



**ACT**  
Government

Environment, Planning and  
Sustainable Development

Phone: (02) 6207 1923  
Reference: 22/127068

Dear [REDACTED]

### **Decision on Additional Government Information Identified (FOI 22/127068)**

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 19 September 2022.

Specifically, you were seeking:

*"...documents generated or received by the ACT Government in relation to Development Application no. 20213949.*

*Documents should include the following:*

- *Correspondence between the Minister and ACT Planning*
- *Any Ministerial briefings*
- *Any correspondence between the Minister and any ACT Labor or ACT Greens MLA's*
- *Any research/information the ACT Government has in relation to the commercial viability of the site and the desires of the residents of McKellar.*
- *Any information the ACT Government has in relation to the closing of the previous commercial tenants up until 2010."*

I am an Information Officer appointed under section 18 of the Act to deal with access applications made under Part 5 of the Act. On 19 October 2022, Craig Weller (Executive Branch Manager, Statutory Planning) made a decision regarding access to thirty-five documents identified as in scope of your application.

Following this decision seven additional documents were identified as within scope of your application. In accordance with section 36 of the Act EPSDD may make a further decision under section 35 of the Act in relation to this additional government information.

#### **Access Decision**

I have included as **Attachment A** to this decision the document schedule. The schedule provides a description of the documents that falls within the scope of your application and the access decision for these documents.

For the reasons set out below, I have decided to:

- grant full access to five of the documents relevant to your application, and

- partial access to two of the 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.

In reaching my access decision, I have taken the following into account:

- the FOI Act, particularly sections 6, 17, 36, 38 and Schedule 2
- the content of the documents that fall within the scope of your request
- the *Human Rights Act 2004*
- the views of third party consulted.

The documents released to you by my decision are provided as **Attachment B** to this letter.

## **Reasons for Decision**

### Third Party Consultation

In accordance with section 38 of the Act, consultation was undertaken with a third party as information that may have been of concern to them was identified. No objection to release of the information was provided by the third party.

### 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 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.

I have considered the public interest regarding development applications and potential impacts, specifically the development of McKellar Shops, and that the release of the requested information may assist in public understanding of government decisions. I have also given regard to the advancing public understanding and transparency in government application processes.

#### *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 4 and 5 contain the personal mobile number of an ACT public servant. I am satisfied that the factors in favour of release can still be met while protecting the personal information of the individuals involved. I have therefore weighed the factor for non-disclosure more highly than the factor in favour of release in this instance. As a result, I have decided that release of this information (personal mobile phone numbers) could prejudice the employee’s right to privacy under the *Human Rights Act 2004*. Having applied the test outlined in section 17 of the Act and deciding that release of personal information contained in the documents is not in the public interest to release, I have chosen to redact this specific information in accordance with section 50(2) of the Act.

### **Charges**

No charges are applicable to this application.

### **Online Publication**

Under section 28 of the Act, EPSDD maintains an online record of access applications called a disclosure log. This decision and documents released will be added to the existing published entry in the EPSDD disclosure log no earlier than three days after you receive this decision.

[EPSDD 22/127068 - Environment, Planning and Sustainable Development Directorate - Environment \(act.gov.au\)](https://www.environment.act.gov.au/epsdd/22/127068)

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  
15 Constitution Avenue  
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 email [EPSDFOI@act.gov.au](mailto:EPSDFOI@act.gov.au) or contact EPSDD Customer Service on (02) 6207 1923 and ask for the FOI team.

Yours sincerely



Craig Simmons  
Information Officer  
Chief Operating Officer  
Environment, Planning and Sustainable Development Directorate

09 May 2023