

Guidelines for preparing Assessment Documentation relevant to the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act)

WestConnex New M5 Project (EPBC 2015/7520)

The WestConnex New M5 Project will be assessed under the Assessment Bilateral Agreement (2015) with NSW. These Guidelines are intended to ensure there is sufficient information in the assessment report on the impacts of this controlled action on each relevant matter of national environmental significance so the Commonwealth decision-maker may consider those impacts when determining whether or not to approve the action and, if so, on what conditions. These Guidelines do not stand alone but are a supplement to the Secretary's Environmental Assessment Requirements issued on 5 March 2015 and must be addressed in conjunction with these requirements.

1 GENERAL REQUIREMENTS - BACKGROUND AND DESCRIPTION OF THE ACTION

The Assessment Documentation must include the precise location of all works to be undertaken (including associated offsite works and infrastructure), structures to be built or elements of the action that may have impacts on matters of national environmental significance (MNES).

2 KEY ISSUES – BIODIVERSITY -MATTERS OF NATIONAL ENVIRONMENTAL SIGNIFICANCE

The Assessment Documentation must identify and/or describe each MNES protected by controlling provisions of Part 3 of the EPBC Act likely to be located in the project area or in the vicinity. For this proposal there is one MNES:

- **listed threatened species and communities (EPBC Act Section 18 and 18A).**

The Department of the Environment has provided a list of threatened species and communities that are considered to be at risk of impact from the proposal at [Attachment 1](#). This is not necessarily an inclusive list and it is the responsibility of the proponent to ensure that all EPBC Act listed threatened species and communities have been identified and assessed accordingly.

The Assessment Documentation must describe:

- i. the environment with regard to each relevant listed threatened species and community (including suitable breeding habitat, suitable foraging habitat, important populations, habitat critical for survival, etc). Consideration of, and reference to any relevant Commonwealth guidelines and policy statements including listing advice, conservation advice, recovery plans and threat abatement plans is essential.
- ii. Details of the scope, timing/effort (survey season/s) and methodology for studies or surveys used to provide information on the EPBC Act listed species and species habitat or listed ecological communities at the site (and in areas that may be impacted by the project. Include details of:
 - best: practice survey guidelines applied; and
 - how they are consistent with (or a justification for divergence from) published Australian Government guidelines and policy statements.

3 IMPACTS

The Assessment Documentation must include a description of all of the relevant direct and indirect impacts of the action on relevant listed species and communities (identified in Section 2). Impacts during all phases of the project must be addressed, and the following information provided:

- i. a description of the impacts of the action on listed species and communities;
- ii. a detailed analysis of the nature and extent of the likely direct, indirect and consequential impacts relevant to listed species and communities, including likely short-term and long-term impacts – refer to the [Significant Impact Guidelines 1.1 - Matters of National Environmental Significance](#) for guidance on the various types of impact that need to be considered;
- iii. consideration of, and reference to any relevant Commonwealth guidelines and policy statements including listing advice, conservation advice, recovery plans and threat abatement plans is essential.
- iv. a statement whether any relevant impacts are likely to be unknown, unpredictable or irreversible;
- v. any technical data and other information used or needed to make a detailed assessment of the relevant impacts;
- vi. an explanation of how the views of Indigenous stakeholders, directly affected by the action, have been sought and considered in the assessment if the action will have or is likely to have a significant impact on threatened species and communities that relates to their Indigenous cultural heritage. Including where relevant, how guidelines published by the Commonwealth in relation to consulting with Indigenous peoples for proposed actions that are under assessment have been considered and applied.

The Assessment Documentation must identify and address cumulative impacts to listed threatened species and communities, where potential project impacts are in addition to existing impacts of other activities (including known potential future expansions or developments by the proponent and other proponents in the region and vicinity).

The Assessment Documentation must also provide a detailed assessment of any likely impact that this proposed action may facilitate on the relevant listed threatened species and communities at the local, regional, state and national scale.

4 AVOIDANCE AND MITIGATION MEASURES / ALTERNATIVES

The Assessment Documentation must provide information on all proposed avoidance and mitigation measures to manage the relevant impacts of the action on listed threatened species and communities.

The Assessment Documentation also must take into account relevant agreements and plans that cover impacts on listed threatened species and communities including but not limited to:

- any recovery plan, conservation advice for the species or community;

- any threat abatement plan for a process that threatens the species;
- any wildlife conservation plan for the species.

The Assessment Documentation must include, and substantiate, specific and detailed descriptions of the proposed avoidance and mitigation measures, based on best available practices and must include the following elements:

- (a) A list of avoidance and mitigation measures proposed to be undertaken to prevent or minimise the relevant impacts of the action on specific listed threatened species and communities, including:
 - i. a description of proposed avoidance and mitigation measures to deal with relevant impacts of the action;
 - ii. assessment of the expected or predicted effectiveness of the mitigation measures, including the scale and intensity of impacts of the proposed action and the on-ground benefits to be gained through each of these measures; and
 - iii. a description of the outcomes that the avoidance and mitigation measures will achieve.
- (b) A detailed outline of a plan for the continuing management, mitigation and monitoring of impacts of the action on relevant listed threatened species and communities, including a description of the outcomes that will be achieved and any provisions for independent environmental auditing.
- (c) Consideration of, and reference to any relevant Commonwealth guidelines and policy statements including listing advice, conservation advice, recovery plans and threat abatement plans is essential.

5 RESIDUAL IMPACTS / OFFSETS

The Assessment Documentation must provide details of the likely residual unavoidable impacts on listed threatened species and communities that are likely to occur after the proposed activities to avoid and mitigate all impacts are taken into account. The Assessment Documentation must:

- i. include the reasons why avoidance or mitigation of impacts is not reasonably achieved; and
- ii. identify the significant residual impacts on listed threatened species and communities.

If after all reasonable avoidance and mitigation measures have been put in place, there is a residual adverse impact on an EPBC Act listed threatened species or ecological community, offsets must be applied. The Assessment Documentation must include details of how the current published *NSW Framework for Biodiversity Assessment* (FBA) has been applied in accordance with the objects of the EPBC Act. The Assessment Documentation must include details of the offset package to compensate for significant residual impacts on EPBC listed threatened species and communities.

For the purposes of approval under the EPBC Act, it is a requirement that offsets directly contribute to the ongoing viability of the specific protected matter impacted by a proposed

action i.e. 'like for like'. In applying the FBA, residual impacts on EPBC Act listed threatened ecological communities must be offset with Plant Community Type(s) (PCT) that are ascribed to the specific EPBC listed ecological community. PCTs from a different vegetation class will not generally be acceptable as offsets for EPBC listed communities.

Any significant residual impacts not addressed by the FBA may need to be addressed in accordance with the *Environment Protection and Biodiversity Conservation Act 1999* Environmental Offset Policy. <http://www.environment.gov.au/epbc/publications/epbc-act-environmental-offsets-policy>

If EPBC Act Environmental Offset Policy is used to calculate proposed offsets for a threatened species or community please contact the Department of Planning and Environment for specific information on applying the EPBC Act offset policy calculator.

6 ENVIRONMENTAL RECORD OF PERSON(S) PROPOSING TO TAKE THE ACTION

The information provided must include details of any proceedings under a Commonwealth, State or Territory law for the protection of the environment or the conservation and sustainable use of natural resources against:

- (a) the person proposing to take the action; and
- (b) for an action for which a person has applied for a permit, the person making the application.

If the person proposing to take the action is a corporation, details of the corporation's environmental policy and planning framework must also be included.

7 INFORMATION SOURCES PROVIDED IN THE ASSESSMENT DOCUMENTATION

For information given in the Assessment Documentation, state:

- (a) the source of the information;
- (b) how recent the information is;
- (c) how the reliability of the information was tested;
- (d) what uncertainties (if any) are in the information; and
- (e) what guidelines, plans and/or policies were considered.

REFERENCES

1. *Environment Protect and Biodiversity Conservation Act 1999* - section 51-55, section 96A(3)(a)(b), 101A(3)(a)(b), section 136, section 527E
2. *Environment Protect and Biodiversity Conservation Regulations 2000* - Division 3.2, 3.02(a)(b)(ii)(iii), Division 5.2, Schedule 4
3. NSW Assessment Bilateral Agreement (2015) - Item 18.1, Item 18.5, Schedule 1
4. Matters of National Environmental Significance Significant impact guidelines 1.1 (2013) EPBC Act
5. *Environment Protect and Biodiversity Conservation Act 1999* Environmental Offsets Policy October 2012

ATTACHMENT 1 – Listed threatened species and communities relevant to the construction and operation of WestConnex new M5, NSW (EPBC 2015/7520)

The construction and operation of WestConnex new M5 was determined to be a controlled action under section 75 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) on 11 August 2015.

The controlled action is likely to have a direct and indirect impact on matters of national environment significance, in particular, threatened species and ecological communities (sections 18 and 18A).

A number of threatened species and ecological communities protected under Part 3 of the EPBC Act have been identified as potentially impacted by the proposed action.

The Department considers that the following threatened species and ecological communities will be impacted directly and or indirectly by the proposed action:

- Cooks River/Castlereagh Ironbark Forest of the Sydney Basin Bioregion– critically endangered
- Green and Golden Bell Frog (GGBF) (*Littoria aurea*) – vulnerable

The Department considers that the following threatened species and ecological communities may be at risk from the proposed action. The Assessment Documentation must identify whether or not a significant impact is likely for these matters and the describe the basis for the conclusion.

- Turpentine Ironbark Forest in the Sydney Basin Bioregion – critically endangered
- Bynoe's Wattle (*Acacia bynoeana*) - vulnerable
- Downy Wattle (*Acacia pubescens*) - vulnerable
- Deane's Paperbark (*Melaleuca deanei*) - vulnerable
- Hairy Geebung (*Persoonia hirsuta*) - endangered
- Spiked Rice-flower (*Pimelea spicata*) - endangered
- Magenta Lilly Pilly (*Syzygium paniculatum*) - vulnerable
- Black-eyed Susan (*Tetradlea juncea*) – vulnerable

It is the responsibility of the proponent to ensure all EPBC Act listed threatened species and ecological communities potentially impacted have been identified and assessed. Any significant residual impacts must be offset.