



Mr Charlie Schroeder

Email: [foi+request-4763-e9d6b26a@righttoknow.org.au](mailto:foi+request-4763-e9d6b26a@righttoknow.org.au)

Dear Mr Schroeder

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**Freedom of Information Request No. 180819**  
**Decision on Access**

I refer to your request of 4 September 2018 to the Department of the Environment and Energy (the **Department**) under the *Freedom of Information Act 1982* (the **FOI Act**). Your request was revised on that date to seek access to:

*[Item 1] The decision brief (including any attachments to that brief) for the approval on EPBC 2009/5017, signed on 11 April 2014.*

*[Item 2] The decision brief (including any attachments to that brief) for the subsequent variation to that approval, signed on 10 April 2015.*

**Authority**

I am authorised by the Secretary of the Department under section 23 of the FOI Act to make a decision in relation to your request.

**Decision**

The Department has identified 42 documents relevant to the scope of your request.

I have decided to:

- **grant access** to Documents 3 through 7, 9, 11, 13a, 28 through 31, in full;
- **grant access** to Documents 1, 2, 8, 10, 12, 13, 14 through 27 and 32 through 36, in part, as they contain material that I consider exempt pursuant to section 47F of the FOI Act and/or irrelevant to the request pursuant to section 22 of the FOI Act; and

A schedule describing these documents and my decision in respect of each is at **ATTACHMENT A**. **ATTACHMENT B** contains information regarding your review rights, should you wish to seek review of my decision.

The documents are at **ATTACHMENT C**.

## Material considered in making my decision

I had regard to:

- the scope of the FOI request
- the content of the documents subject to your request
- the relevant provisions in the FOI Act
- advice from subject matter experts within the Department
- third party responses to third party consultation
- the *Guidelines issued by the Australian Information Commissioner under s93A of the Freedom of Information Act 1982* (the **FOI Guidelines**).

## Reasons for decision

### Material deleted pursuant to Section 22

#### *Deletion of irrelevant material*

Section 22 of the FOI Act allows for information that is irrelevant to your request to be deleted. The documents captured by your request include the personal information of junior government officers and the personal contact information of senior government officers. As iterated in our correspondence of 4 September 2018, the Department considers this material to be irrelevant to the scope of a request where no representation has been made that they be specifically included. The Department has not received a representation to this effect. Accordingly, I have decided that the personal information of junior government officers and the personal contact details of senior officers contained within the documents are irrelevant to the scope of your request and have deleted that information pursuant to section 22 of the FOI Act.

### Material exempted under section 47F

#### *Personal privacy*

Section 47F(1) of the FOI Act provides that where the disclosure of document would result in an unreasonable disclosure of personal information about any person (including a deceased person), that document is conditionally exempt. The conditionally exempt document may then be withheld from release to the applicant only if giving access to it would be against the public interest.

#### Unreasonable disclosure of information

Documents 8 and 16 through 26 contain the names, signatures, email addresses, physical addresses and phone numbers of members of the public who have provided submissions to the Department that were considered in the assessment of the East Gippsland Shire Council Poplar Removal Program (EPBC 2009/5017). I am satisfied that this information is “personal information” for the purposes of the FOI Act.

To determine whether the disclosure of this personal information was unreasonable, I gave regard to the following criteria under 47F(2) of the FOI Act:

- (a) the extent to which the information is well known;
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
- (c) the availability of the information from publicly accessible sources;
- (d) any other matters that the Authority considers relevant.

Against these criteria, I consider that:

- (a) the information is not well known;
- (b) the persons are not known to be associated with the matters dealt with in the document;  
and
- (c) the information is not available from publicly accessible sources.

Against criteria (d), and consistent with the decision in *Re Chandra and Minister for Immigration and Ethnic Affairs* [1984] AATA 437, I considered all relevant circumstances, including the nature of the information, the purpose for which the information was obtained, the likelihood of the information being information which the person concerned would not wish to have disclosed, and whether the information has any current relevance.

With reference to my findings above, I consider that any disclosure of the names, signatures, email addresses, physical addresses and phone numbers of members of the public who have provided submissions to the Department contained within the documents would be unreasonable, and therefore that this personal information is conditionally exempt. I will consider whether access to this personal information would be contrary to the public interest.

#### Contrary to the public interest

To determine whether access to the conditionally exempt personal information would be contrary to the public interest, I must consider those public interest factors favouring access to the personal information and weigh them against those public interest factors against access. If satisfied that the public interest factors against access outweigh those favouring access, I may decide that access to the personal information is contrary to the public interest.

I did not consider any of the irrelevant factors set out in section 11B(4) of the FOI Act.

Section 11B(3) sets out the public interest factors that favour access to information:

- (a) *promote the objects of this Act (including all the matters set out in sections 3 and 3A);*
- (b) *inform debate on a matter of public importance;*
- (c) *promote effective oversight of public expenditure;*
- (d) *allow a person to access his or her own personal information.*

Against these factors, I consider that access to the names, signatures, email addresses, physical addresses and phone numbers of members of the public who have provided submissions to the Department contained within Documents 8 and 16 through 26:

- (a) would promote the objects of the FOI Act in respect of providing access to information held by the Government (promoting section 3(1)(b)) and that the information is a national resource (section 3(3)).

However, I do not consider that this specific personal information would allow for greater insight into Government decision making (section 3(2)(a)) or that their release would allow for increased discussion or scrutiny of Government activities (section 3(3));

- (b) would not inform debate on a matter of public importance;
- (c) would not promote effective oversight of public expenditure; and
- (d) would not allow a person, being the applicant, further access to his or her own personal information.

Paragraph 6.22 of the FOI Guidelines provides a non-exhaustive list of public interest factors against access. Of these factors, I consider that access to the names, signatures, email addresses, physical addresses and phone numbers of members of the public who have provided submissions to the Department contained within Documents 8 and 16 through 26:

*(a) could reasonably be expected to prejudice the protection of an individual's right to privacy;*

After considering the public interest factors favouring access and those against access, I consider that the factors against access to outweigh those favouring access, and that access to the personal information discussed above to be contrary the public interest.

I have therefore decided to withhold access to the conditionally exempt names, signatures, email addresses, physical addresses and phone numbers of members of the public who have provided submissions to the Department contained within Documents 8 and 16 through 26 pursuant to section 47F of the FOI Act.

### **Disclosure Log**

Pursuant to section 11C of the FOI Act, the Department will publish on their website details of how the documents at **ATTACHMENT C** may be obtained within 10 days of providing you with this decision.

While your personal information is contained within Document 8 this will be redacted pursuant to section 11 of the FOI Act before being disclosed through the Department's disclosure log.

### **Further assistance**

The FOI Contact Officer in the Department can be contacted by telephone on 02 6274 2098 or by email at [foi@environment.gov.au](mailto:foi@environment.gov.au).

Yours sincerely



Gregory Manning  
Assistant Secretary  
Assessments & Post Approvals Branch

12 October 2018

### **ATTACHMENTS:**

- A.** Schedule of documents
- B.** Information sheet "Your Review Rights"
- C.** Documents subject to your request



# Australian Government

## Department of the Environment and Energy

## ATTACHMENT A

### FOI 180819 Schedule of Documents

Item No.	Document No	Description	Decision	
1	1	Approval decision brief  EPBC 20095017-Approval Decision Brief - signed	<i>Release in part</i> Section 22 - names, phone numbers and email address of non-Executive staff deleted as irrelevant to scope	
1	2	Proposed approval decision brief	<i>Release in part</i> Section 22 - names and phone numbers of non-Executive staff deleted as irrelevant to scope	
1	3	Attachment to proposed approval decision brief - Recommendation report  EPBC 20095017 - Recommendation Report - FINAL	<i>Release in full</i>	
1	4	Attachment to proposed approval decision brief - Referral information  Finalised PD B1 - Referral information	<i>Release in full</i>	
1	4a	Attachment to proposed approval decision brief - Referral information Attachment A - proposed location and site map  Finalised PD B1 - Referral information Attachment A	<i>Release in full</i>	
1	4b	Attachment to proposed approval decision brief - Referral information Attachment B - Photograph  Finalised PD B1 - Referral information Attachment B	<i>Release in full</i>	

Item No.	Document No	Description	Decision
1	4c	Attachment to proposed approval decision brief - Referral information Attachment C - Photograph  Finalised PD B1 - Referral information Attachment C	<i>Release in full</i>
1	5	Attachment to proposed approval decision brief - Draft management plan  FINAL PD - B2 Draft management plan	<i>Release in full</i>
1	6	Attachment to proposed approval decision brief - Approvals and Monitoring advice  Approvals and Monitoring advice.pdf	<i>Release in full</i>
1	7	Attachment to proposed approval decision brief - Draft Recovery Plan  Draft Recovery Plan for Grey Headed Flying Fox 2008.pdf	<i>Release in full</i>
1	8	Attachment to proposed approval decision brief - Public submissions  Public submissions	<i>Release in part</i> section 47F - names, email addresses, phone numbers, addresses of public submission authors
1	9	Attachment to proposed approval decision brief - Draft approval decision notice  EPBC 2009- 5017-Draft Approval Decision Notice	<i>Release in full</i>
1	10	Attachment to proposed approval decision brief - Letter to East Gippsland Shire Council consulting on proposed decision	<i>Release in part</i> Section 22 - names, email addresses and phone numbers of non-Executive staff deleted as irrelevant to scope

Item No.	Document No	Description	Decision	
		EPBC 20095017- LET Proposed approval decision -EGSC		
1	11	Attachment to proposed approval decision brief - Letter to Minister for Planning Victoria advising of proposed decision  EPBC 20095017- LET Proposed approval decision -Guy	<i>Release in full</i>	
1	12	Attachment to proposed approval decision brief - Referral decision brief  DOC 201 Referral Decision Brief 2009-5017 signed	<i>Release in part</i> Section 22 - names and phone numbers of non-Executive staff deleted as irrelevant to scope	
1	13	Attachment to Referral decision brief at Document 12 - Information regarding impacts on matters of NES  Attachment B Controlling Provisions 2009-5017	<i>Release in part</i> Section 22 - name of non-Executive staff deleted as irrelevant to scope	
1	13a	Attachment to Referral decision brief at Document 12 - Notification of referral decision and decision on assessment approach  DOC 206 - Notification CA 2009-5017 signed	<i>Release in full</i>	
1	14	Attachment to Referral decision brief at Document 12 - Letter to East Gippsland Shire Council notifying of decision on referral  LET 205 Notify decision on referral - EGSC signed	<i>Release in part</i> Section 22 - names, email addresses and phone numbers of non-Executive staff deleted as irrelevant to scope	
1	15	Attachment to Referral decision brief at Document 12 - Letter to Department of Planning and Community Development notifying of decision on referral	<i>Release in part</i> Section 22 - name, phone number and email address of non-Executive staff deleted as irrelevant to scope	



Item No.	Document No	Description	Decision
		LET 205 Notify decision on referral - DPCD signed	
1	16	Letter - Public submission - Author 1	<i>Release in part</i> section 47F - name, address of public submission author
1	17	Letter - Public submission - Author 2	<i>Release in part</i> section 47F - name, email address and address of public submission author
1	18	Letter - Public submission - Author 3	<i>Release in part</i> section 47F - name, email address and address of public submission author
1	19	Letter - Public submission - Author 4	<i>Release in part</i> section 47F - name of public submission author
1	20	Letter - Public submission - Ku-ring-gai BCS KBCS_submission_Ref_2009_5017.pdf	<i>Release in part</i> section 47F - name, signature of public submission author
1	21	Email - Public submission - Author 5	<i>Release in part</i> section 22 - names, email addresses of non-Executive government officers section 47F - name, email address of public submission author
1	22	Email - Public submission - Author 6	<i>Release in part</i> section 22 - names, email addresses of non-Executive government officers section 47F - name, email address of public submission author
1	23	Letter - Public submission - Author 7	<i>Release in part</i> section 47F - name and address of public submission author
1	24	Letter - Public submission - BANSW submission to EPBC (2009.5017).pdf	<i>Release in part</i> section 22 - names of non-Executive government officers section 47F - name, signature and phone number of public submission author
1	25	Public submission - Vic Advocates for Animals	<i>Release in part</i>



Item No.	Document No	Description	Decision	
		VIC Advocates for Animals inc 10_08_09.pdf	section 47F - name, email address and signature of public submission author	
1	26	Letter - Public submission - Author 8	<i>Release in part</i> section 47F - name, address and signature of public submission author	
1	27	Letter: proponent's responses to invitation for comment on proposed decision  EGSC letter of comment.pdf	<i>Release in part</i> Section 22 - name, phone number and email address of non-Executive staff deleted as irrelevant to scope	
1	28	Attachment to Document 27 - Proponent's comments on draft approval notice  Comments on Conditions DRAFT EGSC -25 March 2014.pdf	<i>Release in full</i>	
1	29	Proponents comments on draft approval notice  Comments on Conditions DRAFT EGSC - 8 April 2014.pdf	<i>Release in full</i>	
1	30	Department's response to invitation for comment on proposed decision - shown in track-changes  Draft Approval Notice FINAL with track changes.pdf	<i>Release in full</i>	
1	31	Notice of decision  EPBC 20095017-Approval Decision Notice-signed	<i>Release in full</i>	
1	32	Letter to East Gippsland Shire Council advising of decision on approval  EPBC 20095017-Letter-EGSC-signed	<i>Release in part</i> Section 22 - name, phone number and email address of non-Executive staff deleted as irrelevant to scope	

Item No.	Document No	Description	Decision
1	33	Letter to The Hon Matthew Guy MLC, Minister for Planning advising of decision on approval  EPBC 20095017-Letter-Guy-signed	<i>Release in part</i> Section 22 - name, phone number and email address of non-Executive staff deleted as irrelevant to scope
2	34	Variation decision brief  2009-5017-Brief-variation condition-4 Approved.pdf	<i>Release in part</i> Section 22 - name, phone number and email address of non-Executive staff deleted as irrelevant to scope
2	34a	Variation instrument  2009-5017-variation-to-conditions	<i>Release in part</i> Section 22 - name, phone number and email address of non-Executive staff deleted as irrelevant to scope
2	34b	Letter to East Gippsland Shire Council advising of decision on variation  2009-5017-letter-advise-variation-of-condition	<i>Release in part</i> Section 22 - name, phone number and email address of non-Executive staff deleted as irrelevant to scope
2	35	Email: East Gippsland Shire Council to Department requesting variation  progress with Commonwealth advice.pdf	<i>Release in part</i> Section 22 - name, phone number and email address of non-Executive staff deleted as irrelevant to scope
2	36	Email: Department of Environment and Natural Resources to East Gippsland Shire Council  Authorisation under Vic Wildlife Act for GHFF distrurance.pdf	<i>Release in part</i> Section 22 - name, phone number and email address of non-Executive staff deleted as irrelevant to scope



## YOUR REVIEW RIGHTS

You may seek review of this primary decision either internally by the Department (internal review), or externally by the Information Commissioner (Information Commissioner review).

### Internal review

An internal review is a review of the decision conducted by a senior officer within the Department. The reviewing officer will not be the same person whom made the primary decision.

If you wish to seek an internal review, you must submit a written application to the Department within 30 days after the day you are notified of this decision. Whilst there is no required form for the written internal Review application, it is recommended that you include your reasons as to why the primary decision should be reviewed.

The decision on the internal review will be provided to you within 30 days of the Department receiving your application.

You can submit your written internal review application to the below addresses:

**Email:** [foi@environment.gov.au](mailto:foi@environment.gov.au)

**Post:** FOI Contact Officer  
General Counsel Branch  
Department of the Environment and Energy  
GPO Box 787  
Canberra ACT 2601

### Information Commissioner review

An Information Commissioner review is a review undertaken by the Information Commissioner (IC). The IC will make a decision on the disclosure of the documents, giving regard to any submissions from the Department, yourself as the applicant, and any third parties consulted as part of this decision.

There is no statutory timeframe for a decision on an IC request.

If you wish to request a review by the IC, you must apply to the IC within 60 days after the day you received it. Further details on how to request an Information Commissioner review can be obtained from the Office of the Australian Information Commissioner:

**Online:** <https://www.oaic.gov.au/freedom-of-information/foi-review-process>

**Post:** GPO Box 5218, Sydney NSW 2001

**Fax:** 02 9284 9666

**Phone:** 1300 363 992

**Email:** [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

