

## Notice of Decision and Reasons for Decision

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|-----------------------|-------------------------------------------------------------------------------------------------------------|
| Applicant:            | 'GF5'                                                                                                       |
| Agency:               | Department of Transport and Planning (previously, Victorian Planning Authority)                             |
| Decision date:        | 12 December 2025                                                                                            |
| Provision considered: | Sections 25A(1)                                                                                             |
| Citation:             | 'GF5' and Department of Transport and Planning (Freedom of Information) [2025] VICmr 110 (12 December 2025) |

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FREEDOM OF INFORMATION – Precinct Structure Plans – submissions – evidence – technical studies and investigations – reports – plans

All references to legislation in this document are to the *Freedom of Information Act 1982* (Vic) (**FOI Act**) unless otherwise stated.

### Notice of Decision

I have conducted a review under section 49F of the Victorian Planning Authority's (**VPA's**) decision to refuse access to documents requested by the Applicant under the FOI Act.

My decision on the Applicant's request differs from the VPA's decision.

I am not satisfied the requirements for refusal to grant access to documents under section 25A(1) are met and the Department of Transport and Planning (**DTP**) is required to process the Applicant's request.

Please refer to the end of my decision for information about review rights through the Victorian Civil and Administrative Tribunal (**VCAT**).

My reasons for decision follow.

Penny Eastman  
**Public Access Deputy Commissioner**

12 December 2025

## Reasons for Decision

### Background to review

1. The Applicant made a request to the VPA for various documents relating to the [locations] within [location], [location] Precinct Structure Plan (**PSP**) or [location] PSP areas.
2. The VPA notified the Applicant of its intention to refuse to process the request under section 25A(1), which resulted in consultation with the Applicant to remove the proposed grounds for refusal. This resulted in the Applicant amending their request to seek:
  - (a) A copy / copies of if held or in the possession of the [VPA]:
    - (i) the submission of [third party] to the [location] PSP Panel in relation to the [location], if it is a different to document 2(g)<sup>1</sup> in Annexure 1;
    - (ii) [a document] which was referred to in the Panel Report of 7 October 2020 for [location] PSP [location] Planning Scheme Amendment C106mith;
    - (iii) any reports by [a third party] which refer to [location], being the reports described [within the] Panel Report of 7 October 2020 for [location] PSP [location] Planning Scheme Amendment C106mith.
  - (b) The following documents held or in possession of the [VPA]:
    - (i) submissions and evidence provided to the 2022 hearing of the Ministerial Advisory Committee on the [location] PSP and ICP, in relation to the [location], except the following documents in Annexure 1: 1(d),<sup>2</sup> 1(g),<sup>3</sup> 1(h),<sup>4</sup> 1(i),<sup>5</sup> 1(j),<sup>6</sup> 1(k),<sup>7</sup> 1(l),<sup>8</sup> 2(d),<sup>9</sup> 2(f),<sup>10</sup> 2(h)<sup>11</sup> & 2(i)<sup>12</sup>;
    - (ii) the names of interested parties to 2022 hearings referred to in (b)(i) above, who made submissions and provided evidence at those hearings, except parties on whose behalf the following documents in Annexure 1 were produced: 1(d), 1(g), 1(h), 1(i), 1(j), 2(d), 2(f), 2(h) & 2(i);
    - (iii) technical investigations or studies commissioned by or on behalf of the VPA for the [location] PSP due diligence in relation to a [location], (in the period between 1 January 2018 and 31 December 2023);
    - (iv) technical investigations or studies commissioned by or on behalf of the VPA for the [locations] PSP areas due diligence in relation to a [location] and/or the, and

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<sup>1</sup> [Citation removed]

<sup>2</sup> [Citation removed]

<sup>3</sup> [Citation removed]

<sup>4</sup> [Citation removed]

<sup>5</sup> [Citation removed]

<sup>6</sup> [Citation removed]

<sup>7</sup> [Citation removed]

<sup>8</sup> [Citation removed]

<sup>9</sup> [Citation removed]

<sup>10</sup> [Citation removed]

<sup>11</sup> [Citation removed]

<sup>12</sup> [Citation removed]

excluding documents 1(l), 1(k) in Annexure 1 (in the period between 1 January 2018 and 31 December 2022);

- (v) any report(s) prepared by [a third party or others] between 2021 and 2024 in relation to the hydrology and geomorphology of the [location] Employment Area or [location] PSP, and the [location] drainage catchment;
  - (vi) any technical reports on the [location] West PSP areas (in the period between 1 January 2018 to date);
  - (vii) plans prepared by or on behalf of the VPA for any wetlands in the [location] PSP area, including plans for the re-establishment of any swamps and wetlands within the [location] PSP or [location] PSP area (in the period of 1 January 2022 to date).
3. The VPA made a decision under section 25A(1) to refuse to grant access to documents without processing the request because it was satisfied the work involved would substantially and unreasonably divert the VPA's resources from its other operations.

#### **Review application**

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
6. I have considered relevant communications and submissions received from the parties.
7. In undertaking my review, I have had regard to the object of the FOI Act, which is to create a general right of access to information in the possession of the Government or other public bodies, limited only by exceptions and exemptions necessary to protect essential public interests, privacy and business affairs.
8. I note Parliament's intention the FOI Act must be interpreted so as to further the object of the Act and any discretions conferred by the Act must be exercised, as far as possible, so as to facilitate and promote the disclosure of information in a timely manner and at the lowest reasonable cost.

#### **Review of section 25A(1)**

9. Under section 25A(1), an agency may refuse to grant access to documents without processing a request if satisfied the work involved would substantially and unreasonably divert the agency's resources from its other operations.
10. Section 25A(2) sets out a non-exhaustive list of matters an agency must have regard to in deciding whether to refuse a request under section 25A(1). These matters are relevant to estimating the work involved in processing a request.
11. The purpose of section 25A is to prevent the mischief that occurs when an agency's resources

are substantially and unreasonably diverted from its other operations.<sup>13</sup>

12. Section 25A(1) should only be applied in a clear case of substantial and unreasonable diversion of an agency's resources.<sup>14</sup> This is because section 25A(1) must be read consistently with the object of the FOI Act,<sup>15</sup> which is to extend as far as possible the right of the community to access information in the possession of the government and the requirement to exercise discretions in a way that facilitates and promotes the disclosure of information.<sup>16</sup>
13. An agency that refuses access under section 25A(1) must establish the requirements of the section.<sup>17</sup> These requirements are not easily satisfied and will only apply in limited circumstances.<sup>18</sup>

***Were the requirements of section 25A(6) met before the request was refused?***

14. An agency cannot decide to refuse a request under section 25A(1) without first giving the applicant a reasonable opportunity to rescope or narrow their request, and the consultation fails to remove the ground for refusal.
15. Under section 25A(6) and Professional Standard 5.2,<sup>19</sup> agencies must:
  - (a) give the applicant a written notice
    - stating its intention to refuse the applicant's request
    - inviting the applicant to consult with an identified agency officer with a view to making the request in a form that would be able to be processed and
    - explaining to the applicant why the request would substantially and unreasonably divert the resources of the agency from its other operations
  - (b) give the applicant a reasonable opportunity to consult and
  - (c) as far as is reasonably practicable, give the applicant any information or suggestions that would assist them to make a request in a form that would remove the ground for refusal.<sup>20</sup>
16. I have reviewed copies of the consultation between the VPA and the Applicant.
17. I am satisfied the VPA provided the Applicant with an opportunity to consult in relation to the terms of their request and provided reasonable options to assist them in reducing the terms of the request. While the Applicant took a cooperative approach, and both narrowed their

<sup>13</sup> *Secretary, Department of Treasury and Finance v Kelly* [2001] VSCA 246, [48].

<sup>14</sup> *Ibid*, [6]; applied in *Davis v Suburban Rail Loop Authority (Review and Regulation)* [2021] VCAT 627, [48].

<sup>15</sup> *Ibid*.

<sup>16</sup> Section 3.

<sup>17</sup> As noted in *McIntosh v Victoria Police* [2008] VCAT 916, [11].

<sup>18</sup> *Chief Commissioner of Police v McIntosh* [2010] VSC 439, [32]. See *Secretary, Department of Treasury and Finance v Kelly* [2001] VSCA 246, [6], [46].

<sup>19</sup> <https://ovic.vic.gov.au/freedom-of-information/resources-for-agencies/professional-standards/#5-substantial-and-unreasonable-diversion-of-resources>.

<sup>20</sup> *XYZ v Victoria Police* [2007] VCAT 1686, [22].

request and took up some of the suggestions made by the VPA to narrow their request, consultation failed to remove the grounds for refusal.

*Would processing the request involve a substantial diversion of DTP's resources from its other operations?*

18. The resources to be considered are those the Agency reasonably requires to process the request while serving their other operations.<sup>21</sup> This includes:
  - the resources of the Agency's internal FOI division<sup>22</sup>
  - the resources of an agent of the Agency that is responsible for responding to the request, because it is in possession of requested documents<sup>23</sup> and
  - refers to the capacity of the Agency overall to process the request, not just the capacity of the FOI unit of the Agency.<sup>24</sup>
19. 'Other operations' refers to all of the other things that an agency does (apart from processing the request), including dealing with and processing other FOI requests.<sup>25</sup>
20. 'Substantial' has been interpreted to mean the diversion of resources must be more than merely nominal (minor).<sup>26</sup>
21. Factors that may be relevant to determining whether the diversion of resources would be substantial may include the:
  - nature and size of the Agency
  - level of resourcing allocated to FOI processing
  - number of other FOI requests on hand, and whether requests received are increasing or decreasing
  - number of employees who may help process the request, and their other responsibilities.
22. The VPA's decision letter set out the following reasons why it considered the request would substantially and unreasonably divert its resources from its other operations:
  - Part (b)(i) would require the VPA to search through submissions and expert evidence provided to the Ministerial Advisory Committee on [location] in order to determine if they are related to the [location].

<sup>21</sup> *Re SRB v Department of Health, Housing, Local Government & Community Services* (1994) 19 AAR 178, 187; applied in *Smeaton v Victorian WorkCover Authority* [2012] VCAT 1550, [24].

<sup>22</sup> *Chief Commissioner of Police v McIntosh* [2010] VSC 439, [25].

<sup>23</sup> *Smeaton v Victorian WorkCover Authority* [2012] VCAT 1550, [24] - [25].

<sup>24</sup> *Chief Commissioner of Police v McIntosh* [2010] VSC 439, [31].

<sup>25</sup> *Ibid*, [23]-[24].

<sup>26</sup> *Re A and Department of Human Services* (1998) 13 VAR 235, 247.

- It would take substantial time to search VPA's records systems and review all relevant records to identify all technical reports or plans as requested in parts (b) (v) – (vii).
  - The request covers a broad range of documents relating to at least four different PSPs.
23. In relation to part (b)(i), the [location] Precinct Structure Plan, Supplementary Levy Infrastructure Contributions Plan and Quarry Planning Permit Application Ministerial Advisory Committee, Advisory Committee Report (**MAC Report**) states:
- The wetland is marked in the PSP as [location], its [redacted] name. The wetland was formerly known as [location]. Many submissions were made, and much evidence called in the Hearing relating to [location] around its ecological, landscape and other values, its future management, its spatial extent and how the road network might respond around the wetland.<sup>27</sup>
24. The issue for consideration in relation to this area was “how the draft Amendment C158 implements the recommendations of the Amendment C106 Panel in relation to [location] and whether this is an acceptable planning outcome”.<sup>28</sup>
25. The VPA advised the Applicant that there were 60 submissions received by the MAC, and that it would be required to search through all submissions and evidence to determine if they related to the [location].
26. The following is one of the VPA's submissions with respect to the scope of the Applicant's request:
- The MAC was considering a range of highly complicated planning issues relating to the development of a Precinct Structure Plan (PSP) and Infrastructure Contributions Plan (ICP) for the urban development of [location], and an application for a quarrying permit by one of the landowners. The submissions and expert evidence are quite substantial documents and we estimate that it would take over 40 hours to search for and review the submissions and expert evidence to determine whether they were relevant to the request. The exclusion of the documents listed in Annexure 1 does not noticeably reduce this task, as it is still necessary to examine each submission and expert evidence individually to determine whether it is one of the documents listed in Annexure 1, and then to determine whether it relates to the matters that are the subject of the request.
27. In my view, this part of the Applicant's request is precise, and only seeks submissions on a discrete aspect of the hearing, where they excluded expert evidence reports.
28. Part 7.3 of the MAC Report sets out evidence and submissions made in relation to this issue. It indicates that around 14 individuals/entities provided evidence and submissions on this issue. The Applicant excluded from their request submissions and evidence for several parties.
29. Given Part 7.3 sets out what submissions and evidence were relevant to this issue, I do not accept that DTP would need to search through all submissions and evidence to determine

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<sup>27</sup> MAC Report, page 48 (footnotes omitted), available at [https://www.planningpanels.vic.gov.au/\\_\\_data/assets/pdf\\_file/0028/757414/Beveridge-North-West-Ministerial-Advisory-Committee-Report-.pdf](https://www.planningpanels.vic.gov.au/__data/assets/pdf_file/0028/757414/Beveridge-North-West-Ministerial-Advisory-Committee-Report-.pdf)

<sup>28</sup> Ibid, page 49.

which are relevant to [location].

30. With respect to parts (b)(v) to (vii) of the request, the VPA made the following submission:

Parts (b)(v)-(vii) of the request cover a range of technical reports and plans for different but related geographic areas, time periods and subject matters. Most of the documents requested relate to the [location]PSP and the [location] PSP, however the scope of the request potentially covers other PSP projects. Each PSP that the VPA works on is a significant multi-year project that typically generates several thousand documents. While the documents are electronically searchable, the sheer quantity of documents that are in scope for this request means that it would take at least four hours to run the searches and review the results to determine if the documents were relevant. If the FOI request consisted only of these parts, then it may be feasible for us to undertake this search. However, when considered as part of a larger request, this is an unreasonable diversion of our resources.

31. The VPA also submitted:

The VPA is responsible for strategic land use planning across Victoria. A key focus of our work is the Melbourne growth areas, created by the expansion of the urban growth boundary in 2006, 2008 and 2011. The growth areas are divided into 119 precincts. Before urban development can occur in a precinct, the VPA must prepare a Precinct Structure Plan (PSP) which sets out the land uses (residential, commercial, industrial, etc.) and the location of roads, parks, schools and community facilities. Preparing a PSP typically takes 2-5 years, and involves extensive consultation with other government agencies, landowners and developers, and the wider community. Key issues that the VPA needs to resolve in preparing the PSP include transport, drainage, biodiversity conservation, aboriginal cultural heritage and community infrastructure. The PSP usually goes through a planning panel process, whereby all stakeholders and members of the public are able to make submissions on the proposed urban structure. The panel makes recommendations which are then considered by the VPA, and the PSP is submitted to the Minister for Planning for approval.

[location] has been one of the most challenging PSPs that the VPA has prepared. This is primarily due to two key issues: a proposed quarry within the PSP, and a [location]. Work commenced on this PSP in 2013. A draft PSP was released for public consultation in 2019, followed by a panel hearing in 2020. An updated PSP was then released for public consultation in 2021-22. The Minister for Planning appointed a Ministerial Advisory Committee (MAC) in 2022 to review the PSP as well as the application for a quarry permit. The MAC has submitted a report to the Minister, but the Minister has not yet made a decision on the PSP or the quarry permit.<sup>29</sup> Due to the protracted and highly contested nature of this PSP, the VPA holds a significant volume of documents relating to [location].

32. While I accept the VPA's submission concerning the extensive work undertaken in developing PSPs and the number of documents generated as part of this process, I again note the Applicant has only sought a specific portion of documents.

33. In terms of the time to process to the request, the VPA submitted the following:

We have estimated that it would take over 55 hours just to search for the documents in this request. As the request includes submissions and evidence provided by external parties, we would need to undertake consultation. We estimate that there may be around 11 parties to consult, which would take another 44 hours. Finally, we estimate it would take at least 8 hours to review

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<sup>29</sup> The MAC Report has since been published.

and redact the documents that were located in this search. This means that it would take around 107 hours to process the request.

34. During the review, the VPA advised that it has progressively merged into DTP. As such, its FOI requests are now being processed by DTP.

35. DTP provided the following information with respect to its FOI resources and workload:

Within DTP, the Privacy and Information Access (P&IA) branch is responsible for the Department's privacy functions, FOI processing, responses to subpoenas and to Parliamentary orders for production of documents. The branch has a staffing of 13 Officers, including 7 FOI officers processing FOI requests and responding to Privacy matters.

The Department received 1801 FOI requests in 2024-25. To the 31<sup>st</sup> of October 2025, it has received 730 requests, up from the 608 received for the same period last year – that is an increase of 20%. Along with that increased intake, numbers on hand have increased from 118 at the end of June 2025 to 169 at the end of October 2025.

Within the P&IA branch 7 FOI officers (who also have responsibilities for Privacy matters) are directly involved in processing FOI requests across a range of topic areas and complexity, working to finalise approximately 150 requests each month. In its submission of 2 July 2025, the former VPA provided time estimates for the retrieval and initial review of materials – matters which would still sit with those former VPA program area staff in the time available from their core duties.

For any FOI officer undertaking processing of the request, assessment of the retrieved documents would require repeated consultation by the allocated FOI Officer with the program area to gain an understanding of the issues involved, as well as extensive consultation with third parties. It is apparent that the work involved in any attempt to process the request would markedly exceed the statutory period for providing a decision. It would also affect the Department's ability to process other FOI requests at a time of increasing demand, leading to delays, dissatisfaction for applicants, complaints and appeals.

36. While I consider the VPA likely overestimated the timeframe it will take to process this request, I do accept that this request would require some additional time and resource investment. However, I do not consider it would be a substantial diversion of the Agency's operations to process this request.

*Would processing the request involve an unreasonable diversion of DTP's resources from its other operations?*

37. Determining whether the diversion of resources would be unreasonable involves balancing the estimated impact on the agency of processing the request against the object of the FOI Act, which is to extend as far as possible the community's right to access information held by government.<sup>30</sup>

38. I have considered each of the following factors that VCAT has set out to be considered when deciding if the diversion of an agency's resources would be unreasonable:<sup>31</sup>

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<sup>30</sup> Section 3(1).

<sup>31</sup> *The Age Company Pty Ltd v CenITex (Review and Regulation)* [2013] VCAT 288, [43-45]. A similar approach was followed in *Smeaton v Victorian WorkCover Authority* [2012] VCAT 1550. The decisions drew on a non-exhaustive list of factors set out

Whether the terms of the request offer a sufficiently precise description to allow the Agency to locate the documents sought within a reasonable time and with reasonable effort

I consider the request terms are sufficiently precise to locate the documents within a reasonable timeframe and with reasonable effort. I consider that reviewing the documents and consultation with third parties will be the time-consuming aspect of processing the request.

The public interest in disclosure of documents relating to the subject matter of the request

I consider there is strong interest in the documents relating particularly to the [location] PSP, noting the number of individuals who made submissions to the MAC.

Whether the request is a reasonably manageable one, giving due but not conclusive regard to the size of the Agency and the extent of its resources usually available for dealing with FOI requests

While I appreciate this request is on the larger side and I accept the DTP's advice about its current resourcing and caseload, I am not convinced that this request is not a reasonably manageable one given the expertise of the DTP's FOI unit.

The estimated number of documents covered by the request, the number of pages and the amount of officer time and salary cost

The Agency estimates that it will take 107 hours to process the request, which is a significant amount of time to dedicate to a request. However, I consider this is an overestimate for the reasons set out above.

The reasonableness or otherwise of the Agency's initial assessment and whether the Applicant had taken a co-operative approach in revising the application

I am satisfied that the Agency provided reasonable information to the Applicant in relation to narrowing the scope of their request and that the Applicant took a cooperative approach to revise the scope of their request.

The statutory time limit under the FOI Act for making a decision

On the information before me, I am not satisfied the Agency would be able to process the request within the statutory time limit for making a decision under section 21. In any case, in the event processing the request would require more time, section 21(2) provides the Agency could request the agreement of the Applicant to obtain an extension of time. Accordingly, I do not accept that the statutory time limit is a barrier to the Agency processing the request.

The degree of certainty that can be attached to the documents and processing time estimates, and whether there is a real possibility that the processing time may exceed the estimate

I am satisfied there is a degree of certainty that can be attached to the documents. However, I

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in the NSW decision of *Cainfrano v Director General, Premier's Department* [2006] NSWADT 137, which drew in part on the decision of the former Victorian Administrative Appeals Tribunal in *Re Borthwick and University of Melbourne* (1985) 1 VAR 33.

am not satisfied that the Agency's estimated processing time is reasonable.

Whether the Applicant is a repeat FOI applicant

The Applicant has sought similar information in separate FOI requests.

39. Having considered the above factors, I am satisfied any diversion of the Agency's resources due to processing the Applicant's request would not be unreasonable in the circumstances.

**Conclusion**

40. On the information before me, I am not satisfied the work involved in processing the Applicant's request would substantially and unreasonably divert the resources of DTP from its other operations.
41. Accordingly, I am not satisfied the requirements for refusal to grant access to documents under section 25A(1) are met and DTP is required to process the Applicant's request.

**Timeframe to seek a review of my decision**

42. DTP has 14 days to apply to VCAT for a review of my decision.
43. Information about how to apply to VCAT is available online at [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au). Alternatively, VCAT may be contacted by email at [admin@vcat.vic.gov.au](mailto:admin@vcat.vic.gov.au) or by telephone on 1300 018 228.
44. The Agency is required to notify the Information Commissioner in writing as soon as practicable if the Applicant applies to VCAT for a review of my decision.<sup>32</sup>

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<sup>32</sup> Section 50(3F).

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