



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923
Reference: 22/82979

[REDACTED]
By Email: [REDACTED]

Dear [REDACTED]

Decision on Freedom of Information Access Application 22/82979

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 27 June 2022, in which you sought access to documents relating to Development Application (DA) 202139248.

Specifically, you are seeking:

"...all documents informing the approval of DA202139248, which Notice of Decision is attached. I already have all 105 public representations and the attached Notice of Decision, a residents' Report and Excel spreadsheet also attached. I am after the entity and agency responses, the draft lease and communication as listed below during the assessment process. All documents are pertinent and timely with regard to an appeal to ACAT. I am familiar with and appreciate the diligence and integrity of the EPSDFOI team in its work.

Documents may include:

- *Emails, records, agendas of meetings, records of phone conversations and all other communication between ACT Planning and Land Authority DA202139248 merit assessment team with (but not limited to) the applicant Purdon Planning Pty Ltd acting on behalf of developer, Geocon*
- *Communication between the assessment team or other government employee(s) with the two companies above or their representatives*
- *ACTPLA assessment team request to the applicant for further information*
- *Communication re the above request including the amended DA*
- *Applicant response to public representations.*

Most important please

- *Representation and associated communication of all entities and agencies to DA202139248 (not including the 105 public representations as above)*
- *All communication pertaining to the draft Instrument of Variation, that is the draft Lease prepared by EPD Leasing*
- *A copy of the draft lease*
- *An updated Traffic Report if any*
- *An updated overshadowing report if any*
- *Any other report submitted by the applicant that needed amendment*

- *All information concerning the Conservator of Flora and Fauna, an entity to DA202139248*
- *Documents to explain what detail of the pre-DA endorsement by TCCS with regard to waste (see Notice of Decision page 4 under WASTE 5 o))*
- *All communication concerning receipt of the email with an attached report and spreadsheet analysis of the 105 public representations (both as attached above) from the Kingston and Barton Residents' Group sent 15 December 2021, 4:18PM to Chief Planner, Ben Ponton and responded Craig Weller, Thu 16/12/2021 9:26 AM*
- *Assessment by the ACTPLA Merit Assessment team or the applicant of the same attached report and analysis of the 105 public representations as above."*

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

Thank you for granting an extension of time; EPSDD must make a decision on your application on or by 2 August 2022.

Searches Conducted

Comprehensive searches were conducted and 185 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 165 documents relevant to your application.

I have decided to grant partial access to 20 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.

Material Considered

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

- the FOI Act, particularly sections 6, 17, 50, and Schedule 2
- the content of the documents that fall within the scope of your request
- the *Human Rights Act 2004*

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)(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*.

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.

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

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
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.

Yours sincerely



Georgē Cilliers
Information Officer
Executive Group Manager, Statutory Planning
Environment, Planning and Sustainable Development Directorate

2 August 2022