



**ACT**  
Government

Environment, Planning and  
Sustainable Development

Phone: (02) 6207 1923  
Reference: 22/84350

### **Decision on Freedom of Information Access Application 22/84350**

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 30 June 2022, in which you sought access to documents relating to analysis of infill development costing compared to greenfield development costing.

Specifically, you are seeking:

*“any analysis held by EPSDD containing infill development costing compared to greenfield development costing. This request includes but is not limited to submissions, accompanying papers and attachments.”*

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

After consulting with third parties, and with your granting of two extensions, EPSDD must make a decision on your application on or by 6 September 2022.

#### **Searches Conducted**

Comprehensive searches were conducted and seven 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.

In accordance with section 38 of the Act, a third party was consulted on release of the information. The third party objected to release of some information.

I have decided to grant full access to five documents relevant to your application. I have refused access to one document, as I consider the information to be contrary to the public interest. I have refused access to one document as it is publicly available.

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, 43, 45, Schedule 2
- the content of the documents that fall within the scope of your request
- the views of third parties consulted
- information publicly available.

## **Public Interest Considerations**

My reasons for deciding not to grant access to certain documents are as follows:

### **Material publicly available**

I have refused access to one document under section 43(1)(d) and section 45(a) of the Act, as it is publicly available on the website of the ACT Legislative Assembly at

[https://www.parliament.act.gov.au/\\_data/assets/pdf\\_file/0016/1360600/Answer-QToN-5.pdf](https://www.parliament.act.gov.au/_data/assets/pdf_file/0016/1360600/Answer-QToN-5.pdf)

### **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 of 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, 2.1(a)(i) – promote open discussion of public affairs and enhance the government's accountability;
- Schedule 2, 2.1(a)(ii) – contribute to positive and informed debate on important issues or matters of public interest.

#### *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)(xi) – prejudice trade secrets, business affairs or research of an agency or person.

### **Prejudice Trade Secrets, Business Affairs or Research of an Agency or Person**

A document relevant to your application contains business information of a third party. The document is a draft working version of an excel spreadsheet that contains cost comparison modelling developed by a third party. In accordance with section 38 of the Act, I sought the views of the third party on whether the government information identified within the scope of your request may reasonably be expected to be of concern to them. The third party raised objections to release of the draft document as it contains intellectual property

including methodologies, research and data. They also advised that due to the draft nature of the document it is unlikely to have gone through their internal approval process and its disclosure may cause reputational damage.

I have considered how the public interest would be advanced by releasing the draft document in part or in whole. It is my view that the information if disclosed, could reasonably be expected to unfairly prejudice the business affairs of the third party by disclosing information about their methodologies and research and its release could reasonably be expected to cause reputational harm and negatively impact on their business affairs.

I am satisfied that, on balance, the public interest factors favouring nondisclosure outweigh the public interest factors favouring disclosure and I have decided not to disclose this document.

### **Charges**

In accordance with the *Freedom of Information (Fees) Determination 2018* no charges are applicable to this application, as the number of pages to be released is below the minimum 50 page threshold.

### **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



Ben Green

Information Officer

Executive Group Manager, Development and Implementation

Environment, Planning and Sustainable Development Directorate

6 September 2022