



DEW Reference Number: F0002781402

Your ref: 7602202

81-95 Waymouth Street
Adelaide

GPO Box 1047
Adelaide SA 5001
Australia

Ph: +61 8204 9000

www.environment.sa.gov.au

Dear [REDACTED]

I refer to your application pursuant to the Freedom of Information Act 1991 (the Act) received by the Department for Environment and Water (DEW) on 5 July 2019, seeking access to:

"DEW responses /submissions to EPBC referral number 2018/8208 Twin Creek wind farm"
Timeline: 01/07/2017 to 23/09/2019.

As the agency did not determine the application within 30 days of receiving it, by the operation of section 19(2)(b) of the FOI Act, the agency is taken to have determined the application by refusing access.

Section 19(2a) of the FOI Act, provides that an agency may give access to a document on an application after the period within which it was required to deal with the application (and any such determination is to be taken to have been made under this Act).

DETERMINATION

Searches of the Department's records have found three (3) documents held by this agency within scope of your request.

As a DEW Accredited FOI Officer, I have determined to grant you partial access to one (1) document and refuse access to two (2) documents. Section 20 of the Act provides that an agency may refuse access to a document if it is an exempt document under the Act.

The documents, or parts of the document to which I am refusing access and the reasons for the refusal are summarised in the attached document schedule and explained in more detail below.

Documents number 1 and 2

Section 20(1)(b) of the Act states that if the documents are otherwise available for inspection (e.g. via internet sites, annual reports, newspapers, online publications etc.), access to the document can be refused.

I hereby determine to refuse access to document 1 and 2 under Section 20(1)(b) the Act as these documents have been provided to you in a previous application and they are published on the Department FOI disclosure webpage in accordance with [PC045 – Disclosure logs for Non-personal information](#).

Document number 3

Schedule 1, Clause 4 (2)(a)(iii) of the Act states that:

4 — Documents affecting law enforcement and public safety

- (2) *A document is an exempt document if it contains matter the disclosure of which could reasonably be expected—*
- (iii) to prejudice the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law (including any revenue law); and*
 - (b) would, on balance, be contrary to the public interest*

Schedule 1, Clause 8 (1) of the Act states that:

8—Documents affecting the conduct of research

- (1) *A document is an exempt document if it contains matter –*
- (a) that relates to the purpose or results of research (other than public opinion polling that does not relate directly to a contract or other commercial transaction that is still being negotiated), including research that is yet to be commenced or yet to be completed; and*
 - (b) the disclosure of which-*
 - (i) could reasonably be expected to have an adverse effect on the agency or other person by or on whose behalf the research is being, or is intended to be, carried out; and*
 - (ii) would, on balance, be contrary to the public interest.*

Public Interest test

Clauses 4(2) and 8(1) of Schedule 1 of the Act requires me to weigh up the public interest when determining to allow access to the above information.

Factors I have considered in favour of the public interest from any such release are:

- The public benefit in disclosure of documents about a matter of community interest.
- Meeting the objects of the FOI Act, which promotes public access to documents.
- Promoting public participation in government, supporting the importance of transparency and openness of Government information and records.

Factors I have considered contrary to the public interest for any such release are:

- Satisfying the elements of an exemption clause
- Disclosure of endangered species data in contrary to Departmental policies and may encourage contraventions of the National Parks and wildlife Act 1972 and hinder Departmental functions and purpose to conserve and protect species.

In making my determination, I have considered the public interest factors in favour of disclosure, particularly the objects of the Act which promote the full disclosure of documents.

I have weighed this against the factors contrary to the public interest and consider that there are real grounds to protect the vulnerability of an endangered species from illegal collection activities, should this information be released to the general public. Release of this information is contrary to Division 2, section 51 – Restrictions upon the taking of protected animals of the National Parks and Wildlife Act 1972 which seeks to protect native species (including eggs). This determination compliments existing data release Departmental policy to compliment Division 2, section 51 of this act.

In accordance with [PC045 – Disclosure logs for Non-personal information](#) once a determination has been provided, the agency is required to make available on our website information and documents that have been disclosed. Information will be publicised online at <http://www.environment.sa.gov.au/about-us/freedom-of-information/foi-disclosure-log>.

FEES AND CHARGES

There is no charge for processing this application.

YOUR APPEAL RIGHTS

If you are dissatisfied with this determination, you are entitled to exercise your rights to internal review and appeal as outlined in the attached documentation, by completing the attached Application for Review of Determination. If you decide to apply to exercise your rights to review, the completed form must be returned within 30 days to:

Chief Executive (Principal Officer FOI)
Department for Environment and Water
GPO Box 1047
ADELAIDE SA 5001

If you have any queries in relation to the above please contact a Freedom of Information Officer on telephone (08) 8463 6625 or email DEW.FOI@sa.gov.au.

Yours sincerely



Dylan Slape

Accredited Freedom of Information Officer, Department for Environment and Water

11 / 11 / 2019

Encl:

1. Documents and Document Schedule
2. Your Rights to Review and Appeal – FOI Fact Sheet



Freedom of Information application: F0002781402 - Member of Public

"DEW responses /submissions to EPBC referral number 2018/8208 Twin Creek wind farm"

Timeline: 01/07/2017 to 23/09/2019

No	Date	Author	Document Description	Determination	Clause	Reason
1	9/10/2017	DEWNR (K Graham)	Email	Refuse Access	20(1)(b)	Previously provided in FOI application F0001648601 (doc 3)
2	2/11/2017	DEWNR (S Reachill)	Email	Refuse Access	20(1)(b)	Previously provided in FOI application F0001648601 (doc 4)
3	18/07/2018	Sarah Reachill	DEW response to EPBC referral	Partial Release	4(2)(iii) 8(1)	Documents affecting law enforcement and public safety Documents affecting the conduct of research



Government of South Australia

Department for Environment
and Water

DEWD0000158

Date: 18 July 2018

Mr Rod Whyte
Director, Project Assessments West Section
Assessments & Post Approvals Branch
Department of the Environment and Energy
GPO Box 787
CANBERRA ACT 2601

Level 8
81-95 Waymouth St
GPO Box 1047
Adelaide SA 5001
Australia
Ph: +61 8
Fax: +61 8
www.environment.sa.gov.au

Dear Mr Whyte

Thank you for your letter dated 3 July 2018 regarding Twin Creek Windfarm (EPBC 2018/8208).

The South Australian Government provides the following response with regard to potential for impacts to Matters of National Environmental Significance. In general, the South Australian Government agrees with the RES Australia's assessment of significant impacts to Matters of National Environmental Significance, specifically impacts to Pygmy Blue-tongue Lizard (*Tiliqua adelaidensis*).

The project area identified in EPBC 2018/8208 contains the most significant population of Pygmy Blue-tongue Lizard at the southern extent of their current known range. The South Australian Department for Environment and Water (DEW) is actively working towards recovering populations of Pygmy Blue-Tongue Lizard through a range of initiatives in an effort to improve the *Environment Protection and Biodiversity Conservation Act 1991* (EPBC) status of Endangered. DEW supports RES Australia's consultants recommendation to avoid areas with suitable habitat for Pygmy Blue-tongue lizard.

DEW concurs with the Proponents assessment on the impacts of climate change on this species and in addition, notes that as the impacts of climate change become more pronounced then it is highly likely that this species range will further contract southward.

Population fragmentation is an important issue raised in the consultants' report provided by RES. DEW suggests that some tracks that split large areas of good Pygmy Blue-tongue habitat could be reasonably removed/relocated and that this could be addressed during the micro-siting process. Specifically tracks between turbines 14 and 7, and between 29, 21 and the intersection of 22 and 23, between 51 and 22 to 17. The status of the track network is not clear due to the maps still showing these areas as wind farm infrastructure zones, which may or may not contain tracks.

DEW notes the potential for ongoing impacts to existing populations of Pygmy Bluetongue due to stormwater run-off. As noted by RES Australia's consultant, this could reasonably result in spider / lizard burrows filling with silt and causing a reduction in quality and size of habitat available. In addition, site development processes that result in a significant change in land management e.g. the removal of stock for extended periods may reduce habitat quality by allowing the build-up of grass and groundcover. This could result in burrows being covered and reduced feeding and basking

opportunities. It is important that grazing management is included as part of the operational management aspects of the project, so that habitat quality is maintained or improved.

Infrastructure such as overhead power lines can significantly reduce habitat quality for Pygmy Blue-tongue Lizards particularly if it traverses occupied habitat or potential habitat areas. Power lines provide perching opportunities for raptors allowing them to improve their hunting efficiency in such locations. It is suggested that any proposed overhead powerlines be clearly mapped and positioned to avoid negative impacts.

DEW considers the viability of recently identified populations of Pygmy Blue-tongue lizards in areas surrounding the proposed wind farm as lower due to the high level of fragmentation at these sites. Individuals are considered more sparsely distributed than the core population that occurs on the Twin Creek property. It may be in the best interest of RES Australia to undertake further survey work in the areas to the north and to the west of the site. If further populations were located, this would provide an indication as to the ability of the species to persist in properties outside of the development footprint.

DEW notes that the surveys completed have focussed on the wind turbine footprint only. There does not appear to be consideration of potential habitat or existing populations in areas such as roadsides where additional infrastructure associated with the development may be required. Should RES Australia require infrastructure within the roadside corridor, there may be a need to undertake further surveys. Natural Resources Adelaide and Mount Lofty Ranges have recorded this species in 4: Documents affecting law enforcement and public safety; 8: Document roadside reserves within the vicinity of the site. Further survey work may be required if this area forms part of the overall development footprint.

DEW supports RES Australia's proposal regarding a collaboration with SA Museum, the Pygmy Blue-tongue Recovery Team and Flinders University, in relation to a research proposal for translocation and/or relocation. This is consistent to the approach described in the Pygmy Blue-tongue Lizard Recovery Plan 2012.

With regard to assessment, if the action is declared controlled, please note that this proposal is not a major development at the State level. As per the bilateral arrangements in place at this time, only major developments are subject to assessment under the bilateral agreement.

Given the level of impact reported by RES Australia it would be reasonable to declare the action controlled. However, RES have provided extensive information detailing management and mitigation measures for this species and it is assumed that additional information will be provided to clarify the footprint concerning ancillary infrastructure. Through the development and implementation of further onsite management and mitigation requirements through the State Development approval process and investment into research into this species through a collaborative research program, the South Australian Government suggests that AG DotEE may wish to consider if approval as the action will be undertaken in a "particular matter" is appropriate.

For further information please contact myself on 08 8463 4821 or sarah.reachill@sa.gov.au

Regards

A handwritten signature in black ink, appearing to read 'S. Reachill', with a stylized flourish at the end.

Sarah Reachill
Coordinator, Planning and Impact Assessment
Economic and Sustainable Development Branch
South Australian Department for Environment and Water