

From: [Barker, James](#)
To: s22
Cc: [de Brouwer, Gordon](#); [Knudson, Dean](#); [Cahill, Matt](#); [Papps, David](#); [Taylor, Mark](#); s22
[Codina, Martin](#); [Richardson, Geoff](#); [Oxley, Stephen](#)
Subject: Toondah harbour, further brief [DLM=Sensitive:Legal]
Date: Wednesday, 5 April 2017 5:31:18 PM
Attachments: [MS17-000477.docx](#)
[Attachment A .docx](#)
[Attachment C.docx](#)

Hi s22

As flagged earlier, enclosed is briefing on the Toondah Harbour proposal, as well as associated TPs which are also enclosed. This has also been put through pdms (including an attachment of an earlier brief on this proposal, which isn't enclosed with this email because of size).

Happy to discuss further.

Regards
James

Copy to:
Secretary
Mr Knudson
Mr Cahill
Mr Papps
Mr Oxley
Mr Tavior
s22
Mr Richardson

To: Minister for the Environment and Energy (For Decision)
TOONDAH HARBOUR DEVELOPMENT, QUEENSLAND (EPBC 2017/7939)
PROPOSED CLEARLY UNACCEPTABLE DECISION
Through: Matt Cahill, First Assistant Secretary, Environment Standards Division.
Timing: 8 June 2017 - statutory timeframe for making a decision



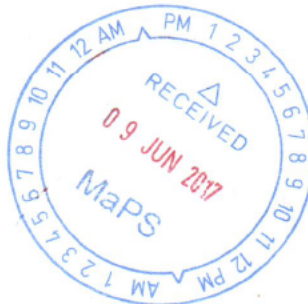
Chief of Staff
s22

Recommendation:

That you decide that the action outlined in the referral for the Toondah Harbour Development, Queensland (EPBC 2017/7939) is clearly unacceptable by signing the decision brief at Appendix A.

Minister:

Comments:



Signed / Not signed

Date:

8/6/17

Clearing Officer: Sent: 5/6/2017	James Barker	Assistant Secretary, Assessments and Governance Branch	Ph: 02 6274 2694 Mob: s22
Contact Officer:	s22	Director, Queensland Assessments North	Ph: 6274 s22

Key Points:

1. This brief seeks your consideration of the Department's recommendation that you find the action described in the referral for the Toondah Harbour Development, Queensland (EPBC 2017/7939), to be clearly unacceptable under section 74B of the *Environment Protection and Biodiversity Conservation Act 1999*.
2. The project proposes to develop a mixed use residential, commercial, retail and tourism precinct including new ferry terminals and a marina at Toondah Harbour, 30 km south of Brisbane. The proposal will involve the excavation of a new marina and land reclamation within Moreton Bay Ramsar wetland.
3. The Department considers the impacts of the proposed development will result in permanent and irreversible damage to the ecological character of the Moreton Bay Ramsar wetland. For the reasons set out in the enclosed brief, it is open to you to decide that the referral is clearly unacceptable because of its likely impacts on the values of that wetland.
4. If you choose not to make the recommended decision, the Department has provided you with brief MS17-000774 for your consideration.

Appendix

A: Clearly Unacceptable Decision Brief and Attachments

DEPARTMENT OF THE ENVIRONMENT AND ENERGY

Sensitive: Legal

MS17-000773

To: Minister (for decision)

Proposed Clearly Unacceptable Decision – Toondah Harbour Development, Queensland (EPBC 2017/7939)

Through: Matt Cahill, First Assistant Secretary, Environment Standards Division.

Timing: 8 June 2017 - statutory timeframe.

Recommendations:

1. Agree, on the basis of the information in the referral at Attachment A and in this brief, that the action is clearly unacceptable and that Division 1A of Part 7 of the EPBC Act should apply to the referral due to its likely impact on the ecological character of the Moreton Bay Ramsar wetland (s16 and 17B).

Agreed / **Not agreed**

2. Note that, if you do not agree with recommendation 1, we have briefed you separately recommending a controlled action decision on the referral (see MS17-000774).

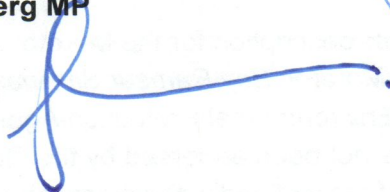
Noted / Please discuss

3. If you agree to recommendation 1, sign the decision notice at Attachment B, the letters to Walker Group Holdings Pty Ltd and other relevant parties at Attachment C, and the draft statement of reasons at Attachment D having made any modification you consider necessary to ensure that the statement reflects your reasoning. (The statement of reasons must be provided to Walker Group Holdings Pty Ltd if you make the recommended decision).

Signed / **Not signed**

Minister for the Environment and Energy,
The Hon Josh Frydenberg MP

Comments:



8/6/17

BACKGROUND:

1. Walker Group Holdings Pty Ltd (the proponent) is proposing to develop a mixed use residential, commercial, retail and tourism precinct including new ferry terminals and a marina at Toondah Harbour, south of Brisbane. The proposal will involve the excavation of a new marina and reclaiming land within the adjoining Moreton Bay Ramsar wetland.

Sensitive: Legal

2. A referral for the project ([Attachment A](#)) was submitted under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) on 11 May 2017. The statutory timeframe for a decision is 8 June 2017. The referral replaces a previous 2015 referral for a generally similar proposal which Walker Group withdrew on 4 May 2017.
3. In its new referral, the proponent stated its belief that the proposal is a controlled action for the purposes of the EPBC Act because it will likely have significant impacts on the Moreton Bay Ramsar wetland, as well as listed threatened species and ecological communities, and listed migratory species. The proponent has stated in the referral that there are no alternatives to the location and footprint of the action.
4. The Moreton Bay Ramsar site is located in and around Moreton Bay, east of Brisbane in Queensland ([Attachment E](#)). The site is a semi-enclosed basin bounded on its eastern side by two of the largest sand islands in the world. It is one of three extensive intertidal areas of seagrass, mangroves and saltmarsh on the eastern coast of Australia that provide habitat for water birds. The wetland was listed in 1993 under the International Convention for the Protection of Wetlands, done at Ramsar, Iran (the Ramsar Convention).
5. In June 2013, at the request of Redland City Council, Toondah Harbour was declared a priority development area by the Queensland government. The declaration removes the land from the standard planning and development assessment processes. Instead, the project would be assessed by Economic Development Queensland against the Priority Development Area Scheme. The proponent has stated they intend to seek declaration of the project as a 'coordinated project' under the *State Development and Public Works Organisation Act 1971* (Qld). The proponent has not yet done so.

MATTERS FOR DECISION-MAKING

6. The Department recommends that you find the proposal is clearly unacceptable for its likely impacts on the ecological character of the Moreton Bay Ramsar wetland and decide that Division 1A of Part 7 of the EPBC Act should apply to the referral.

Ecological character of the Moreton Bay Ramsar wetland

7. The Conference of the Parties to the Ramsar Convention has resolved to define the ecological character of a wetland as the '*combination of ecosystem components, processes and benefits, and services that characterise the wetland*'.
8. There is no definitive ecological character description for the Moreton Bay Ramsar wetland. An *Ecological Character Description of the Moreton Bay Ramsar Site* was prepared by consultants BMT WBM Pty Ltd for the Queensland Environmental Protection Agency in 2008 ([Attachment F](#)). While the document has not been endorsed by the Queensland Government, it provides a comprehensive description of the wetland's ecological character.
9. In addition the ecological character of the Moreton Bay Ramsar wetland is informed by the Ramsar Information Sheet ([Attachment G](#)). The Ramsar Information Sheet for the Moreton Bay Ramsar wetland provides the following justification of the listing of the Moreton Bay wetland:
 - *Criterion 1: contains a representative, rare, or unique example of a natural or near-natural wetland type found within the appropriate biogeographic region.*
The Moreton Bay Ramsar site is one of the largest estuarine bays in Australia which are enclosed by a barrier island of vegetated sand dunes. Moreton Bay protects the local area from oceanic swells, providing habitat for wetland development.

Sensitive: Legal

- *Criterion 2: supports vulnerable, endangered, or critically endangered species or threatened ecological communities.*
Moreton Bay supports large numbers of the nationally threatened Green Turtle, Hawksbill Turtle, Loggerhead Turtle and a number of other nationally threatened species including the Australia Painted Snipe. The site is ranked among the top ten habitats in Queensland for the internationally vulnerable Dugong.
- *Criterion 3: supports populations of plant and/or animal species important for maintaining the biological diversity of a particular biogeographic region.*
The Moreton Bay Ramsar site supports over 355 species of marine invertebrates, at least 42 species of shorebirds, seven species of mangrove and seven species of seagrass. At least 42 species of shorebirds use intertidal habitats in the Bay, including 30 migratory species listed by international migratory bird conservation agreements.
- *Criterion 4: supports plant and/or animal species at a critical stage in their life cycles, or provides refuge during adverse conditions.*
Moreton Bay is a significant feeding ground for the threatened Green Turtle and is a foraging and breeding ground for the Dugong. The Bay also has the most significant concentration of the young and mature Loggerhead Turtles in Australia.
- *Criterion 5: regularly supports 20,000 or more waterbirds.*
The Moreton Bay Ramsar site supports up to 50,000 wintering and staging shorebirds during the non-breeding season.
- *Criterion 6: regularly supports 1% of the individuals in a population of one species or subspecies of waterbird.*
The Moreton Bay Ramsar site regularly supports more than 1% of the population the wintering Eastern Curlews and the Grey-tailed Tattler

10. The Ramsar Information Sheet and the *Ecological Character Description of the Moreton Bay Ramsar Site* that was prepared by consultants BMT WBM Pty Ltd provides a basis for your consideration of the components, processes and benefits which make up the ecological character of the wetland. A summary of the impacts of the proposal against the components of the ecological character description is at [Attachment I](#).
11. The wetland is one of only two Ramsar sites in Australia that supports the critically endangered Eastern Curlew all year round, with juvenile birds not migrating until they are 2-3 years old. The Eastern Curlew is one of twenty species of birds recently identified for priority conservation in Australia's Threatened Species Strategy Action Plan 2015-16. Evidence in the referral indicates that the Eastern Curlew uses sites in the referral footprint.
12. The referral documentation includes a methodology for assessing the contribution that the project area makes to the ecological character of the Ramsar wetland. Important attributes of the wetland include the high tide roosting sites for migratory shorebirds such as those at Cassim Island and Nandeebie Claypan. The project area also includes important intertidal foraging habitat for a significant population of the Eastern Curlew.

Likely impacts on the ecological character of the Moreton Bay wetland

13. The proposed development area is immediately adjacent to and within the Moreton Bay Ramsar site. The referred area for the Toondah Harbour project is approximately 73 hectares and includes the construction of:

Sensitive: Legal

- new ferry terminals to improve access to North Stradbroke Island;
 - mixed use development including residential, retail, commercial and tourism uses;
 - a marina;
 - public open space and boardwalks providing foreshore access;
 - dredging of the existing Toondah Harbour marine access channel to allow for safe navigation for all vessels; and
 - reclamation of areas within Moreton Bay.
14. The referral states that the proposed action is likely to result in significant impacts to the ecological character of a portion of the Moreton Bay Ramsar wetland. In particular, there will be a permanent impact to approximately 40 hectares of shorebird feeding habitat as a result of dredging and reclamation works.
15. The Department considers that direct impacts to the ecological character of the wetland will occur as the proposed action will result in:
- areas of the wetland within the referral area being removed or substantially modified through dredging, excavation and/or land reclamation activities;
 - impacts on habitat values through the removal of seagrass, mangroves and intertidal mudflats;
 - impacts on the lifecycle of listed species such as migratory shorebirds through the removal of, or disturbance to, foraging and roosting habitat in or near the referral area; and
 - changes in the hydrological regime of the wetland and consequent changes to water quality, sedimentation and aquatic habitats.
16. The Department considers that tidal works, such as the excavation of quarry material from land under tidal water, capital dredging of the navigation channel and land reclamation will result in a loss of seagrass meadow and intertidal mudflats that have aquatic ecological and fisheries value and provide foraging habitat for EPBC Act listed migratory species, such as migratory shorebirds, Dugong and marine turtles. The Department is of the view that there will be direct and indirect impacts to these species from the project, including habitat loss and disruption of foraging and breeding activities of migratory birds such as the Eastern Curlew.
17. Of the 73 hectare referral area, approximately 50 hectares are within the Ramsar site (map at [Attachment E](#)). The proposed action will permanently remove an area of the Ramsar wetland through land reclamation and will negatively impact the ecological character of the wetland.
18. Within the Moreton Bay Ramsar site material would be excavated from the wetland to construct the marina basin. This excavation of the marina and infilling of marine areas for urban development and public open space, will result in a permanent and irreversible impact to the ecological character of the Ramsar wetland through the loss of a portion of the Ramsar site.

International Implications

19. Australia has obligations under the Ramsar Convention to conserve its Ramsar listed wetlands, and to maintain the ecological character of those wetlands. Further detail on the Convention is at Attachment H.
20. Section 138 of the EPBC Act also provides that in deciding whether or not to approve an action, and what conditions to attach to such an approval, you must not act inconsistently with Australia's obligations under the Ramsar Convention. Further, under Schedule 6 to the EPBC Regulations, an action should not be approved if it would be inconsistent with maintaining the ecological character of the wetland or the conservation and sustainable use of the wetland.
21. Projects and developments may occur in Ramsar wetlands, but they must maintain or enhance the ecological character of the site, and be in accordance with "wise use" which the Conference of the Contracting Parties to the Convention has accepted as meaning: "the maintenance of their ecological character, achieved through the implementation of ecosystem approaches, within the context of sustainable development".
22. Advice from the Ramsar Administrative Authority for Australia (Attachment J) is that approval of the proposal as it stands would not be consistent with Australia's obligations under the Ramsar Convention. No commercial residential development of this scale or impact has been approved within an existing Ramsar wetland site. Remediation of the site will not be possible if the proposal proceeds as currently planned because it is planned to reclaim land within the Ramsar site. One residential development (The Vineyards Estate, Farm Road, Werribee (EPBC 2003/960)) has previously been approved within a Ramsar site. It was located on a terrestrial area of the site which did not contain values that contributed to the ecological character of the Ramsar wetland.
23. **[The following paragraph is subject to legal professional privilege. Its contents should not be disclosed or discussed with third parties.] s42**

s42

24.

s47C

The Department considers that the implications of the proposed action for Australia's obligations under the Ramsar Convention support the conclusion that the proposed action would have clearly unacceptable impacts and that Division 1A should apply to the referral.

Recommendation that the likely impacts are clearly unacceptable

25. Under section 74B of the EPBC Act, if you consider that it is clear that the action would have unacceptable impacts on a matter protected by a provision of Part 3, you can decide that Division 1A of Part 7 of the EPBC Act (decision that the action is clearly unacceptable) applies to the referral.
26. In deciding whether the proposed action is clearly unacceptable, you are required to make this decision on the basis of information contained in the referral (Attachment A). You are also permitted to consider the information contained in this brief, as well as any general information (i.e. not specific to the action) that is part of the Department's existing knowledge or is publicly available information, and which is relevant to consideration of the likely impacts of the action. You may not consider other information such as the public comments received during the referral process.
27. The scale and nature of the action is such that a significant impact on the ecological character of the Moreton Bay Ramsar site is not only likely, but unavoidable. The Department further concludes that it will not be possible to mitigate the impacts on the ecological character of the wetland where components of the wetland will be lost through land reclamation and construction of a marina (Attachment I).
28. Based on the information in the referral, and in this brief, the Department is of the view that the impacts of the proposed action on matters of national environmental significance are clearly unacceptable because the action would result in permanent and irreversible damage to the ecological character of the Morton Bay Ramsar wetland and that it is open to you to decide that Division 1A of Part 7 of the EPBC Act should apply to the referral.
29. Specifically, the Department is of the view that the proposed action would clearly result in areas of the Moreton Bay Ramsar site (including areas that form part of the ecological character of the wetland) being destroyed or substantially modified through substantial land reclamation and that therefore the proposed action will have unacceptable impacts on the ecological character of a wetland of international importance (s 16 and 17B).
30. In addition, the Department considers that the implications of the proposed action for Australia's obligations under the Ramsar Convention support the conclusion that the proposed action would have unacceptable impacts and that Division 1A should apply to the referral.

Consequences of a 'clearly unacceptable' decision

31. If you decide that the action is clearly unacceptable, section 74C(3) of the EPBC Act states that the proponent may:
 - withdraw the referral and take no further action in relation to the proposed action;
 - withdraw the referral and refer, under section 68 of the EPBC Act, a new proposal to take a modified action; or

Sensitive: Legal

- request, in writing, that you reconsider your decision that the action is clearly unacceptable.

IF RECOMMENDATION NOT AGREED

32. Notwithstanding the Department's recommendation, you might not be satisfied that the proposal is clearly unacceptable.
33. In making a decision that the proposal is clearly unacceptable, you are not permitted to undertake the kind of inquiry that is contemplated in the assessment and approval processes in Parts 8 and 9 of the EPBC Act. Moreover, by determining an action to be clearly unacceptable you necessarily prevent yourself from gaining access to the broader range of information that is produced in the process of a further assessment, including information on:
 - mitigation and offset measures, which might include conservation measures to improve habitat for the values of the Ramsar wetland, and threatened and migratory species, within other areas of the wetland;
 - economic and social matters; and
 - likely conditions that you, or the State, might impose for the protection of matters of national environmental significance.
34. It is open to you to conclude that further inquiry into these matters under Parts 8 and 9 of the EPBC Act may affect your view as to the ultimate acceptability of the project's impacts on the ecological character of the Morton Bay Ramsar wetland, including whether approving the proposal would be consistent with Australia's obligations under the Ramsar Convention, and that as a result, you aren't satisfied that the proposal is clearly unacceptable. If you are not satisfied that the proposal is clearly unacceptable, the Department has provided you with a separate briefing on whether the proposal should be determined to be a controlled action (MS-000774).
35. The referral states that there are no alternatives to the location and footprint of the referred action. If the proponent did wish to change the proposed action after any 'controlled action' decision, section 156B of the EPBC Act provides that a variation of a proposal can only be accepted if the character of the varied proposal is substantially the same as the original proposal. If the nature and extent of the impacts of the action or the nature of the activities proposed are substantially different, a new referral would be required.
36. In discussions with the Department, the proponent has expressed the view that the proposal is not clearly unacceptable and that an assessment of the project should occur to provide an opportunity to propose offsets to compensate for any residual impacts after other measures to reduce impacts have been taken.

Consultation and handling:

37. The Wildlife, Heritage and Marine Division, Wetlands, Policy and Northern Water Branch, General Counsel Branch were consulted and provided advice in the preparation of this brief.

James Barker
Assessments and Governance Branch
Ph: 02 6274 2694
Mob: s22

Attachments

- A: Referral
- B: Decision notice FOR SIGNATURE
- C: Letter to Walker Group Holdings FOR SIGNATURE
 - Letter to Queensland Minister for Environment and Heritage FOR SIGNATURE
 - Letter to Queensland Deputy Premier FOR SIGNATURE
 - Letter to Minister for Infrastructure and Development FOR SIGNATURE
 - Letter to Minister for Indigenous Affairs FOR SIGNATURE
 - Letter to Minister for Trade, Tourism and Investment FOR SIGNATURE
- D: Statement of reasons FOR SIGNATURE
- E: Maps of project area, regional context, Ramsar site boundary.
- F: Ecological Character Description – Moreton Bay Ramsar Site (Final Report)
- G: Information sheet on Moreton Bay Ramsar Site (June 1999)
<http://www.environment.gov.au/water/topics/wetlands/database/pubs/41-ris.pdf>
- H: Ramsar Convention Information
- I: Summary of components of the ecological character descriptors and relevant impacts
- J: Advice from the Ramsar Administrative Authority for Australia



**Notification of
DECISION THAT THE ACTION IS CLEARLY UNACCEPTABLE**

Toondah Harbour Development, Queensland (EPBC 2017/7939)

This decision is made under Section 74B of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Proposed action

proposed action	The development of a mixed use residential, commercial, retail and tourism precinct, including new ferry terminals and a marina at Toondah Harbour south of Brisbane, Queensland, as described in the referral received by the Department on 11 May 2017 [see EPBC Act referral 2017/7939].
------------------------	---

Decision: Action is clearly unacceptable

status of proposed action	The proposed action will have clearly unacceptable impacts on a matter protected by Part 3 of the EPBC Act. Division 1A of Part 7 of the EPBC Act applies to this referral.
----------------------------------	--

relevant protected matter	<ul style="list-style-type: none">Wetlands of international importance (sections 16 & 17B)
----------------------------------	--

person proposing to take the action	Walker Group Holdings Pty Limited ABN: 8100 121 5069
--	---

Person authorised to make decision

Name and position	The Hon Josh Frydenberg MP Minister for the Environment and Energy
--------------------------	---

signature

date of decision	June 2017
-------------------------	-----------



THE HON JOSH FRYDENBERG MP
MINISTER FOR THE ENVIRONMENT AND ENERGY

MS17-000773

Senator the Hon Nigel Scullion
Minister for Indigenous Affairs
Parliament House
CANBERRA ACT 2600

Dear Senator

I am writing to advise you of my decision in relation to the Toondah Harbour Project, Queensland (EPBC 2017/7939) proposed by Walker Group Holdings Pty Ltd, which was referred for consideration under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The footprint of the proposed development is substantially within the Moreton Bay Ramsar wetland site and includes the permanent removal of an area of the wetland through the excavation of a marina and the approximately 40 hectares of land reclamation. The ecological character of this wetland is nationally and internationally protected under the Ramsar Convention.

Based on the information provided to me in the referral, I consider that it is clear that the proposed action will have an unacceptable impact on a Wetland of International Importance (s16 and 17B of the EPBC Act). I have therefore decided that Division 1A of Part 7 of the EPBC Act applies and the proposal cannot proceed.

A copy of the document recording this decision is enclosed. This document and the reasons for my decision will be published on the Department's website:
<http://epbcnotices.environment.gov.au/referralslist/>

The contact officer for this matter is s22 [REDACTED]
email s22 [REDACTED] [@environment.gov.au](mailto:s22 [REDACTED]@environment.gov.au), telephone (02) 6274 s22 [REDACTED] .

Yours sincerely

Josh Frydenberg



THE HON JOSH FRYDENBERG MP
MINISTER FOR THE ENVIRONMENT AND ENERGY

MS17-000773

The Hon Darren Chester MP
Minister for Infrastructure and Transport
Parliament House
CANBERRA ACT 2600

Dear Minister

I am writing to advise you of my decision in relation to the Toondah Harbour Project, Queensland (EPBC 2017/7939) proposed by Walker Group Holdings Pty Ltd, which was referred for consideration under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The footprint of the proposed development is substantially within the Moreton Bay Ramsar wetland site and includes the permanent removal of an area of the wetland through the excavation of a marina and the approximately 40 hectares of land reclamation. The ecological character of this wetland is nationally and internationally protected under the Ramsar Convention.

Based on the information provided to me in the referral, I consider that it is clear that the proposed action will have an unacceptable impact on a Wetland of International Importance (s16 and 17B of the EPBC Act). I have therefore decided that Division 1A of Part 7 of the EPBC Act applies and the proposal cannot proceed.

A copy of the document recording this decision is enclosed. This document and the reasons for my decision will be published on the Department's website:
<http://epbcnotices.environment.gov.au/referralslist/>

The contact officer for this matter is Mr s22 ;
email s22 [@environment.gov.au](mailto:s22@environment.gov.au), telephone (02) 6274 s22

Yours sincerely

Josh Frydenberg



THE HON JOSH FRYDENBERG MP
MINISTER FOR THE ENVIRONMENT AND ENERGY

MS17-000773

The Hon Steven Ciobo MP
Minister for Trade, Tourism and Investment
Parliament House
Canberra ACT 2600

Dear Minister

This is to advise you of my decision in relation to the Toondah Harbour Project, (EPBC 2017/7939), which was referred for consideration under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). I am writing to you as this project has been granted 'Tourism Major Project Facilitation' status.

The footprint of the proposed development is substantially within the Moreton Bay Ramsar wetland site and includes the permanent removal of an area of the wetland through the excavation of a marina and the approximately 40 hectares of land reclamation. The ecological character of this wetland is nationally and internationally protected under the Ramsar Convention.

Based on the information provided to me in the referral, I consider that it is clear that the proposed action will have an unacceptable impact on a Wetland of International Importance (s16 and 17B of the EPBC Act). I have therefore decided that Division 1A of Part 7 of the EPBC Act applies and the proposal cannot proceed.

A copy of the document recording this decision is enclosed. This document and the reasons for my decision will be published on the Department's website:
<http://epbcnotices.environment.gov.au/referralslist/>

The contact officer for this matter is Mr s22 ;
email s22 [@environment.gov.au](mailto:s22@environment.gov.au), telephone (02) 6274 s22

Yours sincerely

Josh Frydenberg



THE HON JOSH FRYDENBERG MP
MINISTER FOR THE ENVIRONMENT AND ENERGY

MS17-000773

The Hon Jackie Trad
Queensland Deputy Premier and
Minister for Infrastructure and Planning
PO Box 15009
CITY EAST QLD 4002

Dear Deputy Premier

I am writing to advise you of my decision in relation to the Toondah Harbour Project, Queensland (EPBC 2017/7939) proposed by Walker Group Holdings Pty Ltd, which was referred for consideration under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The footprint of the proposed development is substantially within the Moreton Bay Ramsar wetland site and includes the permanent removal of an area of the wetland through the excavation of a marina and the approximately 40 hectares of land reclamation. The ecological character of this wetland is nationally and internationally protected under the Ramsar Convention.

Based on the information provided to me in the referral, I consider that it is clear that the proposed action will have an unacceptable impact on a Wetland of International Importance (s16 and 17B of the EPBC Act). I have therefore decided that Division 1A of Part 7 of the EPBC Act applies and the proposal cannot proceed.

A copy of the document recording this decision is enclosed. This document and the reasons for my decision will be published on the Department's website:
<http://epbcnotices.environment.gov.au/referralslist/>

The contact officer for this matter is Mr s22 ;
email s22 [@environment.gov.au](mailto:s22@environment.gov.au), telephone (02) 6274 s22 .

Yours sincerely

Josh Frydenberg



THE HON JOSH FRYDENBERG MP
MINISTER FOR THE ENVIRONMENT AND ENERGY

MS17-000773

The Hon Steven Miles MP
Minister for Environment and Heritage Protection
GPO Box 2454
Brisbane QLD 4001

Dear Minister

I am writing to advise you of my decision in relation to the Toondah Harbour Project, Queensland (EPBC 2017/7939) proposed by Walker Group Holdings Pty Ltd, which was referred for consideration under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The footprint of the proposed development is substantially within the Moreton Bay Ramsar wetland site and includes the permanent removal of an area of the wetland through the excavation of a marina and the approximately 40 hectares of land reclamation. The ecological character of this wetland is nationally and internationally protected under the Ramsar Convention.

Based on the information provided to me in the referral, I consider that it is clear that the proposed action will have an unacceptable impact on a Wetland of International Importance. I have therefore decided that Division 1A of Part 7 of the EPBC Act applies and the proposal cannot proceed.

A copy of the document recording this decision is enclosed. This document and the reasons for my decision will be published on the Department's website:
<http://epbcnotices.environment.gov.au/referralslist/>

The contact officer for this matter is Mr s22 ;
email s22 [@environment.gov.au](mailto:s22@environment.gov.au), telephone (02) 6274 s22

I have asked Department officials to continue to work with Walker Group to consider whether an alternative proposal can be brought forward for my consideration.

Yours sincerely

Josh Frydenberg



THE HON JOSH FRYDENBERG MP
MINISTER FOR THE ENVIRONMENT AND ENERGY

MS17-000773

Mr Peter Saba
General Manager – Queensland Developments
Walker Group Holdings Pty Ltd
GPO Box 652
Brisbane QLD 4000

Dear Mr Saba

I am writing to advise you of my decision in relation to the Toondah Harbour Development, Queensland (EPBC 2017/7939) proposed by Walker Group Holdings Pty Ltd, which was referred for consideration under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The footprint of the proposed development is substantially within the Moreton Bay Ramsar wetland site and includes the permanent removal of an area of the wetland through the excavation of a marina and the approximately 40 hectares of land reclamation. The ecological character of this wetland is nationally and internationally protected under the Ramsar Convention.

Based on the information provided to me in the referral, I consider that it is clear that the proposed action will have an unacceptable impact on a Wetland of International Importance (s16 and 17B of the EPBC Act). I have therefore decided that Division 1A of Part 7 of the EPBC Act applies and the proposal cannot proceed.

A copy of the document recording this decision is enclosed. This document and the reasons for my decision will be published on the Department's website:

<http://epbcnotices.environment.gov.au/referralslist/>

After receiving the attached notice of the decision, you have the following options under the EPBC Act:

- withdraw the referral and take no further action in relation to the proposed action; or
- withdraw the referral and refer a new proposal to take a modified action; or
- request that the referral decision be reconsidered.

I would encourage you to work with the State and Local Council to consider a redesign of a proposal, having regard to the ecological character of the Moreton Bay wetland, and other environmental matters. I will ensure that the Department is available to discuss the matter further with Walker Group and State and Local Government officers.

If you have any questions about the referral process or this decision, please contact the project manager, s22 [REDACTED], by email to s22 [REDACTED]@[environment.gov.au](mailto:s22[REDACTED]@environment.gov.au) or telephone (02) 6274 s22 [REDACTED].

Yours sincerely

Josh Frydenberg



Statement of Reasons for a Decision that an Action is Clearly Unacceptable under the *Environment Protection and Biodiversity Conservation Act 1999*

I, Josh Frydenberg MP, Minister for the Environment and Energy, provide the following statement of reasons for my decision of June 2017, under section 74B of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), that the proposed action by Walker Group Holdings Pty Ltd to development a mixed use residential, commercial, retail and tourism precinct, including new ferry terminals and a marina at Toondah Harbour south of Brisbane, Queensland, Queensland (EPBC 2017/7939)¹, would have clearly unacceptable impacts on a matter protected by a provision of Part 3 of the EPBC Act, and that Division 1A of Part 7 of the EPBC Act should apply to the referral of the proposed action.

Legislation

1. Relevant legislation is at Annexure A.²

Background

2. Walker Group Holdings Pty Ltd (the proponent) is proposing to develop a mixed use residential, commercial, retail and tourism precinct including new ferry terminals and a marina at Toondah Harbour, south of Brisbane. The proposal will involve the excavation of a new marina and reclaiming land within the adjoining Moreton Bay Ramsar wetland.
3. A referral for the project was submitted under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) on 11 May 2017. The statutory timeframe for the decision was 8 June 2017.
4. In its referral, the proponent stated its belief that the proposal was a controlled action for the purposes of the EPBC Act and will likely have significant impacts on the Moreton Bay Ramsar wetland, as well as listed threatened species and ecological communities, and listed migratory species. The proponent stated in the referral that there are no alternatives to the location and footprint of the action.
5. The Moreton Bay Ramsar site is located in and around Moreton Bay, east of Brisbane in Queensland. The site is a semi-enclosed basin bounded on its eastern side by two of the largest sand islands in the world. It is one of three extensive intertidal areas of seagrass, mangroves and saltmarsh on the eastern coast of Australia that provide habitat for water birds. The wetland was listed in 1993 under the Ramsar Convention for the Protection of Wetlands and is a declared Ramsar wetland for the purposes of the EPBC Act.

¹ The proposed action is described in further detail in the referral received by the Department on 11 May 2017.

² This legislation is provided as background and context and does not form part of the statement of reasons.



6. I decided that the proposed action would have clearly unacceptable impacts on the ecological character of the Moreton Bay Ramsar wetland, a matter protected by the provisions of Part 3 of the EPBC Act,³ and that Division 1A of Part 7 of the EPBC Act should apply to the referral of the proposed action.

Evidence or other material on which my findings were based

7. My decision to apply Division 1A of Part 7 of the EPBC Act to the referral of the proposed action, was informed by a recommendation brief prepared by officers of the Department of the Environment and Energy, which had the following attachments:

A: Referral

B: Decision notice FOR SIGNATURE

C: Letter to Walker Group Holdings FOR SIGNATURE

Letter to Queensland Minister for Environment and Heritage FOR SIGNATURE

Letter to Minister for Infrastructure and Development FOR SIGNATURE

Letter to Minister for Indigenous Affairs FOR SIGNATURE

Letter to Minister for Trade, Tourism and Investment FOR SIGNATURE

D: Statement of Reasons FOR SIGNATURE

E: Maps of project area, regional context, Ramsar site boundary.

F: Ecological Character Description – Moreton Bay Ramsar Site (Final Report)

G: Information sheet on Moreton Bay Ramsar Site (June 1999)

<http://www.environment.gov.au/water/topics/wetlands/database/pubs/41-ris.pdf>

H: Ramsar Convention Information

I: Summary of components of the ecological character descriptors and relevant impacts

J: Advice from the Ramsar Administrative Authority for Australia

Findings on material questions of fact

Ecological character of the Moreton Bay Ramsar wetland

8. The Conference of the Parties to the Ramsar Convention has resolved to define the ecological character of a wetland as the *'combination of ecosystem components, processes and benefits, and services that characterise the wetland'*.
9. There is no definitive ecological character description for the Moreton Bay Ramsar wetland. An *Ecological Character Description of the Moreton Bay Ramsar Site* was prepared by consultants BMT WBM Pty Ltd for the Queensland Environmental Protection Agency in 2008. This document has not been endorsed by the Queensland Government, however, it provides a comprehensive description of the wetland's

³ EPBC Act, ss. 16 – 17B.



components, processes and benefits services which make up ecological character of the wetland. Additionally, a description of the ecological character is informed by the Ramsar Information Sheet.

10. Based on an analysis of the BMT WBM report and the Ramsar Information Sheet for the Moreton Bay Ramsar wetland, the Department identified the components, processes and benefits that comprise the ecological character of the Moreton Bay site and which may be impacted by the proposed action. Those components, processes and benefits are set out in the following table:

Ecological Character descriptors	Relevant components
S1. Contains diversity of wetland habitat types that are representative of a major coastal wetland aggregation and in many areas show a high degree of connectivity between habitat types	All habitat types, including mangroves, seagrass and intertidal areas
S2. Contains several critical wetland habitat types . Critical habitat types that are in a near natural state and are representative of the habitat type within the broader biogeographic region	S2C – Southern Bay Mangroves
S3. Supports an assemblage of vulnerable or endangered marine/aquatic fauna	Critical habitat components for species such as dugong and green turtles include seagrass
S4. Supports an assemblage of vulnerable or endangered wetland-dependent terrestrial fauna species	Critical habitat components for wetland dependent threatened fauna species, such as the beach-stone curlew and the little tern, include mangrove forests and associated intertidal areas, and nearshore and offshore open waters
S5. Supports an assemblage of vulnerable or endangered wetland flora species and endangered and of concern wetland regional ecosystems	Not identified in the referral
S6. Supports significant populations (more than 20 000 in total and over 1% of the population size of particular populations) of migratory and resident shorebirds	Expansive intertidal flats; a diversity of feeding substrates; and a diversity of roost sites
S7. The tidal fish habitats and fish and invertebrate populations support valuable recreational and commercial fishing activities	Mangroves; intertidal flats; seagrass; open expanses of shallow oceanic waters



S8. Important cultural values and significance to indigenous peoples	Not identified in the referral
S9. Important site for research and education	Not identified in the referral
S10. Tourism and recreational uses	Predominant habitats include marine waters and intertidal flats

11. I agreed with the Department's advice in this regard. I also noted the Department's advice that the Moreton Bay Ramsar wetland is one of only two Ramsar sites in Australia that supports the critically endangered Eastern Curlew all year round and that the Eastern Curlew is a species recently identified for priority conservation in Australia's Threatened Species Strategy Action Plan 2015-16.

Likely impacts on the ecological character of the Moreton Bay wetland

12. The proposed development area is immediately adjacent to and within the Moreton Bay Ramsar site. The referred area for the Toondah Harbour project is approximately 73 hectares and includes the construction of:
- New ferry terminals to improve access to North Stradbroke Island;
 - Mixed use development including residential, retail, commercial and tourism uses;
 - A marina;
 - Public open space and boardwalks providing foreshore access;
 - Dredging of the existing Toondah Harbour marine access (Fison Channel) to allow for safe navigation for all vessels; and
 - Reclamation of areas within Moreton Bay.
13. The referral states that there is potential for the proposed action to result in significant impacts on the ecological character of a portion of the Moreton Bay Ramsar wetland. In particular, there will be a permanent impact to approximately 40 hectares of shorebird feeding habitat as a result of dredging and reclamation works.
14. The Department considered that direct impacts to the ecological character of the wetland will occur as the proposed action will result in:
- areas of the wetland within the referral area being removed or substantially modified through dredging, excavation and/or land reclamation activities
 - impacts on habitat values through the removal of seagrass, mangroves and intertidal mudflats



- impacts on the lifecycle of listed species such as migratory shorebirds through the removal of, or disturbance to, foraging and roosting habitat in or near the referral area
 - changes in the hydrological regime of the wetland and consequent changes to water quality, sedimentation and aquatic habitats
15. The Department considered that tidal works, such as the excavation of quarry material from land under tidal water, capital dredging of the navigation channel and land reclamation will result in a loss of seagrass meadow and intertidal mudflats that have aquatic ecological and fisheries value and provide foraging habitat for EPBC Act listed migratory species, such as migratory shorebirds, dugong and marine turtles.
 16. In addition, the Department advised that Moreton Bay is one of only two Ramsar sites in Australia that supports the critically endangered Eastern Curlew throughout the year, with juvenile birds not migrating until they are 2-3 years old. The Department considered that there will be direct and indirect impacts to this species from the project, including habitat loss and disruption of the species foraging and breeding activities.
 17. The Department considered that, of the 73 hectare referral area, approximately 50 hectares are within the Ramsar site. The proposed action will permanently remove an area of the Ramsar wetland through land reclamation and is likely to impact the ecological character of the wetland.
 18. According to the referral, within the Moreton Bay Ramsar site material would be excavated from the wetland to construct the marina basin. Also within the Ramsar site, land reclamation for the project (i.e. the area of residential and commercial development) will be approximately 40 hectares. The proponent states that the proposed action will have direct impacts on a portion of the Moreton Bay Ramsar site. The Department concluded that the action of excavation of the marina and infilling of marine areas for urban development and public open space, will result in a permanent and irreversible impact on the ecological character of the Ramsar wetland through the loss of a portion of the Ramsar site.
 19. I agreed with the Department's assessment of the likely impacts of the proposed action on the ecological character of the Moreton Bay Ramsar wetland.

International Implications

20. I considered Australia's obligations under the Ramsar Convention to conserve its Ramsar listed wetlands, and to maintain the ecological character of those wetlands. Section 138 of the EPBC Act also provides that in deciding whether or not to approve an action, and what conditions to attach to such an approval, I must not act inconsistently with Australia's obligations under the Ramsar Convention. Under Schedule 6 to the EPBC Regulations, an action should not be approved if it would be inconsistent with maintaining the ecological character of the wetland.
21. The Department advised that projects and developments may occur in Ramsar wetlands, but they must maintain or enhance the ecological character of the site, and be in accordance with "wise use" which the Conference of the Contracting Parties to the Convention has accepted as meaning: "the maintenance of their ecological character,



achieved through the implementation of ecosystem approaches, within the context of sustainable development”.

22. The Department advised that no commercial residential development of this scale or impact has been approved within an existing Ramsar wetland site. Remediation of the site will not be possible if the proposal proceeds as currently planned because it is planned to reclaim land within the Ramsar site. One residential development (The Vineyards Estate, Farm Road, Werribee (EPBC 2003/960)) has previously been approved within a Ramsar site. It was located on a terrestrial area of the site which did not contain values that contributed to the ecological character of the Ramsar wetland.
23. Advice from the Ramsar Administrative Authority stated that approval of the proposed action as it stands would not be consistent with Australia’s obligations under the Ramsar Convention.

The proposed action will have clearly unacceptable impacts on the ecological character of the Morton Bay Ramsar wetland

24. Based on the information in the referral and the material provided in the Department’s brief, I concluded that the proposed action would clearly result in permanent and irreversible damage to the ecological character of the Morton Bay Ramsar wetland.
25. I found that the proposed action would clearly result in areas of the Moreton Bay Ramsar site being destroyed or substantially modified through substantial land reclamation for urban development and the construction of a marina. Specifically, the proposed action would result in the permanent and irreversible loss of the following in the referral area:
 - mangroves, seagrass and intertidal areas;
 - seagrass habitat that supports an assemblage of vulnerable or endangered marine/aquatic fauna;
 - mangroves and associated intertidal habitat that supports an assemblage of vulnerable or endangered wetland dependent terrestrial fauna species;
 - mangroves, seagrass and intertidal habitat that supports migratory and resident shorebirds;
 - mangroves, intertidal areas, seagrass and open expanses of shallow water that supports recreational and commercial fishing activities; and
 - habitat for the Eastern Curlew, a species which contributes to the ecological character of the Moreton Bay Ramsar site.
27. I also found that the scale and nature of the proposed action is such that a significant impact on the ecological character of the Moreton Bay Ramsar site is not only likely, but unavoidable. I concluded that it would not be possible to mitigate the impacts on the ecological character of the wetland where the wetland will be permanently lost through land reclamation for urban development and the construction of a marina.
28. Having regard to the nature and scale of these impacts, I concluded that the proposed action would have clearly unacceptable impacts on the ecological character of the



Moreton Bay Ramsar wetland, a matter protected by the provisions of Part 3 of the EPBC Act. I am confirmed in this view by the implications of the proposed action for Australia's obligations under the Ramsar Convention, as discussed in paragraphs 20 – 23 of these reasons.

Reasons for decision

29. In light of my findings above, I was satisfied that the proposed action would have clearly unacceptable impacts on a matter protected by the provisions of Part 3 of the EPBC Act, and thus that Division 1A of Part 7 of the EPBC Act should apply to the referral of the proposed action.

Signed

.....

JOSH FRYDENBERG

June 2017

Annexure A – EPBC Act extracts

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 74B of the EPBC Act provides:

- (1) This Division applies to the referral of a proposal to take an action if, within 20 business days after the Minister receives the referral:
 - (a) the Minister considers, on the basis of the information in the referral, that it is clear that the action would have unacceptable impacts on a matter protected by a provision of Part 3; and
 - (b) the Minister decides that this Division should apply to the referral.
- (2) If this Division applies to a referral, any other provisions of this Chapter that would, apart from this subsection, have applied to the referral cease to apply to the referral.
- (3) Subsection (2) has effect subject to paragraph 74D(6)(a).



Section 74C of the EPBC Act provides:

- (1) As soon as practicable after making the decision under paragraph 74B(1)(b) in relation to a referral, the Minister must give written notice of the decision to:
 - (a) the person proposing to take the action that is the subject of the referral; and
 - (b) the person who referred the proposal to the Minister (if that person is not the person proposing to take the action that is the subject of the referral).
- (2) The notice must:
 - (a) state that the Minister considers that the action would have unacceptable impacts on a matter protected by a provision of Part 3; and
 - (b) set out the reasons for the Minister's decision.
- (3) After receiving the notice under subsection (1), the person proposing to take the action may:
 - (a) withdraw the referral and take no further action in relation to the proposed action; or
 - (b) withdraw the referral and refer a new proposal to take a modified action to the Minister in accordance with Division 1; or
 - (c) request the Minister, in writing, to reconsider the referral.

Note 1: Section 170C sets out the procedure for withdrawing a referral.

Note 2: A referral of a proposal to take a modified action will be a new referral for the purposes of this Chapter.

Section 138 provides that:

In deciding whether or not to approve for the purposes of section 16 or 17B the taking of an action, and what conditions to attach to such an approval, the Minister must not act inconsistently with Australia's obligations under the Ramsar Convention.

Ramsar Convention

Listed sites and values

Australia is a Contracting Party to the Ramsar Convention on Wetlands of International Importance. Under the Convention, Contracting Parties designate wetlands to be included on a List of Wetlands of International Importance which meet one or more listing criteria due to their international significance in terms of ecology, botany, zoology, limnology or hydrology (Article 2).

Moreton Bay Ramsar site was added to the List in October 1993 for its international importance as one of the largest estuarine bays in Australia enclosed by barriers of vegetated dunes, with its wetlands providing habitat for nationally threatened green and loggerhead turtles, the internationally vulnerable dugong and other threatened species, supporting high biodiversity (shorebirds, marine invertebrates, fish, algae, mangroves, seagrasses) and supporting migratory shorebirds.

Conservation of the ecological character of Ramsar listed sites

Contracting Parties are required to formulate and implement their planning so as to promote the conservation of the wetlands included in the Ramsar list and wise use of all wetlands in their territory (Article 3.1).

Each Contracting Party must be informed at the earliest possible time if the ecological character of any of its listed wetlands has changed, is changing, or is likely to change as a result of technological developments, pollution or other human interference, and inform the Ramsar Secretariat (Article 3.2).

Under the *National Guidance on Notifying Change in Ecological Character of Australian Ramsar Wetlands (Article 3.2)* a formal assessment would be made to determine if there had been a change in ecological character at the site. The Ramsar Secretariat would be notified, and a Statement of Reasons would be posted on the Department's website. Once a notification has been made to the Convention, it is included on the agenda of subsequent Conferences of the Parties for discussion. After a notification has been made, Parties must advise of steps taken to address the change in ecological character. A Response Strategy would need to be developed, with remediation actions to return the site to its baseline ecological character (or a new baseline if this is not possible).

Boundaries of sites

s47C

The overarching principle of the Ramsar Convention is that a wetland should remain designated as a Ramsar site and that the whole of its original extent should remain designated, whenever possible and appropriate (CPO 9, Resolution IX.6).

The only circumstances in which a Contracting Party has the right to delete or restrict the boundary of a listed wetlands is because of its urgent national interest (Articles 2.5).

Should a Contracting Party delete or restrict a boundary, it should as far as possible compensate for any loss of wetland resources, and in particular it should create additional

nature reserves for waterfowl and for the protection, whether in the same areas or elsewhere, of an adequate portion of the original habitat (Article 4.2).

In Australia, the final decision to change the boundary of a Ramsar site rests with the Australian Government Minister for the Environment. Notices of boundary changes of declared Ramsar wetlands must be published in the Gazette.

Ramsar Convention guidance and rules

Wise use of wetlands - is the maintenance of their ecological character, achieved through the implementation of ecosystem approaches, within the context of sustainable development. The wise use concept is about maintaining wetland values and functions, while at the same time delivering services and benefits now and into the future, for human well-being. The three key elements of the definition of wise use are:

- ecological character, which is the combination of the ecosystem components, processes and benefits/services that characterise the wetland at a given point in time;
- ecosystem approaches, which consider the complex relationships between every element of an ecosystem, and promote the integrated management of land, water and living resources (including humans); and
- sustainable development, which is a pattern of resource use that aims to meet human needs while preserving the environment so that these needs can be met not only in the present, but also for generations to come.

Deletion or boundary restriction should not be to facilitate development - Ramsar Guidance indicates that deletion or boundary restriction should not be considered to be acceptable under the Convention when such deletion or restriction is being proposed in order to permit or facilitate future developments or other land use change in that area which is not justified as in the national interest (Resolution IX.6)

Deletion should be in urgent national interest – Resolution VIII.20 indicates a number of factors which should be taken into account in interpreting urgent national interest, including national benefits, alternatives to the proposed action (including locations), existing and proposed economic, social and ecological benefits, particular values and breadth of beneficiaries.

Proposal must undergo environmental assessment – should a change be considered, undertake the highest level of environmental, economic and social impact assessment, which takes into consideration the full range of functions, services and benefits offered by the wetland, and in full consultation with stakeholders (Resolution VIII.20)

Secretariat must be informed – The Ramsar Secretariat must be informed of such changes at the earliest possible time and advice can be sought from the Ramsar Scientific and Technical Review Panel or Standing Committee before irreversible action is taken (Resolution VIII.20)

Ramsar requirements under the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*

Under the EPBC Act, actions that have, will have or are likely to have, a significant impact on a matter protected by the EPBC Act require approval from the Australian Government

Minister for the Environment (Minister). The ecological character of a Ramsar wetland is a matter of national environmental significance protected under the EPBC Act.

'Clearly Unacceptable' is not defined in the EPBC Act. Potential offsets or benefits cannot be considered in a decision on Clearly Unacceptable or a Controlled Action.

For the Toondah Harbour Proposal, areas of wetland will be destroyed or substantially modified, there may be changes in ground and surface water flows to a part of the wetland, local populations of migratory shorebirds may be significantly affected, and water quality in the area will be affected. There is potential to avoid or mitigate some of these impacts, but not the loss of the wetland habitat itself.

Examples of previous relevant boundary changes and developments within Ramsar sites

Port Phillip Bay (Western Shoreline) and Bellarine Peninsula

A decision was made in March 1997 to excise 20 hectares at Point Lillias from this 5460 hectare Ramsar site to relocate the Coode Island chemical storage facility from Melbourne. The package involved the addition of 240 hectares of high quality wetland to the reserve and 500 hectares of additional environmental buffer near the storage facility. This was considered to be in the urgent national interest, in terms of health and safety, environmental and economic benefits. Later that year, a decision was made not to proceed with the relocation, and that an upgrade of the Coode Island facility would proceed instead.

Riverland Ramsar site, South Australia

In 2007, following extensive public consultation, a boundary change was made to this site, to change the boundary to follow a floodline rather than roads and other boundaries (Resolution IX.6 – aligning boundaries more closely with location of internationally important wetland parts of the site). This resulted in the inclusion of additional floodplains and lakes and exclusion of non-wetland areas used for horticulture and agriculture areas. This had no impact on the ecological character of the site.

Port Phillip Bay Ramsar site, Vic

The Vineyards Estate, Farm Road, Werribee (2003/960) was a residential development within the Ramsar site, but located in a terrestrial area of the site which does not contain values that contribute to the ecological character of the Ramsar wetland. The boundaries of the site were originally defined to include the entire Western Treatment Plant, and the development site was part of this, but subsequently sold into private ownership. Note that Avalon Airport is also located within this site.

Peel-Yalgorup Ramsar site, WA

The Point Grey Marina proposal involved the construction of a marina (outside the Ramsar site), but with a navigation channel within the site. Conditions were put in place on the approval to minimise impacts to the wetlands.

Summary of Ecological Character descriptors

Ecological Character descriptors	Relevant components	Relevant threats identified in Ecological Character Description Report	Impacts from Toondah Harbour proposal	Notes
<p>S1. Contains diversity of wetland habitat types that are representative of a major coastal wetland aggregation and in many areas show a high degree of connectivity between habitat types</p>	<p>All habitat types, including mangroves, seagrass and intertidal areas</p>	<p>Inadequate buffers between human settlement and wetlands associated edge effects</p>	<p>Permanent and irreversible loss of mangroves, seagrass and intertidal areas through land reclamation for urban development and the construction of a marina</p>	<p>The referral notes that approximately 50 hectares of the Toondah Harbour project occurs within the Moreton Bay Ramsar Wetland, of which approximately 40 hectares will be impacted by land reclamation.</p>
<p>S2. Contains several critical wetland habitat types. Critical habitat types that are in a near natural state and are representative of the habitat type within the broader biogeographic region</p>	<p>S2C – Southern Bay Mangroves</p>	<p>Clearing; reclamation and filling</p>	<p>At northern margin of these wetlands - unlikely to impact on core areas of this mangrove habitat</p>	
<p>S3. Supports an assemblage of vulnerable or</p>	<p>Critical habitat components for species such as dugong and</p>	<p>Habitat loss due to development Boat strike</p>	<p>Permanent and irreversible loss of seagrass habitat through land</p>	<p>The Marine Ecology Report (Table 3.2) Attachment 5 of the referral, states that</p>

Ecological Character descriptors	Relevant components	Relevant threats identified in Ecological Character Description Report	Impacts from Toondah Harbour proposal	Notes
endangered marine/aquatic fauna	green turtles include seagrass		reclamation for urban development and the construction of a marina	several threatened marine species are likely to occur in the project area and may be impacted by direct loss of habitat, increased boating and increased turbidity.
S4. Supports an assemblage of vulnerable or endangered wetland-dependent terrestrial fauna species	Critical habitat components for wetland dependent threatened fauna species, such as the beach-stone curlew and the little tern, include mangrove forests and associated intertidal areas, and nearshore and offshore open waters	Habitat loss, fragmentation and degradation due to development	Permanent and irreversible loss of mangroves and associated intertidal habitat through land reclamation for urban development and the construction of a marina	The BAAM report (Appendix 3) – Attachment 6 to the referral) – states that several of the relevant species are likely, or have the potential, to occur in the Toondah Harbour PDA
S5. Supports an assemblage of vulnerable or endangered wetland flora species and endangered and of	Not identified in the referral		No potential impacts on relevant flora species were identified in the referral	

Ecological Character descriptors	Relevant components	Relevant threats identified in Ecological Character Description Report	Impacts from Toondah Harbour proposal	Notes
concern wetland regional ecosystems				
S6. Supports significant populations (more than 20 000 in total and over 1% of the population size of particular populations) of migratory and resident shorebirds	Expansive intertidal flats; a diversity of feeding substrates; and a diversity of roost sites	Anthropogenic disturbance	Permanent and irreversible loss of mangroves, seagrass and intertidal habitat through land reclamation for urban development and the construction of a marina	The referral states that there are 2 high tide roost sites located adjacent to the project area and that these areas are recognised as having high importance to shorebirds in the region.
S7. The tidal fish habitats and fish and invertebrate populations support valuable recreational and commercial fishing activities	Mangroves; intertidal flats; seagrass; open expanses of shallow oceanic waters	Incremental habitat loss due to human population growth	Permanent and irreversible loss of mangroves, intertidal areas, seagrass and open expanses of shallow waters through land reclamation for urban development and the construction of a marina	The referral (Attachment 3) states that there is no threatened fish species or their habitat in the project area.
S8. Important cultural values and	Not identified in the referral		No potential impacts on important cultural values and areas significant to indigenous	

Ecological Character descriptors	Relevant components	Relevant threats identified in Ecological Character Description Report	Impacts from Toondah Harbour proposal	Notes
significance to indigenous peoples			peoples were identified in the referral	
S9. Important site for research and education	Not identified in the referral		No important sites for research and education were identified in the referral	
S10. Tourism and recreational uses	Predominant habitats include marine waters and intertidal flats	Impacts from tourism and recreational activities on all other critical services	Information on the magnitude of potential impacts was not provided in the referral	

EPBC Referral 2017/7939: Toondah Harbour, Moreton Bay, Queensland

Advice on Proposal

The following advice is provided by David Papps, Ramsar Administrative Authority for Australia, on the aspects of the Toondah Harbour proposal which impact on the Moreton Bay Ramsar site.

Summary Advice

Australia, as a signatory of the Ramsar Convention, is obliged under Article 3, to conserve and maintain the ecological character of wetlands which have been designated by Australia as Wetlands of International Importance.

Under Section 138 of the EPBC Act, the Minister with responsibility for the Environment cannot make decisions which would be inconsistent with Australia's obligations under the Ramsar Convention.

While developments within Ramsar sites are allowable, they must be consistent with the 'wise use' of the wetland and should maintain the ecological character of the site – the ecological values for which the site was listed.

The Toondah Harbour proposal currently under consideration involves destroying a part of the Moreton Bay Ramsar site to allow for a commercial development. The relative size of the project area is small in comparison to the entire Ramsar site, but it is the impact on the ecological values of the Ramsar site which I must consider.

The proposal will result in the destruction of mudflats, sandbanks and saltmarsh, which provide habitat for threatened shore-bird species (including the critically endangered eastern curlew) and sea-grass beds which support EPBC Act-listed turtle and dugong populations, will create disturbance to shorebird populations during construction and operation, and will impact on local currents, sediment movements and water quality. The proposal will, in my view have a substantially adverse impact on the ecological character and values of the Moreton Bay Ramsar site. The damage to the Ramsar site within the proposal's boundary and in adjacent areas will be profound and irreversible. This will remain true for the proposal under any set of mitigating measures or conditions.

It is my advice, therefore, that approval of the proposal as it stands would not be consistent with Australia's obligations under the Ramsar Convention.

The proposed action

1. The Toondah Harbour proposal is located on the foreshore of Moreton Bay, largely within the Moreton Bay Ramsar site, a Wetland of International Importance (see map at [Attachment A](#)). The referral area covers 73 hectares, at least half of which is within the Moreton Bay Ramsar site. The referral does not provide details of the actual area of overlap. The proposal includes 40 hectares of reclamation and 10.5 hectares of marina basin and access channel, as well upgrading of the existing Toondah Harbour channel.
2. The project involves significant construction works including:

- reclamation of 40 hectares of the Ramsar site, to be backfilled in part with spoil from the dredging of the Stradbroke Island ferry channel and Toondah Harbour access. Note that there is a likelihood that other areas of the Ramsar site may be used to dispose of excess dredging material from the development site;
- medium-rise, medium-high density residential development with additional retail, commercial and tourism uses;
- a marina and new ferry terminals to improve access to North Stradbroke Island; and
- public open space and boardwalks providing foreshore access.

Moreton Bay Ramsar site: listing criteria, ecological character and boundary

3. Under Article 2.1 of the Ramsar Convention, “*each Contracting Party shall designate suitable wetlands within its territory for inclusion in the List of Wetlands of International Importance ... The boundaries of each wetlands shall be precisely described and also delimited on a map.*”
4. Moreton Bay was listed as a Ramsar wetland in 1993, and it meets six of the nine criteria for identifying Wetlands of International Importance:

Criterion 1: contains a representative, rare, or unique example of a natural or near-natural wetland type found within the appropriate biogeographic region – one of the largest estuarine bays, enclosed by a barrier island of vegetated sand dunes.

Criterion 2: supports vulnerable, endangered, or critically endangered species or threatened ecological communities – supports vulnerable green and hawksbill turtles, the endangered loggerhead turtle and ranked among the top 10 dugong habitats in Queensland.

Criterion 3: supports populations of plant and/or animal species important for maintaining the biological diversity of a particular biogeographic region – supports over 355 species of marine invertebrates, at least 43 species of shorebirds, 55 species of algae associated with mangroves, seven species of mangrove and seven species of seagrass.

Criterion 4: supports plant and/or animal species at a critical stage in their life cycles, or provides refuge during adverse conditions – significant feeding ground for green turtles, and feeding and breeding ground for dugong. Also has the most significant concentration of young and mature loggerhead turtles in Australia.

Criterion 5: regularly supports 20,000 or more waterbirds – supports more than 50,000 wintering and staging shorebirds during the non-breeding season.

Criterion 6: regularly supports 1% of the individuals in a population of one species or subspecies of waterbird – significant for population of wintering eastern curlews (3,000 to 5,000) and the grey-tailed tattler (more than 10,000), both substantially more than 1% of East Asian Australian Flyway population.

5. Within Australia, the ecological character of a site is described as the components, processes, benefits and services of the wetland and how they are linked. For Moreton Bay Ramsar site, these include the variety of wetland habitats, dugongs and turtles, migratory and resident shorebirds, hydrodynamics and coastal processes which support

coastal ecosystems, water quality, energy and nutrient dynamics and biological processes.

6. At the time of listing, the boundaries were drawn to specifically include areas of ecological value which supported the listing, and to exclude certain areas from the Ramsar boundary to support future development of port and airport facilities, including the Brisbane River and Brisbane Harbour, and certain navigation channels. These exclusions include a section near Toondah Harbour where provision is made for the Ferry Terminals and approach channel to the harbour.
7. The Toondah Harbour proposal goes beyond the area currently excluded from the Ramsar site boundary, to include areas which are currently within the boundary of the Ramsar site (see **Attachment A**).

Development within, or adjacent to, a Ramsar Site

8. Under the Ramsar Convention, projects and developments may occur in Ramsar wetlands, but they must maintain the ecological character of the site, and be in accordance with “wise use” which is a key principle of the Convention, defined as: “the maintenance of the ecological character [of a wetland], achieved through the implementation of ecosystem approaches, within the context of sustainable development.”
9. No commercial or residential development of this scale or impact has been approved within an existing Ramsar site within Australia.

Article 3.2 Change in ecological character

10. Under Article 3.2 “*each Contracting Party shall arrange to be informed at the earliest possible time if the ecological character of any listed wetland has changed, is changing or is likely to change as the result of technological developments, pollution or other human interference.*” The Ramsar Secretariat is to be advised of such changes without delay.
11. National guidance on notifying change in ecological character of Australia's Ramsar Wetlands is available on the Department's website.
12. Should the proposal proceed, it would likely trigger the requirement for a formal assessment under Article 3.2 of the Ramsar Convention to determine if the development would result in a change in ecological character at the site.
13. If a change in ecological character was determined, the Ramsar Secretariat would be notified, and the notification would be reported to the next Conference of the Parties (scheduled for October 2018). A Response Strategy would need to be developed, which is intended to set out remediation actions to return the site to its baseline ecological character. If this is not possible, a new baseline would need to be set. This has only been done in a very limited number of cases.
14. Given the lack of precedents for this type of action, and because boundary changes could be proposed, there may be a need to involve a Ramsar Advisory Mission of international wetland experts to provide advice on the issues back to the Secretariat and

Contracting Parties. To date, no Ramsar Advisory Missions have been required for Australia's listed wetlands.

Article 4.4 Increase waterfowl populations

15. *"The Contracting Parties shall endeavour through management to increase waterfowl populations on appropriate wetlands."*
16. Should the Toondah Harbour proposal proceed, there are likely to be adverse impacts on migratory bird species, including the critically endangered eastern curlew and bar-tailed godwit which will lose known summer foraging habitat, and year round habitat for juvenile birds, and may be disturbed at adjacent roosting sites both during construction and operation of the proposal.

**Boundary of Toondah Harbour Priority Development Area and
Moreton Bay Ramsar Site**



Sources: EPA, DP/IR/RS/04, State of Victoria, USFV, USBS, AEST, Cairns/04, Cairns/05, R30, R31, substation, and the GIS User Community

Legend

- QLD DSDIP EDQ PDA
- Ramsar

Copy to:
Secretary
Mr Knudson
Mr Cahill
Mr Papps
Mr Oxley
Mr Taylor
s22
Mr Richardson

To: Minister for the Environment and Energy (For Decision)

REFERRAL DECISION - TOONDAH HARBOUR DEVELOPMENT, QUEENSLAND (EPBC 2017/7939)

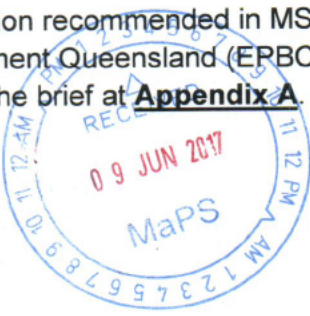
Through: Matt Cahill, First Assistant Secretary, Environment Standards Division.

Timing: 8 June 2017 - statutory timeframe.



Recommendation:

If you choose not to make the decision recommended in MS17-000773, that you decide that the Toondah Harbour Development Queensland (EPBC 2017/7939) referral is a controlled action and that you sign the brief at **Appendix A**.



Minister:

Signed / Not signed

Date:

8/6/17

Comments:

Clearing Officer: Sent: 5/06/17	James Barker	Assistant Secretary, Assessments and Governance Branch	Ph: 02 6274 2694 Mob: s22
Contact Officer:	s22	Director, Queensland Assessments North	Ph: 6274s22

Key Points:

1. This brief is provided for you to consider whether or not further assessment of the Toondah Harbour Development (EPBC 2017/7939) is required under the *Environment Protection and Biodiversity Conservation Act 1999*.
2. The project proposes to develop a mixed use residential, commercial, retail and tourism precinct including new ferry terminals and a marina at Toondah Harbour, 30 km south of Brisbane. The proposal will involve the excavation of a new marina and land reclamation within Moreton Bay Ramsar wetland.
3. The Department recommends that you decide that the proposed action is likely to have a significant impact on: a Ramsar wetland of international importance, listed threatened species and communities and listed migratory species for the reasons outlined in the brief at **Appendix A**.

Appendix

A: Referral Decision Brief and Attachments

DEPARTMENT OF THE ENVIRONMENT AND ENERGY

MS17-000774

To: Minister (for decision)

Referral Decision Brief – Toondah Harbour Development, Queensland
(EPBC 2017/7939)

Through: Matt Cahill, First Assistant Secretary, Environment Standards Division.

Timing: 8 June 2017 - statutory timeframe.

Recommended Decision	NCA <input type="checkbox"/> NCA(pm) <input type="checkbox"/> CA <input checked="" type="checkbox"/>												
Designated Proponent	Walker Group Holdings Pty Ltd 81 001 215 069												
Controlling Provisions triggered or matters protected by particular manner	<table border="0"> <tr> <td>World Heritage (s12 & s15A) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No if PM <input type="checkbox"/></td> <td>National Heritage (s15B & s15C) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No if PM <input type="checkbox"/></td> </tr> <tr> <td>Wetlands (Ramsar)(s16 & s17B) Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> No if PM <input type="checkbox"/></td> <td>Threatened Species & Communities (s18 & s18A) Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> No if PM <input type="checkbox"/></td> </tr> <tr> <td>Migratory Species (s20 & s20A) Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> No if PM <input type="checkbox"/></td> <td>C'wealth marine (s23 & s24A) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No if PM <input type="checkbox"/></td> </tr> <tr> <td>Nuclear actions (s21 & s22A) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No if PM <input type="checkbox"/></td> <td>C'wealth land (s26 & s27A) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No if PM <input type="checkbox"/></td> </tr> <tr> <td>C'wealth actions (s28) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No if PM <input type="checkbox"/></td> <td>GBRMP (s24B & s24C) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No if PM <input type="checkbox"/></td> </tr> <tr> <td>A water resource – large coal mines and CSG (s24D & s24E) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No if PM <input type="checkbox"/></td> <td>C'wealth heritage o/s (s27B & s27C) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No if PM <input type="checkbox"/></td> </tr> </table>	World Heritage (s12 & s15A) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No if PM <input type="checkbox"/>	National Heritage (s15B & s15C) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No if PM <input type="checkbox"/>	Wetlands (Ramsar)(s16 & s17B) Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> No if PM <input type="checkbox"/>	Threatened Species & Communities (s18 & s18A) Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> No if PM <input type="checkbox"/>	Migratory Species (s20 & s20A) Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> No if PM <input type="checkbox"/>	C'wealth marine (s23 & s24A) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No if PM <input type="checkbox"/>	Nuclear actions (s21 & s22A) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No if PM <input type="checkbox"/>	C'wealth land (s26 & s27A) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No if PM <input type="checkbox"/>	C'wealth actions (s28) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No if PM <input type="checkbox"/>	GBRMP (s24B & s24C) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No if PM <input type="checkbox"/>	A water resource – large coal mines and CSG (s24D & s24E) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No if PM <input type="checkbox"/>	C'wealth heritage o/s (s27B & s27C) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No if PM <input type="checkbox"/>
World Heritage (s12 & s15A) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No if PM <input type="checkbox"/>	National Heritage (s15B & s15C) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No if PM <input type="checkbox"/>												
Wetlands (Ramsar)(s16 & s17B) Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> No if PM <input type="checkbox"/>	Threatened Species & Communities (s18 & s18A) Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> No if PM <input type="checkbox"/>												
Migratory Species (s20 & s20A) Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> No if PM <input type="checkbox"/>	C'wealth marine (s23 & s24A) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No if PM <input type="checkbox"/>												
Nuclear actions (s21 & s22A) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No if PM <input type="checkbox"/>	C'wealth land (s26 & s27A) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No if PM <input type="checkbox"/>												
C'wealth actions (s28) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No if PM <input type="checkbox"/>	GBRMP (s24B & s24C) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No if PM <input type="checkbox"/>												
A water resource – large coal mines and CSG (s24D & s24E) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No if PM <input type="checkbox"/>	C'wealth heritage o/s (s27B & s27C) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No if PM <input type="checkbox"/>												
Public Comments	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Number: 180 individual and 1238 campaign. See <u>Attachment N</u> .												
Ministerial Comments	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Who: Queensland Department of Environment and Heritage Protection. See <u>Attachment I</u> .												
Assessment Approach Decision	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Bilateral Applies <input type="checkbox"/>												
Recommendations:													
<p>1. Consider the information in this brief, the referral (<u>Attachment A</u>) and other the information in the attachments.</p> <p style="text-align: right;">Considered / Please discuss</p> <p>2. Agree with the recommended decision.</p> <p style="text-align: right;">Agreed / Not agreed</p>													

UNCLASSIFIED

3. If you agree to 2, indicate that you accept the reasoning in the departmental briefing package as the basis for your decision.

Accepted/Please discuss

4. Agree to the designated proponent.

Agreed / Not agreed

5. Agree to stop the clock on the assessment approach decision to allow time for the Queensland Government to confirm whether the project can be assessed under the bilateral agreement with the Commonwealth.

Agreed / Not agreed

6. Sign the notice at Attachment B (which will be published if you make the recommended decision).

Signed / Not signed

7. Sign the letters at Attachment C advising the proponent and relevant parties of your decision.

Signed / Not signed

8. Sign the draft statement of reasons at Attachment D having made any modification you consider necessary to ensure that the statement reflects your reasoning (we have provided this in anticipation of requests for it from third parties).

Signed / Not signed



**Minister for the Environment and Energy,
The Hon Josh Frydenberg MP**

Date:

8/6/17

Comments:

BACKGROUND:

Description of the referral

1. Toondah Harbour is an existing marine area that serves as the base for water taxi, passenger and ferry services between the mainland and North Stradbroke Island. Walker Group Holdings Pty Ltd (the proponent) is proposing to develop a mixed use residential, commercial, retail and tourism precinct including new ferry terminals and a marina at Toondah Harbour, 30 kilometres (km) south of Brisbane. The proposal will involve the excavation of a new marina and reclaiming land within the adjoining Moreton Bay Ramsar wetland. The Toondah Harbour project is proposed to be delivered in stages over a 15 to 20 year period.

2. The key components of the proposal are:
 - project area of 73 hectares, of which approximately 50 hectares is within the Moreton Bay Ramsar wetland;
 - approximately 40 hectares of reclamation within Moreton Bay Ramsar wetland;
 - new ferry terminals to improve access to North Stradbroke Island;
 - mixed use development including residential, retail, commercial and tourism uses;
 - a marina;
 - public open space and boardwalks providing foreshore access; and
 - dredging of the existing Toondah Harbour marine access channel to allow for safe navigation for all vessels.
3. A referral for the project (Attachment A) was submitted under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) on 11 May 2017. The statutory timeframe for a decision under the EPBC Act is 8 June 2017.
4. In its referral, the proponent stated its belief that the proposal is a controlled action for the purposes of the EPBC Act and will likely have a significant impact on the ecological character of the Moreton Bay Ramsar wetland, listed threatened species and ecological communities, and listed migratory species. The proponent has stated in the referral that there are no alternatives to the location and footprint of the action.

State approval process

5. In June 2013, at the request of Redland City Council, the Queensland State Government declared Toondah Harbour a Priority Development Area (PDA) under the *Economic Development Act 2012* (Qld). As a result, the PDA is exempt from the standard planning and development assessment processes and will be assessed by Economic Development Queensland against the PDA Development Scheme. The proponent has stated that it intends to seek a declaration of the project as a 'coordinated project' under the *State Development and Public Works Organisation Act 1971* (Qld).
6. If you agree to the recommended decision, the Department will seek further information from the Queensland State Government regarding the state assessment process for the project. Subject to that advice, it may be that the project can be assessed under the bilateral agreement or, if not, your delegate will make a decision on the assessment approach.

RECOMMENDED DECISION:

7. Under section 75 of the EPBC Act you must decide whether the action that is the subject of the referral is a controlled action, and which provisions of Part 3 (if any) are controlling provisions for the action. In making your decision you must consider all adverse impacts the action has, will have, or is likely to have, on the matter protected by each provision of Part 3. You must not consider any beneficial impacts the action has, will have or is likely to have on the matter protected by each provision of Part 3.

8. The Department recommends that you decide that the proposed action is likely to have a significant impact on:
- the ecological character of the Moreton Bay Ramsar site (sections 16 and 17B);
 - listed threatened species, including marine turtles and the critically endangered Eastern Curlew (sections 18 and 18A); and
 - listed migratory species, including the dugong (sections 20 and 20A).

Ramsar wetlands

9. The Moreton Bay Ramsar site is located in and around Moreton Bay, east of Brisbane in Queensland (Attachment E). The Ramsar wetland supports extensive intertidal areas of sand and mud flat habitats, seagrass, mangroves and saltmarsh that provide vital habitat for dugongs, turtles and waterbirds including significant populations of migratory shorebirds. The wetland supports more than 50,000 migratory waders. At least 43 species of wading birds use the intertidal habitats, including 30 migratory species listed on international conservation agreements.
10. In addition, Moreton Bay is one of only two Ramsar sites in Australia that supports the critically endangered Eastern Curlew throughout the year, with juvenile birds not migrating until they are 2-3 years old. The ecological character of the Moreton Bay Ramsar wetland is described in *Ecological Character Description – Moreton Bay Ramsar Site* (Attachment F) and *Information sheet on Moreton Bay Ramsar Site* (Attachment G).
11. The proposed development area is immediately adjacent to and within the Moreton Bay Ramsar site.
12. The referral states that it is likely that the proposed action will result in significant impacts on the ecological character of a portion of the Moreton Bay Ramsar wetland. In particular, the proposed action will permanently remove an area of the Ramsar wetland through approximately 40 hectares of land reclamation and is likely to negatively impact the ecological character of the wetland.
13. Advice from the Department's Wetland Section (Attachment H) considers that direct impacts to the ecological character of the wetland will occur as the proposed action will result in:
- areas of the wetland within the referral area being removed or substantially modified through dredging, excavation and/or land reclamation activities;
 - impacts on habitat values through the removal of seagrass, mangroves and intertidal mudflats;
 - impacts on the lifecycle of an ecologically significant proportion of the population of the Eastern Curlew and Bar-Tailed Godwit, as well as other listed migratory species, such as Whimbrels and Grey-Tailed Tattler, through the removal of, or disturbance to, foraging and roosting habitat in or near the referral area; and
 - changes in the hydrological regime of the wetland and consequent changes to water quality and aquatic habitats from sedimentation.

14. The referral lacks detail on the proposed development, such as the size of the marina, the number of apartments, the height of buildings and the extent of dredging required to upgrade the channel. The referral has not considered indirect impacts from the proposed action such as light pollution, the potential for increased weeds and domestic animals, and human traffic. In addition, advice from the Department's Wetland Section concludes that the impacts on the ecological character of the site will be difficult to mitigate and offset.
15. Although the referral states that a buffer zone will be included between the development and the mangroves and high tide roosting site at Cassim Island, it does not provide sufficient information for the Department to be confident that this will reduce the impacts on migratory shorebirds.
16. The Department therefore concludes that the proposed action is likely to have a significant impact on the ecological character of the Moreton Bay Ramsar wetland.

Listed migratory species

17. The Department's Environment Reporting Tool (ERT) indicates that a total of 72 listed migratory species may occur within two kilometres of the proposed action (Attachment J). Based on the location of the action and likely habitat present in the area of the proposed action, the Department considers that significant impacts are likely in relation to the following matters:

Listed migratory shorebirds

18. The referral notes that habitat used by migratory shorebirds for foraging or roosting within Toondah Harbour and roosting habitat adjoining the project area are characterised as 'important habitat' for migratory shorebirds under the *EPBC Act Significant Impact Guidelines 1.1 – Matters of National Environmental Significance*.
19. Eleven migratory shorebirds were recorded within or immediately adjacent to the project area during the proponent's field surveys. These include:
 - Grey-tailed Tattler (*Tringa brevipes*);
 - Ruddy Turnstone (*Arenaria interpres*);
 - Great Knot (*Calidris tenuirostris*) (also listed as critically endangered);
 - Red-necked Stint (*Calidris ruficollis*);
 - Bar-tailed Godwit (*Limosa lapponica baueri*) (also listed as vulnerable)
 - Whimbrel (*Numenius phaeopus*);
 - Eastern Curlew (*Numenius madagascariensis*) (also listed as critically endangered);
 - Terek Sandpiper (*Xenus cinereus*); and
 - Curlew Sandpiper (*Calidris ferruginea*) (also listed as critically endangered).
20. Migratory shorebirds use two different habitat types within or adjacent to the project area, namely intertidal mudflats that provide feeding habitat when exposed at low tide, and stands of mangrove trees, offshore sandbars and shoreline saltmarsh and claypan areas that provide high tide roost sites.
21. The referral states that the proposed action is likely to have both direct and indirect impacts on migratory shorebirds through clearing of approximately 40 hectares of foraging

habitat for dredging and land reclamation, and disturbance during construction including changes to water quality during dredging and reclamation works. However, the referral also states that the project area is not considered to be a major foraging site in terms of diversity or numbers of migratory shorebirds as similar habitat is found throughout Moreton Bay, and the project site provides less than 0.001% of feeding habitat within the Ramsar wetland. As outlined below, the Department considers that the loss of this foraging habitat, combined with the indirect impacts of the proposal, is likely to have a significant impact on migratory shorebirds.

22. Surveys undertaken by the proponent mapped large areas of intertidal foraging habitats in the project area, comprising areas of mudflat, sandflat, seagrass and areas of surface coral rubble, and two high tide roost sites directly adjacent to the project area (Figure 2, Attachment 3 of Attachment A).
23. Important roosting sites - Cassim Island and Nandeebie Claypan - are in close proximity to the proposed action. It is likely that the proposed action will have indirect impacts on these roosting sites, including noise and visual disturbance as a result of increased human use of the area.
24. Survey results provided in the referral (Attachment A) confirmed that Cassim Island, located approximately 100 meters east of the project boundary, and the Nandeebie Claypan, immediately south of the project area, are important roosting habitat for migratory shorebirds based on the relatively large total numbers of migratory shorebirds using these roost sites. Up to 920 migratory shorebirds of four species known to roost in mangrove trees were recorded at Cassim Island, while up to 1,060 migratory shorebirds were recorded roosting at the Nandeebie Claypan.
25. The *EPBC Act Policy Statement 1.1 Significant Impact Guidelines (2013)* and the *EPBC Act Policy Statement 3.21 - Industry guidelines for avoiding, assessing and mitigating impacts on EPBC Act listed migratory shorebird species (2017)* provide that a proposed action will be likely to have a significant impact on migratory species where the proposal will substantially modify, destroy or isolate an area of important habitat for migratory species.
26. The proposed action will reduce the area of occupancy for migratory shorebird species by removing approximately 40 hectares of foraging habitat; adversely affecting important roosting habitat and modifying, destroying, isolating and decreasing the availability and quality of habitat through indirect impacts such as light, noise and human interaction.
27. In addition to the above, advice received from the Department's Migratory Species Section (Attachment H) concluded that the proposed action will seriously disrupt the lifecycle (feeding, migration and resting behaviour) of an ecologically significant population of the Eastern Curlew and Bar-tailed Godwit, as well as other listed migratory species, such as Whimbrels and Grey-tailed Tattlers, through the removal of, or disturbance to, foraging and roosting habitat in or near the referral area. Additional impacts will result from linking important offshore roosting sites with the mainland as it will interfere with the recovery of the Eastern Curlew by removing important habitat and causing an increase in ongoing disturbance.

Other Migratory species

28. Moreton Bay supports important foraging populations of Green, Hawksbill and Loggerhead Turtles and is close to the southern-most extent of their range. The *Marine*

Bioregional Plan for the Temperate East Marine Region (2012) (Attachment K) considered Moreton Bay a significant feeding ground for the Green Turtle.

29. Advice from the Department's Migratory Species Section (Attachment H) considers that light pollution, vessel disturbance and habitat modification (though dredging and infrastructure/coastal development) are known threats to migratory marine species. The Department considers it likely that the proposed action will increase these threats to migratory marine species and reduce the area of occupancy of the species.
30. Based on this advice and other information available to the Department, such as the Species Profile and Threats database and information from the referral documentation, the Department considers that the proposed action is likely to have significant impacts on other migratory species such as:
 - Loggerhead Turtle (*Caretta caretta*);
 - Green Turtle (*Chelonia mydas*);
 - Hawksbill Turtle (*Eretmochelys imbricata*);
 - Indo-pacific Humpback Dolphin (*Sousa chinensis*); and
 - Dugong (*Dugong dugon*).

Listed threatened species and communities

31. The Department's Environment Reporting Tool (ERT) identifies 57 threatened species and one ecological community may occur within two kilometres of the proposed action (see the ERT report at Attachment J). Based on the location of the action and likely habitat present in the area of the proposed action, the Department considers a number of these species will be impacted by loss of marine, intertidal and terrestrial habitat as well as light and noise disturbance during construction and operation of the project. The Department considers that significant impacts are likely in relation to the following matters:

Eastern Curlew (*Numenius madagascariensis*) – critically endangered

32. The Department has considered the likelihood of direct and indirect impacts, the importance of habitat in, and immediately adjacent to, the project area and the lack of adequate mitigation and management measures to minimise these impacts and concluded that the proposed action is likely to have a significant impact on the critically endangered Eastern Curlew.
33. The critically endangered Eastern Curlew occurs seasonally around the Australian coastline, with up to 3500 birds estimated to visit Moreton Bay (9% of the flyway population). The Eastern Curlew habitat in the Moreton Bay wetland is internationally important as it supports more than 1% of the individuals in a population of the migratory Eastern Curlew (*EPBC Act Policy Statement 3.21 - Industry guidelines for avoiding, assessing and mitigating impacts on EPBC Act listed migratory shorebird species (2017)*).
34. The project site contains intertidal foraging habitat for the Eastern Curlew with seven individuals recorded during 2015 surveys (Attachment A). Important roosting sites, the Nandeebie Claypan and Cassim Island, are also immediately adjacent to the project area with up to 180 Eastern Curlew having been recorded at the Nandeebie Claypan roosting site (Attachment 6 of Attachment A). Although there are a number of available roost sites

for the Eastern Curlew within the region, the Nandeebie Claypan is considered by the Department to be an important site within Moreton Bay (Attachment 6 of Attachment A).

35. The referral proposes a buffer zone of 100 to 200 metres between the development and the mangroves and high tide roosting site at Cassim Island. However, the referral does not provide adequate information on whether they would be sufficient to manage the impacts to the Eastern Curlew. The *Conservation Advice for Numenius madagascariensis (Eastern Curlew)* (2015) states that the species is easily disturbed by human interaction within 250m.
36. The Department considers that as the proposed action will substantially modify, destroy and isolate an area of habitat for the Eastern Curlew it is likely to have a significant impact on the species.

Other listed species

37. The Department's ERT identifies the potential presence of additional threatened species or communities within two kilometres of the proposed action area. Based on information available to the Department and the nature of the proposed action that includes removal of onshore vegetation, intertidal mudflats and seagrass bed that provide habitat for threatened species, the Department considers that the proposed action is likely to have significant impacts on other threatened species such as:
 - Great Knot (*Calidris tenuirostris*) – critically endangered
 - Curlew Sandpiper (*Calidris ferruginea*) – critically endangered
 - Bar-tailed Godwit (*Limosa lapponica baueri*) – vulnerable;
 - Koala (*Phascolarctos cinereus*) (combined populations of Qld, NSW and the ACT) – vulnerable;
 - Grey-headed Flying-fox (*Pteropus poliocephalus*) – vulnerable;
 - Loggerhead turtle (*Caretta caretta*) – endangered;
 - Green Turtle (*Chelonia mydas*) – vulnerable; and
 - Hawksbill Turtle (*Eretmochelys imbricate*) – vulnerable.

PROTECTED MATTERS THAT ARE NOT CONTROLLING PROVISIONS:

World Heritage properties	The ERT did not identify any World Heritage properties located within or adjacent to the proposed action area, therefore this controlling provision does not apply.
National Heritage places	The ERT did not identify any National Heritage places located within or adjacent to the proposed action area, therefore this controlling provision does not apply.
Commonwealth marine environment	The proposed action does not occur in the vicinity of a Commonwealth marine environment therefore this controlling provision does not apply.
Commonwealth action	The referring party is not a Commonwealth agency, therefore this controlling provision does not apply.
Commonwealth land	The proposed action is not being undertaken on Commonwealth land therefore this controlling provision does not apply.
Nuclear action	The proposed action does not meet the definition of a nuclear action as defined in the EPBC Act therefore this controlling provision does not apply.
Great Barrier Reef Marine Park	The proposed action is not located in the vicinity of the Great Barrier Reef Marine Park, therefore this controlling provision does not apply.
Commonwealth Heritage places overseas	The proposed action is not located overseas, therefore this controlling provision does not apply.
A water resource, in relation to coal seam gas development and large coal mining development	The proposed action is not a coal seam gas or a large coal mining development, therefore this controlling provision does not apply.

SUBMISSIONS:

Public submissions

38. The proposal was published on the Department's website on 11 May 2017 and public comments were invited until 25 May 2017. 180 public submissions, including from the Ramsar Secretariat, and a further 1,238 campaign submissions were received during the public consultation period. Attachment N provides a summary of the public submissions.
39. The submissions raised issues including the following:
- unacceptable impacts of 40 ha of land reclamation within a Ramsar wetland;
 - impacts to migratory shorebirds, seagrass, koalas, turtles and Dugongs;
 - Australia's need to meet its obligations as a party to international agreements to protect migratory birds and Ramsar wetlands;
 - impacts related to pollution from dredge spoil;

- the proposed development is not critical infrastructure – the local community would like to see an upgrade to the ferry terminal but do not support the construction of a marina and housing development; and
- the Ramsar Secretariat advised that the Moreton Bay Ramsar site will be placed under Article 3.2 notification. Under Article 3.2 of the Ramsar Convention “Each Contracting Party shall arrange to inform the Ramsar Secretariat...at the earliest possible time if the ecological character of any wetland in its territory and included in the List has changed, is changing or is likely to change as the result of technological developments, pollution or other human interference”.

Comments from Commonwealth Ministers

40. By letter dated 11 May 2017, the following ministers were invited to comment on the referral:
- Senator The Hon Nigel Scullion, Minister for Indigenous Affairs
 - The Hon Darren Chester MP, Minister for Infrastructure and Transport
41. No comments were received in response to that invitation.

Comments from State Ministers

42. By letter dated 11 May 2017, the delegate for the Queensland Minister for Environment and Heritage Protection, the Hon Dr Steven Miles MP, was invited to comment on the referral. The response stated that the proposal will not be assessed using the EIS process in Chapter 3 of Queensland’s *Environmental Protection Act 1994*. The response also stated that the Queensland Department of State Development reviewed the referral documentation and advised that the Coordinator-General has not received a request for declaration of this proposal as a coordinated project under Part 4 of the *State Development and Public Works Organisation Act 1971*.

ASSESSMENT APPROACH:

43. If you agree that the action is a controlled action, you must decide on the approach for assessment in accordance with section 87 of the EPBC Act. Noting that the proponent intends to lodge a formal application for declaration of the proposal as a coordinated project under Part 4 of the *State Development and Public Works Organisation Act 1971* (Qld) and the potential for assessment under the bilateral agreement, the Department recommends that this decision is postponed and made by your delegate, once the Queensland government confirms the state assessment approach.

OTHER MATTERS FOR DECISION-MAKING:

Precautionary principle

44. In making your decision under section 75, you are required to take account of the precautionary principle (section 391). The precautionary principle is 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. A controlled action decision will require any uncertainties in the referral (e.g. around the potential effectiveness of mitigation measure and availability of offsets) to be clarified through further detailed assessment.

Bioregional Plans

45. In accordance with section 176(5), you are required to have regard to a bioregional plan in making any decision under the Act to which the plan is relevant. The *Marine Bioregional Plan for the Temperate East Marine Region (2012)* (Attachment J) is relevant to the proposed action.

Consultation and handling

46. The Wildlife, Heritage and Marine Division, Wetlands, Policy and Northern Water Branch, General Counsel Branch were consulted and provided advice in the preparation of this brief.

James Barker
Assessments and Governance Branch
Ph: 02 6274 2694
Mob: s22

Attachments

- A: Referral
- B: Decision notice FOR SIGNATURE
- C: Letter to Walker Group Holdings FOR SIGNATURE
 - Letter to Queensland Minister for Environment and Heritage FOR SIGNATURE
 - Letter to Queensland Deputy Premier FOR SIGNATURE
 - Letter to Minister for Infrastructure and Development FOR SIGNATURE
 - Letter to Minister for Indigenous Affairs FOR SIGNATURE
 - Letter to Minister for Trade, Tourism and Investment FOR SIGNATURE
- D: Statement of Reasons FOR SIGNATURE
- E: Maps of project area, regional context, Ramsar site boundary.
- F: Ecological Character Description – Moreton Bay Ramsar Site (Final Report)
- G: Information sheet on Moreton Bay Ramsar Site (June 1999)
<http://www.environment.gov.au/water/topics/wetlands/database/pubs/41-ris.pdf>
- H: Line Area Advice:
 - Wetlands Section Advice
 - Migratory Species Section Advice
- I: Submission from EHP
- J: Department's Environmental Reporting Tool
- K: Marine Bioregional Plan for the Temperate East Marine Region (2012)
- L: Summary of public submissions