



May 2020

# Mernda Rail Extension Project

EPBC 2016/7674 Compliance Report

4 April 2019 to 3 April 2020



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# 1 Introduction

## 1.1 Project details

**Table 1 Project details**

<b>EPBC number</b>	2016/7674
<b>Project name</b>	Mernda Rail Extension Project
<b>Approval holder</b>	Major Transport Infrastructure Authority (Level Crossing Removal Project), (formerly the Level Crossing Removal Authority, LXRA)
<b>ABN</b>	69 981 208 782
<b>Approved action</b>	To construct a new eight-kilometre dual track railway line from the existing South Morang station to Mernda.
<b>Location of the project</b>	Approximately 27 km north of Melbourne in Victoria
<b>Person accepting responsibility for the report</b>	Cathy Philo, Director Land Planning and Environment, Major Transport Infrastructure Authority (Level Crossing Removal Project) (previously the Level Crossing Removal Authority), an administrative office established in relation to the Department of Transport.
<b>Reporting period</b>	4 April 2019 to 3 April 2020
<b>Date of preparation of the report</b>	May 2020

## 1.2 Declaration

A person must not knowingly provide information to the Department that is false or misleading (see sections 490 and 491 of the EPBC Act). The extract below from the EPBC Act should be considered in the context of the Act as whole, including any related sections and any relevant definitions.

### **490 Providing false or misleading information in response to a condition on an approval or permit**

- 1) A person is guilty of an offence if:
  - (a) the person is the holder of an environmental authority; and
  - (b) a condition attached to the environmental authority requires the person to provide information; and
  - (c) the person provides information in response (or purportedly in response) to the requirement; and
  - (d) the person is reckless as to whether the information is false or misleading in a material particular.

Note: The fault element in paragraph (1) (d) can be demonstrated by proof of knowledge. See subsection 5.4(4) of the Criminal Code.
- 2) The offence is punishable on conviction by:
  - (a) imprisonment for a term of not more than 2 years, a fine of not more than 120 penalty units, or both, if it is proved the person knew the information was false or misleading; or
  - (b) imprisonment for a term of not more than 1 year, a fine not more than 60 penalty units, or both, if it is proved the person was reckless as to whether the information was false or misleading.

Note: Subsection 4B(3) of the Crimes Act 1914 lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

## 2 Description of the 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 plan<sup>1</sup> 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 2020 in accordance with the Translocation Plan and all plants are flourishing.

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 LXRA.

The remnant patch of Grassy Eucalypt Woodland of the Victorian Volcanic Plain at South Morang in the no-go zone remains protected and undisturbed by the project.

Practical completion was reached earlier than originally forecast and trains commenced in late August 2018.

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<sup>1</sup> EPBC 2016/7674 Matted Flax-lily Translocation Plan, Rev 8. Subsequently, Revision 9 was approved under the FFG Act on 8 April 2020.

# 3 Conditions of approval

## 3.1 Compliance with approval conditions

The approval conditions are addressed in the Compliance Table in Table A1 in Appendix A.

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 become apparent during the project.

# Appendix A: Compliance table

**Table A1 Compliance table**

Condition number	Condition	Compliant / Non-compliant / Not applicable	Evidence / Comments
1	The approval holder must ensure: construction remains within the designated project area unless otherwise agreed to in writing by the Minister. No construction is to be undertaken within the no-go zone.	Compliant	The action is now complete and there are no ongoing requirements under this condition.
2	<p>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.</p> <p>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.</p> <p>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:</p> <p>a) Management activities to: control and prevent establishment of weeds; control biomass at suitable levels; and prevent unauthorised access.</p> <p>b) Performance indicators specifying the measurable outcomes to be achieved by management activities.</p> <p>c) A monitoring programme suitable to determine the effectiveness of management activities.</p> <p>d) Corrective actions to be implemented if performance outcomes are not being met.</p> <p>If the Minister approves the PCMP then the approved PCMP must be implemented.</p> <p>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</p>	Compliant	<p><b>2(i)</b> This condition has previously been addressed.</p> <p><b>2(ii)</b> This condition has previously been addressed.</p> <p><b>2(iii)</b> Translocation, in accordance with the Salvage and Translocation Plan, is complete and the temporary fencing (identified in Annex B) will be removed.</p>

	in place until salvage and translocation in accordance with the Salvage and Translocation Plan is complete.		
<b>3</b>	<p>The approval holder must implement the Construction Environmental Management Plan, including but not limited to:</p> <ul style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>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.</li> </ul>	Compliant	This condition has previously been addressed.
<b>4</b>	<p>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.</p> <ul style="list-style-type: none"> <li>i. The approval holder must provide the Department with a copy of the pre-translocation survey conducted by a suitably qualified expert no more than 1 month prior to any translocation activities being undertaken.</li> </ul>	Compliant	This condition has previously been addressed.
<b>5</b>	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 condition has previously been addressed.
<b>6</b>	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	Compliant	This condition has previously been addressed.



the action, the approval holder must:

- i. enter into a written bond agreement with Trust for Nature to identify and establish a covenant on an offset area.
- 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.

Note: The loss of 0.82 ha refers to the actual extent of impact to the area containing grassy eucalypt woodland of the Victorian volcanic plain. As this area was protected under EPBC 2010/5313, compensation is required for both the impact to the protected area under EPBC 2010/5313 and the extent of impact under this approval. Therefore, the size of the impact under the Offsets Assessment Guide to the EPBC Act Environmental Offsets Policy (Department of Sustainability, Environment, Water, Population and Communities, 2012) will be double 0.82 ha (1.64 ha).

7	A copy of the bond agreement must be provided to the Department within seven days following execution.	Compliant	This condition has previously been addressed.
8	<p>The approval holder must:</p> <ol style="list-style-type: none"> <li>i. 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.</li> </ol>	Compliant	<p><b>8(i):</b> An agreement to secure and management offset was signed by all parties on 30 September 2019, with a copy of this agreement provided to the Commonwealth on 10 October 2019.</p> <p><b>8(ii):</b> A covenant for the offset area was registered on title on 13 March 2020, with a copy of the signed covenant provided to the</p>

	<ul style="list-style-type: none"> <li>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.</li> </ul>		<p>Commonwealth on 25 March 2020.</p> <p>This condition has therefore been met and no further action by LXRP is required.</p>
9	<p>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.</p> <ul style="list-style-type: none"> <li>i. The approval holder must obtain the Minister's approval of the Offset Management Plan prior to executing the covenant over the offset area.</li> <li>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.</li> <li>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 <ul style="list-style-type: none"> <li>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.</li> <li>b) A map and description of the offset area and surrounding land uses.</li> <li>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.</li> <li>d) The nature, timing and frequency of monitoring to determine the success of management actions and attainment of future condition.</li> <li>e) Evidence that all relevant conservation advices, recovery plans and/or threat abatement plans have been considered in formulating the plan.</li> <li>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</li> </ul> </li> </ul>	Compliant	<p>An Offset Management Plan for the offset site was approved by the Commonwealth on 30 April 2019, providing confirmation that the requirements of this condition were met. This Plan forms part of the 'agreement of secure and manage offset' discussed against Condition 8.</p> <p>This condition has therefore been met and no further action by LXRP is required.</p>

	<p>be demonstrated.</p> <p>g) The roles and responsibilities for implementing the management actions.</p> <p>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.</p>		
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	This condition has previously been addressed.
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.	Compliant	Accurate records are being maintained by LXP.
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	<p>The following management plans are published on the project website:</p> <ul style="list-style-type: none"> <li>• Construction Environment Management Plan</li> <li>• Matted Flax-lily Salvage and Translocation Plan</li> <li>• Post Construction Management Plan (Rev C)</li> </ul> <p>Refer: <a href="https://levelcrossings.vic.gov.au/media/publications/mernda-rail-project-environment-protection-and-biodiversity-conservation-policy">https://levelcrossings.vic.gov.au/media/publications/mernda-rail-project-environment-protection-and-biodiversity-conservation-policy</a></p>

13	<p>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 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.</p>	Compliant	<p>The following reports addressing compliance with the conditions of this approval are published on the LXP website:</p> <ul style="list-style-type: none"> <li>• <i>Mernda Rail Extension Project EPBC 2016/7674 Compliance Report: 4 April 2017 to 3 April 2018</i> (September 2018)</li> <li>• <i>Mernda Rail Extension Project EPBC 2016/7674 Compliance Report: 4 April 2018 to 3 April 2019</i> (June 2019)</li> </ul> <p>This report will be published online concurrently with its submission to the Commonwealth Department of Agriculture, Water and Environment.</p> <p>Refer: <a href="https://levelcrossings.vic.gov.au/media/publications/mernda-rail-extension-project-compliance-report2">https://levelcrossings.vic.gov.au/media/publications/mernda-rail-extension-project-compliance-report2</a></p>
14	<p>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:</p> <ol style="list-style-type: none"> <li>notify the Department in writing that the approved plan has been revised and provide the Department with an electronic copy of the revised plan;</li> <li>implement the revised plan from the date that the plan is submitted to the Department; and</li> <li>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.</li> </ol>	Compliant	Plans approved by the Minister under conditions 3 and 9 have not required amendment during the reporting period.
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	Revocation of this choice has not occurred.
16	Condition 14 does not apply if the revisions to the approved plan include changes to environmental offsets provided under the Offset Management Plan	Not applicable	Changes to the offsets provided under the approved Offset

	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.		Management Plan have not been necessary.
<b>17</b>	<p>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:</p> <ul style="list-style-type: none"> <li>i. Condition 14 does not apply, or ceases to apply, in relation to the revised plan; and</li> <li>ii. The person taking the action must implement the plan approved by the Minister.</li> </ul> <p>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.</p>	Not applicable	Such notice was not given.
<b>18</b>	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	Such notice was not given.
<b>19</b>	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	Condition exists to avoid ambiguity.
<b>20</b>	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	The action has now been completed.
<b>21</b>	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.	Compliant	LXRP is not aware of any potential or actual contravention of the conditions of this approval during the reporting period.

