

DEPARTMENT OF AGRICULTURE, WATER AND THE ENVIRONMENT

MS20-000073

To: Minister for the Environment (For Decision)


EPBC CONGESTION BUSTING PERFORMANCE REPORTING AND MAJOR PROJECTS

Timing: 18 February 2020 - to ensure ongoing performance reporting is provided to you in a timely manner.

Recommendations:

- Note the progress to deliver the Government's announced congestion busting for environmental assessments. Noted / Please discuss
- That you agree to the format and content of the fortnightly performance report at Attachment B. *provide performance reports quarterly instead of fortnightly* Agreed / Please discuss
- That you agree to the criteria and process for determining 'major project' status at Attachment C. Agreed / Please discuss
- That you approve the initial projects to be allocated 'major project' status at Attachment C. Approved / Please discuss

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

Minister:  Date: 19/2/20

Comments:

Clearing Officer: Sent: 12/2/2020	Michelle Croker	A/g First Assistant Secretary, Environment Approvals Division	Ph: 6274 9031 Mob: s. 22(1)(a)(ii)
Contact Officer:	Declan O'Connor-Cox	A/g Assistant Secretary, Environment Approvals Division	Ph: 6274 2969 Mob: s. 22(1)(a)(ii)

Key Points:

- On 21 November 2019, the Australian Government announced an investment of \$25 million to reduce unnecessary delays within the existing assessment system, including the establishment of a major projects team to ensure assessments can be completed efficiently and thoroughly in accordance with the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

2. This funding is for additional staff from January 2020 to June 2021 to:
 - a. Improve performance against statutory timeframes
 - b. Meet agreed timeframes for 'major project' approvals
 - c. Reduce the backlog of projects.
3. Also announced was a Digital Transformation of Environmental Assessment program. This program will streamline processes, use technology to allow better integration across jurisdictions and embed information standards to capture and reuse data. The program includes three measures:
 - a. establishing a single online portal for proponents to interact with the environmental assessment process
 - b. developing a digital environmental assessment system to deliver a streamlined and faster assessment process
 - c. development of a biodiversity data repository to store and share information collected by proponents such as wildlife surveys.

Progress to Date

4. Congestion busting project: We have recruited 35 additional staff with 17 staff expected to commence during the coming weeks and another 26 before the end of the financial year. We have also rolled-out training for the new staff. We are nearing completion of a prioritised business and policy reform agenda to improve our efficiency and processes. We have also established an approval tracking system and public-facing dashboard quarterly assessment performance report (**Attachment A**). These systems track and report on our performance and allow us to address assessments that are not tracking on time.
5. Digital Transformation program: Scoping work is underway and initial meetings are being held with Western Australia who will partner with the Department in the rollout of the program.

Performance Reporting

6. A specific charter letter performance target is 28 per cent of key EPBC Act decisions to be made within statutory timeframes by 30 June 2021 (compared to 14 per cent for 2018-19). This statistic is not publicly reported, and we anticipate stakeholder expectations will be much higher. We are setting ourselves the ambitious target of aiming to meet statutory timeframes 100 per cent of the time for key decisions from 1 January 2020.
7. The target of 100 per cent will not be reached immediately as recruitment, training and integration of new staff is placing an initial pressure on our performance as existing staff spend time away from assessments to support the expansion. We anticipate a timeframe of 3 – 6 months for these pressures to be resolved and maximum performance reached.
8. As part of these commitments, we will be updating you on progress through fortnightly performance reports. These will not be public reports, the Department's public reporting is the quarterly performance report (as mentioned above, at **Attachment A**). The Department has prepared the first performance report (**Attachment B**) and is seeking your approval of the format and content.

9. For January 2020, 59 per cent of decisions due for the month were made within statutory timeframes (see first graph of **Attachment B**). Note that the second graph of the performance report at **Attachment B** includes late 'backlog' decisions (late decisions which were already due prior to the commencement of the project). These have been reduced from 78 to 60.

Major Projects

10. To deliver on major project approvals, the Department proposes to report on and manage a small number of the most nationally-significant projects as 'major projects', based on criteria linked to economic contribution and strategic significance of the projects. Assessment of these projects will be afforded the highest priority and will be resourced to ensure key decisions are made within agreed timeframes. The performance report includes updates on our performance in managing major projects.
11. The Department is seeking your agreement to the process for selecting 'major projects' and approval of the initial recommended projects to be allocated major projects status, outlined at **Attachment C**.

Sensitivities and Handling

12. We anticipate the list of major projects will be public. There is likely to be pressure from proponents wanting to be afforded major project status. The limited number of projects afforded major project status will reduce administrative burden for both your office and the Department and match our resourcing capability to service proponents. To manage this pressure the major projects criteria provide clear messaging for why projects have been afforded major project status. The Department will continue to aim to meet statutory timeframes for all projects.

Consultation: YES

13. Knowledge and Technology Division were consulted in the preparation of this brief.

ATTACHMENTS

- A:** Dashboard (quarterly assessment performance report)
- B:** EPBC Congestion Busting: Performance Report
- C:** Major projects criteria and allocation



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

Quarterly assessment performance report

Highlights

Some of the key highlights of decisions made during November 2019 to January 2020 are listed below.

EPBC 2019/8525 – Star of the South Offshore Surveys, near Yarram and Port Albert, Vic

In November 2019 the Star of the South Wind Farm Pty Ltd referred an action to undertake marine geophysical and geotechnical surveys of the seabed off the coast of Gippsland, Victoria. As part of the referral a number of measures were proposed to reduce impacts on listed threatened and migratory whale species. As a result, on 7 January 2020 a delegate of the Minister decided that the project was not a controlled action if undertaken in a particular manner.

It is anticipated that a separate referral for the construction of the wind farm will be submitted at a later date.

EPBC 2019/8582 – City to Commonwealth Park Light Rail 2A, ACT

On 10 January 2020 a delegate of the Minister decided that the extension of Canberra's existing light rail network from the City to Commonwealth Park is a controlled action, due to impacts on the critically endangered Golden Sun Moth and Commonwealth land. The impacts of the action will be further scrutinised through a preliminary documentation assessment and is required to be approved under the EPBC Act before it can proceed.

EPBC 2017/7955 – Sydney Opera House Building Renewal Program – Concert Hall and associated works, Sydney, NSW

On 21 January 2020 a delegate of the Minister approved the proposed action with conditions. Approval of this project provides for accessibility upgrades and improvements to work health and safety standards, whilst protecting the values of this iconic world heritage property.

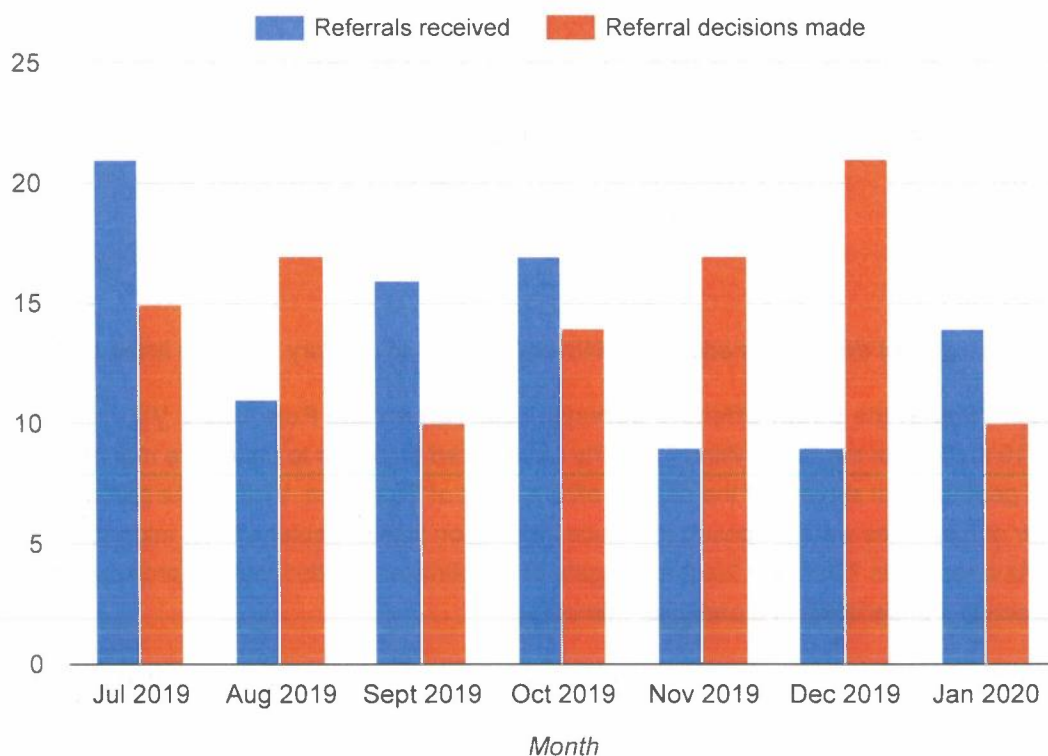
A complete list of all decisions can be found on the [Public Notices website](#).

Number of decisions made this financial year (to 1 February 2020):

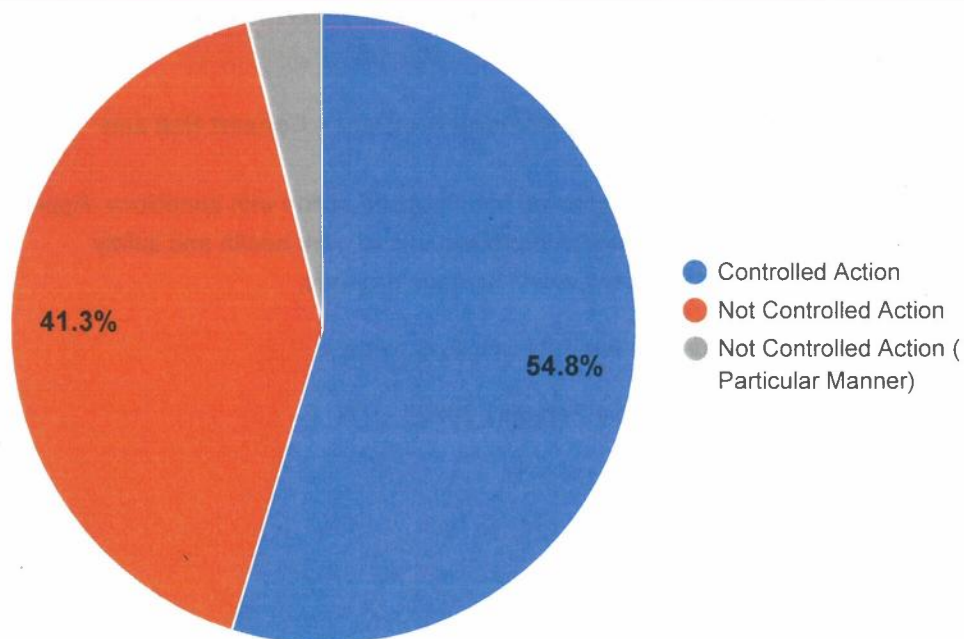
- Referral Decisions – 104
- Assessment Method Decisions – 56
- Approval Decisions – 53
- Administrative Decisions - 331

Current performance

Referrals received and decisions made



Referral Decisions by type



Key

- **Not-Controlled Action** - The project may proceed without further assessment or approval as long as the action is done as it was described in the referral

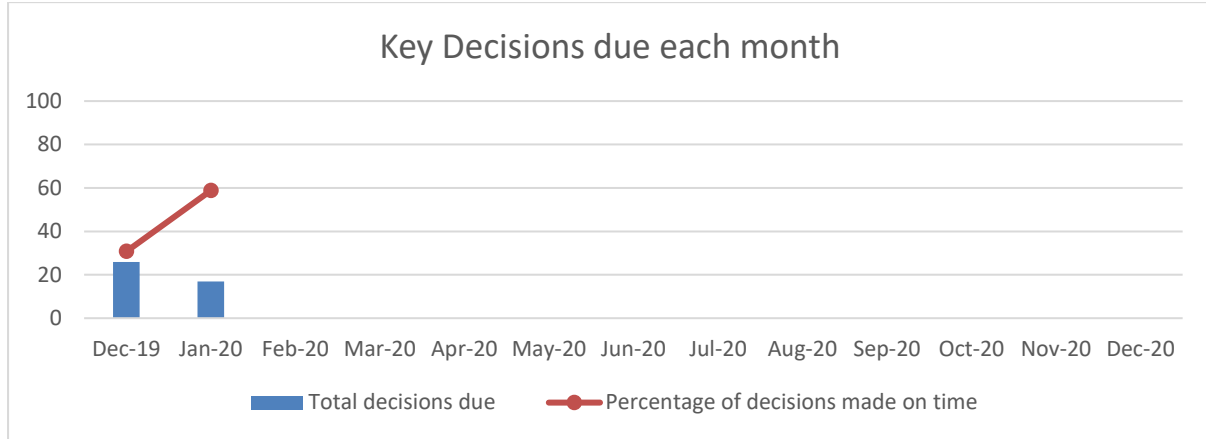


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EPBC CONGESTION BUSTING: PERFORMANCE REPORT

JANUARY 2020

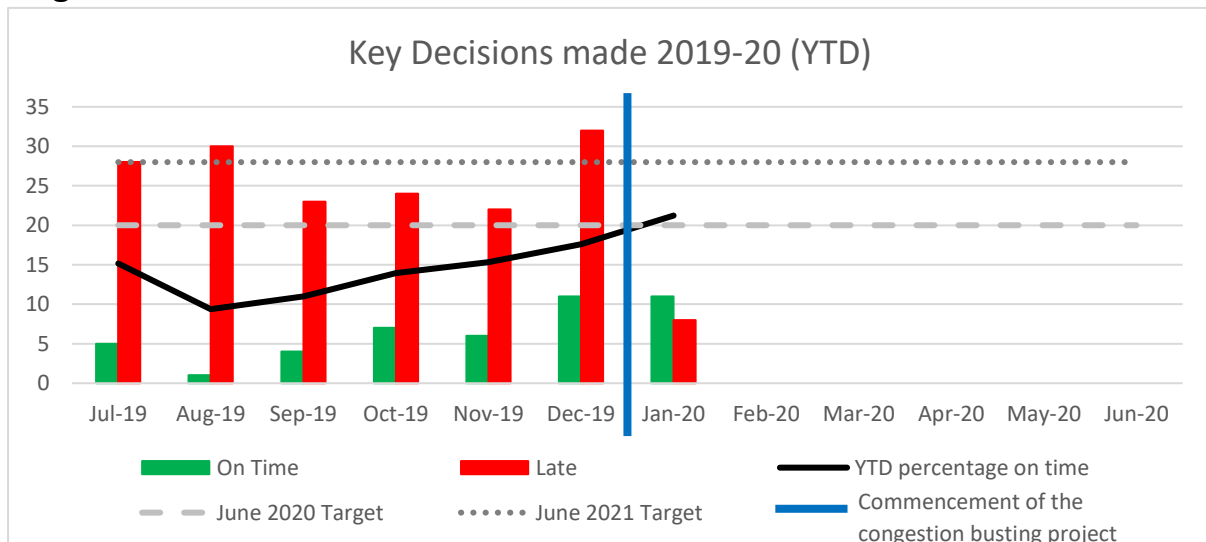
We have lifted our performance in the first month (January 2020)



The Department’s Congestion Busting project commenced on 1 January 2020.

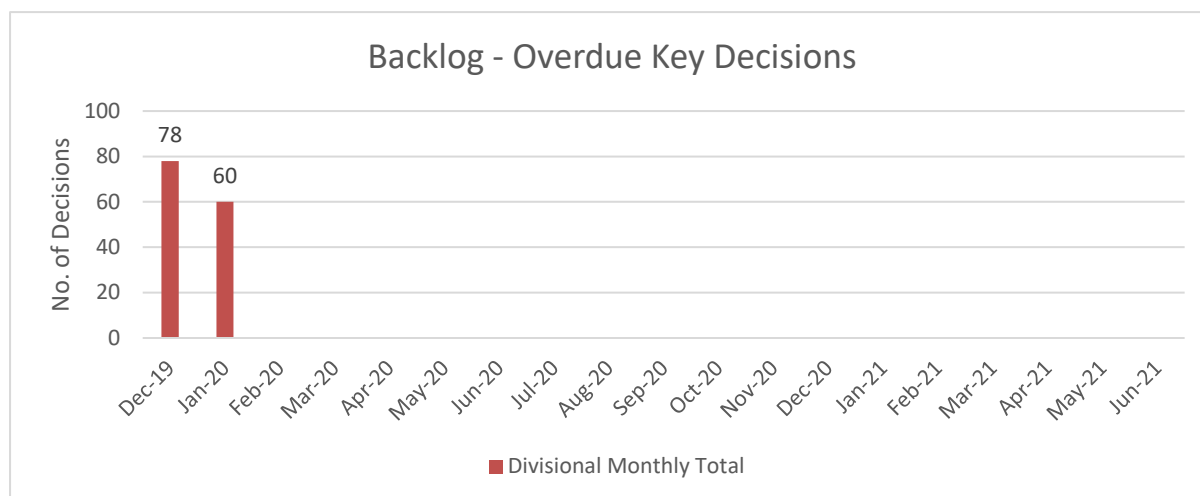
59 per cent of the 17 key decisions which fell due in the month of January 2020 were made within statutory timeframes. This is shown by the red dot, and blue column respectively, in the above graph.

Our performance is improving, and we are on track to meet our MYEFO targets



The Department made **194** key statutory decisions in the period between 1 July and 31 December 2019, before the Congestion Busting project started. Of those decisions, 18 per cent were made on time. The Department’s performance has since improved to 21 per cent (as demonstrated by the black trend line in the graph above) and we are on track to meet the final MYEFO target of 28 per cent by 30 June 2021.

The backlog is reducing



Prior to 1 January 2020, there was a backlog of 78 overdue key decisions across 57 projects. As at 6 February 2020, the number of overdue decisions in the backlog had reduced to 60 (the red column in the above graph) across 47 projects. The Department expects these to be progressively resolved.

Background

Statutory timeframes and key decisions

There are over 100 different statutory timeframes which an active project might potentially be subject to during its assessment. Most of these are administrative (such as the Department publishing the proponent's documents on its website for public comment). There are three key decisions (with their associated statutory timeframes) which proponents tend to be most interested:

- Decision on referral – whether a project requires assessment before it can take place.
- Decision on assessment method – the extent and complexity of the assessment required, and whether it will be undertaken under a bilateral arrangement with states/territories.
- Decision on approval – the ultimate decision on whether the project can proceed.

There are currently 144 decisions pending across these three key stages.

Active projects

For the purpose of this report an active project is a project either awaiting a referral decision, or which has received a controlled action referral decision but has not been lapsed, withdrawn or approved.




There are currently 408 active projects. Of these, 60 are awaiting a referral or assessment method decision, 40 are awaiting an approval decision, and 308 are not subject to any active key decisions.

Major Projects update

The Department has identified **six** potential major projects for your consideration. Once determined, these major projects will be afforded the highest priority in terms of their assessment. An update on each project is provided in the table below.

Project	Current status	Next steps	Comments
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s. 22(1)(a)(ii)

 On track to meet timeframes.  Some risk of not meeting timeframes.  High risk of not meeting timeframes.

Proposed handling of 'major projects' subject to assessment under the EPBC Act

Overview

As part of implementing the Government's congestion busting agenda in relation to environmental approvals, the Department proposes to manage a small number of the most nationally-significant projects as 'major projects'. Assessment of these projects will be afforded the highest priority and will be resourced and managed with a view to ensure key decisions are made within agreed timeframes.

The Department will recommend projects for 'major project' status to you for approval and will provide regular reports to you on the Department's performance in managing the major projects.

Recommendation of major projects to you will be based on an evaluation against agreed criteria which focuses on economic contribution and strategic significance of the projects (see below).

What is the proposed initial set of major projects?

The Department's proposed initial list of major projects comprises:

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See **Appendix A** below for further details on the nominated projects and other significant projects.

What are major projects and why is it necessary to limit their number?

The Department proposes to prioritise and appropriately resource the assessment and approval of six projects which are the most nationally-significant and critical due to their economic contribution and strategic significance.

The proposed limit on the number of major projects will minimise the administrative burden of managing major projects. It also recognises the constraints on the Department's capacity to provide such a significant level of resourcing for any larger number of projects. Major projects are typically more complex projects, requiring close and regular work with proponents and state/territory agencies. The projects will also often involve a high level of legal risk which requires extensive engagement with the Department's General Counsel and AGS.

As a consequence, there will be a number of other projects that will not be afforded major project status but which are still significant projects in their own right (see **Appendix B**). The Department's objective for these projects will be to manage resources, work closely with proponents, and prioritise efforts towards improving performance to meet statutory timeframes.

What criteria will be used to identify major projects?

The proposed criteria for major project selection are outlined below. Equal weightings will apply to the proposed criteria.

- strategic significance: for example, critical national infrastructure which will facilitate further growth, investment and job creation or to meet critical community needs
- economic contribution: having regard to key indicators such as expected revenue, upfront and ongoing employment opportunities, and capital expenditure
- other Government policy objectives

The Division's SES leadership group will nominate projects for major project status, having regard to the criteria. A brief for your approval of the projects will then be prepared.

What can proponents of major projects expect from the Department?

The Department will negotiate a client service charter with the proponent for each major project. The service charter will provide proponents with greater certainty about the assessment process, including roles and expectations of parties, timeframes for key decisions, and any necessary caveats or contingencies regarding timing. Importantly (noting that these projects are typically much more complex than standard projects), the timeframes negotiated in the service charter are expected to be longer than statutory timeframes.

The service charter for each project will make no commitment or guarantee about the decision outcome.

What reporting will be done on Major Projects?

The Department will provide a regular report to you on our performance with meeting timeframes for major projects as part of our congestion busting performance reporting (see [Attachment B](#) to brief).

No public reporting on performance is proposed for major projects. It is not considered necessary or appropriate to maintain a public-facing report given the limited number of projects to be afforded major projects status and the challenges with managing expectations of the Department's regulated community more broadly.

Appendix A: Further information on proposed major projects

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

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

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

Appendix B: Other significant projects

There are around 80 other projects that, when evaluated against the criteria and compared with the recommended list, are not recommended for inclusion as major projects (or at least not at this stage), but which are still recognised as important and requiring active management. The Department will be aiming to meet 100 per cent of statutory timeframes for these projects. The Department does not recommend lowering the threshold for major project status as this means that all of these projects would qualify, which would create an unsustainable administrative burden for the Department and your Office.

The approximately 80 other significant projects are listed below:

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

Western Australia

- Perth Airport (new runway and other infrastructure / commercial projects), assessment via s160 of the EPBC Act and regulated under the Airports Act by Department of Infrastructure

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