



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923
Reference: 24/064951

Dear [REDACTED]

Decision on Freedom of Information Access Application 24/064951

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 19 June 2024.

Specifically, you are seeking:

- *“Internal discussion regarding timing of notification of the decision on DA 202342470 to submitters of public representation.*
- *Anything pertaining to the assessment of and decision on DA 202342470.*
- *This is for both formal assessment templates and statements against codes, criteria, etc as judged by ESPDD, and information (excluding the text of public representations) that may have been passed around, to, or from EPSDD that would influence the assessment.*
- *This is for information on how the application was judged to meet whatever criteria and submissions it was assessed against.*
- *Information pertaining to the addressing of public representations concerning 202342470, noting that the original texts / messages as they were received by EPSDD are NOT required:*
- *Responses from the applicant and JACS about the public representations and addressing of these representations.*
- *IF the full text of submissions including attachments was not passed to the applicant or JACS, the consolidated form in which they were passed on.*
- *Anything pertaining to the recreational value of the site of 202342470, apart from an original submission message.*
- *Anything pertaining to comparison of the development proposal to an industrial development, apart from an original submission message.*
- *Anything pertaining to the public release of information that would demonstrate how representations were addressed.*
- *Anything pertaining to reason why public representations were not addressed properly and are not portrayed accurately in the Notice of Decision for DA 202342470.*
- *Anything pertaining to the location on a prominent hill, how that affects the integrity of the zoning, and why this feature should be destroyed to develop the site, apart from an original submission message.*

- Anything pertaining to EPSDD's characterisation and enumeration public representations and the number of favourable and unfavourable submissions.
- Anything pertaining to consideration of alternative locations as suggested in public representations, apart from an original submission message.
- Information, apart from the original submission message and attachments, on representation WVPS7XY4 (submitted 29 January 2024, within the notification period) and whether it was received, whether it was passed to the applicant or JACS and how it was considered.
- Anything not able to be released before the issue of the notice of decision that could be released after that notice was released for FOI 24/009432.

— The date range of this application is from the date of the latest information occurring in FOI 24/009432, namely the 23rd of January 2024 to the date of this submission”.

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

In accordance with section 40 of the Act, and as third party consultation was undertaken, a decision on your access application must be made on or by 21 August 2024.

Searches Conducted

Comprehensive searches were conducted and 20 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 11 documents relevant to your application
- grant **partial** access to nine documents relevant to your application.

Documents that were refused access from your previous application have been provided to you except where legal professional privilege (schedule 1, 1.2 of the Act) still applies, or they are publicly available (as per section 43 and section 45 of the Act). Further details regarding publicly available information are outlined below.

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, 50, Schedules 1 and 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
- information released to you previously
- information publicly available

Public Interest Considerations

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

Publicly Available Information – Section 43 and Section 45

As per section 43(1)(d) of the Act, a respondent may refuse to deal with an access application wholly or in part if the government information is already available to the applicant. Government information is considered already available to the applicant when it is publicly available (section 45(a) of the Act).

Documents relevant to your application were identified to be already available via the decision published for [DA 202342470](#) on the [ACT Planning](#) website. As these documents are already publicly available, these documents have been refused in accordance with section 43(1)(d) and section 45(a) of the Act.

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)(ii) – contribute to positive and informed debate on important issues or matters of public interest.
- 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. 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)(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/accountability-and-oversight/freedom-of-information/foi-complaints-and-reviews>

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 EPSDFOI@act.gov.au or (02) 6207 1923 and ask for the Information Governance team.

Yours sincerely

(electronically signed)

Craig Weller
Information Officer
Executive Branch Manager, Statutory Planning
Environment, Planning and Sustainable Development Directorate
21 August 2024