



25 June 2018

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

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

To the Department of the Environment,

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

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

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

Recommendations

The ACF recommends that:

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



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

Overview

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

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

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

Prior Assessment of NGWS

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

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

Significant Impact on MNES

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

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



(i) Statutory interpretation

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

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

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

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

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

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

³ *Ibid* s 24D(1)(b).

⁴ *Ibid* s 528.

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

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

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

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

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

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



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

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

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

(ii) Application to the NGWS

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

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

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

(i) Referral application based on inadequate surveys

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

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

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

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



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

(ii) Referral application identifies likely significant impacts

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

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

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

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

For more information:

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

www.acf.org.au

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

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