



**ACT**  
Government

Environment, Planning and  
Sustainable Development

Phone: 6207 1923  
Reference: 22/79161

[REDACTED]  
Email [REDACTED]

Dear [REDACTED],

**Freedom of information request: 22/79161**

I refer to your applications under section 30 of the *Freedom of Information Act 2016* (the Act) received by the Environment, Planning and Sustainable Development Directorate (EPSDD) on 20 June 2022, in which you sought access to information relating to the amendment and approval of Development Application (DA) 202139308, and associated Assessment Advisory Panel determination.

As advised in writing on the 21 June 2022, both applications received on the 20 June 2022 were processed as one application under the Act.

On the 4 July 2022, as agreed documents in the possession of ACAT are not included in scope of the application.

The scope of your applications was seeking:

**Application 1**

*"...approval to the applicant for development approval DA 2021389308 (the applicant) at Block 15 Section 37 Griffith, otherwise known as 18 Lockyer St Griffith.*

- 1. All written communications from the Authority to the applicant in relation to DA 202139308, whether by letter, email, SMS, file notes, diary entries or records of telephone conversations, together with any attachments or enclosures, including any drafts, revisions and final versions and all electronic exchanges in whatever form, together with attachments and other related material;*
- 2. Any briefs, files notes, reports, minutes, summaries, diary entries or other records, together with any attachments or enclosures, including any drafts, revisions, and final versions, relating to any meetings between the Authority and the applicant to DA 202139308;*
- 3. All communications from the applicant to the Authority in relation to DA 202139308, irrespective of whether or not the communication was in response to a communication from the Authority, and whether by letter, email, SMS, or file notes, diary entries or records of telephone conversations, together with any attachments*

*or enclosures, including any drafts, revisions and final versions, and all electronic exchanges in whatever form, together with attachments and other related material;*

- 4. The amendment or amendments to DA 202139308 lodged on 7 April 2022;*
- 5. The name and positions of the decision maker who decided that no-one other than the applicant will be adversely affected by the amendments to DA 202139308;*
- 6. A list of the matters taken into account by the decision maker; and any briefs, advice, assessments, or other documents used by the decision maker, in making the decision in 5 above.*

## **Application 2**

*“The decision is signed by Chris Gell as “Delegate of the Planning and Land Authority”. Page 5 of the decision advises that the proposed development was referred to an Assessment Advisory Panel (the Panel).*

*I request copies of the following documents:*

- 1. A copy of the delegation held by Chris Gell when making the decision;*
- 2. Mr Gell’s position within the Authority when making the decision;*
- 3. The names and positions of all members of the Panel between 14 October 2021 and 23 May 2022;*
- 4. The names and positions of all employees of the Authority not members of the panel who were present at the any meetings of the Panel between 14 October 2021 and 23 May 2022;*
- 5. All written documents pertaining to the Authority’s policy or policies relating to the operations of the Panel, and in particular any criteria used to determine which development applications are to be referred to the Panel;*
- 6. The notice, minute, determination or document referring DA 202139308 to the Panel;*
- 7. Any briefings, background papers, minutes, advice, assessments, or correspondence, together with any attachments or enclosures, including any drafts, revisions, and final versions, relating to DA 202139308, or to the site at Block 15 Section 37 Griffith, otherwise known as 18 Lockyer St Griffith, prepared for, or given to any member of the Panel;*
- 8. Any minutes, records, comments, memoranda, phone records, SMS messages, or diary entries together with any attachments or enclosures, including any drafts, revisions and final versions relating to any meeting of the Panel considering in whole or in part matters relating to DA 202139308, or the site at Block 18 Section 37 Griffith;*

9. *Any decisions, determinations, conclusions, assessments, made reached, or arrived at by the panel at or after any meeting in 6 above;*
10. *Any instructions, advice, opinion, view, guidance, or perspective, in any form written or otherwise, given by the Panel as a whole or by any member of the Panel to Mr Gell I relation to any matter under consideration, or that should have been under consideration, in relation to DA 202139308, or to the site at Block 18 Section 37 Griffith;*
11. *Any written evidence of any kind considered by a member of the Panel or by Mr Gell arguing for or against the proposition that the proposed development was consistent with the definition of Supportive Housing under the ACT legislation....”*

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 is required to provide a decision on your access application in accordance with section 41 of the Act, by 18 July 2022.

#### **Searches conducted**

Comprehensive searches were conducted by the EPSDD for documents relevant to your application.

#### **Decision on Access**

Thirteen documents were located that fall within the scope of your request.

I have included as **Attachment A** to this decision the schedule of documents relevant to the scope of your request. The schedule provides a description of each document and the access to these documents.

I have decided to grant access in full, to nine documents relevant to the scope of your request.

I have decided to grant partial access to four documents relevant to your request as I consider information contained within these documents would, on balance, be contrary to public interest to disclose under the test set out in section 17 of the Act.

I have decided to grant access, under section 50 of the Act, to copies of these documents with deletions applied to the information that I consider would be contrary to public interest to disclose. My access decision is detailed further in the following statement of reasons and the documents released to you is 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 17, 47, 50, and Schedule 2;
- the *Information Privacy Act 2014*;
- the content of the documents that fell within the scope of your request.

## **Public Interest Considerations**

My reasons for deciding to not grant access to documents, and components of the documents are explained below; these documents contain information that I consider to be contrary to the public interest to disclose.

### **Information Disclosure – Contrary to the Public Interest under 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 accessing the public interest, I must apply the test outlined under section 17 of the Act which requires consideration of factors favouring disclosure, any favouring non-disclosure and the balance of those factors when considered cumulatively.

#### Factors Favouring Disclosure

Disclosure of the identified 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 Non-disclosure

In applying the public interest test, I have determined that disclosure of the information could reasonably be expected to do the following and meet relevant factors favouring non-disclosure:

- 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

Some items are scheduled for partial release as they contain information that falls within the meaning of personal information as defined by the Act.

I have considered the release of personal information including mobile numbers, email addresses and signatures, and my view in this instance is that the identification of third-party information would not serve to further open discussion, government accountability, informed debate and the provision of contextual or background information.

I am satisfied that the disclosure of this personal information could reasonably be expected to prejudice the protection of an individual’s right to privacy under the *Human Rights Act 2004*. This is a factor favouring nondisclosure under Schedule 2, section 2.2(a)(ii) of the Act.

In balancing public interest considerations, I am satisfied that, on the information available, disclosure of the identified personal information may constitute a breach of privacy and is therefore contrary to the public interest.

### **Online publication**

Under section 28 of the Act, EPSDD maintains an online record of access applications called a disclosure log. Under the Open Access Information Scheme, documents associated with access applications are published on the disclosure log no earlier than three days after a decision on access is provided to the applicant.

You may view the EPSDD's disclosure log at:

<http://www.environment.act.gov.au/about/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  
Executive Group Manager, Statutory Planning  
Environment, Planning and Sustainable Development Directorate  
18 July 2022