



Decision and Reasons for Decision

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| Citation: | <i>Clermont Quarries Pty Ltd and Isaac Regional Council</i> [2022] QICmr 9 (3 March 2022) |
| Application Number: | 315789 |
| Applicant: | Clermont Quarries Pty Ltd (ACN: 606 766 250) |
| Respondent: | Isaac Regional Council |
| Decision Date: | 3 March 2022 |
| Catchwords: | <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - SCOPE OF APPLICATION - applicant contended scope should be interpreted to exclude some documents - construction of scope of access application under section 24 of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - application for information provided to agency to support a claim of existing lawful rights use - whether disclosure would prejudice business affairs - whether disclosure would enhance accountability and transparency - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</p> |

REASONS FOR DECISION

Summary

1. By application dated 29 July 2020 (**Access Application**), the access applicant (**Access Applicant**) applied under the *Right to Information Act 2009* (Qld) (**RTI Act**) to Isaac Regional Council (**Council**) for access to documents provided to Council by Clermont Quarries Pty Ltd (**Clermont**) or any current or previous owners of three named quarry sites to support a claim of existing lawful rights to quarry those sites without the need for a development application.
2. While processing the application, Council consulted with Clermont as a relevant third party under section 37 of the RTI Act. While Clermont objected to the disclosure of all information located by Council, Council decided¹ to disclose some of this information to the Access Applicant contrary to Clermont's views.
3. Clermont applied² for internal review of Council's decision. In its internal review decision,³ Council varied its original decision, by removing some information on the basis that it was irrelevant to the scope of the Access Application.

¹ On 23 September 2020.

² Application dated 21 October 2020.

³ 16 November 2020.

4. Clermont then applied to the Office of the Information Commissioner (**OIC**) for external review of that decision.⁴
5. For the reasons set out below, I vary Council's decision and grant access to parts of 39 pages and a further 39 full pages.

Background

6. Clermont operates hard rock quarries at the three sites identified in the Access Application.⁵ As noted above, Council consulted with Clermont about the proposed release of information to the Access Applicant.
7. Significant procedural steps in this external review are set out in the Appendix.

Reviewable decision

8. The decision under review is Council's internal review decision dated 16 November 2020.

Information in issue

9. The information to which Council decided to refuse access is not in issue in this review. Rather, it is the information to which Council decided to grant access that is in issue in this review.
10. During the external review, Clermont raised objection to the disclosure of some information on the basis that it is outside the scope of the Access Application. After reviewing the information located by Council, I identified a number of pages that fell outside the scope of the Access Application,⁶ on the basis the information comprised communications *from* Council or internal Council administration documents, whereas the Access Application specifically requests access to information that was provided '*to*' Council to support a claim of existing lawful rights to quarry the three sites. I conveyed a preliminary view to Council in this respect,⁷ which Council accepted.⁸
11. Accordingly, this decision deals with the remaining information which Clermont contends should not be released to the Access Applicant, being parts of 39 pages⁹ and all of another 39 pages.¹⁰ The Information in Issue is communications (some with attachments), provided to Council by, or on behalf of Clermont in relation to the three sites as follows (**Information in Issue**):
 - Site A – an email to Council from a representative of Clermont, concerning a development application to reconfigure a lot and documents supporting the existence

⁴ Application dated 14 December 2020.

⁵ Letter to OIC from Clermont's lawyer dated 21 July 2021.

⁶ At part-page 1 of File 1, part-page 1 of File 2, part-pages 1,2 and 3 of File 5, part-page 2 of File 6, part-page 1 of File 7 and part-pages 4 and 5 of File 13 and pages 37-38 of File 1, pages 2-4 and 7-8 of File 2, pages 1-8 of File 3, pages 5-7 of File 5, page 9 of File 6, pages 3-5 and 7 of File 7, pages 23-25 of File 9 and pages 1-3 and 7-8 of File 13.

⁷ Dated 13 January 2022.

⁸ OIC also conveyed this preliminary view to the Access Applicant in a telephone conversation on 11 November 2021. OIC advised the Access Applicant, if the Access Applicant wished to pursue access to the out of scope information, the Access Applicant could make a fresh application to Council. The Access Applicant accepted OIC's view in this regard.

⁹ Pages 1, 4-25 and 29 of File 1, pages 1 and 6 of File 2, pages 1, 2 and 3 of File 5, pages 1, 2 and 3 of File 6, pages 1 and 2 of File 7, pages 1 and 2 of File 9 and pages 4, 5 and 6 of File 13.

¹⁰ At pages 3, 26-28 and 30-36 of File 1, page 5 of File 2, page 4 of File 5, pages 4-8 of File 6, page 6 of File 7 and pages 3-22 of File 9.

of a development permit issued under the *Environmental Protection Act 1994 (EP Act)*. Attached to the email is:

- a Department of Environment and Resource Management (**DERM**) permit
 - an environmental certificate
 - a satellite view of the site
 - four photographs of the site; and
 - a page comprising Council's logo.¹¹
- Site B – a letter to Council from Clermont providing information to support its contention of ongoing existing use at site B since the 1980's, including a reference to the extraction limits per annum comprised in the DERM permit for the site.¹²
 - Site C – email communications to Council on behalf of Clermont in relation to whether a development permit is required for Site C. This is in relation to an invitation for proposals to purchase quarry material from Site C, issued by the Department of Agriculture and Fisheries (**DAF**). Attached to the emails are:
 - DAF's invitation for proposal to purchase
 - what appears to be a generic bulk density conversion guide; and
 - an extract of records of material removed from Site C between 1992 until 1997, provided by DAF.¹³

Evidence considered

12. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including the footnotes and the Appendix).¹⁴

Issues for determination

13. Clermont contends that some further Information in Issue falls outside the scope of the Access Application and, in the alternative, that disclosure of all of the Information in Issue could reasonably be expected to prejudice Clermont's business or commercial affairs.
14. Accordingly, the first issue for determination is whether some of the Information in Issue falls outside the scope of the Access Application. The second issue is whether access to all of the Information in Issue may be refused on the ground that on balance, disclosure would be contrary to the public interest pursuant to section 47(3)(b) of the RTI Act.

Out of scope information

15. I note that, on external review, the Information Commissioner conducts a merits review, that is, an administrative reconsideration of a case which can be described as 'stepping into the shoes' of the primary decision-maker to determine what is the correct and preferable decision. As such, the Information Commissioner has the power to decide any matter in relation to an application that could have been decided by the agency under

¹¹ At pages 3, 27-28 and 31-36 and part pages 1, 4-25 and 29 of File 1.

¹² At page 5 and part-pages 1 and 6 of File 2.

¹³ At part-pages 1-3 of File 5, pages 4-8 and part-pages 1-3 of File 6, page 6 and part-pages 1-2 of File 7, pages 3-22 and part-pages 1-2 of File 9 and part-pages 4-6 of File 13.

¹⁴ In making this decision, I have observed and respected the law prescribed in the RTI Act. Doing so is construed as 'respecting and acting compatibly with' the rights prescribed in the *Human Rights Act 2019 (Qld) (HR Act) - XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111]. I have therefore satisfied the requirements of section 58(1) of the HR Act, in accordance with the following observations of Bell J in *XYZ* at [573] about the interaction between the Victorian analogues of Queensland's RTI Act, *Information Privacy Act 2009 (Qld)*, and HR Act: 'it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act'.

the RTI Act.¹⁵ Accordingly, I consider that, on external review, it is open to me to consider whether any information falls outside the scope of the Access Application.¹⁶

Relevant law

16. Section 24(2)(b) of the RTI Act provides that an access application must:

give sufficient information concerning the document to enable a responsible officer of the agency ... to identify the document[.]

17. Under the RTI Act, a person has a right to be given access to documents of an agency.¹⁷ However, if an entire document does not contain *any* information which responds to the terms of an access application, it is outside the scope of the access application and the agency need not consider it as part of the application. Equally, once OIC determines that a document is outside the scope of an application, OIC cannot further consider the document in an external review arising from that application.¹⁸

Findings

18. As noted at paragraph 10, Clermont objected to the release of some information on the basis that it is not relevant to the Access Application and accordingly should not be released to the Access Applicant.¹⁹ OIC accepted Clermont's submission in respect to some of this information and conveyed a preliminary view to Council, which Council accepted, in this regard. Accordingly, this decision only addresses the remaining information that Clermont contends is not relevant to the Access Application, which comprises 28 pages.²⁰

19. As noted at paragraph 1 above, the Access Applicant seeks access to documents provided to Council by Clermont or any current or previous owners of three named quarry sites to support a claim of existing lawful rights to quarry those sites without the need for a development application.

20. The 28 pages comprise a development permit issued by DERM and a Certificate of Registration issued under the EP Act (**Permit Information**) in relation to Site A (noted at paragraph 11 above).

21. Clermont submits that the Permit Information falls outside the scope of the Access Application because both documents were issued by DERM, rather than Council. While I acknowledge that the Permit Information was issued by DERM, the Permit Information is attached to an email to Council, in support of Clermont's contention that there is an existing development permit over Site A, which is precisely the type of information the Access Applicant seeks in the Access Application.

22. In view of the above, I am satisfied that the Permit Information does, as a simple matter of fact, fall within the scope of the Access Application. Given my finding in relation to the Permit Information, I will now consider whether access to all of the Information in Issue may be refused on the ground that on balance, disclosure would be contrary to the public interest pursuant to section 47(3)(b) of the RTI Act.

¹⁵ Section 105 of the RTI Act.

¹⁶ In accordance with *NBN Co Ltd v Information Commissioner* [2021] QCATA 40 at [21] (**NBN**), in which Sheridan J found that section 89 of the RTI Act does not place any limits on the grounds of a review.

¹⁷ Section 23 of the RTI Act.

¹⁸ *NBN* at [22], in which Sheridan J found that the Information Commissioner may not give access to documents not sought in an application.

¹⁹ Letter to OIC dated 21 July 2021.

²⁰ At pages 3-30 of File 1.

Refused Information

Relevant law

23. As noted at paragraph 17, under the RTI Act, a person has a right to access documents of an agency,²¹ however, this right is subject to certain limitations, including grounds for refusal of access.²² Parliament intends for the grounds of refusal to be interpreted narrowly.²³ Relevantly, access may be refused where disclosure would, on balance, be contrary to the public interest.²⁴
24. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision-maker must:²⁵
- identify any irrelevant factors and disregard them
 - identify any relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure would, on balance, be contrary to the public interest.
25. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of public interest lies in a particular case. I have considered these lists,²⁶ together with all other relevant information, in reaching my decision. I have applied the RTI Act's pro-disclosure bias²⁷ and Parliament's requirement that grounds for refusing access to information be interpreted narrowly.²⁸
26. As the decision on external review is a *disclosure decision*, Clermont bears the onus of establishing that a decision not to disclose the Information in Issue is justified or that the Information Commissioner should give a decision adverse to the person who wishes to be given access to the document.²⁹

Findings

Applicant's submissions

27. In the course of the external review Clermont submitted:³⁰

If the Documents are disclosed, [they] will be put at a commercial disadvantage to their competitors, as the disclosure will reveal details about their commercial operations.

If the Documents are disclosed, there is a reasonable expectation that:

1. *[their] commercial and financial affairs ...will be prejudiced³¹*
2. *[their] business affairs ... will be prejudiced;³² and*

²¹ Section 23(1)(a) of the RTI Act.

²² As set out in section 47 of the RTI Act.

²³ Section 47(2)(a) of the RTI Act.

²⁴ Section 47(3)(b) of the RTI Act.

²⁵ Section 49(3) of the RTI Act.

²⁶ I have considered each of the public interest factors outlined in schedule 4 of the RTI Act, and any relevant factors are discussed below.

²⁷ Section 44 of the RTI Act.

²⁸ Section 47(2) of the RTI Act. In deciding whether disclosure of the information in issue would, on balance, be contrary to the public interest, I have taken no irrelevant factors into account in making my decision.

²⁹ Section 87(2) of the RTI Act.

³⁰ Letter to OIC dated 14 December 2020 and email to OIC dated 15 December 2021.

³¹ Schedule 4, part 3, item 2 of the RTI Act.

³² Schedule 4, part 3, item 15 of the RTI Act.

3. *the disclosure would amount to a public interest harm.*³³

These factors favouring nondisclosure should be considered determinative of the detrimental effect disclosure would have on the public interest, which is reinforced by the lack of readily identifiable factors favouring disclosure.

This is merely another case of a commercial competitor seeking to gain an advantage over [their] business.

Irrelevant factors

28. In considering whether disclosure of the Information in Issue would, on balance, be contrary to the public interest, I have not identified or taken any irrelevant factors into account.³⁴

Factors favouring disclosure

29. The RTI Act gives rise to factors favouring disclosure in circumstances where disclosing information could reasonably be expected to:

- promote open discussion of public affairs and enhance the Government's accountability³⁵
- contribute to positive and informed debate on important issues or matters of serious interest³⁶
- inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community;³⁷
- reveal the reason for a government decision and any background or contextual information that informed the decision;³⁸ and
- contribute to the protection of the environment.³⁹

30. While Clermont is of the view that there is a '*lack of readily identifiable factors favouring disclosure*' of the Information in Issue,⁴⁰ I consider that the above factors have application in the circumstances of this matter.

31. Council is responsible for ensuring that quarry sites are operating in accordance with approved uses and in compliance with applicable laws, including the EP Act.⁴¹ The disclosure of the Information in Issue will enable the community to scrutinise how Council meets its responsibilities to contribute to protection of the environment through ensuring compliance with corresponding legislation. Given these circumstances, I consider that disclosure of the Information in Issue would enhance Council's accountability and transparency, and contribute to the protection of the environment, by enabling public scrutiny of Council's decisions regarding the operation of quarry sites.

32. Additionally, disclosing the Information in Issue could also reasonably be expected to:

³³ Schedule 4, part 4, section 7(1)(c) of the RTI Act.

³⁴ Including those listed at schedule 4, part 1 of the RTI Act.

³⁵ Schedule 4, part 2, item 1 of the RTI Act.

³⁶ Schedule 4, part 2, item 2 of the RTI Act.

³⁷ Schedule 4, part 2, item 3 of the RTI Act.

³⁸ Schedule 4, part 2, item 11 of the RTI Act.

³⁹ Schedule 4, part 2, item 13 of the RTI Act.

⁴⁰ Letter to Council dated 28 August 2020.

⁴¹ Noting the object of the EP Act, per section 3, is to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends (**ecologically sustainable development**).

- inform the community about how Council manages quarrying activity; and
 - contribute to a positive and informed debate about the nature of such activity and the impact of those operations on local residents and Council's role in monitoring compliance with permissions and regulations.
33. Taking these circumstances into consideration, I afford significant weight to the public interest factors favouring disclosure which relate to enhancing Council's accountability and transparency, informing the community about Council's compliance activities, contributing to the debate on important issues and contributing to the protection of the environment.
34. I have considered the other public interest factors in schedule 4, part 2 of the RTI Act and am satisfied that no further factors favouring disclosure apply.

Factors favouring nondisclosure

35. Similar to the submission noted above Clermont also submitted:⁴²

[They operate] hard rock quarries at each of the three locations identified in the access application. Those quarries primarily produce road base material for use in road construction;

[T]he subject documents disclose information about [their] operations at those quarries;

[T]he road base market is extremely competitive and involves low-margins. In that environment, knowledge about a competitor's operations is of high value to a commercial competitor;

[Clermont believe] it is highly likely that this access application has come from a particular commercial competitor and, in fact, this access application is one of four that have been made to [Council] in respect of [their] operations over approximately the last 12 months, all of which [they believe] have come from the same commercial competitor for the purpose of obtaining commercially sensitive information about [their] operations in order to gain a commercial advantage;

[I]n the above circumstances, the disclosure of the documents would be to [their] commercial detriment ... and prejudice [their] business, commercial and financial affairs and would consequently be contrary to the public interest and ought to be refused;

[Citations omitted]
[sic]

36. Clermont's submissions raise specific nondisclosure factors which arise where disclosure could reasonably be expected to:
- prejudice the private, business, professional, commercial or financial affairs of entities⁴³
 - prejudice trade secrets, business affairs or research of an agency or person;⁴⁴ and
 - cause a public interest harm because disclosure of the information would disclose information concerning the business, professional, commercial or financial affairs of

⁴² Letter to OIC dated 21 July 2021.

⁴³ Schedule 4, part 3, item 2 of the RTI Act.

⁴⁴ Schedule 4, part 3, item 15 of the RTI Act.

an agency or another person and could reasonably be expected to have an adverse effect on those affairs.⁴⁵

37. Establishing a reasonable expectation of prejudice or adverse effect requires more than simply asserting that disclosure will result in such consequences. The words '*could reasonably be expected to*' call for a decision-maker to discriminate between what is merely possible or merely speculative and expectations that are reasonably based.⁴⁶ I must therefore be satisfied that there is a reasonably based expectation (and not mere speculation or mere possibility) that disclosure of the Information in Issue could reasonably be expected to cause the prejudice or harm claimed by Clermont. In the course of the review, I sought further particulars from Clermont of the exact nature of the prejudice to their business affairs they claim would occur in the event of disclosure of the Information in Issue but none were forthcoming.⁴⁷
38. While I accept that some of the Information in Issue comprises the business affairs of Clermont (namely that they conduct extractive activities), as previously held by the Right to Information Commissioner, under the RTI Act, the mere fact that information relates to commercial issues of entities does not, of itself, lead to an automatic presumption that disclosure under the RTI Act would be contrary to the public interest.⁴⁸ Clermont's submissions do not sufficiently identify any particular prejudice or adverse effects on their business, commercial and/or financial affairs, that could reasonably be expected to result from the disclosure of the Information in Issue. Nor has Clermont explained any causal link between disclosure of the Information in Issue and a resulting reasonable expectation of those prejudice/s or adverse effect/s.
39. Given the nature of the Information in Issue, as described at paragraph 11 above, I do not accept Clermont's submission that the Information in Issue comprises commercially sensitive information. In relation to the communications to Council, these mainly comprise historical information about how the three sites have been operated, to support Clermont's contention that the sites are operating in accordance with approved existing uses. While some of the information in one of the emails to Council comprises details of recent extraction limits per annum comprised in the DERM permit for Site B, this information is publicly accessible.⁴⁹ I also note that DAF's invitation for proposal to purchase in relation to Site C is also publicly available online.⁵⁰
40. With regard to the attachments to the email in relation to Site A, I note that the DERM permit and the environmental certificate were issued to the previous owner of the site and I understand the company has subsequently gone into administration. I also note

⁴⁵ Schedule 4, part 4, section 7(1)(c) of the RTI Act. Section 7(1) effectively contains three mutually exclusive public interest harm factors, at subsections (a)-(c). Some of the language used by Clermont in its submissions might arguably be construed as invoking section 7(1)(b), which operates to tell against disclosure of information possessed of a commercial value. Clermont has not developed any such submission, however, and in view of the onus it bears, I do not think it necessary to address that factor. Certainly, I cannot, on the information before me, see how the Information in Issue could be said to be possessed of commercial value, within the meaning of section 7(1)(b).

⁴⁶ See *Cannon and Australian Quality Egg Farms Limited* (1994) 1 QAR 491 at [62]-[63]. See also *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at [160]. Other authorities note that the words '*require a judgement to be made by the decision-maker as to whether it is reasonable, as distinct from something that is irrational, absurd or ridiculous to expect a disclosure of the information could have the prescribed consequences relied upon*': *Smolenski v Commissioner of Police, NSW Police* [2015] NSWCATAD 21 at [34], citing *Commissioner of Police, NSW Police Force v Camilleri (GD)* [2012] NSWADTAP 19 at [28], *McKinnon v Secretary, Department of Treasury* [2006] HCA 45 at [61] and *Attorney-General's Department v Cockcroft* (1986) 10 FCR 180 at 190.

⁴⁷ On 7 July 2021 and 11 November 2021.

⁴⁸ These comments were made in relation to a Queensland government-owned company but remain relevant here: *Kalinga Wooloowin Residents Association Inc and Brisbane City Council; City North Infrastructure Pty Ltd* (Third Party); *Department of Treasury* (Fourth Party) (Unreported, Queensland Information Commissioner, 9 May 2012) at [79].

⁴⁹ By searching the EP Act Public Register at <[Search for environmental authorities | Queensland Government \(des.qld.gov.au\)](#)>.

⁵⁰ I have confirmed this via the website of the Department of Agriculture and Fisheries at <[Invitation for Proposals to Purchase Quarry Material \(daf.qld.gov.au\)](#)>.

that any current permits for Site A will be publicly accessible.⁵¹ In providing the four photographs of Site A to Council, Clermont explains the photos comprise the pad, stockpile and shot rock that were part of the previous owner's operations that were being transferred as part of a sale arrangement. This information was provided to Council in 2013. The photographs show the state of the site in 2013, or prior, at least nine years ago, and there have subsequently been operations carried out at Site A since that time. While Clermont contends that disclosure of the information would be to Clermont's detriment, in the absence of any better particulars from Clermont and given the photographs show what appears to be quarried material that was in situ on the site at least nine years ago, I cannot identify any prejudice to Clermont's business affairs or public interest harm that could reasonably be expected to occur from disclosure of this information.

41. Clermont's submissions focus on its view that knowledge about its commercial operations would be of high value to a commercial competitor, such that the commercial competitor could use the information to gain a commercial advantage over Clermont. However, I consider that at most, release of the majority of the Information in Issue would merely disclose that Clermont conducts extractive activities at the three sites, which is, as noted above, information that is already publicly available. I cannot identify any information within the Information in Issue, that comprises specific information about how Clermont conducts its activities at those sites, such that disclosure of the information would enable a competitor to gain a commercial advantage over Clermont or reveal trade secrets of Clermont.
42. In relation to the information about extraction rates from Site C provided by DAF, I note these cover a period of 1992 to 1997. While I acknowledge that it may be arguable that disclosing the extraction rates from that time period may disclose the average amount of material that can be extracted from Site C per annum, unfortunately I have nothing before me about this from Clermont. It strikes me that the data is very old and would bear little correlation to Clermont's current activities at Site C and would therefore be of little value to a competitor.
43. In view of the above, to the extent that the business affairs factors favouring nondisclosure of the Information in Issue apply, I find they carry no weight.
44. I have considered the other public interest factors listed in schedule 4, parts 3 and 4 of the RTI Act and am satisfied no further factors favouring nondisclosure apply.⁵²

Balancing the public interest

45. In terms of balancing the relevant public interest factors against one another, I consider that disclosing the Information in Issue could reasonably be expected to enhance Council's accountability and transparency, inform the community and contribute to public debate, reveal the background or contextual information that informed Council's decision-making processes in relation to the sites, and contribute to the protection of the environment. I consider that these public interest factors warrant significant weight.
46. With respect to the nondisclosure factors, for reasons explained above, none apply to be balanced: in short, because I am not satisfied that there is a reasonable expectation of

⁵¹ By searching the EP Act Public Register at <[Search for environmental authorities | Queensland Government \(des.qld.gov.au\)](#)>.

⁵² In the event that further relevant factors exist in favour of nondisclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the significant weight that I have afforded to the public interest factors that favour disclosure of the Information in Issue.

prejudice or adverse effect, as anticipated by those factors arising from disclosure of the Information in Issue.⁵³

47. There being multiple factors favouring disclosure, and none telling against, I find that disclosure of the Information in Issue would not, on balance, be contrary to the public interest and the information should be disclosed to the Access Applicant.⁵⁴

DECISION

48. For the reasons set out above, I vary Council's decision and find that access may be granted to parts of 39 pages and a further 39 full pages.
49. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Assistant Information Commissioner Corby

Date: 3 March 2022

⁵³ However, if I am wrong in this respect and the factors favouring nondisclosure do require to be balanced against the factors favouring disclosure, I consider the factors favouring nondisclosure only warrant marginal weight.

⁵⁴ Section 47(3)(b) and 49 of the RTI Act.

APPENDIX**Significant procedural steps**

| Date | Event |
|------------------|--|
| 14 December 2020 | OIC received Clermont's application for external review. |
| 17 December 2020 | OIC requested preliminary documents from Council. |
| 21 December 2020 | Council provided OIC with the preliminary documents |
| 22 January 2021 | OIC contacted Clermont's lawyer via telephone to confirm some details of the application. |
| 5 February 2021 | OIC advised Clermont and Council that the external review had been accepted. |
| 29 April 2021 | OIC provided Clermont and Council with an update regarding the timeframe for OIC's provision of a preliminary view. |
| 21 June 2021 | OIC contacted Council via telephone to provide an update and confirm some details regarding the application. |
| 7 July 2021 | OIC issued a preliminary view to Clermont and provided an update to Council. |
| 21 July 2021 | Council contacted OIC via telephone to confirm some details regarding the application. Clermont's lawyer provided OIC with submissions in response to the preliminary view. |
| 11 November 2021 | OIC contacted Clermont's lawyer via telephone to discuss Clermont Quarry's submissions. Clermont requested an extension which OIC granted to provide submissions. |
| 8 December 2021 | OIC contacted Clermont's lawyer, noting that OIC had not received any further submissions. |
| 15 December 2021 | Clermont's lawyer advised OIC that Clermont did not intend to provide any further submissions and requested that OIC decide the issues based on the information before it. |
| 13 January 2022 | OIC advised the Access Applicant of OIC's view in relation to the information that is not relevant to the Access Application. OIC also conveyed a preliminary view to Council in this respect. |
| 24 January 2022 | Council advised OIC that it accepted OIC's preliminary view. |