



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923
Reference: 21/83086

By Email: [REDACTED]

Dear [REDACTED],

Decision on Freedom of Information Access Application 21/83086

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 10 September 2021, in which you sought access to documents relating to all RZ1 zoned properties in the ACT. On 20 September 2021 EPSDD issued an 'intent to refuse to deal with application' notice under section 43 of the Act and suspended your application pending major scope refinement. On 26 October 2021, you responded with a refined scope, relating to two properties: 21 Packer Street Weetangera (block 31, section 34) and 12 Kilby Crescent Weetangera (block 6, section 37).

Specifically, you are seeking:

"Confirmation that these two properties, both located in an RZ1 zone, were given approval to be subdivided and, assuming that they were, details such as the date of development approval, the decision-maker/approving officer, and the reasons for approval."

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

An extension was granted to allow time for locating and processing physical records during COVID-19 working arrangements, and as such EPSDD must make a decision on your application on or by 14 December 2021.

Searches Conducted

Comprehensive searches were conducted and five 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 partial access to these five 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 FOI Act, particularly sections 6, 17, 43, 50, and Schedule 2
- the content of the documents that fall within the scope of your request
- the *Information Privacy Act 2014*, and
- 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, 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.

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.

21 Packer Street Weetangera - Block 31 Section 34 Weetangera

The site was approved for subdivision under section 20 and Section 27 of the *Unit Titles Act 2001* on 31 October 2003, and 12 November 2003 respectively - by Phil Bozykowski.

As the time taken to lodge the approved units plan with land titles for registration exceeded the permitted 3 months, an approval was sought for the re-endorsement of the units plan. Approval under section 28 of the unit titles Act 2001 was given by Dulce Lander on 18 February 2004 and the units plan was re-endorsed.

12 Kilby Crescent Weetangera - Block 6 Section 37 Weetangera

The site was approved to be subdivided under section 20 and Section 27 of the *Unit Titles Act 2001* on 19 June 2002 and 20 June 2002 respectively - by Monica Saad.

Reasons for approval in both cases:

It was determined that the applications met the requirements (at that time) set out in section 20 of the *Units Titles Act 2001*, one of which being that it is not in breach of the Land (Planning and Environment) Act 1991. Approval requirements are set out in the Section 20 documents attached.

It should be noted that:

- in the case of 21 Packer Street, the approving officer was satisfied that the dual occupancy existing at the time the units plan was approved was lawfully constructed prior to 30 September 2003 as was required by the Territory Plan at that time as the site lies within what is now the RZ1 suburban zone.
- In the case of 12 Kilby Crescent, the approving officer was satisfied that the dual occupancy existing at the time the units plan was approved was lawfully constructed. No date relating to construction timeframes existed in the Territory Plan at that time.

Charges

No charges are applicable to this application, the number of pages to be released is below the minimum 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

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
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.

Yours sincerely



George Cilliers

Information Officer

a/g Executive Group Manager, Statutory Planning

Environment, Planning and Sustainable Development Directorate

10 December 2021