



ACT
Government

Environment, Planning and
Sustainable Development

Phone: 02 6207 1923

Reference: 19/20001

Dear [REDACTED]

Freedom of Information - 19/20001

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Environment, Planning and Sustainable Development Directorate (EPSDD) on 21 June 2019, in which you sought access to documents relating to Block 5 Section 28, Reid.

Specifically, you are seeking:

- A. *the reasoning and decision in relation to the Building Approval (BA) 20191985, a knockdown/rebuild Mr Fluffy site at 23 Dirrawan Gardens, within the Reid Housing Precinct*
- B. *the reasoning and decisions by the Conservator of Trees for the mature trees on this block*

"The request includes:

1. *the referral documentation of the proposed building plans to the Heritage Council*
2. *why the process was unlike the two other Mr Fluffy houses in Reid: 46 Euree and 72 Coranderrk streets*
3. *copies of the certifier's documentation*
4. *the approved plans*
5. *placement of easements marked on plans provided to some neighbours*
6. *the response by the Heritage Council to the Environment and Planning Directorate and Heritage Unit*
7. *the Notice of Decision in relation to requirements to meet regulated standards for building a single house dwelling*
8. *any email correspondence, phone and text notes relation the EPSD decisions regarding this BA*
9. *dates and copies of meeting notes from the Heritage Unit and Heritage Council on the deliberations on this approval*
10. *references to the relevant legislation, technical amendments, regulations and variations to the Territory Plan that enable this proposal to proceed as a BA in this Heritage-listed RZ1 zone*
11. *any further information relating to complying with, and maintaining the heritage listed character of the suburb."*

Your request was partially transferred to Transport Canberra and City Services, and Chief Minister, Treasury and Economic Development Directorate, as it was expected that documents relevant to your request, may be held by these Directorates.

No development application was lodged for Block 5 Section 28 Reid, therefore, there is no Notice of Decision issued.

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 party consultation was undertaken, the EPSDD is required to make a decision on your access application by 9 August 2019.

Searches Undertaken

Searches were completed for relevant documents, and 60 documents were identified that fall within the scope of your request.

I have included as **Attachment A** to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

Decision on Access

I have decided to grant access in full to 27 documents relevant to your request.

I have decided to refuse access to five documents, under section 45(a) of the Act, as these documents are publicly available, hyperlinks to the information are included in the schedule of documents.

Thirteen duplicate documents have been noted in the schedule but not provided, these items include emails presented in later email threads and duplicate attachments.

Documents identified as relevant to your request contain information that I consider to be: information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

I have decided to grant access to these 15 documents, under section 50 of the Act, to copies of documents with deletions applied to information that I consider would be contrary to the public interest to disclose. These documents are indicated on the schedule as for 'Partial Release'.

Third party consultation was conducted, no response was received.

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 17, 38, 43, 45, 50 and schedule 2;
- the content of the documents that fall within the scope of your request;
- the *Information Privacy Act 2014* (Privacy Act)
- the *Human Rights Act 2004*

Public Interest Considerations

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

Information Disclosure – Contrary to the Public Interest under Schedule 2 of the Act

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 collectively.

Personal Information

I have considered that the release of the information relevant to your application may promote open discussion of public affairs and enhance the government's accountability, contribute to positive and informed debate and reveal the reason for a government decision and any background or contextual information that informed the decision.

Some of the documents relevant to your application contain information that includes the image, name and contact details of a third party individual and the internal layout of a residence, which I consider, if disclosed, could reasonably be expected to prejudice the protection of an individual's right to privacy under the *Human Rights Act 2004*. I have considered whether public benefit would be served by the release of this information and I have decided, on balance, that it would be contrary to the public interest to disclose this information.

Charges

Pursuant to the *Freedom of Information (Fees) Determination 2018* processing charges are applicable for this request, due to the total number of pages to be released to you exceeding the minimum charging threshold of 50 pages. However, the charges associated with your access application, have been waived under section 107(2)(d) of the Act.

Online Publication

Under section 28 of the Act, the EPSDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application 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's disclosure log at

<https://www.environment.act.gov.au/about/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:

http://www.ombudsman.act.gov.au/_data/assets/pdf_file/0026/79190/40A-Reviews-Factsheet-and-Application-Form-final-A1569634.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



Ian Walker

Information Officer
Environment, Planning and Sustainable Development Directorate

7th August 2019