



## Decision on Freedom of Information Access Application 22/159887

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 12 December 2022, in which you sought access to documents relating to DA202139248-02.

Specifically, you are seeking:

*“All documents relating to DA2021139248-02 after the ACAT orders of 23 September 2022, including but not limited to:*

- *All EPD communication informing the NOD condition of approval concerning the Crown Leases for Blocks 13 and 22, Kingston;*
- *All EPD communication with and response from the applicant, Purdon Planning, on behalf of the developer, Geocon, pertaining to the preparation of the new Notice of Decision for DA202139248-02-DECISION AFTER ACAT REMITTED DA BACK TO AUTHORITY;*
- *Any EPD request to and representation and/or associated communication from all entities and agencies concerning DA202139248-02-DECISION AFTER ACAT REMITTED DA BACK TO AUTHORITY;*
- *Any EPD communication with ACAT after 23/09/2022.”*

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

As third parties have been consulted, EPSDD must make a decision on your application on or by 3 February 2023.

### Searches Conducted

Comprehensive searches were conducted and 23 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 16 documents relevant to your application. Information that is out of scope of your application has been redacted from two documents.

I have decided to grant partial access to one document and, in accordance with section 50 of the Act, provide you with a copy of the document with deletions applied to information which is contrary to the public interest.

Under section 43(1)(d) of the Act I have refused access to six documents. These documents [REDACTED] are available on the EPSDD Disclosure Log at <https://www.environment.act.gov.au/about-us/access-government-information/disclosure-log/disclosure-logs/epsdd-2282979>

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, 45, 50, 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
- your views regarding the public interest
- information released [REDACTED] previously.

### **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, 2.1(a)(i) – promote open discussion of public affairs and enhance the government's accountability
- Schedule 2, 2.1(a)(viii) – reveal the reason for a government decision and any background or contextual information that informed the decision.

I have noted your argument that release of the information is in the public interest, and that it would support transparent and lawful government decision-making.

#### *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. 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**

I note that you have requested the waiving of processing fees as the information is of special benefit to the public. In accordance with section 107(2)(b) 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

Signed electronically

Craig Weller

Information Officer

A/g Executive Branch Manager, Statutory Planning

Environment, Planning and Sustainable Development Directorate

3 February 2023