

Devils Pulpit Pacific Highway Upgrade

Compliance Report

Transport for NSW | March 2022 to February 2023



1 Introduction

1.1 The Project

The Devils Pulpit Upgrade is part of the Pacific Highway Upgrade Program, a joint commitment by the Australian and NSW governments to improve the standard of the Pacific Highway between Hexham and the Queensland border. The Upgrade is 7.36 kilometres in length, located between 65.64 and 73 kilometres north of Grafton.

1.2 Project approval

The Project was approved under Part 9 of the *Environment Protection and Biodiversity Conservation Act 1999* on 14 February 2011.

1.3 Purpose of this report

This is the eleventh report reporting on compliance with the Department of Climate Change, Energy, the Environment and Water conditions of approval for the project (EPBC 2010/5586). As required by condition 10, this report will report on compliance against each condition in the conditions of approval, including implementation of any management plans that have been approved by the Minister.

Condition 10. Within three months of every 12 month anniversary after the substantial commencement of the action, the person taking the action must submit to the department an annual report addressing compliance with each of the conditions of this approval, including implementation of any management plans that have been approved by the Minister. Annual reports must be provided until the Minister is satisfied that the person taking the action has complied with all conditions of this approval.

1.4 Activities and progress during the reporting period

Offset Plan

The revised Offset Plan was submitted to the Department of Environment and Energy for approval on 15 December 2017. Transport for NSW (TfNSW) received comments on the plan from the Department on 5 October 2018 and re-submitted in November 2019. Further comments were received in February 2020. The Plan was re-submitted for approval on 27 May 2020 and approved on 14 August 2020.

Vegetation rehabilitation

The landscape maintenance contract was completed at the end of June 2016. TfNSW Regional Maintenance Delivery now maintains the vegetation under the routine maintenance contract for TfNSW roads.

Vegetation across the study area was significantly burnt in the late 2019 bush fires. Some areas (eg. Impact Site 4 and the swamp forest west of the Tabbimoble bridges) experienced particularly high intensity canopy fires. The vegetation connectivity corridor was also burnt, however recruitment and growth of native species has been recorded across the corridor. The bushfire impacted (reduced) native species diversity and cover in some areas, and increased weed cover mainly in the ground stratum. Exotic groundcovers (including weeds) are present and reducing native species recruitment in the southern half of the corridor. As recommended in the Year 6 EMP, TfNSW commenced bush regeneration and tree plantings works in October 2022 to assist the regeneration process where the density of understorey/ canopy tree recruits is low. Regeneration works will continue until October 2024.

Ecological Monitoring Program

In June 2017, monitoring under the EMP commenced. The EMP requires monitoring in Year 3 (2017/2018), Year 4 (2018/2019) and Year 6 (2020/2021) following completion of construction. The final Year 6 report was attached to the 2021-2022 Compliance Report.

Road kill and monitoring of fauna fence for maintenance is undertaken regularly as part of TfNSW regular asset maintenance activities.

Fauna Connectivity


Transport for NSW have continued to investigate fauna connectivity structure repairs to improve dry passage following significant flood events in 2017. These works have been added to the TfNSW Road Maintenance works schedule.


1.5 Non-compliance

There were no non-compliances during the reporting period.

Compliance with approvals

Condition	Status	Comment
<p>Condition 1. <i>The person taking the action must carry out the action in accordance with the conditions of this approval and as described in the referral documentation received 23 July 2010 and the variation information submitted 8 November 2010. Where the referral or variation information and these conditions are inconsistent, these conditions shall prevail to the extent of the inconsistency.</i></p>	Compliant	Noted.
<p>Condition 2 <i>The person proposing to take the action must not clear more than 58 hectares of vegetation within the footprint of the action.</i></p>	Compliant	All clearing and grubbing for the project was completed. A total of 46.47 hectares was cleared.
<p>Condition 3 <i>To minimise impacts on listed threatened species and migratory species, if the person taking the action intends to undertake preparatory works as part of the Pacific Highway Upgrade, a plan must be submitted to the Minister for approval outlining all preparatory works to be undertaken. This plan must be approved by the Minister prior to any preparatory works being undertaken. The plan must include, but not be limited to:</i></p> <p><i>a) the location of all preparatory works to be undertaken;</i></p>	Compliant	The Preparatory Works Plan was approved on 13 December 2011.

<p>b) the area (in hectares) to be impacted;</p> <p>c) an assessment of the quality vegetation to be impacted by the preparatory works; and</p> <p>d) an assessment of the likely impacts of the preparatory works on habitat for threatened species and migratory species.</p>		
<p>FLORA AND FAUNA MANAGEMENT PLAN</p> <p>Condition 4 <i>To mitigate impacts on listed threatened species and migratory species, the person taking the action must submit a detailed Flora and Fauna Management Plan to the Minister for approval prior to substantial commencement of the action. This plan must be approved by the Minister prior to substantial commencement of the action. The approved plan must be implemented. The Flora and Fauna Management Plan must include, but not be limited to, the following requirements:</i></p> <p>a) <i>Measures to be implemented to avoid, suppress and control the spread of weeds, plant pathogens and invasive species and to measure other indirect impacts that may result from the proposal during construction;</i></p> <p>b) <i>Measures to manage aquatic habitat on-site to at least maintain habitat values for the Oxleyan Pygmy Perch;</i></p>	<p>Compliant</p>	<p>The Flora and Fauna Management Plan was approved 9 February 2012.</p> <p>As recommended in the Year 6 EMP, TfNSW commenced bush regeneration and tree plantings works in October 2022 to assist the regeneration process where the density of understorey/ canopy tree recruits is low. Regeneration works will continue until October 2024.</p> 

<p>c) <i>An Ecological Restoration Plan detailing the rehabilitation of vegetation to occur within the footprint of the action;</i></p> <p>d) <i>Engagement of a suitably qualified expert to undertake pre-clearing fauna searches within the footprint of the action, including searches of nests, hollow bearing trees, logs, existing culverts and existing bridges to ensure that the area is free of Spotted-tail Quoll, Grey-headed Flying-fox, Regent Honeyeater, Swift Parrot and any other EPBC Act listed species.</i></p> <p>e) <i>Measures to relocate an/or ensure the appropriate care of individuals of EPBC Act listed fauna species that are located during searches referred to in Condition 4(d), in accordance with the RTA's Fauna Rescue Framework;</i></p> <p>f) <i>The Flora and Fauna Management Plan must include clear key milestones, monitoring, performance indicators, corrective actions and timeframes for the completion of all actions outlined in the plan.</i></p>		
<p>SPOTTED-TAIL QUOLL MANAGEMENT PLAN</p> <p>Condition 5. <i>The person taking the action must submit a management plan for the Spotted-tail Quoll to the Minister for approval prior to the substantial commencement of the action. This plan must be approved by</i></p>	<p>Compliant</p>	<p>The Spotted-tail Quoll Management Plan was approved 9 February 2012.</p> <p>As per Section 1.4, the final Year of the Ecological Monitoring Program was completed during the 2021 – 2022 reporting period.</p>

<p><i>the Minister prior to substantial commencement of the action. The approved plan must be implemented. The management plan must include, but not be limited to, the following requirements:</i></p> <ul style="list-style-type: none"> <i>a. The construction, ongoing monitoring, maintenance and repair of permanent fauna crossings, fauna exclusion fencing and associated infrastructure that will ensure safe and effective movement of the Spotted-tail Quoll across the Pacific Highway Upgrade;</i> <i>b. An independent, suitably qualified expert is to verify that the design, location and number of fauna crossings are appropriate;</i> <i>c. The construction, ongoing monitoring, maintenance and repair of permanent fauna exclusion fencing that will restrict Spotted-tail Quoll from crossing the Pacific Highway Upgrade and facilitate the use of fauna crossings;</i> <i>d. Conduct research that:</i> <ul style="list-style-type: none"> <i>i. Determines the effectiveness of various designs of fauna crossing structures to facilitate the effective movement of the Spotted-tailed Quoll across various types of linear infrastructure and avoid injury or death due to crossing;</i> 		
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<ul style="list-style-type: none"> ii. <i>determines the effectiveness of the fauna crossings constructed for the Pacific Highway Upgrade to maintain the viability of the Spotted-tail Quoll population affected by the Pacific Highway Upgrade;</i> iii. <i>determines the effectiveness of the existing culverts, to be repaired and maintained consistent with Conditions 5(a) to 5(c), to maintain the viability of the Spotted-tail Quoll population affected by the highway;</i> iv. <i>identifies potential and actual threats to the viability of Spotted-tail Quoll populations affected by the Pacific Highway Upgrade;</i> v. <i>Have the research reviewed by a suitably qualified expert. Documentation of the review must be submitted to the Minister with documentation of research outcomes;</i> vi. <i>Implement recommendations made as a result of the research.</i> e. <i>The plan must include clear key milestones, performance indicators, corrective actions and timeframes for the completion of all commitments and actions outlined in the plan.</i> 		
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<p><i>f. If it is determined the fauna crossings and culverts monitored, consistent with condition 5(a), are not effective to maintain the viability of the Spotted-tailed Quoll population affected by the Pacific Highway Upgrade, the person taking the action must submit an amended Management Plan for the Spotted-tailed Quoll to the Minister for approval. The amended strategy must include appropriate measures to ameliorate impacts on the affected Spotted-tailed Quoll population;</i></p> <p><i>g. All actions must be developed in consultation with a suitably qualified expert.</i></p> <p><i>h. The plan must integrate with and build on management plans for other nearby highway upgrade projects for the Spotted-tail Quoll.</i></p>		
<p>SOIL AND WATER MANAGEMENT PLAN</p> <p><i>Condition 6. To mitigate impacts on listed threatened species, the person taking the action must submit a detailed Soil and Water Management Plan, to be developed in consultation with I&I NSW (Fisheries), to the Minister for approval prior to substantial commencement of the action. This plan must be approved by the Minister prior to substantial commencement of the action. The approved plan must be implemented.</i></p>	Compliant	The Soil and Water Management Plan was approved 9 February 2012 and implemented.

The Soil and Water Management Plan must include, but not be limited to:

- a) *Details of the water monitoring program to be implemented before, during and after construction to determine baseline water conditions, water quality objectives for the site as they relate to the Oxleyan Pygmy Perch, as well as the performance and effectiveness of mitigation measures to be used to mitigate water quality and hydrologic impacts. The program must include but not be limited to:*
 - i. *A minimum of two (2) baseline data sites in Tabbimoble Floodway No. 2 and a minimum of two(2) in Tabbimoble Floodway No. 3, determined in consultation with I&I NSW (Fisheries);*
 - ii. *Baseline water conditions must include data describing water quality, pH levels and hydrological parameters such as stream flows and velocity;*
 - iii. *Water conditions must be monitored at monthly intervals before, during and after construction for a length of time to be determined in consultation with I&I NSW (Fisheries);*
 - iv. *The identification of thresholds that will trigger corrective actions and the actions that will be implemented within 24 hours if a threshold is reached or exceeded.*

<p><i>If such an event occurs, this is to be reported to the department within 2 weeks of the event occurring;</i></p> <p><i>v. Monitoring of the effectiveness of mitigation measures, which should include samples during and post rainfall events. Contaminant concentrations and flow volumes entering and discharging from treatment systems on-site must be quantified and contaminant loads calculated;</i></p> <p><i>vi. Reporting arrangements to the department, including procedures and time frames for reporting any non compliance; and</i></p> <p><i>vii. Results of the Monitoring Program (including data and its interpretation) is to be made publicly available on the website of the person taking the action including data and its interpretation within three months of every 12 month anniversary of the substantial commencement of the action.</i></p> <p><i>b) Details and location of all permanent erosion and sediment control, as well as pollution control measures, to be implemented during construction and operation of the Pacific Highway Upgrade. All erosion and sediment control measures must be best practice based on</i></p>		
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<p><i>industry guidelines and must be certified, in consultation with I&I NSW (Fisheries) and approved by the department. These measures must include, but not be limited to:</i></p> <ul style="list-style-type: none"><i>i. All waterway crossings within the footprint of the Pacific Highway Upgrade to be in accordance with the fish classification for each waterway based on state guidelines, unless otherwise agreed to by I&I NSW (Fisheries) and the department.</i><i>ii. Any in-stream works in Class 1 waterway (as defined in the state guidelines) to be conducted outside the spawning season of the Oxleyan Pygmy Perch (October to December inclusive);</i><i>iii. In-stream works in Class 1 waterways (as defined in the state guidelines) must not be undertaken on a day when a rainfall event is forecast. If a rainfall event occurs, in-stream work must only recommence once dry weather is forecast and Tabbimoble No. 2 and No. 3 have returned to a non-flowing state;</i><i>iv. No stockpiles to occur in the floodplain zone between Tabbimoble Floodway No. 2 and Tabbimoble Floodway No. 3;</i><i>v. Chemicals and fuels to be stored and banded so that the floor of the bund is above the 1 in 20 year</i>		
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<p><i>flood event and the top of the bund above the 1 in 100 year flood event. No chemicals and fuels to be stored in the floodplain zone between Tabbimoble Floodway No. 2 and Tabbimoble Floodway No. 3;</i></p> <p><i>vi. The area within 50 meters of Tabbimoble No. 2 and Tabbimoble Floodway No. 3 to be fully stabilised before the commencement of the next spawning season of the Oxleyan Pygmy Perch;</i></p> <p><i>vii. Measures to ensure that any waters treated on site will be suitable for the Oxleyan Pygmy Perch (based on best available knowledge on the Oxleyan Pygmy Perch and results of monitoring outlined in Condition 6(a)) prior to release from water treatment areas implemented as part of the Pacific Highway Upgrade;</i></p> <p><i>viii. Measures to be implemented for events such as rainfall events and fuel and chemical spills;</i></p> <p><i>ix. Measures to be implemented to monitor, review and update the effectiveness of the sediment and erosion control measures implemented.</i></p>		
<p>OFFSET PLAN</p> <p><i>Condition 7. The person taking the action must submit an Offset Plan for approval by the Minister within 12</i></p>	<p>Compliant</p>	<p>The revised Offset Plan was submitted to the Department of Environment and Energy for approval on 15 December 2017. Transport for NSW (TfNSW) received comments on the plan from the Department on 5 October 2018 and re-submitted in November</p>

<p><i>months of the date of this approval to provide for the conservation and management in perpetuity of a minimum of 152 hectares of habitat for the Grey-headed Flying-fox, the Spotted-tail Quoll, the Regent Honeyeater and the Swift Parrot. The approved plan must be implemented. The Offset Plan must include, but not be limited to:</i></p> <ul style="list-style-type: none"> <i>a. The acquisition and conservation of land containing a minimum of 152 hectares of habitat for the Grey-headed Flying-fox, the Spotted-tail Quoll, the Regent Honeyeater and the Swift Parrot that is of equal or greater quality to that to be removed for the Pacific Highway Upgrade;</i> <i>b. The land referred to at condition 7(a) must be located within 50km of the Pacific Highway upgrade at Devil's Pulpit, unless otherwise agreed to by the department.</i> <i>c. The land referred to at condition 7(a) must be protected by a legal instrument under relevant nature conservation legislation on the title of the area within 18 months of the date of this approval.</i> <i>d. The instrument referred to in Condition 7(c) must provide for:</i> 		<p>2019. Further comments were received in February 2020. The Plan was re-submitted for approval on 27 May 2020 and approved on 14 August 2020.</p>
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<ul style="list-style-type: none"> <i>i. The protection of the land in perpetuity</i> <i>ii. Prevent any future development activities</i> <i>iii. Ensure the active management of the land;</i> <i>e. The land referred to at Condition 7(a) must provide linkages to existing habitat for the species of concern.</i> <i>f. The Offset Plan must include a clear commitment to ongoing management of the land at Condition 7(a). Management works must be consistent with advice from a suitably qualified expert. These measures must commence within 3 months of the legal protection of the land.</i> <i>g. The Plan must include key milestones, performance indicators, corrective actions and timeframes for the completion of all actions outlined in the Plan.</i> <i>h. The Plan must include clear outline of funding for the management in perpetuity of the land at Condition 7(a).</i> <i>i. The Plan must be developed in consultation with the department.</i> 		
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<p>STANDARD ADMINISTRATIVE CONDITIONS</p> <p>Condition 8. <i>Within 10 business days of the substantial commencement of the action, the person taking the action must advise the department in writing of the actual date of substantial commencement.</i></p>	Compliant	The action was substantially commenced on 13 February 2012. The Department was advised of substantial commencement of the action on 21 September 2017.
<p>Condition 9. <i>If, after 3 years from the date of this approval, the person taking the action has not substantially commenced the action to the satisfaction of the Minister, the person taking the action must obtain the written agreement of the Minister to commence or continue taking the action.</i></p>	Compliant	The action was substantially commenced on 13 February 2012.
<p>Condition 10. <i>Within three months of every 12 month anniversary after the substantial commencement of the action, the person taking the action must submit to the department an annual report addressing compliance with each of the conditions of this approval, including implementation of any management plans that have been approved by the Minister. Annual reports must be provided until the Minister is satisfied that the person taking the action has complied with all conditions of this approval.</i></p>	Compliant	<p>The first annual compliance report for the period February 2012 to February 2013 was submitted on 10 July 2013.</p> <p>The second annual compliance report for the period March 2013 to February 2014 was submitted on 30 May 2014 (with a revised version being sent on 11 August 2014).</p> <p>A third annual compliance report for the period March 2014 – February 2015 was not submitted within three months of the third 12 month anniversary and was therefore a non-compliance.</p> <p>A fourth annual compliance report for the period March 2015 – February 2016 was not submitted within three months of the fourth 12 month anniversary and was therefore a non-compliance.</p> <p>These reports were submitted in March 2017 addressing those non-compliances. All reports following 2017 have been submitted within three of every 12 month anniversary.</p>
<p>Condition 11. <i>Upon the direction of the Minister, the person taking the action must ensure that an independent audit of compliance with the conditions of</i></p>	Compliant	No direction from the Minister has been received to undertake an independent audit of compliance with the conditions of approval during the reporting period.

<p><i>approval is conducted and a report submitted to the Minister. The independent auditor must be approved by the Minister prior to the commencement of the audit. Audit criteria must be agreed to by the Minister and the audit report must address the criteria to the satisfaction.</i></p>		<p>Independent audits of the project have been undertaken and results of these are available on request.</p>
<p><i>Condition 12. If the person taking the action wishes to carry out any activity otherwise than in accordance with the plans, reports or strategies referred to in this approval, the person taking the action must submit for the Minister's approval a revised version of any such plan, report or strategy. The varied activity shall not commence until the Minister has approved the varied plan, report or strategy in writing. If the Minister approves such a revised plan, report or strategy, that plan, report or strategy must be implemented in place of the plan, report or strategy originally approved.</i></p>	<p>Compliant</p>	<p>No activities have been carried out otherwise than in accordance with the Conditions of Approval during the reporting period.</p>
<p><i>Condition 13. If the Minister believes that it is necessary or desirable for the better protection of listed migratory species and listed threatened species and ecological communities to do so, the Minister may request that the person taking the action make specified revisions to the plans, report or strategies approved pursuant to the conditions of this approval and submit the revised plan, report or strategy for the Minister's approval. The person taking the action must comply with any such request. The revised</i></p>	<p>Compliant</p>	<p>No requests for revisions to approved plans have been received from the Minister to date.</p>

<p><i>approved plan, report or strategy must be implemented. Unless the Minister has approved the revised plan, report or strategy, then the person taking the action must continue to implement the plan, report or strategy originally approved under this approval.</i></p>		
<p><i>Condition 14. The person taking the action must maintain accurate records substantiating all activities associated with or relevant to the conditions of this approval, including measures taken to implement the management plans required by this approval, and make them available upon request to the department. Such records may be subject to audit by the Department or an independent auditor in accordance with section 458 of the EPBC Act, or used to verify compliance with the conditions of approval. Summaries of audits may also be publicised through the general media.</i></p>	<p>Compliant</p>	<p>Noted. All records are available upon request by the Department.</p>