



**ACT**  
Government

Environment, Planning and  
Sustainable Development

Phone: (02) 6207 1923

Reference: 21/96721

[REDACTED]  
By Email: [REDACTED]

Dear [REDACTED]

### **Freedom of Information 21/96721**

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 22 October 2021, in which you sought access to documents related to the decision to delay land release in the Molonglo Valley Commercial Centre.

In relation to the decision made in the ACT 2021-22 Budget for the delayed land release for the Molonglo Valley Commercial Centre, you are specifically seeking information, which could be in the form of ministerial briefing notes or submissions; file notes and emails (but not necessarily limited to such documents), which explains the following:

- *which area of the ACT Government initiated the proposal to delay releasing the land for the Molonglo Valley Commercial Centre;*
- *the reasons for the delay in releasing the land;*
- *if any consultation regarding the decision to delay releasing the land was undertaken across the ACT Government, Murrumbidgee MLAs or the ACT community and the outcome of that consultation; and*
- *if any consideration was given to the needs of Molonglo Valley residents and the failures with the Coombs shops before the decision was made.*

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 must make a decision on your application on or by 19 November 2021.

### **Searches Conducted – documents falling within scope**

Comprehensive searches were conducted and 19 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, which provides a description of each document and the access decision for each of those documents.

## Material Considered

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

- the FOI Act, particularly sections 6, 7, 17, 50, and schedules 1 and 2
- relevant case law
- the content of the documents that fall within the scope of your request
- the *Human Rights Act 2004*
- your views regarding the public interest
- information already publicly available.

## Decision on access

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 grant access to information subject to the Act, unless on balance, disclosure would be contrary to the public interest under the test set out in section 17 of the Act. Schedule 1 of the Act also identifies information, the disclosure of which, is taken to be contrary to the public interest.

On the balance of the information available to me, I have decided to:

- grant full access to 14 documents relevant to your application;
- grant partial access to three documents and, in accordance with section 50 of the Act, provide you with copies of these documents with deletions applied to the information that I consider to be contrary to the public interest to release; and
- refuse access to two documents on the basis that disclosure of the information in these records is deemed as contrary to the public interest under schedule 1, section 1.6 of the Act.

My access decisions are detailed further in the following statement of reasons and noted in the document schedule at **Attachment A**. The documents released to you are provided as **Attachment B** to this letter.

## Public interest considerations

My reasons for deciding not to grant access to certain documents and parts of these documents are as follows.

### ***Information disclosure contrary to the public interest - Schedule 1 of the Act***

I have considered schedule 1, section 1.6(1)(a), (b) and (d) of the Act, in relation to the documents referenced at 18 and 19 of the schedule at **Attachment A**. This section of the Act relevantly provides:

#### **1.6 Cabinet information**

(1) Information—

- a. that has been submitted, or that a Minister proposes to submit, to Cabinet for its consideration and that was brought into existence for that purpose; or
- b. that is an official record of Cabinet; or
- c. ...

- d. the disclosure of which would reveal any deliberation of Cabinet (other than through the official publication of a Cabinet decision).

The documents referenced at 18 and 19 of the schedule at **Attachment A** are cabinet briefing papers that I understand were submitted to Cabinet for its consideration in relation to the 2021-2022 to 2025-2026 Indicative Land Release Program and associated housing targets. As cabinet papers they are an official record of matters considered by Cabinet and disclosure, through release in response to your request, would reveal the deliberations of Cabinet.

I have considered the documentation and am satisfied that it does not identify corruption or the commission of an offence by a public official or that the scope of a law enforcement investigation has exceeded the limits imposed by law.

Accordingly, schedule 1.6(1)(a), (b) and (d) apply to these documents and access is refused on the grounds that disclosure would be contrary to the public interest.

***Information disclosure on balance contrary to the public interest – section 17 and schedule 2 of the Act***

In deciding whether, on balance, disclosure of the remaining three documents (see references 9, 11 and 12 of the schedule at **Attachment A**) would be contrary to the public interest, I must apply the test outlined in section 17 of the Act.

Relevantly, this provision requires that I:

- identify and consider any factors favouring disclosure, including any factor mentioned in schedule 2, section 2.1;
- identify and consider any favouring nondisclosure, including any factor mentioned in schedule 2, section 2.2;
- balance any relevant factor or factors favouring disclosure against any relevant factor or factors favouring nondisclosure;
- decide whether, on balance, disclosure of the information would be contrary to the public interest.

Unless, on balance, disclosure would be contrary to the public interest, I must allow access to these records.

**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)(ii) – contribute to positive and informed debate on important issues and matters of public interest;
- Schedule 2, 2.1(a)(iii) – inform the community of the government’s operations including the policies, guidelines and codes of conduct followed by the government in its dealings with the members of the community;
- Schedule 2, 2.1(a)(viii) – reveal the reason for a government decision and any background or contextual information that informed the decision.

I also note your views, expressed in the application, that “this issue is significant for the successful development of the Molonglo Valley and building the local community”.

I consider that the disclosing of the contents of scheduled items 9, 11 and 12 would significantly contribute to open discussion and informed debate on the matters contained in the documents. The scheduled documents provide the background information to the government's decision-making arrangements in relation to the Indicative Land Release Program and the release of the Molonglo group centre more specifically. I am satisfied there is a public interest in the decision-making process related to the deferral of the release of the land for the Molonglo group centre. The scheduled documents demonstrate that the risk assessments and associated considerations were presented, contextualised, and decided on through the papers and minutes of the Indicative Land Release Program's Steering Committee and Working Group prior to deliberations by Cabinet.

#### Factors favouring Nondisclosure

In applying the public interest test, I have determined that disclosure of some 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*.

The documents at 9, 11 and 12 of the schedule 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 these 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)(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



Carolyn O'Neill  
Information Officer  
A/g Executive Group Manager, Planning and Urban Policy

19 November 2021