



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923
Reference:21/12283

Dear [REDACTED]

Freedom of Information 21/12283

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 9 February 2021, in which you sought access to documents relating to Block 14 (previously Blocks 9 and 11), Section 8 Fyshwick

Specifically, you are seeking:

Documents pertaining to the preparation of a draft lease being an attachment to the Notice of Decision for DA202036891 for the consolidation of Block 9 with Block 11 Section 8 Division Fyshwick.

Documents would include:

- *Emails, records of phone conversations and all other communication between ACT Planning and Land Authority (DA202036891 merit assessment and DA leasing inclusive but not limited to) and Purdon Planning Pty Ltd and Capital Recycling Solutions Pty Ltd and any representatives of these companies with regard to the formulation of the draft lease an attachment to the Notice of Decision above;*
- *All documents including the agenda and record of any meeting held to discuss the draft lease for Blocks 8 + 11 consolidation and subsequent communication between the Authority and representatives of CRS and Purdon Planning and any representatives of these companies;*
- *The amount of Lease Variation Charge paid with regard to the lease registered Vol2427 Folio 22 at 4 November 2019;*
- *The amount of Lease Variation Charge paid with regard to the lease registered Vol 3004 Folio102 at 15 December 2020.*
- *Any Form 044 Application to Vary a Crown Lease lodged for Blocks 9, 11 or 14 Section 8 Fyshwick.*

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 and an extension to the due date was granted, EPSDD must make a decision on your application on or by 16 April 2021.

In relation to point 3 of your application, the Crown Lease (Volume 2427 Folio 22) was granted due to the direct sale of Block 11 Section 8 Fyshwick and no lease variation had occurred.

In relation to point 5 of your application, EPSDD confirmed with Land Titles that no Form 044 (Application to Vary a Crown Lease) was lodged for either Blocks 9, 11 or 14, Section 8 Fyshwick.

Searches Conducted

Comprehensive searches were conducted and 18 documents within the scope of your application were located.

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.

I have decided to grant partial access to two 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.

Third Party Consultation

In accordance with section 38 of the Act, third party consultation was undertaken. No objections to release were provided by the third party.

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, 38, 50, and schedule 2
- the content of the documents that fall within the scope of your request
- the *Information Privacy Act 2014*
- 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 2.1(a)(i) – promote open discussion of public affairs and enhance the government’s accountability
- Schedule 2.1(a)(ii) – contribute to positive and informed debate on important issues or matters of public interest
- Schedule 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(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

No charges are applicable to this application, the number of pages to be released is below the minimum threshold considering the documents which are public register associated documents available under section 30 of the *Planning and Development Act 2007*.

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
Executive Branch Manager Statutory Planning
Environment, Planning and Sustainable Development Directorate

15 April 2021