



# Regulatory case study

*Looking downstream at the lower end of the Carwoola floodplain in the Southern Tablelands NSW, 2020.*

## Molonglo Catchment Rehydration Initiative Carwoola – Stage 1 (NSW)



### Summary

A project funded by a local landowner, Mulloon Institute, NSW Saving our Species program and NSW Environmental Trust to restore the breeding habitat of the last population of the endangered Green and Golden Bell Frog on the Southern Tablelands has been delayed for years by the necessity to address regulatory requirements. While designs for the proposed works were completed in early 2022, the significant regulatory approvals hurdles have meant implementation of the works is still unable to occur over two years later.



### Project

The Molonglo Catchment Rehydration Initiative (MCRI) aims to restore the function of the upper Molonglo River floodplain to close to its natural state by implementing targeted interventions, including eight in-stream bed control structures (leaky weirs), minor earthworks to restore flood flows across the floodplain and two constructed wetlands to enhance habitat for the Green and Golden Bell Frog. Our project design is focussed on restoring the wetting and drying of the floodplain to advantage breeding habitat of the GGBF and provide drought refugia.

The MCRI will take place on two adjacent properties: Carwoola Station (Stage 1) and Foxlow Station (Stage 2), with a staged implementation. This project pertains to the Carwoola Station (Stage 1) component of the MCRI.





*Carwoola floodplain on the Molonglo River, flanked by *Poa labillardierei* grassland – generally the dominant grass in this wet natural temperate grassland, 2020.*



## Problem

The site supports an important population of the nationally endangered Green and Golden Bell Frog (GGBF), being the last known population in the Southern Tablelands. This project is seen as a critical step in improving the habitat to arrest the decline of that population.

Regular annual monitoring of this population since 2016 has been funded under the NSW Government's Saving our Species (SoS) program. Additionally, the SoS Program has provided funding to the Mulloon Institute to support the initial investigations and preparation of a scoping report for this project. The results of the SoS monitoring indicate that this population is in severe decline and expert advice of herpetologist, Sam Patmore, is that the population is at significant risk of localised extinction in the next few years in the absence of intervention. Unfortunately, over the last three annual surveys (2021–2024), no evidence of the GGBF has been observed.



## Solution

The project includes the design and installation of eight in-stream structures on the Molonglo River channel, 16 earthwork interventions aimed primarily at restoring flood flows along secondary floodplain channels, and two constructed wetlands to enhance habitat for the GGBFs.

Mulloon Institute has received grant funding of \$170,000 through the NSW Environmental Trust's Environmental Restoration and Rehabilitation Program to complete approvals and construction of stage 1 of the project up to 2025. The landholder has also contributed significant funds towards the project to support the completion of project investigations and preparation of detailed designs and legislative approvals.

The Institute has also received further grant funding of \$170,000 through the NSW Environmental Trust's Environmental Restoration and Rehabilitation Program to progress design and approvals for the Foxlow Station (Stage 2) component of the MCRI.



## Regulatory requirements

This project is subject to regulation under the following Commonwealth and state legislation and planning instruments:

- Environment Protection and Biodiversity Conservation Act 1999 (Cth)
- Biodiversity Conservation Act 2016 (NSW) (BCA)
- Environmental Planning and Assessment Act 1979 (NSW) (EPAA)
- Fisheries Management Act 1994 (NSW)
- Water Management Act 2000 (NSW)
- National Parks and Wildlife Act 1974 (NSW).



## Environmental Planning & Assessment Act 1979 (NSW) (EPAA)

Because the proposal was originally to be assessed under Part 4 EPAA, in order to meet the requirements of the BCA, a Biodiversity Development Assessment Report (BDAR) was required for the project in accordance with the NSW Biodiversity Offset Scheme (BOS) and Biodiversity Assessment Method (BAM).

In order to construct the restoration works, up to 3.2 ha of grasslands will be impacted. The BAM method assumes this impact is permanent and does not enable the broader biodiversity benefits of restoring the floodplain function across the project site or the expected re-establishment of grasslands in impacted areas to be considered.

Environmental consultants Umwelt prepared a BDAR on behalf of Mulloon Institute in which the BAM determined that the following biodiversity credits may be required to offset the impacts of the Project:

- PCT 1110 River Tussock – Tall Sedge – Kangaroo Grass moist grasslands of the South Eastern Highlands Bioregion, 28 credits
- Green and Golden Bell Frog (*Litoria aurea*), 20 credits.



## The landscape rehydration infrastructure works – approvals and procedures guideline 2023

In December 2022, changes were made in the NSW Planning system including a new planning pathway for landscape rehydration infrastructure under the Transport and Infrastructure 2021 State Environmental Planning Policy (T&I SEPP).

The [\*Landscape rehydration infrastructure works – approvals and procedures\*](#) guideline came into effect on 20 March 2023. This means the proponent and the determining authority must examine and take into account the environmental factors set out in the guideline, rather than those listed under section 171(2) of the EP&A Regulation 2021. This means local Council is no longer the determining authority for landscape rehydration infrastructure.





## Section 7.3 of the Biodiversity Conservation Act 2016 (BC Act), the test of significance

The new guideline provides the opportunity to undertake the test of significance, rather than going directly to a BDAR. The objective of the test of significance, is to provide standardised and transparent consideration of threatened species and ecological communities, and their habitats, through the development assessment process. It allows proponents of landscape rehydration infrastructure to provide an assessment of both short term negative impacts of disturbance and long term positive impacts on habitat for threatened species.



*Green and Golden Bell Frog.*

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## Part 5 Approval submission

Consistent with the Landscape rehydration infrastructure works – approvals and procedures guideline, Mulloon Institute submitted project documentation for regulatory approvals to NSW Department of Planning and Environment (DPE) (now DECCW/W) as a Controlled Activity Approval (CAA) application in June 2023.

Although the proposed works met the definition of Landscape Rehydration Infrastructure in the guideline, Mulloon Institute was advised in February 2024 (7 months after submitting the CAA application) that the works went beyond a bed control function and were considered impoundment works requiring Water Supply Works approval through WaterNSW. There is no definition of impoundment in the NSW Water Act 2000 and there appears no reference to the objects of the legislation in the decision to consider the works as impounding water.

Mulloon Institute subsequently submitted a Water Supply Works approval application to WaterNSW in March 2024. The application has been with WaterNSW for over 5 months with no clarity on when a determination will be made.



## Commentary

This project continues to await regulatory approval, with significant delays and cost. This is a perverse outcome, given the intent of the project is to improve biodiversity outcomes by restoring the floodplain function, which in turn is expected to create an overall benefit in the longer term for both the River Tussock (PCT1110) and the Green and Golden Bell Frog as well as supporting water quality and water quantity outcomes within the Upper Molonglo River system. More broadly, this has potentially significant consequences for the viability of future restoration projects aiming to reinstate landscape function and improve biodiversity outcomes.

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