

FW: OFFICIAL: RE: Notification and Invitation for Discussion on Potential Impact of EPBC Act and FFG Act Listed Threatened Species

**From:** Elyse L Harrison (DEECA) [REDACTED]

[REDACTED] 23 March 2023 11:57 AM

**To:** Sylvana Mitchell [REDACTED]

**Cc:** Donna L Burns (DELWP) [REDACTED]

**Subject:** OFFICIAL: RE: Notification and Invitation for Discussion on Potential Impact of EPBC Act and FFG Act Listed Threatened Species

Hi Sylvana,

Thank you for the email.

DEECA's interest largely relates to the *Flora and Fauna Guarantee Act 1988* (FFG Act). As a government body, the Department of Transport and Planning (DTP), has an obligation or duty under the FFG Act to consider potential biodiversity impacts when exercising its functions (set out in section 4B). This reflects the Victorian Government's commitment to embed biodiversity consideration in government decision making. The act requires that in performing any of their functions that may reasonably be expected to impact on biodiversity, including a function under any act, ministers and public authorities must give proper consideration to the act's objectives, so far as is consistent with the proper exercising of their functions.

It is understood that DTP is currently reviewing the project design and working on mitigation measures to avoid and reduce impacts. These include tightening instream works and implementing the impact management and mitigation measures, as per the recommendations of the water ecologist and the guidelines of the WoWL issued by Glenelg Hopkins CMA. We also note that you are currently investigating options for a temporary waterway diversion that has the least impact upon the aquatic environment.

The work you are undertaking on mitigation measures demonstrates your understanding of the need to meet your obligations set out in FFG Act.

Given our regulatory role, we are not in a position to give advice on the implications under the EPBC Act. We note that a significant impact assessment under the EPBC significant impact guidelines has been completed which found that the project is likely to have a significant impact on the Yarra Pygmy Perch.

It is recommended that you meet with DCCEEW to determine the appropriate options/pathways and discuss any proposed mitigation measures with them. They may be aware of examples of where temporary water diversion has been successfully implemented. They will also be able to discuss the referral process in detail with you.

However, from my experience, the referral process is relatively straightforward, and you can commence a referral via the EPBC Act Business Portal: <https://epbcbusinessportal.awe.gov.au/>

Happy to discuss this in more detail if required.

Thank you,

Elyse

**Elyse Harrison** (she/her)

**Natural Environment Program Officer**

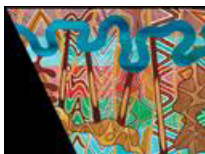
Forest Fire Regions | Barwon South West | Department of Energy, Environment and Climate Action

30-38 Little Malop Street, Geelong, Victoria 3220

[REDACTED]



We acknowledge Victorian Traditional Owners and their Elders past and present as the original custodians of Victoria's land and waters and commit to genuinely partnering with them and Victoria's Aboriginal community to progress their aspirations.



OFFICIAL

**From:** Sylvana Mitchell [REDACTED]

**Sent:** Monday, 20 March 2023 6:01 PM

**To:** Elyse L Harrison (DEECA) [REDACTED]

**Cc:** Donna L Burns (DEECA) [REDACTED]; Rowan Sciberras (VICROADS)

[REDACTED]; Suzy Love (DOT) [REDACTED]

**Subject:** Notification and Invitation for Discussion on Potential Impact of EPBC Act and FFG Act Listed Threatened Species

Hi Elyse,

DTP is currently working on a bridge replacement project on the Henty Hwy in Portland where a new record of an EPBC and FFG listed aquatic species, Yarra Pygmy Perch was found in Wattle Hill Creek. The project engineer, Rowan Sciberras is the project manager and together with the environmental team and guidance from Aaron Jenkins from Aquatica, are working on mitigation measures to avoid and reduce impacts, in the design phase of the project.

Following the email I sent below, I have also spoken with Donna Burns who advised me that once all avenues to tighten instream works have been considered and the significant impact assessment reviewed by the ecologist, DTP should contact DEECA to discuss the EPBC referral process and the conservation and management of the Yarra Pygmy Perch. In the ecologist's report, it finds that the "project will likely require extensive works and excavation in the creek's bed and banks and possible diversion of the stream around works areas for a duration of up to two years, which poses a high risk of impact to the project area and downstream receiving waterways and environments and fauna passage". The ecologist undertook a significant impact assessment under the EPBC guidelines and found that the project will have a significant impact on the Yarra Pygmy Perch, and recommended that we meet with DCCEEW for their position on the requirement of a Referral.

We've looked at similar previous road safety projects where we've implemented mitigation measures to avoid and reduce impacts on EPBC listed aquatic species but was unable to find one where we've been unable to avoid instream works. I've checked records under the EBPC At and been unsuccessful there too. We are investigating options for a temporary waterway diversion (ie. culvert and flume) that has the least impact upon the aquatic environment, habitat, fish passage and Yarra Pygmy Perch. We were wondering whether DEECA has any examples of this that we could implement on our project.

Regards,

**Sylvana Mitchell**

Sustainability and Environment Officer  
Barwon South West  
Department of Transport and Planning

180 Fyans St  
South Geelong VIC 3220

[REDACTED]

[REDACTED]

Wadawurrung Country



Department  
of Transport  
and Planning

**From:** Sylvana Mitchell

**Sent:** Tuesday, 10 January 2023 1:51 PM

**To:** BSW environment (DELWP) [REDACTED]; Bsw Planning (DELWP)

[REDACTED]

**Cc:** Donna L Burns (DELWP) [REDACTED]; Suzy Love (DOT)

[REDACTED]; Naveed Memon [REDACTED]

**Subject:** Notification and Invitation for Discussion on Potential Impact of EPBC Act and FFG Act Listed Threatened Species

Good afternoon,

DoTP wishes to notify DEECA about the potential impact on a listed EPBC Act and FFG Act threatened species associated with bridge upgrade works, and discuss with you the possible referral to the commonwealth department, DCCEEW.

The Department is proposing to undertake bridge replacement work at Wattle Hill Creek, Henty Hwy Portland, to improve road safety and Ports infrastructure connectivity. An aquatic assessment conducted by Aquatica followed by a targeted survey on four state and commonwealth protected species, Little Galaxias, Yarra Pygmy Perch, Hairy Burrowing Crayfish and Portland Burrowing Crayfish (report attached). The targeted survey confirmed that the Yarra Pygmy Perch is present in Wattle Hill Creek and the project area. The report states that as it's a new record for this species and not included in the current literature, it is likely to be considered as an important population. The

targeted survey was also able to confirm that Little Galaxias is unlikely to be present in the creek due to unsuitable habitat. The survey was unable to confirm whether the small number of burrowing crayfish burrows and chimneys observed in the project are one of the two possibly present FFG Act listed species, or a common species.

A significant impact assessment on the Yarra Pygmy Perch was undertaken in accordance with the EPBC guidelines. The assessment found that the project is unlikely to result in a significant impact to Yarra Pygmy Perch provided that the instream works occur during a very narrow timeline between February and April, to avoid the species' breeding season between September and January. However the timeframe for the tendering and delivery of works will fall outside of the recommended ecological timeline, the risk of impact will significantly increase and a referral may be required.

The Department will review the project design in tightening instream works and implement the impact management and mitigation measures, as per the recommendations of the water ecologist and the guidelines of the WoWL issued by Glenelg Hopkins CMA. The significant impact assessment on the Yarra Pygmy Perch needs updating on the bases that works will fall outside of the recommended timeframe but Aquatica are not due to reopen until late January. Meanwhile, we seek your guidance on the potential referral process, conservation and management of the Yarra Pygmy Perch, and any other considerations.

I would like to arrange an online meeting with your key representatives at a mutually agreeable time if you could please let me know.

Kind regards,

**Sylvana Mitchell**

Sustainability and Environment Officer  
Barwon South West  
Department of Transport and Planning

180 Fyans St  
South Geelong VIC 3220

[REDACTED]  
[REDACTED]

Wadawurrung Country



Department  
of Transport  
and Planning

DISCLAIMER