



Dear [REDACTED]

## Freedom of Information – Notice of Decision

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the FOI Act), received by the City and Environment Directorate (CED) on 10 March 2026. It is my understanding you are seeking access to the following information:

*Records held by the ACT Environment Protection Authority relating to excavated natural material (ENM) that was reportedly transported from a site within the ACT to 298 Micalago Road, Michelago NSW (Snowy Monaro Regional Council area). The material is referenced in an investigation concerning the Michelago site as approximately 3,500 cubic metres of ENM said to have been approved by the ACT EPA. To assist identification, I request searches for records concerning:*

### *1. Approval / Authorisation*

*Any approval, authorisation, exemption, permit, advice, or regulatory determination issued by or on behalf of the ACT EPA relating to the excavation, classification, transport, or reuse of approximately 3,500m<sup>3</sup> of excavated natural material transported to 298 Micalago Road, Michelago NSW.*

### *2. Classification and Environmental Assessment*

*All records describing or determining the classification of the material, including:*

- environmental or contamination assessments*
- site history or contamination screening*
- environmental consultant reports*
- regulatory advice provided by ACT EPA officers*

### *3. Laboratory Testing*

*All sampling and laboratory testing records relating to the material, including:*

- laboratory analysis reports*
- sampling methodology*
- chain-of-custody documentation*
- asbestos screening or contamination testing*

### *4. Source Site*

*Records identifying the origin of the material, including:*

- address or location of the excavation site*

- *development approval, demolition approval, or earthworks approval for the source site*
- *environmental or contamination assessments for that site*

#### 5. *Transport and Disposal*

*Records relating to the movement or reuse of the material, including:*

- *waste transport documentation*
- *reuse or beneficial reuse determinations*
- *waste classification advice*

#### 6. *Communications*

*All correspondence (including emails) between the ACT EPA (or Access Canberra officers) and:*

- *Snowy Monaro Regional Council (NSW)*
- *the landowner/developer of 298 Micalago Road Michelago NSW*
- *any contractor, consultant, or waste transporter*

*for the period 1 January 2021 to 31 December 2025 relating to the above material.*

I thank you for providing the following context in your application:

*For clarity, my request is directed to records concerning the approval, classification, movement and regulatory consideration of material (including ENM) entering New South Wales in connection with the Michelago site.*

### **Timeframes**

In accordance with section 40 of the FOI Act, CED was required to provide a decision on your access application within 30 working days. As this matter required third party consultation, the decision due date was extended by 15 working days, in accordance with section 40(2) of the FOI Act. Therefore, a decision is due on or by **14 May 2026**.

### **Authority**

I am an Information Officer appointed by the Director-General of the City and Environment Directorate under section 18 of the FOI Act to deal with access applications made under Part 5 of the FOI Act.

### **Decision on access**

A search for records held by CED has been completed and seven records within the scope of your application have been identified. The records are listed in the schedule at **Attachment A**.

I have decided to:

- grant **full** access to one record.
- grant **partial** access to six records.

The reasons for my decision are detailed in the *statement of reasons* section below.

## Deferred release of records

Under section 38 of the FOI Act, CED is required to consult with third parties where disclosure of information may reasonably be expected to affect their interests. In making this decision, I consulted with relevant third parties and considered their views and objections. One third party objected to the release of information in scheduled record Ref 7.

As I have decided to partially release this information, access to this document is deferred under section 38(6)(b) of the FOI Act. This deferral allows the third party 20 working days, or a longer period if granted by the ACT Ombudsman, to seek a review of my decision by the ACT Ombudsman. You will be notified if a review application is received or when access is no longer deferred.

## Statement of reasons

The FOI Act has a pro-disclosure bias, which requires information to be disclosed unless doing so would be contrary to the public interest. As an Information Officer, I am responsible for determining whether disclosure of the information within the scope of your application would be contrary to the public interest.

My assessment begins with Schedule 1 of the FOI Act, which outlines categories of information that are taken to be contrary to the public interest to disclose. If the information does not fall within any of these categories, I must then apply the public interest test under section 17 of the FOI Act. This test involves weighing the factors favouring disclosure against those favouring nondisclosure, as set out in Schedule 2.

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

- the FOI Act
- the information that falls within the scope of your application
- the views of third parties consulted
- the *Human Rights Act 2004*
- the ACT Ombudsman FOI Guidelines
- public media regarding the matter
  - <https://aboutregional.com.au/concerns-rife-in-michelago-over-alleged-dumping-water-contamination/464657/>
  - <https://www.snowymonaro.nsw.gov.au/News-and-Media/News-articles/Lifting-of-prevention-notice-for-land-filling-at-Micalago-Rd-property>
  - [Who Will Apologise to Michelago? #191 - by Back to Basics -](#)

I confirm that I have not considered any of the factors listed in section 17(2) of the FOI Act, which outlines a list of considerations that must not be taken into account when applying the public interest test.

### Schedule 1 – Information taken to be contrary to the public interest

- Section 1.14 - Law enforcement or public safety information.

Section 1.14 provides that the disclosure of information is taken to be contrary to the public interest if it would, or could reasonably be expected to, affect law enforcement or public safety. Schedule 1, 1.14(1)(d) applies where disclosure of the information would, or could reasonably be expected to, result in a person being subject to a serious act of harassment or intimidation.

The history of public interest associated with the site, which is evidenced in the links to media articles and websites above and related social media activity, is sufficient to consider that staff and public safety is a legitimate concern and that release of this information would, or could reasonably be expected to result in serious harassment or intimidation from members of the public who feel strongly about the decisions being made regarding the use of the site.

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.

#### Schedule 2 – Public interest test

##### *Factors favouring disclosure (Schedule 2.1)*

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

In reviewing the information within the scope of your application, I consider that disclosure would contribute to positive and informed debate by revealing the reasons for the government decision to approve the movement of soil to the site, as well as contextual information about government processes followed. I have placed significant weight on these factors.

##### *Factors favouring nondisclosure (Schedule 2.2)*

- *Section 2.2(a)(ii) - prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004.*

Some of the records relevant to your application contain the personal information of individuals employed by third parties and members of the public, including names and contact details. I have considered that this information is not readily available to the public and has not otherwise been disclosed by CED. I further consider that this information has come to be held by CED with the expectation that it is handled in accordance with the *Information Privacy Act 2014*.

It is my view that this 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*. I have placed significant weight on this factor.

##### *Balancing the factors*

In balancing the factors favouring disclosure against those favouring nondisclosure, I have carefully considered the public interest in contributing to positive informed debate and revealing the reasons for government decisions. I acknowledge that disclosure of certain information would advance these interests, particularly where it relates to the context surrounding government decisions.

However, I must also consider the strong public interest in protecting personal privacy and safety.

On balance, in considering the safety of ACT and NSW Government employees and third parties against the public right of access to information, I have determined that the privacy and safety of staff and third parties is the paramount consideration as the likelihood and degree of prejudice that could result from disclosure is significant.

On balance, I find that in the circumstances of this matter, the factors against disclosure carry greater weight than the factors favouring disclosure for the relevant information. As such, I have decided to withhold the information where the public interest against disclosure outweighs the public interest in favour of release.

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.

Consistent with the pro-disclosure intent of the FOI Act, I am satisfied that redacting only the information that is contrary to the public interest ensures compliance with the FOI Act while still providing access to the majority of the information held by CED within the scope of your application.

### **Charges**

Processing charges are applicable for this application because the total number of pages to be released to you exceeds the charging threshold of 50 pages. However, I have decided not to impose a fee in response to your application.

### **Online publishing – Disclosure Log**

Under section 28 of the FOI Act, CED maintains a disclosure log, which is a public record of access applications and decisions. Your original access application and my decision will be published on the CED disclosure log. Your personal contact details will not be published.

### **ACT Ombudsman Review**

My decision on your access application is a reviewable decision as identified in Schedule 3 of the FOI Act. You have the right to seek ACT Ombudsman review of this outcome under section 73 of the FOI Act within 20 working days from the day that my decision is provided to you, or a longer period allowed by the ACT Ombudsman. If you wish to request a review of my decision, you may write to the ACT 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 FOI 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  
GPO Box 370  
Canberra City ACT 2601  
Telephone: (02) 6207 1740  
<https://www.acat.act.gov.au/>

Please contact the CED Information Access team if you have any queries in relation to your application via 6207 2987 or [CEDFOI@act.gov.au](mailto:CEDFOI@act.gov.au).

Yours sincerely

(signed electronically)

Craig Weller  
Information Officer  
City and Environment Directorate  
14 May 2026