



Mr Hamish Manzi
Adani Infrastructure Pty Ltd
GPO Box 2569
BRISBANE QLD 4001

Dear Mr Manzi

**Request for additional information
North Galilee Water Scheme, Galilee Basin, Qld**

Thank you for submitting a referral under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) concerning the above proposed action.

An initial examination of your referral indicates that there is insufficient information to allow the Department to consider all the relevant issues.

Could you please provide the following further information:

- details of how the proposed action relates to water supply infrastructure approved under EPBC 2010/5736, including but not limited to the proportion of water harvesting that will occur from the Belyando River and the Suttor River;
- provide data to show the seasonal flow regime for the Suttor River at the proposed harvest location;
- a description of geomorphological conditions downstream of the proposed water harvest site. This should include the location of any permanent or semi-permanent pools that may support habitat for matters of national environmental significance;
- details of how the proposed action is likely to impact species and ecological communities downstream of the proposed harvest location. Species that must be considered include, but are not limited to, Brigalow (*Acacia harpophylla* dominant and co-dominant) ecological community, Koala (*Phascolarctos cinereus*), Squatter Pigeon (*Geophaps scripta scripta*), and Ornamental Snake (*Denisonia maculate*); and
- a copy of the Queensland Water Licence (reference 617268) including any conditions.

In any correspondence with the Department please quote the title of the action and EPBC reference, as shown at the beginning of this letter.

s22
[Redacted text block]

s22 [redacted]

[redacted]
[redacted]
[redacted]

[redacted]
[redacted]
[redacted]
[redacted]

Please note that the timing to make a decision on your referral stops on the date of this letter, and restarts once the Department has received satisfactory information and, if not exempt or waived, the invoice has been paid. In the event that the project is determined to be a controlled action, the timing to make a decision on an assessment approach also stops on the date of this letter.

If you have any questions about the process, please contact the project manager, s22 [redacted] by email to s22 [redacted]@environment.gov.au, or telephone 02 6275 s22 [redacted] and quote the EPBC reference number shown at the beginning of this letter

Yours sincerely



James Barker
Assistant Secretary
Assessments and Governance Branch
2 July 2018


DEPARTMENT OF THE ENVIRONMENT

FOI 180712
Document 2

To: James Barker, Assistant Secretary, Assessments and Governance Branch (for decision)

**Stop Clock and Request Additional Information: North Galilee Water Scheme
(EPBC 2018/8191)**

Timing: Before 6 July 2018, the referral decision due date.

Recommendations:	
1. Agree to stop the clock to request additional information.	<input checked="" type="radio"/> Agreed / <input type="radio"/> Not agreed
2. Sign the letter at <u>Attachment A</u> .	<input checked="" type="radio"/> Signed / <input type="radio"/> Not signed
3. s22 [REDACTED]	<input checked="" type="radio"/> Noted / <input type="radio"/> Please discuss
	
James Barker Assistant Secretary, Assessments and Governance Branch	Date: 2/7/18
Comments:	

Key Points:

- The referral does not provide sufficient information to adequately assess how the proposed action relates to the water supply infrastructure approved under the Carmichael Coal Mine project (EPBC 2010/5736).

Background:

- On 7 June 2018, a referral was received from Adani Infrastructure Pty Ltd to construct and operate a water pipeline to provide a water supply under a commercial agreement to the proposed Carmichael Coal Mine and potentially in the future, other resource projects in the northern Galilee Basin (Attachment B).
- The proposal involves the construction of a pump station, water storage infrastructure, 110 km of buried pipeline, and upgrading an existing storage dam from 2.2 gegalitres to 10 gegalitres. The North Galilee Water Scheme will access water made available to Adani in a surface water licence issued by the Queensland Government in April 2017.
- The assessment of the Carmichael Coal Mine (EPBC 2010/5736) included consideration of water supply infrastructure to allow extraction, storage and delivery of up to 12.5 gegalitres (GL) per year of water (with an average annual extraction of 10 GL) including a flood water harvester

on the Belyando River, a 70 km raw water supply pipeline from the Belyando River to the mine site, pump stations and an off-site storage facility.

- s22 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- It is also unclear from the referral information what the likely impacts on listed threatened species and ecological communities may be downstream of the proposed action.
- The Department recommends requesting further information to enable the delegate to determine whether the proposed action is likely to have a significant impact on any matters of national environmental significance. s22 [REDACTED]
[REDACTED]
[REDACTED]
- The Department also recommends requesting that the proponent provides a copy of the Queensland Water Licence (reference 617268) and any associated conditions to allow the delegate to understand how impacts from the proposed action are being mitigated.
- Under subsection 76 (1b) of the EPBC Act the Minister may request that the person proposing to take an action provide further information to determine which provisions of Part 3 are controlling provisions for the action.
- If you agree to seek further information, under subsection 75(6), the statutory timeframe for making a decision under section 75 is suspended (the referral decision clock is stopped). If you decide not to seek further information, the due date for a referral decision is 6 July 2018.
- Please note, under subsection 520(4A) of the EPBC Act and Regulation 5.19 of the Environment Protection and Biodiversity Conservation Regulations 2000, this project is subject to cost recovery and the request to provide additional information is a contingent activity, for which a cost recovery fee is payable.

s22 [REDACTED]
Director
Queensland North Assessments
Assessments and Governance Branch
Ph: 02 6274 s22 [REDACTED]

s22 [REDACTED]
Assessments Officer
Queensland North Assessments
Ph: 02 6275 s22 [REDACTED]

ATTACHMENTS

- A: Letter to the proponent requesting additional information [FOR SIGNATURE]
- B: Referral and referral attachments



25 June 2018

Referrals Gateway
Environment Assessment Branch
Department of the Environment
GPO Box 787
Canberra ACT 2601

Proposed Action: North Galilee Water Scheme (NGWS) Project
Reference Number: 2018/8191

To the Department of the Environment,

I am writing to you on behalf of the Australian Conservation Foundation (“ACF”).

The ACF is Australia’s national environment organisation. We represent a community of more than 500,000 people who are committed to achieving a healthy environment for all Australians. For more than 50 years, the ACF has been a strong advocate for Australia’s forests, rivers, people and wildlife. ACF is proudly independent, non-partisan and funded by donations from our community.

Thank you for the opportunity, under s 74(3), to allow the ACF to comment on whether the proposed action should be assessed under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (“the EPBC Act”).

Recommendations

The ACF recommends that:

1. The NGWS is declared a controlled action, for the purposes of s 67 of the EPBC Act because it will have, or is likely to have, a significant impact on matters of national environmental significance (“MNES”).
2. The impacts of the proposed action on MNES should be rigorously assessed under the EPBC Act via a full Environmental Impact Statement (“EIS”).
3. The following controlling provisions for the proposed action should apply:
 - a. A water resource, in relation to coal seam gas development and large coal mining development (sections 24D & 24E);



- b. Listed threatened species and communities (sections 18 & 18A);
- c. World Heritage properties (sections 12 & 15A); and
- d. Great Barrier Reef Marine Park (sections 24B & 24C).

Overview

The proposed action, the North Galilee Water Scheme (“NGWS”) project, is located approximately 160 km North-West of Clermont in Central Queensland. The proponent is Adani Infrastructure Pty Ltd (“Adani”), a fully-owned subsidiary of the Adani Group. The total disturbance area for the project is 508.98 ha. Adani estimate that construction will run from January 2019 to March 2020.

The NGWS involves water harvesting and transportation infrastructure to collect flood water from the Suttor River, of the Burdekin Basin catchment, in Central Queensland. The water will be stored in a 10 GL dam (upgraded from 2.2 GL), before being pumped along an approximately 110 km pipeline to the site of the proposed Carmichael coal mine. Adani is currently authorised to take 12.5 GL of surface water from the Suttor River and 8 GL from Mistake Creek, in the Belyando-Suttor Subcatchment.

The proponent intends to use this water for the primary purpose of mining operations at the Carmichael mine. The referral application also contemplates that the NGWS could be used to supply water to other coal mines in the Galilee Basin including Alpha North and China Stone.

Prior Assessment of NGWS

The original EIS documents for the Carmichael coal mine project stated an anticipated surface water demand of 12 GL per year in addition to dewatering and on-site rainwater harvesting. This water to be sources from on-site sources and bores drilled along nearby creeks. By the time of the Supplementary EIS (“SEIS”), the surface water plans had changed to incorporate a flood harvesting scheme at the Belyando River, nearby to the mine site.¹ The EIS and SEIS were assessed during the approval process for the Carmichael mine.

The proposal to harvest water from the Suttor River was not considered in the EIS or SEIS. It follows that the proposed action has not been assessed under the EPBC Act. Arguably the proponent’s decision to refer the NGWS evidences their understanding of this fact.

Significant Impact on MNES

(a) A water resource, in relation to ... large coal mining development (sections 24D & 24E)

¹ Adani Mining Pty Ltd, ‘Carmichael Coal Mine and Rail Project SEIS – Updated Mine Project Description’ (2013) app B, p 96-7.



(i) Statutory interpretation

The 'water trigger' comprises of two-limbs. First, the action must 'involve large coal mining development'.² Second, the action must have or be likely to have 'a significant impact on a water resource'.³ Relevantly, 'large coal mining development' is defined as 'any coal mining activity that has, or is likely to have, a significant impact on water resources'.⁴

The proponent states that the NGWS does not constitute a large coal mining development and is therefore not a controlled action. In a supporting document to the referral application, Adani state that 'activities relevant to the water trigger are those that form part of the process of extracting coal and not merely be associated with it'.⁵ The question of whether the water trigger should apply therefore hinges on the interpretation of 'coal mining activity'.

We note that the relevant Department *Significant Impact Guidelines* provide that only extractive activities fall within the scope of 'coal mining activities' and 'large coal mining developments'.⁶ However, this narrow interpretation of the EPBC Act is of minor relevance to the process of statutory interpretation. The High Court has repeatedly underscored that the task of interpretation requires close consideration of the words of the statute, within the context of the purpose of the legislation.⁷

On the matter of interpretation, Kiefel J has observed that the EPBC Act ought to be interpreted 'consistent with the high public policy apparent in the objects of the Act' and 'no narrow approach should be taken to the interpretation of legislation having objects of this kind'.⁸ These objects include, *inter alia*, 'to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance'.⁹

Considering the specific purposes of the water trigger, during the second reading speech, the Minister referred, *inter alia*, to the 'irreversible depletion ... of our surface and groundwater resources'.¹⁰ The relevant *Bills Digest* also considered the impacts of large coal mining developments

² *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 24D(1)(a)(ii).

³ *Ibid* s 24D(1)(b).

⁴ *Ibid* s 528.

⁵ Adani Infrastructure Pty Ltd, 'Referral Application – MNES No Impact Summary' (2018) p 3.

⁶ Commonwealth Department of the Environment, 'Significant Impact Guidelines 1.3 – Coal Seam Gas and Large Coal Mining Developments – Impacts on Water Resources' (2013) s 3.4.

⁷ See, eg, *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27.

⁸ *Queensland Conservation Council Inc v Minister for Environment and Heritage* [2003] FCA 1463, [40].

⁹ *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 3(1)(a).

¹⁰ Commonwealth, *Parliamentary Debates* House of Representatives, 13 March 2013, p 1846 (Anthony Burke).



on water resources including the use of water ‘for processing and dust suppression and other mining activities’ as necessary for coal production.¹¹

Having regard to the objects of the EPBC Act and purpose of the water trigger, sections 24D and 24E are intended to capture activities that form part of a large-scale coal mining development. In effect, while the activity must be connected to (i.e. ‘involve’) a large coal mining development it is not limited to the act of extraction.

A narrower interpretation of these sections that only captures coal extraction activities would clearly undermine the purpose of the legislation. It would result in major infrastructure, that is fundamental for coal mining activities and which may have a significant impact on water resources, not being assessed under the EPBC Act. This interpretation would encourage proponents to divide-up their projects, with the intention of avoiding appropriate scrutiny under the water trigger.

(ii) Application to the NGWS

It is not contentious that the Carmichael coal mine is a large coal mining development. The NGWS is required to supply water to the Carmichael coal mine. This water will be used on-site for activities such as coal-washing, longwall coal mining operations, dust and fire suppression. These activities, and therefore the NGWS, clearly ‘involve’ a large coal mining development for the purposes of the EPBC Act.

The proposed water-take of up to 20.5 GL per year from the Suttor River and Mistake Creek amounts to more than 50% of the total ‘state purposes’ strategic reserve for the Belyando-Suttor Subcatchment.¹² This clearly constitutes a significant impact requiring further assessment under the water trigger.

(b) Listed threatened species and communities (sections 18 & 18A)

(i) Referral application based on inadequate surveys

In the referral application, Adani state that the NGWS will impact on listed threatened species and communities, but that these impacts are not likely to be significant and therefore the project does not require further assessment. However, the threatened species surveys conducted on-site for the project are inadequate. They appear to have been conducted over short durations which, given the scale of disturbance (508.98 ha), would fail to consider significant temporal and seasonal variations.

Further, regarding the surveying that was conducted, very little information is provided as to the techniques that were used and where they were applied. Based on the information that is available,

¹¹ Department of Parliamentary Services (Cth), *Bills Digest*, No 108 of 2012-13, 13 May 2013, p 12.

¹² See *Water Plan (Burdakin Basin) 2007* (Qld) s 32(a).



we have no confidence that systematic surveys of flora and fauna took place. This underscores the need for a full EIS.

(ii) Referral application identifies likely significant impacts

Adani's referral application identifies that there is important or critical habitat present for at least three listed threatened species – Ornamental Snake, Black-Throated Finch and Koala. Specifically, 137.43 ha of suitable habitat for the Ornamental Snake falls within the project footprint and this 'is almost certain to be used for foraging and breeding'. Under the relevant *Significant Impact Guidelines*, this constitutes 'critical habitat' and actions that will 'adversely affect habitat critical to the survival of a species' should be considered significant impacts.¹³

Similarly, the referral application acknowledges the presence of important habitat for the Black-Throated Finch and Koala that is likely to be disturbed but conclude that there will not be a significant impact. These conclusions are not sufficiently supported by the evidence presented in the referral application. Further investigation of the project's impact on listed threatened species should be conducted via an EIS.

(c) World Heritage properties (sections 12 & 15A) and Great Barrier Reef Marine Park (sections 24B and 24C)

The referral application states that the proposed action will have no impact on the Great Barrier Reef. However, the Suttor River and Mistake Creek feed the Burdekin River. The Burdekin catchment is an important catchment for the Great Barrier Reef. Recent research has identified that the Burdekin River is one of just four rivers that are most likely to affect water quality on the Great Barrier Reef.¹⁴ Given the sensitivity of the Great Barrier Reef to changes in water quality, the proposed action must be rigorously assessed via a full EIS to identify and minimise downstream impacts.

For more information:

Christian Slattery | Campaigner | P: 03 9345 1226 | E: christian.slattery@acf.org.au

The Australian Conservation Foundation is Australia's national environment organisation. We stand up, speak out and act for a world where reefs, rivers, forests and wildlife thrive.

www.acf.org.au

¹³ Commonwealth Department of the Environment, 'Significant Impact Guidelines 1.1 – Matters of National Environmental Significance' (2013) p 9.

¹⁴ Nicholas H Wolff et al, 'Contribution of Individual Rivers to Great Barrier Reef Nitrogen Exposure with Implications for Management Prioritisation' (2018) 133 *Marine Pollution Bulletin* 30.