

Contact: Janelle Skipworth  
Telephone No: (03) 5153 9500  
Email: [foi@egipps.vic.gov.au](mailto:foi@egipps.vic.gov.au)  
Our reference: FOI477

**Corporate Centre**  
273 Main Street (PO Box 1618)  
Bairnsdale Victoria 3875  
**Telephone:** (03) 5153 9500  
**National Relay Service:** 133 677  
**Residents' Info Line:** 1300 555 886  
**Facsimile:** (03) 5153 9576  
**Email:** [feedback@egipps.vic.gov.au](mailto:feedback@egipps.vic.gov.au)  
**ABN** 81 957 967 765

2 September 2024

Ms Patsy Lisle

Via email only: [foi+request-11357-1f70896f@righttoknow.org.au](mailto:foi+request-11357-1f70896f@righttoknow.org.au)

Dear Ms Lisle

### **Notice of decision – request for documents under the *Freedom of Information Act 1982* (Vic)**

We refer to your request to East Gippsland Shire Council ("**Council**"), which you clarified via email on 2 July 2024, for access to documents under the *Freedom of Information Act 1982* (Vic) ("**FOI Act**") for access to:

"Documents about the Bastion Point ocean access facility received from consultants investigating problems with the facility and/or providing proposed solutions dating from the facility's opening in December 2014 until now. That includes the dilapidation report provided by Magryn and Associates in 2023." ("**Request**")

I also refer to your emails dated 12 July 2024 and 13 July 2024 where you advised that you seek draft versions of documents but do not seek access to the following:

- duplicate documents;
- commercial information of third parties; and
- any type of personal affairs information of third parties (including the types of personal affairs information that are defined by section 33(9) of the FOI Act.

You have also advised that you are content to receive documents with exempt or irrelevant material removed. That is, you are content to receive documents with any information that is exempt under the FOI Act removed, along with any information that is irrelevant to your Request (such as the personal affairs information and commercial information of third parties).

### **Preliminary matters**

I am authorised under section 26 of the FOI Act to make decisions on behalf of Council in relation to freedom of information requests.

After conducting a thorough and diligent search, the Council has identified 6 documents that fall within the scope of your Request. Of these, one document titled "Wharf Structures Condition Assessment Manual" is publicly available through Ports Australia - Wharf Structures Condition Assessment Manual at <https://www.portsaustralia.com.au/wscam>.

We have assumed that you would prefer to access this document outside the FOI Act, so that access charges will not apply. If this is incorrect, please let us know.

In making our decision on the remaining 5 documents, we have taken into account all relevant considerations including; the terms of your Request and willingness to receive copies of documents with exempt or irrelevant material removed, where practicable:

- the documents relevant to your Request, including their contents;
- information provided by Council's officers in relation to the documents;
- my knowledge and understanding of the FOI Act;
- the fact that you do not seek access to commercial information relating to third parties or personal information relating to third parties;
- the practicability of consulting with third parties to obtain their views on the disclosure of information in the documents; and
- the outcomes of consultations with third parties where required under the FOI Act.

### Decision and reasons

We have decided to grant you access in full to 5 documents with all personal information and commercial information of third parties removed as irrelevant.

### Review rights of third parties

We note that in this instance a third party has the right to apply for a review of our decision to release the information. We cannot release this information as the relevant business did not specifically consent to the Council disclosing their business, commercial and financial information during consultation under section 34(1)(b) of the FOI Act.

Under section 50(3A) of the FOI Act, that business now has the right to seek review of our decision to disclose that information to you. Section 52(3) of the FOI Act provides that the business has 60 days from receiving notice of my decision to disclose to make such a review application to the Victorian Civil and Administrative Tribunal ("**VCAT**"). Until the expiry of that review period, we are unable to provide you with access to the document.

If Council does not receive notification from the VCAT of an application for review of its decision by the relevant business within the next 70 days, then we will contact you to arrange a time for you to inspect the document under supervision, provided that there are no outstanding access charges remaining payable at that date.

### Access charges

The FOI Act requires that access charges be paid before documents are provided pursuant to a request for access. The access charges payable in respect of the documents being released in response to the Request have been calculated by me in accordance with section 22 of the Act and the *Freedom of Information (Access Charges) Regulations 2014* ("**Regulations**") as follows:

Search time x 1.5 hours @ \$24.50 per hour or part thereof: <sup>1</sup>	\$36.75
Supervised inspection @ \$6.12 per quarter hour <sup>2</sup> (18 pages)	\$6.10
<b>Total charges payable</b>	<b>\$42.85</b>

You will be given access to the documents once the Council has received payment of the access charges in full.

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<sup>1</sup> Item 1, Regulations, where the charge is 1.5 fee units per hour or part of an hour and a fee unit is currently \$16.33.

<sup>2</sup> Item 2, Regulations, where the charge is 1.5 fee units per hour calculated per quarter hour or part of a quarter hour. A fee unit is currently \$16.33.

You can make the access charges payment by one of the following options:

- In person at one of [Council's Service or Outreach Centres](#) by credit card, cheque, money order or cash; or
- Over the phone, by contacting Customer Service on (03) 5153 9500; or
- Cheque or money order (made payable to East Gippsland Shire Council) posted to PO Box 1618 BAIRNSDALE, VIC, 3875.

Please quote **FOI477** to make the payment.

### ***Supervised inspection of documents***

As 2 documents are subject to copyright subsisting in persons other than the Council, we have determined under section 23(1)(a) and 23(3)(c) of the FOI Act to allow you a reasonable opportunity to inspect those documents under the supervision of a Council officer, rather than provide you with an electronic copy of the documents.

As explained above, access to one of these documents is subject to a third-party business's review rights. Accordingly, you will only be able to access the document through supervised inspection once the third party's review rights have expired. If the review rights are exercised, then access will only occur once a decision is made on that review. You may wish to arrange for supervised inspection of both documents at the same time or separately.

To schedule a date and time for inspection of this document, please email me at [foi@egipps.vic.gov.au](mailto:foi@egipps.vic.gov.au) and quote **FOI477**. At the inspection of the document, the documents can be viewed on a computer screen in person. Please note that you will **not** be permitted to make any physical or electronic copies of the documents, but you will be allowed to take notes.

For present purposes, we have allowed 15 minutes for you to inspect both of the documents (which comprise of 18 pages in total). If you require more time to inspect the documents, then you will be able to continue to inspect the documents once you have paid for the *additional inspection time* required, calculated at \$6.12 for each quarter hour or part of a quarter hour. Once you have paid for any inspection time required, you will be permitted to continue with the inspection.

### **Review rights**

If you are dissatisfied with the access charges set out above, you have the right to seek review of my decision in relation to the charges, by applying to the VCAT within 60 days of receiving this notice. Contact details are set out below:

Victorian Civil and Administrative Tribunal  
GPO Box 5408  
MELBOURNE VIC 3001  
Phone: 1300 01 8228  
Email: [admin@vcat.vic.gov.au](mailto:admin@vcat.vic.gov.au)  
Web: [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au)

Please note that the VCAT will only accept an application for review of access charges if you have first obtained a certificate from the Victorian Information Commissioner certifying that the matter is one of sufficient importance for the VCAT to consider. The contact information for the Victorian Information Commissioner is as shown below:

PO Box 24274  
MELBOURNE VIC 3001  
Telephone: 1300 006 842  
E-mail: [enquiries@ovic.vic.gov.au](mailto:enquiries@ovic.vic.gov.au)  
Web: [www.ovic.vic.gov.au](http://www.ovic.vic.gov.au)

### **More information**

If you have any questions about this decision, please contact me on 5153 9500 or via email at [foi@egipps.vic.gov.au](mailto:foi@egipps.vic.gov.au) and quote **FOI477**.

Yours sincerely

*Janelle Skipworth*

**JANELLE SKIPWORTH**  
**Freedom of Information Officer**