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EPBC Act Annual Compliance Report

Brand Highway widening and passing lanes project 34.83-164.3 SLK, WA
(EPBC 2017/7864)

D23#164837

Reporting period: 11 December 2021 to 11 December 2022

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1 Introduction

1.1 Project Background and Status

Main Roads Western Australia (Main Roads) is currently undertaking widening and passing lanes works on Brand Highway between 34.83-164.3 Straight Line Kilometres (SLK), in the Shire of Gingin and Shire of Dandaragan (the Project). The improvements are intended to improve the safety of Brand Highway by providing safe overtaking opportunities and improving the functionality of the road.

The Main Roads Mid-West Gascoyne Region is delivering the Project in stages based on funding availability. Project implementation commenced on 11 December 2019. Main Roads notified the Department of Agriculture, Water and the Environment (the Department) of action (the Project) commencement in writing on 12 December 2019.

No construction or clearing activities were undertaken during the reporting period (11 December 2021 to 11 December 2022).

1.2 Approval under the *Environment Protection and Biodiversity Conservation Act 1999*

The Project was referred to the Department in January 2017 for assessment under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). The Project was determined to be a Controlled Action on 16 March 2017 due to its potential impacts on listed threatened species and communities. The Department granted approval for the Project on 25 September 2019 (EPBC 2017/7864), which included a number of conditions that Main Roads is required to fulfil.

1.3 Purpose of this Report

This compliance report has been produced to satisfy Condition 13 of approval EPBC 2017/7864.

Table 1 of this report details the Project's compliance with regard to each approval condition over the 12 month reporting period: 11 December 2021 to 11 December 2022. Conditions deemed completed are shaded grey.

2 Compliance

Table 1: Compliance with Conditions of EPBC Approval 2017/7864

Condition Number	Condition	Status	Evidence/Comments
1	To minimise impacts to EPBC Act listed threatened species and ecological communities, the approval holder must not clear more than 37.8 ha of vegetation as required under Condition 3 (Area of clearing) of the Western Australian approval.	Compliant	No clearing of native vegetation occurred during this reporting period. A total of 19.62 ha (previously reported incorrectly as 19.77 ha) of native vegetation has been cleared for the project to date. This is in accordance with Condition 3 of the Western Australian approval (CPS 7533/2).
2	To minimise impacts to the Carnaby's Black Cockatoo, the approval holder must not clear more than 36.49 ha of Carnaby's Black Cockatoo habitat.	Compliant	No clearing of Carnaby's Black Cockatoo habitat occurred during this reporting period. A total of 13.26 ha of Carnaby's Black Cockatoo habitat has been cleared for the Project to date (reported previously).
3	To minimise impacts to the Banksia Woodlands threatened ecological community, the approval holder must not clear more than 15.24 ha of vegetation identified as the Banksia Woodlands threatened ecological community.	Compliant	No clearing of the Banksia Woodlands threatened ecological community was cleared during the reporting period. A total of 10.98 ha of Banksia Woodlands threatened ecological community has been cleared for the Project to date. (It should be noted that a total of 3.28 ha of the Banksia Woodlands threatened ecological community was cleared during the 2020-21 reporting period; not 3.84 ha as previously reported.)
4	To minimise impacts to EPBC Act listed threatened species and ecological communities, the approval holder must comply with Conditions 2 (Land on which clearing is to be done), Condition 3 (Area of clearing), Condition 6	Compliant	Works undertaken to date have been conducted in accordance with Condition 2, 3, 6, 7, and 8 of CPS 7533/2. Refer to Appendix A for a summary of condition compliance.

Condition Number	Condition	Status	Evidence/Comments
	(Avoid, minimise and reduce the impacts and extent of clearing), Condition 7 (Dieback and weed management) and Condition 8 (Fauna Management) of the Western Australian approval.		
5	<p>To offset the residual significant impacts to the Carnaby's Black Cockatoo and the Banksia Woodlands threatened ecological community the approval holder must comply with Condition 11 (Offsets) of the Western Australian approval. Funds referred to in Condition 9 (Offsets) of the Western Australian approval must be used for the purchase of:</p> <ul style="list-style-type: none"> a. At least 226 hectares of Carnaby's Black Cockatoo habitat; and, b. At least 91 hectares of the Banksia Woodlands threatened ecological community. <p>The offset(s) must meet the requirements of the <i>Environmental Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy</i> (October 2012).</p>	Compliant	A financial contribution was made to the Western Australian Department of Water and Environmental Regulation (DWER) Offset Fund on 24 May 2019 to fully fund the purchase of an offset site/s for the Project (D19#684286) (reported previously).
6	Within 12 months of the commencement of the action (or otherwise agreed by the Department in writing), the person taking the action must provide the Department with the offsets attributes and a shapefile.	Non-Compliant	<p>An extension to 11 June 2022 was agreed to by the Department in writing on 20 January 2021 (previously reported).</p> <p>Subsequent to the above agreement, due to complexities and delays relating to confirmation of offset proposal suitability by DWER in accordance with the Western Australian approval, the required offsets attributes and shapefile were provided to your Department</p>

Condition Number	Condition	Status	Evidence/Comments
			<p>(Environmental Assessments and Post Approvals) on 24 November 2022 (D22#1235775) and accepted on 12 December 2022 (D23#186822).</p> <p>The late submission is deemed administrative and did not result in environmental impacts. Considering acceptance of the required offsets attributes and shapefile by the Department, it is envisaged that no further actions are required for this condition. Internal compliance tracking processes will however be improved to mitigate reoccurrence of missed notifications in the future.</p>
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.	Compliant	The action commenced on 11 December 2019. Main Roads notified the Department of the commencement of the action in writing on 12 December 2019.
8	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.	Not applicable	The project was approved on 25 September 2019 and the action was commenced on 11 December 2019.

Condition Number	Condition	Status	Evidence/Comments
9	<p>The approval holder must:</p> <ul style="list-style-type: none"> publish each plan approved under condition 4 on the website within 20 business days of the date the plan is approved, or a revision to the plan is approved; exclude or redact sensitive ecological data from plans published on the website or provided to a member of the public; and keep plans published on the website until at least the end date of this approval 	Compliant	<p>The Dieback and Weed Management Plan (DWMP) (65-86 SLK) was approved on 29 October 2019 (D19#915226) and published on the Main Roads website by 31 October 2019 (D19#919422).</p> <p>The DWMP (120-136 and 139-152 SLK) was approved on 20 January 2021 (D21#108929) and published on the Main Roads website on 27 January 2021 (D21#108880) (reported previously).</p> <p>No other plans were required to be published during the reporting period.</p>
10	The approval holder must maintain accurate and complete compliance records.	Compliant	Main Roads maintains the respective compliance records in accordance with this condition and its legal obligations, under the <i>State Records Act 2000</i> (Western Australia).
11	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.	Not applicable	To date, no direction has been received from the Department to provide electronic copies of any compliance records.
12	The approval holder must ensure that any monitoring data (including sensitive ecological data), surveys, maps, and other spatial and meta data 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.	Not applicable	To date, no biological survey data has been required to be submitted under conditions of this approval.

Condition Number	Condition	Status	Evidence/Comments
13	<p>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:</p> <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	<ul style="list-style-type: none"> a. To date, reports have been published on Main Roads website within the relevant timeframe(s). (refer https://www.mainroads.wa.gov.au/community-environment/environment/construction-project-reports/Brand Highway Passing Lanes and Widening). This compliance report will be published on the Main Roads website prior to 11 March 2023. b. The Department has been (D21#148189 and D22#187059) and will be notified by email within five business days of the date of publication of this report. c. This report and other respective reports will remain publicly available on the Main Roads website until the expiration date of the project approval (refer Main Roads website). d. No sensitive ecological data has been included in this report. e. No sensitive ecological data has been included in this report.
14	<p>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:</p> <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- 	<i>Non-Compliant</i>	<p>As part of the development of this report, it was identified that the Department was not notified within two business days of becoming aware of the potential non-compliance against Condition 6. A brief description of the non-compliance is provided against Condition 6 above. It is envisaged that the respective information provided in this report is sufficient and accordingly no further notification will be required in accordance with Condition 14.</p> <p>No other incidents; non-compliance with the conditions; or</p>

Condition Number	Condition	Status	Evidence/Comments
	compliance.		non-compliance with the commitments made in plans occurred during the reporting period.
15	<p>The approval holder must provide to the Department the details of any incident or noncompliance 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:</p> <p>a. any corrective action or investigation which the approval holder has already taken or intends to take in the immediate future;</p> <p>b. the potential impacts of the incident or non-compliance; and</p> <p>c. the method and timing of any remedial action that will be undertaken by the approval holder.</p>	<i>Non-Compliant</i>	<p>As part of the development of this report, it was identified that the Department was not notified within 10 business days of becoming aware of the potential non-compliance against Condition 6. Details regarding corrective actions, potential impacts and remedial actions undertaken are provided against Condition 6 above. It is envisaged that the respective information provided in this report is sufficient and accordingly no further notification will be required in accordance with Condition 15.</p> <p>No other incidents; non-compliance with the conditions; or non-compliance with the commitments made in plans occurred during the reporting period.</p>
16	The approval holder must ensure that independent audits of compliance with the conditions are conducted as requested in writing by the Minister.	Not applicable	To date, no direction has been received from the Minister to undertake an independent audit.
17	<p>For each independent audit, the approval holder must:</p> <p>a. provide the name and qualifications of the independent auditor and the draft audit criteria to the Department;</p> <p>b. only commence the independent audit once the audit criteria have been approved in writing by the Department;</p>	Not applicable	To date, no direction has been received from the Minister to undertake an independent audit.

Condition Number	Condition	Status	Evidence/Comments
	and c. submit an audit report		
18	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.	Not applicable	To date, no direction has been received from the Minister to undertake an independent audit.
19	Within 30 days after the completion of the action, the approval holder must notify the Department in writing and provide completion data.	Not applicable	The action has not yet been completed.

3 Appendices

Appendix A: Evidence of Compliance with CPS 7753/2 Conditions 2, 3, 6, 7, and 8 during the Reporting Period

Condition Number	Condition	Status	Evidence/Comments
2	<p>Condition 2: Land on which clearing is to be done Brand Highway road reserve (PIN 1358753), Hill River Brand Highway road reserve (PIN 1358743), Badgingarra Lot 4180 on Plan 215549, Badgingarra Brand Highway road reserve (PIN 1358737), Badgingarra Brand Highway road reserve (PIN 11674695), Badgingarra Brand Highway road reserve (PIN 11674696), Badgingarra Lot 4255 on Plan 209084, Badgingarra Brand Highway road reserve (PIN 11579146), Cooljarloo Brand Highway road reserve (PIN 11674269), Cooljarloo Brand Highway road reserve (PIN 11674270), Cataby Brand Highway road reserve (PIN 1226149), Cataby Brand Highway road reserve (PIN 1226168), Yathroo Brand Highway road reserve (PIN 1226171), Regans Ford Brand Highway road reserve (PIN 1226192), Red Gully Brand Highway road reserve (PIN 1188398), Orange Springs Lot 13800 on Plan 206476, Red Gully Lot 14246 on Plan 27746, Red Gully Brand Highway road reserve (PIN 11674225), Granville</p>	Compliant	<p>No clearing was undertaken during the reporting period.</p> <p>To date, clearing has only occurred on the land listed in this condition.</p>
3	<p>Condition 3: Area of clearing (a) The Permit Holder must not clear more than 1.3 hectares of native vegetation within the area cross-hatched yellow on attached Plan 7533/2a. (b) The Permit Holder must not clear more than 2.2 hectares of native vegetation within the area cross-hatched yellow on attached Plan 7533/2b.</p>	Compliant	<p>No clearing was undertaken during the reporting period.</p> <ul style="list-style-type: none"> a) No clearing to date b) A total of 0.50 ha has been cleared to date c) A total of 2.61 ha has been cleared to date d) A total of 1.80 ha has been cleared to date

Condition Number	Condition	Status	Evidence/Comments
	<p>(c) The Permit Holder must not clear more than 2.7 hectares of native vegetation within the area cross-hatched yellow on attached Plan 7533/2c.</p> <p>(d) The Permit Holder must not clear more than 1.8 hectares of native vegetation within the area cross-hatched yellow on attached Plan 7533/2d.</p> <p>(e) The Permit Holder must not clear more than 1.6 hectares of native vegetation within the area cross-hatched yellow on attached Plan 7533/2e.</p> <p>(f) The Permit Holder must not clear more than 2.1 hectares of native vegetation within the area cross-hatched yellow on attached Plan 7533/2f.</p> <p>(g) The Permit Holder must not clear more than 2.6 hectares of native vegetation within the area cross-hatched yellow on attached Plan 7533/2g.</p> <p>(h) The Permit Holder must not clear more than 2.2 hectares of native vegetation within the area cross-hatched yellow on attached Plan 7533/2h.</p> <p>(i) The Permit Holder must not clear more than 2.2 hectares of native vegetation within the area cross-hatched yellow on attached Plan 7533/2i.</p> <p>(j) The Permit Holder must not clear more than 6 hectares of native vegetation within the combined area cross-hatched yellow on attached Plan 7533/2j, Plan 7533/2k and Plan 7533/2l.</p> <p>(k) The Permit Holder must not clear more than 2.5 hectares of native vegetation within the area cross-hatched yellow on attached Plan 7533/2m.</p>		<p>e) A total of 1.21 ha has been cleared to date</p> <p>f) A total of 1.67 ha has been cleared to date</p> <p>g) A total of 2.12 ha has been cleared to date</p> <p>h) No clearing to date</p> <p>i) No clearing to date</p> <p>j) A total of 5.73 ha has been cleared to date (previously reported incorrectly as 5.88 ha)</p> <p>k) No clearing to date</p> <p>l) A total of 3.98 ha has been cleared to date</p> <p>m) No clearing to date</p>

Condition Number	Condition	Status	Evidence/Comments
	<p>(l) The Permit Holder must not clear more than 4.6 hectares of native vegetation within the combined area cross-hatched yellow on attached Plan 7533/2n, Plan 7533/2o and Plan 7533/2p.</p> <p>(m) The Permit Holder must not clear more than 6 hectares of native vegetation within the area cross-hatched yellow on attached Plan 7533/2q.</p>		
6	<p>Condition 6: Avoid, minimise and reduce the impacts and extent of clearing</p> <p>In determining the amount of native vegetation to be cleared authorised under this Permit, the Permit Holder must have regard to the following principles, set out in order of preference:</p> <p>(a) avoid the clearing of native vegetation;</p> <p>(b) minimise the amount of native vegetation to be cleared; and</p> <p>(c) reduce the impact of clearing on any environmental value.</p>	Compliant	<p>The Project footprint was refined to the smallest possible area during the development phase and environmental matters were considered in selecting the design in balance with safety requirements. The design was tailored from the standard for safety and functionality to provide steepened batters to reduce the footprint. Other design features such as the placement of safety barriers, the extent of widening in relation to the road centreline and the installation of road drainage considered the minimum Project footprint while maintaining the safety integrity of the road.</p> <p>Further reductions on site enabled a smaller area to be cleared than approvals allowed. For example, the clearing area was demarcated prior to the commencement of Project activities and the commencement of native vegetation clearing. Clearing for support infrastructure was avoided by locating the site office, materials storage areas, construction vehicles/machinery and access tracks on previously disturbed/ cleared areas.</p>

Condition Number	Condition	Status	Evidence/Comments
7	<p>Condition 7: Dieback and weed management</p> <p>(a) The Permit Holder must conduct a dieback survey of each of the areas cross-hatched yellow on attached Plan 7533/2a, Plan 7533/2b, Plan 7533/2c, Plan 7533/2d, Plan 7533/2e, Plan 7533/2f, Plan 7533/2g, Plan 7533/2h, Plan 7533/2i, Plan 7533/2j, Plan 7533/2k, Plan 7533/2l, Plan 7533/2m, Plan 7533/2n, Plan 7533/2o, Plan 7533/2p and Plan 7533/2q, undertaken by a dieback specialist, to map the presence of dieback.</p> <p>(b) Each dieback survey undertaken in accordance with condition 7(a) of this Permit must be undertaken prior to, but no greater than 12 months from, commencing clearing within the related area cross-hatched yellow on attached Plan 7533/2a, Plan 7533/2b, Plan 7533/2c, Plan 7533/2d, Plan 7533/2e, Plan 7533/2f, Plan 7533/2g, Plan 7533/2h, Plan 7533/2i, Plan 7533/2j, Plan 7533/2k, Plan 7533/2l, Plan 7533/2m, Plan 7533/2n, Plan 7533/2o, Plan 7533/2p and Plan 7533/2q.</p> <p>(c) The Permit Holder must prepare a Dieback and Weed Management Plan for each of the areas cross-hatched yellow on attached Plan 7533/2a, Plan 7533/2b, Plan 7533/2c, Plan 7533/2d, Plan 7533/2e, Plan 7533/2f, Plan 7533/2g, Plan 7533/2h, Plan 7533/2i, Plan 7533/2j, Plan 7533/2k, Plan 7533/2l, Plan 7533/2m, Plan 7533/2n, Plan 7533/2o, Plan 7533/2p and Plan 7533/2q, for minimising the spread and/or introduction of dieback and weeds.</p> <p>(d) Once the Permit Holder has developed a Dieback and Weed Management Plan, the Permit Holder must provide that Dieback and Weed Management Plan to the CEO for the</p>	Compliant	<p>a) A dieback survey was conducted over Plan 7533/2j, Plan 7533/2k, Plan 7533/2l, Plan 7533/2n, Plan 7533/2o and Plan 7533/2p during the previous reporting period.</p> <p>b) The dieback survey for Plan 7533/2j, Plan 7533/2k, Plan 7533/2l, Plan 7533/2n, Plan 7533/2o and Plan 7533/2p was undertaken from 5 November 2020 to 17 December 2020. The clearing commenced on 4 March 2021.</p> <p>c) A Dieback and Weed Management Plan (DWMP) (120-136 and 139-152 SLK) was prepared for Plan 7533/2j, Plan 7533/2k, Plan 7533/2l, Plan 7533/2n, Plan 7533/2o and Plan 7533/2p (reported previously).</p> <p>d) The DWMP (120-136 and 139-152 SLK) was approved by the CEO on 7 January 2021 (reported previously) and implemented on 4 March 2021.</p> <p>e) The DWMP did not require any modifications and so further approval was not required.</p> <p>f) Monitoring was undertaken between 120-152 SLK during the reporting period in accordance with the DWMP (120-136 and 139-152 SLK). No weed infestations were observed.</p>

Condition Number	Condition	Status	Evidence/Comments
	<p>CEO’s approval, prior to undertaking any clearing of any area to which the Dieback and Weed Management Plan is related, and prior to implementing the Dieback and Weed Management Plan.</p> <p>(e) If it is necessary to modify a Dieback and Weed Management Plan approved by the CEO, then the Permit Holder must provide that modified Dieback and Weed Management Plan to the CEO for the CEO’s approval prior to implementing the modified Dieback and Weed Management Plan.</p> <p>(f) The Permit Holder shall implement the latest version of each Dieback and Weed Management Plan approved by the CEO.</p>		
8	<p>Condition 8: Fauna management</p> <p>(a) Up to one week prior to undertaking clearing of any of the areas cross-hatched yellow on attached Plan 7533/2b, Plan 7533/2c, Plan 7533/2d, Plan 7533/2e, Plan 7533/2f and Plan 7533/2g, that area shall be inspected by a fauna specialist to identify chuditch (<i>Dasyurus geoffroii</i>) dens and individuals.</p> <p>(b) Where a chuditch (<i>Dasyurus geoffroii</i>) individual(s) is identified in accordance with condition 8(a) of this Permit, clearing shall only occur within that area after the individual has either:</p> <p>(i) moved on to adjacent suitable habitat of its own accord; or</p> <p>(ii) has been relocated to adjacent suitable habitat by a fauna specialist.</p>	Compliant	<p>a) Not applicable during the reporting period</p> <p>b) Not applicable during the reporting period</p> <p>c) Not applicable during the reporting period</p> <p>d) Not applicable during the reporting period</p> <p>e) No clearing was undertaken during the reporting period</p>

Condition Number	Condition	Status	Evidence/Comments
	<p>(c) Where a chuditch (<i>Dasyurus geoffroii</i>) den(s) is identified in accordance with condition 8(a) of this Permit, clearing shall only occur within that area after an equivalent replacement chuditch (<i>Dasyurus geoffroii</i>) den(s) has been installed in adjacent suitable habitat.</p> <p>(d) The Permit Holder is not required to comply with conditions 8(a), (b) and (c) of this Permit if the clearing of that area is undertaken during the period 1 January to 31 August.</p> <p>(e) The Permit Holder shall conduct clearing in a slow progressive manner towards adjacent remnant vegetation to allow fauna to escape the clearing activity.</p>		