



Sequana Partners

Victorian Constraints Measures Program

Regulatory Approvals Strategy – Stage 1A

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Executive Summary

The natural flow and flooding regime of the Murray Darling Basin has been modified over the years to support and prioritise agriculture industries. Whilst development of infrastructure, such as dams and weirs, and water management practices have supported the growth of the Basin's communities, it has come at the cost of the health of the rivers and their floodplains. There are operational constraints in place which limit how much water river operators will release from storages to avoid overbank flows impacting on adjoining private landholders. These operational constraints limit how water can be delivered to the environment. Relaxing these constraints is an important part of implementing the Basin Plan and ensuring environmental outcomes from water recovery can be achieved.

The Victorian Constraints Measures Program (Program) involves relaxing constraints at key locations across the Murray and Goulburn rivers. The aim of these changes is to allow river operators to deliver higher flows down the river, inundating key wetlands and floodplains. The flows targeted are generally below the minor flood warning levels so as to minimise the impact on private land and assets. These changes in river operating practices aim to provide a range of local environmental, recreational, and cultural benefits within each river, as well as providing desired watering regimes to important downstream environmental assets.

To manage the risk of impact from inundation to private and public land, and to identified assets, values and uses, inundation mitigation measures are proposed as physical works, such as bridges and river crossings, as well as compensation for impacts to land and associated uses.

Delivery of the Program is complex, as it requires an understanding of hydrological, ecological, cultural and social systems and values over a large geographic scale within Victoria, New South Wales and South Australia. The Program's regulatory environment is equally complex, as it, by nature of its geography, covers multiple jurisdictional boundaries and requires involvement of regulatory authorities and approvals under Commonwealth and State legislation.

This Regulatory Approvals Strategy provides a roadmap for navigating Key Approvals for the Program in Victoria and is informed by a regulatory approvals perspective on the Program's governance arrangements, proponent/s and approach to Program delivery (across scope, spatial and temporal contexts), and has considered the interdependencies of each aspect.

This Regulatory Approvals Strategy identifies that the Program's governance arrangements and potential proponent models are key issues that should be resolved before a preferred approach to navigating Key Approvals is confirmed.

This Strategy recommends two feasible pathways for navigating Key Approvals for the Program, either through a Program-wide Strategic Assessment or separate assessment of the Goulburn and Murray rivers. The advantages and disadvantages of each option are outlined for consideration alongside other factors relevant to Program delivery outside of this Strategy. Indicative schedules have been prepared to support consideration of each approval pathway option.

Pathway Option 1 - Program-wide Strategic Assessment

Under this pathway option, the Program would be assessed and approved with the Goulburn and Murray rivers combined to provide an integrated approach to assessing the Program's direct, indirect and cumulative effects.

The environmental assessment process would be addressed through a Strategic Assessment under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), which would rely upon agreements between the Commonwealth, New South Wales and Victorian governments to establish a bespoke process that assesses both Commonwealth and State environmental matters.

The Strategic Assessment process should be undertaken alongside, rather than ahead of, other State-based Key Approvals, such as Planning Scheme Amendments and Cultural Heritage Management Plans.

This option could either be delivered by a single Commonwealth Government led proponent, or through a co-proponent model shared between the Commonwealth, Victoria and New South Wales governments, or the Victorian and New South Wales governments. The co-proponent model could be facilitated by the establishment of a special purpose vehicle.

A pilot inundation program could be implemented to deliver a smaller increase in flow limits to provide a proof-of-concept and inform community engagement on the basis of demonstratable benefits and managed impacts.

Figure 1 below provides a summary of the pathway option which is explored in more detail at Pathway Option 1 – Program-wide Strategic Assessment. The high-level schedule for Option 1 indicates that the Key Approvals process could be completed within approximately 35 months, noting that the Murray River constraints measures is dependent on successful project and regulatory engagement between Commonwealth, New South Wales and Victorian governments.

Figure 1 - Pathway Option 1 – Program-wide Strategic Assessment



Pathway Option 2 - Separate assessment of Goulburn and Murray rivers

This pathway option is distinct to Option 1 as it assumes the Program would be assessed and approved as two projects with the Goulburn and Murray rivers considered separately.

The separation of the Goulburn and Murray rivers could potentially lead to separate proponents for each project. For example, the proponent for the Goulburn River could be either the Commonwealth and/or Victorian governments, while the proponent for the Murray River could be either the Commonwealth or a co-proponent model similar to the Program-wide approach.

A key difference to Option 1 is that a Strategic Assessment would not be prepared to assess Commonwealth environmental matters. Instead, each project would be assessed under state-based environmental assessment processes, such as an Environment Effects Statement, with existing bilateral agreements used to accredit the State process to address Commonwealth environmental matters.

As with Option 1, other State-based Key Approvals, such as Planning Scheme Amendments and Cultural Heritage Management Plans, should be progressed alongside, rather than following completion of, the Commonwealth environmental assessment process.

The potential to implement a pilot inundation program is common across both options and should be explored further to provide a proof-of-concept and inform community engagement on the basis of demonstratable benefits and managed impacts.

Figure 2 below provides a summary of the pathway option which is explored in more detail at Pathway Option 2 – Separate assessment of Goulburn and Murray rivers. The schedule for Option 2 indicates that the Key Approvals process could be completed within approximately 31 months for the Goulburn River Project, and 36 months for the Murray River Project, noting that

the Murray River constraints measures is dependent on successful project and regulatory engagement between Commonwealth, New South Wales and Victorian governments.

Figure 2 - Pathway Option 2 – Separate assessment of Goulburn and Murray rivers

	Goulburn River	Murray River
Proponent/s	Cwlth or Victoria	Cwlth or (Vic & NSW) or (Cwlth, Vic & NSW)
Scope	Pilot inundation	Pilot inundation
----- Main works -----		
Commonwealth environmental approval	Referral & Assessment (Part 7-9)	Referral & Assessment (Part 7-9)
Victorian environmental assessment	Likely EES	Likely EES and NSW EIS
Victorian planning approval	Planning Scheme Amendment – Common VCMP provision	Planning Scheme Amendment – Common VCMP provision
Cultural Heritage Management Plan	Yorta Yorta	Yorta Yorta
	Taungurung	First Peoples – State Relations

Effects framework

Regardless of the preferred approval pathway option, it is crucial that the approach to assessing the potential benefits and impacts of the Program, including cumulative effects, is well established by the Program and regulatory authorities. With this in mind, an effects framework has been prepared to provide an overarching framing of the hydrological, ecological, cultural heritage and socio-economic (including any potential land use change) effects of the Program.

The effects framework will establish how to assess and then monitor, evaluate and report on the effects through the Program's lifecycle and in accordance with regulator guidelines.

Figure 3 provides a simplistic representation of the key aspects of the Program that require consideration through the effects framework. It illustrates how each aspect relate on a geographic and temporal scale, including:

- **Environmental water** – is the key operational input for the Program, which is defined by the volume, frequency, timing and duration of environmental water delivery in the context of the statutory Commonwealth and State environmental water frameworks
- **Assets, values and uses** – existing high value aspects that will be identified to inform assessment of the Program's direct, indirect and cumulative effects
- **Inundation area** – is the land which will be subject to inundation by the environmental water delivery. This land will be subject to a change in the frequency, timing and duration of inundation, relative to the existing regulated river. It will include public and private land

- **Inundation mitigation measures** – are proposed as physical works, such as bridges and river crossings, as well as compensation for impacts to land and associated uses
- **Cumulative effects** – will be identified and assessed on transverse and longitudinal scales within each river and downstream to the Murray River mouth.

Figure 3 - Effects framework

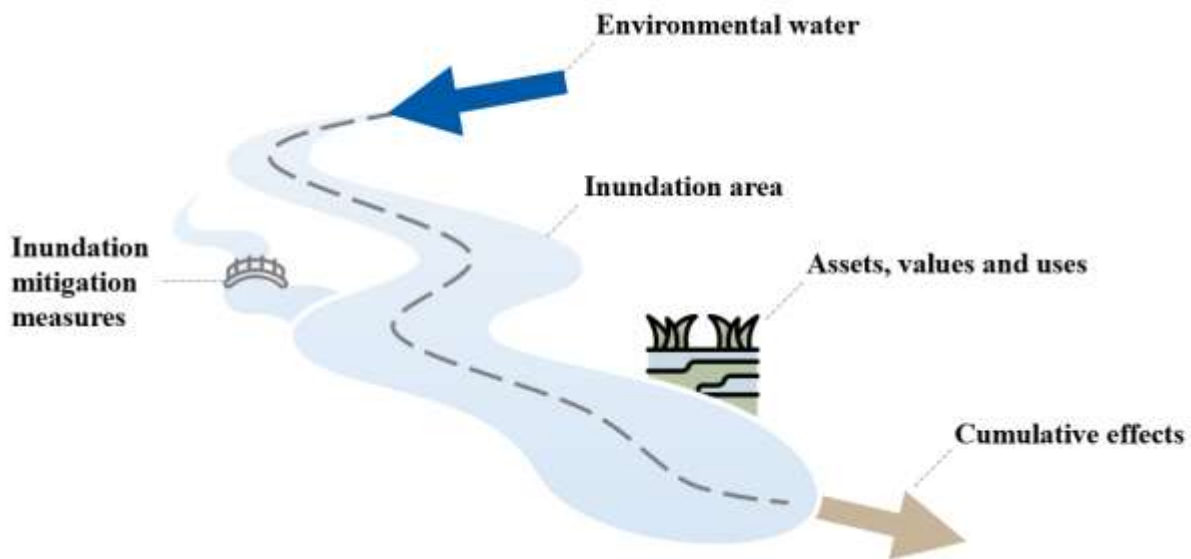


Table 1 demonstrates how each aspect of the effects framework would be identified and assessed to ensure the approach provides a suitable geographic and temporal scale. The assessment approach outlined in Table 1 can be applied through the Key Approvals process regardless of whether pathway option 1 or pathway option 2 is progressed further.

Table 1 - Effects Framework assessment approach

Aspect	Extent	Assessment approach	Examples
Environmental water	Within the study area and downstream to Murray Mouth	Environmental water delivery	Define the volume, timing, frequency and duration of environmental water delivery
Assets, values and uses	Within study area and downstream to Murray Mouth	Initial desktop screening assessment	Identify listed wetlands and National Parks
Inundation area	Up to approximately 60,000 ha ¹	Landscape scale assessment of effects	• Cultural values assessment • Socio-economic assessment

Aspect	Extent	Assessment approach	Examples
Inundation mitigation measures	Physical works to manage risk of inundation	Site specific assessment of impacts	• Cultural Heritage Management Plan • Planning permit assessment • Habitat hectare assessment
Cumulative effects	Downstream to Murray Mouth	Landscape scale assessment of cumulative effects	Assessment of residual effects of the Program and related existing projects

¹: based on the highest degree of constraint relaxation (hydraulic inundation area) under investigation for each reach in Stage 1A.

This Strategy identifies the key considerations for navigating Key Approvals for the Program as:

- **Governance** – the Program should establish a system of governance that defines roles and responsibilities between the Program’s complex set of stakeholders. The Program would benefit from formal arrangements between stakeholders including a Program Control Group, a Key Approvals working group, and the continuation of the community-centric co-design approach through subsequent stages
- **Proponent/s** – a proponent or proponents should be established early to ensure consistent decision-making across the planning, delivery, and operation of the Program. The proponent could be either the Commonwealth Government, the Victorian Government (for the Goulburn River only), or a combination of the Commonwealth, Victorian, and New South Wales governments
- **Program delivery** – there are various options for scope, spatial, and temporal contexts to deliver the Program. The following approaches can be feasibly delivered:
 - The Key Approvals must consider changes to river operations together with the proposed inundation mitigation measures
 - The Goulburn and Murray rivers can be considered separately or together
 - The delivery of pilot inundation ahead of the main works would benefit the Key Approvals processes.

Glossary

Term	Definition
Basin	The Murray Darling Basin (Basin) is one interconnected system of rivers made up of 22 different catchments across south-eastern Australia and includes most of New South Wales, some of southern Queensland, the east of South Australia, northern Victoria and all of the Australian Capital Territory
Basin Plan	The Murray Darling Basin Plan (Basin Plan) was prepared by the Murray Darling Basin Authority (MDBA) after the passing of the <i>Water Act 2007</i> (Cth). The Basin Plan provides an integrated framework for water planning in the Basin to improve its health by setting limits on the amount of water that can be taken from the Basin water resources on a sustainable basis
Effects	The direct, indirect or cumulative benefits, or adverse impacts, that may result from the Program.
Environment	The physical, biological, heritage, cultural, social, health, safety and economic aspects of human surroundings, including the wider ecological and physical systems within which humans live
Key Approvals	Key Approvals are those that would typically be obtained by the Program proponent and include Commonwealth environmental approval, Victorian environmental assessment, Victorian planning approval, and Cultural Heritage Management Plan. This Strategy does not address any Key Approvals that may be required under New South Wales or South Australian legislation.
Overbank event	Inundation that exceeds the bankfull capacity of the river channel
Study area	The area of land that would be subject to assessments for the Program.

1. Introduction

1.1 Purpose

The purpose of this Regulatory Approvals Strategy (Strategy) is to provide a roadmap for navigating Key Approvals for the Victorian Constraints Measures Program ('the Program').

The approach to delivering Key Approvals will be informed by a regulatory approvals perspective on the Program's governance arrangements, proponent/s and approach to Program delivery. The Strategy will identify pathway options for navigating Key Approvals that are relevant to the Victorian components of the overall Program and will not address any Key Approvals that may be required under New South Wales or South Australian legislation. The pathway options are supported by schedules that indicate the likely time required to complete the Key Approvals for each option.

This Strategy forms part of a feasibility study being undertaken by the Victorian Government as part of Stage 1A of the Program and will inform decisions on whether the Program should proceed to the following stages. Whilst the Strategy presents a regulatory approvals perspective on governance arrangements and potential proponent models, it is acknowledged that the feasibility study will consider many other factors that will contribute to the ultimate governance and proponent arrangements, which will likely require agreement between the Commonwealth, Victorian and New South Wales governments.

This Strategy has been developed following an initial round of consultation with the Victorian Department of Environment, Land, Water and Planning (DELWP – Impact Assessment Unit, State Projects, and Water and Catchments), New South Wales Government and the Commonwealth Department of Climate Change, Energy, the Environment and Water (DCCEEW).

1.2 Objectives

The objectives of this Strategy include:

- Key Approvals that are robust and transparent, clearly present the Program benefits, and demonstrate appropriate management of the potential impacts including cumulative effects
- Providing a statutory approvals perspective on the Program's governance arrangements, proponent/s and approach to Program delivery, particularly in the context of multijurisdictional regulatory frameworks and complex stakeholder interactions
- Advising on preferred Key Approvals pathways that consider regulatory frameworks and options given the Program's scope, and spatial and temporal contexts.

1.3 Background

1.3.1 Basin Plan and constraints measures

The natural flow and flooding regime of the Murray-Darling Basin's (Basin) river systems have been modified and controlled over the years through the construction of dams and weirs. This has resulted in river channels becoming disconnected from the floodplain and a decline in river and wetland health.

A series of regulatory changes are being implemented to improve the health of rivers and floodplains and increase the amount of water available for the environment.

The Program is being implemented as part of Victoria's obligations under the Murray Darling Basin Plan (Basin Plan), which set Sustainable Diversion Limits adjustment measures (or offset projects) agreed by Basin water ministers in 2017. The offset projects enable the Basin Plan's ecological objectives to be achieved, while minimising the impacts of additional water purchase on regional communities.

The Basin Plan identified that the delivery of environmental water proposed to be recovered under the Basin Plan and Sustainable Diversion Limits could be improved if physical and operational constraints are relaxed or removed.

The *Constraints Management Strategy 2013-2024* (Constraints Management Strategy) was prepared by the Murray Darling Basin Authority to identify the constraints that affect environmental water delivery, and set out roles and responsibilities of basin governments, the MDBA and communities for developing and implementing the Constraints Management Strategy.

Constraints are river management practices and structures that govern the volume and timing of regulated water delivery through the river system.

Operational constraints include arrangements and processes, such as channel sharing, water accounting, and the ability to order water from specific locations. Physical constraints include things like roads, bridges, public land and private land that would be flooded at higher flows, potentially causing damage and affecting access.

Relaxing operational constraints and providing inundation mitigation measures for physical constraints across the Basin will enable higher river flows to be delivered and re-establish natural river and wetland processes that support ecological biodiversity.

The Constraints Management Strategy identified seven priority areas across Victoria, New South Wales and South Australia for addressing constraints in the Basin. In Victoria, this included relaxing constraints on the Murray River and Goulburn River as part of the Victorian Constraints Measures Program.

1.3.2 Regulatory approvals context

Relaxing constraints across the Murray River and Goulburn River is complex as it involves activities across a large geographic area that spans jurisdictional boundaries, resulting in interrelated Key Approvals across Commonwealth and State regulatory frameworks and authorities.

The Goulburn River is located entirely within Victoria and its flows reach the Murray River just upstream of Echuca and Moama. The Murray River largely defines the border between Victoria and New South Wales. The Murray River (including flows from the Goulburn River) flows downstream to reach South Australia near its borders with New South Wales and Victoria.

The approach to navigating regulatory approvals must consider how relaxing constraints on the Goulburn River would affect the Murray River, as well as how relaxing constraints on the Murray River could affect downstream reaches of the Murray, including within South Australia.

The cross-border nature of the Murray River and its floodplains means that Key Approvals must be obtained under both Victorian and New South Wales legislation for the Murray River constraints measures to be delivered, whilst delivery of the Goulburn River constraint measures requires Victorian-based Key Approvals. Both projects require consideration under Commonwealth environmental approval.

The Victorian Constraints Measures Program must be considered in context with the Basin Plan, and the other Basin Plan related projects that complement and support improved environmental outcomes.

1.4 Document structure

This document is structured as follows:

- Introduction – Provides the purpose of this Strategy, objectives for Key Approvals and background to the Program
- Victorian Constraints Measures Program – Provides an overview of the Program including a brief description of changes to river controls within the Goulburn and Murray rivers
- Governance arrangements for Key Approvals – Outlines the key stakeholder groups relevant to the Program and recommends key considerations from a Regulatory approvals perspective to achieve effective governance
- Proponent/s for Key Approvals – Considers the advantages and disadvantages of delivering the Program under different Proponent models
- Approach to Program delivery – Considers the advantages and disadvantages of options to structure the Program given the scope, spatial and temporal contexts
- Overview of Key Approvals – Provides a summary of Commonwealth and Victorian Key Approvals
- Key Approvals pathway – Provides two pathway options for navigating Key Approvals that considers regulatory frameworks and options given the Program's scope, spatial and temporal contexts
- Effects framework – provides an overarching context for assessing the potential benefits and impacts of the Program, including cumulative effects (for example downstream to South Australia)
- Conclusion and next steps – Summarises the approach to delivering Key Approvals and outlines the next steps to progress the Key Approvals for the Program.

2. Victorian Constraints Measures Program

The Program aims to enhance the delivery of already available environmental water and introduce a more natural river flow within the Goulburn and Murray Rivers. The extent of the Program across the two rivers is shown in Figure 4.

Figure 4 - Mapped extent of Program



Relaxing constraints at key locations across each river would allow regulated releases to achieve generally up to minor flood levels and provide a range of local environmental, recreational, and cultural benefits within each river reach, as well providing desired watering regimes to important downstream environmental assets.

The Program comprises the following key activities to relax constraints:

- Changes to river operations to address operational constraints and increase daily flow limits
- Inundation mitigation measures to manage risk of impacts on public and private land. Inundation mitigation measures may include physical works to protect infrastructure and assets from risk of inundation, reinstatement or remediation activities following inundation events, or operational and management controls, such as private landowner agreements and flood notification and warning protocols.

The proposed changes within the Goulburn and Murray rivers are described further below:

2.1 Goulburn River

The Goulburn River is approximately 430 km long from Lake Eildon to the Murray River and consists of the mid and lower Goulburn. The mid Goulburn extends from Lake Eildon to the Goulburn Weir, and the lower Goulburn extends from Goulburn Weir to the River Murray near Echuca. The Program would relax constraints in the mid-Goulburn and in the lower Goulburn. The upper Goulburn (above Lake Eildon) is unregulated and is not managed for environmental flows and therefore falls outside the focus area.

The current flow rate constraint, measured at Shepparton, is 9,500ML/day. The flow range under investigation is between 17,000ML/day to 25,000 ML/day. This will be achieved by ceasing diversions to Waranga Basin and passing these flows over the Goulburn Weir, as well as additional releases from Lake Eildon. The ability to achieve the proposed extent of inundation in the lower Goulburn reach is reliant on relaxing constraints in the mid Goulburn, in particular through increased releases at Lake Eildon.

It is assumed that the Goulburn River constraints measures are located entirely within Victoria and would provide downstream environmental flows to the Murray River in New South Wales and South Australia.

Table 2 provides a summary of the indicative environmental watering regime that would be implemented by the Program.

Table 2 - Goulburn River environmental watering regime (indicative)

Goulburn River	
Existing flow limit	9,500ML/day at Shepparton
Proposed flow limit	17,000ML/day to 25,000 ML/day at Shepparton
Timing	July to October (Winter and Spring)
Frequency	Overbank event is preferred around seven years in 10. Managed overbanks events would not be planned if a natural event has achieved the target that year.
Duration	Five days at peak flow. Rise length around six days, fall beginning around 11 days.
Recession	Gradual recession to reduce erosion risk and stranding of fish
Notification	Staged notification system to give advice of planned flows

2.2 Murray River

The Program would relax constraints across two key reaches of the Murray River, from Lake Hume to Yarrawonga Weir (Hume to Yarrawonga) and from Yarrawonga Weir to the confluence of the Wakool River (Yarrawonga to Wakool).

For Hume to Yarrawonga, the operational flow limit would be increased from the current level of 25,000 ML/day to a range between 30,000 ML/day to 40,000 ML/day, as measured at Doctors Point.

For Yarrawonga to Wakool, the operational flow limit would be increased from the current level of 15,000 ML/day to a range between 25,000 ML/day to 45,000 ML/day, as measured at Downstream of Yarrawonga Weir.

The Murray River and its distributaries span both Victorian and New South Wales jurisdictions. Relaxing constraints across each Murray River reach will result in impacts to land within each state.

Generally, increased releases from Yarrawonga Weir relies on equivalent increased releases from Hume Dam.

Table 3 provides a summary of the indicative environmental watering regime that would be implemented by the Program.

Table 3 - Murray River environmental watering regime (indicative)

Murray River - Hume to Yarrawonga / Yarrawonga to Wakool	
Existing flow limit	25,000 ML/day at Doctors Point (Hume to Yarrawonga) 15,000 ML/day at Downstream of Yarrawonga Weir (Yarrawonga to Wakool)
Proposed flow limit	30,000 ML/day to 40,000 ML/day at Doctors Point (Hume to Yarrawonga) 25,000 ML/day to 45,000 ML/day at Downstream of Yarrawonga Weir (Yarrawonga to Wakool)
Timing	Mostly August to October. Occasionally earlier (June, July) or later (November)
Frequency	Align with ecological requirements and pre-regulation flow patterns. Depends on season storage volumes, tributary flows
Duration	Mostly 7-14 days at target flow. Occasionally up to 30 days, for lower-end flows
Recession	Gradual recession to reduce erosion risk and stranding of fish
Notification	Staged notification system to give advice of planned flows

2.3 Areas outside current scope of Program

As the Program scope is developed further, consideration should be given as to whether floodplain inundation will occur downstream of Wakool Junction and into South Australia.

This area is not subject to assessment as part of this Strategy and associated feasibility study, however further assessment should be undertaken to determine if inundation is likely to occur as a result of the Program and if inundation mitigation measures would be required.

Key Approvals beyond what is outlined in this Strategy may be required if inundation mitigation measures are proposed downstream of Wakool Junction and into South Australia.

3. Governance arrangements for Key Approvals

The approach to obtaining Key Approvals must be informed by, and align with, the Program's governance arrangements. A system of governance for potential implementation of the Victorian CMP should be established early in the Program's lifecycle due to the complex nature of the program. A system of governance will determine how the Program will be implemented, operate and the mechanisms by which it, and its people, will be held to account.

The Program has complex stakeholder interactions that can be broadly described as:

- **Funders** – the Commonwealth Government is responsible for funding the Program
- **Managers** – Commonwealth and State government departments and agencies with responsibilities under legislation relevant to the Basin Plan to deliver the overall Program.

For the Victorian Constraints Measures Program this includes the Commonwealth DCCEEW, the MDBA, and DELWP

- **Proponent/s** – the proponent or proponents will be responsible for delivery and operation of the Program including obtaining and compliance with Key Approvals. The proponent options are considered in Section 4
- **Program partners** – are stakeholders for delivery of the Project, such as for their legislated river operation or land management responsibilities.

This may include parties such as river operators, waterway managers, public land managers (including local councils), Traditional Owners, and the Commonwealth and Victorian Environmental Water Holders

- **Community** – are groups and individuals that may be affected by the Program who must be engaged throughout its planning, delivery, and operational phases. This includes local councils, landowners, and users (including recreation users), environmental representative groups and the general public
- **Regulatory agencies** – are authorities that are required to make decisions on Key Approvals under relevant legislation such as DCCEEW, Victorian and NSW departments and Registered Aboriginal Parties
- **Independent expert review** – The program will be delivered based on detailed technical assessments of its potential effects across various disciplines. Independent expert review should be established to review, monitor, and validate data and assessments to ensure the Program is delivered consistent with its stated objectives.

From a regulatory approvals perspective, the key considerations to achieving effective governance throughout the Program's lifecycle are:

- Establish an integrated approach to facilitating engagement with affected parties and ensure approval processes maintain appropriate consistency across the Program's geographic scale and jurisdictional boundaries

- Establish a Key Approvals working group to agree upon the final Regulatory Approvals Strategy, oversee the development of agreements between Commonwealth and State governments, and a coordinated approach to assessing the potential effects of the Program. The working group should include representatives from the proponent, relevant regulatory authorities, and program partners, and would report on progress and outcomes to the program control group
- Undertake detailed stakeholder identification, including defining the roles and responsibilities of each stakeholder. The governance arrangements should document which parties are required to make key decisions on the Program's planning, delivery and operation, and those whose views are required to inform decision making processes
- Establish a program control group that incorporates key representatives from the Program's funders and managers, the proponent, and program partners, to coordinate the delivery of the Program and ensure decisions are coordinated and consistent
- Establish an independent expert review panel to review, monitor and validate data and assessments to ensure the Program is delivered consistent with its stated objectives. The panel should include expert representatives in science, economics and social effects. The independent advice would be provided to the program control group to inform key Program decisions
- Continue the work of the already established Consultative Committee to receive comment and input on the design and feasibility of the Program from key community members and stakeholders. The Consultative Committee is independently chaired and includes representatives from program partners, community, and regulatory agencies.

Further consultation with stakeholders is required to confirm the governance arrangements for any future stages of the Program.

4. Proponent/s for Key Approvals

A proponent or proponents should be established early to ensure consistent decision-making across the planning, delivery and operation of the Program.

From a statutory approvals perspective, key considerations for determining the proponent/s include:

- The proponent or proponents must be a legal entity that has been established under relevant legislation to allow for the appropriate level of accountability throughout the Program's lifecycle. This may either be an existing legal entity, or one established specifically to implement the Program
- The proponent or proponents must be able to deliver a project that is entirely within Victoria (the Goulburn project), as well as a project that spans both Victoria and New South Wales (the Murray projects)
- Given the scope of the Program is centred on changes to river operations, the proponent or proponents should include river operators responsible for the subject reaches
- The roles and responsibilities outlined in the Basin Plan for recovery of environmental water. Under the Basin Plan, the Commonwealth Government (including the Murray Darling Basin Authority) coordinates the management of water resources across the Basin, and the relevant State governments (Basin States) are responsible for implementing the Basin Plan. Some responsibilities are shared between the Commonwealth Government and the Basin States.

Table 4 outlines the proponent options available for the Program, the advantages and disadvantages of each option, and indicates whether each option could feasibly deliver a project or projects on the Goulburn and Murray rivers respectively.

Determining the preferred proponent or proponents is interdependent with the approach to governance arrangements and project delivery, which is explored further at Section 7.

Table 4 - Proponent/s for Key Approvals

Proponent	Advantages	Disadvantages	Goulburn	Murray
Commonwealth Government A Commonwealth Government department or agency, either existing or newly established for the purpose of the Program	- Provides consistent oversight for a Program that spans State jurisdictions - Aligns with Commonwealth funding source - Allows for consistent consideration of Commonwealth approval matters and cumulative effects, including into South Australia - Newly established entity could be given special powers to deliver and implement the Program across jurisdictions	- Involves practical challenges to deliver physical works at a local scale and would likely need to engage State parties to deliver and/or operate on its behalf - Does not include State based river operators - Potential or real loss of local approach and appreciation of regional considerations - May not align with Basin Plan responsibility for States to implement - High administrative effort and cost to establish a new Commonwealth entity - Requires collaboration with South Australia to understand cumulative effects downstream to the Murray Mouth	✓	✓
Victorian Government An existing Victorian government department or agency (including river operators)	Provides an efficient framework to deliver the Goulburn River component, which is entirely within Victoria	Delivery of the Program within New South Wales would be difficult, in particular undertaking engagement with New South Wales landholders	✓	✗

Proponent	Advantages	Disadvantages	Goulburn	Murray
	- Allows for efficient delivery of Victorian Key Approvals - Aligns with Basin Plan responsibility for States to implement	and stakeholders, as well as obtaining local approvals Less effective in assessing the cumulative effects of the Program, particularly into New South Wales and South Australia, because it would rely on collaboration with the other states		
New South Wales Government An existing New South Wales government department or agency (including river operator)	- Allows for efficient delivery of New South Wales Key Approvals - Aligns with Basin Plan responsibility for States to implement	- Delivery of the Program within Victoria would be difficult, in particular undertaking engagement with New South Wales landholders and stakeholders, as well as obtaining local approvals - Less effective in assessing the cumulative effects of the Program, particularly into Victoria and South Australia, because it would rely on collaboration with the other states	✗	✓
Victorian and New South Wales governments combined Both States agree to deliver the Program as co-proponents, or this could be via a special purpose vehicle	- Allows for delivery of Murray River components that span State jurisdictions - Aligns with Basin Plan responsibility for States to implement	- Complex interface between States as co-proponents - Requires collaboration with South Australia to understand cumulative effects downstream to the Murray Mouth	✓	✓

Proponent	Advantages	Disadvantages	Goulburn	Murray
	- Allows for coordinated delivery of Key Approvals in Victoria and New South Wales - Allows for consistent and coordinated preparation of project activities, including Key Approvals, across all projects and stakeholders - Supports localised presence and engagement of affected stakeholders - Recognises the inter-connected nature of the Basin			
Commonwealth, Victorian and New South Wales governments combined All parties agree to deliver the Program as co-proponents, or this could be via a special purpose vehicle	- Provides a framework to effectively address Program across Commonwealth and State jurisdictions - Allows for the proponent to include a combination of government delivery agencies and river operators	- Administrative burden of establishing a new public entity under legislation - Requires collaboration with South Australia to understand cumulative effects downstream to the Murray Mouth	✓	✓

5. Approach to Program delivery

The Program should be structured to optimise planning, delivery, and operational efficiency. In doing so, it should also consider the statutory approvals perspective of a ‘project’ or ‘action’, which includes:

- An action that can stand alone, and
- Any co-dependent actions in time and/or geographically, which may form part of an overall plan, or have the same proponent and/or funding

5.1 Outline of Program delivery options

For the Victorian Constraints Measures Program, options that can be considered include:

- **Scope** – whether the components of river operations and inundation mitigation measures should be considered separately or combined.
- **Spatial** – whether the Program should be defined geographically as a single project encompassing both the Murray and Goulburn Rivers, or as multiple projects split across each river or river reach.
- **Temporal** – whether there are feasible and beneficial options to stage delivery of aspects of the program.

5.2 Feasible Program delivery options

A background summary of each Program delivery option is provided at Tables 5, 6 and 7 as well as the advantages and disadvantages of each and an indication of whether the option is feasible. Following from this, Figure 5 outlines the feasible approaches to Program delivery across scope, spatial and temporal contexts. These feasible approaches will be considered further at Key Approvals pathway.

Figure 5 - Approach to program delivery



Table 5 - Options to approach Program scope

Options	Advantages	Disadvantages	Feasible?
Separate river operations and inundation mitigations measures	- Changes to river operations may occur without further environmental or planning approvals under certain legislation - This approach would allow some ‘as of right’ uses to progress promptly whilst approvals are sought to implement mitigation measures	- The inundation mitigation measures result directly from the river operations and must be considered as one combined activity under environmental assessment legislation - There may be a legal risk associated with inundating private land without due consideration of potential effects. - Does not give the community an appreciation of the full scope of the Program - Inundation mitigation measures likely to still require approvals - Could be perceived as ‘implementing the project by stealth’	✗
Combine river operations and inundation mitigation measures	- Allows for a cohesive understanding of the Program’s components and its potential effects for community, regulators and stakeholders. - Aligns with common understanding of project actions established under environmental assessment legislation	- Approach is more likely to require consideration under major environmental assessment and approval processes - Significant time and cost implications to complete environmental assessments and key Approvals for the whole Program	✓

Table 6 - Options to approach Program spatially

Options	Advantages	Disadvantages	Feasible?
Single project – Murray and Goulburn rivers combined	- Approach would ensure a consistent approach to Program delivery across rivers and river reaches - Allows for a more integrated understanding of the Program’s cumulative effects within the river reaches and downstream - Is well suited to a Commonwealth Government led proponent approach as it is more conducive to undertaking broad, program wide assessment of effects - Allows for consistent approach to obtaining Commonwealth environmental approvals	- Combines the large number of interfaces, communities and stakeholders and environmental issues into one project, which may lead to administrative burden and inability to resolve fine-grain issues. - Must address Victorian and New South Wales specific approvals requirements - Introduces risk that the overall schedule is reliant on the slowest component of the Program to obtain approval, therefore not allowing potential efficiencies with delivering less complex aspects of the Program separately.	✓
Two projects (rivers) – Goulburn River and Murray River separated	- Aligns with jurisdictional boundaries, stakeholders, communities and ecosystem - Allows an individual project to progress with less risk of causing delay to the other project. - Aligns with business cases and strategic justification for each project. - The Goulburn River project can provide stated benefits without relying on Murray River project delivery. - The operation of the Murray River project relies on successful implementation of each river reach, Hume to Yarrawonga and Yarrawonga to Wakool.	- Common approach to assessing Program’s cumulative effects would need to be established - Creates risk of inconsistencies between project delivery approaches - Combines two Murray River components into one project, therefore not allowing potential efficiencies with delivering less complex river reach separately	✓

Options	Advantages	Disadvantages	Feasible?
Three projects (river reaches) – Goulburn River, Hume to Yarrawonga, Yarrawonga to Wakool separated	- Aligns with jurisdictional boundaries, stakeholders, communities and ecosystem - Acknowledges the two activities on Murray River have distinct complexities. - Allows an individual project to progress with less risk of causing delay to another project - Aligns with business cases and strategic justification for each project. - The Goulburn River project can provide stated benefits without relying on Murray River project delivery.	- The operation of the Murray River project relies on successful implementation of each river reach, Hume to Yarrawonga and Yarrawonga to Wakool - Common approach to assessing Program's cumulative effects would need to be established - Creates risk of inconsistencies between project delivery approaches - Increases risk of interfaces between projects	×

Table 7 - Option to approach Program temporally

Options	Advantages	Disadvantages	Feasible?
Pilot inundation – Implement a minor increase in regulated releases and deliver inundation mitigation measures proportionate with the appropriate level of environmental assessment and approvals	- Establishes a ‘proof-of-concept’ to demonstrate Program benefits and provide certainty of delivery. - Demonstrates Program concept to communities, stakeholders and landowners in incremental, less impactful manner - Staggered delivery allows for lessons learnt to be implemented for more significant inundation thresholds - Could test understanding of environmental effects and inform Commonwealth and State Key Approval processes	- Would need to be implemented within the constraints of Key Approvals framework. - Creates risk of delay to delivery of ‘main works’. - Duplication of landholder negotiations for each incremental mitigation measure.	✓

6. Overview of Key Approvals

This section outlines Key Approvals for the Program, including:

- Commonwealth environmental approval under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (EPBC Act)
- Victorian environmental assessment under the *Environment Effects Act 1978 (Vic)*
- Victorian planning approval under the *Planning and Environment Act 1987 (Vic)*
- Cultural Heritage Management Plan under the *Aboriginal Heritage Act 2006 (Vic)*.

Refer to Appendix A for further background information on the relevant legislation for each Key Approval. Appendix B provides a summary of Victorian secondary approvals that are relevant to the Program.

6.1 Commonwealth environmental approval

The Program is likely to require consideration under the EPBC Act regardless of the adopted approach to scope, spatial and temporal matters, because of the potential for significant impact to matters of national environmental significance such as:

- Wetlands of international importance (listed under the Ramsar Convention)
- Listed threatened species and ecological communities
- Migratory species (protected under international agreements).

Further assessment is required to determine whether the Program has the potential for significant impact on matters of national environmental significance, and whether it must be referred to the Commonwealth Government for assessment and approval.

With a Program of this nature, the EPBC Act provides two assessment and approval pathways either referral, assessment and approval, or Strategic Assessment. The two approval pathways are described in further detail below.

6.1.1 Referral, assessment and approval

The Program could be referred in its entirety, or as separate Goulburn and Murray River projects, under Parts 7-9 of the EPBC Act. Following referral, the Commonwealth would determine whether the action is a ‘controlled action’ or not and, if a ‘controlled action’ requires further assessment and approval prior to proceeding.

The EPBC Act allows the Commonwealth Government to enter agreements with the States to minimise duplication of assessment and approval processes by accrediting the State process. An existing bilateral agreement between the Commonwealth and Victorian governments accredits processes under the Environment Effects Act, Planning and Environment Act and Water Act for assessment under the EPBC Act. This bilateral agreement could be used for the Goulburn River if undertaken separately to the Murray River.

The existing Commonwealth bilateral agreements with Victoria and New South Wales do not accredit an assessment process for an action that spans across State jurisdictions. To address this, the Program, either in its entirety or just for the Murray River, could be referred, assessed and approved under the EPBC Act:

- Separately to State based assessments
- Under Victorian and New South Wales accredited assessment processes separately using existing bilateral agreements, or
- Under a one-off combined assessment process that addresses Commonwealth, Victorian and New South Wales assessment requirements under a trilateral agreement between the parties.

Referral, assessment and approval is the more typically accepted way of obtaining Commonwealth environmental approval.

6.1.2 Strategic Assessment

An alternative, less commonly used approach, would be for the Program to be proposed in its entirety under Part 10 of the EPBC Act as a Strategic Assessment.

Strategic Assessments can be prepared to provide a landscape-scale approach to assessing impacts to protected matters for a ‘class of actions’.

The Program, as the Murray and Goulburn rivers combined, would be suitable for consideration under a Strategic Assessment due to the scale spanning geographic and jurisdictional boundaries, the potential for cumulative effects, and that it comprises a ‘class’ of similar actions.

A Strategic Assessment would benefit the Program by providing an upfront approval on a larger scale than project-by-project referrals, assessments and approvals.

As an example, the expansion of Melbourne’s Urban Growth Boundary was subject to a Strategic Assessment that was endorsed by the Commonwealth Environment Minister in 2010. The Strategic Assessment provided the framework to assess the program of measures associated with the Urban Growth Boundary expansion and allowed for the Minister to subsequently approve four classes of actions under the endorsed program.

A Strategic Assessment is a significant undertaking that is resource and time intensive for all parties involved including the proponent, regulators and the community. However, the cost and time involvement should be considered on balance with the alternative approach to prepare multiple EPBC Act referrals, assessments and approvals for separate projects.

The EPBC Act allows a State to accredit the Commonwealth Strategic Assessment process to address State-based environmental assessment matters, such as the Environment Effects Act, however the existing bilateral agreements do not provide for this. With this, the relationship between the Strategic Assessment and State-based assessment processes could be established as either:

- A one-off approved trilateral Strategic Assessment that addresses Commonwealth, Victorian and New South Wales assessment requirements under a trilateral agreement between the parties

- A Strategic Assessment with concurrently but separately assessed Victorian and New South Wales processes; or,
- A Strategic Assessment in series with separately assessed Victorian and New South Wales processes.

A one-off approved trilateral Strategic Assessment would be preferred as the most efficient of these options, with it the best for avoiding duplication of both assessment and process. However, this would require regulatory engagement to confirm the detail of such an approach. The alternatives, Strategic Assessment either concurrently or in series with State processes, remain viable, however present risks of duplication of assessment and process (respectively), that would require careful engagement across regulatory parties to address.

6.2 Victorian environmental assessment

The Environment Effects Act applies to works that could reasonably be considered to be capable of having a significant effect on the environment.

The Environment Effects Act outlines multiple pathways to determine whether an Environment Effects Statement is required to assess the potential effects of the Program, including but not limited to:

- The Minister for Planning may declare the Program to be ‘public works’ for the purposes of the Environment Effects Act
- A decision maker may seek the advice of the Minister for Planning as to whether an Environment Effects Statement is required
- The proponent may seek the advice of the Minister for Planning as to whether an Environment Effects Statement is required. This will be referred to as a ‘referral’.

The Program’s proponent will need to assess whether a referral should be prepared by undertaking a self-assessment against relevant referral criteria outlined in the *Ministerial guidelines for assessment of environmental effects under the Environment Effects Act* (Guidelines), when further assessment information is available.

The Guidelines provide that ‘a project should be referred in its entirety wherever possible, including any ancillary works or later project stages essential to the project’s operation’. Although the majority of potential environmental effects result from the river operations and not the inundation mitigation measures, the inundation mitigation measures are considered an integral component of the Program and should be considered in combination with the river operations through any referral process.

A high-level assessment against the referral criteria within the Guidelines is provided at Appendix C and can be used to inform where further assessment is required. While recognising the need for further assessment, the high-level assessment indicates that a referral is likely to be required due to potential effects to biodiversity, social and economic well-being, severance of communities and effects on Aboriginal cultural heritage. This is likely to be the case whether the Program is considered in its entirety or with the Goulburn and Murray rivers considered separately. It should be noted that a carefully considered pilot inundation would likely avoid referral.

Consideration of the use of bilateral agreements between the Commonwealth and State governments to combine assessment processes and minimise duplication of effort has been outlined at Section 6.1. Commonwealth environmental approval

6.3 Victorian planning approval

The Planning and Environment Act and subordinate planning schemes provide regulatory oversight of the use and development of land in Victoria.

It is our view that the proposed changes to river operations are not classified as a use or development and are therefore not subject to Victorian planning approval. However, many of the inundation mitigation measures will involve physical works and must be considered against relevant planning scheme requirements.

Inundation mitigation measures are proposed on land within 10 local government areas and separate planning schemes, which will almost certainly require multiple planning permits across various environmental, flooding, vegetation protection and heritage planning controls. The discrete nature of the inundation mitigation measures over a large spatial area means that planning permit applications would not be for development on contiguous land.

Victorian planning approval could be obtained using the following options:

1. Planning permits

Multiple planning permit applications would be prepared to respond to specific planning permit requirements across the inundation mitigation measures. Planning permit applications would typically be made to each local council; however, the Minister for Planning could also act as the Responsible Authority.

This option is not preferred because it does not provide an efficient process to assessing and approving works that span large geographic areas and multiple local government jurisdictions. The option would increase administrative burden on the proponent that is responsible for preparing the permit applications, as well as the councils that are required to assess and approve each application.

2. Planning Scheme Amendment to apply a Specific Controls Overlay and Incorporated Document

Under this option an Incorporated Document would override the existing planning scheme controls with a set of requirements tailored to the site and project. This would allow for bespoke conditions to be drafted in consultation with DELWP, local councils and other key stakeholders. This option requires a planning instrument to be applied to a defined geographic area, including a large number of private properties.

This option is often used on similar complex major projects, as it provides a single cohesive approval framework in place of multiple planning permit application. The approval pathway can respond to the unique nature of the Program by providing for bespoke conditions to be prepared alongside any associated environmental assessment process (such as Strategic Assessment or Environment Effects Statement).

3. Planning Scheme Amendment to introduce a Program specific Particular Provision

This approval pathway would amend all Victorian planning schemes to introduce a new particular provision at Clause 52 that exempts use and development for the purpose of the Program from requiring a planning permit, subject to complying with the requirements of the provision. The conditions contained within the provision can be drafted in consultation with key stakeholders and alongside any associated environmental assessment process. The conditions can also be drafted to address the unique temporal nature of the Program.

This approach is similar to that now being implemented to facilitate other projects of State significance that involve a program of works, including the Level Crossing Removal Project, Rail Projects Victoria and Major Road Projects Victoria (example provided at Appendix D).

This pathway is preferred as it provides an appropriate regulatory oversight whilst also providing the required flexibility to facilitate a Program of works over a large geographic scale. The pathway would allow for the exact scope and location of the inundation mitigation measures to be determined as the Program develops, in consultation with landowners and stakeholders, without requiring a defined project boundary at the time of Ministerial approval.

In doing so, this option also provides a Victorian planning approval pathway for future constraints measures projects on other Victorian rivers. As an example, the Particular Provision for major roads provides a Victorian planning approval pathway for all future qualifying major road projects.

6.4 Cultural Heritage Management Plan

The Program is located within the boundary of two Registered Aboriginal Parties, the Taungurung Land and Waters Council Aboriginal Corporation and the Yorta Yorta Nation Aboriginal Corporation. The Program will also affect land within two river reaches where a Registered Aboriginal Party has not been appointed and First Peoples – State Relations is responsible for administering approvals under the Aboriginal Heritage Act.

The Program will also include environmental watering of land within the First People of the Millewa-Mallee Registered Aboriginal Party boundary, but as no physical works have been identified within this Registered Aboriginal Party boundary, a mandatory Cultural Heritage Management Plan would not be required. If physical works are identified within this Registered Aboriginal Party boundary during further development of the Program, a mandatory Cultural Heritage Management Plan may be required.

Engagement with Traditional Owners and other interested parties, including First Peoples – State Relations, has commenced as part of the feasibility study and should continue throughout the Program's planning, delivery and operation phases. The approach to engagement should be based on principles of self-determination and seek to integrate the knowledge of Traditional Owners into the Program, whilst also helping to navigate Aboriginal cultural heritage and Native Title requirements.

To manage activities that may harm Aboriginal cultural heritage, a Cultural Heritage Management Plan is required to be prepared as outlined in the *Aboriginal Heritage Regulations 2018*, if:

- All or part of the activity area is an area of cultural heritage sensitivity, and
- All or part of the activity is considered a high impact activity.

The majority of the Program is located within areas of Aboriginal cultural heritage sensitivity as it is within 200m of a waterway.

Inundation mitigation measures are likely to include some aspects that are classified as a ‘high impact activity’ as ground disturbance is expected for works to upgrade culvert crossings, roads or to relocate irrigation and pump infrastructure.

The inundation component of the Program is not classified as a ‘high impact activity’ as it is not listed in Division 5 of the Aboriginal Heritage Regulations and would not involve any significant ground disturbance.

Therefore, a mandatory Cultural Heritage Management Plan is likely to be required for certain inundation mitigation measures but not the inundation component.

The Aboriginal Heritage Act also requires a Cultural Heritage Management Plan to be prepared for the works to which an Environment Effects Statement is required to be prepared. Therefore, if the Program requires an Environment Effects Statement, a Cultural Heritage Management Plan must be prepared for the works that are subject to the Environment Effects Statement.

Further consultation with the relevant Registered Aboriginal Parties and First Peoples – State Relations is required to confirm whether a mandatory Cultural Heritage Management Plan is required, or whether voluntary Cultural Heritage Management Plans are recommended to be prepared.

Alongside the statutory Cultural Heritage Management Plan process, the Program should continue early engagement with Traditional Owners and interested parties and partner with them to identify and understand the cultural values that are relevant to the Program.

7. Key Approvals pathways

This section outlines two pathway options for navigating Key Approvals for the Program. Each pathway option is informed by a statutory approvals perspective on the Program's governance arrangements, proponent/s and approach to Program delivery, and has considered the interdependencies of each aspect. The advantages and disadvantages of each option are discussed in Section 7.3.

A high-level indicative schedule has been prepared for each approval pathway option that considers key tasks and their duration to build an overall program for delivering Key Approvals. In preparing this high-level indicative schedule, the duration for Program development, specialist assessment, impact assessments, and public exhibition and approval are the same for each option.

The timing of each schedule is subject to relevant governments deciding to proceed to the next stage of the Program, establishment of the Program's governance arrangements, and progression of relevant specialist assessments and engagement activities needed to support the Key Approvals.

Each high-level schedule also relies upon successful engagement between Commonwealth, New South Wales and Victorian governments to establish agreements that allow for each bespoke environmental assessment approach.

7.1 Pathway Option 1 – Program-wide Strategic Assessment

From a statutory approvals perspective, the Program could be treated as a program of works and undertake a Strategic Assessment (refer to Figure 6), with rationale for each aspect being:

- **Approach to Program delivery**

The Program would be assessed and approved with the Goulburn and Murray rivers combined to provide an integrated approach to assessing the Program's direct, indirect and cumulative effects. This aligns with the approach to undertake a Program-wide Strategic Assessment under the EPBC Act (preferably via a one-off approved trilateral agreement).

While the Program would be considered wholly through the Key Approvals process, this would not then restrict any later opportunities to stage the delivery of inundation mitigation measures through smaller packages for each river or river reach.

- **Proponent/s**

The Program could either be delivered by a single Commonwealth Government led proponent, or through a co-proponent model shared between the Commonwealth, Victoria and New South Wales governments, or the Victorian and New South Wales governments. The co-proponent model could be facilitated by the establishment of a special purpose vehicle.

A Commonwealth Government proponent would provide consistent oversight for the whole Program and allow for an integrated assessment of direct, indirect and cumulative effects through the EPBC Act Strategic Assessment.

The co-proponent model would be consistent with the designation of roles and responsibilities for States under the Basin Plan, and would allow for greater understanding of local and regional issues, and State assessment and approval processes.

- **Scope**

The Program would be defined to allow a pilot inundation to be delivered ahead of wider main works. A Pilot Inundation Approvals Strategy should be prepared to ensure the minor increase to flow limits, and any associated inundation mitigation measures, would occur within the parameters of the relevant Key Approvals and environmental assessment processes.

- **Commonwealth environmental approval (EPBC Act)**

Should further assessments determine that an approval is required under the EPBC Act, a Strategic Assessment could be prepared to assess the Program under Part 10 of the EPBC Act. A Strategic Assessment would provide landscape scale assessment of the Program's impacts and remove the requirement to refer individual projects for approval under parts 7-9 of the EPBC Act.

Opportunities would be explored to incorporate the environmental assessment processes required under state legislation into the EPBC Strategic Assessment via a one-off trilateral agreement between the Commonwealth, Victorian and New South Wales governments. A one-off assessment approach could be established to address both Commonwealth and State environmental matters and ensure consultation requirements, including any required panel hearings, are addressed appropriately. This approach would reduce administrative burden on the proponent and regulators and simplify the community engagement process.

- **Environment Effects Act**

Should further assessments determine that a referral and subsequent Environment Effects Statement is required for the Program, a one-off trilateral agreement could be considered to incorporate the Environment Effects Statement into the Strategic Assessment process under the EPBC Act, and ensure Victorian assessments are integrated and coordinated with this process.

- **Planning and Environment Act**

Alongside the environmental assessment processes under the EPBC Act and Environment Effects Act, a Planning Scheme Amendment would be prepared and approved to establish a common particular provision to facilitate the program of inundation mitigation measures across the relevant planning schemes.

- **Cultural Heritage Management Plan**

At least three Cultural Heritage Management Plans would be required for geographic areas of the Yorta Yorta and Taungurung Registered Aboriginal Parties, and the non-Registered Aboriginal Party area to facilitate the inundation mitigation measures.

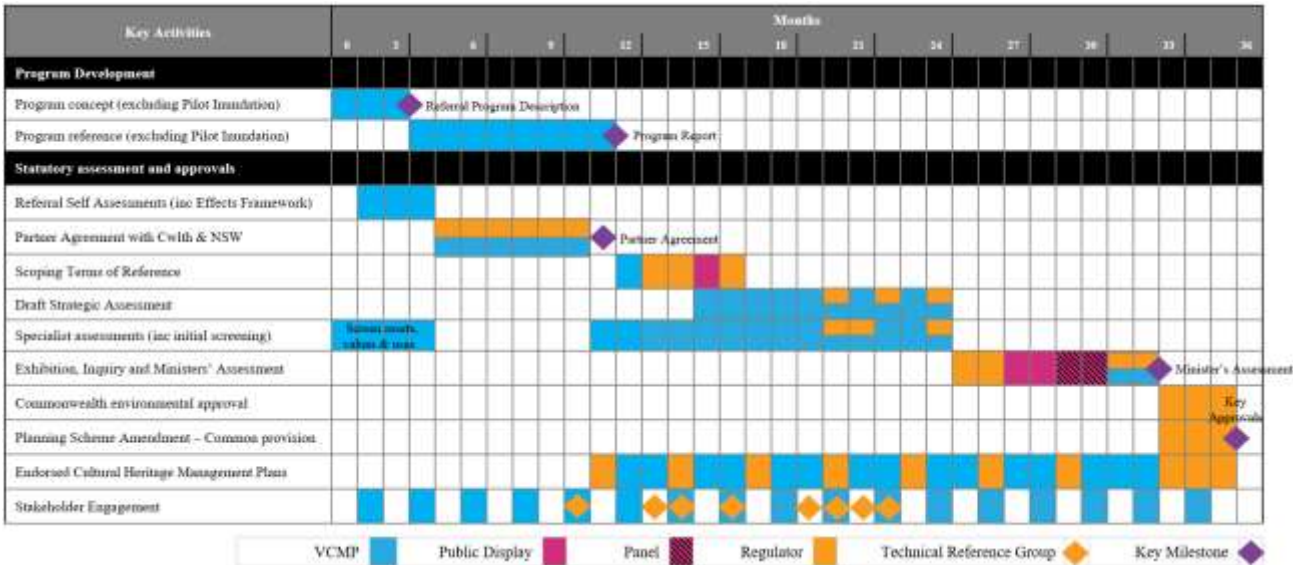
Figure 6 – Pathway Option 1



High-level schedule Pathway Option 1- Program-wide Strategic Assessment

Figure 7 provides a high-level schedule for Pathway Option 1 that indicates that Key Approvals could be completed within approximately 35 months, however this is reliant on successful engagement between Commonwealth, New South Wales and Victorian governments to establish a partner agreement that allows the bespoke environmental assessment approach.

Figure 7 - High level indicative schedule for Pathway Option 1



7.2 Pathway Option 2 – Separate assessment of Goulburn and Murray rivers

Alternatively, from a statutory approvals perspective, the Goulburn and Murray River components of the Program could be considered separately (refer to Figure 8) with rationale for each aspect being:

- **Approach to program delivery**

The Program would be assessed and approved as two projects with the Goulburn and Murray Rivers considered separately.

This approach allows each individual project to be delivered without its progress being contingent on the delivery of the other project.

- **Proponent/s**

The separation of the Goulburn and Murray Rivers could potentially lead to separate proponents for each project. For example, the proponent for the Goulburn River could be either the Commonwealth and/or Victorian governments, while the proponent for the Murray River could be either the Commonwealth or a co-proponent model similar to the Program-wide approach.

- **Commonwealth environmental approval (EPBC Act)**

Should further assessments determine that the Goulburn and Murray River projects require approval under the EPBC Act, the projects could be referred, assessed and approved separately under parts 7-9. The referrals could be progressed at different times depending on each project's delivery program, however the cumulative effects of each project would need to be considered.

The existing bilateral agreement between the Commonwealth and Victorian governments could be used to accredit the assessment of the Goulburn River. However, the Murray River would require either a one-off assessment process to be agreed between Commonwealth, Victorian or New South Wales, or for a Victorian and New South Wales bilateral process to be undertaken concurrently.

- **Environment Effects Act**

Should further assessments determine that two referrals and subsequent Environment Effects Statements are required for each of the separate Goulburn and Murray Rivers projects, these processes would be used to integrate and coordinate Victorian assessments, including with the EPBC Act (as discussed directly above).

- **Planning and Environment Act**

Alongside the environmental assessment processes under the EPBC Act and Environment Effects Act, a Planning Scheme Amendment for each project that would establish a common particular provision to facilitate the program of inundation mitigation measures across the relevant planning schemes. The draft Planning Scheme Amendment can be prepared for consideration alongside the environmental assessment processes under the EPBC Act and Environment Effects Act.

- **Cultural Heritage Management Plan**

The Goulburn River project would require at least two Cultural Heritage Management Plans, one for inundation mitigation measures within the Yorta Yorta Registered Aboriginal Party area and one for inundation mitigation measures within the Taungurung Registered Aboriginal Party area.

The Murray River project would also require at least two Cultural Heritage Management Plans, one for inundation mitigation measures within the Yorta Yorta Registered Aboriginal Party area and one for inundation mitigation measures within the First Peoples – State Relations for the non-Registered Aboriginal Party area.

Figure 8 - Approvals approach Option 2

	Goulburn River	Murray River
Proponent/s	Cwlth or Victoria	Cwlth or (Vic & NSW) or (Cwlth, Vic & NSW)
Scope	Pilot inundation	Pilot inundation
	----- Main works -----	
Commonwealth environmental approval	Referral & Assessment (Part 7-9)	Referral & Assessment (Part 7-9)
Victorian environmental assessment	Likely EES	Likely EES and NSW EIS
Victorian planning approval	Planning Scheme Amendment – Common VCMP provision	Planning Scheme Amendment – Common VCMP provision
Cultural Heritage Management Plan	Yorta Yorta	Yorta Yorta
	Taungurung	First Peoples – State Relations

High-level schedule Pathway Option 2 – Separate assessment of Goulburn and Murray rivers

The indicative high-level schedule for Pathway Option 2 has been provided separately for each Project, acknowledging that the Key Approvals could be progressed concurrently, or separately, under the option.

Figure 9 provides a high-level schedule for Pathway Option 2 Goulburn River Project that indicates that Key Approvals could be completed within approximately 31 months.

Figure 10 provides a high-level schedule for Pathway Option 2 Murray River Project that indicates that Key Approvals could be completed within approximately 36 months, noting that is reliant on successful engagement between Commonwealth, New South Wales and Victorian governments to establish a partner agreement that allows the bespoke environmental assessment approach.

Figure 9 - High level indicative schedule Pathway Option 2 – Goulburn River Project

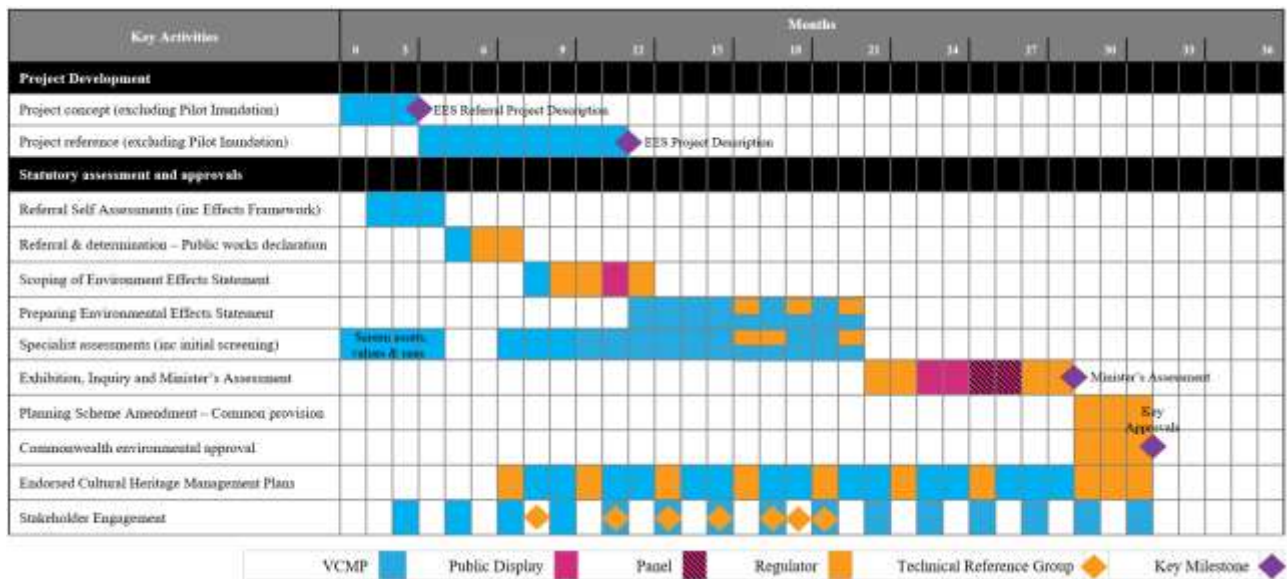
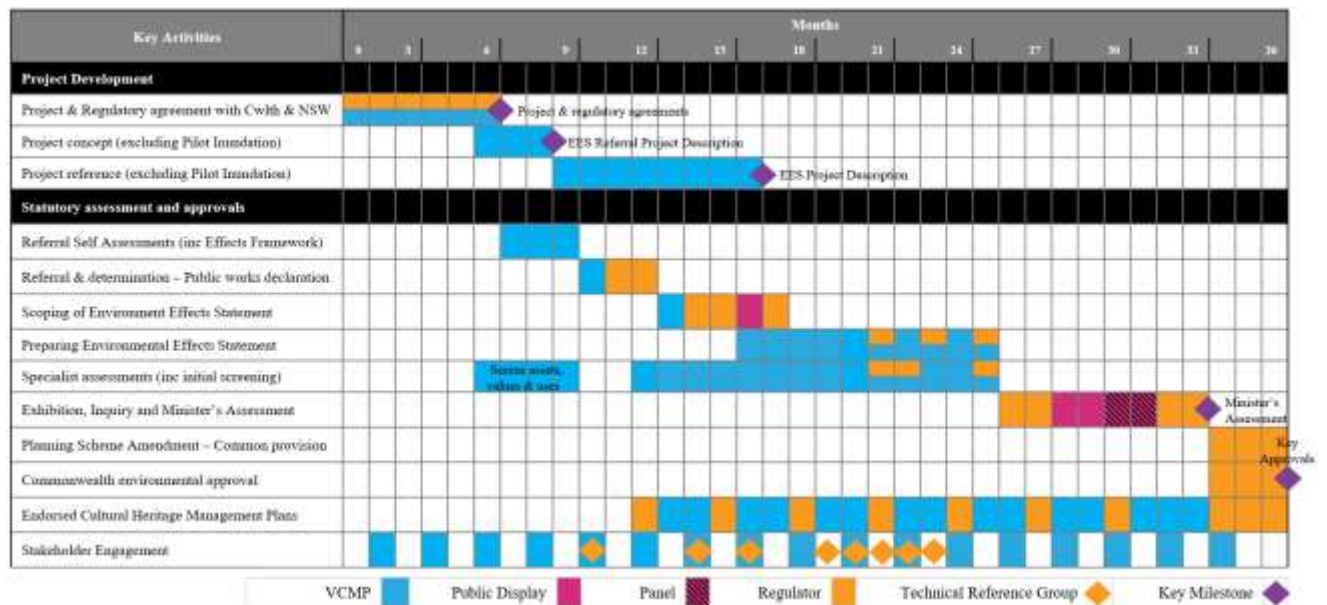


Figure 10 High level indicative schedule Pathway Option 2 – Murray River Project



7.3 Comparison of approvals pathway options

From a statutory approvals perspective, both proposed pathway options are viable approaches to navigate the Key Approvals for the Program.

The key advantages and disadvantages of each option are outlined further at Table 8 and should be considered alongside other elements of Program development in selecting a preferred approach.

Table 8 - Comparison of approvals options

Option	Advantages	Disadvantages
Pathway Option 1 – Program-wide Strategic Assessment	- Provides for assessment, approval of the Program at an appropriate landscape scale - Avoids need for separate referrals to be prepared for each project - Potential to combine the State based environmental assessment processes with the EPBC Act Strategic Assessment	- Introduces risk that the overall schedule is reliant on the slowest component of the Program to obtain approval, therefore not allowing potential efficiencies with delivering less complex aspects of the Program separately - Significant time and cost to prepare Strategic Assessment covering both rivers - Significant community engagement exercise to seek the views of impacted parties across both rivers
Pathway Option 2 – Separate assessment Goulburn and Murray Rivers	- Allows each individual project to be delivered without its progress being contingent on the delivery of the other project - State based environmental assessment processes can be accredited to address EPBC Act matters in a combined manner.	Requires coordination between separate projects and assessment processes to ensure cumulative effects are appropriately assessed

7.4 Approach to pilot inundation

Both Pathway Option 1 and Option 2 include a potential for pilot inundation. Pilot inundation would involve a smaller increase in flow limits to provide a proof-of-concept and inform community engagement on the basis of demonstratable benefits and managed impacts.

The pilot inundation would need to be carefully developed to avoid major statutory assessment and approval processes, and would instead be used to inform the assessment approach for the higher flows and associated inundation and mitigation measures.

A pilot inundation approvals strategy should be developed further that considers the following key principles:

- Pilot inundation and inundation mitigation measures should be developed to avoid potential for significant impact on matters of national environmental significance (EPBC Act referral), referral criteria under the Ministerial Guidelines for the Environment Effects Act and environmental assessment criteria under New South Wales legislation
- Pilot inundation mitigation measures should be developed to avoid or minimise planning approvals with the exception of limited planning permits and Cultural Heritage Management Plans
- Pilot inundations should be implemented to align with early stages of the Key Approvals process for the main works to allow for the outcomes to inform Program development. Pilot inundations should not increase schedule risk for main works.

8. Effects framework

An effects framework has been prepared to provide an overarching context for assessing the potential benefits and impacts of the Program, including cumulative effects (for example downstream to South Australia). This will frame consideration of the hydrological, ecological, cultural heritage and socio-economic (including any potential land use change) effects of the Program.

The effects framework establishes how to assess and then monitor, evaluate and report on the effects through the Program's lifecycle and in accordance with regulator guidelines.

Figure 11 provides a simplistic representation of the key aspects of the Program that require consideration through the effects framework. It illustrates how each aspect relate on a geographic and temporal scale, including:

- **Environmental water** – is the key operational input for the Program, which is defined by the volume, frequency, timing and duration of environmental water delivery in the context of the statutory Commonwealth and State environmental water frameworks
- **Assets, values and uses** – existing high value aspects that will be identified to inform assessment of the Program's direct, indirect and cumulative effects
- **Inundation area** – is the land which will be subject to inundation by the environmental water delivery. This land will be subject to a change in the frequency, timing and duration of inundation, relative to the existing regulated river. It will include public and private land
- **Inundation mitigation measures** – are proposed as physical works, such as bridges and river crossings, as well as compensation for impacts to land and associated uses
- **Cumulative effects** – will be identified and assessed on transverse and longitudinal scales within each river and downstream to the Murray River mouth.

Figure 11 - Effects framework

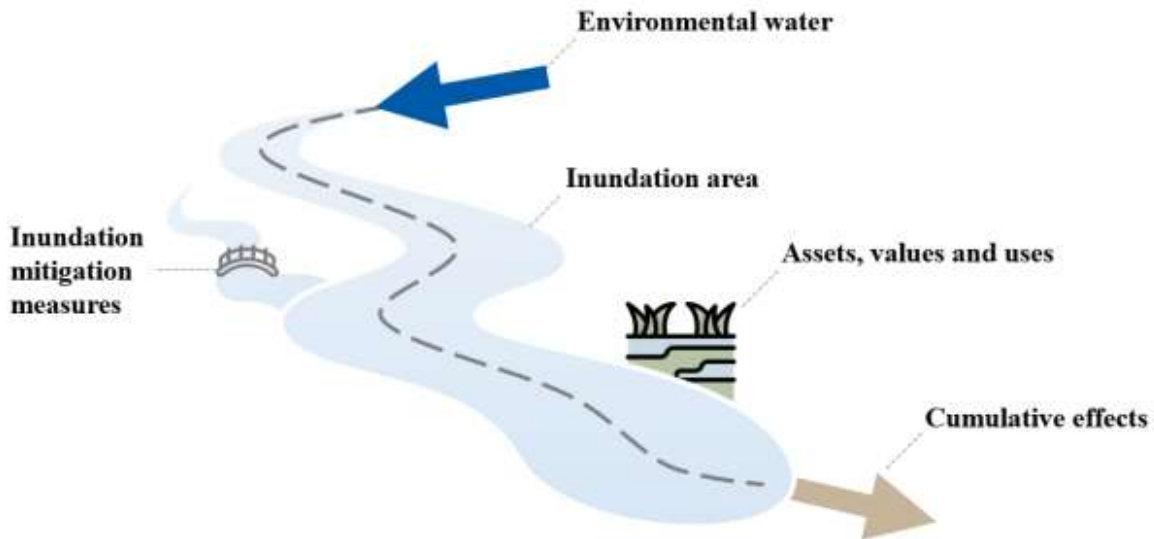


Table 9 demonstrates how each aspect of the effects framework would be identified and assessed to ensure the approach provides a suitable geographic and temporal scale. The assessment approach outlined in Table 9 can be applied through the Key Approvals process regardless of whether pathway option 1 or pathway option 2 is progressed further.

Table 9 - Effects Framework assessment approach

Aspect	Extent	Assessment approach	Examples
Environmental water	Within the study area and downstream to Murray Mouth	Environmental water delivery	Define the volume, timing, frequency and duration of environmental water delivery
Assets, values and uses	Within study area and downstream to Murray Mouth	Initial desktop screening assessment	Identify listed wetlands and National Parks
Inundation area	Up to approximately 60,000 ha ¹	Landscape scale assessment of effects	• Cultural values assessment • Socio-economic assessment
Inundation mitigation measures	Physical works to manage risk of inundation	Site specific assessment of impacts	• Cultural Heritage Management Plan • Planning permit assessment • Habitat hectare assessment
Cumulative effects	Downstream to Murray Mouth	Landscape scale assessment of cumulative effects	Assessment of residual effects of the Program and related existing projects

¹: based on the highest degree of constraint relaxation under investigation for each reach in Stage 1A.

9. Conclusion and next steps

This Regulatory Approvals Strategy provides key considerations to inform a roadmap for navigating Key Approvals for the Victorian Constraints Measures Program. In doing so, it provides a statutory approvals perspective on the Program's governance arrangements, proponent/s and approach to program delivery, including:

- Governance – the Program should establish a system of governance that defines roles and responsibilities across the Program's complex set of stakeholders. The Program would benefit from formal arrangements between stakeholders including a Program Control Group, a Key Approvals working group and the continuation of the community centric co-design approach through subsequent stages
- Proponent/s – A proponent or proponents should be established early to ensure consistent decision-making across the planning, delivery and operation of the Program. This Strategy demonstrates that, depending on the Program's governance arrangements and delivery approach, the proponent could be either the Commonwealth Government, the Victorian Government (for the Goulburn River only), or a combination of the Commonwealth, Victorian and New South Wales governments
- Program delivery – this Strategy presents options to approach program delivery across scope, and spatial and temporal contexts, and demonstrates that the following approaches can be feasibly delivered:
 - The Key Approvals must consider changes to river operations together with the proposed inundation mitigation measures
 - The Goulburn and Murray rivers can be considered combined or separately, but the Murray River component cannot be separated by its river reaches
 - That delivery of pilot inundation ahead of main works would benefit the Key Approvals process
- Key Approvals – this Strategy outlines two feasible approvals pathway options for navigating Key Approvals for the Program, either through a Program-wide Strategic Assessment or separate assessment of the Goulburn and Murray rivers. The advantages and disadvantages of each option are outlined and should be considered alongside other factors relevant to Program delivery in order to select a preferred option. Indicative high-level schedules for these options show that Key Approvals could be delivered within approximately 31 to 36 months options, noting that the Murray River constraints measures is dependent on successful project and regulatory engagement between Commonwealth, New South Wales and Victorian governments
- Pilot inundation – delivery of pilot inundation ahead of main works would demonstrate a 'proof-of-concept' that can be incorporated into the Key Approvals process and be used to inform meaningful engagement with the community. A pilot inundation approvals strategy should be considered to guide the scope and extent of any pilot inundations

- Effects framework – provides an overarching framework for assessing the potential benefits and impacts of the Program, including cumulative effects, which can be applied throughout the Key Approvals phase.

The next steps to progress Key Approvals for the Program are outlined below (this may include activities being undertaken as part of the Stage 1A Feasibility Study):

- 1) Continued early and ongoing regulatory and stakeholder engagement including:
 - a) Review of this Strategy by key regulators including:
 - i) Engagement with key regulators on options for cross-jurisdictional assessment including either Program-wide Strategic Assessment or a separate assessment that addresses cross-jurisdictional issues for the Murray River
 - ii) Engagement with key regulators on the proposed effects framework and the approach to initial desktop screening of assets, values and uses
 - b) Engagement with Traditional Owners and interested parties on:
 - i) Proposed approach to Cultural Heritage Management Plans
 - ii) Partnering to identify and understand cultural values
 - iii) Land management agreements that apply to potential inundation areas including with Taungurung Land and Waters Council Aboriginal Corporation and Taungurung Traditional Owner group, and Yorta Yorta Nation Aboriginal Corporation
- 2) Program development to inform statutory approvals:
 - a) Confirm the approach to delivering the Program (including the Governance model) in consultation with relevant Commonwealth, Victorian and New South Wales parties, informed by considerations of the statutory approvals. This is a fundamental item needing to be progressed in the next stage to allow the statutory approvals pathway to be further developed and defined
 - b) Further review and refine operational scenarios – hydrologically define the inundation area, frequency and timing, including relative to the current regulated river existing condition and pre-river regulation natural flows for the Goulburn and Murray rivers
 - c) Investigate a 'pilot inundation program' - consider the merits, practicalities and usefulness of a pilot program in consultation with key stakeholders. If the Program is considered to potentially benefit from implementation of a pilot inundation program, design the pilot inundation and engage with regulatory authorities around the planned activities, such that securing approval to undertake such works do not hinder the overall cost or time required to implement the broader project
 - d) Environmental water – document the operational scenarios including the volume, frequency, timing, duration and reliability for the proposed pilot and main inundation for the Goulburn and Murray rivers
 - e) Confirm the approach to inundation easements – current Victorian Government policy is that any easements required for the Program on private land would be established through negotiated agreement only. This approach presents a delivery risk to the Program as it relies

upon the successful implementation of potentially hundreds of negotiated agreements before environmental watering flow limits are increased. This Strategy notes that the *Water Act 1989* includes certain water management rights, including the powers to acquire easements compulsorily

3) Assets, values and uses:

- a) Effects framework – confirm the proposed approach with regulators including preparing a draft high-level study program that addresses the different spatial and temporal scale of assessments for the inundation area, inundation mitigation measures and cumulative effects
- b) Initial screening of assets, values and uses – following regulatory engagement to confirm methodology, undertake an initial desktop screening of assets, values and uses within the study area and downstream to the Murray Mouth
- c) Program rationale or benefits – document clear, evidence-based framing of the environmental, social and economic benefits of the Program (for both the Goulburn and Murray rivers) including in the regulatory context such as matters of national environmental significance, ecological offsets, Basin salinity targets and benefits of avoiding the alternative water buybacks. This should inform an adaptive management framework and integrate into the Program’s monitoring, evaluation and reporting framework
- d) Develop a pilot inundation regulatory approvals strategy alongside development of the pilot inundation program at 2)c) that considers the following:
 - i) Avoidance of potential for significant impact on matters of national environmental significance (EPBC Act referral), referral criteria under the Ministerial Guidelines for the Environment Effects Act and environmental assessment criteria under New South Wales legislation
 - ii) Avoidance of major planning and cultural heritage approval processes except for limited planning permits and Cultural Heritage Management Plans
 - iii) A program that aligns the pilot inundation with early stages of the Key Approvals process for the main works to allow for the outcomes to inform Program development and reduce schedule risk for main works
- e) Continue early engagement with Traditional Owners and interested parties and partner with them to identify and understand the cultural values that are relevant to the Program

4) Referral self-assessments informed by assets, values and uses:

- a) EPBC Act referral assessment – following further Program definition and informed by the initial screening of assets, values and uses, undertake desktop assessment of the potential for significant impact on matters of national environmental significance
- b) Environment Effects Statement referral self-assessment – following further Program definition and informed by the initial screening of assets, values and uses, undertake referral self-assessment including on biodiversity, social and economic wellbeing of communities and effects on Aboriginal cultural heritage.

A.1 Key Approvals

This section provides a summary of Key Approvals applicable to the Program. Key Approvals are those that would typically be obtained by the Program proponent and include Commonwealth environmental approval, Victorian environmental assessment, Victorian planning approval, and Cultural Heritage Management Plan.

Commonwealth environmental approval

The EPBC Act provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places defined as Matters of National Environmental Significance. The nine Matters of National Environmental Significance are:

- World heritage properties
- National heritage places
- Wetlands of international importance (listed under the Ramsar Convention)
- Listed threatened species and ecological communities
- Migratory species
- Commonwealth marine areas
- Great Barrier Reef Marine Park
- Nuclear actions
- A water resource, in relation to coal seam gas development and large coal mining development.

Where a proposed action is thought likely to have a significant impact on Matters of National Environmental Significance, a referral must be made to the Commonwealth Government. The referral is then assessed as to whether the action is not acceptable or if approval under the EPBC Act is required. The proposal would therefore require referral to the Commonwealth Environment Minister, who must determine within 20 business days whether an action is:

- ‘Controlled action’ – proposal is subject to further assessment and approval under the EPBC Act
- Not a ‘controlled action’, subject to compliance with specified conditions and carried out in a ‘particular manner’ or not a ‘controlled action’, or
- Action is clearly unacceptable – proposal cannot proceed without significant modification.

This decision determines the extent of any further assessment or information, if any, is required by the Commonwealth prior to making an approval decision.

In the event that approval is required under the EPBC Act, the action can be assessed using the following pathways:

- Accredited assessment (described below)
- Assessment on referral information
- Assessment on preliminary documentation

- Assessment by Environmental Impact Statement / Public Environment Report
- Assessment by public inquiry.

Certain impact assessment processes under Victorian legislation are accredited under the Victorian Commonwealth Assessment Bilateral Agreement as a means to undertake the assessment. The Victorian Commonwealth Assessment Bilateral includes the following accredited assessment processes:

- Environment Effects Statement under the *Environment Effects Act 1978*
- Advisory Committee under the *Planning and Environment 1987*
- Approvals under the *Water Act 1989*

Victorian environmental assessment

An EES is required under the *Environment Effects Act 1978* for works that may result in a significant effect on the environment. The Act enables statutory decision makers to understand the potentially significant environmental effects that could occur as a result of development.

The first step of the process is to establish the need for a referral to be submitted to the Minister for Planning. This can be determined by a set of criteria set out in the *Ministerial guidelines for assessment of environmental effects under the Environment Effects Act 1978* (Ministerial Guidelines) (DSE 2006). The referral criteria are provided in Appendix F. The criteria are defined in two groups:

- Individual potential environmental effects, such that where the project meets at least one of the criteria the project should be referred
- Combination of potential environmental effects whereby a referral should be prepared and submitted if two or more of the criteria are met.

If a referral is required, the Minister for Planning can determine:

- EES is required
- EES is not required
- EES is not required subject to conditions specified by the Minister
- Project is unlikely to be environmentally acceptable in the light of likely environmental effects and existing policy.

If the Minister determines that an Environment Effects Statement is required, DELWP issues Scoping Requirements outlining what is required to be assessed in the Environment Effects Statement.

The EES assessment process typically requires public exhibition of the Environment Effects Statement, during which submissions from the public are invited. An Independent Planning Panel is also typically convened to consider the assessments and submissions and make a recommendation to the Minister for Planning as to whether a project should proceed as proposed, be amended or refused. At the completion of the process, the Minister for Planning provides an assessment which

relevant decision-makers must consider in deciding whether to approve a project under Victorian law. While the recommendations in the assessment are authoritative, they are not usually binding on decision-makers.

It should be noted that the Minister for Planning cannot make a decision until a Cultural Heritage Management Plan has been approved by the relevant RAP or Aboriginal Victoria under the *Aboriginal Heritage Act 2006*.

The Victorian Commonwealth Assessment Bilateral includes an EES under the *Environment Effects Act 1978* as an accredited assessment process.

Victorian planning approval

The *Planning and Environment Act 1987* establishes a framework for planning and managing the use, development and protection of land in Victoria in the present and long-term interests of all Victorians. It requires the preparation and administration of municipal planning schemes which draw together relevant State, regional and local policies and controls for the use and development of land.

Planning schemes set out local planning policy, land zoning, land overlays, particular provisions (relating to requirements for matters such as advertising signage and car parking), general provisions (applicable to all uses), general exemptions and land use definitions.

Planning permission may be required for several reasons, such as land use, buildings and works, and subdivisions. A Planning approval can be pursued through the following primary pathways:

- Planning permit
- Planning Scheme Amendment to introduce an Incorporated Document
- Planning Scheme Amendment to introduce a particular provision

Some land uses may be prohibited under a specific zone and therefore require a Planning Scheme Amendment.

Planning Scheme Amendment

A Planning Scheme Amendment can be obtained in accordance with a stand-alone process prescribed in the *Planning and Environment Act 1987*, or as part of an EES process.

A Planning Scheme Amendment generally is prepared by the proponent and involves public exhibition and planning panel if there are any objections to the proposed amendment.

Under Section 20(5) of the Act, the Minister for Planning may consult with the responsible authority or any other person before exercising the powers under Section 20(2) or 20(4), which allow exemptions from public exhibition and third-party Victorian Civil and Administrative Tribunal (VCAT) appeal risk.

The Minister for Planning typically approves the amendment to the planning scheme allowing for the project to commence once gazetted typically subject to conditions detailed in a project-specific Incorporated Document within the planning scheme, or through a particular provision.

Cultural Heritage Management Plan

The *Aboriginal Heritage Act 2006* primarily provides for the protection of Aboriginal cultural heritage in Victoria.

RAPs are organisations that hold decision-making responsibilities under the *Aboriginal Heritage Act 2006*. If there is no Registered Aboriginal Party, Aboriginal Victoria acts as the regulator.

A Cultural Heritage Advisor is a person who is appropriately qualified in a discipline directly relevant to the management of Aboriginal cultural heritage or who has extensive experience or knowledge in relation to the management of Aboriginal cultural heritage. Under the *Aboriginal Heritage Act 2006*, a Cultural Heritage Advisor may be engaged to assist project sponsors in the preparation of a Cultural Heritage Management Plan.

The Preliminary Aboriginal Heritage Test provides sponsors with certainty about whether a Cultural Heritage Management Plan is required for a proposed activity. The Preliminary Aboriginal Heritage Test is a voluntary process, which allows for the Secretary to the Department of Premier and Cabinet to certify whether a Cultural Heritage Management Plan is required for a proposed activity.

To give effect to the Act, the *Aboriginal Heritage Regulations 2018* prescribe standards, set out the circumstances in which a Cultural Heritage Management Plan should be prepared and set fees and charges.

To manage activities that may harm Aboriginal cultural heritage, a Cultural Heritage Management Plan is required to be prepared as outlined in the *Aboriginal Heritage Regulations 2018*, if:

- All or part of the activity area is an area of cultural heritage sensitivity
- All or part of the activity is considered a high impact activity.

Preparation of a Cultural Heritage Management Plan involves the following process:

- Consult with Aboriginal Victoria and Registered Aboriginal Parties (where applicable)
- Desktop Assessment
- Standard Assessment (which involves field work)
- Complex Assessment, where required (which involves more detailed field work)
- Draft the Cultural Heritage Management Plan
- Endorsement by Aboriginal Victoria or the RAP (30 days)

A.2 Secondary Victorian Approvals

Legislation	Description
<i>Catchment and Land Protection Act 1994</i>	The <i>Catchment and Land Protection Act 1994</i> defines requirements to avoid land degradation, conserve soil, protect water resources and eradicate and prevent the spread and establishment of noxious weed and pest animal species. Management measures would need to be implemented to minimise the potential spread of noxious weeds. These measures would be included in the Construction Environmental Management Plan for the Project.
<i>Crown Land (Reserves) Act 1978</i>	Victoria's <i>Crown Land (Reserves) Act 1978</i> provides for the reservation of Crown land for certain public purposes by the Governor in Council and sets out the administrative and legal framework for managing reserved Crown land and the processes for revoking Crown land reservations. Crown land can be reserved for a range of public purposes, including public parks and gardens, the beds and banks of waterways and railways.
<i>Environment Protection Act 2017</i>	The <i>Environment Protection Act 2017</i> is Victoria's overarching environmental legislation, replacing the <i>Environment Protection Act 1970</i> (Vic). The Act is administered by the Environment Protection Authority (EPA) and supported by subordinate instruments including the Environment Reference Standard (ERS) and Environment Protection Regulations 021 (EP Regulations). The Act shifts the focus of protection of the environment and human health in Victoria to a prevention-based approach and enhances the mandate and powers of the EPA. The Environment Protection Act 2017 also introduces the General Environmental Duty (GED), which is a legal requirement for all Victorians to take reasonably practicable steps to eliminate or reduce the risks of harm to human health and the environment from pollution and waste. The proponent must comply with the Act, GED, ERS and EP Regulations for the Program. The EPA has published numerous guidelines and guidance documents under the Act which must be regarded as appropriate.
<i>Flora and Fauna Guarantee Act 1988</i>	Victoria's <i>Flora and Fauna Guarantee Act 1988</i> provides a framework for biodiversity conservation in Victoria. The Act provides for the listing of threatened species, communities of flora and fauna and potentially threatening processes. A number of non-threatened flora species are also protected under the Act.

Legislation	Description
	A permit is required to take species protected under the Act from public land and may also be required to remove protected species from private land in certain circumstances. A permit is required under this Act for the removal of protected or threatened species, which may occur as a result of vegetation clearing. Permits required for the Program under the <i>Flora and Fauna Guarantee Act 1988</i> will be obtained on a site by site basis.
<i>Forest Act 1958</i>	This Act provides for the management of state forests, including the development of working plans to protect public land from fire, to maintain and improve state forests, and for licensed occupations including grazing, beekeeping and the sale of forest produce.
<i>Heritage Act 2017</i>	The <i>Heritage Act 2017</i> regulates the protection and conservation of places of heritage significance listed on the Victorian Heritage Register (VHR) and archaeological sites and relics listed on the Victorian Heritage Inventory (VHI). Any works or activities which are proposed that may alter a registered place or object require a permit. An application for a permit must be lodged with Heritage Victoria, accompanied by specified supporting documentation appropriate to the nature of the works proposed. A Heritage Impact Statement is required with all applications that discuss the potential impacts of the proposal on the heritage values of significance of the place or object. Under the AH Act, ‘works’ is defined as: a) <i>any physical intervention, excavation or action that may result in a permanent or temporary change to the appearance or physical nature of a place or object; and</i> b) <i>any change to the natural or existing condition or topography of land; and</i> If Works are proposed within the extent of VHR or VHI sites, the proponent must assess whether a heritage permit, consent or exemption is required from Heritage Victoria. Planned inundation of a VHR or VHI site may have the potential to damage a registered place or object. It may also be classified as ‘works’ under the above definition and therefore an activity that may require approval under the AH Act. Further

Legislation	Description
	heritage advice will be required to determine whether the environmental watering component of the VCMP requires assessment against the Heritage Act. The outcomes of which may differ between registered places.
<i>Land Act 1958</i>	Victoria's <i>Land Act 1958</i> deals with the sale, grants and occupation of unreserved Crown land in Victoria. Land can be occupied under this Act under leases for community, commercial and industrial purposes. A lease is an agreement whereby a tenant has an exclusive right to occupy land for a specified term, subject to certain terms and conditions. Conversely, a licence is when a licence-holder may carry out a specified activity on the land but does not have exclusive rights to occupy the land.
<i>National Parks Act 1975</i>	Victoria's <i>National Parks Act 1975</i> and associated National Parks Regulations 2013 seek to preserve and protect the natural environment and wilderness areas, its indigenous flora and fauna, its scenic and archaeological features, and remote nature areas. This is achieved through the development of certain protected areas, which include national parks, state parks, marine national parks and coastal parks. In these areas activities and access are restricted and require specific written approval in the form of leases, licences and agreements from Parks Victoria, declared management authority under the <i>Parks Victoria Act 2018</i> .
<i>Parks Victoria Act 2018</i>	The <i>Parks Victoria Act 2018</i> re-creates Parks Victoria as an independent statutory authority and strengthens Parks Victoria's role of protecting, conserving and enhance Victoria's parks and waterways. The Act amends important pieces of legislation to modernise and clarify Parks Victoria's management responsibilities and provides clear objectives, functions and land management powers integral to efficient and effective operation.
<i>Road Management Act 2004</i>	Victoria's <i>Road Management Act 2004</i> provides the statutory framework for VicRoads, local government and other road authorities to manage the Victorian road network and the coordination of road reserves for roadways, pathways, infrastructure and similar purposes. A road includes the reserve from boundary line to boundary line. While the Minister for Roads and Road Safety is responsible for administering the <i>Road Management Act 2004</i>, VicRoads is responsible for the management of freeways and arterial roads declared under the Act, while local councils are responsible for municipal roads. Consent may be required under the Act for works on these roads.

Legislation	Description
<i>Traditional Owner Settlement Act 2010 (Vic)</i>	This Act provides for an out-of-court settlement of Native Title, allowing the Victorian Government to recognise both Traditional Owners and certain rights in Crown land. In return for entering a settlement, Traditional Owners must agree to withdraw any Native Title claim, pursuant to the <i>Native Title Act 1993</i> and not make any future Native Title claims. The Act provides an alternative framework for the recognition of Traditional Owner rights, financial and land management packages and settlement of Native Title claims in Victoria through the negotiation of agreements, including Recognition and Settlement Agreements, by Traditional Owners with the Victorian Government. The Taungurung Land and Waters Council Aboriginal Corporation (TLWCAC) and Taungurung Traditional Owner group entered a recognition and settlement agreement under the Act that includes Lake Eildon and part of the Goulburn River in the Agreement Area and Lake Eildon as an area of land granted as Aboriginal Title
<i>Water Act 1989</i>	The <i>Water Act 1989</i> promotes the orderly, equitable and efficient use of water resources to make sure that water resources are conserved and properly managed for sustainable use for the benefit of present and future Victorians. The Act regulates the impacts on and use of surface water and groundwater. Approval is required under the Act for works on waterways.
<i>Wildlife Act 1975</i>	Victoria's <i>Wildlife Act 1975</i> establishes procedures for the protection and conservation of wildlife, the prevention of wildlife becoming extinct and the sustainable use of and access to wildlife. The Act also includes procedures to prohibit and regulate the conduct of persons engaged in activities concerning or related to wildlife. An authorisation under Section 28A of this Act would be required where fauna habitat is required to be translocated. A suitably qualified wildlife ecologist would be engaged to check for fauna occupancy and ensure compliance with this Act. Authorisations required for the Project under the <i>Wildlife Act 1975</i> will be obtained on a site by site basis.

A.3 EES Referral Criteria

✓	Likely	?	Uncertain	✘	Unlikely
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Referral criterion		Referral criteria met?	Comments
Individual potential environmental effects			
1	Potential clearing of 10ha or more of native vegetation from an area that: Is of an EVC classified as Endangered within the Bioregion Is, or is likely to be, of Very High Conservation Significance; and Is not authorised under an approved Forest Management Plan or Fire Protection Plan	?	Further assessment is required as it is uncertain whether inundation mitigation measures across the Program or for separate Goulburn and Murray River projects would result in native vegetation removal in excess of 10 hectares.
2	Potential long-term loss of a significant proportion of known remaining habitat or population of a threatened species within Victoria.	✘	While recognising further assessment is required, inundation mitigation measures are unlikely to cause a long-term loss of known remaining habitat or population of a threatened species. Rather the effects are expected to be primarily positive.
3	Potential long-term change to the ecological character of a wetland Listed under the Ramsar Convention or in 'A Directory of Important Wetlands in Australia' (Environment Australia, 2001).	✓	The Program will result in changes to environmental flows and potential terrestrialisation within eight Ramsar listed wetlands both within the Program's inundation area and downstream. Although effects are expected to be primarily positive, further assessment is likely required to understand any potential adverse impacts.
4	Potential extensive or major effects on health or biodiversity of aquatic, estuarine or marine ecosystems, over the long-term.	?	The Program will result in major effects on the health of aquatic and estuarine ecosystems, albeit largely beneficial. Further investigation likely required to understand any adverse impacts.

Referral criterion		Referral criteria met?	Comments
5	Potential extensive or major effects on health, safety or well-being of a human community, due to emissions to air, water or chemical hazards or displacement of residents.	✗	Referral criteria will not be met as Program will have no emissions to air or water or chemical hazards, and will not displace residents.
6	Potential greenhouse gas emissions exceeding 200,000 tonnes of carbon dioxide equivalent per annum, directly attributable to the operation of the facility.	✗	Referral criteria will not be met as Program will not result in excessive greenhouse gas emissions
Combined potential environmental effects			
7	Potential clearing of 10ha or more of native vegetation, unless authorised under an approved Forest Management Plan or Fire Protection Plan.	?	Further assessment is required as it is uncertain whether inundation mitigation measures across the Program or for separate Goulburn and Murray River projects would result in native vegetation removal in excess of 10 hectares.
8	Matters listed under the <i>Flora and Fauna Guarantee Act 1988</i> : • Potential loss of a significant area of a Listed ecological community; or • Potential loss of genetically important population of an endangered or threatened species (Listed or nominated for listing), including as a result of fragmentation of habitats; or • Potential loss of critical habitat; or • Potential significant effects on habitat values of a wetland supporting migratory bird species.	?	Further assessment is required to understand if impacts to FFG Act listed species could occur from proposed inundation and inundation mitigation measures.

Referral criterion		Referral criteria met?	Comments
9	Potential extensive or major effects on landscape values of regional importance, especially where recognised by a planning scheme overlay or within or adjoining land reserved under the <i>National Parks Act 1975</i> .	✗	The Program will not impact on landscape values of regional importance.
10	Potential extensive or major effects on land stability, acid sulphate soils or highly erodible soils over the short term.	?	The Program is unlikely to cause extensive or major effects on land stability, however further assessment likely required to confirm.
11	Potential extensive or major effects on beneficial uses of waterbodies over the long-term due to changes in water quality, stream flows or regional groundwater levels.	?	The Program is likely to cause extensive or major effects on beneficial uses of waterbodies, albeit largely beneficial. Further assessment is likely required to understand any adverse impacts.
12	Potential extensive or major effects on social or economic well-being due to direct or indirect displacement of non-residential land use activities.	✓	Depending on the extent of constraint relaxation, the Program is likely to result in potentially extensive or major effects to social and economic values through temporary displacement of non-residential land uses, particularly agricultural and recreational.
13	Potential for extensive displacement of residences or severance or residential access to community resources due to infrastructure development.	✓	The Program will result in temporary displacement of residential access to community resources through inundation of public and private roads, bridges and access paths. Although inundation mitigation measures are proposed to reduce the risk of this impact, further assessment would be required to demonstrate that the scope and extent of the inundation mitigation measures is appropriate
14	Potential significant effects on the amenity of substantial number of residents due to extensive or major long-term changes in visual, noise and traffic conditions.	✗	The Program will not cause major long-term changes in visual, noise or traffic conditions.

Referral criterion		Referral criteria met?	Comments
15	Potential exposure of a human community to severe or chronic health or safety hazards over the short or long-term, due to emissions to air or water or noise or chemical hazards or associated transport.	✗	The Program will not expose human communities to severe or chronic health or safety hazards.
16	Potential extensive or major effects on Aboriginal cultural heritage	✓	The Program may cause extensive or major effects on Aboriginal cultural heritage and requires further assessment and approval.
17	Potential extensive or major effects on heritage places Listed on the Heritage Register or the Archaeological Inventory under the <i>Heritage Act 2017</i> .	?	The Program is unlikely to cause extensive or major effects on protected heritage places. Further assessment may be required to determine whether inundation of archaeological sites has the potential to cause material harm.

A.4 Clause 52.35 – Major Road Projects Victoria