



Statement of reasons for a decision under section 75 of the *Environment Protection and Biodiversity Conservation Act 1999* for a Not Controlled action

I, James Barker, Department of the Environment and Energy, delegate for the Minister for the Environment and Energy, provide the following statement of reasons for my decision of 19 May 2017, under section 75 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), that the proposed action by Department of Transport and Main Roads to upgrade and operate boating infrastructure, including a breakwater, access jetty, boat ramp, berthing pontoons, pile berths and swing moorings at Clump Point, Mission Beach, Queensland (EPBC 2017/7924), is not a controlled action under the EPBC Act.

Legislation

1. EPBC Act extracts relevant to my decision are provided at [Appendix A](#).

Background

2. On 20 April 2017, under section 68 of the EPBC Act, the Queensland Department of Transport and Main Roads (TMR) (**the proponent**) referred the Mission Beach Clump Point boating infrastructure upgrade (EPBC 2017/7924) (**the proposed action**) for consideration under the EPBC Act.
3. On 19 May 2017, under section 75 of the EPBC Act, I determined that the proposed action was not a controlled action.

Evidence or other material on which my findings were based

4. My decision under section 75 was informed by a decision brief (**Decision Brief**) prepared by officers of the Department of the Environment and Energy (**the Department**) dated 21 March 2017, which had the following attachments:
 - a. Referral
 - b. Department's Environmental Reporting Tool report (dated 17 May 2017)
 - c. Email from TMR regarding the traffic management plan
 - d. Advice from the Great Barrier Reef Marine Park Authority
 - e. Ministerial comment
 - f. Decision notice on referral decision
 - g. Letter of notification advising the proponent of my decision.

Public comments

5. On 21 April 2017, in accordance with section 74(3) of the EPBC Act, comments on the referral were invited from members of the public within ten (10) business days (on or before 5 May 2017). The publication of referral notices for public comment (section 74(3)(b))

EPBC Act) was carried out in accordance with legislative requirement for publication on the internet (section 74(3) EPBC Act). No public comments were received.

6. As part of the development process, prior to the referral, the proponent undertook public consultation. Copies of the public meeting notes were included with the referral documentation.

Ministerial comments

7. On 21 April 2017, in accordance with section 74(1) of the EPBC Act, comments on the referral were invited within ten (10) business days (on or before 5 May 2017) from the Queensland Minister for Environment and Heritage Protection, the Hon Steven Miles MP (through his nominated representative, Mr Chris Loveday. On 3 May 2017, Mr Loveday advised that the proposed action would not be assessed using the EIS process in Chapter 3 of the *Environmental Protection Act 1994 (QLD)*.

Findings on material questions of fact

8. I considered that the information before me was sufficient for me to make a referral decision under section 75 of the EPBC Act. I did not request further information from the proponent.
9. In deciding whether the proposed action is a controlled action, and which provisions of Part 3 of the EPBC Act are controlling provisions for the action (if any), I considered all adverse impacts the action has or will have, or is likely to have on each matter protected by a provision of Part 3 of the EPBC Act.

Overview of environmental features included in the referral

10. The proposed action is situated approximately 1.5 kilometres north of the township of Mission Beach, 135 km south of Cairns. The project area is located within the Great Barrier Reef Heritage Area and Marine Park and adjacent to the Wet Tropics World Heritage Area.
11. The proposed action has a development footprint of approximately 3 hectares. The proposed works include; a detached breakwater offshore of the existing breakwater; two berthing pontoons, 5-6 pile berths and a three lane boat ramp upgrade. The facility may also include 5-6 swing moorings in the lee of the breakwater structure. The proposal also includes an upgrade of the existing breakwater to provide a single lane road access and a small expansion and raising of the existing carpark to increase the turning circle size.
12. The Clump Point boat ramp is located on a basalt point. Clump Point is heavily vegetated and has an extensive tree canopy. There will be no removal of remnant vegetation as part of the proposed action. The immediate vicinity of the existing boat ramp is disturbed and in poor condition. The offshore area where the new breakwater is proposed is largely bare sandy and silty substrates. Between the existing boat ramp and the proposed breakwater there is a high value fringing reef of soft and hard corals with some small areas of sparse seagrass.

Listed threatened species and communities

13. The Department's Environmental Reporting Tool (ERT) identified 41 species and one ecological community that may occur within 2 km of the proposed action (recommendation brief Attachment B). Based on the location of the action the Department considered that impacts may potentially arise in relation to the following matters:

- Southern Cassowary (*Casuarius casuarius johnsonii*) – endangered
- Loggerhead Turtle (*Caretta caretta*) – endangered
- Olive Ridley Turtle (*Lepidochelys olivacea*) – endangered
- Hawksbill Turtle (*Eretmochelys imbricata*) – vulnerable
- Green Turtle (*Chelonia mydas*) – vulnerable
- Flatback Turtle (*Natator depressus*) – vulnerable
- Green Sawfish (*Pristis zijsron*) – vulnerable
- Humpback Whale (*Megaptera novaeangliae*) – vulnerable.

14. My findings of fact regarding the EPBC listed threatened species were informed by the recommendation brief including the Department's ERT report attached to the recommendation brief.

Southern Cassowary

15. The referral stated that surveys carried out by the proponent did not identify any listed terrestrial species within the proposed project area. However, there is a local Southern Cassowary population in the Mission Beach area.
16. The approved conservation advice for the Southern Cassowary lists threats from vehicle strikes as one of the main impacts on the species. The Department considered there may be the potential for impacts due to increased road traffic during construction and operations.
17. The Department considered the proposed traffic management plan submitted by the proponent to manage any potential impacts on the Southern Cassowary. The plan will include choosing road access routes to avoid known Cassowary crossing sites, truck driver awareness training, appropriate speed limits in known Cassowary areas and communication and action procedures for the sighting of Cassowaries on the road reserve. After construction is complete, commercial vessel operators will be required to bus passengers from a location outside of Clump Point to the boat ramp. This will both reduce the need for parking and the number of cars travelling the Clump Point road.
18. The Department considered that with the traffic plan in place there is unlikely to be a real chance or possibility that the proposed action will result in a significant impact on the Southern Cassowary.
19. I agreed with the Department's advice. Therefore, I concluded that the proposed action is unlikely to have a significant impact on the Southern Cassowary.

Marine species

20. The Department considered information provided in the referral that noted turtles may occasionally feed in the project area however, the project area is not a key feeding or nesting habitat for any of the above listed turtle species.
21. The Department considered the potential impact of the proposed action on the Green Sawfish and Humpback Whale. These megafauna are migratory and are not considered likely to occur regularly in the area.
22. The Department considered information provided in the referral to avoid impacts on marine species during construction. The proponent will develop and implement a Construction Environmental Management Plan (CEMP) that will include measures to avoid and manage impacts on marine species. These measures include:

- All marine works that could potentially harm protected marine species will be limited to daylight hours.
- Pre-start and ongoing regular visual inspections of the works area will be conducted during rock placement and piling activities. If marine megafauna are sighted within the works area, potentially harmful marine activities will be stopped.
- An observation/ shut-down zone of 550 m will be established for marine megafauna during pile driving and underwater excavation activities. If marine megafauna are sighted within this zone during works, works will be ceased until they have been observed to move out of the zone.
- Construction activities will include constructional vessel operational buffers and no-wash speed limits of 100 m for large cetaceans and 50 m from dolphins.
- Water-based noise activities will be commenced gradually to provide warning to nearby marine megafauna.
- Where possible, artificial lighting sources will be shielded and redirected away from adjacent beach environments.

23. The CEMP included management measures to avoid the risk of erosion and consequent increase in local turbidity. The Department considered these measures sufficient to manage erosion risk.

24. The Department considered the proposed measures are adequate to avoid, mitigate and manage potential impacts on listed marine species and their habitat. The Department considered the proposed action is unlikely to have a significant impact on the Green Turtle, Loggerhead Turtle, Hawksbill Turtle, Flatback Turtle, Olive Ridley Turtle, Green Sawfish or Humpback Whale.

25. I agreed with the Department's advice. I concluded that the proposed action is unlikely to have a significant impact on the listed marine species.

Listed migratory species

26. The Department's Environmental Reporting Tool (ERT) identified 43 migratory species that may occur within 2 km of the proposed action (recommendation brief Attachment B). Based on the location of the action the Department considered that impacts may potentially arise in relation to the following matters:

- Indo-Pacific Humpback Dolphin (*Sousa chinensis*)
- Dugong (*Dugong dugon*)
- Green Sawfish (*Pristis zijsron*) – vulnerable
- Humpback Whale (*Megaptera novaeangliae*) – vulnerable.

27. The Department considered information in the referral that the Indo-Pacific Humpback Dolphin may occasionally feed or transit the study area. Habitat suitability is considered low due to shallow water depths (in Boat Bay) and absence of preferred river mouth habitats. The Dugong, Green Sawfish and Humpback Whale may occasionally visit the project area. As discussed in paragraph 22, the proponent will implement a CEMP to avoid, mitigate and manage impacts on marine species.

28. Based on the information available, the Department considered that a significant impact to listed migratory species is unlikely.

29. I agreed with the Department's advice. Therefore, I concluded that the proposed action is unlikely to have a significant impact on the listed migratory species.

Great Barrier Reef Marine Park (GBRMP)

30. The proposed action includes in-water components that will occur within the GBRMP.
31. My findings of fact regarding the GBRMP were informed by the referral decision brief including advice from the Great Barrier Reef Marine Park Authority (recommendation brief Attachment D).
32. The Department considered the following impacts on the GBRMP from the proposed action:
- decreased water quality from sediment plumes from construction activities,
 - increased turbidity during construction works,
 - noise and vibration impacts to marine fauna during construction and operation,
 - disturbance to high value corals.
33. The Department considered advice from the Great Barrier Reef Marine Park Authority stating that the proposed activity may have some local impacts but these would not constitute a significant impact on matters of national environmental significance and any local impacts could be handled through the Marine Park's assessment and permit process.
34. The Department considered the proponent's CEMP plan to mitigate impacts.
35. The Department considered the information in the referral stating that no significant food sources for marine fauna have been identified in the project area and no impacts are anticipated to existing sediment transport patterns.
36. The referral included information on modelling that demonstrated the proposed 20 metre gap between the existing and new breakwater is sufficient to maintain the area between the structures and not impact on the high value corals in this area. The Department considered this and GBRMPA advice and concluded it was unlikely there would be a real chance or possibility of a significant impact on corals.
37. The Department considered that the above listed potential impacts will be mitigated through the CEMP and the GBRMPA permitting process.
38. I agreed with the Department's advice. Therefore, I concluded that the proposed action is unlikely to have a significant impact on the Great Barrier Reef Marine Park.

World Heritage Properties

39. For the same reasons as discussed in previous paragraphs, the Department considered it was unlikely there was a real chance or possibility that there would be a significant impact on the World Heritage values of the Great Barrier Reef World Heritage property as a result of the proposed action.
40. I agreed with the Department's advice. Therefore, I concluded that the proposed action is unlikely to have a significant impact on the World Heritage values of the Great Barrier Reef.

National Heritage places

41. For the same reasons as discussed in previous paragraphs, the Department considered it was unlikely there was a real chance or possibility that there would be a significant impact on the National Heritage values of the Great Barrier Reef National Heritage place as a result of the proposed action.

42. I agreed with the Department's advice. Therefore, I concluded that the proposed action is unlikely to have a significant impact on the National Heritage values of the Great Barrier Reef.

Ramsar Wetlands

43. The ERT did not identify any Ramsar listed wetlands of international importance within, or in sufficient proximity to the proposed action area, for the action to be likely to have a significant impact on a Ramsar Wetland. Therefore, I decided that the proposed action was unlikely to have a significant impact on the ecological character of a Ramsar wetland.

Commonwealth marine environment

44. The proposed action does not occur in the vicinity of a Commonwealth marine environment. Therefore, I decided that the proposed action was unlikely to have a significant impact on the Commonwealth marine environment.

Commonwealth action

45. The referring party is not a Commonwealth agency. Therefore, I decided this controlling provision does not apply.

Commonwealth land

46. The proposed action is not being undertaken on Commonwealth land. Therefore, I decided that the proposed action is unlikely to have a significant impact on Commonwealth land.

Nuclear action

47. The proposed action does not meet the definition of a nuclear action as defined in the EPBC Act. Therefore, I decided this controlling provision does not apply.

Commonwealth Heritage places overseas

48. The proposed action is not located overseas. Therefore, I decided this controlling provision does not apply.

A water resource, in relation to coal seam gas development and large coal mining development

49. The proposed is not a coal seam gas or a large coal mining development. Therefore, I decided this controlling provision does not apply.

Reasons for decision

50. I considered that the quality and quantity of information before me were adequate for me to make a decision under section 75 of the EPBC Act.

51. In making my decision I took account of submissions from the relevant State minister as well as the matters required to be taken into account under section 75 of the EPBC Act.

52. In making my decision, I took account of the precautionary principle (section 391 of the EPBC Act) which states that a lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.

53. In view of my findings, I was satisfied that the proposed action will not, or is not likely to, have a significant impact on matters of national environmental significance. I therefore decided on 19 May 2017 that the proposed action is not a controlled action.

Signed



A handwritten signature in blue ink, consisting of several connected loops and a final vertical stroke, positioned above a horizontal dotted line.

JAMES BARKER

14 JULY 2017

Appendix A

Legislation

Section 68 of the EPBC Act relevantly provides:

- (1) A person proposing to take an action that the person thinks may be or is a controlled action must refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.
- (2) A person proposing to take an action that the person thinks is not a controlled action may refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.

Section 74 of the EPBC Act relevantly provides:

Inviting other Commonwealth Ministers to provide information

- (1) As soon as practicable after receiving a referral of a proposal to take an action, the Minister (the **Environment and Energy Minister**) must:
 - (a) inform any other Minister whom the Environment and Energy Minister believes has administrative responsibilities relating to the proposal; and
 - (b) invite each other Minister informed to give the Environment and Energy Minister within 10 business days information that relates to the proposed action and is relevant to deciding whether or not the proposed action is a controlled action.

Inviting comments from appropriate State or Territory Minister

- (2) As soon as practicable after receiving, from the person proposing to take an action or from a Commonwealth agency, a referral of a proposal to take an action in a State or self-governing Territory, the Environment Minister must, if he or she thinks the action may have an impact on a matter protected by a provision of Division 1 of Part 3 (about matters of national environmental significance):
 - (a) inform the appropriate Minister of the State or Territory; and
 - (b) invite that Minister to give the Environment and Energy Minister within 10 business days:
 - (i) comments on whether the proposed action is a controlled action; and
 - (ii) information relevant to deciding which approach would be appropriate to assess the relevant impacts of the action (including if the action could be assessed under a bilateral agreement).

Inviting public comment

- (3) As soon as practicable after receiving a referral of a proposal to take an action, the Environment Minister must cause to be published on the Internet:
 - (a) the referral; and

- (b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the action is a controlled action.

Section 75 of the EPBC Act relevantly provides:

Is the action a controlled action?

(1) The Minister must decide:

- (a) whether the action that is the subject of a proposal referred to the Minister is a controlled action; and
- (b) which provisions of Part 3 (if any) are controlling provisions for the action.

(1AA) To avoid doubt, the Minister is not permitted to make a decision under subsection (1) in relation to an action that was the subject of a referral that was not accepted under subsection 74A(1).

Minister must consider public comment

(1A) In making a decision under subsection (1) about the action, the Minister must consider the comments (if any) received:

- (a) in response to the invitation under subsection 74(3) for anyone to give the Minister comments on whether the action is a controlled action; and
- (b) within the period specified in the invitation.

Considerations in decision

(2) If, when the Minister makes a decision under subsection (1), it is relevant for the Minister to consider the impacts of an action:

(a) the Minister must consider all adverse impacts (if any) the action:

- (i) has or will have; or
- (ii) is likely to have;

on the matter protected by each provision of Part 3; and

(b) must not consider any beneficial impacts the action:

- (i) has or will have; or
- (ii) is likely to have;

on the matter protected by each provision of Part 3.

Timing of decision and designation

(5) The Minister must make the decisions under subsection (1) and, if applicable, the designation under subsection (3), within 20 business days after the Minister receives the referral of the proposal to take the action.

