



**ACT**  
Government

Environment, Planning and  
Sustainable Development

Phone: (02) 6207 1923  
Reference: 24/036509

By email: [REDACTED]

Dear [REDACTED]

### **Decision on Freedom of Information Access Application 24/036509**

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 23 September 2024.

Specifically, you are seeking:

*“On the ESO, we request:*

1. *All communications, documents and correspondence held by Environment, Planning and Sustainable Development Directorate from November 2019 until 31 August 2022 specifically related to any application for, consultation on, or development of an Environmental Significance Opinion for the proposed retirement village development on Federal Golf Club in the location designated in the draft Red Hill Integrated Plan, between:*
  - a. *the Office of the ACT Conservator of Flora and Fauna;*
  - b. *EPSDD officials including Stacey Taylor, Laura Rayner, Michael Mulvaney;*
  - c. *Mbark FGC Retirement Pty Ltd and its directors, employees, contractors and agents, including but not limited to any person associated with its consultants Umwelt, Tania Parkes & Associates or Canberra Town Planning;*
  - d. *Federal Golf Club and its directors, employees, contractors and agents, including but not limited to [REDACTED]*
  - e. *the Red Hill Bush Regeneration Group commonly known as the Red Hill Regenerators and its members including but not limited to [REDACTED]*
  - f. *the Garran and Hughes Residents Action Group (GAHRAG) and its members including but not limited to [REDACTED].*
2. *And, all communications, documents and correspondence held by Environment, Planning and Sustainable Development Directorate outlining or declaring a conflict of interest in relation to any application for, consultation on, or development of an Environmental Significance Opinion for the proposed retirement village development on Federal Golf Club in the location designated in the draft Red Hill Integrated Plan, including but not limited to the following parties:*

- a. *Laura Rayner, as a subject matter expert upon whose contributions and advice the proponent's ESO application relies and who was asked to review the application by the Office of the Conservator of Flora and Fauna;*
- b. *Stacey Taylor, as a subject matter expert upon whose advice the proponent's ESO application relies and who was asked to review the application by the Office of the Conservator of Flora and Fauna;*
- c. *Red Hill Regenerators generally and/or [REDACTED]*
- d. *Michael Mulvaney, Conservation Officer for the Red Hill Regenerators, as a subject matter expert upon whose advice the proponent's ESO application relies;*
- e. *[REDACTED], Member of the Red Hill Regenerators, Co-Convenor of the Garran and Hughes Residents Action Group, [REDACTED] Garran, as a source of research that was used to favourably assess the merits of the proposal.*

*On the relocation of the development site to the southern part of the club land we request:*

3. *All communications, documents and correspondence held by Environment, Planning and Sustainable Development Directorate between 25 October 2017 and November 2019 specifically related to relocating the proposed site of Federal Golf Club's retirement village development from near the existing clubhouse to the current location (as first outlined in the Draft Red Hill Integrated Plan November 2019) on the southern part of the course, including the development of an access road off Kitchener Street, AND the ceding of approximately 12 hectares of Federal Golf Club land back into the Red Hill Nature Reserve, between:*
  - a. *the Office of the ACT Conservator of Flora and Fauna;*
  - b. *ACT Planning Authority;*
  - c. *Transport Canberra and City Services;*
  - d. *EPSDD officials including but not limited to Alix Kaucz, Michael Mulvaney;*
  - e. *Mbark FGC Retirement Pty Ltd and its directors, employees, contractors and agents, including but not limited to any person associated with its consultants Umwelt, Tania Parkes & Associates or Canberra Town Planning;*
  - f. *Federal Golf Club and its directors, employees, contractors and agents, including but not limited to [REDACTED]*
  - g. *the Red Hill Bush Regeneration Group commonly known as the Red Hill Regenerators and its members including but not limited to [REDACTED]*

- h. the Garran and Hughes Residents Action Group (GAHRAG) and its members including but not limited to [REDACTED]*
4. *And, all communications, documents and correspondence held by Environment, Planning and Sustainable Development Directorate outlining or declaring a conflict of interest in relation to the ceding of approximately 12 hectares of Golf Club land not currently used for golf into the Red Hill Nature Reserve, including but not limited to the following parties:*
- a. Red Hill Regenerators and/or [REDACTED]*
- b. Michael Mulvaney, Conservation Officer for the Red Hill Regenerators;*
- c. [REDACTED], Member of the Red Hill Regenerators, Co-Convenor of the Garran and Hughes Residents Action Group, [REDACTED] [REDACTED] Garran, as a source of research that was used to favourably assess the merits of the proposal;*
- d. Any other individual or organisation.”*

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

In accordance with section 40 of the Act, as third-party consultation was undertaken, a decision on your access application must be made on or by 26 November 2024.

### **Searches Conducted**

Comprehensive searches were conducted and 143 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 67 documents
- grant partial access to 75 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 and
- refuse access to one document as I consider the information to be contrary to the public interest.

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, 38, 50, Schedule 1 and 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
- your views regarding the public interest
- information released to you previously
- information publicly available
- the *Nature Conservation Act 2014*.

## **Public Interest Considerations**

My reasons for deciding not to grant access to certain documents or components of documents are as follows:

### **Information Disclosure – Contrary to the Public Interest under Schedule 1 of the Act**

Schedule 1 of the Act recognises a range of information that is taken to be contrary to the public interest to disclose unless the information identifies:

- 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.

Five documents contain information considered to be contrary to the public interest under Schedule 1.14(k) of the Act. These documents contain information that would on disclosure, prejudice the wellbeing of the habitat of an animal.

The *Nature Conservation Act 2014* defines ‘habitat’ as an area:

- occupied (continuously, periodically or occasionally) by an organism or group of organisms, or
- once occupied (continuously, periodically or occasionally) by an organism, or group of organisms, and into which organisms of that kind have the potential to be reintroduced.

This information 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.

### **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)(ii) – contribute to positive and informed debate on important issues or matters of public interest.
- Schedule 2, 2.1(a)(viii) – reveal the reason for a government decision and any background or contextual information that informed the decision.

I agree there is demonstrated and significant public interest from the Canberra community in relation to the development of the Federal Golf Club site, as such I have given substantial weight to the factors favouring disclosure.

### *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 have given significant weight to this factor favouring nondisclosure. 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 Information

Document 64 contains the link to a network drive and document location that if disclosed could prejudice the business affairs of a third party.

I have deliberated on how the public interest is served by the information assessed to be released to you, and what further benefit may be derived from the release of this link. I have considered the rights of third parties when dealing with the ACT Government, including information which is not publicly available.

On balance, I have decided that the detriment caused by the release of this information which may constitute a breach of confidence, outweighs any anticipated benefit provided by its release.

I consider the information in the document should be exempt from release. The release of the information could cause detriment to cyber security of a third party, factors favouring nondisclosure under Schedule 2.2(a)(xi) of the Act. I am therefore satisfied that, on the information available, disclosure of the identified business affairs information is contrary to the public interest.

### **Charges**

In accordance with section 107(2)(d) 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/accountability-and-oversight/freedom-of-information/foi-complaints-and-reviews>

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  
15 Constitution Avenue  
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



Information Officer  
Deputy Director-General, Environment, Water and Emissions Reduction  
Environment, Planning and Sustainable Development Directorate

19 November 2024