



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923
Reference: 23/069995

By Email: [REDACTED]

Dear [REDACTED]

Decision on Freedom of Information Access Application 23/069995

I refer to your application made under section 30 of the *Freedom of Information Act 2016* received by the Environment, Planning and Sustainable Development Directorate (EPSDD) on 3 July 2023, in which you sought access to documents relating to Development Application 201936510.

On the 22 August 2023 you amended the scope of your request to exclude representations made regarding DA 201936510, which were provided directly to you via informal release on the 22 August 2023.

Specifically, you are seeking:

"...Under the FOI Act, I seek access to the following documents:

Development Approval Information

1. *The development application (DA) 201936510 lodged on 19 December 2019 proposing the development of the Plant including:*
 - a. *any air quality impact assessment reports submitted with or subsequent to the lodgement of the DA;*
 - b. *the document referred to at page 8 of the Development Approval as the EPA's request for further information pursuant to section 141 of the Planning and Development Act 2007;*
 - c. *the following documents referred to on page 12 of the Development Approval:*
 - i. *the document seeking further information on the Air Quality Report and any documents submitted to the Authority and/or EPA in response to that request;*
 - ii. *the document referred to as Supplementary Air Quality Impact Assessment prepared by SLR Consulting Australia Pty Ltd dated 17 March 2020 and any subsequent assessment of that document by the EPA;*
 - iii. *the document referred to as the air quality assessment ERM dated 1 May 2020 submitted by a representator; and*
 - iv. *the document referred to as EPA's final advice dated 19 May 2020.*

2. *The documents submitted to the Authority in satisfaction of Condition 1 at page 2 of the Development Approval relating to air quality measures for the development.*
3. *Any advice or further conditions imposed by the EPA as referred to in Condition 1 of the Development Approval, including any amended drawings or environmental reports relied on by the EPA.*
4. *Any advice or documents submitted to the EPA and not caught by the request above that led to its final support for the DA, including any independent review of the air quality modelling referred to at page 12 of the Development Approval;*
5. *The Development Approval including the submission from Queanbeyan-Palerang Regional Council which raised concerns with the air quality and odour assessment and the proximity to current and future residential development at South Jerrabomberra referred to at page 8 of Development Approval.*
6. *Any modifications to the Amended Development Approval after 26 March 2021.*

Environmental Authorisation

7. *Any application for an environmental authorisation under s49(1)(a) of the Environment Protection Act 1997 (EP Act) to the operation of the Plant by the EPA, and documents submitted with such an application relating air emissions subsequent or connected to the Development Approval.*
8. *Documents evidencing the assessment of air quality issues as part of the application referred to in paragraph 7.*
9. *Any notice of determination granting an environmental authorisation under s49(1)(a) of the EP Act to the operation of the Plant by the EPA following receipt of an application referred to in paragraph 7 (Authorisation).*
10. *Any approved amendments to an environmental authorisation impacting upon or in any way altering conditions in the Authorisation addressing air quality and air emissions.*
11. *Any environmental management plan (EMP) accepted by the EPA prior to the commissioning of the Plant and any approved variations to the EMP.*

Operation of the Plant under the Development Approval and the Environmental Authorisation

12. *Any reports or records of air quality / air pollution / odour complaints provided to the EPA under the Authorisation.*
13. *Correspondence, if any, between the period 25 May 2020 to date, between the owner of the Plant and the EPA in respect of compliance or non-compliance with conditions of the Authorisation relating to air emissions, air pollution or odour and changes to conditions of the Authorisation dealing with air emissions, air pollution or odour.*
14. *Copies of any prevention notices or prohibition orders issued since 25 May 2020 dealing with air emissions, air pollution or odour and documents evidencing compliance with any such notices.”*

I am an Information Officer appointed under section 18 of the Act to deal with access applications made under Part 5 of the Act.

EPSDD must decide your application on or by 18 September 2023.

Searches Conducted

Comprehensive searches were conducted and 50 documents containing information within the scope of your application were identified.

Decision on Access

I have included as **Attachment A** to this decision the schedule of relevant documents. The schedule provides a description of each document that falls within the scope of your application and the access decision for each of those documents.

I have decided to grant full access to 22 documents relevant to your application.

I have decided to grant partial access to 28 documents and, in accordance with section 50 of the Act, provide you with copies of documents with deletions applied to contrary to the public interest information.

My access decisions are detailed further in the following statement of reasons and the documents released to you are provided as **Attachment B** to this letter.

Material Considered

In reaching my access decision, I have taken the following into account:

- the FOI Act, particularly sections 6, 17, 38, 50, and Schedule 2
- the content of the documents that fall within the scope of your request
- the *Human Rights Act 2004*
- the views of third parties consulted

Public Interest Considerations

My reasons for deciding not to grant access to components of these documents are as follows:

Information Disclosure – Schedule 2 of the Act

The Act recognises the right of every person to obtain access, under its provisions, to government information (see section 7, the Act). As an Information Officer, I am required to allow access to information subject to the Act, unless, on balance, disclosure would be contrary to the public interest.

In assessing the public interest, I must apply the test outlined under section 17 of the Act which requires consideration of factors favouring disclosure, any favouring nondisclosure and the balance of those factors when considered cumulatively.

Factors Favouring Disclosure

In applying the public interest test, I have determined that disclosure of the information could reasonably be expected to do the following:

- Schedule 2.1(a)(i) – promote open discussion of public affairs and enhance the government’s accountability;
- Schedule 2.1(a)(iii) – inform community of government operations and its dealings with community members;
- Schedule 2, 2.1(a)(viii) – reveal the reason for a government decision and any background or contextual information that informed the decision;

Factors favouring Nondisclosure

In applying the public interest test, I have determined that disclosure of the information could reasonably be expected to do the following:

- Schedule 2, 2.2(a)(ii) – prejudice the protection of an individual’s right to privacy or any other right under the *Human Rights Act 2004*;

Personal Information

Documents relevant to your application contain personal information of individuals including signatures, personal emails, and mobile phone numbers. I have considered how the public interest would be advanced by releasing this information in part or in whole. I have also taken into account the views of third parties, who objected to the release of staff names and contact information.

It is my view that the information if disclosed, could reasonably be expected to prejudice the protection of an individual’s right to privacy under section 12 of the *Human Rights Act 2004*. On balance, and the information available to me, I am satisfied that the disclosure of this personal information is not in the public interest.

To provide you with the information that I have determined to be in the public interest to release, copies of some documents have been prepared with personal information redacted in accordance with section 50 and the Objects of the Act.

Charges

In accordance with the *Freedom of Information (Fees) Determination 2018* no charges are applicable to this application.

Online Publication

Under section 28 of the Act, EPSDD maintains an online record of access applications called a disclosure log. Your original access application, this decision and documents released will be published in the EPSDD disclosure log no earlier than three days after you receive this decision. Your personal contact details will not be published.

You may view the EPSDD disclosure log at

<https://www.environment.act.gov.au/about-us/access-government-information/disclosure-log>

Ombudsman Review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in the disclosure log, or a longer period allowed by the Ombudsman. For more information and the application form for Ombudsman review, please visit:

https://www.ombudsman.act.gov.au/_data/assets/pdf_file/0026/79190/Apply-for-Ombudsman-review.pdf

Alternatively, you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Via email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) Review

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision.

Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
15 Constitution Avenue
GPO Box 370
CANBERRA CITY ACT 2601
Telephone: (02) 6207 1740

<http://www.acat.act.gov.au/>

Further Information

If you have any queries concerning the Directorate's processing of your request, or would like further information, please contact EPSDD Customer Service on (02) 6207 1923 and ask for the FOI team, or email to EPSDFOI@act.gov.au.

Yours sincerely



Information Officer
Executive Group Manager, Statutory Planning Branch
Environment, Planning and Sustainable Development Directorate

18 September 2023