



**ACT**  
Government

Environment, Planning and  
Sustainable Development

Phone: (02) 6207 1923  
Reference: 22/59434

Dear [REDACTED]

### **Decision on Freedom of Information Access Application 22/59434**

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 May 2022, in which you sought access to documents relating to DA 202037990 for Block 9 Section 33 Torrens.

Specifically, you are seeking:

*In relation to DA-202037990 Block 9 Section 33 Torrens:*

*Conditions of Approval (Part A of NOD)*

- *Condition 1 - Copy of Crown Lease for 9/33 Torrens that permits development*
- *Condition 4 – Revised site, floor, landscape and architectural drawings showing windows to the upper floor level, particularly the unscreened element*
- *Condition 4 – Evidence of compliance with the use of obscured glass or a high sill window*
- *Condition 5 – Approval from Icon Water*
- *Condition 6 – Evidence that works within TPZ has been monitored and overseen by a suitable qualified arborist*
- *Condition 7e – the Landscape Management and Protection Plan*
- *Condition 7f - Plan showing the new verge crossing is no closer than 5 metres from the edge of the street tree trunk*
- *Condition 10 - Evidence of the lessee's reasonable steps to obtain written agreement from neighbours before the erection of any new fencing*
- *Condition 12 - Location of air conditioning/air pumps and assessment of impact on detrimental impacts on the amenity of on-site residents.*

*Noise*

- *Evidence that air conditioning units will comply with the noise standard at the block boundary*

*Multi-unit Housing Development Code - the assessment of DA 202037990 against the Rules and criteria, including:*

- *Table A6 - evidence of 6m setback for unscreened elements on upper floor*
- *R38 and C38 - evidence of 40% of the total site area allocated to communal open space or private open space that has sufficient space for planting trees with deep root systems and provision of outdoor areas for range of uses and activities*
- *R38 evidence that 20% of the area is planting area*

- *C56A - assessment advising that the design of the buildings encourages high quality architectural standards that contribute to a visually harmonious streetscape character with variety and interest, whilst not detrimental to, or overtly detracting from the existing streetscape character.*
- *C59 - assessment of the evidence provided demonstrating that reasonable privacy between dwellings on the same block is achieved through design solution*
- *C60 - assessment of the evidence provided demonstrating that reasonable privacy of principal private open space of each dwelling is achieved through design solution.*
- *C61 - assessment that the principal private space achieves a) to f) and described in Table A9*
- *section of the law that says an area over 2 metres from the ground with a standard door is considered to be foundations*

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 of time was granted to allow for third party consultation. As such, EPSDD must make a decision on your application on or by 29 June 2022.

### **Searches Conducted**

Comprehensive searches were conducted and 11 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 eight documents relevant to your application.

I have decided to grant partial access to three 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, 50, and Schedule 2
- the content of the documents that fall within the scope of your request
- the *Human Rights Act 2004*
- the views of the third party consulted

### **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)(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/\\_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 Group Manager, Statutory Planning  
Environment, Planning and Sustainable Development Directorate

29 June 2022