

Dear [REDACTED]

### **Decision on Freedom of Information Access Application 22/11301**

I refer to your application made under section 30 of the *Freedom of Information Act 2016* (the Act) received by the Chief Minister, Treasury and Economic Development Directorate and transferred to the Environment, Planning and Sustainable Development Directorate (EPSDD) on 3 February 2022, in which you sought access to documents relating to the Lovett Tower DA.

Specifically, you are seeking:

*A full copy of the Lovett Tower DA – Development Application / NOD – Notice Of Decision – Accompanying DA Set Of Plans Elevations and Reports please – Known as Block 6 Sec 8 Phillip – Address – 5 Keltie St, Phillip.*

As part of this access application, public register documents have been provided to you informally.

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 undertake third party consultation, therefore EPSDD must make a decision on your application on or by 11 May 2022.

### **Searches Conducted**

Comprehensive searches were conducted and 34 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 ten documents, and partial access to 21 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.

I have refused access to three documents. These two of these documents are refused under section 45(g) of the Act, as they are available for purchase. One document is refused under Schedule 2, 2.2(a)(xi) as it contains the business affairs of a 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, 45, 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 third parties consulted
- information publicly available

### **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)(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*.
- Schedule 2, 2.2(a)(xi) - prejudice trade secrets, business affairs or research of an agency or person.

### **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.

### Business Affairs

Consideration has been given to scheduled item 32, and whether the information contained within the document contains information contrary to the public interest. The document is a report authored by a third party and includes research in the form of confidential and privileged valuations methodology and research underpinning the outcomes of the report.

If disclosed to competitors, this could place the third party at disadvantage and destroy or diminish the commercial value of the information. This information is not publicly available, and its common disclosure would likely prejudice the business affairs of the third party, a factor favouring nondisclosure under Schedule 2.2(a)(xi) 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



George Cilliers  
Information Officer  
a/g Executive Group Manager, Statutory Planning  
Environment, Planning and Sustainable Development Directorate

11 May 2022