



Australian Government
Department of the Environment

EPBC Ref: 2015/7582

Mr Andrew Dooley
Project Manager
NSW Department of Industry Skills
and Regional Development
PO Box 2185
DANGAR NSW 2309

Dear Mr Dooley

Decision on referral – Eden Breakwater Wharf Extension, NSW (EPBC 2015/7582)

Thank you for submitting a referral under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). This is to advise you of my decision about the proposed action to extend the existing Breakwater Wharf at Eden, New South Wales.

As a delegate of the Minister for the Environment, I have decided that the proposed action is not a controlled action, provided it is taken in accordance with the manner described in the enclosed decision document. This means that, provided that the action is undertaken in that way, it does not require further assessment and approval under the EPBC Act before it can proceed. A copy of the document recording this decision is enclosed. This document will be published on the Department's website.

Please note that this decision relates only to the specific matters protected under Chapter 2 of the EPBC Act.

This decision does not affect any requirement for separate state or local government environment assessment and approvals of the proposed action.

Please notify this Department immediately if you are unable to undertake the proposed action in accordance with the measures described. Penalty provisions may apply if the referred action is undertaken in a different way to the manner specified.

Otherwise we would appreciate receiving your written advice:

- within two weeks of the date of this letter - confirming that the action will be undertaken in the manner set out in the enclosed decision, and
- within three months of the date of this letter - reporting on your progress in implementing the measures.


The Department has an active audit program for proposals that have been referred under the EPBC Act. The audit program aims to ensure that there is a high degree of compliance with decisions made in relation to those proposals. Please note that your project may be selected for audit by the department at any time and all related records and documents may be subject to scrutiny. Information about the Department's compliance monitoring and auditing program is attached.

In addition, The Department received comments from the Australian Maritime Safety Authority (AMSA) which noted that as a party to the International Convention for the Prevention of Pollution from Ships (MARPOL), Australia is obligated to provide adequate waste reception facilities that meet the needs of the ships using them. Considerations on the provision of these facilities extends to wharf design in order to ensure that ships can be serviced whilst at berth.

Adequate waste reception facilities serves to, among other things, negate disincentives to dispose of waste appropriately onshore and therefore reduce the instances of the discharge of waste into the marine environment. Wastes from ships include garbage, sewage, oily waste and other MARPOL related discharges at the request of a ship. AMSA have suggested that as part of the wharf extension, both access to the ship whilst at berth to allow the collection of waste and the provision of adequate waste reception facilities be considered and assessed against existing arrangements in order to respond to future demand.

If you have any questions about the referral process or this decision, please contact the project manager, Kimberley Shields, by email to kimberley.shields@environment.gov.au, or telephone (02) 6274 2217 and quote the EPBC reference number shown at the beginning of this letter

Yours sincerely

A handwritten signature in black ink, appearing to read 'Deb Callister', with a long horizontal flourish extending to the right.

Deb Callister
Assistant Secretary
Assessments and Policy Implementation Branch

7 December 2015



Notification of

REFERRAL DECISION – not controlled action if undertaken in a particular manner

Eden Breakwater Wharf Extension, NSW (EPBC 2015/7582)

This decision is made under sections 75 and 77A of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Proposed action

person named in the referral	Department of Industry Skills and Regional Development ABN: 72 189 919 072
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proposed action	To extend the existing Breakwater Wharf at Eden, New South Wales (See EPBC Act referral 2015/7582).
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Referral decision: Not a controlled action if undertaken in a particular manner

status of proposed action	The proposed action is not a controlled action provided it is undertaken in the manner set out in this decision.
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Person authorised to make decision

Name and position	Deb Callister Assistant Secretary Assessments and Policy Implementation Branch
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signature

date of decision	7 December 2015
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manner in which proposed action must be taken	<p>The following measures must be taken to avoid significant impacts on</p> <ul style="list-style-type: none">• Listed threatened species and communities (sections 18 & 18A)• Listed migratory species (sections 20 & 20A)• Commonwealth marine areas (sections 23 & 24A)
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To mitigate potential impacts, the person taking the action must implement the following monitoring approaches and procedures:

1. Piling Operation Procedures:

- a) **Pre-start Observation:** Marine mammal observer/s must visually monitor **observation** and **shut-down zones** for **whales** for a minimum of 30 minutes before the commencement of **piling**.
- b) **Soft-Start Procedure:** If after the 30 minute **pre-start observation** no **whale/s** have been spotted within the **observation** or **shutdown zone** a **soft start procedure** may commence with a gradual increase in **piling** impact energy of no more than 50% of full impact energy for 10 minutes. The **soft start procedure** must be implemented after breaks in **piling** of 30 minutes or more.
- c) **Stand by procedure:** If a **whale** is spotted within the **observation zone** during the **soft start procedure** the operator of the **piling** equipment must be placed on standby to shut-down the **piling** rig and a trained crew member should continuously monitor the **whale/s** in sight at all times.
- d) **Normal Piling Procedure:** If no **whale/s** has been sighted during the soft-start procedure full impact **piling** may commence.

2. Shut- Down requirements:

- a. If visibility is poor and the **marine mammal observer** is unable to clearly identify objects to the full **observation zone** distance, a vessel or aircraft search must be conducted or the action postponed until visibility has improved.
- b. **Piling** is not permitted between 6.00pm and 7.00am.
- c. If any **whales** are spotted within the **shut-down zone**, **piling** must cease immediately or as soon as safe to do so until the **whale/s** has moved outside of the **shut-down zone**.
- d. All **piling** must cease for a minimum of 1 hour after the last sighting of a **whale** within the **observation zone**. **Piling** must recommence at the **pre-start observation** after the 1 hour shutdown has elapsed.

3. Dredge Vessel Operations: Vessels must maintain a 300 metre exclusion zone with all **whales** en-route to and from the disposal ground and within the disposal ground.

4. Vessel Speed Limits: All vessels associated with dredging and construction will travel at speeds no higher than 10 knots within the port limits, en-route to, or at the disposal ground.

Glossary

Marine Mammal Observer: A trained marine mammal observer/s with demonstrated experience in the identification and management of **whales** and to undertake **whale** observation during **piling**.

Observation Zone: horizontal radius determined from the **piling** equipment of 1.5 kilometres.

Piling: any impact driving and/or vibro-driving.

Shut- Down Zone: horizontal radius determined from the piling equipment of 1 kilometre.

Standby: advise piling contractors to the presence of whale/s and to prepare to shutdown **piling** if necessary.

Whale/s: species listed under the *Environment Protection Biodiversity Conservation Act 1999*(EPBC Act).



COMPLIANCE MONITORING AND AUDITING

This fact sheet provides an overview of the compliance monitoring and auditing program in place for projects referred under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and permits granted under the *Environment Protection (Sea Dumping) Act 1981* (the Sea Dumping Act).

What is the EPBC Act?

The EPBC Act is Australia's key national environment law. Under the EPBC Act, proposals which are likely to have a significant impact on matters of national environmental significance must be referred, assessed, and a decision made by the Minister or his delegate on whether to approve the proposal.

What is the Sea Dumping Act?

The Sea Dumping Act regulates the loading and dumping of waste at sea. The Sea Dumping Act fulfils Australia's international obligations under the London Protocol to prevent marine pollution by dumping of wastes and other matter. Permits are required from the Department for all ocean disposal activities.

What is compliance monitoring and auditing for?

The Department has implemented a program to monitor and audit projects that have been referred under the EPBC Act and the Sea Dumping Act to ensure they are complying with their approval/permit conditions or particular manner requirements and the legislation.

Compliance monitoring activities, including inspections and audits, aim to ensure projects with the potential to impact on nationally protected matters are implemented as planned. Monitoring and audits help the Australian Government to understand how well conditions or requirements are being understood and applied, and contribute to improving the effectiveness of the Department's operations.

All compliance monitoring activities, and any subsequent enforcement activities, are conducted in accordance with the Department's Compliance and Enforcement Policy.

What is a monitoring inspection?

Approved projects are subject to monitoring inspections to ensure and verify compliance with the conditions or requirements of the approval or permit. Projects are selected for a monitoring inspection based on a risk-based process informed through a number of factors, including sector, location, compliance history and the potential impact on listed matters (such as threatened species and ecological communities).

What is a compliance audit?

A compliance audit is an objective assessment of a project's compliance against selected criteria. Projects are audited against conditions or requirements. A compliance audit usually takes the form of a desktop document review and may include a site inspection, if necessary. In some cases, the document review provides the Department with enough information to verify that a project is compliant.

Projects can be chosen for audit based on a random selection process or a risk-focused selection process. If your project is selected for an audit, you will be contacted by a Departmental officer who will explain the process. All audit report summaries are posted on the Department's website. The results of audits may also be publicised through the general media.

Further information

For further information on the compliance monitoring and auditing program, please visit the Department's website at www.environment.gov.au or contact:

The Director, Compliance Monitoring Section
Department of the Environment
GPO Box 787 CANBERRA ACT 2601
Telephone: (02) 6274 1111
Email: EPBCmonitoring@environment.gov.au

