



ACT
Government

Chief Minister, Treasury and
Economic Development

Freedom of Information Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI Reference: CMTEDDFOI 2020-195

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	Published
4. Additional information identified	No
5. Fees	N/A
6. Processing time (in working days)	29
7. Decision made by Ombudsman	N/A
8. Additional information identified by Ombudsman	N/A
9. Decision made by ACAT	N/A
10. Additional information identified by ACAT	N/A

From: [EPSDFOI](#)
To: [CMTEDD FOI](#)
Cc: [White, Julie](#)
Subject: RE: request for information plans FOI for [REDACTED]
Date: Wednesday, 7 October 2020 1:48:46 PM
Attachments: [image001.png](#)

OFFICIAL

Good afternoon Team

Please see the below clarification of the access request received by EPSDD seeking documents possibly held on the building file.

Please advise if CMTEDD accepts transfer of the application.

Kind Regards

Angelina Aloisi | Freedom of Information and Records Officer

Information and Knowledge Management

Environment, Planning and Sustainable Development Directorate | ACT Government

Phone: 02 6207 7912 | Email: Angelina.Aloisi@act.gov.au

Level 5, 480 Northbourne Avenue, Dickson | GPO Box 158 Canberra ACT 2601 |

www.environment.act.gov.au | www.planning.act.gov.au

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This email, and any attachments, may contain confidential information. If you are not the intended recipient please notify the sender and delete all copies of this transmission along with any attachments immediately. You should not copy or use it for any purpose, nor disclose its contents to any other person.

From: [REDACTED]
Sent: Wednesday, 7 October 2020 12:35 PM
To: EPSDFOI <EPSDFOI@act.gov.au>
Cc: [REDACTED]
Subject: RE: request for information plans FOI for [REDACTED]

CAUTION: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Attention - Angelina Aloisi | Freedom of Information and Records Officer

Hi Angelina

I am emailing you on behalf of my client [REDACTED] re the email chain below.

The documents sought are the notification form 7A, site plans and elevations that are required to be provided to the neighbours by S1.19 of the Planning and Development Regulation 2008 for the exempt residence. The neighbours have not received these documents as required by law, the proponents refuse to provide them, and the compliance unit refuse to investigate the matter.

Can you please double check and confirm whether these documents are on the building file and if they are can you please provide them to my client.

If these documents are not on the building file please provide the latest approved building plans

that must be same as the set notified to the neighbours for the exemption to be valid.

Thanks and regards

From: [REDACTED]

Sent: Tuesday, 6 October 2020 5:49 PM

To: [REDACTED]

Subject: Fwd: request for information plans FOI for [REDACTED]

Hi [REDACTED]

This is an interesting reply for the FOI for the plan. What do I do now?

Thanks

[REDACTED]

----- Forwarded message -----

From: **EPSDFOI** <EPSDFOI@act.gov.au>

Date: Tuesday, October 6, 2020

Subject: request for information plans FOI for [REDACTED]

To [REDACTED]

OFFICIAL

Dear [REDACTED]

In relation to your application (below) received by the Environment, Planning and Sustainable Development Directorate (EPSDD) on 23 September 2020. Searches conducted have not identified the requested plan being submitted to ACT Planning and Land Authority.

Alternatively, an amended plan may have been submitted to Access Canberra as part of Building Approval, an option may be to amend your request to not specify ACTPLA and submit the revised application to Chief Minister, Treasury and Economic Development Directorate (CMTEDD) via CMTEDDFOI@act.gov.au

Please advise if you wish to withdraw your application from EPSDD. I can be contacted on 6207 7912 if you have any questions.

Kind Regards

Angelina Aloisi | Freedom of Information and Records Officer

Information and Knowledge Management

Environment, Planning and Sustainable Development Directorate | ACT Government

Phone: 02 6207 7912 | Email: Angelina.Aloisi@act.gov.au

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From: [REDACTED]

Sent: Wednesday, 23 September 2020 10:42 AM

To: EPSDFOI <EPSDFOI@act.gov.au>

Subject: request for information plans FOI for [REDACTED]

CAUTION: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Hi,

I am writing to you to request the updated plan submitted to ACTPLA for [REDACTED]. We received a letter with a landscaping plan but never the updated plan for the movement of the building 600mm closer to our boundary. We met with ACTPLA planning who agreed that this should not have been an exemption but the change would trigger a new DA. We met with the owner, builder and architect on 25th March 2019 to request a copy of the new building plans as they had changed. We took our solicitor [REDACTED] with us as witness to the meeting. At the meeting and in subsequent emails [REDACTED] agreed to send us the plans and elevations. After several months and many excuses later [REDACTED] sent an email stating he would not give us the revised plans which he was legally obliged to when they gave us the letter on the 25th January 2019. I have since contacted our neighbours at [REDACTED] who were on the neighbour consultation list and none of them received the letter or consultation about the change in the building plans even though they were on the list and the builder filled in a legal form that the neighbours had been consulted. I have a letter from my solicitor and one of the neighbours attached.

I would like to request a copy of the revised plan which were always meant to have and it is fraudulent that the builders said they had done neighbour consultation. Please find attached a copy of the original letter, confirmation from one of our neighbours in writing and confirmation from our solicitor.

You can call me on [REDACTED] to discuss this matter, but I should not have to ask for a FOI for the plans which were meant to be given to us in the first place.

Your Sincerely

[REDACTED]

Begin forwarded message:

From: [REDACTED]

Subject: Re: Copy of plans.

Date: 21 September 2020 at 3:24:23 pm AEST

To: [REDACTED]

Hi [REDACTED]

We have never at any stage received a plan package for [REDACTED]. We are at [REDACTED]

Regards,

[REDACTED]

Begin forwarded message:

From: [REDACTED]

Subject: [REDACTED]

Date: 22 September 2020 at 12:59:32 pm AEST

To: [REDACTED]

Dear [REDACTED]

I confirm I was engaged in a meeting with you and [REDACTED] at the offices of [REDACTED]. The purpose of the meeting was to discuss issues you had in respect of the development of a house on the neighbouring property at [REDACTED].

During that meeting [REDACTED] agreed to provide you with copies of the amended plans for the construction .

Regards,



Begin forwarded message:

From: [REDACTED]

Subject: Re: [REDACTED]

Date: 14 June 2019 at 4:44:56 pm AEST

To: [REDACTED]

Dear [REDACTED]

I will send you the updated plans on Tuesday which I think will show you the screening between houses Sorry for the delay .

All my best,



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Warning: Although the company has taken reasonable precautions to ensure no viruses are present in this email, the company cannot accept responsibility for any loss or damage arising from the use of this email or attachments.

On 12/6/19, 10:34 am, [REDACTED] wrote:

Hi [REDACTED]

We are still waiting on the information you promised to send as per our below email sent on the 26th March.

Hope you are feeling better.

Regards

[REDACTED]

Begin forwarded message:

From: [REDACTED]

Subject: Re: [REDACTED]

Date: 25 September 2019 at 12:45:48 pm AEST

To: [REDACTED]

Dear [REDACTED]

The reason I have not sent the elevations as they have not changed from the ones you have. The reason for that is that [REDACTED] have just decided on the landscape architect, and they can now complete their plans and then we can change ours to suit. There is no effect on your property from what you have seen so far only an improvement on the screening which will help you. As soon as I have those plans I can then send you revised plans to you both.

All my best,

[REDACTED]





ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI 2020-195

[REDACTED]
via email: [REDACTED]

Dear [REDACTED]

FREEDOM OF INFORMATION REQUEST

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 7 October 2020, in which you sought access to:

“The documents sought are the notification form 7A, site plans and elevations that are required to be provided to the neighbours by S1.19 of the Planning and Development Regulation 2008 for the exempt residence at [REDACTED].”

On 22 October 2020 you rescoped your request as [REDACTED] had already received some of the requested information. Your request was now to *“provide the Notification Form 7A for the exemption and its recorded date of supply to the neighbours of the site.”*

Authority

As an appointed Information Officer under section 18 of the Act, I am authorised to make a decision on access or amendment to government information in the possession or control of CMTEDD.

Timeframes

In accordance with section 40 of the Act, CMTEDD was required to provide a decision on your access application by 4 November 2020 however, following on from third party consultations, the due date is now 25 November 2020.

Third Party Consultation

In making this decision, third party consultation was completed in accordance with section 38 of the Act. The views of the relevant third parties were taken into consideration when making this decision.

Decision on access

Searches were completed for relevant documents and two documents were identified that fall within the scope of your request.

I have included as **Attachment A** to this decision the schedule of relevant documents. This provides a description of the documents that fall within the scope of your request and the access decision for those documents.

I have decided to grant access in full to one document and partial access to the other document.

My access decisions are detailed further in the following statement of reasons and the documents that will be released to you as **Attachment B** to this letter.

In accordance with section 54(2) of the Act a statement of reasons outlining my decisions is below.

Statement of Reasons

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

- the Act;
- the content of the documents that fall within the scope of your request;
- the *Human Rights Act 2004*.

Exemption claimed

My reasons for deciding not to grant access to the identified documents and components of these documents are as follows:

Public Interest

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interests lies. As part of this process I must consider factors favouring disclosure and non-disclosure.

In *Hogan v Hinch* (2011) 243 CLR 506, [31] French CJ stated that when ‘used in a statute, the term [public interest] derives its content from “the subject matter and the scope and purpose” of the enactment in which it appears’. Section 17(1) of the Act sets out the test, to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and Schedule 2 of the Act.

Taking into consideration the information contained in the documents found to be within the scope of your request, I have identified that the following public interest factors are relevant to determine if release of the information contained within these documents is within the ‘public interest’.

Factors favouring disclosure in the public interest:

- (a) *disclosure of the information could reasonably be expected to do any of the following:*
- (b) (xiii) *contribute to the administration of justice generally, including procedural fairness.*

Having considered the factors identified as relevant in this matter, I consider that release of the information contained in the document may contribute to procedural fairness by allowing you to have a copy of the documents that fall within the scope of your request.

Factors favouring nondisclosure in the public interest:

(a) *disclosure of the information could reasonably be expected to do any of the following:*

(b) (ii) *Prejudice the protection of an individual's right to privacy or other rights under the Human Rights Act 2004;*

Taking into account the submissions put to me by the relevant third parties as part of the consultation undertaken in accordance with section 38 of the Act and having reviewed the documents, I consider that the protection of an individual's right to privacy, especially in the course of dealings with the ACT Government is a significant factor as the parties involved have provided their personal information for the purposes of working with the ACT Government. This, in my opinion, outweighs the benefit which may be derived from releasing the personal information of the individual's involved in this matter.

Individuals are entitled to expect that the personal information they have supplied as part of this process will be dealt with in a manner that protects their privacy. Considering the type of information to be withheld from release, I am satisfied that the factors in favour of release can still be met while protecting the personal information of the individuals involved. I therefore weight the factor for non-disclosure more highly than the factor in favour of release in this instance. As a result, I have decided that release of this information (signature of individuals not employed by the ACT Public Service) could prejudice their right to privacy under the *Human Rights Act 2004*.

Having applied the test outlined in section 17 of the Act and deciding that release of personal information contained in the documents is not in the public interest to release, I have chosen to redact this specific information in accordance with section 50(2). Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that I believe is not in the public interest to release will ensure that the intent of the Act is met and will provide you with access to the majority of the information held by CMTEDD within the scope of your request.

Access to documents

Pursuant to section 38(6) of the Act, I am required to defer access to all the identified documents which release was objected to by third parties. These third parties may apply for review of my release decision within 20 working days after my decision, or a longer period allowed by the Ombudsman. I will write to you to advise when access is no longer deferred.

Charges

Processing charges are not applicable for this request because the number of pages to be released to you is below the charging threshold of 50 pages.

Online publishing – Disclosure Log

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published on the CMTEDD disclosure log after the conclusion of the third party review period. Your personal contact

details will not be published. You may view CMTEDD disclosure log at <https://www.cmtedd.act.gov.au/functions/foi/disclosure-log-2020>.

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 CMTEDD disclosure log, or a longer period allowed by the Ombudsman.

We recommend using this form [Applying for an Ombudsman Review](#) to ensure you provide all of the required information. 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/>

Should you have any queries in relation to your request please contact me by telephone on 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely



Philip Dachs
Information Officer
Information Access Team
Chief Minister, Treasury and Economic Development Directorate

17 November 2020



ACT
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Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST	Reference NO.
Notification Form 7A for the exemption and recorded date of supply to neighbours of the site.	CMTEDDFOI 2020-195

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1	Form 7A – Information for adjoining residents about proposed exempt development	Undated	Full release	N/A	Yes
2	2-3	Form 7B – Summary of written information for building certifier – compliance with exemption criteria	25 Jan 2019	Partial release	Sch 2 s2.2 (a)(ii)	Yes
Total No of Docs						
2						



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Environment, Planning and
Sustainable Development

Planning and Development Act 2007, S425

Form 7A - Information for adjoining resident about proposed exempt development

- to be completed by the proponent and provided to each adjoining resident

Why are you receiving this information?

The exemption criteria for demolition and development of single dwellings on land that has previously had a house built on it requires that information about the proposed development is provided to you as an adjoining resident. Development can be exempt from the need for a development application (DA) if it meets specified criteria. This type of development is known as 'DA exempt development'.

If you are a tenant please consider forwarding a copy of this information and the plans to the lessee or their managing agent.

What you should receive

1. Information sheet (Form 7A) explaining that development is proposed for the site indicated below; and
2. If the proposed development is a single dwelling a copy of each site plan and elevation plan.
A copy of the floor plan is not required to be provided to you.
If the proposed development is only for the demolition of a single dwelling no plans are required to be provided.

What this means for you

The information sheet and attached plans (if required) have been provided for your **information** only. Prior to any construction commencing, a private building certifier must confirm the development proposal meets the DA exemption criteria.

If the proposal meets all of the DA exemption requirements:

- no DA is required and there is no public notification or right of merit review; and
- a building approval can be granted and work can commence without any further notice.

If you have any questions about the proposed development please contact the nominated person which may be the proponent, builder or building certifier. They can discuss the proposal with you.



Single dwelling Demolition Please tick

Nominated person contact details

Name



Phone number



Email

Alternative
phone number

Role

NOTE: If the building certifier determines the proposed development does not meet the DA exemption requirements a DA will have to be lodged by the proponent and you will be notified during the public consultation phase of the DA process.



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Environment, Planning and
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Planning and Development Act 2007, S425

**Form 7B - Summary of written information for building certifier –
compliance with exemption criteria - Planning & Development
Regulation - to be completed by the proponent and provided to the building certifier**

What this form is for

You should complete this form (Form 7B) if you are proposing to:

- demolish a single residential dwelling (s1.100B); and
- construct a code compliant single residential dwelling on old residential land (s1.100 or s1.100A)

If you are proposing to do this type of development you are required under section 1.19, schedule 1, *Planning and Development Regulation 2008* to give written information about the proposal to each adjoining resident.

Process

1. Complete the form "Information for adjoining resident about proposed exempt development" (Form 7A) and if required attach a copy of the site plan and a copy of elevation plan. Give a copy of the completed form and plans to each adjoining resident. You can do this by placing in the letterbox, by-hand, by email etc.
2. Complete the details below. A copy of Form 7A including any attachments and this form (Form 7B) are required to be included in your application for building approval.

Information for building certifier – compliance with *Planning and Development Regulation 2008*

The information below is provided to demonstrate that s1.19, s1.100, s1.100A and s1.100B (as applicable), schedule 1, *Planning and Development Regulation 2008* has been complied with.

Proponent Name/s: [Redacted]

Block [Redacted] Section [Redacted] Suburb [Redacted] Unit No. [Redacted]

Street address [Redacted] Signature Sch 2.2(a)(ii) Date 25.1.19

Signature _____ Date _____

The following adjoining residences have been provided with a copy of Form 7A and if required the site plan/s and elevation/s plans.

	Adjoining residences Street address – please print	Method and date of delivery			Date
		Letterbox	In person	Other – please state	
1.	[Redacted]	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	25.1.19
2.	[Redacted]	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	25.1.19
3.	[Redacted]	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	25.1.19
4.	[Redacted]	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	25.1.19
5.	[Redacted]	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	25.1.19
6.	[Redacted]	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	25.1.19

If there is insufficient space please attach a separate sheet.

Privacy Notice

The personal information on this form is provided to the Planning and Sustainable Development Directorate (EPSDD) to enable the processing of your application. The collection of personal information is authorised by the *Planning and Development Act 2007*. If all or some of the personal information is not collected EPSDD cannot process your application. The personal information you provide may be disclosed where the Directorate reasonably believes that the use or disclosure of the information is reasonably necessary for enforcement-related activities conducted by, or on behalf of, an enforcement body. EPSDD's Information Privacy Policy contains information about how you may access or seek to correct your personal information held by EPSDD, and how you may complain about an alleged breach of the Territory Privacy Principles. The EPSDD Information Privacy Policy can be found at www.environment@act.gov.au

Contact Details:

Environment, Planning and Sustainable Development Directorate
Customer Service Centres
GPO Box 158, Canberra City 2601
16 Challis Street Dickson ACT 2602

Business Hours: 8.30am to 4.30pm weekdays (excluding Public Holidays)
Phone: (02) 6207 1923
Email: epcustomerservices@act.gov.au
Website: www.planning.act.gov.au



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Environment, Planning and
Sustainable Development

Planning and Development Act 2007, S425

**Form 7B - Summary of written information for building certifier –
compliance with exemption criteria - Planning & Development
Regulation - to be completed by the proponent and provided to the building certifier**

What this form is for

You should complete this form (Form 7B) if you are proposing to:

- demolish a single residential dwelling (s1.100B); and
- construct a code compliant single residential dwelling on old residential land (s1.100 or s1.100A)

If you are proposing to do this type of development you are required under section 1.19, schedule 1, *Planning and Development Regulation 2008* to give written information about the proposal to each adjoining resident.

Process

1. Complete the form "Information for adjoining resident about proposed exempt development" (Form 7A) and if required attach a copy of the site plan and a copy of elevation plan. Give a copy of the completed form and plans to each adjoining resident. You can do this by placing in the letterbox, by-hand, by email etc.
2. Complete the details below. A copy of Form 7A including any attachments and this form (Form 7B) are required to be included in your application for building approval.

Information for building certifier – compliance with *Planning and Development Regulation 2008*

The information below is provided to demonstrate that s1.19, s1.100, s1.100A and s1.100B (as applicable), schedule 1, *Planning and Development Regulation 2008* has been complied with.

Proponent Name/s: [Redacted]

Block [Redacted] Section [Redacted] Suburb [Redacted] Unit No. [Redacted]

Street address [Redacted] Signature Sch 2.2(a)(ii) Date 25.1.19

Signature _____ Date _____

The following adjoining residences have been provided with a copy of Form 7A and if required the site plan/s and elevation/s plans.

	Adjoining residences	Method and date of delivery			Date	
		Street address – please print	Letterbox	In person		Other – please state
1.	[Redacted]	[Redacted]	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	25.1.19
2.	[Redacted]	[Redacted]	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	25.1.19
3.	[Redacted]	[Redacted]	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	25.1.19
4.	[Redacted]	[Redacted]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
5.	[Redacted]	[Redacted]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
6.	[Redacted]	[Redacted]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

If there is insufficient space please attach a separate sheet.

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Contact Details:

Environment, Planning and Sustainable Development Directorate
Customer Service Centres
GPO Box 158, Canberra City 2601
16 Challis Street Dickson ACT 2602

Business Hours: 8.30am to 4.30pm weekdays (excluding Public Holidays)
Phone: (02) 6207 1923
Email: epdcustomerservices@act.gov.au
Website: www.planning.act.gov.au