



Mr Scott Whitaker
Regional Director, North Coast Region
Department of Transport and Main Roads
12 First Avenue
Maroochydore QLD 4558

Dear Mr Whitaker

Suspension of referral decision timeframe
Beerburrum to Nambour Rail Upgrade Project, Queensland

I am writing to you in relation to your proposal to upgrade the North Coast Line between Beerburrum and Nambour, including a new rail corridor and associated infrastructure, Queensland (the action).

In accordance with section 76(2) of the EPBC Act, the Department may request additional information (Attachment A) to allow the Minister's Delegate to make an informed decision on whether or not the action is a component of a larger action. To allow adequate time, I have decided to suspend the referral decision timeframe in accordance with section 75(6) of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The timing to make a referral decision stopped on this date with 4 days remaining for a referral decision.

In addition, Section 75(7) of the EPBC Act allows the referral decision timeframe to be extended by mutual written agreement of the Minister and the person proposing to take the action. In order to give the Minister sufficient time to adequately consider the additional information, I am seeking your agreement via email to extending the referral decision timeframe by 10 business days from the date that the Department receives your response to the request for further information.

If you have any questions about this decision, please contact the assessment manager, Carl Menke, by email to carl.menke@environment.gov.au, or telephone 02 6274 2896 and quote the EPBC reference number shown at the beginning of this letter.

Yours sincerely

Mike Smith
Director
Queensland South Assessments Section
Assessments and Governance Branch
10 December 2020

Request for additional information

Beerburrum to Nambour Rail Upgrade Project, Queensland (EPBC 2020/8803)

Further information

The Department notes that Queensland Department of Transport and Main Roads (DTMR) propose to develop the Beerburrum to Nambour Rail Upgrade Project (B2N). DTMR propose to undertake the action in two stages with stage 1 and 2 being part of the referred action (EPBC 2020/8803). We also understand that DTMR propose to undertake early works in early 2021 which includes vegetation clearing, geotechnical and topographic investigations, realignment of a portion of Steve Irwin Way, and additional parking access at Landsborough and Nambour stations. DTMR have stated that “early works” is not part of the referred action, however is a component of the larger action.

Please see below advice on the application of section 74AA and 74A of the EPBC Act to your project, and a request for further information.

Section 74AA of the EPBC Act

During discussion between the Department and DTMR on Thursday 3 December 2020, the DTMR requested clarification on whether undertaking early works would be in breach of section 74AA of the EPBC Act. Under section 74AA (a) and 74AA (b)(i) of the EPBC Act, a person commits an offence if the person takes an action; and a proposal to take the action (or a larger action of which the action is a component) has been referred to the Minister by the person under section 68 of the EPBC Act.

Noting that early works are considered part of the larger action, section 74AA would apply in this instance. Should DTMR choose to undertake early works without a decision under the EPBC Act, DTMR carry all associated legal risks.

Section 74A of the EPBC Act (component of a larger action)

Based on information in the referral documentation, the Department is of the view that the referred action is a component of a larger action. The larger action being stages 1 and 2 of the B2N, and associated early works. Please be aware that under section 74A of the EPBC Act, the Minister may decide to not accept the referral if she is satisfied that the action is a component of a larger action; and if by splitting the action it prevents adequate consideration of the larger actions impacts on protected matters.

The Department understand that early works may result in the loss of remnant and regrowth habitat which is considered likely Koala habitat and based on a self-assessment, DTMR are of the view that this will not result in a significant impact on protected matters. The Department notes however that this area of habitat is part of a contiguous patch of Koala habitat within the broader referral footprint, and impacts to this area should be considered in its entirety.

Further information in regards to staged developments/split referrals and S74A of the Act can be found here:

<https://www.environment.gov.au/resource/epbc-act-policy-statement-staged-developments-split-referrals-section-74a-epbc-act>

Information request:

To assist the Department in its recommendation to the Minister (or delegate) on whether to accept the referral and proceed to make a referral decision, can you please provide the following:

1. The project critical timeframes and details on what the consequences are should early works not be undertaken in early 2021.
2. Confirmation on how much habitat is likely to be impacted as a result of the proposed early works. Please ensure that 'habitat' is identified in accordance with relevant statutory documents (e.g. recovery plans, conservation advices, and referral guidelines) and a discussion on the potential for indirect impacts and edge effects is provided.
3. Justification why early works is being undertaken separately, and whether any impacts on EPBC protected matters can be avoided completely.

Subject to the submission of the above information, the Department considers there are two possible outcomes for DTMR to progress this referral:

1. Provide a letter stating the intention of the DTMR to include early works as part of the referred action. This would provide DTMR with legal certainty, however early works would not commence until the Minister determines whether or not the action is a controlled action; and if it is a controlled action, whether or not the Minister approves the action.
2. Proceed with making a referral decision under 2020/8803 on the basis that early works is a separate action however noting that Minister (or delegate) may refuse to accept a referral if by splitting the action it prevents adequate consideration of the larger actions impacts on protected matters.

In any correspondence with the Department please quote the title of the action and EPBC reference, as shown at the beginning of this letter. You can send information to us:

by letter Queensland South Assessments
Environment Assessments Queensland and Sea Dumping Branch
Department of Agriculture, Water and the Environment
GPO Box 858
CANBERRA ACT 2601

by email carl.menke@environment.gov.au