

From: s22
To: s22
Cc: s22 ; s22
Subject: Query re supplementary condition for the Koala associated with the Mt Gilead residential development [SEC=UNCLASSIFIED]
Date: Thursday, 25 October 2018 10:19:18 AM
Attachments: [image001.jpg](#)

Hi s22

The southern NSW Assessments team at ESD is currently assessing the Mt Gilead residential development in Campbelltown for proposed approval under the EPBC Act. s22 suggested you as the best person to discuss this proposal with. One of the impacts we have identified with this project is to the Koala associated with 10.85 ha of direct clearing and 3.53 ha of indirect impacts through isolation of retained patches of habitat. The proponent is proposing to offset the impacts to the 10.85 ha of direct clearing and 3.53 ha by purchasing Koala biodiversity credits from on-site and offsite BioBank sites.

We have also identified additional potential indirect impacts on Koala populations using the BioBank sites to the north (Campbelltown City Council's Noorumba Biobank site) and south of the site (Beula BioBank site) as these sites will be further isolated by clearing of habitat within the Mt Gilead site. To address these difficult to quantify indirect impact we are trying to put together a condition for supplementary measures where the proponent would contribute to a fund to support research or other mitigation measures (such as land bridges between these BioBank sites and Koala habitat on the eastern side of Appin road). (we have don't something similar for Superb Parrots associated with wind farms in the Yass area). The draft wording is below:

- To further compensate for the loss of connectivity between the Noorumba Biobank site and the Beula BioBank site, the Department recommends proposed Condition 11 requiring the approval holder to prepare and implement a Koala Management Plan for the proposed action area in consultation with the Koala Recovery Team and contribute at least \$100,000 each year for five years to fund activities outlined in the plan.

I know that there is a lot of work being carried out between the Department and NSW OEH (through a senior officers group?) and other proposals for mitigation measures associated with the proposed Appin Road upgrade. It would be great to get your thoughts on how the above condition could be crafted to be consistent with/ contribute to these wider efforts.

I would be happy to come over and discuss at some stage if that is easier.

Thanks

s22

s22

Assistant Director (ag)

Southern NSW and ACT Assessments / Environment Standards Division / Department of the Environment and Energy

51 Allara Street Canberra 2600 /GPO Box 787 Canberra 2601 / 02 6274 s22 /

s22 [@environment.gov.au](mailto:s22@environment.gov.au)

cid:image014.jpg@01D2893B.C52619D0

■

From: [Anderson, Mark \(Australia\)](#)
To: s22; "Humphries, Robert"; s47F; s22
Subject: RE: Discussion of proposed conditions for Mt Gilead [SEC=UNCLASSIFIED]
Date: Wednesday, 14 November 2018 4:07:44 PM
Attachments: [image001.png](#)

s22

We are surprised by the position taken by the Department, some of these items have not been raised during the preliminary review, any previous discussions or correspondence from the Department. It is disappointing to have these raised as part of the draft condition report which has a limited timeframe for discussion and debate. To understand the Departments position are you able to advise the following as a matter of absolute urgency:

1. Are proposing not to accept the onsite offset for the Council reserve (SSTF offset) –
What is the basis for this position? We intentionally amended this to become a Bio-Bank at the request of the Department, with the understanding this would satisfy the Departments concerns in regards to the long term management of this portion of the site?
2. Not proposing to accept the use of the Noorumba-Mt Gilead to offset impacts to the Koala –
What is the basis for this position? This was not raised as an issue during the preliminary assessment or any discussions.
3. We have also proposed another supplementary condition to compensate for cumulative impacts to the Koala associated with the development –
A requirement for supplementary compensation for 'cumulative impacts' was not raised as an issue during the preliminary assessment or any discussions
What are the specific cumulative impacts which have been deemed to require compensation?
How was this condition prepared?
What basis for the quantum of the contribution value?

I will confer with s47F and Rob and advise our preference for meeting or teleconference, are you able to book a meeting room in my anticipation of our preference to meet?

Regards,

Mark Anderson

Senior Development Manager, Communities
Level 2, 88 Phillip Street, Parramatta NSW 2150 Australia
PO Box 4, Parramatta NSW 2150
M s47F

mark.anderson@lendlease.com | www.lendlease.com



-----Original Appointment-----

From: s22

Sent: Wednesday, 14 November 2018 2:09 PM

To: Anderson, Mark (Australia); 'Humphries, Robert'; s47F; s22

Subject: Discussion of proposed conditions for Mt Gilead [SEC=UNCLASSIFIED]

When: Wednesday, 21 November 2018 2:30 PM-3:30 PM (UTC+10:00) Canberra, Melbourne, Sydney.

Where: TBD

Hi Mark

As discussed, I have sent you through a letter and proposed decision notice for Mt Gilead. We

have accepted your calculations of the impact areas (including the reduced offset requirements for indirect impacts) but are proposing not to accept the onsite offset for the Council reserve (SSTF offset). The Department is also not proposing to accept the use of the Noorumba-Mt Gilead to offset impacts to the Koala. The effect of this is that additional offsite offsets will be required to compensate for impacts to these matters. We have also proposed another supplementary condition to compensate for cumulative impacts to the Koala associated with the development.

Please let me know if you would like to have a phone meeting or would like to come to Canberra for this meeting.

Regards

s22

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From: s22
To: [Anderson, Mark \(Australia\)](mailto:Anderson.Mark@lendlease.com)
Cc: s22; s22; "RobertH@ecoaus.com.au"; s47F
Subject: Discussion of proposed conditions for Mt Gilead [SEC=UNCLASSIFIED]
Date: Thursday, 15 November 2018 1:50:12 PM
Attachments: [image001.png](#)

Hi Mark

I have provided some additional points of clarification below. I have booked a room so look forward to discussing next Wednesday.

Regards

s22

From: Anderson, Mark (Australia) [<mailto:Mark.Anderson@lendlease.com>]

Sent: Wednesday, 14 November 2018 4:08 PM

To: s22; 'Humphries, Robert'

<RobertH@ecoaus.com.au>; s47F; s22

s22

Subject: RE: Discussion of proposed conditions for Mt Gilead [SEC=UNCLASSIFIED]

s22

We are surprised by the position taken by the Department, some of these items have not been raised during the preliminary review, any previous discussions or correspondence from the Department. It is disappointing to have these raised as part of the draft condition report which has a limited timeframe for discussion and debate.

To understand the Departments position are you able to advise the following as a matter of absolute urgency:

1. Are proposing not to accept the onsite offset for the Council reserve (SSTF offset) –

What is the basis for this position? We intentionally amended this to become a Bio-Bank at the request of the Department, with the understanding this would satisfy the Departments concerns in regards to the long term management of this portion of the site?

The Department has previously raised concerns about the Council reserve by email (s22 to Rob Humphries cc yourself on the 16/11/17 and 13/2/18). The Department has accepted the patch of vegetation as retained vegetation to be managed by a vegetation management plan but does not consider that this reserve meets the requirements of the Department's offset policy. This is in part due to concerns about the long-term legal protection for the site and concern for the long-term viability of this community given its isolation within the housing development.

We have accepted your proposed offsets for SSTF and CPW at the Macarthur-Onslow-Mt Gilead and Noorumba-Mt Gilead proposed BioBank sites given that draft agreements have been prepared by OEH and registration is imminent. Consultations with the NSW Office of Environment and Heritage during the assessment phase has confirmed that registration of these sites is imminent.

2. Not proposing to accept the use of the Noorumba-Mt Gilead to offset impacts to the Koala –

What is the basis for this position? This was not raised as an issue during the preliminary assessment or any discussions.

The Department is concerned about the viability of Koala populations in the BioBank sites to the west of Appin road given the current plans for a Koala proof fence along the eastern side of Appin road designed to stop east-west movement of the Koala. As such the Department considers that these sites they do not provide "an overall conservation outcome that improves or maintains the viability of the protected matter" (S7.1 of the EPBC Offset Policy). The Department has only become aware of the

detail of this proposed road upgrade through consultation with NSW RMS during preparation of our proposed approval decision. Although the Appin Road upgrade was mentioned in the preliminary documentation no detail was provided on the proposed Koala proof fence.

3. We have also proposed another supplementary condition to compensate for cumulative impacts to the Koala associated with the development –

A requirement for supplementary compensation for 'cumulative impacts' was not raised as an issue during the preliminary assessment or any discussions

What are the specific cumulative impacts which have been deemed to require compensation?

How was this condition prepared?

What basis for the quantum of the contribution value?

The Department is concerned about cumulative impacts on connectivity of Koala populations associated with the combined effect of the Mt Gilead project, nearby proposed residential developments and the Appin Road upgrade. These impacts have not been compensated for through the Mt Gilead project's offset strategy which addresses impacts on Koala habitat within the Mt Gilead property or (to the Department's knowledge), the RMS's REF process.

I will confer with s47F and Rob and advise our preference for meeting or teleconference, are you able to book a meeting room in my anticipation of our preference to meet?

Regards,

Mark Anderson

Senior Development Manager, Communities

Level 2, 88 Phillip Street, Parramatta NSW 2150 Australia

PO Box 4, Parramatta NSW 2150

Ms47F

mark.anderson@lendlease.com | www.lendlease.com



Emails duplicated
within Document 2

s222

s22

From: [Anderson, Mark \(Australia\)](#)
To: s22 ; s22 ; s22
Cc: [Humphries, Robert](#); s47F
Subject: RE: Discussion of proposed conditions for Mt Gilead [SEC=UNCLASSIFIED]
Date: Monday, 19 November 2018 4:00:25 PM
Attachments: [image001.png](#)
[20181105 FAQs Greater Macarthur final.pdf](#)
[Greater Macarthur 2040 interim plan 2018 11 19.pdf](#)
[greater macarthur 2040 interim plan 2018 11 16 \(1\).pdf](#)

s22

In preparing for our meeting this week, I would like to bring to your attention the release of updated Land Use Planning for Greater Macarthur which was released by the NSW Department of Planning earlier today.

<https://www.planning.nsw.gov.au/Plans-for-your-area/Priority-Growth-Areas-and-Precincts/Greater-Macarthur-Growth-Area/Key-actions-and-documents>

Specifically I highlight the response towards the management of Koala's within the Departments plans See you Wednesday.

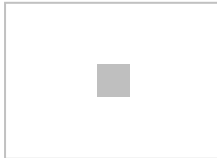
Regards,

Mark Anderson

Senior Development Manager, Communities
Level 2, 88 Phillip Street, Parramatta NSW 2150 Australia
PO Box 4, Parramatta NSW 2150

M s47F

mark.anderson@lendlease.com | www.lendlease.com



-----Original Appointment-----

From: s22

Sent: Thursday, 15 November 2018 2:24 PM

To: Anderson, Mark (Australia); s22

Cc: Humphries, Robert; s47F

Subject: Discussion of proposed conditions for Mt Gilead [SEC=UNCLASSIFIED]

When: Wednesday, 21 November 2018 10:00 AM-11:00 AM (UTC+10:00) Canberra, Melbourne, Sydney.

Where: 51A - 2177 - Level 2 Meeting Room

Hi Mark

As discussed, I have sent you through a letter and proposed decision notice for Mt Gilead. We have accepted your calculations of the impact areas (including the reduced offset requirements for indirect impacts) but are proposing not to accept the onsite offset for the Council reserve (SSTF offset). The Department is also not proposing to accept the use of the Noorumba-Mt Gilead to offset impacts to the Koala. The effect of this is that additional offsite offsets will be required to compensate for impacts to these matters. We have also proposed another supplementary condition to compensate for cumulative impacts to the Koala associated with the development.

Please let me know if you would like to have a phone meeting or would like to come to Canberra for this meeting.

Regards

s22

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From: [Anderson, Mark \(Australia\)](#)
To: s22 ; s22 ; s22
Cc: [Humphries, Robert](#); s47F
Subject: RE: Discussion of proposed conditions for Mt Gilead [SEC=UNCLASSIFIED]
Date: Tuesday, 20 November 2018 3:08:33 PM
Attachments: [image001.png](#)
[181121 Proposed Response to Draft Conditions \(Dept Issue\).pdf](#)
[DOC18 850344 Draft Biodiversity Certification Agreement - Mt Gilead Stage 1 \(Version 1\)\(4\).pdf](#)

s22

To ensure the optimum outcomes from our meeting tomorrow please find attached the key queries and discussion points we wish to raise.

Regards,

Mark Anderson

Senior Development Manager, Communities
Level 2, 88 Phillip Street, Parramatta NSW 2150 Australia
PO Box 4, Parramatta NSW 2150
Ms47F

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NOTES FOR MEETING – 21 NOVEMBER 2018

MT GILEAD RESIDENTIAL DEVELOPMENT (EPBC 2015/7599)

ADMINISTRATIVE

- i. Proposal to condition offsets in terms of Hectares Not Credits. Prior advise was these would be stated as credit requirements for ease of reference between the State and Commonwealth assessments & approvals.
- ii. Treatment of the managed lands with regards to the obligations under the Biodiversity Conservation Agreement (attached) to bio bank these sites
- iii. Methodology for calculation of offset requirements (We can't clearly index these back to the final report)

RESPONSES TO PROPOSED CONDITIONS OF APPROVAL

PART A – Conditions Specific to the action

Impacts

1. The approval holder must ensure that the clearing of **protected matters** within the proposed action area is limited to the area marked as 'development area' in **Attachment 1**.

Condition to be reworded to areas nominated for 'development' alternatively the clause should also nominate 'Detention Basins', 'Open Space' and 'Open Space – Passive' areas (per Attachment 1)

Compensation Measures

2. To offset the **impacts** on 3.3 ha of **SSTF** and 0.37 ha of **CPW**, the approval holder must ensure that 8 ha of **SSTF** and 0.8 ha of **CPW** is **secured** within **onsite offset areas** prior to the **commencement of the action**.

Department requested to confirm how these areas for impacts have been calculated?

3. To offset the **impacts** on 1.79 ha of **SSTF**, the approval holder must **secure** a minimum of 4 ha of **SSTF** at the Fernhill Central West Biobanking site prior to the **commencement of the action**.
4. To compensate for **impacts** on 0.8 ha of **SSTF**, and 0.17 ha of **CPW**, not compensated through offsetting through conditions 2 and Conditions 3, the approval holder must submit for the **Minister's** approval, an offset strategy in accordance with the **EPBC Act environmental offsets policy**. The offset strategy must outline how these impacts will be offset in perpetuity. The offset strategy should be submitted at least three months prior to the intended **commencement date**. The approval holder must not **commence the action** unless the offset strategy has been approved by the **Minister**.

An additional 2.96 ha of SSTF will be restored within 10 years through active management of the Macarthur Onslow BioBank. (PD Section 8.1.1)

An additional 0.81 ha of CPW will be restored within 10 years through active management of the Noorumba – Mt Gilead BioBank. (PD Section 8.1.1)

- a. These areas directly contribute to the ongoing viability of the protected matter and deliver an overall conservation that improves the viability of the protected matter as compared what is likely to happen if the action does not take place.

(S7.1 - EPBC Environmental Offset Policy 2012)

- b. Creates new similar habitat through revegetation works improving the quality of existing foraging habitat for the species, and /or protecting existing habitat through putting a conservation covenant on the title of the land (Biodiversity Certification & Bio banking)

(S7.1 - EPBC Environmental Offset Policy 2012)

Why are these areas be excluded from quantum of onsite offsets?

5. To compensate for **impacts to Koalas** and the **GHFF** the approved holder must submit, for the **Minister's** approval, an offset strategy in accordance with the **EPBC Act environmental offset policy**. The offset strategy must outline how these impacts will be offset in perpetuity. The offset strategy should be submitted at least three months prior to the intended **commencement date**. The approval holder must not **commence the action** unless the offset strategy has been approved by the **Minister**.

Koalas -

The proposed development is already compensating in the order of (199%) for the direct impacts to Koalas is already provided in the form of onsite Biobanks (97%) and the retirement of Koala credits from Noorumba Reserve. (102%)

RMS is reviewing the impacts of Appin as part of their assessment of the Review of Environmental Factors. In addition, direct impacts for Appin Road within the project frontage has been included in this assessment.

NSW Department of Planning is reviewing the impacts of proposed future developments as part of their Cumberland Plain Conservation Plan

In addition to these points above, NSW Government has committed \$1m funding for activities to compensate for cumulative impacts to the Koala associated with the development.

The funding will be released over the next two years to community groups, landowners and local council to undertake koala research, tree planting, pest management, and build greater community awareness about Koalas and their habitat.

Connectivity of the koala population is maintained within the Greater Macarthur land use planning

GHFF

What specific concerns the Department has with the proposed onsite offsetting provisions for foraging habitat.

Vegetation Management Plan

11. At least three months prior to the **commencement of the action**, the approval holder must submit a vegetation management plan (VMP) for the protection of protected matters in the Council reserve the **Minister's** approval. If the **Minister** approves the VEMP, then the approved VEMP must be implemented.

Treatment of these should be amended to reflect their status as proposed biobanks, per the Biodiversity Certification Agreement.

The Minister administering the *Threatened Species Conservation Act 1995* (NSW)

And

Lendlease Communities (Mount Gilead) Pty Limited

And

Mt Gilead Pty Limited

And

Campbelltown City Council

Biodiversity Certification Agreement

Threatened Species Conservation Act 1995 (NSW)

Table of contents

Deed made at

on

Parties

Minister for the Environment as the Minister administering the *Threatened Species Conservation Act 1995* (NSW) (**'the Minister'**)

and

Lendlease Communities (Mount Gilead) Pty Limited **ACN 605 278 331**

(Developer)

and

Mt Gilead Pty Limited ACN 008 499 189

(Owner)

and

Campbelltown City Council

(Council)

Background

- A. The Council has applied to the Minister to confer Biodiversity Certification on land (the Biodiversity Certification Area) at Mount Gilead Stage 1 within the Campbelltown City Council local government area upon application by Campbelltown City Council.
- B. The Biodiversity Certification Application has identified the following Conservation Measures:
 - (a) the entering into a biodiversity banking agreement over the Conservation Area as a Conservation Measure and the subsequent retirement of 20 HN556 Biodiversity Credits generated from that site; and
 - (b) the retirement of 84 HN556 Biodiversity Credits, and 85 Koala species credits, generated from the Macarthur-Onslow Biodiversity Stewardship Site (ID xx)
 - (c) the retirement of 28 HN528 Biodiversity Credits, and 48 Koala species credits, generated from the Noorumba-Mt Gilead Biodiversity Stewardship site (ID xx); and
 - (d) the retirement of a further 151 Koala species credits.
- C. The Developer owns land, being Lot 61 DP 752042, within the Biodiversity Certification Assessment Area.
- D. The Owner owns land, being Part Lot 2 DP1218887 and Lots 1, 2, 3, 4 and 5 DP 1240836, within the Biodiversity Certification Assessment Area. Within this land, the Owners own Noorumba-Mt Gilead biodiversity stewardship site (ID x) and Macarthur-Onslow Mt Gilead biodiversity stewardship site (ID x).

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

In this Agreement, unless the context indicates otherwise:

Agreement means this deed titled 'Biodiversity Certification Agreement' and includes all schedules.

Bank Guarantee means an bank guarantee in favour of the Minister in a form, and from an institution, acceptable to the Minister.

BC Act means the *Biodiversity Conservation Act 2016* (NSW).

Biodiversity Certification has the same meaning as in in Part 7AA of the TSC Act and, in this Agreement, refers to the biodiversity certification of the Biodiversity Certification Area.

Biodiversity Certification Application means the application for Biodiversity Certification in respect of land known as Mount Gilead Stage 1 at Lot 61 DP 752042, Part Lot 2 DP1218887 and Lots 1, 2, 3, 4 and Part Lot 5 DP 1240836 (previously Lot 3 DP 1218887 which was formerly part of Lot 1 and Lot 2 DP 807555 and Lots 59 DP 752042) on Appin Road in the Campbelltown local government area made on 19 July 2018 by Campbelltown City Council under section 126J of the TSC Act.

Biodiversity Certification Area means the land identified as "Land to be Certified" on the map in Schedule 3.

Biodiversity Certification Assessment Area means the land identified as the "Biodiversity Certification Assessment Area" on the map in Schedule 3.

Biodiversity Certification Strategy means the Mt Gilead Biodiversity Certification Assessment Report and Biocertification Strategy Final Report to Minister prepared for Mt Gilead Pty Ltd and Mr & Mrs Dzwonnik by Eco Logical Australia Pty Ltd, V11, dated 2 July 2018 and as updated by the Statement of Commitments revised v4 26102018 received by OEHL via email on 26 October 2018.

Biodiversity Credit means a biodiversity credit created under Part 7A (Biodiversity Banking) of the TSC Act.

Note: Clause 22(3) of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017* allows the Environment Agency Head to determine the biodiversity credits under the BC Act that are reasonably equivalent to biodiversity credits under the TSC Act that remain to be retired. It is the common understanding of the parties that the actual retirement will take place under the BC Act and that therefore clause 22(3) will apply.

Business Day means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

Chief Executive has the same meaning as in the *Threatened Species Conservation Act 1995*.

Clearing means clearing within the meaning of section 60C of the *Local Land Services Act 2013*, but does not include:

- (a) clearing of native vegetation for activities described in section 60O(c)-(g) of the *Local Land Services Act 2013*; and
- (b) clearing of a kind described in clause 8(3) of the *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*.

Conservation Area means:

- (a) the land identified as “Land Subject to Conservation Measures”; and
- (b) the land identified as “EEC Buffer”

on the map in Schedule 3.

Conservation Measure has the same meaning as in section 126L of the TSC Act or section 8.3 of the BC Act, as the case may be.

Construction Certificate means a construction certificate within the meaning of the EP&A Act.

Construction Environment Management Plan means the plan referred to in cl 4.2(e).

Environment Agency Head has the meaning provided in the BC Act.

EP&A Act means the *Environmental Planning & Assessment Act 1979* (NSW).

HN528 Biodiversity Credits means the Biodiversity Credits having the plant community code HN528 in the public register of biodiversity credits under the Biodiversity Conservation Act.

HN556 Biodiversity Credits means the Biodiversity Credits having the plant community code HN556 in the public register of biodiversity credits under the Biodiversity Conservation Act.

Koala species credit means the Biodiversity Credits having the species code koala in the public register of biodiversity credits under the Biodiversity Conservation Act.

Minister means the Minister of the State of New South Wales administering the TSC Act and Biodiversity Conservation Act and includes his or her successors in office and where not repugnant to the context includes the servants and agents of the Minister.

OEH means Office of Environment and Heritage.

Party means a party to this Agreement, including their respective successors and assigns.

Real Property Act means the *Real Property Act 1900* (NSW).

Registrar-General has the same meaning as in the Real Property Act.

Registration on Title means the registration of this Agreement under section 8.17 of the BC Act in the folio of the register kept under the Real Property Act in relation to the Lot 61 DP 752042, Lot 2 DP 1218887 and Lots 1, 2, 3, 4 and 5 DP 1240836 and **Registered on Title** refers to the state of the Agreement being so registered.

Stage means a stage of the proposed development of the Biodiversity Certification Area, as shown in the diagram forming Schedule 2.

Stage Area means the land contained within any of the Stage 1 Area and Stage 2 Area.

Stage 1 Area means that part of the Biodiversity Certification Area marked as Stage 1 in the diagram in Schedule 2.

Stage 2 Area means that part of the Biodiversity Certification Area marked as Stage 2 in the diagram in Schedule 2.

State means the State of New South Wales.

Subdivision Work means subdivision work within the meaning of the EP&A Act.

Sunset Date means:

- (a) except as provided in (b) below — 1 January 2028;
- (b) if the Biodiversity Certification has been conferred, but has subsequently been suspended or revoked — 1 January 2028 plus an additional period of time equal to the sum of all the periods in which the Biodiversity Certification was suspended.

TSC Act means the (now repealed) *Threatened Species Conservation Act 1995* (NSW).

1.2 Interpretation

In this Agreement:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) **person** includes an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (d) a reference to a document is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to

or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;

- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **includes** in any form is not a word of limitation;
- (j) where a Schedule contains obligations of any party then the obligation so expressed shall be read and construed and shall constitute obligation on the part of the relevant party, as the case may be, to be performed or observed under this Agreement;
- (k) neither this Agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (l) if a party to this Agreement is subsequently made up of more than one person:
 - (i) an obligation of those persons is joint and several;
 - (ii) a right of those persons is held by each of them severally; and
 - (iii) any references to that party is a reference to each of those persons separately, so that (for example), a representation, warranty or undertaking is given by each of them separately.

Note: As at the date of this Agreement none of the parties to this Agreement is made up of more than one person.

2. Commencement

- (a) This Agreement commences on the date it is signed by the parties (**Commencement Date**).
- (b) Despite any other provision of this Agreement, there is no obligation to obtain and/or retire any Biodiversity Credits under this Agreement prior to the day that Biodiversity Certification is conferred by the Minister.

3. Status of this Agreement

The parties agree that this Agreement is a biodiversity certification agreement within the meaning of section 126ZH of the TSC Act.

Note: This Agreement was entered into after the commencement of the BC Act, but in relation to an application for biodiversity certification made under Part 7AA of the TSC Act which had not been determined at the time the BC Act commenced. Accordingly, under clause 40 of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*, this Agreement is taken to be a biodiversity certification agreement entered into under Part 8 of the BC Act.

4. Obligations in relation to biodiversity certification and biodiversity banking

4.1 Owner's obligations

Without limiting the obligations of the Owner under clauses 1 – 144 of this Agreement, the Owner agrees to:

- (a) within [X timeframe], transfer the following biodiversity credits from the Noorumba-Mt Gilead biodiversity stewardship site (ID x) and Macarthur-Onslow Mt Gilead biodiversity stewardship site (ID x) to the Developer:
 - (i) 84 HN556 Biodiversity Credits
 - (ii) 28 HN528 Biodiversity Credits
 - (iii) 133 Koala species credits.

4.2 Developer's obligations

Without limiting the obligations of the Developer under clauses 1 – 144 of this Agreement, the Developer agrees to:

- (a) carry out the relevant obligations set out in Schedule 1 to this Agreement within the timeframes specified in that Schedule; and
- (b) within 12 months of the conferral of Biodiversity Certification, apply to the Minister to enter into a biobanking agreement over the Conservation Area in accordance with clause 14 of the *Threatened Species Conservation (Biodiversity Banking) Regulation 2010* in terms consistent with the standard form biodiversity banking agreement template published by the Office of Environment and Heritage on its webpage (or on such other terms as are agreed to by the Minister) and which will enable the Developer to successfully apply for the creation of at least 20 HN556 Biodiversity Credits.
- (c) following retirement of 20 HN556 biodiversity credits generated by the biodiversity stewardship agreement over the Conservation Area and by 31 December 2024, transfer the Conservation Area to Council.
- (d) prior to transfer of the Conservation Area to Council:
 - (i) manage the Conservation Area in accordance with biodiversity stewardship agreement (in the event of any inconsistency, the biodiversity stewardship agreement prevails); and
 - (ii) not to transfer the land to any other person.
- (e) Within 30 days of Biodiversity Certification, whichever happens sooner, erect temporary fencing around each Conservation Area to ensure stock cannot enter the Conservation Area;
- (f) before clearing in the Stage Area, prepare a Construction Environment Management Plan for vegetation clearing within the Biodiversity Certification Assessment Area that includes the following requirements:

- (i) hollow-bearing trees within the Biodiversity Certification Area that potentially contain roosting and breeding habitat for threatened microbats must be identified and, where possible, retained
- (ii) identify and salvage any trees, or parts thereof, that would be appropriate for use as fauna habitat on the Conservation Area, the Noorumba-Mt Gilead biodiversity stewardship site (ID xx) or the Macarthur-Onslow Mt Gilead biodiversity stewardship site (ID xx)
- (iii) roads surrounding each Conservation Area must be fully curbed and guttered with piped stormwater management that will not flow into the Conservation Area
- (iv) a de-watering plan for any farm dams that are removed from the Biodiversity Certification Area
- (v) a fauna pre-clearance protocol; and
- (g) implement the Construction Environment Management Plan in the Biodiversity Certification Assessment Area.

4.3 Council's obligations

Without limiting the obligations of Council under clauses 1 – 144 of this Agreement, Council agrees to:

- (a) accept the transfer of the Community Land to Council;
- (b) following transfer of the Community Land to Council, use its best endeavours to:
 - (i) classify the Conservation Area as Community Land – Natural Area under the *Local Government Act 1993*; and
 - (ii) prepare a plan of management for the Conservation Area that is consistent with the biodiversity stewardship agreement applying to the Area.

4.4 Minister's obligations

This Agreement does not impose any obligation on the Minister to:

- (a) confer Biodiversity Certification on any specified land; or
- (b) enter into a biobanking agreement (within the meaning of section 127D of the TSC Act) or biodiversity stewardship agreement (within the meaning of the BC Act) (as the case may be) with the owner of any land.

4.5 Obligations of the Chief Executive and Environment Agency Head

This agreement does not impose any obligation on the Chief Executive or Environment Agency Head to create, or register the creation of, biodiversity credits in respect of any biobanking agreement or biodiversity stewardship agreement.

5. Enforcement

- 5.1 In accordance with section 13.16 of the BC Act, and without limiting other remedies available to the Minister, the Minister or a person acting with the written consent of the Minister, may bring proceedings in the Land and Environment Court for an order to remedy or restrain a contravention of this Agreement.
- 5.2 Under section 8.17 of the BC Act (as applied by virtue of clause 40 of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*), this Agreement, when registered by the Registrar-General, is binding on, and is enforceable against, the owner from time to time of the land over which it is registered as if each owner for the time being had entered into the Agreement.
- 5.3 The obligations of the Developer under this agreement are taken to be obligations on it as the owner of Lot 61 DP752042 for the purposes of this agreement and the BC Act.

6. Security

6.1 Provision of Security

The Developer has agreed to provide security for the performance of the obligations of the Owner and Developer under this Agreement by providing, and continuing to provide, to the Minister a Bank Guarantee(s) in accordance with this clause 6.

6.2 Initial Security

The Developer must provide, upon the execution of this Agreement, a Bank Guarantee or Bank Guarantees in the total amount of \$2,230,078.37

6.3 Security to be recalculated

(a) When:

(i) Bank Guarantee(s) have been provided under clause 6.2; and

(ii) either:

(A) Biodiversity Credits are subsequently retired in accordance with this Agreement; or

(B) the Minister notifies the Developer that the Minister elects to have the required amount of the Bank Guarantee recalculated in accordance with this clause 6.3; or

(C) the Developer notifies the Minister that the Developer elects to have the required amount of the Bank Guarantee recalculated in accordance with this clause 6.3,

the required amount of the Bank Guarantee (**the Required Amount**) is to be recalculated in accordance with clause 6.3(b) below.

- (b) The recalculated Required Amount is to be determined by:
 - (i) subtracting the number of each type of Biodiversity Credits that have been retired under this Agreement from the number of each type of Biodiversity Credits required to be retired under this Agreement;
 - (ii) taking that number (which is 28 HN528 Biodiversity Credits, 104 HN556 Biodiversity Credits and 284 Koala species credits if no Biodiversity Credits have been retired under this Agreement);
 - (iii) applying the methodology of the offsets payment calculator established under Division 6 of Part 6 of the BC Act to determine the monetary amount (exclusive of GST) that would need to be paid into the Biodiversity Conservation Fund if, instead of retiring Biodiversity Credits of that number, a payment was made into the Biodiversity Conservation Fund; and
 - (iv) multiplying the resultant amount by 1.05 (rounded to the nearest one cent).

6.4 Substitution of the Bank Guarantee

- (a) At any time the Developer may substitute the Bank Guarantee(s) that have been provided with one or more Bank Guarantees of such that the total amount of the Bank Guarantee(s) is not less than the Required Amount.
- (b) If the value of the Bank Guarantee provided by the Developer exceeds the Required Amount at any time, the Developer may substitute it with another Bank Guarantee or Bank Guarantees whose total amount is not less than the Required Amount at that time.
- (c) If:
 - (i) the Required Amount has been recalculated in accordance with clause 6.3(b); and
 - (ii) as a result, the Required Amount exceeds the total amount of the Bank Guarantee(s) that have been provided to the Minister under this Agreement,the Developer must supplement or substitute the Bank Guarantee(s) that have been provided with one or more Bank Guarantees, such that the total amount of the Bank Guarantee(s) that are provided to the Minister under this Agreement are not less than the Required Amount.
- (d) To the extent that another Bank Guarantee is provided, the Minister must not deduct, and must promptly release and return, the Bank Guarantee(s) that have been substituted.

6.5 Recourse

- (a) Without limiting the other steps the Minister may take, if the Minister is of the reasonable opinion that the Developer or Owner has contravened a requirement of this Agreement, the Minister may, without notice to the Developer, call upon the Bank Guarantee(s), in whole or in part, to enable:

- (i) the sourcing of Biodiversity Credits that have not been retired in contravention of this Agreement from any source (not just those listed in this Agreement) and subsequent retirement of those Biodiversity Credits; or
 - (ii) to fund the taking of any Conservation Measures in the Minister's absolute discretion, or
 - (iii) to take any other action, including making any other use of the money available under the Bank Guarantee, that the Minister deems appropriate in the circumstances.
- (b) Should the Minister use the part or whole of monies under the Bank Guarantee(s) under clause 6.5(a)(ii), the Developer must, on being notified by the Minister, promptly take steps to ensure that the funds available under the Bank Guarantee(s) referred to in clauses 6.2 – 6.4 are restored to the Required Amount (with a reduction in that amount, determined by the Minister acting reasonably, for the value of the Biodiversity Credits purchased, or other Conservation Measures taken, by the Minister in accordance with clause 6.5(a)(ii), with the funds made available by the calling up of the Bank Guarantee).
- (c) For the avoidance of doubt, the calling upon the Bank Guarantee(s) under clause 6.5(a) (despite any other provision of this Agreement) reduces the obligation to retire Biodiversity Credits in accordance with Schedule 1 (that have not already been retired) by the same extent that the Bank Guarantee(s) have been called upon calculated in accordance with clause 6.5(b).

6.6 Release of Bank Guarantee

The Minister will release the Bank Guarantee(s) in their entirety within one month of being notified of, and satisfied that, all of the Biodiversity Credits have been retired in accordance with Schedule 1 to this Agreement.

7. Permissions, consents and authorisations

The Developer and Owner is responsible for obtaining all necessary licences, consents, authorisations, permits or approvals in order to lawfully comply with and carry out their respective obligations under this Agreement, including but not limited to, clause 12 of this Agreement.

8. Dispute resolution

- (a) Where there is a dispute, difference or claim (dispute), the party raising the dispute must notify the other parties of the nature of the dispute, including the factual and legal basis of the dispute.
- (b) Within 14 days of the notice, the parties, or nominated senior representatives of the parties, must confer to attempt to resolve the dispute, and if the dispute cannot be resolved within 21 days of the written notice, the parties will refer the matter to mediation.

- (c) The parties will agree on the terms of appointment of the mediator and the terms of the mediation in writing within 28 days, failing which the mediation will be at an end and any party may commence court proceedings in respect of the dispute.
 - (d) If the matter has not been resolved within 28 days of the appointment of the mediator, the mediation process will be at an end and any party may commence court proceedings in respect of the dispute.
 - (e) Notwithstanding the above clauses, the Minister, the Minister's delegate, or a person duly authorised by the Minister, may:
 - (i) enforce this Agreement under the BC Act,
 - (ii) institute proceedings, or
 - (iii) call upon the Bank Guarantee in accordance with clause 6 of this Agreement,without first entering into the dispute resolution procedure set out in clauses 8(a), 8(b), 8(c) and 8(d).
-

9. GST

- (a) The parties to this Agreement agree that the retirement of Biodiversity Credits by the Environment Agency Head is not a taxable supply, and that no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the Environment Agency Head and the Biodiversity Certification Landowner (as the case may be) on the retirement of Biodiversity Credits.
 - (b) The parties to this Agreement acknowledge and agree that for any taxable supply made by one party to another party under this Agreement the party which has received the supply will on receipt of a tax invoice from the supplier make a payment to the supplier that covers both the value of the supply and the GST liability of the party that has made the supply.
 - (c) This clause will not merge on completion or termination of this Agreement.
 - (d) Words used in this clause that are defined in the GST Law have the meaning given in that legislation.
 - (e) In this clause, GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
-

10. Releases and indemnities

- (a) The Developer, Owner and Council agree to carry out their respective obligations under this Agreement at their own risk.
- (b) The Developer, Owner and Council release and indemnify the Minister from any claim, liability or loss arising from, and costs incurred in connection with the respective obligations of the Developer, Owner and Council under this

Agreement except to the extent caused or contributed to by the Minister's negligent act or default under this Agreement.

- (c) The indemnity in clause (b) is a continuing obligation, independent of the other obligations of the Developer, Owner and Council under this Agreement and continues after the Agreement ends.

11. Costs

- (a) Subject to clause 11(b), each party bears its own costs in connection with the preparation and execution of this Agreement.
- (b) The Developer agrees to pay the Minister's reasonable costs in connection with the preparation and execution of this Agreement:
 - (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this Agreement; or
 - (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 10 Business Days of demand by the Minister for payment.

12. Registration of this agreement

- (a) The Developer and Owner agree to use their best endeavours, and at their own expense, to lodge (within 60 Business Days of this Agreement) this Agreement in registrable form with the Registrar-General for registration of this Agreement in the relevant folio of the Register relating to Lot 61 DP 752042, Lot 2 DP 1218887 and Lots 1, 2, 3, 4 and 5 DP 1240836 in accordance with section 8.17 of the BC Act.
- (b) The Developer and Owner at their own expense and risk, must take all practicable steps and otherwise do anything the Minister reasonably requires, to, and must, procure:
 - (i) the execution of any documents;
 - (ii) the production of the relevant duplicate certificates of title; and
 - (iii) the registration of this Agreement over Lot 61 DP 752042 and Lots 1, 2, 3, 4 and 5 DP 1240836 by the Registrar-General in the relevant folios of the Register.
- (c) The Developer and Owner must, within 21 days of registration of this Agreement, provide the Minister with evidence of registration of this Agreement over the Lot 61 DP 752042 and Lots 1, 2, 3, 4 and 5 DP 1240836 as required by clause (a).

13. General provisions

13.1 Prior representations

This Agreement is entered to form a Conservation Measure for the purposes of Part 7A of the TSC Act. No party can rely on an earlier document, anything said or done by another party, or by an authorised officer, agent or employee of that party, before the Agreement was executed.

13.2 **Further acts**

Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

13.3 **Governing law and jurisdiction**

This Agreement is governed by the laws of the State of New South Wales and the parties agree to submit to the jurisdiction of the courts of that State.

13.4 **No fetter**

- (a) This Agreement is not intended to operate to fetter, in any unlawful manner:
- (i) the sovereignty of the Parliament of the State of New South Wales to make any law;
 - (ii) the power of the Executive Government of the State of New South Wales to make any statutory rule; or
 - (iii) the exercise of any statutory power or discretion of any Minister of the State.
- (b) Nothing in this Agreement is to be construed as requiring any party to do anything that would cause it to be in breach of any of its obligations at law, and without limitation and nothing in this Agreement is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

13.5 **No joint venture, etc.**

Unless otherwise stated:

- (a) nothing in this Agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

13.6 **Representations and warranties**

The parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under this Agreement.

13.7 **Severability**

- (a) If any part of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- (b) If any part of this Agreement is illegal, unenforceable or invalid, that part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

13.8 **Modification**

No modification of this Agreement will be of any force or effect unless it is in writing and signed by all the parties.

13.9 **Waiver**

- (a) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or a breach of obligation by, another party.
- (b) A waiver by a party is only effective if it is in writing.
- (c) A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

13.10 **Good faith**

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this Agreement.

13.11 **Development options and staging to be flexible**

Nothing in this Agreement (including the identification of Stages by a number) requires:

- (a) any party to commence or complete all or any part of any development; or
- (b) commence or complete any Stage in any particular order.

14. **Notices**

14.1 **Form**

Any notice, consent, information, application or request that must or may be given or made to a party under this Agreement is only given or made if it is in writing delivered or posted to that party at its address set out below.

The Minister

Address: Office of Environment and Heritage
PO Box A290
SYDNEY SOUTH NSW 1232

Attention: s22
Director, Greater Sydney

Telephone: (02) 9995 s22

Lendlease Communities (Mount Gilead) Pty Ltd

Address:

Attention: M

Telephone: (02)

Mt Gilead Pty Ltd

Address:

Attention: M

Telephone: (02)

14.2 Change in details

The name or title of the nominated officer or the address for the parties referred to in clause 14.1 above may be updated from time to time by a further written notice being sent to the other parties by the party (which in the case of the Minister may include an officer of OEHL) advising of the new officer (or title of an office) and address to which such documents, information or notification may be sent.

14.3 Receipt

- (a) Any notice, consent, information, application or request is to be treated as given or made at the following time:
 - (i) if it is delivered, when it is left at the relevant address; or
 - (ii) if it is sent by post, two (2) Business Days after it is posted (unless the contrary is proved).
- (b) If any notice, consent, information, application or request is delivered, on a day that is not a Business Day or after 5pm on any Business Day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

Schedule 1 - Retirement of Biodiversity Credits by the Developer

1. Subject to clause 4 of this Schedule, the Developer agrees to retire the number and type of Biodiversity Credits set out in Table 1 below for each corresponding Development Stage before:
 - (a) any Clearing is commenced in the corresponding Stage Area; or
 - (b) a Construction Certificate is issued for Subdivision Work, or any work involving Clearing, in the corresponding Stage Area,
 whichever is the earlier.

Table 1 Staging of ecosystem credits

Development Stage and Stage Area	Indicative Time Frame	HN528 Grey Box - Forest Red Gum grassy woodland on flats credits to be retired	HN556 Narrow-leaved Ironbark - Broad-leaved Ironbark - Grey Gum credits to be retired
1	0-2 years (2018-2020)	28 from Noorumba-Mt Gilead Biodiversity Stewardship site (ID XX)	84 from Macarthur-Onslow Biodiversity Stewardship Site (ID XX)
2	3-5 years 2021-2023	0	20 from the Conservation Area (prior to dedication to Council)
Total		28	104

2. Subject to clause 4 of this Schedule, the Developer agrees to retire 284 Koala species credits as set out in Table 2 below before:
 - (a) any Clearing is commenced in the Stage Area; or
 - (b) a Construction Certificate is issued for Subdivision Work, or any work involving Clearing, in the Stage Area,
 whichever is the earlier.

Table 2 Staging of Koala species credits

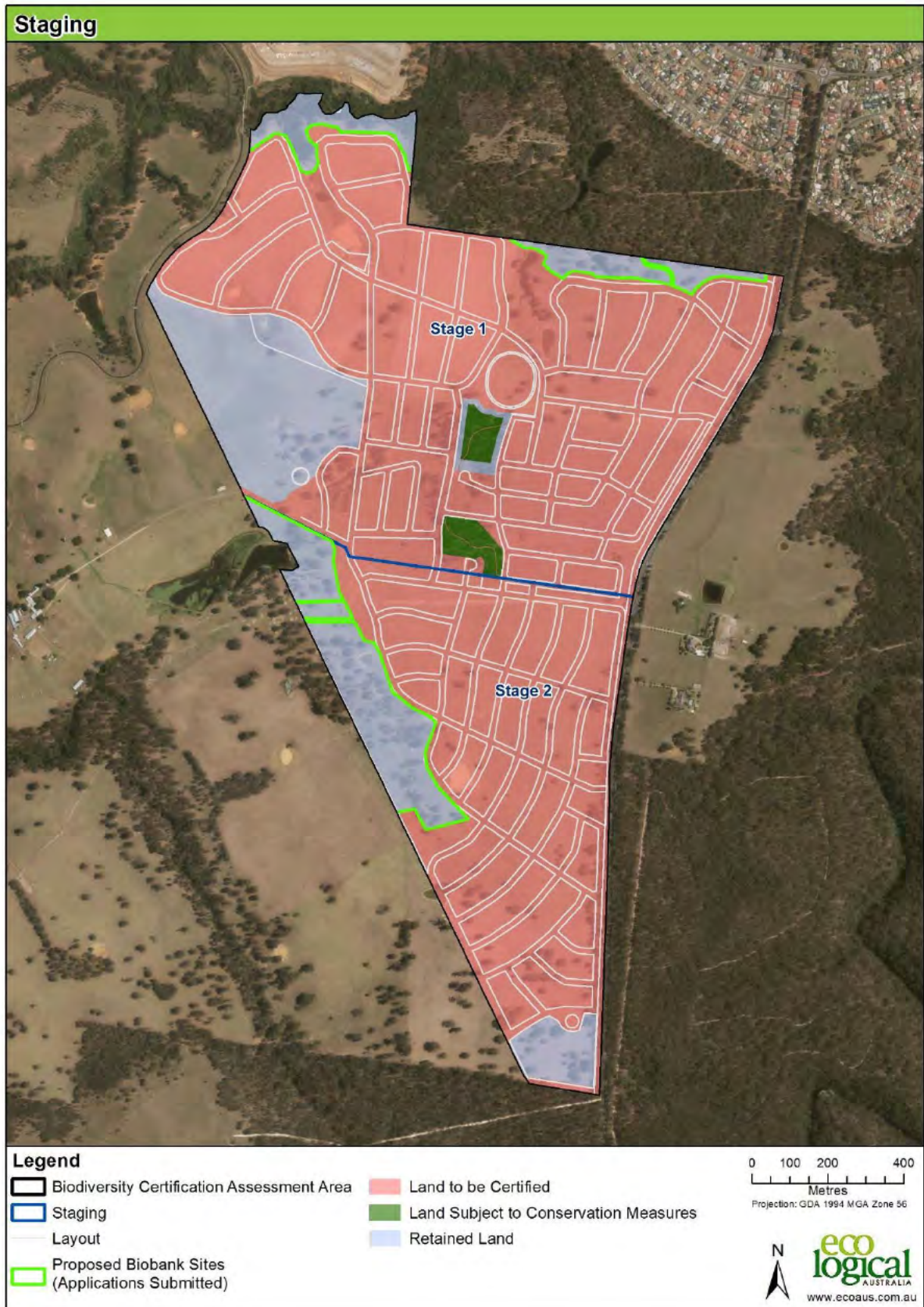
Indicative Time Frame	No. of Koala species credits to be retired
0-2 years (2018-2020)	48 from Noorumba-Mt Gilead Biodiversity Stewardship site (ID xx) 85 from Macarthur-Onslow Biodiversity Stewardship Site (ID xx) 151 held by the Developer
	284

3. For the purposes of this Schedule, the Developer must provide the Minister with at least 1 month's written notice before:
 - (a) any Clearing is commenced in the relevant Stage Area; or

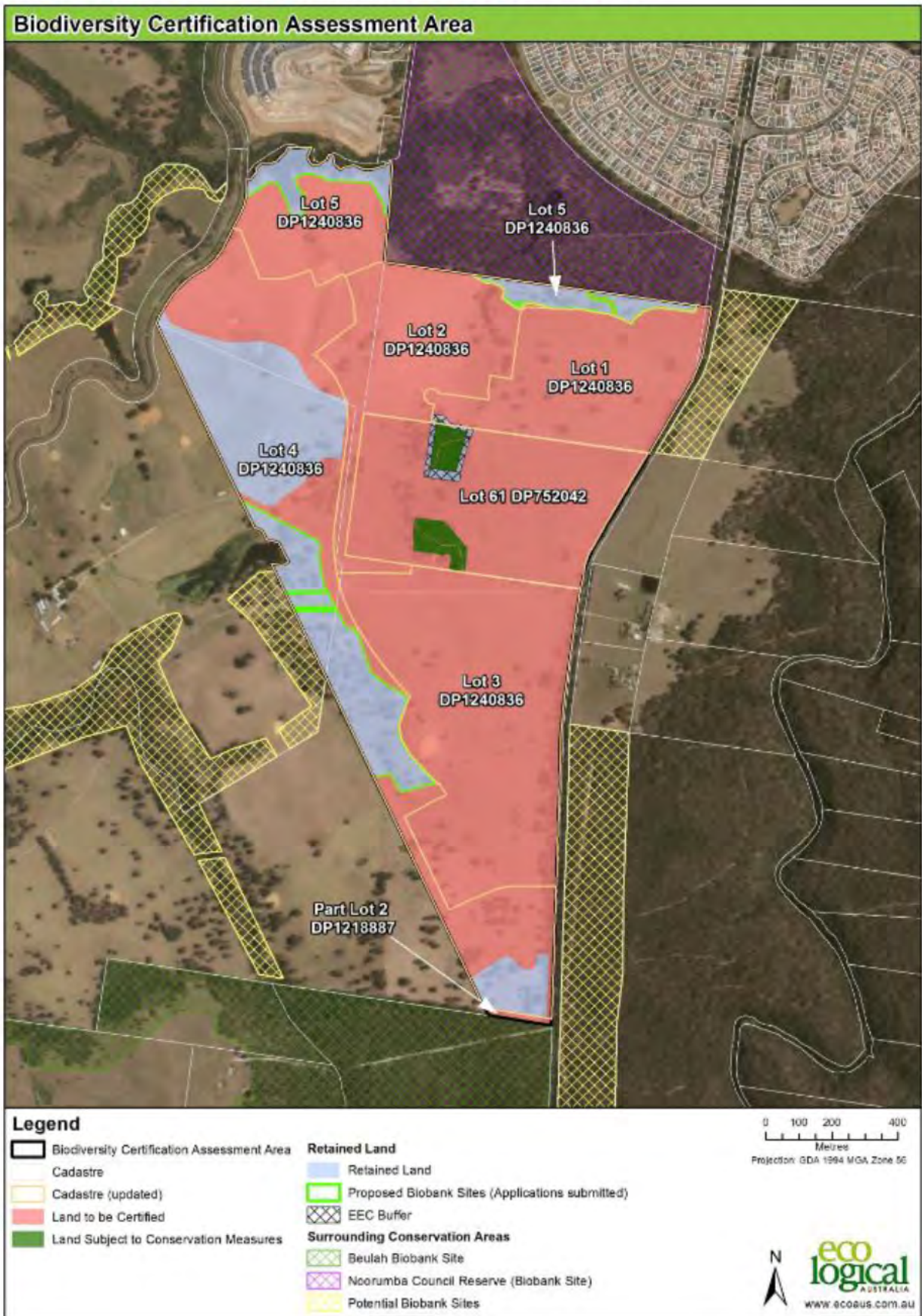
- (b) an application is made for a Construction Certificate for the relevant Stage Area pursuant to clauses 1 or 2 of this Schedule.
4. If the Developer has not ensured retirement of a total of 416 Biodiversity Credits in relation to the Biodiversity Certification Area by the Sunset Date (not including the Retired Biodiversity Credits), it must immediately make an application to the Environment Agency Head to voluntarily retire the outstanding Biodiversity Credits, notwithstanding that an obligation to retire Biodiversity Credits has not arisen under item 1 of this Schedule. Such retirement, when effected, fully satisfies the requirements of this Schedule 1.
 5. The Developer must do all things reasonably necessary to support, without delay, the application to retire Biodiversity Credits in clause 3 above being processed immediately, including complying with any reasonable direction by the Environment Agency Head to rectify any error or omission in the application.
 6. The Developer agrees to provide proof of the retirement of Biodiversity Credits in accordance with this Schedule to the Minister, as soon as practicable after retirement of the Biodiversity Credits occurs.

DRAFT

Schedule 2 – Stages



Schedule 3 – Biodiversity Certification Assessment Area



Executed as a Deed

Executed by The Honourable Gabrielle Upton, MP
Minister for the Environment for the State of New South
Wales as the Minister administering the *Threatened
Species Conservation Act 1995 (NSW)*

The Hon. Gabrielle Upton, MP,
Minister for the Environment

Name of Witness in full

Signature of Witness

Executed by Lendlease Communities (Mount Gilead)
Pty Limited ACN 605 278 331 in accordance with s127 of
the *Corporations Act 2001 (Cth)*

Name of Director/Company secretary

Signature of Director/Company secretary

Name of Director

Signature of Director

Executed by Mt Gilead Pty Limited ACN 008 499 189 in accordance with s127 of the *Corporations Act 2001* (Cth)

Name of Director/Company secretary

Signature of Director/Company secretary

Name of Director

Signature of Director

Executed by Campbelltown City Council ACN in accordance with s127 of the *Corporations Act 2001* (Cth)

Name of Director/Company secretary

Signature of Director/Company secretary

Name of Director

Signature of Director

DRAFT

From: [Anderson, Mark \(Australia\)](#)
To: s22
Cc: "[Humphries, Robert](#)"; s47F ; s22 ; s22
Subject: RE: [EXT]:Mt Gilead residential development, NSW (EPBC 2015-7599) [SEC=UNCLASSIFIED]
Date: Tuesday, 27 November 2018 2:47:14 PM
Attachments: [image002.png](#)
[image003.jpg](#)
[181127 Ltr to DoTEE re Comments and Response to Proposed Action Conditions.pdf](#)

s22

Thank you for your letter dated 12 November 2018 inviting comments to the proposed action approval for Mt Gilead residential development, NSW (EPBC 2015/7599)

Following our discussion on 21 November, we have considered the merits of the proposed approval and provide the attached response to the proposed approval with particular reference to the items discussed in various emails and during the aforementioned meeting.

I trust that the Department will consider our proposed revised commitments fair and reasonable which ultimately achieve our goal to deliver a superior environmental outcome.

Regards,

Mark Anderson

Senior Development Manager, Communities
Level 2, 88 Phillip Street, Parramatta NSW 2150 Australia
PO Box 4, Parramatta NSW 2150

M s47F

mark.anderson@lendlease.com | www.lendlease.com



From: s22

Sent: Wednesday, 14 November 2018 11:52 AM

To: Anderson, Mark (Australia)

Cc: 'Humphries, Robert' ; s47F

Subject: [EXT]:Mt Gilead residential development, NSW (EPBC 2015-7599) [SEC=UNCLASSIFIED]

Dear Mr Anderson,

Mt Gilead residential development, NSW (EPBC 2015-7599)

Please see attached a letter from the delegate of the Minister with proposed conditions of approval for the above project. You are invited to provide comments on the proposed decision within 10 business days of the date of this letter.

Regards

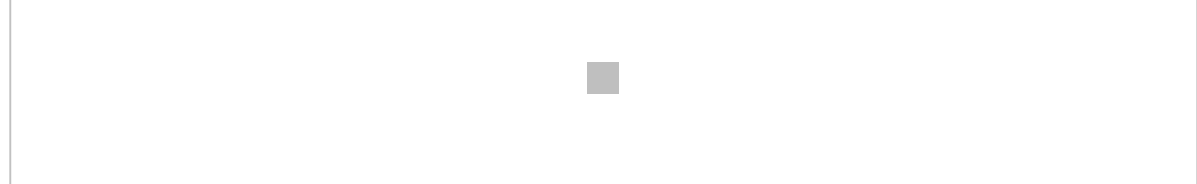
s22

s22

Senior Assessments Officer

Southern NSW and ACT Assessments / Environment Standards Division / Department of the Environment and Energy
51 Allara Street Canberra 2600 / GPO Box 787 Canberra 2601 / 02 6274 s22 / s22

cid:image014.jpg@01D2893B.C52619D0



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27 November 2018

Kim Farrant
Assistant Secretary
Assessment and Waste Branch
Department of the Environment and Energy
GPO Box 787
Canberra ACT 2601

Attention: s22
CC: s22

Dear s22

**Re: Invitation to comment on proposed approval decision
Mt Gilead residential development, NSW (EPBC 2015/7599)**

I am writing to you in relation to your invitation to provide comments on the approval decision for the Mt Gilead residential development, NSW (EPBC 2015/7599) dated 12 November 2018. We welcome the opportunity to collaborate with the Department of the Environment and Energy to secure appropriate environmental outcomes for the Mt Gilead development.

There are several proposed conditions which we bring to your attention namely;

- Condition 1 – Impacts
- Conditions 2, 4, 5 & 7 Compensation Measures
- Conditions 11 – 13 Vegetation management plan

We also advise that a portion of the subject site (Lot 3 DP 1218887) was subdivided in May 2018 to create Lots 1-5 DP 1240836. We request the description of the action be updated accordingly.

In preparing the following comments reference is made to the meeting held on 21 November 2018 between Lendlease Communities (Mt Gilead) Pty Limited (**Lendlease**), consultants acting on behalf of Lendlease (**ELA**), representatives for Mt Gilead Pty Limited (**Mt Gilead**) and officers for the Department of the Environment and Energy (**The Department**) held at the Department Offices.

Condition 1 – Impacts

The current wording of the condition does not provide absolute certainty to the areas which are able to be cleared of protected matters within the action area. Modifications are requested to the 'Map showing proposed action area' to clearly and without doubt provide certainty that clearing of protected matters is permissible in the following areas;

- Development Areas - Currently Shaded Red on the Map of proposed action area
- Detention Areas - Currently Shaded Turquoise on the Map of proposed action area
- Open Space Areas - Currently Shaded Light Green on the Map of proposed action area
- Opens Space – Passive Areas - Currently Shaded Dark Green on the Map of proposed action area

We understand that this request was accepted and agreed by The Department at the meeting of 21 November 2018.



Conditions 2 – 7 Compensation Measures

Condition 2

We have reviewed the quantum of offsets provided by the onsite offset areas and concluded that the impact on CPW is 0.54 Ha (combined impacts of proposed conditions 2 & 3) however we conclude that excluding the buffer zones the onsite offset areas provide 1.2 Ha of EPBC Act quality CPW. This is the equivalent to 102.70% of the offset targets being met with the onsite offset areas.

Condition 4

Per the point above, we conclude that 102.7% of impacts to CPW are provided in the onsite offset areas, accordingly we believe there is no requirement for further offsetting of CPW.

From our meeting, we understand that the Department is not willing to accept the Council Reserves as onsite offset site due to potential uncertainty regarding the registration of these sites as biobank sites.

I bring to your attention the legal requirement for Lendlease to apply to enter into a biobanking agreement over these areas within 12 months of the conferral of the Biodiversity Certification, which will be imposed by The Minister administering the Threatened Species Conservation Act 1995 (NSW) as part of the Biodiversity Certification Agreement for the site. While we agree this requirement does not provide the Department absolute certainty these sites will become registered biobank, it does however demonstrate these sites will ultimately become biobanks following the relevant process.

As discussed with the Department we put forward the proposal to redraft conditions requiring offsets which are not satisfied by the creation of the Noorumba/Mt Gilead and Macarthur-Onslow biobanks so the remaining offset must be secured prior to works commencing is Stage 2 of the development in accordance with the staging plan forming the Biodiversity Certification. (Refer Appendix 2)

As such we recommend the proposed condition 4 be replaced with the following.

4. To compensate for impacts on 0.8 ha of SSTF not compensated through offsetting through conditions 2 and conditions 3, the approval holder must secure that 0.8 ha of SSFT is secured prior to the commencement of actions within Stage 2.

Condition 5

Grey Headed Flying-Fox (GHFF)

At the request of the Department (21/11/18) ELA have assessed the impacts to GHFF through the EPBC offset calculator. Using a habitat scope of 5, representative of the low quality of the 10.85 ha of habitat being impacted, an offset of 15.09 Ha is required.

To provide suitable offsets the onsite offset areas contain 13.8 Ha of existing habitat with a further 4 Ha being restored under the biobank agreements, a total offset of 117.94% will be provided in the onsite and offsite offset areas.

Koala

When considering the impacts on the local Koala population it is important to determine what the direct impacts of the action is on the local Koala population, the proposed action has a direct impact on 10.85 ha combined with a 3.53 Ha indirect impact of Koala habitat, when these are subjected to the EPBC offset calculator an offset of 20 ha is required to offset the direct impact of the action.



The current proposal of a combination of onsite offsetting (18.69 ha) and the retirement of 151 Koala credits from The Noorumba Reserve Biobank site will result in a protected habitat area of 39.96 ha, which is equivalent to an offset of 199% of the direct impacts of the action.

In order to provide a superior environmental outcome Lendlease also proposes to also provide offsets for the potential indirect impacts to the local Koala population. Lendlease proposes to secure an additional 21.13 ha of Koala Habitat from a registered biobank site prior to the commencement of the action. This additional offset exceeds the equivalent quantum of the direct impacts, in combination with the onsite offset measures this secures 60.82 ha of Koala habitat, delivering a superior environmental outcome.

Condition 7

The NSW government recently announced a commitment of a \$1m grant program to ensure Koala friendly planning occurs in the area. The funding to be released over the next two years to undertake koala research, tree planting, pest management, and build greater community awareness about Koalas and their habitat.

This commitment, combined with Lendlease's commitment to provide 60.82 ha of protected habitat for the local Koala population provides a significant investment in the protection of the local Koala population. These commitments exceed the expectations proposed in clause 7, as such this clause should be removed from the approval in its entirety.

Conditions 11 - 13

The requirement for the provision of a Vegetation Management Plan was originally drafted to ensure the long-term management of the council reserves, however these sites are now going to be subject to biobanking applications as per the Biodiversity Certification Agreement. As these sites will be subject to an application for biobanking a broad range of management plans will be prepared and administrated to ensure the long-term management of the reserves.

In the interim period between the commencement of the action and the commencement of bushland management works within the reserves, adequate protections for the reserves will be provided through a Construction Management Plan required under Clauses 8 – 10 of the Department's approval.

As discussed with the Department this clause should be removed from the approval in its entirety.

I trust that the Department will consider our proposed revised commitments fair and reasonable which ultimately achieve our goal to deliver a superior environmental outcome.

Regards,

s47F

Mark Anderson
Lendlease Communities (Mt Gilead) Pty Limited

cc: Old Mill Properties Pty Limited

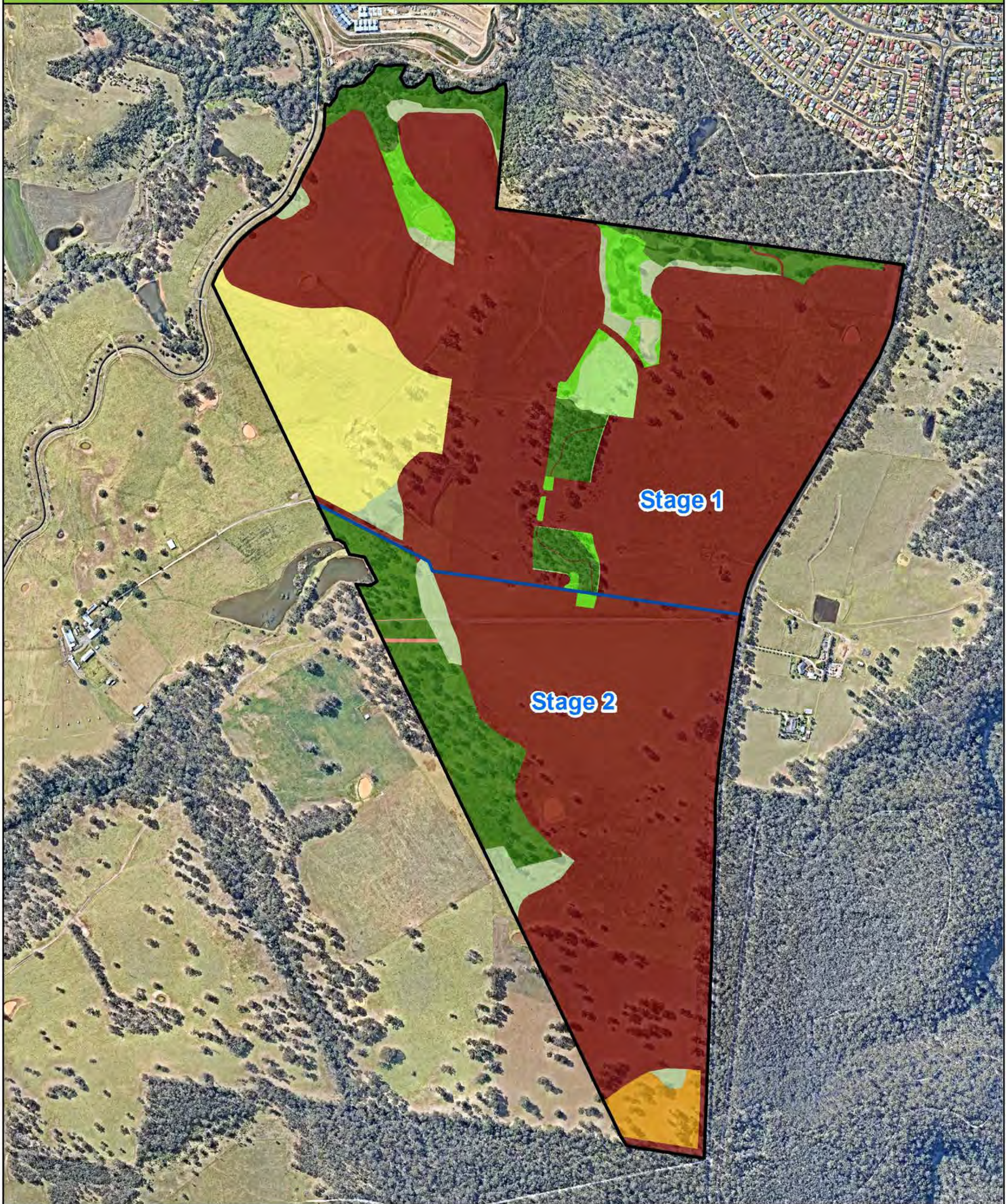
Appendix 1 – Revised Summary of Commitments

Mt Gilead Residential Development – Revised Commitment Register

Threatened Ecological Community / Threatened Fauna Species	Impact to be Offset	Stage 1 Offset		Stage 2 Offset
		Onsite	Offsite	
Sandstone Shale Transition Forest	5.97 Ha	8 Ha	4 Ha	0.8 Ha
Cumberland Plain Woodland	0.54 Ha	1.2 Ha		Nil
Koala (Direct)	10.85 Ha	18.7 Ha	21.27 Ha	Nil
Koala (In-Direct)	3.53 Ha			
Koala (Potential In-Direct)			21.13 Ha	Nil
Grey-Headed Flying Fox	10.85 Ha	13.8 Ha	4 Ha	Nil

Appendix 2 – Revised Map showing proposed action area

Development Layout



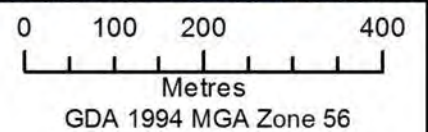
Legend

- Study Area
- Stages

- Development Area**
- Urban Area
 - Detention Basin (Landscaped)
 - Open Space - Landscaped
 - Open Space

- Retained Land**
- Rural Land
 - Open Space - Retained
 - Existing Easements

- Conservation (Offsets)**
- Offset (Biobank Sites)



GDA 1994 MGA Zone 56

From: s22
To: s22
Subject: Mt Gilead update [SEC=UNCLASSIFIED]
Date: Wednesday, 12 December 2018 11:38:36 AM
Attachments: [Att A3 Location of proposed Koala offset.pdf](#)

Hi s22

Re Mt Gilead Lendlease have proposed an alternative registered biobank site at Lot 2 DP 225253, Douglas Park Drive. This is located within the primary Koala corridors which is positive (see attached map with area highlighted in green) and the proponent will send information on the site/ amount of credits it generates etc . I have revised conditions accordingly (see below). I am still proposing to keep the condition requiring them to contribute to the a fund to compensate for indirect impacts on connectivity of Koala populations.

Can you shoot me a quick email on your thoughts / any suggested changes to the two conditions 1) Land based offsets and 2) the fund? I will attach this to the final decision brief.

Thanks

s22

5. To compensate for **impacts** on **Koala**, the approval holder must acquire or **retire** no less than **XXX Biodiversity credits** for the **Koala** from the **Lot 2 DP 225253, Douglas Park Drive** Biobanking site prior to the **commencement of the action**.

7. Prior to the **commencement of the action**, the approval holder must prepare and implement a Koala Management Plan for the proposed action area to the satisfaction of the **Minister**. This must include provisions for the approval holder to contribute at least \$100,000 each year for five years to fund activities outlined in the plan. The approval holder must provide the **Department** with **evidence** of the Koala Recovery Team's endorsement of the Koala Management Plan prior to the **commencement of the action**.

From: s22

Sent: Monday, 26 November 2018 3:15 PM

To: s22

Cc: s22

Subject: RE: Additional report for consideration EPBC2015/7599 [SEC=UNCLASSIFIED]

Thanks s22

From: s22

Sent: Monday, 26 November 2018 8:59 AM

To: s22

Cc: s22

Subject: FW: Additional report for consideration EPBC2015/7599 [SEC=UNCLASSIFIED]

Importance: High

Hi s22

Thanks for taking the time to discuss Koalas on Friday. I will send through my notes separately. Attached is a new BioLink report that IFAW obtained from OEH through a FOI. In summary they are recommending fencing on both sides of the road but also fauna overpasses at Nooruma, Beulah (south of Mt Gilead) and Mallaty's creek. Interesting that OEH have decided not to consider this in their recommendations for primary corridors.

Cheers

s22

From: s47F [.contractor@ifaw.org](mailto:contractor@ifaw.org)

Sent: Friday, 23 November 2018 4:13 PM

To: s22 [>](mailto:@environment.gov.au)

Cc: s47F @edonsw.org.au; s47F @tec.org.au; s47F @ifaw.org>; s47F @ifaw.org>

Subject: Additional report for consideration EPBC2015/7599

Importance: High

Dear s22

Thank you for the meeting yesterday. By way of follow up I'm attaching the report mentioned that IFAW obtained yesterday via GIPA from OEH.

The Biolink report 'Koala Corridor Project - Campbelltown City Council & Wollondilly Local Government Areas: Greater Macarthur Growth Area' Oct 2018 was commissioned by OEH.

It contains new and important information that is relevant to the impacts of the development at Gilead specifically and the cumulative impacts of the various developments on the cards, including at Wilton. It also contains new information with regards to the connectivity of important koala populations.

We request that this important additional report is taken into account when making the final decision and in determining any conditions relating to it.

We understand that a draft decision has been made and is currently with Lendlease for consultation.

We strongly feel that the public should be given the opportunity to review and comment on the proposed decision to ensure that the submissions raised have indeed been taken fully into account.

We will be writing to the Minister directly but would like to request that the Minister exercises the power under Section

131A of the EPBC Act and invite public comment on the proposed decision in light of the project being of significant public concern and interest.

If you could please confirm receipt of this report that would be greatly appreciated.

Kind regards

s47F

s47F / Campaign Consultant

IFAW - International Fund for Animal Welfare

Oceania Regional Office (Australia)

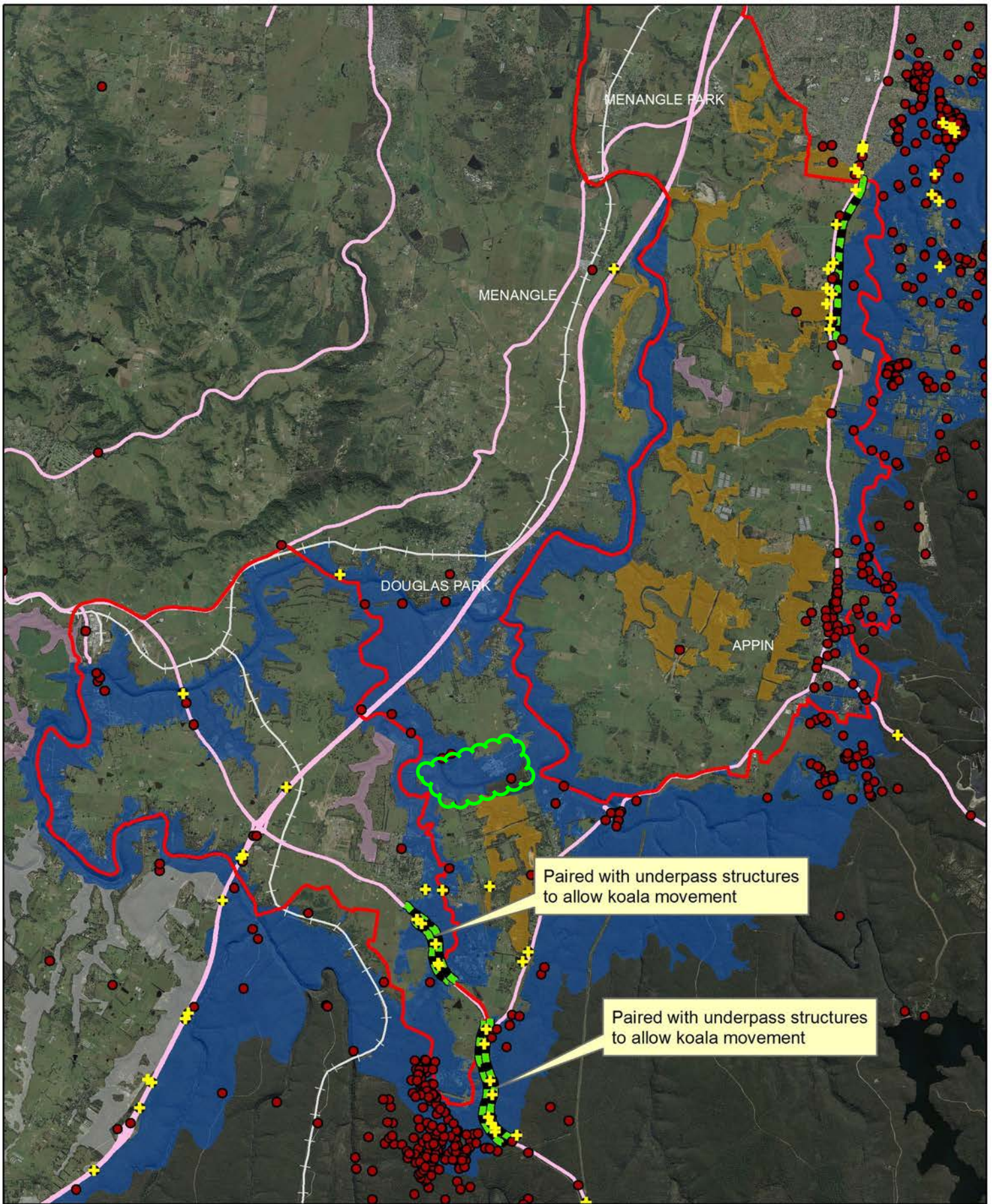
6 Belmore Street, Surry Hills, Sydney, NSW 2010, Australia.

tel. (+61) s47F email. s47F .contractor@ifaw.org

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Watch videos of our work at... <http://g.ifaw.org/IFoundAWay>

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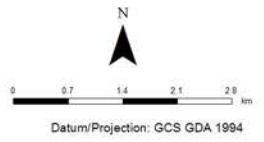
Legend

- | | |
|--|--|
|  Priority Growth Areas |  Corridors outside PGA |
|  Primary |  Koala road kill mitigation fence |
|  Secondary |  All koala records |
|  Tertiary |  Road kill koalas |

FOI 190712
Document 7a



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OEH and its employees disclaim liability for any act done on the
information in the map and any consequences of such acts or omissions.



From: s22
To: s22
Subject: RE: Mt Gilead update [SEC=UNCLASSIFIED]
Date: Monday, 17 December 2018 5:23:28 PM

Thanks s22

It'll be good to see the details of the property eg how connected that area might be to other bits of the landscape, what area is remnant habitat, what needs rehabilitation etc.

Can I clarify – is the expectation that the koala management plan is just for the proposed off set block? Not something a bit more regional that might include corridors? Also suggest we ensure that the plan links to other state koala plans/strategies.

And what's the likely time frame for this? At the moment we don't have a formally constituted recovery team (only a drafting group made up of state agencies). Will bed this down once a recovery plan is in place. Can we perhaps leave it open and provide criteria up front as to our expectations of what the plan should entail, ie to meet the 'to the satisfaction of the Minister' test. Eg The plan must demonstrate that it is consistent with and is informed by state and national koala plans together with evidence of appropriate consultation with key koala experts, and detailing budget, governance, risks, monitoring and reporting.

From: s22
Sent: Wednesday, 12 December 2018 11:39 AM
To: s22
Subject: Mt Gilead update [SEC=UNCLASSIFIED]
Hi s22

Emails duplicated
within Document 7

s22

s22

s22

From: s22
To: s22
Subject: FW: Mt Gilead update [SEC=UNCLASSIFIED]
Date: Wednesday, 19 December 2018 2:13:34 PM
Attachments: [Att A3 2618 Figure 12 KoalaHabitat.pdf](#)
[Att A3 2618 Figure 7 Veg.pdf](#)
[Att A3 2618 Figure 11 Koala.pdf](#)
[Att A3 2618 BB CreditReport 12May2016.pdf](#)

Hi s22

The attached figures show the location of the proposed offset site, Koala habitat and veg communities. The offset site has its own Bio Banking agreement and money which is available to improve the site as Koala habitat. The BioBanking credit report also attached discusses some of the priority management actions which have been identified for the site.

The Koala management plan would be focused on activities in the vicinity of Mt Gilead site more generally/ so not linked to the offset site. What it covers as you say would be decided by the recovery team and I imagine that the scope of the plan would be agreed with the proponent prior to commencement. I added your words into the condition (see below).

Cheers

s22

5. To compensate for **impacts** on **Koala**, the approval holder must acquire or **retire** no less than 150 **Biodiversity credits** for the **Koala** from the **Lot 2 DP 225253, Douglas Park Drive** Biobanking site prior to the **commencement of the action**.
6. Prior to the **commencement of the action**, the approval holder must prepare and implement a Koala Management Plan for the proposed action area to the satisfaction of the **Minister**. This must include provisions for the approval holder to contribute at least \$100,000 each year for five years to fund activities outlined in the plan. **The plan must demonstrate that it is consistent with and is informed by state and national koala plans together with evidence of appropriate consultation with key koala experts, and detailing budget, governance, risks, monitoring and reporting.** The approval holder must provide the **Department** with **evidence** of the Koala Recovery Team's endorsement of the Koala Management Plan prior to the **commencement of the action**.

From: s22
Sent: Monday, 17 December 2018 5:23 PM
To: s22
Subject: RE: Mt Gilead update [SEC=UNCLASSIFIED]

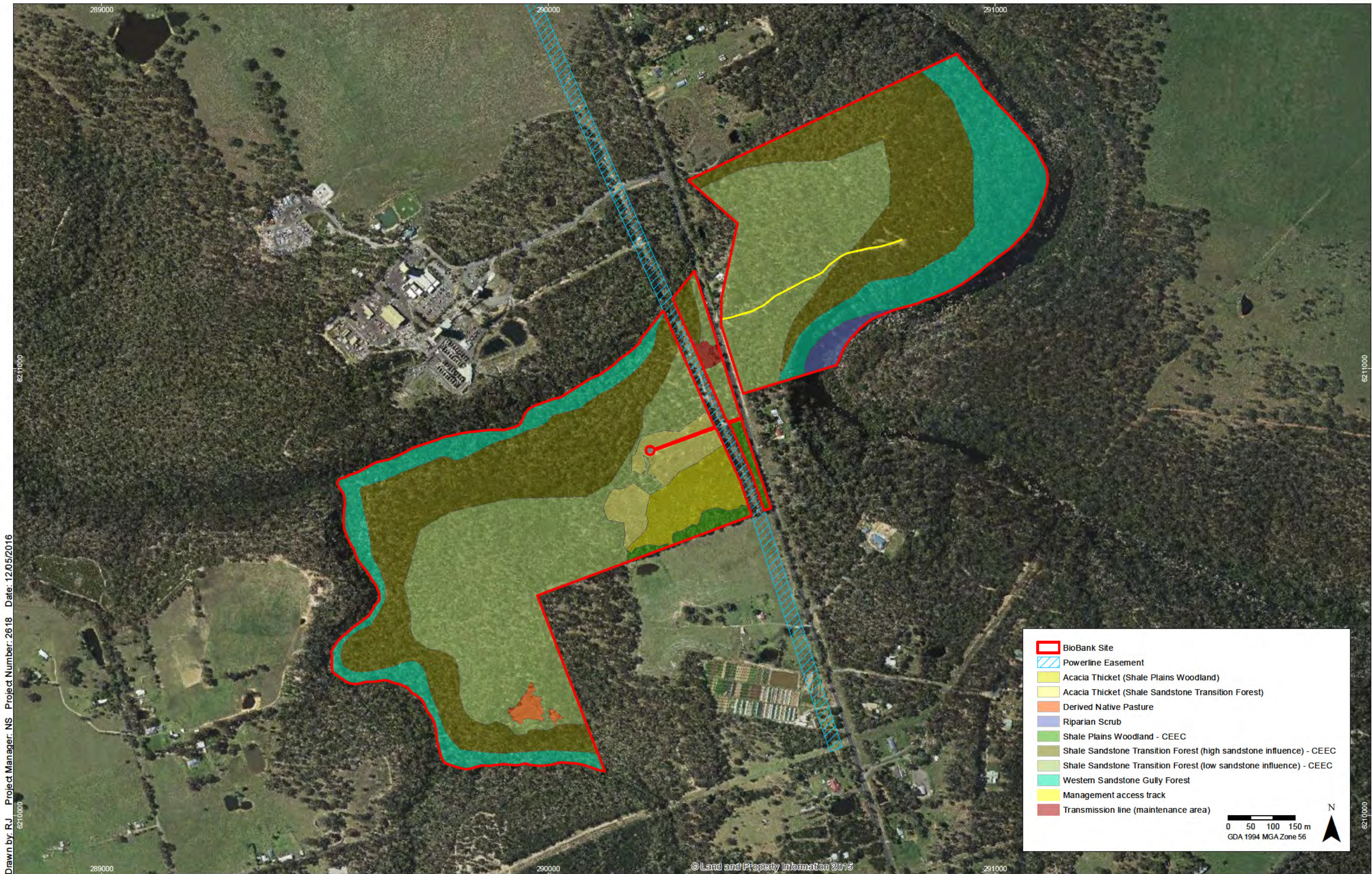
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s22

s22

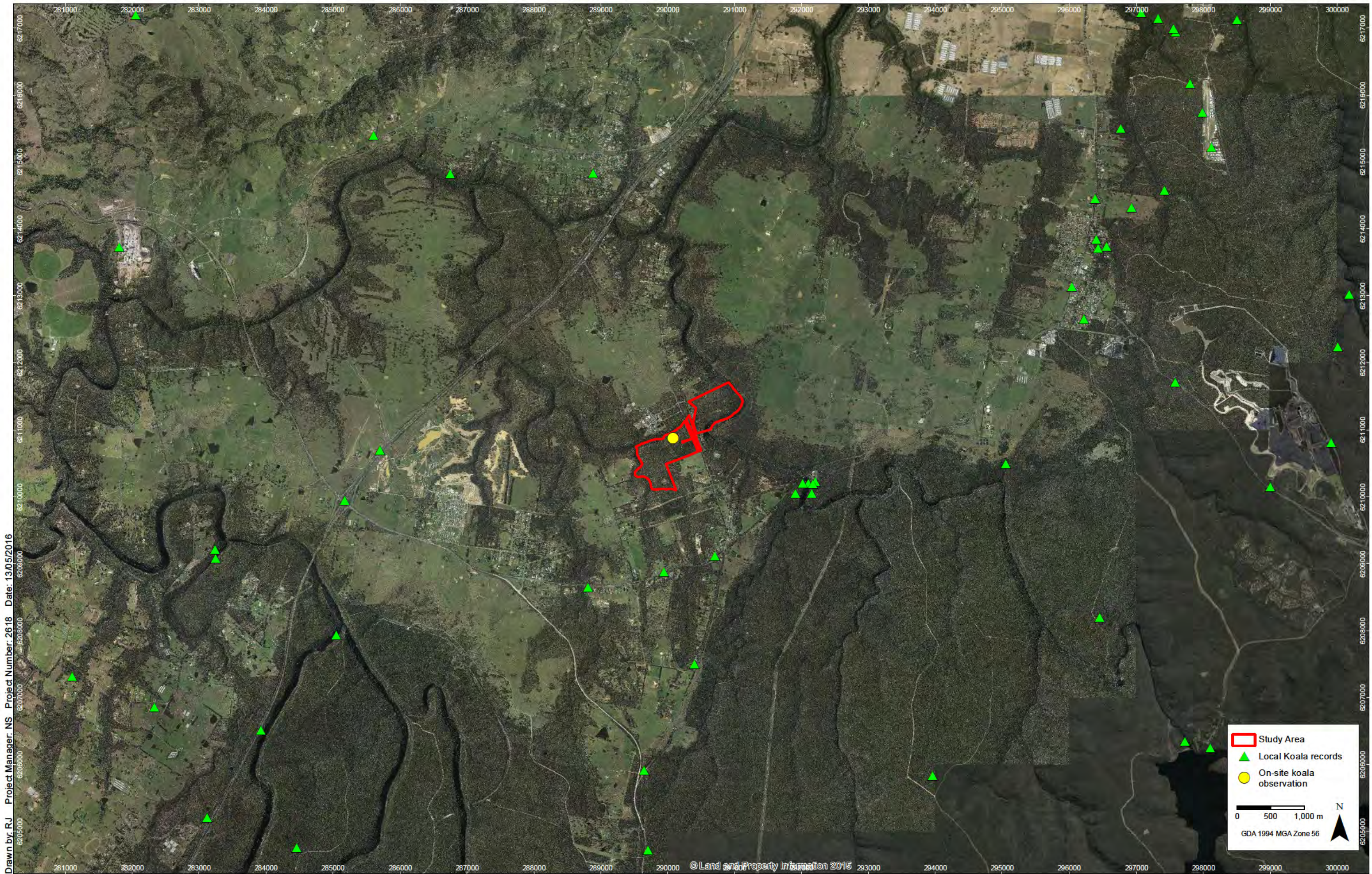
s22





Drawn by: RJ Project Manager: NS Project Number: 2618 Date: 12/05/2016

Site-validated vegetation mapping (Niche 2016 after NPWS 2003)
The Appin West BioBank Site



Local Koala records (Atlas of NSW Wildlife, Dec 2015)
 The Appin West BioBank Site

FIGURE 11
 Imagery: (c) LPI 2013-02-07

This report identifies the number and type of credits required at a BIOBANK SITE

Date of report: 12/05/2016

Time: 6:08:40PM

Calculator version: v4.0

Biobank details

Proposal ID: 0047/2015/1880B
Proposal name: Appin West offset site
Proposal address: Douglas Park Road Douglas Park NSW 2569
Proponent name: Illawarra Coal
Proponent address: PO Box 514 Unanderra NSW 2526
Proponent phone: s47F
Assessor name: s47F
Assessor address: s47F
Assessor phone: s47F
Assessor accreditation: 0047

Additional information required for approval:

- Use of local benchmark
- Expert report...
 - Koala Phascolarctos cinereus
- Request for additional gain in site value

Ecosystem credits summary

Plant Community type	Area (ha)	Credits created
Grey Box - Forest Red Gum grassy woodland on flats of the Cumberland Plain, Sydney Basin Bioregion	3.92	58.00
Grey Gum - Blue-leaved Stringybark open forest on gorge slopes, southern Sydney Basin Bioregion and north east South Eastern Highlands Bioregion	15.17	177.00
Narrow-leaved Ironbark - Broad-leaved Ironbark - Grey Gum open forest of the edges of the Cumberland Plain, Sydney Basin Bioregion	63.67	757.00
Water Gum - Coachwood riparian scrub along sandstone streams, Sydney Basin Bioregion	0.86	12.00
Total	83.62	1,004

Credit profiles

1. Grey Box - Forest Red Gum grassy woodland on flats of the Cumberland Plain, Sydney Basin Bioregion, (HN528)

Number of ecosystem credits created	58
IBRA sub-region	Cumberland - Hawkesbury/Nepean

2. Grey Gum - Blue-leaved Stringybark open forest on gorge slopes, southern Sydney Basin Bioregion and north east South Eastern Highlands Bioregion, (HN531)

Number of ecosystem credits created	177
IBRA sub-region	Cumberland - Hawkesbury/Nepean

3. Narrow-leaved Ironbark - Broad-leaved Ironbark - Grey Gum open forest of the edges of the Cumberland Plain, Sydney Basin Bioregion, (HN556)

Number of ecosystem credits created	752
IBRA sub-region	Cumberland - Hawkesbury/Nepean

4. Narrow-leaved Ironbark - Broad-leaved Ironbark - Grey Gum open forest of the edges of the Cumberland Plain, Sydney Basin Bioregion, (HN556)

Number of ecosystem credits created	5
IBRA sub-region	Cumberland - Hawkesbury/Nepean

5. Water Gum - Coachwood riparian scrub along sandstone streams, Sydney Basin Bioregion, (HN607)

Number of ecosystem credits created	12
IBRA sub-region	Cumberland - Hawkesbury/Nepean

Species credits summary

Common name	Scientific name	Extent of impact Ha or individuals	Number of species credits created
Epacris purpurascens subsp. purpurascens	Epacris purpurascens subsp. purpurascens	7,349.00	52,178
Small-flower Grevillea	Grevillea parviflora subsp. parviflora	0.00	2,904
Small-flower Grevillea	Grevillea parviflora subsp. parviflora	409.00	2,904
Koala	Phascolarctos cinereus	44.60	317

Additional management actions

Additional management actions are required for:

Vegetation type or threatened species	Management action details
Epacris purpurascens subsp. purpurascens	Feral and/or over-abundant native herbivore control
Epacris purpurascens subsp. purpurascens	Maintain or re-introduce natural flow regimes
Grey Box - Forest Red Gum grassy woodland on flats of the Cumberland Plain, Sydney Basin Bioregion	Exclude commercial apiaries
Grey Box - Forest Red Gum grassy woodland on flats of the Cumberland Plain, Sydney Basin Bioregion	Exclude miscellaneous feral species
Grey Box - Forest Red Gum grassy woodland on flats of the Cumberland Plain, Sydney Basin Bioregion	Feral and/or over-abundant native herbivore control
Grey Box - Forest Red Gum grassy woodland on flats of the Cumberland Plain, Sydney Basin Bioregion	Fox control
Grey Box - Forest Red Gum grassy woodland on flats of the Cumberland Plain, Sydney Basin Bioregion	Slashing
Grey Gum - Blue-leaved Stringybark open forest on gorge slopes, southern Sydney Basin Bioregion and north east South Eastern Highlands Bioregion	Exclude commercial apiaries
Grey Gum - Blue-leaved Stringybark open forest on gorge slopes, southern Sydney Basin Bioregion and north east South Eastern Highlands Bioregion	Exclude miscellaneous feral species
Grey Gum - Blue-leaved Stringybark open forest on gorge slopes, southern Sydney Basin Bioregion and north east South Eastern Highlands Bioregion	Feral and/or over-abundant native herbivore control
Grey Gum - Blue-leaved Stringybark open forest on gorge slopes, southern Sydney Basin Bioregion and north east South Eastern Highlands Bioregion	Fox control
Grey Gum - Blue-leaved Stringybark open forest on gorge slopes, southern Sydney Basin Bioregion and north east South Eastern Highlands Bioregion	Slashing
Narrow-leaved Ironbark - Broad-leaved Ironbark - Grey Gum open forest of the edges of the Cumberland Plain, Sydney Basin Bioregion	Exclude commercial apiaries

Narrow-leaved Ironbark - Broad-leaved Ironbark - Grey Gum open forest of the edges of the Cumberland Plain, Sydney Basin Bioregion

Exclude miscellaneous feral species

Narrow-leaved Ironbark - Broad-leaved Ironbark - Grey Gum open forest of the edges of the Cumberland Plain, Sydney Basin Bioregion	Feral and/or over-abundant native herbivore control
Narrow-leaved Ironbark - Broad-leaved Ironbark - Grey Gum open forest of the edges of the Cumberland Plain, Sydney Basin Bioregion	Fox control
Narrow-leaved Ironbark - Broad-leaved Ironbark - Grey Gum open forest of the edges of the Cumberland Plain, Sydney Basin Bioregion	Slashing
Water Gum - Coachwood riparian scrub along sandstone streams, Sydney Basin Bioregion	Exclude commercial apiaries
Water Gum - Coachwood riparian scrub along sandstone streams, Sydney Basin Bioregion	Exclude miscellaneous feral species
Water Gum - Coachwood riparian scrub along sandstone streams, Sydney Basin Bioregion	Feral and/or over-abundant native herbivore control
Water Gum - Coachwood riparian scrub along sandstone streams, Sydney Basin Bioregion	Fox control
Water Gum - Coachwood riparian scrub along sandstone streams, Sydney Basin Bioregion	Slashing