Annual Compliance Report 23/24

EPBC Approval: 2016/7674 Mernda Rail Project



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4.1 Annual Compliance Table

**Introduction**

* 1. **Project Details**

*Table 1: Project Details*

|  |  |
| --- | --- |
|  |  |
| EPBC Number | 2016/7674 |
| Project Name | Mernda Rail Extension Project |
| Approval Holder | Department of Transport and Planning |
| ABN | 69 981 208 782 |
| Approved Action | To construct a new eight-kilometre dual track railway line  from the existing South Morang station to Mernda. |
| Location of the Project | Approximately 27kn north of Melbourne, Victoria |
| Person Accepting Responsibility for the report | Robin Weston – Network Environment Manager, Department of Transport and Planning  Public Transport Division |
| Reporting Period | April 2023 – April 2024 |
| Date of Preparation of the Report | July 2024 |

* 1. **Declaration**

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| --- |
| **Declaration of accuracy**  In making this declaration, I am aware that sections 490 and 491 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) make it an offence in certain circumstances to knowingly provide false or misleading information or documents. The offence is punishable on conviction by imprisonment or a fine, or both. I declare that all the information and documentation supporting this compliance report is true and correct in every particular.  I am authorised to bind the approval holder to this declaration and that I have no knowledge of that authorisation being revoked at the time of making this declaration.  Signed A black signature on a white background  Description automatically generated  Full name: Robin Weston  Position: Network Environment Manager  Organisation: Department of Transport and Planning 69 981 208 782  Date: 31/07/2024 |
|  |

1. **Description of Activities**

The action commenced in April 2017, and core works were completed in time for passenger rail services to commence on 26 August 2018.

These works comprised of:

• Establishment of the site and no-go zones.

• Salvage of the matted flax-lily plants.

• Clearance of the project area.

• Establishment of site offices at McDonalds Road, Epping; Williamsons Road,

South Morang and Bridge Inn Road, Mernda.

• Diversion of utility services and upgrades to the power supply

• Construction of:

̵ rail from South Morang Station through to Mernda.

̵ three new train stations at Middle Gorge, Hawkstowe and Mernda

̵ the stabling yard.

̵ Shared use path.

Translocation of salvaged Matted Flax-lily plants occurred in July/August 2019, with translocation occurring into two

recipient sites as per the translocation plan1 approved for the project under the *Flora and Fauna Guarantee Act 1988*

(Vic). Since planting occurred, monitoring has confirmed high success rates so far.

The remainder of the salvaged matted flax-lily plants are being stored in a nursery in Research as ‘insurance’ to

ensure long term survival targets of the translocated plants are met. This stock was inspected in April 2024 in

accordance with the Translocation Plan and all plants are flourishing. For full details of 2023/24 actions required under the Translocation Plan see ***2023-24 Matted Flax Lilly Annual Summary Report*** ***June 2024*** as prepared by Aecom on behalf of DTP.

Commitments regarding the translocation of these plants are ongoing in accordance with the Translocation Plan,

and in accordance with contractual agreements Whittlesea City Council will manage both recipient sites for DTP.

The remnant patch of Grassy Eucalypt Woodland of the Victorian Volcanic Plain was offset in 2019 in line with the approved Offset Management Plan prepared by Ecology and Heritage Partners (OMP 2019). Trust for Nature continues to manage the offset site in coordination with the Brian Ruschmeyer (the owner) and has provided the annual monitoring inspection report prepared by Wildlife & Ecology. For full details of 2023/24 actions required under the Offset Management see ***Wildlife Ecology Offset Site*** ***Year Four Report April 2024*** as prepared by Ecology & Heritage Partners of Behalf of Trust For Nature.

Commitments regarding the offset of the Grassy Eucalypt woodland are ongoing in accordance with the OMP 2019 and are secured between Ruschmeyer Nominees Pty Ltd and Trust for Nature Victoria under the Deed of Covenant AT072092A as of the 11th of March 2020.

1. **Condition of Approval**

**3.1 Compliance with approval conditions**

The approval conditions are addressed in the Compliance Table in Appendix 4.1 Annual Compliance Table.

Compliance with each of the conditions is designated as either 'Compliant', 'Non-compliant' or 'Not applicable', with

the meanings of these terms set out below:

• **'Compliant'** - A designation of ‘Compliant' is used when all the requirements of a condition have been met,

including the implementation of management plans or other measures required by those conditions.

• **'Non-compliant'** - A designation of ‘Non-compliant’ is used where the requirements of a condition or elements of a condition, including the implementation of management plans and other measures, have not been met.

• **'Not-applicable'** - A designation of ‘Not-applicable' is used where the requirements of a condition or elements of

a condition fall outside of the scope of the reporting period. For example, a condition which applies to an activity

that has not yet commenced.

**3.2 New Environmental Risks**

No new environmental risks have emerged in 2023-24

1. **Appendix**

4.1 Annual Compliance Table 2023-24

1. R Annua

4.2 Grassy Eucalypt Woodland Offset Year Four Report

4.3 2023-24 Matted Flax Lilly Annual Summary Report

Appendix

4.1 Annual Compliance Table 2023-24

Table 2: Annual Compliance Table

|  |  |  |  |
| --- | --- | --- | --- |
| Condition Number/ reference  e.g., ‘3(c)’ | Condition  Include the complete wording of the condition, and/or sub-condition that is being addressed | Is the project compliant with this condition?  Compliant or Non‑Compliant or  Not applicable | Evidence/Comments  Evidence to support claims regarding compliance or non-compliance |
| 1 | The approval holder must ensure: construction remains within the designated project area; and no construction is undertaken within the no-go zone | Compliant | Construction works completed in 2019 and were delivered by Level Crossing Removal Authority. See annual reports from Years 1-3 for evidence. |
| 2 | For the protection of the grassy eucalypt woodland of the Victorian volcanic plain and the matted flax-lily, prior to commencement of the action, the approval holder must establish the designated no-go zone, including signage and fencing to prevent sediment transfer and restrict access.  **i.** After the construction phase is complete, the no-go zone must be protected by permanent fencing that restricts access to the no-go zone.  **ii.** Within 30 days of the commencement of the action the approval holder must submit for the Minister's approval a Post Construction Management Plan (PCMP). The PCMP must include the details of management measures that will be implemented in the no-go zone after the construction phase. The PCMP must include but not be limited to:  a) Management activities to: control and prevent establishment of weeds; control biomass at suitable levels; and prevent unauthorised access.  b) Performance indicators specifying the measurable outcomes to be achieved by management activities.  c) A monitoring programme suitable to determine the effectiveness of management activities.  d) Corrective actions to be implemented if performance outcomes are not being met.  If the Minister approves the PCMP then the approved PCMP must be implemented.  **iii.** For the protection of the matted flax-lily, temporary fencing with signage must be erected around all areas containing matted flax-lily for salvage and translocation, as identified in Annex B. The temporary fencing must remain in place until salvage and translocation in accordance with the Salvage and translocation plan is complete. | Compliant | Construction works completed in 2019 and were delivered by Level Crossing Removal Authority. See annual reports from Years 1-3 for evidence.   1. This action has previously been addressed 2. This action has previously been addressed 3. This action has previously been addressed |
| 3 | The approval holder must implement the construction Environmental Management Plan, including but not limited to:  **i.** All personnel must be inducted into the site prior to access to the project area, including clearly setting out the no-go zone for the protection of the matted flax-lily and grassy eucalypt woodland of the Victorian volcanic plain. Maps clearly identifying the no-go zone must remain available for the duration of construction.  **ii.** To prevent the introduction of weeds and pathogens to the no-go zone, all vehicles, plant and equipment must be cleaned free of weeds, soil and mud before entering the project area.  **iii.** To protect the no-go zone for the duration of construction, no stockpiles may be located within 30 metres of the no-go zone, dust suppression controls must be established, and sedimentary controls must be in place with weekly monitoring to ensure ongoing effectiveness. Implement corrective actions as set out in the Construction Environmental Management Plan, where effectiveness of sedimentary controls is found inadequate. | Compliant | Construction works completed in 2019 and were delivered by Level Crossing Removal Authority. See annual reports from Years 1-3 for evidence. |
| 4 | To manage the impacts of the action on the matted flax-lily, the approval holder must salvage and translocate matted flax-lily from the project area in accordance with the Salvage and Translocation Plan. i. A pre-clearance survey must be conducted by a suitably qualified expert no more than 1 month prior to any translocation activities being undertaken. The approval holder must document the results of the survey. | Compliant | Evidence of compliance provided to the department by the Level Crossing Removal Authority during construction activities. |
| 5 | Prior to commencement of the action, the approval holder must provide the Department with a copy of the approved Salvage and Translocation Plan and state permit granted by the Victorian Government. | Compliant | This action was completed by LXRA prior to transfer of permit obligations to DTP in 2020 |
| 6. | To compensate for the loss of 0.82 ha of the grassy eucalypt woodland of the Victorian volcanic plain at the GEWWP impact area, prior to commencement of the action, the approval holder must:   1. enter into a written bond agreement with Trust for Nature to identify and establish a covenant on an offset area. 2. ii. provide a sum of $1 200 000 to Trust for Nature to be held until such time as the offset area is identified and secured in accordance with condition 6(i), at which time that sum will form the basis of the payment to purchase environmental services for the offset area.   a. The arrangements for the provision and expenditure of the funds must be set out in the written bond agreement.  b. If the cost of purchasing environmental services is greater than $1 200 000, the approval holder will provide additional funds to Trust for Nature as required by the bond agreement.  c. If the cost of purchasing environmental services is less than $1 200 000, the funds will be returned to the approval holder as required by the bond agreement. | Compliant | 1. Bond agreement secured between Trust for Nature and Level crossing removal authority was entered into in 2019/2020. 2. Completed by Level crossing removal authority prior to securing of offset site in 2019.      1. This action was completed by LXRA prior to transfer of permit obligations to DTP in 2020 2. This action was completed by LXRA prior to transfer of permit obligations to DTP in 2020 |
| 7. | A copy of the bond agreement must be provided to the Department within seven days following execution. | Compliant | This action was completed by LXRA prior to transfer of permit obligations to DTP in 2020 |
| 8. | The approval holder must:   1. Within 18 months of the date of this approval, secure the tenure of the offset area through an agreement to secure and manage offset. The Department must be provided with a copy of the signed agreement to secure and manage offset within 4 weeks following its execution. 2. ii. Within 6 months of the date of signing the agreement to secure and manage offset, ensure that a covenant for the offset area is registered on the title documents of the offset area. The Department must be provided with a copy of the signed covenant within 2 weeks following execution. | Compliant | This action was completed by LXRA prior to transfer of permit obligations to DTP in 2023 |
| 9. | To provide for the conservation and enhancement of the grassy eucalypt woodland of the Victorian volcanic plain, prior to entering into the agreement to secure and manage offset, the approval holder must submit to the Department an Offset Management Plan for the offset area.   1. The approval holder must obtain the Minister's approval of the Offset Management Plan prior to executing the covenant over the offset area. 2. ii. The approved Offset Management Plan must be implemented for a minimum of 10 years following the establishment of the covenant over the offset area. 3. iii. The Offset Management Plan must be prepared by a suitably qualified expert and be consistent with the Department's Environmental Management Plan Guidelines. The Offset Management Plan must   a. Provide the baseline data and other supporting evidence that documents the baseline quality of the grassy eucalypt woodland of the Victorian volcanic plain within the offset area and the GEWWP impact area.  b. A map and description of the offset area and surrounding land uses.  c. Key performance indicators and timeframes for implementation of specific management actions to improve the condition of the grassy eucalypt woodland of the Victorian volcanic plain within the offset area. Management actions should include but not be limited to control of weed and pest species, control of access to the protected land, revegetation, strategic fire and grazing management.  d. The nature, timing and frequency of monitoring to determine the success of management actions and attainment of future condition.  e. Evidence that all relevant conservation advices, recovery plans and/or threat abatement plans have been considered in formulating the plan.  f. Corrective actions that will be implemented in the event monitoring activities indicate future condition objectives are not being achieved. The appropriateness and effectiveness of corrective measures must be demonstrated.  g. The roles and responsibilities for implementing the management actions.  h. Include provisions and measures to ensure that actions taken to conserve, manage and protect the grassy eucalypt woodland of the Victorian volcanic plain have no detrimental impact on the habitat and populations of other listed threatened species and ecological communities identified in the Offset Management Plan as occurring in the offset area. | Compliant | Offset Management plans have been submitted to DCCEEW by Level crossing removal authority during construction. Post construction (April 2019) a revised OMP was provided by LXRA and approved by DCCEEW which remains current. |
| 10. | Within 14 days following commencement of the action, the approval holder must advise the Department in writing of the actual date of commencement of the action. | Compliant | Completed prior to DTP ownership of conditions by the Level Crossing Removal Authority during construction. |
| 11. | The approval holder must maintain accurate records substantiating all activities associated with or relevant to the conditions of approval, including measures taken to implement the plans required by this approval, and make them available upon request to the Department. Such records may be subject to audit by the Department or an independent auditor in accordance with section 458 of the EPBC Act, or used to verify compliance with the conditions of approval. Summaries of audits will be posted on the Department's website. The results of audits may also be publicised through the general media. | Non compliant | **Issue:** Administrative errors at the handover of obligations from Level Crossing Removal Authority (matted flax lily translocated) to DTP and Trust for Nature (GEWWP offset) meant that not all documents were maintained and transmitted to DCCEEW by DTP within the required timeframes.  **Rectification:** These records have now been collated and communicated to DCCEEW. All subsequent reports and plans will be maintained and made available to DCCEEW by DTP. |
| 12. | Unless otherwise agreed to in writing by the Minister, the person taking the action must publish all management plans referred to in these conditions of approval on their website. Each management plan must be published on the website within 1 month following approval by the Minister and remain published for the life of the approval. | Compliant | Current management plans were published by the Level Crossing Removal Authority in 2019.  These are available on the DTP website. |
| 13. | Within three months of every 12 month anniversary following commencement of the action, the approval holder must publish a report on their website addressing compliance with each of the conditions of this approval, including implementation of any management plans as specified in the conditions. The approval holder must provide the Department with evidence of publication on the same day the report is published. Reports must be remain published for the life of the approval. The approval holder must continue to meet the requirements of this condition until such time as agreed to in writing by the Minister. | Compliant | This report and related plans were published on DTP website in July 2024.  The following related annual review reports for this reporting period are also published on the DTP website   * ***2023-24 Matted Flax Lilly Annual Summary Report*** ***June 2024*** * ***Wildlife Ecology Offset Site*** ***Year Four Report April 2024***   Previous years reports are also available via this website. |
| 14. | The person taking the action may choose to revise a management plan approved by the Minister under conditions 3 and 9 without submitting it for approval under section 143A of the EPBC Act, if the taking of the action in accordance with the revised plan would not be likely to have a new or increased impact. If the person taking the action makes this choice they must:   1. notify the Department in writing that the approved plan has been revised and provide the Department with an electronic copy of the revised plan; 2. ii. implement the revised plan from the date that the plan is submitted to the Department; and 3. iii. for the life of this approval, maintain a record of the reasons the approval holder considers that taking the action in accordance with the revised plan would not be likely to have a new or increased impact. | Not applicable | No revision of the approved plans occurred in 2023-24 |
| 15. | The approval holder may revoke their choice under condition 14 at any time by notice to the Department. If the approval holder revokes the choice to implement a revised plan without approval under section 143A of the Act, the plan approved by the Minister must be implemented. | Not applicable | As for 14. |
| 16. | Condition 14 does not apply if the revisions to the approved plan include changes to environmental offsets provided under the Offset Management Plan in relation to a matter protected by a controlling provision for the action, unless otherwise agreed in writing by the Minister. This does not otherwise limit the circumstances in which the taking of the action in accordance with a revised plan would, or would not, be likely to have new or increased impacts. | Not applicable | As for 14. |
| 17. | If the Minister gives a notice to the approval holder that the Minister is satisfied that the taking of the action in accordance with the revised plan would be likely to have a new or increased impact, then:   1. Condition 14 does not apply, or ceases to apply, in relation to the revised plan; and 2. ii. The person taking the action must implement the plan approved by the Minister. To avoid any doubt, this condition does not affect any operation of conditions 9, 10 and 11 in the period before the day the notice is given. | Not applicable | As for 14. |
| 18. | At the time of giving the notice the Minister may also notify that for a specified period of time that condition 14 does not apply for one or more specified plans required under the approval. | Not applicable | As for 14. |
| 19. | Conditions 14, 15, 16, and 17 are not intended to limit the operation of section 143A of the EPBC Act which allows the approval holder to submit a revised plan to the Minister for approval. | Not applicable | As for 14. |
| 20. | If, at any time after five (5) years from the date of this approval, the approval holder has not commenced the action, then the approval holder must not commence the action without the written agreement of the Minister. | Not applicable | Action commenced within 5 year period. |
| 21. | The approval holder must report any potential or actual contravention of the conditions of this approval to the Department in writing within seven days of the approval holder becoming aware of a contravention. | Not applicable | Historic contraventions related to provision of historic documents (condition11) noted by DCCEEW during 2023/24 audit aside no contraventions noted by DTP throughout 2023-24 reporting year. |