



APPROVAL

Operation of Peel River Drought Protection Works, Tamworth, NSW (EPBC 2019/8590)

This decision is made under sections 130(1) and 133(1) of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*. Note that section 134(1A) of the **EPBC Act** applies to this approval, which provides in general terms that if the approval holder authorises another person to undertake any part of the action, the approval holder must take all reasonable steps to ensure that the other person is informed of any conditions attached to this approval, and that the other person complies with any such condition.

Details

Person to whom the approval is granted (approval holder)	WATER NSW
ACN or ABN of approval holder	ABN: 21 147 934 787
Action	To operate a temporary drought mitigation pipeline to supply water directly from Chaffey Dam to the Tamworth water supply network [See EPBC Act referral 2019/8590].

Approval decision

My decision on whether or not to approve the taking of the action for the purposes of the controlling provision for the action is as follows.

Controlling Provisions

Listed Threatened Species and Communities	
Section 18	Approve
Section 18A	Approve

Period for which the approval has effect

This approval has effect until 01 May 2030

Decision-maker

Name and position

The Hon Sussan Ley MP
Minister for the Environment

Signature

Date of decision

12 June 20

Conditions of approval

This approval is subject to the conditions under the EPBC Act as set out in ANNEXURE A.

ANNEXURE A – CONDITIONS OF APPROVAL

Part A – Conditions specific to the action

1. The approval holder must implement the **Drought Operations – Delivery of Peel Environmental Water Plan** for the life of the approval. In addition the approval holder must comply with **NSW conditions of authorisation** where those conditions relate to environmental water releases and operation of the **technical advisory group**.
2. The approval holder must notify the **technical advisory group** at least five **business days** prior to commencing the next **phase of operation**.
3. The approval holder must invite the **Commonwealth Environmental Water Holder** to nominate a representative to become a member of the **technical advisory group**.
4. To compensate for impacts to **Murray Cod** and **Silver Perch**, the approval holder must, within 20 **business days** of **commencement of the action**, submit a Biodiversity Offset Management Plan (BOMP) for approval by the **Minister**. If the **Minister** approves the BOMP, then the BOMP must be implemented.
5. The approval holder must make all reasonable efforts to ensure the BOMP (in full) meets the following requirements and promptly address any feedback from the **Department** on unapproved versions of the BOMP so that the BOMP is suitable for the **Minister** to approve within three months of the **commencement of the action**.
6. The BOMP must:
 - a. be prepared by a **suitably qualified ecologist**, and be consistent with the **Department’s Environmental Management Plan Guidelines** and the **EPBC Act Environmental Offset Policy**;
 - b. propose an offset package, including direct habitat restoration works and conservation measures relevant to **Murray Cod** and **Silver Perch**;
 - c. include, but not be limited to:
 - i. specific objectives to demonstrate improvements in habitat quality and conservation outcomes for **Murray Cod** and **Silver Perch** over the life of the approval;
 - ii. specific management actions, and timeframes for implementation, to be carried out to meet the specific objectives to improve habitat quality and conservation outcomes for **Murray Cod** and **Silver Perch**;
 - iii. key performance indicators to demonstrate the improvements in habitat quality and conservation outcomes for **Murray Cod** and **Silver Perch**;
 - iv. the nature, timing and frequency of monitoring to determine the success of management actions against key performance indicators;
 - v. indicative corrective actions that will be implemented in the event monitoring activities indicate key performance indicators are not or are unlikely to be achieved;
 - vi. the roles and responsibilities for implementing the management actions;
 - vii. evidence of consistency with relevant conservation advices, recovery plans and/or threat abatement plans;
 - viii. commitments to maintain or improve the extent and quality of habitat and populations of other **EPBC Act** listed threatened species and ecological communities in the offset area; and
 - ix. a timeline and legal mechanism for implementing the offset(s).

Part B – Standard administrative conditions

Notification of date of commencement of the action

7. The approval holder must notify the **Department** in writing of the date of **commencement of the action** within 10 **business days** after the date of **commencement of the action**. The approval holder must notify the **Department** in writing of the date of **commencement** of each **phase of operation** within 10 **business days** after the date of **commencement** of each **phase of operation**.

Compliance records

8. The approval holder must maintain accurate and complete **compliance records**.
9. If the **Department** makes a request for **compliance records** in writing, the approval holder must provide electronic copies of **compliance records** to the **Department** within the timeframe specified in the request.

Note: **Compliance records** may be subject to audit by the **Department** or an independent auditor in accordance with section 458 of the **EPBC Act**, and or used to verify compliance with the conditions. Summaries of the result of an audit may be published on the **Department's website** or through the general media.

Preparation and publication of plans

10. The approval holder must:
 - a. submit **plans** electronically to the **Department**;
 - b. publish each **plan** on the **website** within 20 **business days** of the date of this approval, or the date that the **plan** is approved by the **Minister** or of the date a revised action management **plan** is submitted to the **Minister** or the **Department**, unless otherwise agreed to in writing by the **Minister**;
 - c. exclude or redact **sensitive ecological data** from **plans** published on the **website** or provided to a member of the public; and
 - d. keep **plans** published on the **website** until the end date of this approval.
11. The approval holder must ensure that any **monitoring data** (including **sensitive ecological data**), surveys, maps, and other spatial and metadata required under a **plan**, is prepared in accordance with the **Department's Guidelines for biological survey and mapped data (2018)** and submitted electronically to the **Department** in accordance with the requirements of the **plan**.

Annual compliance reporting

12. The approval holder must prepare a **compliance report** for each 12 month period following the date of **commencement of the action**, or otherwise in accordance with an annual date that has been agreed to in writing by the **Minister**. The approval holder must:
 - a. publish each **compliance report** on the **website** within 60 **business days** following the relevant 12 month period;
 - b. notify the **Department** by email that a **compliance report** has been published on the **website** and provide the weblink for the **compliance report** within five **business days** of the date of publication;
 - c. keep all **compliance reports** publicly available on the **website** until this approval expires;
 - d. exclude or redact **sensitive ecological data** from **compliance reports** published on the **website**; and
 - e. where any **sensitive ecological data** has been excluded from the version published, submit the full **compliance report** to the **Department** within five **business days** of publication.

Note: The first **compliance report** may report a period less than 12 months so that it and subsequent **compliance reports** align with the similar requirement under state approval. **Compliance reports** may be published on the **Department's website**.

Reporting non-compliance

13. The approval holder must notify the **Department** in writing of any: **incident**; non-compliance with the conditions; or non-compliance with the commitments made in **plans**. The notification must be given as soon as practicable, and no later than two **business days** after becoming aware of the **incident** or non-compliance. The notification must specify:
 - a. any condition which is or may be in breach;
 - b. a short description of the **incident** and/or non-compliance; and
 - c. the location (including co-ordinates), date, and time of the **incident** and/or non-compliance. In the event the exact information cannot be provided, provide the best information available.
14. The approval holder must provide to the **Department** the details of any **incident** or non-compliance with the conditions or commitments made in **plans** as soon as practicable and no later than 10 **business days** after becoming aware of the **incident** or non-compliance, specifying:
 - a. any corrective action or investigation which the approval holder has already taken or intends to take in the immediate future;
 - b. the potential impacts of the **incident** or non-compliance; and
 - c. the method and timing of any remedial action that will be undertaken by the approval holder.

Independent audit

15. The approval holder must ensure that **independent audits** of compliance with the conditions are conducted as requested in writing by the **Minister**.
16. For each **independent audit**, the approval holder must:
 - a. provide the name and qualifications of the independent auditor and the draft audit criteria to the **Department**;
 - b. only commence the **independent audit** once the audit criteria have been approved in writing by the **Department**; and
 - c. submit an audit report to the **Department** within the timeframe specified in the approved audit criteria.
17. The approval holder must publish the audit report on the **website** within 10 **business days** of receiving the **Department's** approval of the audit report and keep the audit report published on the **website** until the end date of this approval.

Revision of action management plans

18. The approval holder may, at any time, apply to the **Minister** for a variation to an action management **plan** approved by the **Minister** under condition 4, or as subsequently revised in accordance with these conditions, by submitting an application in accordance with the requirements of section 143A of the **EPBC Act**. If the **Minister** approves a revised action management **plan** (RAMP) then, from the date specified, the approval holder must implement the RAMP in place of the previous action management **plan**.

Completion of the action

19. Within 30 days after the **completion of the action**, the approval holder must notify the **Department** in writing and provide **completion data**.

Part C - Definitions

In these conditions, except where contrary intention is expressed, the following definitions are used:

Business day means a day that is not a Saturday, a Sunday or a public holiday in the state or territory of the action.

Commencement / Commencement of the action means the first instance of any specified activity associated with the action.

Commonwealth Environmental Water Holder means as established under the *Water Act 2007* (Cth.) to manage water acquired by the Australian Government as part of a suite of national water reforms, including the Murray-Darling Basin Plan.

Completion data means an environmental report and spatial data clearly detailing how the conditions of this approval have been met. The **Department's** preferred spatial data format is **shapefile**.

Completion of the action means all specified activities associated with the action have permanently ceased.

Compliance records means all documentation or other material in whatever form required to demonstrate compliance with the conditions of approval in the approval holder's possession or that are within the approval holder's power to obtain lawfully.

Compliance report(s) means written reports:

- i. providing accurate and complete details of compliance, **incidents**, and non-compliance with the conditions and the **plans**;
- ii. consistent with the **Department's Annual Compliance Report Guidelines (2014)**;
- iii. include a **shapefile** of any clearance of any **protected matters**, or their habitat, undertaken within the relevant 12 month period; and
- iv. annexing a schedule of all **plans** prepared and in existence in relation to the conditions during the relevant 12 month period.

Department means the Australian Government agency responsible for administering the **EPBC Act**.

Department's Environmental Management Plan Guidelines means the *Environmental Management Plan Guidelines, Commonwealth of Australia, 2014*.

Drought Operations – Delivery of Peel Environmental Water Plan means the environmental management plan submitted to the **Department** on 20 April 2020 as Appendix C to the finalised preliminary documentation.

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

EPBC Act Environmental Offset Policy means *EPBC Act Environmental Offsets Policy, Commonwealth of Australia, 2012*.

Incident means any event which has the potential to, or does, impact on one or more **protected matter(s)**.

Independent audit: means an audit conducted by an independent and **suitably qualified person** as detailed in the *Environment Protection and Biodiversity Conservation Act 1999 Independent Audit and Audit Report Guidelines (2019)*.

Monitoring data means the data required to be recorded under the conditions of this approval.

Minister means the Australian Government Minister administering the **EPBC Act** including any delegate thereof.

Murray Cod means the Murray Cod (*Maccullochella peelii*), listed as a vulnerable species under the EPBC Act.

NSW conditions of authorisation means the conditions set out in the NSW authorisation under the NSW *Water Supply (Critical Needs) Act 2019*.

Phase of operation means each discrete phase of the action as specified in Table 1 in the **Drought Operations – Delivery of Peel Environmental Water Plan**.

Plan(s) means any of the documents required to be prepared, approved by the **Minister**, and/or implemented by the approval holder and published on the **website** in accordance with these conditions (includes action management plans and/or strategies).

Protected matter means a matter protected under a controlling provision in Part 3 of the EPBC Act for which this approval has effect.

Sensitive ecological data means data as defined in the Australian Government Department of the Environment (2016) *Sensitive Ecological Data – Access and Management Policy V1.0*.

Shapefile means location and attribute information of the action provided in an Esri shapefile format. Shapefiles must contain '.shp', '.shx', '.dbf' files and a '.prj' file that specifies the projection/geographic coordinate system used. Shapefiles must also include an '.xml' metadata file that describes the shapefile for discovery and identification purposes.

Silver Perch means the Silver Perch (*Bidyanus bidyanus*), listed as a critically endangered species under the EPBC Act.

Suitably qualified ecologist means a person who has professional qualifications and at least three (3) years of work experience designing and implementing surveys and management plans for **Murray Cod** and **Silver Perch**, and can give an authoritative assessment and advice on the presence and environmental requirements of **Murray Cod** and **Silver Perch** applying relevant protocols, standards, methods and literature.

Suitably qualified person means a person who has professional qualifications, training, skills and/or experience related to the nominated subject matter and can give authoritative independent assessment, advice and analysis on performance relative to the subject matter using the relevant protocols, standards, methods and/or literature.

Technical advisory group means the Technical Advisory Group established as specified in the **Drought Operations – Delivery of Peel Environmental Water Plan** and is the same as the Peel Environmental Water Technical Advisory Group established under the **NSW conditions of authorisation**.

Website means a set of related web pages located under a single domain name attributed to the approval holder and available to the public.