

Notification of approval decision

Inland Rail - Illabo to Stockinbingal, NSW (EPBC 2018/8233)

This decision is made under section 130(1) and 133(1) of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Note that section 134(1A) of the EPBC Act also applies to this approval. That provision provides, in general terms, that if the approval holder authorises another person to undertake any part of the Action, the approval holder must take all reasonable steps to ensure that the other person is informed of any conditions attached to this approval, and that the other person complies with any such conditions.

Approved Action

person to whom the	Australian Rail Track Corporation Limited	
approval is granted		
(approval holder)	ACN: 081 455 754	
Action	To upgrade, construct and operate a rail line between Illabo and Stockinbingal as part of the Inland Rail Program (See EPBC Act referral 2018/8233) subject to the variation of the proposed Action accepted by the Minister under section 156B on 13 September 2024.	
Approval decision		
decision	My decision on whether or not to approve the taking of the Action for the purposes of the controlling provision for the Action is as follows.	
	Controlling Provision	Decision
	Listed threatened species and communities (section 18 and section 18A)	Approved
period for which the approval has effect	This approval has effect until 31 October 2100.	
conditions of approval	The approval is subject to conditions under the EPBC Act as set out in Annexure A.	
Person authorised to n	nake decision	
name and position	Kate Gowland Branch Head Environment Assessments (NSW, ACT)	
signature	A Control	
date of decision	28 October 2024	

Annexure A

Note: Words and terms appearing in **bold** (excluding headings) have the meaning assigned to them at **Part C – Definitions**.

Part A – Avoidance, mitigation, and compensation conditions

CLEARING LIMITS

- The approval holder must not clear and construct outside of the Action area unless either of the following are met:
 - a) such clearing and construction is limited to locations with no habitat of protected matters;
 - b) such clearing and construction is limited to locations required to facilitate minor design adjustments and only as allowable under the NSW Approval, and the total extent of clearing for the Action will not exceed the limits specified in condition 2 of this approval and specified in condition E25 of the NSW Approval.
- 2) The approval holder must not **clear** more than:
 - a) 16.77 hectares (ha) of Grey Box Woodlands
 - b) 17.48 ha of Box-Gum Grassy Woodlands
- 3) To avoid and mitigate harm to protected matters as a result of the Action, the approval holder must comply with conditions E23, E24, E25 and E27 of the NSW approval, to the extent that they relate to protected matters.
- 4) To avoid and mitigate **harm** to **protected matters** as a result of the Action, the approval holder must comply with conditions E31, E32 and E33 of the **NSW Approval**.

CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN

- 5) To avoid and mitigate **harm** to **protected matters** as a result of the Action, the approval holder must comply with conditions C17 and C20 of the **NSW Approval**.
- 6) The approval holder must ensure that, in complying with condition C20(c) of the **NSW Approval**, the weed, pest and pathogen management plan:
 - a) Prevents both the introduction of new weeds and spread of weeds, as a result of the Action, into any retained areas of Grey Box Woodland and Box-gum Grassy Woodlands within and immediately adjacent to the Action Area; and
 - b) addresses and incorporates appropriate actions and objectives identified in the relevant **TAPs**.

OPERATIONAL ENVIRONMENTAL MANAGEMENT PLAN

7) To avoid and mitigate harm to protected matters as a result of the action, the approval holder must comply with conditions D1 to D4 (inclusive) of the NSW Approval, to the extent that they relate to protected matters.

OPERATIONAL MONITORING PROGRAMS

8) To avoid and mitigate harm to protected matters as a result of the action, the approval holder must implement conditions D5 to D12 (inclusive) of the NSW Approval, where they relate to protected matters.

FAUNA CONNECTIVITY STRATEGY

9) To mitigate impacts to protected matters as a result of the Action, the approval holder must comply with conditions E40 to E45 (inclusive) of the NSW Approval, to the extent that they relate to protected matters.

ADDITIONAL BOX-GUM WOODLAND MEASURES

10) If the Biodiversity Stewardship Agreement as outlined in condition E34 of the NSW Approval is approved, the approval holder must comply with conditions E34 to E37 (inclusive) of the NSW Approval.

BIODIVERSITY OFFSETS

- 11) Prior to the **commencement of the Action**, to compensate for the residual significant impacts of the Action on **relevant protected matters**, the approval holder must **retire** the number and types of **biodiversity credits** in accordance with conditions E26 and E28 of the **NSW Approval**.
- 12) The approval holder must not **commence the Action** until the **biodiversity credits** for the **protected matters** have been **retired** in accordance with condition E28 of the **NSW Approval.**
- 13) Within 5 business days of retiring any biodiversity credits in respect of protected matters, the approval holder must submit evidence in writing to the department demonstrating that the biodiversity credits have been retired in accordance with condition E28 of the NSW Approval and specify, in relation to each relevant protected matter, how many biodiversity credits were retired.

Part B – Administrative conditions

SUBMISSION AND PUBLICATION OF PLANS

- 14) Wherever these conditions require the approval holder to submit any **plan** to the **department**, all such **plans** must be submitted to the **department** electronically.
- 15) Unless otherwise agreed to in writing by the **Minister**, the approval holder must publish each **plan** on the **website** within 15 **business days** of the date:

- a) the **plan** is approved by the **Minister** in writing, if the **plan** requires the approval of the **Minister**, or
- b) the **plan** is approved by the **NSW Planning Secretary** as required under a **NSW approval** condition which must be complied with in accordance with these **EPBC Act** conditions.
- 16) The approval holder must keep all **plans** published on the **website**, in a format that is easily accessible and downloadable, from the first date which that **plan** must be published and until the expiry date of this approval, or as otherwise requested in writing by the **department**. This requirement applies to all current and superseded versions of **plans**.
- 17) The approval holder is required to exclude or redact sensitive biodiversity data from any version of a plan before that plan is published on the website or otherwise provided to a member of the public. If sensitive biodiversity data is excluded or redacted from a plan, the approval holder must notify the department in writing what exclusions and redactions have been made in the version published on the website.

MODIFICATIONS TO STATE OR TERRITORY APPROVAL

- 18) The approval holder must notify the **department** in writing of any proposed change to the **NSW Approval** that may relate to **protected matters** within 2 **business days** of formally proposing such a change.
- 19) The approval holder must notify the **department** in writing of any change to the **NSW Approval** conditions that may relate to **protected matters**, within 5 **business days** of such a change to conditions coming into effect. Such notification must include a copy of the changed **NSW Approval** conditions showing what changes have been made.

COMMENCEMENT OF THE ACTION

- 20) The approval holder must notify the **department** electronically of the date of **commencement of the Action**, within 5 **business days** following **commencement of the Action**.
- 21) The approval holder must not **commence the Action** later than 5 years after the date of this approval decision.
- 22) The approval holder must notify the **department** electronically of the date of commencement of **operation** within 5 **business days** following commencement of **operation**.

COMPLIANCE RECORDS

- 23) The approval holder must maintain accurate and complete **compliance records** and document the procedure for recording and storing **compliance records**.
- 24) If the **department** makes a request in writing, the approval holder must provide electronic copies of **compliance records** to the **department** within the timeframe specified in the request.
 - **Note: Compliance records** may be subject to audit by the **department**, or by an **independent auditor** in accordance with section 458 of the **EPBC Act**, and/or be used to verify compliance with the conditions. Summaries of the results of an audit may be published on the **department's** website or through the general media.

- 25) The approval holder must ensure that any **monitoring data**, surveys, maps, and other spatial and metadata required under the conditions of this approval are prepared in accordance with the *Guidelines for biological survey and mapped data*, Commonwealth of Australia 2018, or as otherwise specified by the **Minister** in writing.
- 26) The approval holder must ensure that any **monitoring data**, surveys, maps, and other spatial and metadata required under the conditions of this approval are prepared in accordance with the *Guide to providing maps and boundary data for EPBC Act projects*, Commonwealth of Australia 2021, or as otherwise specified by the **Minister** in writing.
- 27) The approval holder must submit all **monitoring data**, surveys, maps, other spatial and metadata and all species occurrence record data (sightings and evidence of presence) electronically to the **department** within 20 **business days** of the next anniversary of the date of this approval decision except where otherwise specified in a **plan**.

ANNUAL COMPLIANCE REPORTING

- 28) The approval holder must prepare a **compliance report** for each **Annual Compliance Report period** (ACR period).
- 29) The approval holder must ensure each **compliance report** includes:
 - a) accurate and complete details of compliance and any non-compliance with:
 - i) each condition imposed under the **NSW approval**, if a condition attached to this approval decision requires compliance with that **NSW approval** condition,
 - ii) each condition attached to this approval decision, and
 - iii) all commitments made in each plan,
 - b) a schedule of all plans in effect in relation to these conditions during the ACR period,
 - accurate and complete details of how each plan was implemented during the ACR period,
 and
 - d) if any **incident** occurred, accurate and complete details of each **incident**.
- 30) The approval holder must ensure each **compliance report** is consistent with the *Annual Compliance Report Guidelines*, Commonwealth of Australia 2023.
- 31) The approval holder must, within 20 **business days** following the end of each **ACR period**, in a format that is easily accessible and downloadable, publish on the **website**:
 - a) each compliance report, and
 - b) a **shapefile** showing all **clearing** of **protected matters**, and their habitat, undertaken within the **ACR period**.

- 32) The approval holder must:
 - a) Exclude or redact **sensitive biodiversity data** from each **compliance report** and **shapefile** published on the **website** or otherwise provided to a member of the public.
 - b) If sensitive biodiversity data is excluded or redacted from a version of a compliance report published or otherwise provided to a member of the public, submit the full compliance report to the department within 5 business days of its publication on the website and notify the department in writing what exclusions and redactions have been made in the version published on the website or otherwise provided to a member of the public.
 - c) If sensitive biodiversity data is excluded or redacted from a version of a shapefile published or otherwise provided to a member of the public, submit the full shapefile to the department within 5 business days of its publication on the website and notify the department in writing what exclusions and redactions have been made in the version published on the website or otherwise provided to a member of the public.
- 33) The approval holder must notify the **department** electronically, within 5 **business days** of each date of publication that the **compliance report** has been published on the **website**. In this notification, the approval holder must provide the **department** with the web address for where the **compliance report** and related **shapefile** are published on the **website**.
- 34) The approval holder must keep each **compliance report** and related **shapefile** published on the **website** from the first date which that **compliance report** must be published and until the expiry date of this approval.

Note: Compliance reports may be published on the department's website.

REPORTING NON-COMPLIANCE

- 35) The approval holder must notify the **department** electronically, within 2 **business days** of becoming aware of any **incident**. The approval holder must specify in each notification:
 - a) any condition or commitment made in a **plan** which has not been, or may have not been, complied with,
 - b) a short description of the incident, and
 - c) the location (if applicable, including co-ordinates), date and time of the incident.
- 36) The approval holder must provide to the **department** in writing, within 12 **business days** of becoming aware of an **incident**, the details of that **incident**. The approval holder must specify:
 - a) all corrective measures and investigations which the approval holder has already taken in respect of the **incident**,
 - b) the potential impacts of the incident,
 - the method and timing of any corrective measures that the approval holder proposes to undertake to address the **incident**, and

d) any variation of these conditions or revision of a **plan** that will be required to prevent recurrence of the **incident** and/or to address its consequences.

INDEPENDENT AUDIT

- 37) The approval holder must ensure that an **independent audit** of compliance with the conditions is conducted for every **audit period**.
- 38) The approval holder must submit details of the proposed **independent auditor** and their qualifications to the **department** within 10 **business days** following the end of each **audit period**.
- 39) The approval holder must ensure the scope of each **independent audit** is sufficient to determine the compliance status for each condition of approval, and each commitment made in each **plan**.
- 40) The approval holder must ensure the criteria for each independent audit and the undertaking of each independent audit are consistent with the Independent Audit and Audit Report Guidelines
- 41) The approval holder must submit an **audit report** to the **department** for written agreement from the **department** within 3 months following the end of each **audit period**, or as otherwise directed by the **Minister** in writing.
- 42) The approval holder must ensure each **audit report** is completed to the satisfaction of the **Minister** and is consistent with the **Independent Audit and Audit Report Guidelines** to the extent that the Guidelines are consistent with these conditions.
- 43) The approval holder must publish each **audit report** on the **website**, in a format that is easily accessible and downloadable, within 10 **business days** of the date the **department** agrees to that **audit report** in writing.
- 44) The approval holder must notify the **department** within 5 **business days** of the date the **audit report** is published on the **website**. In this notification, the approval holder must provide the **department** with the web address for where the **audit report** is published on the **website**.
- 45) The approval holder must keep each **audit report** published on the **website** from the first date which that **audit report** must be published and until the expiry date of this approval.

COMPLETION OF THE ACTION

- 46) Within 20 business days after the completion of the Action, and, in any event, at least 20 business days before this approval expires, the approval holder must notify the department electronically of the date of completion of the Action and provide completion data. The approval holder must submit any spatial data that comprises completion data as a shapefile.
- 47) The approval holder must notify the **department** electronically 60 **business days** prior to the expiry date of this approval, that the approval is due to expire.

Note: Section 145C of the **EPBC Act** entitles the approval holder to request an extension to the period of effect of this approval.

Part C - Definitions

Words and terms appearing in **bold** (excluding headings) have the meaning assigned to them in the list below:

Action area means the location of the Action, represented in <u>Attachment A</u> by the zone enclosed by the red line designated Proposal Site in the legend.

Annual Compliance Report period or **ACR period** means each subsequent 12-month period following the date of this approval decision until the expiry date of this approval, unless otherwise specified in writing by the **Minister**.

Audit period means each subsequent five-year period following the **commencement of the Action** until the expiry date of this approval unless otherwise specified in writing by the **Minister**.

Audit report means a written report of an independent audit.

Biodiversity credit means units of required offsets calculated for the Action in accordance with the Biodiversity Offsets Scheme under the *Biodiversity Conservation Act 2016* (NSW).

Biodiversity data means 'biodiversity data' as described in the *Policy on Accessing and Sharing Biodiversity Data*, Commonwealth of Australia 2024.

Biodiversity Stewardship Agreement means a legal agreement between the owner of the land and the Minister responsible for the *Biodiversity Conservation Act 2016*.

Box-Gum Grassy Woodland means White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community listed as threatened under the **EPBC Act.** Within the **Action area, Box-Gum Grassy Woodland** is represented in <u>Attachment A</u> by the pink hatch areas designated "White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland" in the legend.

Business day means a day that is not a Saturday, a Sunday, or a public holiday in New South Wales.

Clear, cleared or **clearing** means the cutting down, felling, thinning, logging, removing, killing, destroying, poisoning, ringbarking, uprooting, or burning of vegetation.

Commence the Action or **commences the Action** means the first instance of any on-site **clearing**, **construction** or other physical activity associated with the Action, but does not include minor physical disturbance necessary to:

Undertake pre-clearance surveys or monitoring programs.

- Install signage and/or temporary fencing to prevent unapproved use of the Action area, so long as the signage and/or temporary fencing is located where it does not harm any protected matter.
- Protect environmental and property assets from fire, weeds, and feral animals, including use of existing surface access tracks.
- Install temporary site facilities for persons undertaking pre-commencement activities so long as these facilities are located where they do not harm any protected matter.
- Undertake low impact work as defined in the NSW Approval.

Commencement of the Action means the date on which the approval holder **commences the Action**.

Completion data means an environmental report and spatial data clearly detailing how the conditions of this approval have been met.

Completion of the Action means the date on which all activities associated with the approved Action have permanently ceased and/or been completed.

Compliance records means all documentation or other material in whatever form required to demonstrate compliance with these conditions of approval (including compliance with commitments made in **plans**) in the approval holder's possession, or that are within the approval holder's power to obtain lawfully.

Compliance report means a written report of compliance with, and fulfilment of, these conditions (including compliance with commitments made in **plans**).

Construction means:

- the erection of a building or structure that is, or is to be, fixed to the ground and wholly or partially fabricated on-site,
- the alteration, maintenance, repair or demolition of any building or structure,
- any work which involves breaking of the ground (including pile driving) or bulk earthworks,
- the laying of pipes and other prefabricated materials in the ground, and
- any associated excavation work.

Construction does not include the installation of temporary fences or signage.

Department means the Australian Government agency responsible for administering the **EPBC Act**.

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Grey Box Woodland means Grey Box (*Eucalyptus microcarpa*) Grassy Woodlands and Derived Native Grasslands of South-eastern Australia ecological community listed as threatened under the **EPBC Act**. Within the **Action area, Grey Box Woodland** is represented in <u>Attachment A</u> by the green hatch areas designated "Grey Box (E. microcarpa) Grassy Woodlands and Derived Native Grasslands of South-Eastern Australia" in the legend.

Harm means to cause any measurable direct or indirect disturbance or deleterious change as a result of any activity associated with the Action.

Incident means any:

- event which has the potential to, or does, harm any protected matter,
- potential non-compliance with these conditions, including the administrative requirements,
- actual non-compliance with these conditions, including the administrative requirements,
- potential non-compliance with one or more commitment made in a plan, and/or
- actual non-compliance with one or more commitment made in a plan.

Independent audit means an audit, conducted by an **independent auditor**, of compliance with and fulfilment of these conditions and the commitments made in **plans**, objectively evaluated against the audit criteria developed by the **independent auditor**, in accordance with the **Independent Audit and Audit Report Guidelines**.

Independent Audit and Audit Report Guidelines means the *Environment Protection and Biodiversity Conservation Act 1999 Independent Audit and Audit Report Guidelines*, Commonwealth of Australia 2019

Independent auditor means a person, or firm, who:

- does not have any individual, financial*, employment* or family affiliation or any conflicting interests with the Action, the approval holder or the approval holder's staff, representatives, or associated persons,
- has demonstrated experience in undertaking government-regulated environmental compliance audits, and
- holds relevant professional qualifications and accreditations.

Minister means the Australian Government Minister administering the **EPBC Act**, including any delegate thereof.

Monitoring data means the data required to be recorded under the conditions of this approval, including **sensitive biodiversity data**.

^{*}Other than for the purpose of undertaking the role for which an independent person, or firm, is required.

NSW Approval means the NSW Government Infrastructure Approval for the Illabo to Stockinbingal project made under Section 5.19 of the *Environmental Planning & Assessment Act* 1979, for application number SSI-9406 approved on 4 September 2024. At the date of this decision, the **NSW approval** can be accessed at the following webpage address: <u>NSW Approval</u> (nsw.gov.au)

NSW Planning Secretary means 'Planning Secretary' as defined in the NSW Approval.

Operation means 'operation' as defined in the NSW Approval.

Plan means any action management plan or strategy that the approval holder is required by these conditions to implement.

Protected matter means a matter protected under a controlling provision in Part 3 of the **EPBC Act** for which this approval has effect.

Relevant protected matter/s means the follow protected matters:

- Grey Box Woodland
- Box-Gum Grassy Woodland
- Swift Parrot
- Superb Parrot

Retire or retired has the same meaning as retire in the Biodiversity Offset Scheme under the *Biodiversity Conservation Act 2016* (NSW), such that the **biodiversity credits** can no longer be bought or sold.

Threat abatement plans or **TAPs** means a plan made by the **Minister**, or adopted from a state or territory, with the purpose of reducing the effect of a listed key threatening process for specific **protect matters**.

Sensitive biodiversity data means **biodiversity data** which, if released, published or otherwise exposed, may result in **harm** to the relevant **protected matter** as a result of the intentional or unintentional misuse of that **biodiversity data**.

Shapefile means location and attribute information about the Action provided in an Esri shapefile format containing:

- '.shp', '.shx', '.dbf' files,
- a '.prj' file which specifies the projection or geographic coordinate system used, and
- an '.xml' metadata file that describes the shapefile for discovery and identification purposes.

Superb Parrot means the species Superb Parrot (*Polytelis swainsonii*) listed as threatened under the **EPBC Act**.

Swift Parrot means the species Swift Parrot (*Lathamus discolor*) listed as threatened under the **EPBC Act**.

Website means a set of related web pages attributed to the approval holder and available to the public.

Attachments

A: Action area



























