



APPROVAL

The M12 Motorway Project between the M7 Motorway, Cecil Hills and The Northern Road, Luddenham, NSW (EPBC 2018/8286)

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)	Transport for NSW
ACN or ABN of approval holder	ABN: 18 804 239 602
Action	To construct a new 16 kilometre east-west motorway from the M7 motorway, Cecil Hills to The Northern Road, Luddenham [See EPBC Act Referral 2018/8286, subject to the variation of the action accepted by the Minister under section 156B on Monday, 29 June 2020].

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

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

Period for which the approval has effect

This approval has effect until 31 December 2100

Decision-maker

<i>Name and position</i>	The Hon Sussan Ley MP Minister for the Environment
<i>Signature</i>	
<i>Date of decision</i>	3/6/21

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 not **clear** in the locations identified in condition E8 of the **State Infrastructure approval**, until it has completed the additional surveys and provided the results to the **Department** as required by condition E8 of the **State Infrastructure approval**.
2. The approval holder must submit to the **Department** a map(s) of the **final construction footprint** within six months of the **final construction footprint** being determined, and where the action is staged, a map of the **final construction footprint** for each stage, within six months of the **final construction footprint** for that stage being determined.
3. The approval holder must not **clear protected matters** outside the **final construction footprint**.
4. To minimise the impacts of the action on **protected matters** the approval holder must not **clear** more than the following specified amounts, or another specified amount determined in consultation with the **Department** in accordance with condition E4 of the **State Infrastructure approval** within the **final construction footprint**:
 - a. 42.89 hectares of known Cumberland Plain Shale Woodlands and Shale-Gravel Transition Forest threatened ecological community;
 - b. 0.44 hectares of known Western Sydney Dry Rainforest and Moist Woodland on Shale threatened ecological community;
 - c. 100 known *Pultenaea parviflora* individuals;
 - d. The number of *Pimelea spicata* individuals identified in the additional surveys required by condition E8 of the **State Infrastructure approval**;
 - e. 62.71 hectares of known **foraging habitat for Grey-headed Flying Fox (*Pteropus poliocephalus*)**;
 - f. 80.21 hectares of known **foraging habitat for Swift Parrot (*Lathamus discolor*)**.
5. For the protection of **protected matters** the approval holder must:
 - a. Implement conditions A24 of Part A, Schedule 2 and C4, C5, C8, C9 and C10 of Part C, Schedule 2 of the **State Infrastructure approval**, where they relate to monitoring, managing, avoiding, mitigating, recording, or reporting on, impacts to **protected matters**.
 - b. Implement biodiversity conditions E2 to E10 of Part E, Schedule 2 of the **State Infrastructure approval** where they relate to monitoring, managing, avoiding, mitigating, offsetting, recording, or reporting on, impacts to **protected matters**.
 - c. Notify the **Department** in writing within 2 **business days** of formally proposing any change to the conditions of the **State Infrastructure approval** for which conditions 5a or 5b apply, and within 5 **business days** of becoming aware of the NSW Government proposing a change.
 - d. Notify the **Department** in writing of any change to the **State Infrastructure approval** for which conditions 5a and 5b apply, within 5 **business days** of a change to the **State Infrastructure approval** being finalised.

Part B – Standard administrative conditions

Notification of date of commencement of the action

6. 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**.

7. If the **commencement of the action** does not occur within 5 years from the date of this approval, then the approval holder must not **commence the action** without the prior written agreement of the **Minister**.

Compliance records

8. The approval holder must maintain accurate and complete **compliance records**.
9. 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.

Annual compliance reporting

10. 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 5 **business days** of the date of publication;
 - c. keep all **compliance reports** publicly available on the **website** until this approval expires or as otherwise agreed by the **Department** in writing;
 - 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

11. The approval holder must notify the **Department** in writing of any: **incident affecting protected matters**; **non-compliance** with the conditions; or **non-compliance** with the commitments made in **plans** required in accordance with conditions 5a or 5b. The notification must be given as soon as practicable, and no later than 2 **business days** after becoming aware of the **incident affecting protected matters** or **non-compliance**. The notification must specify:
 - a. any condition which is or may be in breach
 - b. a short description of the **incident affecting protected matters** and/or **non-compliance**
 - c. the location (including co-ordinates), date, and time of the **incident affecting protected matters** and/or **non-compliance**. In the event the exact information cannot be provided, provide the best information available.
12. The approval holder must provide to the **Department** the details of any **incident affecting protected matters** or **non-compliance** with the conditions or commitments made in **plans** required in accordance with conditions 5a or 5b as soon as practicable and no later than 10 **business days** after becoming aware of the **incident affecting protected matters** 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 affecting protected matters** or **non-compliance**; and

- c. the method and timing of any remedial action that will be undertaken by the approval holder.

Independent audit

13. The approval holder must ensure that **independent audits** of compliance with the conditions are conducted as requested in writing by the **Minister**.
14. For each **independent audit** requested by the **Minister** under condition 13, 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**
 - c. submit an audit report to the **Department** within the timeframe specified in the approved audit criteria.
15. 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, or as otherwise agreed by the **Department** in writing.

Submission and publication of plans

16. The approval holder must:
 - a. submit **plans** electronically to the **Department** for information;
 - b. unless otherwise agreed to in writing by the **Minister**, publish each **plan** on the **website** within 20 **business days** of the date:
 - i. that the **plan** was approved under the **State Infrastructure approval**, if the **plan** requires approval under the **State Infrastructure approval**; or
 - ii. that the **plan** was finalised and provided to the NSW Planning Secretary, if the **plan** is required for information under the **State Infrastructure approval**.
 - c. exclude or redact **sensitive ecological data** from **plans** that are to be published on the **website** or provided to a member of the public; and
 - d. keep **plans** published on the **website** for the period for which this approval has effect, or as otherwise agreed by the **Department** in writing.

Completion of the action

17. Within 20 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.

Clear or Clearing means the cutting down, felling, thinning, logging, removing, killing, destroying, poisoning, ringbarking, uprooting or burning of vegetation (but not including weeds – see the *Australian weeds strategy 2017 to 2027* for further guidance).

Commencement of the action means the first instance of any specified activity associated with the action including **clearing** and **construction**. **Commencement of the action** 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, illegal dumping including installation of temporary fencing, and use 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**;
- v. targeted surveys for *Pimelea spicata*; and
- vi. undertake low impact work (as defined in Schedule 1 of the **State Infrastructure approval**) where the work does not impact **protected matters**.

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 the time at which all activities associated with **construction** have permanently ceased and requirements of conditions 5a and 5b have been fully met.

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
- iv. annexing a schedule of all **plans** prepared and in existence in relation to the conditions during the relevant 12 month period.

Construction has the same meaning as "Construction" stated in Table: Terms and Definitions (in Definition and Terms section) in Schedule 1 of the **State Infrastructure approval**.

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

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

Final construction footprint means the area shown in the map(s) submitted under condition 2, determined by the approval holder in accordance with a consistency assessment(s) or a modification assessment under the *NSW Environmental Planning and Assessment Act 1979* where no new significant impacts to **protected matters** are identified.

Foraging habitat for Grey-headed Flying Fox (*Pteropus poliocephalus*) means the Plant Community Types 850, 724, 849, 830, 835 and 1800 within the meaning of the NSW Bionet Vegetation Information System (VIS) classification database.

Foraging habitat for Swift Parrot (*Lathamus discolor*) means the Plant Community Types 724, 830, 835, 849, 850 and 1800 within the meaning of the NSW Bionet Vegetation Information System (VIS) classification database.

Incident affecting protected matters means any event which has the potential to, or does, impact on one or more **protected matter(s)**, other than as authorised by this approval.

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).

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

Non-compliance means an occurrence, set of circumstances or development that is a breach of this approval but is not an **incident affecting protected matters**.

Plan(s) means any of the documents required to be prepared under the conditions of the **State Infrastructure approval** for which conditions 5a and 5b apply.

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.

State Infrastructure approval means the NSW Government *State Significant Infrastructure: Conditions of Approval for M12*, made under Section 5.19 of the *Environmental Planning & Assessment Act 1979*, for application number SSI-9364, dated 23 April 2021.

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.