



Australian Government
Department of Agriculture,
Water and the Environment

EPBC Ref: 2018/8177

Mr Daniel Hackett
Director
Wild Drake Pty Ltd
PO Box 1061
LAUNCESTON TAS 7250

Dear Mr Hackett

**Additional information required for preliminary documentation
Halls Island Standing Camp, Lake Malbena, Tasmania**

I am writing to you in relation to your proposal to construct and operate a small-scale tourist operation, including a standing camp on Halls Island, Lake Malbena and helicopter access, approximately 20 kilometres north-east of Derwent Bridge, Tasmania.

On 16 September 2020, the Hon Sussan Ley MP, Minister for the Environment, decided that the the proposed action is a controlled action and that it will be assessed by preliminary documentation. Further information will be required to be able to assess the relevant impacts of the proposed action.

Details outlining the further information required are at [Attachment A](#).

Details on the assessment process and the responsibilities of the proponent are set out in the enclosed fact sheet. Further information is available from the Department's website at <http://www.environment.gov.au/epbc>.

If you have any questions about the referral process or the additional information required, please contact the project manager, [s. 22\(1\)\(a\)\(ii\)](#) by email to [s. 22\(1\)\(a\)\(ii\)](#) or telephone [s. 22\(1\)\(a\)\(ii\)](#) and quote the EPBC reference number shown at the beginning of this letter.

Yours sincerely

Richard Miles
Acting Assistant Secretary
Environment Assessments (Vic, Tas) and Post Approvals Branch
September 2020

**REQUEST FOR ADDITIONAL INFORMATION - PRELIMINARY DOCUMENTATION
Halls Island Standing Camp, Lake Malbena, Tasmania (EPBC 2018/8177)**

On 16 September 2020, it was determined that the proposed action is likely to have a significant impact on listed threatened species and communities (sections 18 and 18A), World Heritage properties (sections 12 and 15A) and National Heritage places (sections 15B and 15C) protected under Part 3 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and that the proposed action will be assessed by preliminary documentation.

Preliminary documentation for the proposal will include:

- the information contained in the original referral
- the information provided in response to the request for additional information dated 24 April 2018
- the further information you provide on the impacts of the action and the strategies you propose to avoid, mitigate and/or offset those impacts (as described below)
- any other relevant information on the matters protected by the EPBC Act.

The preliminary documentation should be sufficient to allow the Minister (or delegate) to make an informed decision on whether or not to approve, under Part 9 of the EPBC Act, the taking of the action for the purposes of each controlling provision.

The preliminary documentation must address the matters set out below.

1. GENERAL CONTENT, FORMAT AND STYLE

The preliminary documentation should be provided as one document with attachments and in a format that is objective, clear and succinct. It must contain sufficient information to avoid the need to search out previous or supplementary reports and be written so that any conclusions reached can be independently assessed.

Where appropriate the documentation should be supported by:

- a) the best available scientific literature
- b) relevant maps, plans, diagrams (clearly annotated, in colour and of high resolution) and technical information
- c) details on relevant uncertainties, including whether impacts are unknown, unpredictable or irreversible, as well as acceptability of the relevant impacts to Matters of National Environmental Significance (MNES)
- d) references or other descriptive detail in relation to the information provided, including how recent the various pieces of information are
- e) a covering summary of the information provided and identification within the summary of where the requirements set out below are addressed in the consolidated documentation.

The documentation must avoid passive language and use active, clear commitments (e.g. 'must' and 'will') where appropriate. Where relevant information was provided

at the referral stage, incorporate or refer to this information as necessary in the consolidated preliminary documentation. Where relevant information updates, replaces or clarifies information that was provided at the referral stage, this should be made clear in the response to the information requirements specified below.

2. DESCRIPTION OF THE ACTION

- a) The location, boundaries and size (in hectares) of the disturbance footprint and of any adjoining areas which may be indirectly impacted by the proposal.
- b) A description of all components of the action, including the anticipated timing and duration (including start and completion dates) of each component of the project.
- c) A description of any ongoing operational requirements including any anticipated maintenance works.
- d) A description of surrounding land uses.
- e) Descriptions of any feasible alternatives to the proposed action, or components of the proposed action, to the extent reasonably practicable, including the alternative of taking no action, and sufficient detail to make clear why any alternative is preferred to another. The short, medium and long-term advantages and disadvantages of the options should be discussed.

3. DESCRIPTION OF THE ENVIRONMENT AND MATTERS OF NATIONAL ENVIRONMENTAL SIGNIFICANCE

The preliminary documentation must provide a general description of the environment affected by and surrounding the proposed action, in both the short and long term.

Specific matters this section must address include, but are not limited to:

- f) A description of any potential MNES that occur, or have the potential to occur, in the project area and adjacent area, including but not limited to:
 - i. Tasmanian Wilderness - declared property on the World Heritage List (Property ID: 181)
 - ii. Tasmanian Wilderness - listed place on the National Heritage List (Place ID: 105695)
 - iii. Tasmanian Wedge-tailed Eagle (*Aquila audax fleayi*) – Endangered.
- g) Targeted surveys to confirm the presence, status and extent of relevant listed threatened species within the proposed action area (if it is believed that targeted surveys are not necessary, an explanation of why, including evidence, should be provided).
- h) Information detailing known populations (and records) or habitat for the relevant listed threatened species within 5 km of the proposed action area.
- i) Information about the resources used to identify and assess the environmental values of the site (i.e. was consultation or advice sought from experts).

- j) An assessment of the adequacy of any surveys undertaken (including survey effort, timing and in accordance with the Department's relevant scientific and policy guidance).
- k) A summary of known helicopter/aircraft use in the vicinity of the proposed action and other similar areas in the Tasmanian Wilderness World Heritage Area, including aircraft type, flight duration and frequency, and altitude.

4. RELEVANT IMPACTS

The preliminary documentation must include an assessment of potential impacts (including direct, indirect, facilitated and cumulative impacts) that may occur as a result of all elements and project phases of the proposed action (e.g. construction, operation and post-construction) on the MNES addressed at Section 3.

Consideration of impacts must not be confined to the immediate area of the proposed action but must also consider the potential of the proposed action to impact on adjacent areas that are likely to contain values, populations or habitat for MNES. Comparative assessment of the impacts of each alternative considered under 2.e) above on each MNES must be provided.

For listed threatened species and communities this must include, but not be limited to:

- a) An assessment of the direct and indirect loss and/or disturbance of listed threatened species populations and habitat as a result of the proposed action. This must include the quality of the habitat impacted, a quantification of the total individuals/populations and habitat area impacted in hectares and analysis of the indirect and facilitated impacts.
- b) An assessment of the likely duration of impacts to MNES as a result of the proposed action.
- c) An assessment of whether impacts are likely to be repeated, for example as part of maintenance or upkeep.
- d) Discussion of whether any impacts are likely to be unknown, unpredictable or irreversible.
- e) Full justification of all discussions and conclusions based on the best available information, including relevant conservation advices, recovery plans, threat abatement plans and guidance documents, should be included if applicable. Departmental documents regarding listed threatened species can be found at: <http://www.environment.gov.au/cgi-bin/sprat/public/sprat.pl>.

For the World Heritage property and National Heritage place this must include, but not be limited to:

- f) An assessment of impacts to heritage values of the MNES that will be notably altered, modified, obscured or diminished as a result of the action including, but not limited to, values associated with the scale of the undisturbed landscapes, and the view fields and sites of exceptional natural beauty associated with the relatively undisturbed nature of the Tasmanian Wilderness World Heritage Area.

- g) An assessment of noise impacts from proposed helicopter use on the values of the Tasmanian Wilderness World Heritage Area, undertaken by a suitably qualified and independent third party, giving consideration to any previous assessments.
- h) An assessment of the likely duration of impacts to MNES as a result of the proposed action.
- i) An assessment of whether impacts are likely to be repeated, for example as part of maintenance or upkeep.
- j) Discussion of whether any impacts are likely to be unknown, unpredictable or irreversible.
- k) Full justification of all discussions and conclusions, and where relevant based on the best available information and guidance documentation.

5. PROPOSED AVOIDANCE AND MITIGATION MEASURES

The preliminary documentation package must provide information on proposed avoidance and mitigation measures to avoid, prevent or minimise impacts, to the MNES addressed at Section 3 above, that are likely to be impacted by the proposed action. A consolidated list of proposed avoidance and mitigation measures must be provided, based on best available practices and must include:

- a) Details of any agreed understandings, agreements or plans developed to manage impacts to the MNES and heritage values.
- b) A detailed description of the avoidance and mitigation measures proposed, including a statement of the objectives, the ongoing management and monitoring, the policy basis for the measures, the party responsible for each measure, and locations and timing of each measure.
- c) Assessment of feasible alternatives to helicopter use or amendments to helicopter landing sites to reduce impacts to heritage values, and assessment of the impacts of these alternatives using relevant impact modelling.
- d) An assessment of the expected or predicted effectiveness of the measures proposed, including an assessment of their past effectiveness where relevant.
- e) Details of ongoing management, including research and monitoring programs to support an adaptive management approach and determine the effectiveness of the measures proposed.
- f) If measures are proposed to not be adopted, a detailed assessment of why the expected or predicted effectiveness, and affordability or achievability of avoidance and mitigation options makes the measures unfeasible.

6. RESIDUAL IMPACTS/PROPOSED OFFSETS

Describe the residual impacts on MNES that are likely to occur as a result of the proposed action in its entirety, after proposed avoidance and/or mitigation measures are taken into account. If applicable, this should include the reasons why avoidance or mitigation of impacts cannot be reasonably achieved.

Include a summary of the net impacts to MNES that are likely to result from the proposed action, taking into consideration both positive and negative impacts.

If residual impacts are likely to be significant please provide an offset proposal to compensate for residual impacts to MNES. Offsets for heritage values should improve the integrity and resilience of the heritage values involved.

Offsets for listed threatened species and communities must directly contribute to the ongoing viability of the listed threatened species and/or ecological communities and deliver an overall conservation outcome that improves or maintains the viability of the protected matter, as compared to what is likely to have occurred if neither the action nor the offset had taken place. The offset proposal should demonstrate how the conservation outcome will be delivered for the protected matter.

The proposed offset must meet the requirements of the Department's *EPBC Act Environmental Offsets Policy* (October 2012) available at:
www.environment.gov.au/epbc/publications/epbc-act-environmental-offsets-policy.

The proposal must include justification of how the offsets meets the *EPBC Act Environmental Offsets Policy* and how the specific outcomes will be achieved. Offsets required by the State can contribute to offset obligations under the EPBC Act if those offsets also meet the requirements of the *EPBC Act Environmental Offsets Policy*.

7. OTHER APPROVALS AND CONDITIONS

The preliminary documentation must include information on any other requirements for approval or conditions that apply, or that you reasonably believe are likely to apply, to the proposed action. This must include:

- a) A description of any approval obtained or required to be obtained from a State or Commonwealth agency or authority (other than an approval under the EPBC Act), including any conditions that apply to the proposed action.
- b) A statement identifying any additional approval that is required.
- c) A description of the monitoring, enforcement and review procedures that apply, or are proposed to apply, to the action.

8. SOCIAL AND ECONOMIC

The preliminary documentation must address the economic and social impacts (both positive and negative) of the proposed action. This may include:

- a) Details of any public consultation activities undertaken, and their outcomes:
 - i. Where relevant, consider the *Engage Early: guidance for proponents on best practice Indigenous engagement for environmental assessments under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*: <https://www.environment.gov.au/epbc/publications/engage-early>
- b) Projected costs and benefits of the proposed action, e.g. employment opportunities expected to be generated by the project (including construction and operational

phases). This must include the basis for their estimation through cost/benefit analysis or similar studies.

- c) Impacts to other users of the Tasmanian Wilderness World Heritage Area and Hall's Island specifically, including measures proposed to mitigate these impacts.

Economic and social impacts should be considered at the local, regional and national level.

9. ENVIRONMENTAL RECORD OF PERSON PROPOSING TO TAKE THE ACTION

Please provide the following information if updated from that provided with the referral document, including details of any proceedings under a Commonwealth, State or Territory law for the protection of the environment or the conservation and sustainable use of natural resources against:

- a) The person proposing to take the action.
- b) For an action for which a person has applied for a permit, the person making the application.

If the person proposing to take the action is a corporation, details of the corporation's environmental policy and planning framework should be described.

10. ECOLOGICALLY SUSTAINABLE DEVELOPMENT

The preliminary documentation package must provide a description of the proposed action in relation to the principles of ecologically sustainable development and the objects and requirements of the EPBC Act:

- a) The long-term and short-term economic, environmental, social and equitable considerations.
- b) The precautionary principle which states that a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation where there are threats of serious/irreversible environmental damage.
- c) The principle of inter-generational equity which states that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.
- d) The conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making.
- e) Improved valuation, pricing and incentive mechanisms should be promoted.

The *National Strategy for Ecologically Sustainable Development* (1992) is available on the following web site: <http://www.environment.gov.au/resource/national-strategy-ecologically-sustainable-development>.

11. CONCLUSION

The preliminary documentation must provide an overall conclusion as to the environmental acceptability of the proposal, including discussion on compliance with

the principles of ecologically sustainable development and the objects and requirements of the EPBC Act.

You may wish to include a statement as to whether or not the controlled action should be approved and may recommend conditions pertaining to an approval. This should include justification for undertaking the proposed action in the manner proposed. The measures proposed or required by way of offset for any unavoidable impacts on MNES and the relative degree of compensation, should be restated here.

12. INFORMATION SOURCES

The preliminary documentation must state for the information provided, the following:

- a) The source and currency (date) of the information.
- b) How the reliability of the information was tested.
- c) The uncertainties (if any) in the information.
- d) The guidelines, plans and/or policies considered.



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Yours sincerely

A handwritten signature in black ink, appearing to read 'Richard Miles'.

Richard Miles
Acting Assistant Secretary
Environment Assessments (Vic, Tas) and Post Approvals Branch
29 September 2020

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- i) Information about the resources used to identify and assess the environmental values of the site (i.e. was consultation or advice sought from experts).

- j) An assessment of the adequacy of any surveys undertaken (including survey effort, timing and in accordance with the Department's relevant scientific and policy guidance).
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- a) A description of any approval obtained or required to be obtained from a State or Commonwealth agency or authority (other than an approval under the EPBC Act), including any conditions that apply to the proposed action.
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- a) Details of any public consultation activities undertaken, and their outcomes:
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phases). This must include the basis for their estimation through cost/benefit analysis or similar studies.

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- b) For an action for which a person has applied for a permit, the person making the application.

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The preliminary documentation package must provide a description of the proposed action in relation to the principles of ecologically sustainable development and the objects and requirements of the EPBC Act:

- a) The long-term and short-term economic, environmental, social and equitable considerations.
- b) The precautionary principle which states that a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation where there are threats of serious/irreversible environmental damage.
- c) The principle of inter-generational equity which states that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.
- d) The conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making.
- e) Improved valuation, pricing and incentive mechanisms should be promoted.

The *National Strategy for Ecologically Sustainable Development* (1992) is available on the following web site: <http://www.environment.gov.au/resource/national-strategy-ecologically-sustainable-development>.

11. CONCLUSION

The preliminary documentation must provide an overall conclusion as to the environmental acceptability of the proposal, including discussion on compliance with

the principles of ecologically sustainable development and the objects and requirements of the EPBC Act.

You may wish to include a statement as to whether or not the controlled action should be approved and may recommend conditions pertaining to an approval. This should include justification for undertaking the proposed action in the manner proposed. The measures proposed or required by way of offset for any unavoidable impacts on MNES and the relative degree of compensation, should be restated here.

12. INFORMATION SOURCES

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- a) The source and currency (date) of the information.
- b) How the reliability of the information was tested.
- c) The uncertainties (if any) in the information.
- d) The guidelines, plans and/or policies considered.

From: s. 22(1)(a)(ii)
To: ["info@riverfly.com.au"](mailto:info@riverfly.com.au)
Cc: [Declan O'Connor-Cox](#)
Subject: EPBC 2018/8177 - Hall's Island Standing Camp - notification of referral decision - controlled action [SEC=OFFICIAL]
Date: Thursday, 17 September 2020 11:53:00 AM
Attachments: [2018-8177 Referral - Decision - CA - letter - proponent - signed.pdf](#)
[2018-8177-Referral2.1-Decision notice - CA-signed.pdf](#)

Dear Mr Hackett,

As discussed, please find attached correspondence from the Minister regarding her decision on your proposal to construct and operate a standing camp on Hall's Island, Lake Malbena, Tasmania. This decision will be published on the Department's website.

Kind Regards,

s.
22

Co-Director (Acting) | Victoria & Tasmania Assessments | s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

Department of Agriculture, Water and the Environment

Environment Assessments (Vic, Tas) & Post Approvals Branch | Environment Approvals Division

John Gorton Building, King Edward Terrace, Parkes, ACT

GPO Box 858, Canberra ACT 2601

awe.gov.au



**THE HON SUSSAN LEY MP
MINISTER FOR THE ENVIRONMENT
MEMBER FOR FARRER**

PDR ID: MS20-001150

Mr Daniel Hackett
Director
Wild Drake Pty Ltd
PO Box 1061
LAUNCESTON TAS 7250

16 SEP 2020

Dear Mr Hackett

**DECISION ON REFERRAL
HALLS ISLAND STANDING CAMP, LAKE MALBENA, TASMANIA (EPBC 2018/8177)**

Thank you for submitting a referral under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). This is to advise you of my decision about the proposed action, to construct and operate a small-scale tourist operation, including a standing camp on Halls Island, Lake Malbena and helicopter access, approximately 20 kilometres north-east of Derwent Bridge, Tasmania. In accordance with section 74A of the EPBC Act, I have decided to accept the referral which I am satisfied is a component of a larger action.

As the Minister for the Environment, I have decided under section 75 of the EPBC Act that the proposed action is a controlled action and, as such, it requires assessment and a decision about whether approval for it should be given under the EPBC Act.

The information that I have considered indicates that the proposed action is likely to have a significant impact on the following matters protected by the EPBC Act:

- World Heritage properties (sections 12 and 15A)
- National Heritage places (sections 15B and 15C)
- Listed threatened species and communities (sections 18 and 18A).

Based on the information available in the referral, the proposed action is likely to have a significant impact on the following matters of national environmental significance, including but not limited to:

- Construction and operation of the proposed action is likely to significantly impact the values of the Tasmanian Wilderness World Heritage property and National Heritage place.
- Construction and operation of the proposed action is likely to significantly impact the Endangered Tasmanian Wedge-tailed Eagle (*Aquila audax fleayi*).

Please note that this decision only relates to the potential for significant impacts on matters protected by the Australian Government under Chapter 2 of the EPBC Act.

I have also decided that the project will need to be assessed by preliminary documentation.

Each assessment approach requires different levels of information and involves different steps. All levels of assessment include a public consultation phase, *in which any third parties can comment on the proposed action*.

Indigenous communities may also need to be consulted during the assessment process. For more information on how and when indigenous engagement should occur during environmental assessments, please refer to the indigenous engagement guidelines at <http://www.environment.gov.au/epbc/publications/engage-early>.

While I have determined that your project will be assessed by preliminary documentation, some further information will be required to be able to assess the relevant impacts of the action. You should expect to receive a letter from the Department within 10 business days, outlining the information required.

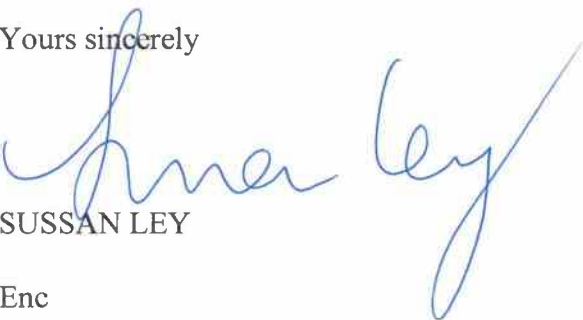
I note that you consider you are exempt from cost recovery under section 520(4C)(e)(v) of the EPBC Act. However, I am required to provide you with a fee schedule for your proposal. Enclosed is a copy of the fee schedule for your information only. This information may be used if your circumstances change.

I have also written to the Tasmanian Government and relevant Commonwealth Ministers to advise them of this decision.

Please also note that once a proposal to take an action has been referred under the EPBC Act, it is an offence under section 74AA to take the action while the decision-making process is on-going (unless that action is specifically excluded from the referral or other exemptions apply). Persons convicted of an offence under this provision of the EPBC Act may be liable for a penalty of up to 500 penalty units. The EPBC Act is available on line at: <http://www.environment.gov.au/epbc/about/index.html>.

If you have any questions about the referral process or this decision, please contact the project manager, s. 22(1)(a)(ii) by email to s. 22(1)(a)(ii) , or telephone s. 22(1)(a)(ii) and quote the EPBC reference number shown at the beginning of this letter.

Yours sincerely



SUSSAN LEY

Enc



**Notification of
REFERRAL DECISION AND DESIGNATED PROPONENT – controlled action
DECISION ON ASSESSMENT APPROACH**

Halls Island Standing Camp, Lake Malbena, Tasmania (EPBC 2018/8177)

This decision is made under section 75 and section 87 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

proposed action To construct and operate a small-scale tourist operation, including a standing camp on Halls Island, Lake Malbena, and helicopter access, approximately 20 kilometres north-east of Derwent Bridge, Tasmania, as described in the referral received by the Department on 28 March 2018 [see EPBC Act referral 2018/8177].

decision on proposed action The proposed action is a controlled action.
The project will require assessment and approval under the EPBC Act before it can proceed.

relevant controlling provisions

- World Heritage properties (sections 12 & 15A)
- National Heritage places (sections 15B & 15C)
- Listed threatened species and communities (sections 18 & 18A)

designated proponent Wild Drake Pty Ltd
ACN: 623 714 545

assessment approach The project will be assessed by preliminary documentation.

Decision-maker

Name and position The Hon Sussan Ley MP
Minister for the Environment

Signature

date of decision

16th September 2020

From: s. 22(1)(a)(ii)
To: ["info@riverfly.com.au"](mailto:info@riverfly.com.au)
Bcc: s. 22(1)(a)(ii)
Subject: EPBC 2018/8177 Halls Island Standing Camp - request for information to form preliminary documentation [SEC=OFFICIAL]
Date: Tuesday, 29 September 2020 5:52:00 PM
Attachments: [2018-8177 Assessment-Brief Att A-PD request-letter to proponent and Att.pdf](#)

Dear Mr Hackett,

Please find attached correspondence from the Department outlining the information requirements to inform the preliminary documentation assessment under the EPBC Act.

Kind Regards,

S.

Co-Director (Acting) | Victoria & Tasmania Assessments | s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

Department of Agriculture, Water and the Environment

Environment Assessments (Vic, Tas) & Post Approvals Branch | Environment Approvals Division

John Gorton Building, King Edward Terrace, Parkes, ACT

GPO Box 858, Canberra ACT 2601

awe.gov.au

From: info@riverfly.com.au
To: s. 22(1)(a)(ii)
Subject: RE: EPBC 2018/8177 - Hall's Island Standing Camp - notification of referral decision - controlled action [SEC=OFFICIAL]
Date: Monday, 21 September 2020 9:38:14 AM

Thanks – just investigating what type of data (comment) management systems are available for use...

Kindest regards,

Daniel Hackett

From: s. 22(1)(a)(ii)
Sent: Monday, 21 September 2020 9:37 AM
To: info@riverfly.com.au
Subject: RE: EPBC 2018/8177 - Hall's Island Standing Camp - notification of referral decision - controlled action [SEC=OFFICIAL]

Public comments will be provided to you, to be addressed in the final assessment documentation and to be provided to the Department.

From: info@riverfly.com.au <info@riverfly.com.au>
Sent: Monday, 21 September 2020 9:28 AM
To: s. 22(1)(a)(ii)
Subject: RE: EPBC 2018/8177 - Hall's Island Standing Camp - notification of referral decision - controlled action [SEC=OFFICIAL]

Thank you. Will the public comments be made via a Wild Drake platform, or directly by the public to the department?

Kindest regards,

Daniel Hackett
Wild Drake
Mob: 0427313972

From: s. 22(1)(a)(ii)
Sent: Monday, 21 September 2020 8:24 AM
To: info <info@riverfly.com.au>
Subject: RE: EPBC 2018/8177 - Hall's Island Standing Camp - notification of referral decision - controlled action [SEC=OFFICIAL]

Hi Daniel,
The public comment period will commence after the additional information is provided. I've attached the template of the guidance we issue with the direction to publish the information – which sets out the requirements of the EPBC Regulations. The Preliminary Documentation

request in the next fortnight will include further details around expectations of the presentation of information.

Happy to discuss,

s. 22(1)(a)(ii)

Co-Director (Acting) | Victoria & Tasmania Assessments | s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

Department of Agriculture, Water and the Environment

Environment Assessments (Vic, Tas) & Post Approvals Branch | Environment Approvals Division

John Gorton Building, King Edward Terrace, Parkes, ACT

GPO Box 858, Canberra ACT 2601

awe.gov.au

From: info <info@riverfly.com.au>

Sent: Monday, 21 September 2020 6:53 AM

To: s. 22(1)(a)(ii)

Subject: Re: EPBC 2018/8177 - Hall's Island Standing Camp - notification of referral decision - controlled action [SEC=OFFICIAL]

Hello s. 22(1)
(a)(ii)

Re the upcoming public comment, does the dept have information in relation to public comment IT system requirements, formats, how data is collected, collated and passed on to the dept etc?

Kindest regards,
Daniel Hackett

Out of Office

----- Original message -----

From: s. 22(1)(a)(ii)

Date: 17/9/20 11:53 am (GMT+10:00)

To: info@riverfly.com.au

Cc: Declan O'Connor-Cox <Declan.O'connor-Cox@environment.gov.au>

Subject: EPBC 2018/8177 - Hall's Island Standing Camp - notification of referral decision - controlled action [SEC=OFFICIAL]

Dear Mr Hackett,

As discussed, please find attached correspondence from the Minister regarding her decision on your proposal to construct and operate a standing camp on Hall's Island, Lake Malbena, Tasmania. This decision will be published on the Department's website.

Kind Regards,

s. 22(1)(a)(ii)

Co-Director (Acting) | Victoria & Tasmania Assessments | s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

Department of Agriculture, Water and the Environment

Environment Assessments (Vic, Tas) & Post Approvals Branch | Environment Approvals Division

John Gorton Building, King Edward Terrace, Parkes, ACT

GPO Box 858, Canberra ACT 2601

awe.gov.au

From: s. 22(1)(a)(ii)
To: "info"
Subject: RE: EPBC 2018/8177 - Hall's Island Standing Camp - notification of referral decision - controlled action [SEC=OFFICIAL]
Date: Monday, 21 September 2020 8:23:00 AM
Attachments: [ATT_302_Publication_of_information_for_assessment_-_preliminary_documentation_s95A_TEMPLATE.pdf](#)

Hi Daniel,

The public comment period will commence after the additional information is provided. I've attached the template of the guidance we issue with the direction to publish the information – which sets out the requirements of the EPBC Regulations. The Preliminary Documentation request in the next fortnight will include further details around expectations of the presentation of information.

Happy to discuss,

s.

s. 22(1)(a)(

ii)

Co-Director (Acting) | Victoria & Tasmania Assessments | s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

Department of Agriculture, Water and the Environment

Environment Assessments (Vic, Tas) & Post Approvals Branch | Environment Approvals Division

John Gorton Building, King Edward Terrace, Parkes, ACT

GPO Box 858, Canberra ACT 2601

awe.gov.au

From: info <info@riverfly.com.au>

Sent: Monday, 21 September 2020 6:53 AM

To: s. 22(1)(a)(ii)

Subject: Re: EPBC 2018/8177 - Hall's Island Standing Camp - notification of referral decision - controlled action [SEC=OFFICIAL]

Hello ^{s. 22(1)}_{(a)(ii)}

Re the upcoming public comment, does the dept have information in relation to public comment IT system requirements, formats, how data is collected, collated and passed on to the dept etc?

Kindest regards,

Daniel Hackett

Out of Office

----- Original message -----

From: s. 22(1)(a)(ii)

Date: 17/9/20 11:53 am (GMT+10:00)

To: info@riverfly.com.au

Cc: Declan O'Connor-Cox <Declan.O'connor-Cox@environment.gov.au>

Subject: EPBC 2018/8177 - Hall's Island Standing Camp - notification of referral decision -

controlled action [SEC=OFFICIAL]

Dear Mr Hackett,

As discussed, please find attached correspondence from the Minister regarding her decision on your proposal to construct and operate a standing camp on Hall's Island, Lake Malbena, Tasmania. This decision will be published on the Department's website.

Kind Regards,

S.

s. 22(1)(a)(

ii)

Co-Director (Acting) | Victoria & Tasmania Assessments | s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

Department of Agriculture, Water and the Environment

Environment Assessments (Vic, Tas) & Post Approvals Branch | Environment Approvals Division

John Gorton Building, King Edward Terrace, Parkes, ACT

GPO Box 858, Canberra ACT 2601

awe.gov.au

ATT 302: Publication of Information for Assessment on PD (s95A)

<<DELETE RED INSTRUCTION TEXT IN DOCUMENT BEFORE PRINTING>>

Publication of Information for Assessment on Preliminary Documentation under section 95A of the *Environment Protection and Biodiversity Conservation Act 1999*

NOTE – If further information was not required (s 95), use ATT 301

Information to be published:

- (a) **ENTER** specified information included in the referral to the Minister of the proposal to **take the action**; Provide specific information to make it clear which documents the proponent is required to publish i.e. title, attachment name, author, date received.
- (b) **ENTER**, if applicable, specified information relating to the action that was given to the Minister after the referral but before the Minister made the assessment approach decision;

If applicable, provide specific information to make it clear which documents the proponent is required to publish i.e. title, attachment name, author, date received.

- (c) **ENTER** specified information relating to the action that was received in response to the Minister's request under subsection (2);

Provide specific information to make it clear which documents the proponent is required to publish i.e. title, attachment name, author, date received.

- (d) An invitation for anyone to give [**ENTER** proponent name], within the period specified in the direction, comments in writing relating to the information or the action.

As the material is more than 200 words, a notice may be published instead.

The published notice must **invite public comments** and state:

- (a) the provision of the Act that requires the material to be published: Section 95A(3);
- (b) the identification number for the action, allocated by the department: **ENTER** EPBC 20XX/XXXX;
- (c) a descriptive title for the action: **ENTER** proposal working title;
- (d) the location of the action: **ENTER** location of action;
- (e) the name of the person intending to take the action: **ENTER** name of person proposing the action;
- (f) each matter protected by a provision of Part 3 of the Act: **ENTER** controlling provisions;
- (g) where a copy of the material may be viewed or obtained:
 - (i) in electronic and hard copy form; and
 - (ii) at a reasonable cost or without charge.
- (h) the final date for providing comment;

- (i) that persons with special needs (i.e. for whom English is a second language or who has a vision impairment) may contact a designated person for assistance in accessing the material.

The notice must be approved by the department before it is published.

Where to be published:

- (a) at an appropriate location on the internet;
- (b) in a national or state daily newspaper that circulates in the state or territory in which the action occurs; and
- (c) if practical, in regional newspapers that circulate in any regions of Australia where the action is likely to have a significant impact on a matter protected by a provision of Part 3 of the Act.

The designated proponent must:

- (a) give 2 copies of the material to:
 - (i) at least 1 local authority, or at least 1 local or regional library, for the area where the action is likely to have a significant impact on a matter protected by a provision of Part 3 of the Act;
 - (ii) a state government authority responsible for environmental protection, or a state library, in the state where the action is likely to have a significant impact on a matter protected by a provision of Part 3 of the Act;
 - (iii) the department.
- (b) ask the authority or library to display the material publicly.

From: [Daniel Hackett](#)
To: [FOI Contact Officer](#)
Subject: Lake Malbena Controlled Action FOI
Date: Monday, 21 September 2020 09:24:10
Attachments: [Referall Decision Brief foi-application-form.docx](#)

Hello,

Please see attached thank you.

Regards, Daniel Hackett
Wild Drake P/L
0427313972



Australian Government
**Department of Agriculture,
 Water and the Environment**

Freedom of Information Act 1982 – request for access to documents

APPLICANT NAME (AND ORGANISATION, IF APPLICABLE): Wild Drake P/L	
EMAIL ADDRESS: daniel@hallsisland.com.au	TELEPHONE NUMBER: 0427313972

COVID-19 (Coronavirus) update – timeframes to process FOI requests

Due to the impact of the COVID-19 pandemic, the Department may require additional time to process FOI requests. In these circumstances, we will try to seek your agreement to an extension of time.

Please send an email to the appropriate FOI mailbox (foi@agriculture.gov.au for Agriculture and Water portfolio requests and foi@environment.gov.au for Environment portfolio requests) if you would like to contact the Department regarding your FOI request.

During this time, we encourage you to use self-service or administrative access schemes on our website where possible.

I AM REQUESTING ACCESS TO DOCUMENTS IN THE POSSESSION OF:

(Choose **one** of the below – a separate form is required for each agency)

- | | |
|--|--|
| <input checked="" type="checkbox"/> Department of Agriculture, Water and the Environment | <input type="checkbox"/> Director of National Parks |
| <input type="checkbox"/> Minister for the Environment (including Minister's Office) | <input type="checkbox"/> Commonwealth Environmental Water Holder |
| <input type="checkbox"/> Assistant Minister for Waste Reduction and Environmental Management (including Minister's Office) | <input type="checkbox"/> Australian Heritage Council |
| <input type="checkbox"/> National Environment Protection Agency | |

SCOPE OF REQUEST:

(Describe the documents you are seeking access to. To guide you, we recommend looking at the suggestions on the next page – this will help ensure that your request captures the information you are interested in and is able to be processed efficiently.)

We request copies of the Statement of Reasons / Referral Decision Brief relating to the Lake Malbena Controlled Action Decision (2020), EPBC referral 2018/8177

If the Department decides to consult with third parties during the course of this FOI request, do you give consent to our identifying you to third parties as the FOI applicant?

(Note: it is not a requirement that you give this consent in order for your request to proceed)

Yes No

If you have any questions or would like assistance completing this form, feel free to contact the Department's FOI Contact Officer on 02 6274 2098 or by email at foi@environment.gov.au. Any personal information that you provide with this form will be managed consistent with the Department's [Privacy Policy](#).

Tips for writing your FOI request

The Department will process your request using the exact wording of your scope. Accordingly, if your request is worded in broad terms, it may capture more documents than you intended. This can lead to higher charges being issued to process the request, and in some cases, the request being refused for being too voluminous to process.

To ensure that this does not happen, you should consider the following:

1. You should try to identify specific documents if you can.

- For example, you could ask for:

‘the decision brief about [x]’

‘the contracts between [x] and [y], for [z]’

‘the assessment of [x]’

‘the letters between [x] and [y], about [z]’

2. You should avoid using phrases like ‘all documents related to’ in your request.

- The phrases ‘related to’ or ‘relating to’ are very broad, and using them in your request may capture more documents than you intend.

For example, if your request sought “*the decision and the documents relied upon in making it*” the scope is limited to those documents as described. However, if you instead sought “*all documents related to the decision*”, the request will capture every document ever created that mentioned the decision, including meeting requests, media releases, publicly available information and other documents that you may not have intended to capture these documents within the scope of your request.

- Similarly, if you ask for a specific document and ‘*all documents related to it*’, the scope of your request may be broader than you intend.

3. You could include the following kinds of criteria in your request:

- Detail about the **subject matter** of your request. For example:

if you were seeking the migratory species advice issued for a project that had the referral number ‘EPBC 2009/555’, your request could be:

‘the migratory species advice provided for EPBC 2009/555’ or ‘documents that contain migratory species advice for EPBC 2009/555’

- The **types of documents** you are seeking. If you are seeking key documents on a particular subject, then your request might ask for decisions, briefs or reports, rather than “all documents” about it.

- A **date range** that the documents were created between. For example:

‘the migratory species advice provided for EPBC 2009/55 between 1 May 2014 and 1 August 2014’.

- The **parties** to correspondence or **author and recipient** of a document. For example:

‘correspondence between the Department and X Corp that assesses the migratory species advice provided in relation to EPBC 2009/55 on 1 May 2014’ or ‘reports prepared by the Department for [x] Committee about [y]’.

From: [FOI Contact Officer](#)
To: ["daniel@hallsisland.com.au"](mailto:daniel@hallsisland.com.au)
Cc: [FOI Contact Officer](#)
Subject: FOI 20795 – Acknowledgement of request [SEC=OFFICIAL]
Date: Tuesday, 22 September 2020 12:58:04

Dear Mr Hackett

Freedom of Information Request no. 20795

The Department of Agriculture, Water and the Environment (the Department) acknowledges receipt of your request under the *Freedom of Information Act 1982* (FOI Act) which seeks:

We request copies of the Statement of Reasons / Referral Decision Brief relating to the Lake Malbena Controlled Action Decision (2020), EPBC referral 2018/8177

COVID-19

The Department will take all reasonable efforts to process your request. However, due to the threat of COVID-19 (Coronavirus), the Department is experiencing a significant call on resources to manage Australia's response. This means we may not be able to process your request within the expected timeframe, and we may require additional time to process your request. We apologise for the inconvenience and appreciate your patience during this time.

The statutory deadline for providing a decision on this request is currently 21 October 2020.

The Department makes two assumptions that affect the scope of the request. These are set out below.

It is the usual practice of the Department:

- not to disclose the personal information of junior officers or the personal contact details of senior officers of the State or Federal governments (including those of the Department). The names of senior officers will generally be released. Your request will be processed on the assumption that you do not intend to capture these details within its scope.
- not to release duplicates of any document captured within the scope of the request. Further, where two documents fall within the scope one differs from the other only with respect to minor editorial changes (such as spelling or grammar corrections), only the later version of the document will be treated as within scope. Your request will be processed on the assumption that you do not intend to capture duplicates or documents that the Department considers duplicates (as per the above explanation) within the scope of your request.

Please inform us if you do not agree to the request being processed by the Department on the above assumptions.

Please note that information released under the FOI Act may later be published online on our disclosure log.

We will contact you using the email you provided. Please advise if you would prefer us to use an alternative means of contact.

If you have any questions, please contact the FOI Contact Officer on (02) 6274 2098.

Regards

FOI Paralegal | Information Law Team | Commercial, Information and Agriculture Legal Branch |
Legal Division

T: (02) 6274 2098 | **E:** foi@environment.gov.au

Department of Agriculture, Water and the Environment

GPO BOX 858 CANBERRA ACT 2601

www.awe.gov.au

From: s. 22(1)(a)(ii)
To: "Daniel Hackett"
Cc: FOI Contact Officer
Subject: RE: Lake Malbena Controlled Action FOI LEX-20795 [SEC=OFFICIAL]
Date: Thursday, 1 October 2020 09:07:06
Attachments: [epbc-act-policy-statements-reasons-2019.pdf](#)

Dear Mr Hackett,

Thank you for your time on Monday 28 September 2020 to discuss your FOI request (our reference (LEX-20795).

Following our telephone conversation, I wanted to outline to you how you can obtain a statement of reasons for the 2020 decision on EPBC referral 2018/8177, as well as confirm a revised scope for your FOI request with you.

Statement of Reasons

As discussed, a statement of reasons for the 2020 decision on EPBC referral 2018/8177 does not yet exist and therefore the department would respond to this part of your request noting that no document exists.

However, if you would like to request a statement of reasons, you can send an email to the EPBC.Referrals@awe.gov.au inbox specifying the referral number, the decision, your interest in this referral (i.e. you are the person proposing to take the action), and that you request a statement of reasons.

For your further information I've **attached** the [department's policy statement regarding statements of reasons available on the department's website](#).

Referral Decision Brief and substantial number of supporting documents and attachments

We also discussed that the referral decision brief for the 2020 decision on EPBC referral 2018/8177 had a substantial number of attachments which supported the decision, as well as public comments.

You have advised that at this point you are only interested in receiving the referral decision brief with no attachments.

Revised scope for your consideration and confirmation

Noting our discussion, we would suggest that you consider revising your FOI request to:

The Referral Decision Brief (without supporting documents or attachments) relating to the Lake Malbena Controlled Action Decision (2020), EPBC referral 2018/8177.

Could you please confirm by 3pm Friday 2 October 2020 that you are happy to revise your request as outlined above. You may also suggest your own revised scope which the department will consider.

If you wish to discuss this further, please feel free to contact me.

Kind regards,

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

...

Legal Officer | Information Law Team | Commercial, Information and Agriculture Legal Branch | Legal Division

Phone **s. 22(1)(a)(ii)** | Department of Agriculture, Water and the Environment

Marcus Clarke Street

GPO Box 858

Canberra ACT 2601

www.awe.gov.au



Australian Government
**Department of Agriculture,
Water and the Environment**

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 Save paper. Do you really need to print this email?

From: Daniel Hackett <daniel@hallsisland.com.au>

Sent: Monday, 21 September 2020 09:24

To: FOI Contact Officer <FOI@environment.gov.au>

Subject: Lake Malbena Controlled Action FOI

Hello,

Please see attached thank you.

Regards, Daniel Hackett

Wild Drake P/L

0427313972



Australian Government

Department of the Environment and Energy

Environment Protection and Biodiversity Conservation Act 1999 (Cth) Policy Statement

Statements of reasons



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This report should be attributed as ‘*EPBC Act Policy Statement—Statements of reasons*, Commonwealth of Australia 2019’.

The Commonwealth of Australia has made all reasonable efforts to identify content supplied by third parties using the following format ‘© Copyright, [name of third party]’.

Disclaimer

The views and opinions expressed in this publication are those of the authors and do not necessarily reflect those of the Australian Government or the Minister for the Environment and the Minister for Energy.

Cover images

(Front) Rainforest Fruits, © Copyright Wet Tropics Management Authority and Department of the Environment and Energy.
(Back) Sunset over the ancient landforms of the Kununurra region in Western Australia

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Overview

This Policy Statement is designed to indicate how the Department will prepare statements of reasons for decisions made under the *Environment Protection and Biodiversity Conservation Act 1999* ('the EPBC Act').

Statements of reasons give persons affected by decisions under the EPBC Act the opportunity to have these decisions fully explained to them, and then to make informed decisions about whether to exercise any rights of review and appeal that they may have.

Publication of certain statements of reasons is a mandatory requirement under the EPBC Act—see Table 1. In other cases, and consistent with the government's policies on transparency in government decision-making, statements of reasons requested under other provisions of the EPBC Act should also be published on the Department's website.

This Policy Statement focuses on statements of reasons concerning decisions in respect of:

- whether a referral is a controlled action (i.e. a controlled action/not a controlled action/or a protected matter);
- whether an action is clearly unacceptable; and
- whether to approve or not approve the taking of an action.

Legislative framework

The legislative requirements to provide statements of reasons for particular decisions under the EPBC Act are set out under:

- particular provisions of the EPBC Act
- section 28 of the *Administrative Appeals Tribunal Act 1975* (the AAT Act), and
- section 13 of the *Administrative Decisions (Judicial Review) Act 1977* (the ADJR Act).

These Acts define:

- which decisions will or may require statements of reasons to be prepared;
- the persons entitled to receive statements of reasons; and
- the timeframes within which statements of reasons must be prepared.

Which decisions require a statement of reasons?

EPBC Act

Table 1 details the decisions under the EPBC Act for which the Minister or the Minister's delegate is required to provide statements of reasons. Table 1 also sets out the decisions for which statements of reasons are always required to be provided as part of the decision-making process, and those for which a statement is required on request.

AAT Act

Under subsection 28(1) of the AAT Act, a person affected by a decision, who has a right to a review of the merits of that decision by the AAT, may request the decision-maker to provide a statement of reasons.

A right to merits review only exists if specified in relevant legislation. **Table 2** sets out where the EPBC Act provides persons with a right to merits review. These rights apply only to decisions made by a Ministerial delegate, and not to Ministerial decisions.

ADJR Act

Subsection 13(1) of the ADJR Act enables a 'person aggrieved', who has a right to a judicial review under section 5 of that Act, to make a written request to the decision-maker to provide a statement of reasons.

These rights apply only to administrative decisions that are substantive, final or operative.

Policy approach

Who is entitled to a statement of reasons?

The Department generally provides statements of reasons to any person who requests one, regardless of their specified rights to receive a statement of reasons under Commonwealth legislation.

The Department's approach is consistent with the government's broader policies on improving citizens' access to information on government decision-making.

Process for determining if a person is entitled to a statement of reasons

When providing a statement of reasons, it is necessary to ascertain whether a person is legally entitled to receive a statement of reasons under the AAT, ADJR, and EPBC Acts.

The test for determining entitlement under the AAT Act is discussed at 2.4 and 2.5. The test for determining entitlement under the ADJR Act is at 2.6.

EPBC Act

Table 1 sets out where persons are entitled to receive a statement of reasons for particular decisions under the EPBC Act, including persons specified under sections 487 and 488 of that Act.

Sections 487 and 488 extend the meaning of the term 'person aggrieved' under the ADJR Act, to individuals and organisations engaged in the protection, conservation or research into the environment within Australia and its territories.

This standing is subject to the requirements specified in subsections 487(2) and 487(3). Subsections 487(2) and (3) specify requirements relating to the individual's citizenship or residency and the individual's involvement in environmental activities, and, in the case of organisations and associations, their specified objects and purposes.

Individuals, organisations and associations frequently request statements of reasons under sections 487 and 488.

What are the timeframes for preparing statements of reasons?

EPBC Act

Statements of reasons must be prepared within the timeframes specified by the EPBC Act. Table 1 sets out the relevant timeframes.

AAT Act

Decision-makers must provide statements of reasons requested under subsection 28(1) of the AAT Act as soon as practicable, and in any case within **28 calendar days** of the receipt of a request from an applicant.

ADJR Act

Decision-makers must provide statements of reasons requested under subsection 13(2) of the ADJR Act as soon as practicable, and in any case within **28 calendar days** of the receipt of a request from an applicant.

Statutory basis for refusing to provide statements of reasons

In limited circumstances, decision-makers may refuse to prepare and provide statements of reasons.

Under subsection 28(1) of the AAT Act, and subsection 13(5) of the ADJR Act, a decision-maker may refuse to provide a statement if an applicant does not make a request within 28 days of receiving the decision, or within a reasonable time after the decision was made (if the applicant did not receive notice of the decision).

Under section 13A of the ADJR Act, a decision maker may not have to provide a statement if it contains certain confidential information discussed at 4.2, and the statement would be false or misleading without that information.

Under subsection 28(2) of the AAT Act, a decision-maker may, in rare circumstances, refuse to provide a statement of reasons on the grounds of public interest immunity. Public interest immunity may be invoked when the Attorney-General certifies that the disclosure of any matter would be contrary to the public interest by:

- prejudicing Australia's security, defence, or international relations;
- disclosing Cabinet deliberations; or
- prejudicing a claim by the Commonwealth in a judicial proceeding.

A decision-maker's refusal to provide a statement of reasons may be challenged in the Federal Court.

The form and content of a statement of reasons

Overview

Under section 25D of the *Acts Interpretation Act 1901*, written reasons for decisions must also set out:

- the evidence or other material on which those decisions were based;
- the findings on material questions of fact.
- (Section 28(1) of the AAT Act and section 13(1) of the ADJR Act impose a similar requirement)

For example, a decision may have been made that an action is a controlled action under section 75 of the EPBC Act. The statement of reasons would cite the evidence on which this decision was based including reports, documents, referral information, and briefing to the Minister. A material finding of fact might, for example, include the finding that the proposed action will have an impact on 'X' identified matters of national environmental significance (MNES), and that this impact is likely to be significant. The reason for the decision would be that there is, or is likely to be, a significant impact on MNES.

If a statement of reasons does not address the material facts, and follow a logical sequence to demonstrate the reasoning behind the ultimate decision, then the AAT or the Federal Court may require a more complete statement to be provided. Statements of reasons can be used as evidence in a Federal Court challenge against a decision.

All decisions and the reasoning processes underlying them would be fully documented by the Department. This documentation will be used by the Department in the preparation of statements of reasons—and statements will generally include references to the recommendation to decision-makers on particular decisions.

To promote transparency and accountability, statements of reasons should reliably document the real findings on material questions of fact, and the actual reasons relied upon by the decision-maker when making a decision. The process of reasoning that led to the decision, linking facts to the decision and the relevant legislative provisions, relevant case law if applicable, policy statements, guidelines, other agency practices and other relevant matters would be fully documented. Statement of reasons should be drafted in clear and plain English.

Departmental advice to the Minister concerning decisions under the EPBC Act is drafted to reflect the Minister's prerogative to either adopt the Department's reasoning, or to substitute an alternative reasoning. The Minister may adopt reasons drafted by departmental officers as the basis for his or her decision. However, if the

Minister does not adopt the reasons drafted by the Department, the statement of reasons will document the alternative reasons for the Minister's decision.

Style of a statement of reasons

A statement of reasons should be drafted in the first person to reflect that it is a statement of reasons

of the Minister, rather than of the Department.

A statement of reasons would not, therefore, use words such as 'us', 'we' or 'our decision'. The statement of reasons and all external correspondence relating to it would refer to the decision made by the Minister, the Secretary or the delegate in the first person e.g. 'My decision was made ...'.

Structure of a statement of reasons

1. Authority to make a decision and issue a statement of reasons

Decision-makers must state their name, position and their legal authority (including their Delegation if a departmental officer) to make a particular decision, within the statement of reasons. This helps the person requesting the statement identify who the decision-maker was, and understand the grounds on which the decision was made.

2. Background section of the statement of reasons

The 'background' section of the statement of reasons should provide context for the decision made and demonstrate that the correct legislative procedures have been followed. The repetition of facts, material findings of fact and reasons for decisions that are included within other sections should be avoided.

3. Legislative provisions

The statement of reasons must refer to the relevant provisions of the EPBC Act that authorised the decision, and any other relevant provisions, such as those setting out relevant considerations in making the decision, or conditions that must be satisfied before making the decision.

For example, where a decision to grant approval for a particular action is based on the Minister's consideration of matters protected under Part 3 of the EPBC Act, as required by paragraph 136(1)(a), and the requirement for the Minister to take into account the principles of ecologically sustainable development, as required by paragraph 136(2)(a), the statement of reasons should include these provisions, and the considerations about them relevant to the approval decision.

These considerations would include any significant impacts of the action on these matters, and the relationship of the action to the principles of ecologically sustainable development, including the precautionary principle.

This information will assist the person requesting the statement to understand the decision-maker's obligations under the EPBC Act at the time the decision was made.

4. Evidence or other material on which findings were based

The statement of reasons must refer to evidence on which each 'material finding of fact' is based.

The statement of reasons should identify evidence that was considered relevant, credible and significant in relation to each finding of fact. Each finding of material fact should be demonstrated by the evidence.

Evidence will be sufficiently referenced within the statement of reasons to show that there is an adequate basis for the findings of fact which have been derived from this evidence, but should not include excessive detail.

Evidence on which findings were based will usually be contained in the documents included in the briefing package provided to the decision-maker, reports or submissions and any other information the decision-maker already had, that were relevant to the decision.

Conversations relevant in making a decision, should be recorded and included in a statement of reasons.

5. Findings on material questions of fact

A material fact is a fact that is required to establish the factual basis for a decision. Therefore, the decision-maker's findings on material facts are those that support the decision, based on the decision-maker's consideration of all relevant evidence. Some facts are material if the relevant legislative

provision requires them to be taken into account, such as the issue of whether an impact is considered as significant or not in making a decision under section 75 of the EPBC Act. Only those findings of fact that were material to a decision need to be included within a statement of reasons. The statement of reasons should document all relevant findings.

A finding of material fact can be direct (a primary fact) or inferred (an ultimate fact). When a finding of fact is inferred, the statement of reasons should document the primary facts and the process of

inference for the indirect ultimate facts. The findings are the decision-maker's conclusions about both kinds of material facts, based on the information available to the decision-maker, and on which the decision was based.

If any recommendations, submissions or reports were not accepted by the decision-maker these should be referenced, and the reasons they were rejected should be included in the statement. If there is conflicting evidence, the statement should state which evidence was preferred and the reasons for the preference.

6. The reasons for the decision

In this section, decision-makers would state their conclusions on the decisions that they reached, the reasons for these conclusions and the ultimate decision made.

Findings of fact would not usually be repeated in this section.

For instance, if a decision relates to a controlled action decision (section 75), then the reason for this decision will be based on the material fact (presented in the findings on material questions of fact section) that the relevant impacts the proposed action has, will have, or is likely to have on MNES are significant. Evidence of this fact may have been provided through ecological surveys or species profile information, contained in recommendations to the Minister—and presented in the section detailing 'evidence or other material on which findings were based'.

Certain information not to be included in a statement of reasons

Confidential personal or business information

Section 13A of the ADJR Act provides that personal or business affairs of someone other than the person making the request do not need to be disclosed if:

- the information was supplied in confidence;
- the publication of the information would reveal a trade secret; or
- the publication of the information would breach a statutory duty to keep the information confidential.

Note that a statement does not need to be provided if the statement, without the confidential information, would be false or misleading.

The use or disclosure of personal information by Commonwealth agencies may be made for a purpose authorised under law. However, a statement of reasons must comply with the Information Privacy Principles set out in section 14 of the *Privacy Act 1988* (the Privacy Act). In particular, Principle 10 sets limits on the use of personal information by Commonwealth agencies and Principle 11 sets limits on the disclosure of this information by these agencies.

Section 6 of the Privacy Act defines ‘personal information’ as including information or an opinion about an individual whose identity is apparent or can be reasonably ascertained, from the information or opinion.

In the AAT Act, there are no similar rules relating to confidential information. Once proceedings have begun however, the Tribunal has power under sections 35(2) and 37 of the AAT Act to prohibit or restrict the disclosure of confidential material. It is therefore open to a decision maker at that stage to ask the tribunal to restrict the disclosure of confidential information included in a statement of reasons.

Legal professional privilege

Legal professional privilege, also known as client legal privilege, may attach to legal advice and other communications with the Department’s Legal Section or an external legal provider including requests for legal advice. Legal professional privilege protects

the confidentiality of communications between a lawyer and their client. If the party claiming privilege (the client) has acted inconsistently with maintaining confidentiality, a court may determine that legal professional privilege has been waived and order the disclosure of the relevant legal advice.

Generally, a reference in a statement of reasons to legal advice on an administrative issue such as the timing of a decision or the interpretation of a provision in particular legislation will not waive privilege. However, in cases where the decision maker has relied on the legal advice in making the decision and the statement of reasons reveals the substance of the legal advice, either expressly or by implication, privilege may be waived.

Change of person holding office

Under section 17 of the ADJR Act, where a person made a reviewable decision under the ADJR Act in the performance of the duties of an office and that person no longer performs the duties of that office, the person currently holding that office (their successor, or the person acting in the position) should prepare the statement of reasons.

For example, if the relevant primary decision-maker was the Minister and he or she had vacated their position due to a machinery of government change, then the new Minister can prepare the statement of reasons.

Request for further information

After the Minister provides a statement of reasons to a person, that person may seek further information.

Section 13(7) of the ADJR Act allows the Federal Court or the Federal Magistrates Court to order the Minister to furnish to the requestor an additional statement containing “*further and better particulars*” where the Court considers that the SoR does not contain:

- i. adequate particulars of findings on material questions of fact;
- ii. an adequate reference to the evidence or other material on which those findings were based; or
- iii. adequate particulars of the reasons for the decision.

Therefore, if a person provided with a statement of reasons seeks further information, the decision maker would usually consider whether the original statement of reasons provided adequate particulars. If it did not, a more detailed statement of reasons may be provided.

If a person requests documents referred to in the statement of reasons, the Department will usually:

- First, contact the requestor to ascertain whether they consider that the reference to evidence or other material in the statement of reasons was inadequate. If this is the issue, and the Minister agrees, a more detailed statement of reasons should be provided.
- Second, if the person wants the documents referred to in the statement of reasons, and those documents are not publicly available, the Department would assess whether any information in the document is likely to be sensitive in any way. In particular, is any of the information legal-in-confidence or commercial-in-confidence. If none of the information is likely to be sensitive, then the Department may release the documents.
- Third, if the Department considers that any of the information in the documents requested could be sensitive, the requestor may put in an FOI request, in order that the Department can properly assess FOI exemptions.

Publication of statements of reasons

As detailed in Table 1, the publication of certain statements of reasons is a mandatory requirement under the EPBC Act. In other cases, and consistent with the government’s policies on transparency in government decision-making, statements of reasons requested under other provisions of the EPBC Act should also be published on the Department’s website.

Once the Minister has provided a person with a statement of reasons, the person is able to deal with it in whatever manner the person feels is appropriate, subject to any restrictions on confidentiality of information contained in it,

including commercial-in-confidence and/or personal information. It is the responsibility of the person to consider and comply with those restrictions.

Processes for legal action following the issue of decisions and statements of reason

Regardless of whether the decision maker provides a statement of reasons, certain persons have rights of review of decisions under the EPBC Act. However, if a statement of reasons is provided for such a decision, the time for a person to bring proceedings to review the decision may be affected.

Depending on the particular decision made under the EPBC Act, the following rights of review may be available to a person affected by the decision:

- Internal merits review;
- External merits review; and
- Judicial review.

Table 1: Specific provisions in the EPBC Act that require a statement of reasons

EPBC Act provision	Statement of reasons is required when	When required	Who is entitled to a statement of reasons?	What is the timeframe for providing a statement of reasons?
Subsection 45(4)	Minister or delegate (‘the decision-maker’) enters into a bilateral agreement with a State or Territory.	Always required	Published statement—no specific recipient	As soon as practicable after entering into the Agreement
Subsection 57(3)	The decision-maker decides if a bilateral agreement has been contravened and what action should be taken in relation to the contravention.	Always required	Published statement—no specific recipient	Not specified
Subsection 59(5)	The decision-maker gives notice of suspension or cancellation of a bilateral agreement to a State or Territory Minister.	Always required	State or Territory Minister. Statement must also be published as soon as practicable after notice of suspension or cancellation provided	Statement of reasons must be provided to state or territory Minister with notice of suspension or cancellation
Subsection 63(5)	The decision-maker suspends or cancels bilateral agreement at request of other party.	Always required	Published statement—no specific recipient	As soon as practicable after suspension or cancellation
Subsection 74C(2)	The decision-maker decides that an action a person is proposing to take is clearly unacceptable.	Always required	The person proposing to take an action and (if different) the person who referred the action	As soon as practicable after making the decision
Subsection 77(4)	The decision-maker decides whether or not an action is a controlled action, and the person proposing to take an action or the designated proponent who received notice of the decision requests reasons for that decision.	Upon request	The person proposing to take an action or a proponent designated by the Minister	Within 28 days of a request (if the request is made within 28 days of being given notice of the Minister’s decision)
Subsection 78C(4)	The decision-maker reconsiders a decision about an action, if the person requesting the reconsideration, person proposing to take the action or the designated proponent request reasons.	Upon request	The person who requested the reconsideration see sections 78C(2)(a), (b) and (c); (who may be any person other than a Minister of a state or self-governing territory) the person proposing to take an action; or a proponent designated by the Minister	Within 28 days of a request (if the request is made within 28 days of being given notice of the Minister’s decision to reconsider an action)
Subsection 79(3)	The decision-maker reconsiders decision about an action on request by a State or Territory.	Always required	The Minister who requested the reconsideration	Within 20 business days of receiving a request from a state or territory Minister
Subsection 158(7)	The decision-maker grants an exemption, under section 158, from Part 3 or from Chapter 4 of the EPBC Act.	Always required	Published statement in accordance with regulations—no specific recipient	Within 10 business days of making a notice of exemption
Subsection 194Q(8)	The decision-maker decides not to include an item in a Subdivision A List (Threatened Species and Ecological Communities).	Required if an item was nominated by a person under section 194E(1)	A person who nominated an item in response to a notice under section 194E(1)	Within 10 business days of making a decision
Subsection 269AA(9)	The decision-maker decides to have an initial recovery plan and any subsequent recovery plan decisions.	Always required	Published statement in accordance with regulations—no specific recipient	Not specified

EPBC Act provision	Statement of reasons is required when	When required	Who is entitled to a statement of reasons?	What is the timeframe for providing a statement of reasons?
Subsection 270A(8)	The decision-maker decides to have a threat abatement plan.	Always required	Published statement in accordance with regulations—no specific recipient	Not specified
Subsection 283A(2)	The decision-maker revokes a recovery plan for a listed threatened species or listed threatened ecological community.	Always required	Published statement in accordance with regulations—no specific recipient	Not specified
Subsection 303A(7)	The decision-maker grants an exemption from Chapter 5 Part 13 under section 303A.	Always required	Published statement and copy provided to the person specified in the notice	Within 10 business days of making a notice of exemption
Subsection 324JJ(8)	The decision-maker decides not to include assessed place in Natural Heritage List.	Always required	Advise the person who nominated the place which includes the assessed place under section 324(J)	Within 10 business days of making the decision
Subsection 324L(3)(b)	The decision-maker removes all or part of a place or part of the National Heritage values of a place from the National Heritage List.	Always required	Publish notice in the Gazette that includes statement of reasons for removal and publish a copy of notice on the internet	No specified time for publication in the gazette—internet publication to be made within 10 business days of the publication of the notice in the Gazette
Subsection 341JI(9)	The decision-maker decides not to include any part of a place in the Commonwealth Heritage List.	Always required	A person responding to a notice under section 341(H)1 of the decision and the reasons for it	Within 10 business days of making the decision
Subsection 341L(4)	The decision-maker removes all or part of a place or Commonwealth Heritage values of a place from the Commonwealth Heritage List.	Always required	Publish notice in the Gazette that includes statement of reasons for removal and publish a copy of notice on the internet	No specified time for publication in the gazette—internet publication to be made within 10 business days of the publication of the notice in the Gazette
Subsection 364(5)	Resolving disagreement between Director and Board over the implementation of a plan—the decision-maker receives report and recommendations from the Director National Parks and Board of Management and then gives directions for a Commonwealth reserve implementation plan.	Always required	Director of National Parks and Boards of Management for national parks	No specified time for providing a statement of reasons
Subsection 369(5)	Resolving disagreement between Director and Board in a planning process—the decision-maker receives report and recommendations from Board of National Parks and Director of National Parks and then gives directions over the planning process.		Director of National Parks and Boards of Management for national parks	

EPBC Act provision	Statement of reasons is required when	When required	Who is entitled to a statement of reasons?	What is the timeframe for providing a statement of reasons?
Section 472	A delegate of the Minister gives notice of advice under Chapter 6 Part 17 Division 13 to a person who is not a Commonwealth agency, notice must include statement that person may seek merits review under the AAT Act and that the person may request a statement of reasons under section 28 of the AAT Act.	Persons proposing to take action which the person believes may contravene a conservation order may request a statement of reasons	The person requesting the statement of reasons	Within 28 calendar days of the receipt of a request from an applicant
Section 514YA(3)	A decision is made on an application for reconsideration of a fee.	Always required	The applicant of the reconsideration of a fee	Within 30 business days of the receipt of the application
Subsection 518(2)	One or more things required under the Act or Regulations is not done within period required.	Always required	Both houses of parliament	As soon as practicable after the end of the financial year

Please note that this list is not intended to be exhaustive of the obligation to provide a statement of reasons under the EPBC Act. Administrative decisions made that are substantive, determinative, final or operative may be subject to a requirement to prepare and provide a statement of reasons.

Note to Table 1—extended standing for judicial review under sections 487 and 488 of the EPBC Act

487 Extended standing for judicial review

- (1) This section extends (and does not limit) the meaning of the term person aggrieved in the *Administrative Decisions (Judicial Review) Act 1977* for the purposes of the application of that Act in relation to:
 - (a) a decision made under this Act or the regulations; or
 - (b) a failure to make a decision under this Act or the regulations; or
 - (c) conduct engaged in for the purpose of making a decision under this Act or the regulations.
- (2) An individual is taken to be a person aggrieved by the decision, failure or conduct if:
 - (a) the individual is an Australian citizen or ordinarily resident in Australia or an external Territory; and
 - (b) at any time in the 2 years immediately before the decision, failure or conduct, the individual has engaged in a series of activities in Australia or an external Territory for protection or conservation of, or research into, the environment.
- (3) An organisation or association (whether incorporated or not) is taken to be a person aggrieved by the decision, failure or conduct if:
 - (a) the organisation or association is incorporated, or was otherwise established, in Australia or an external Territory; and
 - (b) at any time in the 2 years immediately before the decision, failure or conduct, the organisation or association has engaged in a series of activities in Australia or an external Territory for protection or conservation of, or research into, the environment; and

- (c) at the time of the decision, failure or conduct, the objects or purposes of the organisation or association included protection or conservation of, or research into, the environment.
- (4) A term (except person aggrieved) used in this section and in the *Administrative Decisions (Judicial Review) Act 1977* has the same meaning in this section as it has in that Act.

488 Applications on behalf of unincorporated organisations

- (5) A person acting on behalf of an unincorporated organisation that is a person aggrieved (for the purposes of the *Administrative Decisions (Judicial Review) Act 1977*) by:
 - (a) a decision made under this Act or the regulations; or
 - (b) a failure to make a decision under this Act or the regulations; or
 - (c) conduct engaged in for the purpose of making a decision under this Act or the regulations;may apply under that Act for a review of the decision, failure or conduct.
- (6) The *Administrative Decisions (Judicial Review) Act 1977* applies in relation to the person as if he or she were a person aggrieved.

Table 2: Rights of merits review under the EPBC Act

EPBC Act reference	Applicant may apply to the AAT for merits review when a delegate of the Minister:
Section 206A	Makes a decision about a permit under Chapter 5 Part 13 Division 1 Listed threatened species and ecological communities.
Section 221A	Makes a decision about a permit under Chapter 5 Part 13 Division 2 Migratory species.
Section 243A	Makes a decision about a permit under Chapter 5 Part 13 Division 3 Whales and other cetaceans.
Section 263A	Makes a decision about a permit under Chapter 5 Part 13 Division 4 Listed marine species.
Section 303GJ	Makes a decision about a permit under Chapter 5 Part 13 International movement of wildlife specimens; the Secretary makes a determination about the marking of a specimen under section 303EU; or a decision to make, refuse, vary or revoke a declaration under section 303FN, 303FO or 303FP is made by a delegate of the Minister.
Section 472	Gives notice of advice under Chapter 6 Part 17 Division 13 Conservation orders to a person who is not a Commonwealth agency, the notice must include statement that person may seek merits review under the AAT Act and that the person may request a statement of reasons under section 28 of the AAT Act.
Section 473	Makes a decision to give advice under Chapter 6 Part 17 Division 13 Conservation orders to a person who is not a Commonwealth agency.

environment.gov.au



From: [Daniel Hackett](#)
To: s. 22(1)(a)(ii)
Subject: RE: Lake Malbena Controlled Action FOI LEX-20795 [SEC=OFFICIAL]
Date: Thursday, 1 October 2020 12:34:30

Hello ^{s.} ₂₂ ,

Thank you for your advice. I can confirm that the below is suitable, and that I am only requesting the Referral Decision Brief (without supporting documents or attachments) relating to the Lake Malbena Controlled Action Decision (2020), EPBC referral 2018/8177.

I have requested the Statement of Reasons separately below, as instructed.

Appreciated thank you

Kindest Regards

Daniel Hackett
Wild Drake
0427313972

From: s. 22(1)(a)(
Sent: Thursday, 1 October 2020 9:07 AM
Subject: RE: Lake Malbena Controlled Action FOI LEX-20795 [SEC=OFFICIAL]

Dear Mr Hackett,

Thank you for your time on Monday 28 September 2020 to discuss your FOI request (our reference (LEX-20795).

Following our telephone conversation, I wanted to outline to you how you can obtain a statement of reasons for the 2020 decision on EPBC referral 2018/8177, as well as confirm a revised scope for your FOI request with you.

Statement of Reasons

As discussed, a statement of reasons for the 2020 decision on EPBC referral 2018/8177 does not yet exist and therefore the department would respond to this part of your request noting that no document exists.

However, if you would like to request a statement of reasons, you can send an email to the EPBC.Referrals@awe.gov.au inbox specifying the referral number, the decision, your interest in this referral (i.e. you are the person proposing to take the action), and that you request a statement of reasons.

For your further information I've **attached** the [department's policy statement regarding statements of reasons available on the department's website](#).

Referral Decision Brief and substantial number of supporting documents and attachments

We also discussed that the referral decision brief for the 2020 decision on EPBC referral 2018/8177 had a substantial number of attachments which supported the decision, as well as public comments.

You have advised that at this point you are only interested in receiving the referral decision brief with no attachments.

Revised scope for your consideration and confirmation

Noting our discussion, we would suggest that you consider revising your FOI request to:

The Referral Decision Brief (without supporting documents or attachments) relating to the Lake Malbena Controlled Action Decision (2020), EPBC referral 2018/8177.

Could you please confirm by 3pm Friday 2 October 2020 that you are happy to revise your request as outlined above. You may also suggest your own revised scope which the department will consider.

If you wish to discuss this further, please feel free to contact me.

Kind regards,

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

Legal Officer | Information Law Team | Commercial, Information and Agriculture Legal Branch | Legal Division

Phone s. 22(1)(a)(ii) | Department of Agriculture, Water and the Environment

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Australian Government
**Department of Agriculture,
Water and the Environment**

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From: Daniel Hackett
Sent: Monday, 21 September 2020 09:24
To: FOI Contact Officer
Subject: Lake Malbena Controlled Action FOI

Hello,

Please see attached thank you.

Regards, Daniel Hackett
Wild Drake P/L
0427313972