



**ACT**  
Government

Environment, Planning and  
Sustainable Development

Phone: (02) 6207 1923  
Reference: 22/130236



Dear 

### **Decision on Freedom of Information Access Application 22/130236**

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 27 September 2022, in which you sought access to documents relating to Conservator of Flora and Fauna information - Block 103 Section 22 Hume.

Specifically, you are seeking:

*Access to information is sought under the Freedom of Information Act 2016 (the Act) in respect of Block 103 Section 22 HUME. In particular,*

- *any decision or communication to or from The Conservator of Flora and Fauna related to regulated or dead trees located on property;*
- *any written or digital observation or report on the condition of any regulated or significant tree on the property*
- *any communication with respect to the fauna overlay that exists over part of the property the Environment, Planning and Sustainable Development.*
- *any written or digital observation or report on the condition of any regulated or significant tree related to the application for subdivision of Block 1210 of Deposited Plan 5759*

I am an Information Officer appointed under section 18 of the Act to deal with access applications made under Part 5 of the Act. EPSDD must make a decision on your application on or by 26 October 2022.

### **Searches Conducted**

Comprehensive searches were conducted and 7 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 5 documents relevant to your application;
- refused access to 2 documents. These documents have been refused as I consider the information to be contrary to the public interest.

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

### **Public Interest Considerations**

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

#### Information Disclosure – Contrary to the Public Interest under Schedule 1 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.

#### **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)(xvi) – Prejudice a deliberative process of government.

### Deliberative Process of Government

Documents identified in scope of the request have been prepared by the proponent for consideration prior to lodgement of a development application. These documents contain current considerations relating to deliberative process by government, which if released, could compromise the development application 202139597 required for consideration under the *Planning and Development Act 2007*. The information has been provided to inform EPSDD regarding a decision concerning the development of Block 103 Section 22 Hume.

I have deliberated on how the release of this information would reveal reasons for government decisions and how principles of transparency and accountability would be served.

Certain matters raised within these documents are currently under consideration by the Agency and the proponent.

It is my view that the information contained in these documents are subject to an active deliberative process and contains information which was prepared and communicated in the course of evaluating consideration of this development application. The premature release of this information may impede the effective completion, and prejudice the integrity, of these activities.

The deliberative process may also be prejudiced under section Schedule 2.2(a)(xvi) of the Act, by the release of these documents at this point in times it may cause undue disruption and reallocation of resources to deal with further public debate or pressure.

The development application and associated documentation once considered will go to public notification and will be available for viewing at:

<https://www.planning.act.gov.au/development-applications-assessments/development-applications/decided-development-applications>

### **Charges**

In accordance with the *Freedom of Information (Fees) Determination 2018* no charges are applicable to this application, the number of pages to be released is below the minimum 50 page 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](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 

  
Bren Burkevics

Information Officer

Executive Group Manager, Environment, Heritage & Water

25 October 2022