

Biobanks EPBC conditions being ignored - No additional Koala habitat protection conferred.

The federal Department of the Environment and Energy has been ignored. It conditionally approved Gilead (EPBC 2015/7599) but rejected the NSW's DPE's use of an existing council bush reserve 'Noorumba' as a Koala biobanking credit and has asked for a Koala Management Plan (KMP) before proceeding. NSW Biodiversity Credits as per the Earthworks DA 3868/2017/DA-CW condition 21b must conform with condition 5 of the EPBC 2015/7599 for approval.

However the NSW DPE have approved Campbelltown Council's Noorumba Bush Reserve as a Biobank under the **Biocertification Stewardship Agreement** (gazetted on July 5th this year (n2019-1900) see BioBanking agreement ID number: 239). The retirement of credits under a **Biodiversity Stewardship** site listed on the public register:

1. 104 HN556 Biodiversity Credits, and 85 Koala species credits, from **Macarthur-Onslow Mt Gilead** - ID 208.
2. 28 HN528 Biodiversity Credits, and 48 Koala species credits, from the **Noorumba-Mt Gilead** - ID 209.
3. 151 Koala species biodiversity credits from **Campbelltown Council's Noorumba Bush Reserve** - ID 239.

The EPBC approval specifically negates the use of the 'Noorumba Bush Reserve' as there is no additionality (it's an existing bush reserve) and because the exclusion fencing makes it meaningless as a Koala Species Credit (no Koala can get there). And the onsite biobanks also have no Koala credit function if Koalas can't reach them. Condition 5 of the EPBC 2015/7599 states a site in West Appin must be secured to retire these Koala credits.

"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 Appin West offset site prior to the commencement of the action."


Condition 21b of the Gilead Earthwork DA states prior to the commencement of works the following must be provided to Council:

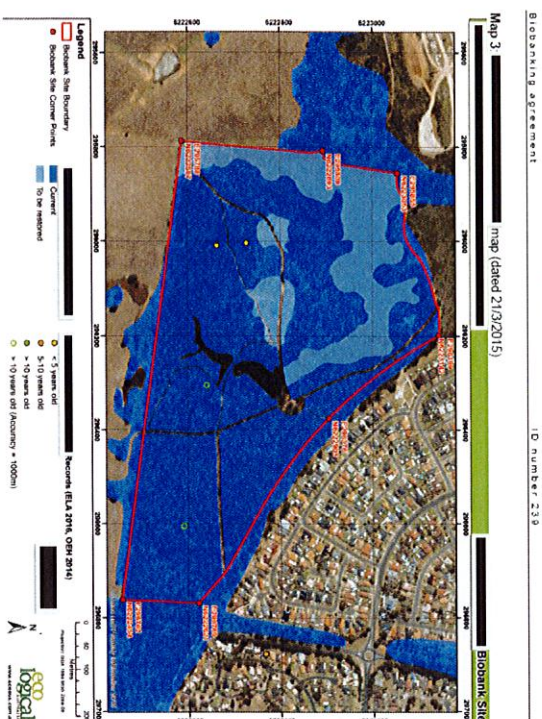
"21b. Evidence of the retirement of biodiversity credits as per Condition 3-5 of the approval issued under the EPBC Act (Mt Gilead residential development EPBC 2015/7599), dated 21 December; "

The Biocertification Stewardship Agreement - **ID 239** uses Noorumba, not West Appin as a required Koala Credit per condition 5 of the EPBC.

A requirement of the Earthworks DA is EPBC Biobank retirement. There is no evidence that this has been retired. The July 5th Biodiversity Certification Agreement that this DA appears to rely

upon applies to Noorumba, not West Appin, and therefore does not meet EPBC Biobank conditions.

<p> Australian Government Department of the Environment and Energy</p> <p>Conditions of approval This approval is subject to the conditions under the EPBC Act as set out in ANNEXURE A</p> <p>ANNEXURE A – CONDITIONS OF APPROVAL</p> <p>Part A – Conditions specific to the action</p> <p>Impacts</p> <ol style="list-style-type: none"> The approval holder must ensure that clearing of protected matters within the proposed action area is limited to the area marked as 'development area' in Attachment 1. <p>Compensation measures</p> <ol style="list-style-type: none"> To offset the impacts on 3.3 ha of SSTF and 0.55 ha of CPW, the approval holder must ensure that 8 ha of SSTF and 1.2 ha of CPW is secured within onsite offset areas prior to the commencement of the action. 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. To compensate for impacts on 0.85 ha of SSTF not compensated through offsetting through conditions 2 and 3, the approval holder must either: <ul style="list-style-type: none"> secure 0.85 ha of SSTF within the Council reserve prior to the commencement of Stage 2 of the action; or (if the approval holder is unable to register the Council reserve as a BioBank site); 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 date of commencement. The approval holder must not commence the action unless the offset strategy has been approved by the Minister To compensate for impacts on Koala, the approval holder must acquire or retire no less than 150 Biodiversity credits for the Koala from the Appin West offset site prior to the commencement of the action. Within 10 business days of securing the relevant offsets specified in conditions 2 - 5, the approval holder must provide the Department with evidence of when the offsets were secured and what mechanism was used to secure the offsets. 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 \$50,000 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. The first year's contribution must be made within 20 business days from the commencement of the action. 	<p>Government Notices</p> <p>Schedule 3 Approved measures</p> <p>The approved measures under this order are as follows:</p> <p>Conservation measures</p> <ol style="list-style-type: none"> The entering into a biodiversity banking agreement over the Conservation Area as a Conservation Measure and the subsequent retirement of all Biodiversity Credits generated from that site; The retirement of 104 HN566 Biodiversity Credits, and 85 Koala species credits, generated from the Macarthur-Onslow Mt Gilead Biodiversity Stewardship site listed on the public register with ID 238; The retirement of 28 HN528 Biodiversity Credits, and 48 Koala species credits, generated from the Noorumba-Mt Gilead Biodiversity Stewardship site listed on the public register with ID 209; The retirement of 151 Koala species biodiversity credits as referred to in the Biodiversity Stewardship Agreement listed on the public register with ID 239. <p>Timing of the implementation of conservation measures</p> <ol style="list-style-type: none"> The conservation measures set out in clauses 1-4 above, must be implemented within the timeframes set out in the Biodiversity Certification Agreement entered into by the following parties in relation to this biodiversity certification: <ol style="list-style-type: none"> Minister for the Environment; Lendlease Communities (Mount Gilead) Pty Limited ACN 605 278 331 Lendlease Communities (Mount Gilead No. 3) Pty Limited ACN 614 296 254 Mt Gilead Pty Limited ACN 008 439 189; and Campbelltown City Council. <p>2492 NSW Government Gazette No 70 of 5 July 2019</p>
<p>21 Dec 2018, Gilead EPBC Final decision notice - West Appin offset of 150 Koala credits (not Noorumba)</p>	<p>Government Gazette No 70 of Friday 5 July 2019 : Order conferring biodiversity certification - Mt Gilead Stage 1 - 151 Koala credits retired under Biodiversity Stewardship Agreement ID 239</p>

 <p>Map 3: map (dated 21/3/2015)</p> <p>Biobanking agreement ID number 239</p>	<p>Local Planning Panel Meeting 24/07/2019</p> <p>21. Compliance with the Biodiversity Certification Agreement</p> <p>Prior to the commencement of works/issue of a construction certificate (whichever comes first) the following information is to be provided to Council's Executive Manager Urban Release (or equivalent) and written acknowledgement received:</p> <ol style="list-style-type: none"> Evidence of the retirement of biodiversity credits as per Table 1 of the Biodiversity Certification Agreement – Mt Gilead Stage 1 (executed on 28 June 2019) and as specified by the Order conferring biodiversity certification – Mt Gilead Stage 1 (published in the NSW Government Gazette No 70 on 5 July 2019); Evidence of the retirement of biodiversity credits as per Conditions 3.5 of the approval issued under the EPBC Act (Mt Gilead residential development EPBC 2015/7599) dated 21 December 2018; and Evidence that the Federal Environment Minister has approved a Koala Plan of Management as per Condition 7 of the approval issued under the EPBC Act (Mt Gilead residential development EPBC 2015/7599) dated 21 December 2018). <p>Compliance is required at all times with the conservation obligations under the Biodiversity Certification Agreement – Mt Gilead Stage 1 (executed on 28 June 2019) and as specified by the Order conferring biodiversity certification – Mt Gilead Stage 1 (published in the NSW Government Gazette No 70 on 5 July 2019).</p> <p>PRIOR TO THE COMMENCEMENT OF ANY WORKS</p> <p>The following conditions of consent have been imposed to ensure that the administration and amenities relating to the proposed development comply with all relevant requirements. These conditions are to be complied with prior to the commencement of any works on site.</p> <p>22. NSW Office of Environmental and Heritage</p> <p>Prior to the commencement of any works on the land the following items must be completed:</p> <ul style="list-style-type: none"> As a 90 Aboriginal Heritage Impact Permit (AHIP) for the proposed works must be sought and granted prior to the commencement of works. The AHIP application must be accompanied by appropriate documentation and mapping as outlined on page 8 of Applying for an Aboriginal Heritage Impact Permit: Guide for Applicants. Consultation with the Aboriginal community undertaken as part of the AHIP application must be in accordance with the Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010. The AHIP application must include appropriate mitigation including an archaeological salvage excavation program designed to answer research questions specific to the southern Cumberland Plain. The research questions must consider comparisons between the southern and northern Cumberland Plain, with a view to developing an Aboriginal occupational model for the southern Cumberland Plain. The AHIP application must include detailed management plans for all proposed conservation areas. Copies of all relevant Biobanking Agreements must also be provided. Long term management of Aboriginal objects must be considered as part of the AHIP application. <p>Item 4.1 - Attachment 1 Page 46</p>
<p>Biobanking agreement : ID number 239 - Noorumba identified (not West Appin)</p>	<p>2019 Jul 24th, Gilead Earthworks DA: 3868/2017/DA-CW Conditions of Consent - EPBC Biobank retirement is condition .21b. .</p>

Issue: Ignoring EPBC Biobank requirements

Recommendation: With no third party ability to take the DPE, DoEE or Lendlease to Court - the EPBC Act is made redundant, and in fact undermines the 'rule of law'. An appeal to an **ombudsman** with teeth to enforce conditions would be a simpler mechanism.

