



Dear [REDACTED]

Decision on Freedom of Information Access Application 24/036509

I refer to your application under section 30 of the Freedom of Information Act 2016 (the FOI Act), received by the Environment, Planning and Sustainable Development Directorate (EPSDD) on 5 April 2024, in which you sought access to:

Specifically, you are seeking:

“5. ...the following information in relation to the Conditional Environmental Significance Opinion made by the Conservator dated 12 October 2022 and issued as Notifiable Instrument NI2022-538 dated 25 October 2022:

(i) A copy of the application (including all related documentation and attachments) made to the Conservator of Flora and Fauna by Mbark FGC Retirement Pty Ltd, as represented by Mr David Consalvi, Director, under section 138AA of the Planning and Development Act 2007 for an environmental significance opinion to the effect that the development proposal set out in the application is not likely to have a significant adverse environmental impact (the application). For the avoidance of doubt, we are seeking all documents submitted to the Conservator with the application and any other information submitted in support of the application and listed on page 4 of the Schedule in NI2022-538, namely:

- *Federal Golf Club Retirement Village and Water Infrastructure – ESO Application Supporting Information (August 2022);*
- *Letters of Authorisation;*
- *Form 1M (as completed by the applicant).*

(ii) All correspondence (including emails, letters, text messages), diary notes, file notes or other records of conversations (including by telephone) and minutes of meetings in relation to any matters pertaining to the preparation of the application, assessment of the application and formulation of the Conditional Environmental Significance Opinion, between any of the following:

- *Staff in the office of the ACT Conservator of Flora and Fauna including the Conservator, officers, employees, contractors and agents, including but not limited to any members of the Environmental Significance Opinion application assessment team;*
- *The applicant Mbark FGC Retirement Pty Ltd and/or any representative of the applicant and/or any consultant representing the applicant, including but not limited*
- *to any person associated with consultants Umwelt or Tania Parkes & Associates or Canberra Town Planning;*
- *Any person representing a government, government department or directorate or authority other than the office of the Conservator;*

- *Any other individual or organisation, including but not limited to Michael Mulvaney, the Red Hill Regeneration Group commonly known as the Red Hill Regenerators, Wayne Fletcher, and the Garran and Hughes Residents Action Group also known as GAHRAG;*
- *Other external organisations, consultants and contractors with which the Conservator or their office consulted or otherwise engaged, including when seeking technical advice;*
- *The Minister for the Environment and their staff including officers, employees, contractors and agents;*
- *The Minister for Planning and their staff including officers, employees, contractors and agents.*

(iii) All documents including but not limited to briefs, de-briefs, evaluation reports, assessments, reviews, memoranda or the like prepared by the Conservator of Flora and Fauna or his office;

(iv) All documents including supporting documentation from the applicant, presentations, scientific papers, expert advice, etc relied upon by the Conservator to support the decision to issue the Conditional Environmental Significance Opinion for a development at Federal Golf Club;

6 ...the following information for the period from 1 January 2016 until 3 April 2024:

(i) All correspondence (including emails, letters, text messages, etc), diary notes, file notes or other records of conversations (including by telephone) and minutes of meetings in relation to any matters pertaining to the development of a retirement village at Federal Golf Club between any of the following:

- *Staff in the office of the ACT Conservator of Flora and Fauna including the Conservator, officers, employees, contractors and agents;*
- *Mbark FGC Retirement Pty Ltd and its directors, employees, contractors and agents, including but not limited to any person associated with consultants Umwelt or Tania Parkes & Associates or Canberra Town Planning;*
- *Federal Golf Club and its officers, employees, contractors and agents;*
- *Any person representing a government, government department or directorate or authority other than the office of the Conservator;*
- *Any other individual or organisation, including but not limited to Michael Mulvaney, the Red Hill Regeneration Group commonly known as the Red Hill Regenerators, Wayne Fletcher and the Garran and Hughes Residents Action Group (GAHRAG);*
- *Other external organisations, consultants and contractors with which the Conservator or their office consulted or otherwise engaged;*
- *The Minister for the Environment and their staff including officers, employees, contractors and agents;*
- *The Minister for Planning and their staff including officers, employees, contractors and agents;*

(ii) All documents (agreements, minutes, correspondence, emails, messages, records of conversations, etc) relating to any offers, agreements, undertakings or commitments made by the applicant in respect of funding research into the endangered Gang-gang Cockatoo;
(iii) All documents (agreements, minutes, correspondence, emails, messages, records of conversations, etc) relating to any offers, agreements, undertakings or commitments given to the Conservator by the applicant or required of the applicant by the Conservator.”

On 1 May 2024, the EPSDD Information Governance team sought to negotiate the time frame of point 6 of the application scope from 1 January 2016 to 1 January 2022, due to the volume of documents within scope of the application. Whilst you did not agree to this suggestion, you amended the time frame to 1 January 2018. You also agreed to refine the scope of your application by excluding some draft documents, correspondence addressed to Friends of Federal Fairway Inc and documents that are already a matter of public record.

In a letter to you dated 18 July 2024, Mr Damian Black (Information Officer) advised of his intention to refuse to deal with your application in its current form under section 43 (1) (a) because dealing with the application would require an unreasonable and substantial diversion of resources, specifically in relation to point 6 of your application. Mr Black advised that while we work with you to further refine the scope of point 6 of your application, EPSDD would continue to process point 5 of your application.

Authority

I am an Information Officer appointed under section 18 of the Act to deal with access applications made under Part 5 of the Act.

Decision on Access

This decision relates only to point 5 of your application (documents relating to the Conditional Environmental Significance Opinion). Comprehensive searches were conducted and 23 documents containing information within the scope of your application were identified.

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 13 documents relevant to your application; and
- partial access to 10 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.

Statement of Reasons

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

- the FOI Act, particularly sections 6, 17, 50 and Schedules 1 and 2
- the content of the documents that fall within the scope of your request
- the *Human Rights Act 2004*
- the views of third parties consulted
- your views regarding the public interest
- information publicly available.

Information Disclosure – Contrary to the Public Interest under Schedule 1 of the Act

The documents identified do not contain information that if disclosed would be contrary to the public interest under Schedule 1 of the Act.

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)(viii) – reveal the reason for a government decision and any background or contextual information that informed the decision.

Disclosure of this information would also reveal the contextual information that informed the decision on the Conditional Environmental Significance Opinion dated 12 October 2022 in relation to the development at Federal Golf Club. I have given these disclosure factors substantial weight.

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*.

Some of the information relevant to your application contain personal information of individuals. I consider the protection of an individual's right to privacy is a significant factor favouring nondisclosure. 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)(d) of the Act, charges applicable to this application are waived.

Rights of 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/accountability-and-oversight/freedom-of-information/foi-complaints-and-reviews>

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:

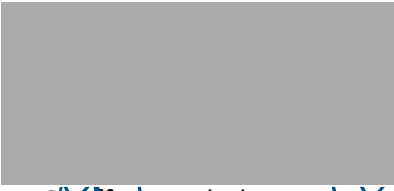
ACT Civil and Administrative Tribunal
15 Constitution Avenue
GPO Box 370
CANBERRA CITY ACT 2601
Telephone: (02) 6207 1740

<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 contact Melinda Hughes on (02) 6207 6502 or email to EPSDFOI@act.gov.au. I understand that you are currently working with Melinda Hughes and the Information Governance team to refine the scope of point 6 of your application.

Yours sincerely



Geoffrey Rutledge
Information Officer

Deputy Director-General, Environment, Water and Emissions Reduction
Environment, Planning and Sustainable Development Directorate

8 August 2024

08/08/24