

**PERFORMANCE AUDIT OF ENVIRONMENT AUSTRALIA'S
ADMINISTRATION OF THE REFERRAL, ASSESSMENT AND APPROVAL
PROCESS UNDER THE *Environment Protection and Biodiversity
Conservation Act 1999* ('EPBC Act').**

SUBMISSION OF THE ENVIRONMENTAL DEFENDER'S OFFICE (ACT)

1. INTRODUCTION

1.1 Australian National Audit Office Audit

We understand from the Australian National Audit Office's letter of 15 July 2002, calling for submissions on the Commonwealth Auditor-General's performance audit, that the objectives of the audit may be summarised as follows:

- to examine and report on the quality, timeliness and cost of administrative practices applying to environmental referrals, assessments and approvals under the EPBC Act; and
- to consider monitoring by Environment Australia of compliance by proponents with the requirements of the EPBC Act.

1.2 Environmental Defender's Offices

Environmental Defender's Offices are non-profit, non-government community legal centres located in states and territories around Australia. Environmental Defender's Offices provide legal advice to individual and community groups to assist the conservation, protection and promotion of the environment.

This submission contains the opinions of the Environmental Defenders' Office (ACT), after consultation with other Environmental Defender's Offices. In particular, this submission draws heavily upon the published views of the Environmental Defender's Office (QLD).

The EDO (ACT) understands that Ms Jo Bragg, Principal Solicitor, EDO (QLD), has arranged to meet with an Australian National Audit Office officer in Brisbane to discuss aspects of the administration of the referral, assessment and approval processes under the EPBC Act.

Nothing stated or implied in this submission is intended to constitute an allegation that any developer referred to has acted in an improper or unlawful manner.

2. REFERRAL, ASSESSMENT AND APPROVAL PROCESS

We consider that two recent case studies in which the EDO (QLD) has been involved highlight deficiencies in the administration of the referral, assessment and approval processes under the EPBC Act.

2.1 Peregian Springs Residential Development – case example

The Peregian Springs development is a major staged residential development by Forrester Kurts Properties on the Sunshine Coast, Queensland. We are informed that several hundred hectares of vegetation are to be cleared in preparation for the development, which will affect a number of listed threatened species, including the Wallum Sedge Frog (*Litoria olongburensis*).

We are informed by the Environment Council that additional listed species have been discovered on, or near, the development site.

The development has been separated into three geographically distinct components. Separate referrals under the EPBC Act were made in respect of actions on two of the components. The two referrals were made due to potential impacts upon listed threatened species. The two referrals were assessed by way of preliminary documentation.

The Commonwealth Environment Minister determined that both actions were controlled actions under the EPBC Act, requiring assessment and approval.

The approval granted in relation to one of the controlled actions, (the action on the Emu Mountain part of the site,) was approved on conditions. Condition 2 of EPBC 2001/165 states:

“Forrester Kurts Properties must submit an Environmental Management Plan for managing the impacts of the action on the Wallum Sedge Frog to the Minister within two months of the date of this approval. The Environmental Management Plan must address water quality within the Emu Mountain site, management of acid sulfate soils during construction of artificial wetlands, management of the artificial wetlands, and monitoring the health of the wet heathland within the conservation area. The Environmental Management Plan must be implemented.”

2.2 Peregian Springs Residential Development – comments and submissions

Following are our comments and submissions on issues raised by the Peregian Springs Residential Development case study:

- The proposed development was divided into components and separate referrals were made for two of the components. Environment Australia treated the two referrals as distinct and decided both were controlled actions. We consider that Environment Australia's treatment of single developments as separate components risks diminishing of the

effectiveness of the referral, assessment and approval provisions of the EPBC Act. This is because the presentation of proposed developments in separate, smaller components is prone to giving the incorrect impression that the environmental impact is less significant than if the proposed development is treated as a whole. We submit that Environment Australia's administration, assessment and approval processes under the EPBC Act should properly consider the environmental impact of an action in its entirety, whether the action is a single action or a series of activities (in support of our view, see s523 of the EPBC Act for the definition of 'action'.)

- The Peregian Springs Residential Development referrals were assessed by way of preliminary documentation. Preliminary documentation is a less onerous form of assessment than a Public Environment Report ('PER'), or an Environmental Impact Statement ('EIA'). Preliminary documentation does not always accurately reveal the environmental risks posed by a proposed development, and may be incomplete. We submit that assessments by way of preliminary documentation should not be undertaken by Environment Australia as a matter of course, and should not be used where likely impact on a threatened species is concerned.
- Condition 2 (EPBC 2001/165, quoted from under 2.1 above) is an unsatisfactory condition. The condition does not ensure that the environmental management plan will be approved before development commences. Nor does the condition state that the Minister must approve the environmental management plan. We submit that the administration of the approvals process under Part 9 of the EPBC Act should demonstrate strict compliance with the objective of the EPBC Act, specifically protection of protected matters under Part 3 of the Act.

2.3 Cooloola Cove Airpark, Tin Can Inlet – case example

The proposed development at Tin Can Inlet, Queensland, will require the clearing of over 70 hectares of native vegetation for residential development, a golf course and the upgrading of an airstrip.

The Environment Council approached EDO (QLD) in relation to the development proposal. The Environment Council has informed us that the proposed development abuts Tin Can Inlet, a Ramsar listed wetland and the roosting site of listed migratory species.

EDO (QLD) wrote to the Commonwealth Environment Minister in February 2002, on behalf of the Environment Council, requesting that the Minister require the developer to refer the matter to the Minister under s70 of the EPBC Act.

Environment Australia has since advised us that it has written to the developer drawing attention to the possible application of the EPBC Act. We are informed that no reply was received by Environment Australia by May 2002, and

Environment Australia has indicated its intention to send the developer a follow up letter and to attempt to arrange a site visit with the developer.

2.4 Cooloola Cove Airpark, Tin Can Inlet - comments and submissions

Following are our comments and submissions on issues raised by the Cooloola Cove Airpark case study:

- There appears to be a reluctance to *require* the developer to refer possible actions to the Minister under s70 of the EPBC Act. (State, Territory or Commonwealth Ministers or agencies may make referrals, as may individuals proposing to take an action. Members of the public may not refer an action.) We submit that reluctance or failure to require referrals from developers detracts from the effective administration of the referral process under the EPBC Act, and may demonstrate inadequate monitoring of compliance with the requirements of the EPBC Act. Referrals should be readily and promptly required of developers. Environment Australia should not, as a matter of course, send letters of warning in place of requiring referrals.
- The Environment Council investigated the proposed development at Cooloola Cove Airpark by obtaining a copy of the state clearing permit granted to the developer from the Queensland Department of Natural Resources ('DNR'). The Environment Council then used the Environment Australia interactive website to ascertain the location of Ramsar wetland areas and listed migratory species in relation to the development. We are informed by Environment Australia that it monitors the DNR website, particularly to identify land clearing permits granted under the Queensland *Vegetation Management Act* 1999. However, Environment Australia does not routinely require referral of developments adjacent to Ramsar wetlands, even for clearing as much as 74 hectares as in the Cooloola Cove Airpark case. We submit that the failure to routinely require referrals for developments adjacent to Ramsar wetlands detracts from the effective administration of the referral process under the EPBC Act, and may demonstrate inadequate monitoring of compliance with the requirements of the EPBC Act. We submit that such referrals should be routinely required.

3. Conclusion

Overall, mindful of EDO (ACT)'s relatively limited involvement in this area, EDO (ACT) considers Environment Australia has acted reasonably in relation to the administration of the referral, assessment and approval processes under the EPBC Act. Chapters 2, 3 and 4 of the EPBC Act in particular present significant administration challenges for Environment Australia, which it appears to have made real effort to meet, possibly with insufficient resources.

It is hoped that the case studies and submissions we have presented contributes to the process of enhancing aspects of Environment Australia's administrative practices and compliance monitoring under the EPBC Act.
