resources (resources that are paid for by the public) to respond to public concerns about such matters. I do not accept the agency's claim that proper planning will proceed in an ad hoc fashion if the disputed documents were to be disclosed. That claim is unsupported by any material before me and it defies logic.

51. I have not given much weight to the agency's claim that the time for it to be accountable for the decisions it makes is when it implements government policy and not before. I do not consider that accountability in the public sector only applies to one part of an agency's activities and not to others. That restricted view of accountability is, in my view, inimical to the concept of open and democratic government.

52. I recognize that there is a public interest in ensuring that the Minister, and ultimately, Cabinet, is fully informed about planning issues. However, I agree with the complainant's submission that the public interest is served, not hindered, by the disclosure of information that would enable the local community to have input into a planning process that directly affects, or could affect, that community. One of the stated objects of the FOI Act in s.3(1) is to enable the public to participate more effectively in governing the State. In my view, if public participation in that process is to have any meaning, it should occur early in the planning process and well before a decision is made. Further,

the public is only able to participate in such democratic processes if it has access to relevant and timely information.

53. I am not persuaded that disclosure of any of the disputed documents would adversely affect the deliberative processes of the agencies, the Ministers or Cabinet or that any other public interest would be so adversely affected by their disclosure such that it would be, on balance, contrary to the public interest to disclose them. Accordingly, I find that the disputed documents are not exempt under clause 6(1).

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