



**ACT**  
Government

Environment, Planning and  
Sustainable Development

Phone: (02) 6207 1923  
Reference: 21/02718

Dear [REDACTED]

**Freedom of Information 21/02718**

I refer to your application made under section 30 of the *Freedom of Information Act 2016* (the Act) received by the Environment, Planning and Sustainable Development Directorate (EPSDD) on 8 January 2021, in which you sought access to documents relating to the conditional approval of Development Application (DA) 201017864.

Specifically, you are seeking:

*Information about the conditional approval of DA201017864 on 15 December 2010 and the approval conditions that:*

- *A2 require the Lessee to provide written advice of compliance with Condition A1 to the Authority within 24 months of the date of the Decision*
- *A3 require the Decision to cease to have effect if the Lessee has not provided written advice in accordance with Condition A1 within 24 months of the date of the Decision.*

*Given the conditions were not met until 2019 and DA201017864 was not endorsed until 2020, would you please provide the following information about compliance with the conditions over the 10-year period.*

- *A1 – evidence that all hazardous materials present at the site have been removed to the satisfaction of the Department of Environment, Climate change, Energy and Water or its successor*
- *A2 - The written advice (with date of receipt) to the Authority of compliance with Condition A1 or the requests for extensions of time to comply*
- *A2 - The written approvals (with date) for extensions of time to comply with condition A1*
- *A4 – the documents with date of receipt for:*
  - a) the revised drawings showing the privacy screens to the balconies*
  - b) revised colour schedules*
  - c) revised outdoor lighting plan*
- *C7 – the approved plan to meet the Australian Standards for noise*

- *C11 – the approved plan to implement the recommendations outlined in chapter 6 of the study prepared by Windtech*
- *All correspondence, including emails, with reference to DA201017864*
- *All correspondence, including emails, about the 2 DAs for the site being active at the same time.*

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 make a decision on your application on or by 3 May 2021. Thank you for your patience in this matter and agreement to extension of the decision due date.

### **Searches Conducted**

Comprehensive searches were conducted and 121 documents within the scope of your application were identified.

In relation to points 7 and 8 of your application, documents relating to conditions C7 and C11 are not submitted during the planning process as they relate to compliance during construction. Therefore no relevant documents were submitted to EPSDD.

### **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 66 documents relevant to your application.

I have decided to grant partial access to 55 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 Act, particularly sections 6, 17 and schedule 2
- the content of the documents that fall within the scope of your request
- the *Information Privacy Act 2014*
- the *Human Rights Act 2004*

### **Public Interest Considerations**

My reasons for deciding not to grant access to certain documents and 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)(ii) – contribute to positive and informed debate on important issues or matters of public interest
- Schedule 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(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 members of the public and the internal layout of a residence. I have considered how the public interest would be advanced by releasing this information in part or in whole. 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 section 107(2) of the Act any charges applicable are waived.

#### **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](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](mailto: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  
Level 4, 1 Moore St  
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](mailto:EPSDFOI@act.gov.au).

Yours sincerely

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

3 May 2020