



ACT
Government

Environment, Planning and
Sustainable Development

Phone: 6207 1923

Dear [REDACTED]

Freedom of information request: 18/02734 – DA201630668 and Direct Sale

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Environment, Planning and Sustainable Development Directorate (EPSDD) on 24 January 2018, in which you sought access to documents relating DA201630668 on Block 11, Section 8 Fyshwick and the direct sale of the same block.

Specifically, you are seeking:

1. *All briefing documents including references and correspondence to the Minister or Delegate in regard to **DA201630668**. Please provide;*
 - a. *All correspondence with the proponent under **s.138 Consideration of development Proposals** in the *Planning and Development Act 2007*;*
 - b. *advice received by ACTPLA from internal or external sources to inform the decision*
 - c. *all documents pertaining to the amendments of the **Planning Report and SAC** documents prepared by Purdon Planning on behalf of Access Recycling Pty Limited dated November 2016 (SCRITERIA-DA201630668-01)*
 - d. *all documents pertaining to the amendments of the **Planning Report and SAC** documents prepared by Purdon Planning on behalf of Access Recycling Pty Limited dated January 2017 (SCRITERIA-DA201630668-02)*
 - e. *all documents pertaining to the amendments which produced the final version of the **Planning Report and SAC** prepared by Purdon Planning on behalf of CRS and accepted for lodgement by ACTPLA on 23/02/2017(SCRITERIA-DA201630668-03)*
 - f. *correspondence pertinent to page 3 and page 4 of **DA201630668** where Purdon Planning state that This application is the first step in a response to advice from ACTPLA as follows and to include;*
 - i. *the section of government which provided the ACTPLA advice numbers 1 to 5*
 - ii. *which legislation and regulations were applied to support this advice*
 - iii. *was the advice 1-5 provided in a series of meetings and if so please provide the meeting notes or record of these meetings between ACTPLA and Purdon Planning and/or the proponent.*

2. All briefing documents including references and correspondence to the Minister or Delegate in regard to assessment of the document, EPD ref, **SUPP-201630668-01.PDF (606KB)**, Direct Sale of Land Eligibility: Commercial dated 15/10/2015. Please provide;

a) The receipted and approved document Direct Sale of Land Eligibility Application: Commercial for Block 11 Section 8 Division Fyshwick, unleased Territory land

b) The document Direct Sale of Land Eligibility Application: Commercial submitted by the proponent and all related correspondence with the applicant and/or authorised representative

c) Advice received by ACTPLA and/or the LDA from internal or external sources to inform approval of eligibility with or without conditions

d) The evidence provided by the proponent and/or Purdon Planning with reference to the Planning and Development Act 2007 to inform ACTPLA's assessment of;

- i. the public benefit of the Direct Sale
- ii. how the estimated land price of \$10,000 was decided including documents relating to the land valuation conducted by ACTPLA and/or Purdon Planning
- iii. the proponent's claim that there are no Interested Parties for this block and section (02/12/2016) in response to the Tech Check (see attached)
- iv. the proponent's claim that there was no other rail option
- v. the proponent's claim that there were no alternatives and
- vi. what cost benefit analysis supported the claim that rail was less costly for the community being to the benefit of the public.

e) All documents used by ACTPLA and/or the LDA/EDD to support its decision in the Direct Sale Eligibility Application and provision of the associated reasons by the proponent.

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 is required to provide a decision on your access application by 5 March 2018.

Document Identification

I have interpreted the scope of your request (above) with the following clarifying points:

1a. The correspondence with the proponent under section s 138 of the *Planning and Development Act 2007* (Consideration of Development Proposals) is recognised to be for correspondence between the Minister or Delegate and the proponent as set out under point 1 of your request.

1b. The decision for approval pertains to DA201630668 as set out under point 1 of your request.

My statement of reasons on the release of information in response to your request is set out below. I have provided responses to each point of your request as referenced above as 1 (a-f) – 2 (a-e).

Comprehensive searches of EPSDD records have been carried out by Directorate staff and I am satisfied that where no documents have been identified, there are no documents relevant to those points of your request.

Decision on Access

No documents have been identified under points 1, 1a, 1c-e, 1f(iii), and 2a.

Documents have been identified as relevant to your request as follows:

Point 1b - Development application (DA201630668) representations

Release determination: already publicly available

Point 1f - Email correspondence from Chris Sparke to Adam Perry of 3 May 2016 at 9.40 am regarding Minister's approval for direct sale

Release determination: full release

Point 2 - Approved brief to the Minister for Planning and Land Management (including attachments A and B) of 24 March 2016 regarding the direct sale of block 11, section 8 Fyshwick.

Release determination: full release

Point 2b - The documentation submitted with the Direct Sale Eligibility Application includes the email listed at point 1f and the development application (DA201630668)

Release determination: full release

Point 2c - Comments received by the Land Requests Advisory Committee (where comments were provided) from ActewAGL; Strategic Planning, former Environment and Planning Directorate (EPD); Merit Assessment South, EPD; Planning Policy, EPD; Surveyor-General, EPD; ICON Water; Asset Acceptance, former Territory and Municipal Services Directorate (TAMSD); Licencing and Compliance, TAMSD; TransACT; and Transport Planning, EPD.

Release determination: partial release

The personal information of external parties has been identified.

Points 2 (d-e) - The Direct Sale Eligibility Application and, under point 2c of your request, the List of Interested Parties

Release determination: full release

Partial release

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 (see section 17, the Act).

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

In relation to the documents identified as falling within the scope of point 2c of your request, section 17 applies as follows.

I have considered the capacity in which representation was provided to the Land Requests Advisory Committee and I am satisfied that the identification of the external entities providing comment may further open discussion, government accountability, informed debate and the provision of contextual or background information.

I am not satisfied that disclosure of the deleted information could reasonably be expected to further advance these matters as it is limited to the personal information of specific external entity staff.

Further, there is no information before me that the representatives were advised that their individual participation would be disclosed or used for broader communication purposes. There is no evidence of any agreement to such use or disclosure.

I am therefore satisfied that disclosure of the personal information of external entity staff could reasonably be expected to prejudice the protection of an individual's right to privacy under the *Human Rights Act 2004*. This is a factor favouring nondisclosure under Schedule 2.2 (ii).

In balancing these matters I am satisfied that, on the information available, disclosure of the personal information of external entity staff would be contrary to the public interest.

The information identified for deletion falls within the meaning of personal information and I am satisfied that when considered collectively with the information released, would involve the unreasonable disclosure of sensitive information.

Accordingly, under point 2c of your request, documents identified through consultation undertaken by the Land Requests Advisory Committee which include staff from ActewAGL, ICON Water, JEMENA, Telstra and TransACT are released in part under section 50 of the Act with material deleted that would be contrary to the public interest to release.

Information already available

Entity comments submitted in response to a development application during the entity referral period have been identified under point 1b of your request. No public representations were received during the public notification period.

Comments and representations form part of a public register and may be made available unless an exemption has been granted. Therefore, I am satisfied that this government information is already available to you and I have refused this portion of the application in accordance with section 43(1)(d) of the Act.

There is no charge for inspecting the register however you will have to pay for copies of any associated documents you request. Please contact the EPSDD Customer Services team on 6207 1923 for further information.

Questions raised in your request

You have included queries rather than requests for access to government information under 1f(i-ii) of your request and I have responded to them as follows:

1f (i) What is the section of government that provided ACTPLA with the advice (as referenced in items 1-5 in the email provided under 1f of your request)?

Response: the Direct Sales team of the former Economic Development Directorate (now within the Urban Renewal stream of EPSDD).

1f(ii) Which legislation and regulations were applied to support this advice (refer email at point 1f)?

Response: the approval processes associated with development and direct sales are managed in accordance with the *Planning and Development Act 2007* and the *Planning and Development Regulation 2008*, both are publicly available on the Legislation Register at the web addresses below:

<http://www.legislation.act.gov.au/a/2007-24/current/pdf/2007-24.pdf>

<http://www.legislation.act.gov.au/sl/2008-2/default.asp>

My access decisions are outlined in the schedule of documents at Attachment A. The documents released to you are enclosed with this letter.

Online Publishing – Disclosure Log

Under section 28 of the Act, EPSDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published in the EPSDD disclosure log from three days after this notice of decision. Your personal contact details will not be published.

You may view EPSDD's disclosure log at <https://www.environment.act.gov.au/about/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 EPSDD's disclosure log, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Or via email to: ombudsman@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
Level 4, 1 Moore St
GPO Box 370
Canberra City ACT 2601
Telephone: (02) 6207 1740

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

If you have any queries concerning the Directorate's processing of your request, or would like further information, please contact EPSDD's Customer Service Centre on (02) 6207 1923 and ask for the Information Management Team.

Yours sincerely



Geoffrey Rutledge
Deputy Director-General
Environment, Planning and Sustainable Development Directorate

5 March 2018