



Dear [REDACTED]

**Freedom of information request: 20/41098**

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Environment, Planning and Sustainable Development Directorate (EPSDD) on 19 August 2020, in which you sought access to information relating to Blocks 13 and 22, Section 22, Kingston.

Specifically, you are seeking:

*Any record held by Environment, Planning and Sustainable Development Directorate (EPSDD) associated with Geocon and Purdon Planning's proposed development at Blocks 13 & 22, Section 22 Kingston (Giles Street). This does not include the development application itself. This includes any records created or obtained by EPSDD either by observing discussions with Geocon/Purdon Planning or formal documentation between EPSDD and Geocon and Purdon Planning for the proposed development at Blocks 13 & 22, Section 22 Kingston (Giles Street).*

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 on or by the 16 September 2020. Thank you for your patience in this matter.

**Searches conducted**

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

**Decision on Access**

Sixty-five documents were identified that fall within the scope of your request. Refer **Attachment A** for the schedule. The schedule also provides a description of the documents and the access decision.

I have decided to grant full access to 14 documents relevant to your application.

I have decided to refuse access to 14 documents, as I consider the information contained within these documents to be contrary to the public interest.

I have decided to grant access to 37 documents with redactions applied to information that I consider would be contrary to the public interest to disclose, under section 50 of the Act. My access decision is detailed further in the following statement of reasons and the document 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, 43, 45, 50, Schedule 2;
- the content of the document that falls within the scope of your request;
- the *Information Privacy Act 2014*;

### **Public Interest Considerations**

My reasons for deciding not to grant access to components of 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**

In assessing the public interest, I must apply the descending test as outlined under section 17 of the Act which requires consideration of all the factors favouring disclosure, any favouring nondisclosure and the balance of those factors when considered collectively.

#### *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.

I have given regard to the special public interest in the proposed development application for Blocks 13 and 22, Section 22, Kingston and the release of some 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 development application processes. It is for this reason that I have decided to release to you 51 documents in part or in full (as outlined in the attached schedule).

#### *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:

- 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*
- Schedule 2.2(a)(xi) – prejudice trade secrets, business affairs
- Schedule 2.2(a)(xvi) – prejudice a deliberative process of government

### 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 and my view in this instance is that the identification of third parties 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.

### Business Affairs

Several of the documents within scope contain information relating to concept designs and business information considered prior to lodgement of the development application. The release of this information would reasonably prejudice trade secrets and business affairs, a factor in favour of non-disclosure under Schedule 2.2(a)(xi) of the Act. I have considered the release of business affairs information and whether its disclosure would provide relevant contextual, or background information.

In reaching my decision my decision I have weighed on balance these public interest considerations, and the information available. I have concluded that the disclosure of trade secrets and business affairs information would be an unreasonable disclosure and may prejudice the business affairs of Geocon and Purdon Planning under Schedule 2.2(a)(xi) of the Act and therefore, contrary to the public interest to release.

### Deliberate Process of Government

Documents identified in scope of the request have been prepared by the proponent for consideration before the National Capital Design Review Panel (NCDRP) prior to lodgement of a development application. These documents contain considerations by the NCDRP and material relating to deliberative process by government, which if released, could compromise NCDRP and deliberate process required for consideration under the *Planning and Development Act 2007*. This information was provided to inform decisions concerning consideration before the NCDRP prior to lodgement of a development application.

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 this information is subject to an active deliberative process and that the information contained in these documents and subsequent premature release of this information may impede the effective completion, and prejudice the integrity, of these commercial activities.

This deliberate 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 time and may cause undue disruption and reallocation of resources to deal with further public debate or pressure.

### **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. Documents containing your personal information will be published in redacted form to protect your privacy.

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 Gilliers

Information Officer

Executive Branch Manager Planning Delivery (E01072)

Environment, Planning and Sustainable Development Directorate

16 September 2020