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Peter Berlyn  
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Date: 16 May 2022  
Our Ref: 40-2122SC  
Enquiries: 03 5320 5659  
Email: sarahcuthbert@ballarat.vic.gov.au

Dear Peter,

I refer to your application received by Council 2 May 2022, in which you sought access to documents under the *Freedom of Information Act 1982* (FOI Act).

Specifically, you advised you are seeking access to:

1. *I request a copy of correspondence , if any, sent to all affected proprietors , either by the Ballarat City Council in its own right or as agent for the State of Victoria, advising that zoning of their properties had altered( or was being altered and invited submissions for or against) from ' Residential' to 'Residential Growth'.*

*On the 13th of April last, the Director of Planning reported to the Delegated Planning Committee Meeting that the change occurred in 2014 with an amendment in 2015. I am unable to verify these dates.*

*The geographic area affected is able to be loosely described as within the area to the east of Ballarat Grammar School, to the north by Norman Street, to the south by Howitt Street and to the west by Gillies. and contains a few excluded areas, eg Stockland Shopping Centre.*

2. *Also requested are copies of the documents indirectly referred to in the Instrument of Delegation from Council latest iteration to each person appointed from time to time as a member of the Planning Delegated Committee and includes under ' Powers and Functions' ;,'relevant policies and guidelines expressed in the introduction, at item 1, the 'Planning Committee Terms of Reference' ,and, at item 2.3:' guidelines or policies which from time to time Council adopts.'*

On 8 May 2022, you emailed Council the following:

*Depending on what document/s (if any) is located one or more dates will be exposed and on this basis, I wish to amend my FOI request to include documentary evidence (if any) that expresses which entity (if any) had the responsibility for consulting, receiving objections and giving notice of the aforementioned one or two changes remembering that a number of old time residents claim not to have ever received anything.*

### **Clarification**

I have examined the terms of your request and have determined that I require clarification in order to process your application. Section 17(2) of the FOI Act requires that a request for access to documents contain sufficient information concerning the documents to which access is sought to enable an officer to identify the relevant documents.

An applicant under the FOI Act must define with as much precision as possible the documents sought. If a request is ambiguous or otherwise ill defined, it may not comply with the FOI Act and may not be processed.

In its present form, I consider that the request does not meet the requirement provided for in section 17 of the FOI Act. Without further clarification it may not be possible to identify all of the documents which you are seeking to access.

Under section 17(3) of the FOI Act I have a duty to help you frame the request in such a way that it complies with section 17(2). Accordingly, I invite you to clarify the request so as to enable this office to identify the documents sought.

To assist you with the clarification of the terms of the application, the following information has been provided and questions posed.

#### Point 1

My understanding of this point is that you are seeking copies of the initial letters sent to affected property owners advising that zoning of their properties had been altered.

Furthermore, if the above does not exist you are seeking a document (in any form) which states which entity (if any) had the responsibility for consulting, receiving objections and giving notice of the aforementioned

Can you please confirm if my interpretation above is correct?

#### Point 2

In this Point of your application you have sought access to “*copies of the documents indirectly referred to in the Instrument of Delegation from Council latest iteration to each person appointed from time to time as a member of the Planning Delegated Committee and includes under ' Powers and Functions' ;'relevant policies and guidelines expressed in the introduction, at item 1, the 'Planning Committee Terms of Reference' ,and, at item 2.3:' guidelines or policies which from time to time Council adopts.'”*

My understanding is that in regard to ‘*copies of the documents indirectly referred to in the Instrument of Delegation from Council latest iteration to each person appointed from time to time as a member of the Planning Delegated Committee?*’ you are requesting the following documents which outline the Councillor Representation for Committees and External Bodies for 2022:

[Council Meeting agenda – 24 November 2021](#) (pg. 402)

[Council Meeting minutes – 24 November 2021](#) (pg. 22)

Furthermore, my understanding is that in regard to ‘*item 2.3 ‘guidelines or policies which Council from time to time adopts’* you are requesting the following documents to which the Instrument of Delegation refers:

[Governance Rules](#)

[Committee Policy](#)

[Planning Delegated Committee Terms of Reference](#)

[Policy for Council Consideration of Planning Applications](#)

Can you please confirm if my interpretation above is correct? And if so each of these documents are publicly available, therefore I have included the relevant links.

## **Freedom of Information process and timeframes**

In order to assist you, I have outlined below some of the provisions of the legislation and the various timeframes applicable to different steps in the procedure which will impact upon the processing of your matter.

### Decision making

When the relevant documents have been identified they will then be assessed and a variety of exemptions will be considered. The main exemptions are:

- Documents affecting personal privacy;
- Some internal working documents;
- Documents relating to trade secrets (both of Council and external entities).

After consideration of the exemptions under the FOI Act it could be that some or all of the relevant documentation cannot be provided to you.

### Third parties

Under the FOI Act, Council is required to consult with individuals, businesses and government agencies referred to in the requested documents before it is permitted to make a decision concerning access.

Once consultation is completed, and if Council makes a decision in opposition to the views of the individuals and businesses, or where they have not consented, they are each entitled to seek a review of the decision by the Victorian Civil and Administrative Tribunal (VCAT). Although a decision may be made to release the material, it must be withheld for 60 days pending the expiry of the review period.

### Access charges

Under section 22 of the FOI Act and the *Freedom of Information (Access Charges) Regulations 2014* access charges are applicable to FOI requests. A summary of the charges is as follows:

Search charges	\$22.215 per hour or part thereof
Copying charges	20 cents per black and white A4 page
Other charges – including transcription and colour copying	Reasonable costs incurred by the agency

Under section 22(4) of the FOI Act, if it is estimated that the charges may exceed \$50.00, a deposit of \$25.00 is required (if the calculated charge does not exceed \$100.00) before the request is further processed.

If the calculated amount will exceed \$100.00, the required deposit amount is 50% of the charge. Documents are not provided until the applicable charges are paid.

Until you clarify the application, a valid request does not exist under section 17 of the FOI Act and as a consequence the statutory timeframe to process this application has not commenced.

When clarification of the terms is received a search for documents relevant to the request will commence. Once the search is complete you will receive a further letter which will inform you of the requirement to pay a deposit towards the access charges applicable to the request.

Irrelevant material

When giving your response would you please also provide your advice concerning section 25 of the FOI Act? Under section 25, if a decision is made not to grant access to a document on the basis that it is an exempt document and/or it contains irrelevant material, Council is only required to provide you with an edited copy of that document (i.e. with the exempt material removed) if you have indicated that you would wish to receive an edited copy.

Diversion of resources

Under section 25A(1) of the FOI Act, access to documents can be refused on the grounds that the work involved in processing the request would divert the resources of the agency substantially and unreasonably from its other operations. I am drawing your attention to this section so that when you clarify your request it is done in such a way so as not to evoke this provision of the FOI Act.

Please note that if you:

- Fail to begin consulting with Council to clarify your request; or
- Fail to provide an amended request; or
- Fail to otherwise make the request compliant with section 17 of the FOI Act within 21 days from you receiving this notice, Council may refuse to comply with your request.

Should you require further information in relation to your application, please do not hesitate to contact me directly on 03 5320 5659.

Regards,



Sarah Cuthbert  
Statutory Compliance Officer