

1 OCTOBER 2020

Mordialloc Freeway Project, Victoria

Compliance Report 01

(28 October 2019 to 28 October 2020)

EPBC Approval No. 2017-8091

Prepared for

Audit and Assurance Section

Compliance and Enforcement Branch

Environment Assessment and Compliance Division

Department of Agriculture, Water and Environment

GPO Box 787, CANBERRA ACT 2601

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TERMS, ABBREVIATIONS AND DEFINITIONS

The terms, abbreviations and definitions that have been used in this document are listed in the below table.

Table 1: List of Terms, Abbreviations and Definitions

Terms / Abbreviation	Definition
DELWP	Department of Environment, Land, Water and Planning
DAWE	Department of Agriculture, Water and the Environment
EES	Environment Effects Statement
EMF	Environmental Management Framework
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPR	Environmental Performance Requirement
Ha	Hectares
IAC	Inquiry and Advisory Committee
IREA	Independent Reviewer and Environmental Auditor
MNES	Matter of National Environmental Significance
MRPV	Major Road Projects Victoria
MTIA	Major Transport Infrastructure Authority
NGZ	No-Go-Zone
The Department	Department of Agriculture, Water and the Environment

1 Introduction and Background

The Mordialloc Bypass Project (the project) is a nine-kilometre freeway linking Dingley Bypass in the north and the Mornington Peninsula Freeway in the south. The project is a four-lane freeway passing through the suburbs of Clayton South, Dingley Village, Braeside, Waterways, Aspendale Gardens, Chelsea Heights and Bangholme (**Appendix A**).

A decision issued on 27 August 2019 determined that the project was a 'controlled action' requiring assessment and approval. The relevant controlling provisions under the EPBC Act are outlined in the notice of approval (**Appendix B**).

Condition 7 of the *Part B – Standard Administrative Conditions* requires an annual compliance report be published on Major Road Project Victoria's website.

This is the first compliance report to be prepared for the Mordialloc Freeway and relates to the period 28 October 2020 to 28 October or year one of the action.

A Design and Construction (D&C) Contract was awarded to McConnell Dowell Constructors (Aust) Pty Ltd & Decmil Southern Pty Ltd on the 1st October 2019. Construction commenced on 28 October 2019. At the time of publishing this report the project is approximately 40% complete and construction is expected to be complete late 2021.

Detailed information on the project, Environmental Management Framework, Environmental Performance Requirements, and Independent Environmental Reviewer and Auditor audit reports and can be found at the project website <https://roadprojects.vic.gov.au/projects/mordialloc-freeway>.

2 Performance and Compliance (EPBC 2017/8091)

Table 2: EPBC Act Approval Notice 2017/8091 compliance information

#	Condition	Status	Comments / Evidence
Part A: Conditions Specific to the Action			
1	To minimise the impacts of the action on the Edithvale-Seaford Wetlands, Fairy Tern, Eastern Curlew, Curlew Sandpiper, Australasian Bittern, Australian Painted Snipe, Sharp-tailed Sandpiper, Latham's Snipe, Natural Damp Grassland of the Victorian Coastal Plain and Seasonal Herbaceous Wetland (freshwater) of the Temperate Lowland Plain, the approval holder must comply with the Mordialloc Bypass (Freeway) Incorporated Document July 2019, incorporated into the Kingston and Greater Dandenong planning Schemes, as in force or existing from time to time.	Compliant	<ul style="list-style-type: none"> Incorporated document gazetted on 26 August 2019. Environmental Management Framework (EMF), including Environmental Performance Requirements (EPR) approved by the Minister for Planning on 2 September 2019. Native vegetation offsets secured and approved by the Department of Environment, Land and Water Protection on 16 September 2019. EPRs included as condition of D&C Contract. Construction environmental management plans and engineering design elements signed off by Independent Reviewer and Environmental Auditor (IREA). Implementation of construction environmental management plans and design elements subject to quarterly review by IREA. As of 5 October three audits completed and no non-conformances or incidents have been recorded with respect to the Part A specific conditions.
2	The approval holder must not impact more than: <ul style="list-style-type: none"> - 0.04 ha of Natural Damp Grassland of the Victorian Coastal Plains. - 0.24 ha of Seasonal Herbaceous Wetland (freshwater) of the Temperate Lowland Plains. 	Compliant	<ul style="list-style-type: none"> Construction footprint (for Waterways Bridge) established with No-Go-Zones surveyed. Clearing has not exceeded limits of condition, confirmed by survey and reviewed by IREA during second audit. Contract includes incentive for Contractor to further avoid clearing of vegetation that has been approved to be cleared and offset for. Extent of clearing is subject of an interim native vegetation reconciliation to establish the potential extent of 'credit' available to the Contractor.
Part B: Standard Administrative Conditions			
3	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.	Compliant	Notification was sent to the Department on 30 October 2019 advising that the action commenced on 28 October 2019.
4	The approval holder must maintain accurate and complete compliance records.	Compliant	Ongoing; records of implementation are maintained according to the accredited quality management system.

#	Condition	Status	Comments / Evidence
5	If the Department makes a request in writing, the approval holder must provide electronic copies of compliance records to the Department within the timeframe specified in the request.	NA	No request made.
6	The approval holder must ensure that any monitoring data (including sensitive ecological data), surveys, maps, and other spatial and metadata required under conditions of this approval, is prepared in accordance with the Department's Guidelines for biological survey and mapped data (2018).	Compliant	
7	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: <ul style="list-style-type: none"> 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 5 business days of publication. 	Compliant	This report.
8	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: <ul style="list-style-type: none"> a. any condition which is or may be in breach; and b. a short description of the incident and/or non-compliance. 	NA	With respect to Part A Condition 1 and 2 no incidents or non-conformances have been recorded with respect to the project approval controlling provisions (i.e. Matters of National Environmental Significance).
9	The approval holder must provide to the Department the details of any incident or noncompliance with the conditions or	NA	With respect to Part A Condition 1 and 2 no incidents or non-conformances have been recorded with respect to the project

#	Condition	Status	Comments / Evidence
	<p>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:</p> <ul style="list-style-type: none"> 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. 		approval controlling provisions (i.e. Matters of National Environmental Significance).
10	The approval holder must ensure that independent audits of compliance with the conditions are conducted as requested in writing by the Minister.	NA	No request made.
11	<p>For each independent audit, the approval holder must:</p> <ul style="list-style-type: none"> 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. 	NA	No request made.
12	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.	NA	No request made.
13	Within 30 days after the completion of the action, the approval holder must notify the Department in writing and provide completion data.	NA	Construction of project is not complete.

Appendix A – Project Map

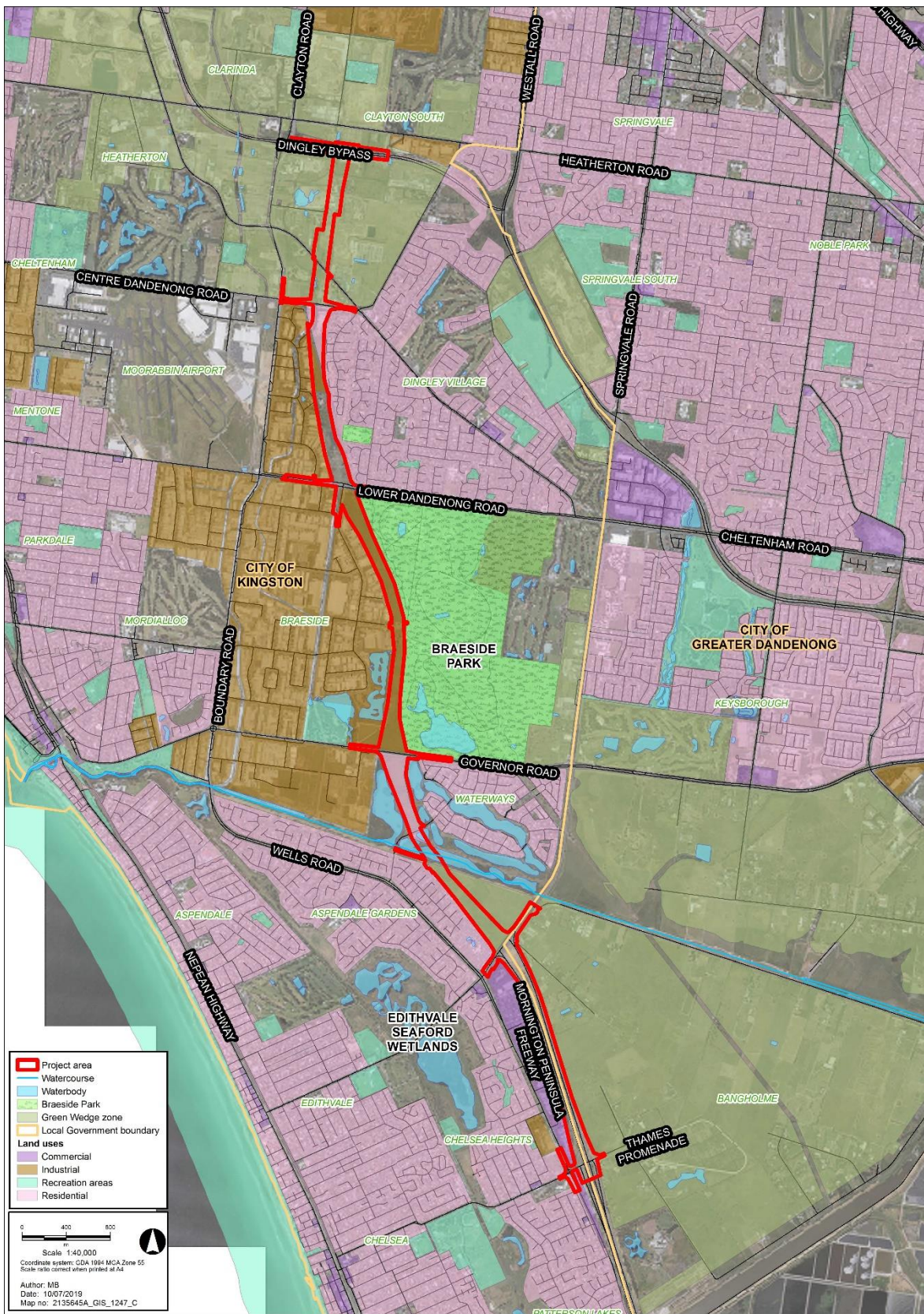


Figure 1: Project overview

Appendix B – Approval Notice



Australian Government
Department of the Environment and Energy

APPROVAL

Mordialloc Bypass Project, Victoria (EPBC 2017/8091)

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)	DEPARTMENT OF TRANSPORT
ACN or ABN of approval holder	ABN 69 981 208 782
Action	To construct and operate the Mordialloc Freeway, a four-lane freeway within Melbourne's south-eastern suburbs, including upgrades to the Mornington Peninsular Freeway and north-facing ramps at Thames Promenade [see EPBC Act referral 2017/8091 and variation request dated 29 May 2018]

Proposed Approval decision

My decisions on whether or not to approve the taking of the action for the purposes of each controlling provision for the action are as follows.

Controlling Provisions

Wetlands of international importance	
Section 16	Approve
Section 17B	Approve

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

Listed migratory species	
Section 20	Approve
Section 20A	Approve

Period for which the approval has effect


This approval has effect until 31 December 2040

Decision-maker

Name and position

Andrew McNee
Assistant Secretary of Assessments and Governance Branch
Department of the Environment and Energy

Signature



Date of decision

27 August 2019

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. To minimise the impacts of the action on the **Edithvale-Seafood Wetlands, Fairy Tern, Eastern Curlew, Curlew Sandpiper, Australasian Bittern, Australian Painted Snipe, Sharp-tailed Sandpiper, Latham’s Snipe, Natural Damp Grassland of the Victorian Coastal Plain and Seasonal Herbaceous Wetland (freshwater) of the Temperate Lowland Plain**, the approval holder must comply with the *Mordialloc Bypass (Freeway) Incorporated Document July 2019*, incorporated into the Kingston and Greater Dandenong Planning Schemes, as in force or existing from time to time.
2. The approval holder must not **impact** more than:
 - 0.04 ha of **Natural Damp Grassland of the Victorian Coastal Plains**.
 - 0.24 ha of **Seasonal Herbaceous Wetland (freshwater) of the Temperate Lowland Plains**.

Part B – Standard administrative conditions

Notification of date of commencement of the action

3. 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**.

Compliance records

4. The approval holder must maintain accurate and complete **compliance records**.
5. If the **Department** makes a request 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.

Monitoring data

6. The approval holder must ensure that any **monitoring data** (including **sensitive ecological data**), surveys, maps, and other spatial and metadata required under conditions of this approval, is prepared in accordance with the **Department’s Guidelines for biological survey and mapped data** (2018).

Annual compliance reporting

7. 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 **5 business days** of publication.

Note: **Compliance reports** may be published on the **Department’s** website.

Reporting non-compliance

8. 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; and
 - b. a short description of the **incident** and/or non-compliance.
9. 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

10. The approval holder must ensure that **independent audits** of compliance with the conditions are conducted as requested in writing by the **Minister**.
11. 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.
12. 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.

Completion of the action

13. 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:

Australasian Bittern means the **EPBC Act** listed threatened species *Botaurus poiciloptilus*.

Australian Painted Snipe means the **EPBC Act** listed threatened species *Rostratula australis*.

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 of the action means the first instance of any specified activity associated with the action including clearance of vegetation and construction of any infrastructure. Commencement does not include minor physical disturbance necessary to:

- i. undertake pre-clearance surveys or monitoring programs;
- ii. install signage and /or temporary fencing to prevent unapproved use of the project area;

- iii. protect environmental and property assets from fire, weeds and pests, including construction of fencing, and maintenance of existing surface access tracks;
- iv. install temporary site facilities for persons undertaking pre-commencement activities so long as these are located where they have no impact on the **protected matters**; and

Completion data means an environmental report and spatial data information 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 reports 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.

Curlew Sandpiper means the **EPBC Act** listed threatened and migratory species *Calidris ferruginea*.

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

Eastern Curlew means the **EPBC Act** listed threatened and migratory species *Numenius madagascariensis*.

Edithvale-Seaford Wetlands means the declared Ramsar wetland of the same name.

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

EPBC Regulations means the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth).

Fairy Tern means the **EPBC Act** listed threatened species *Sternula nereis nereis*.

Impact means to cause any measurable direct or indirect disturbance/change as a result of any activities associated with the approved action.

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 (2015)*.

Latham's Snipe means the **EPBC Act** listed migratory species *Gallinago hardwickii*.

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.

Natural Damp Grassland of the Victorian Coastal Plains means the **EPBC Act** listed threatened ecological community of the same name.

Plan(s) means any of the documents required to be prepared 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.

Seasonal Herbaceous Wetland (freshwater) of the Temperate Lowland Plains means the **EPBC Act** listed threatened ecological community of the same name.

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.

Sharp-tailed Sandpiper means the **EPBC Act** listed migratory species *Calidris acuminata*.

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.

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