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

[Stamp: Total Environment Centre]

[Stamp: Document tendered by Mr. Saul Deane]

[Stamp: Received by Tina Moors]{

Date: 16/08/2019

Resolved to publish: Yes / No}
upon applies to Noorumba, not West Appin, and therefore does not meet EPBC Biobank conditions.

**Conditions of approval**

This approval is subject to the conditions under the EPBC Act as set out in ANNEXURE A.

**ANNEXURE A – CONDITIONS OF APPROVAL**

**Part A – Conditions specific to the action**

**Impacts**

1. 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.

**Compensation measures**

2. To offset the impacts on 1.93 ha of SEFF, and 8.55 ha of GPE, the approval holder must ensure that 2.7 ha of SEFF is secured within six months of approval under the commencement of the action.

3. To offset the impacts on 1.79 ha of SEFF, the approval holder must secure a minimum of 4 ha of SEFF in the Central West Biobanking site prior to the commencement of the action.

4. To compensate for impacts on 0.85 ha of SEFF not compensated through offsetting through conditions 2 and 3, the approval holder must either:
   
   - secure 0.85 ha of SEFF within the Council’s reserve prior to the commencement of Stage 2 of the action, or
   - secure a Council reserve as a biobanking site under the commencement of the action.

5. To compensate for impacts on Koala, the approval holder must secure 1,500 two-year old, or less than 1,500 biodiversity credits for the Koala from the Action’s offset site prior to the commencement of the action.

6. Within 30 business days of securing the relevant offsets specified in conditions 1 - 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.

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.

**Government Gazette**

21 Dec 2018, Gyleed EPBC Final decision notice - West Appin offset of 150 Koala credits (not Noorumba)

**Schedule 3 Approved measures**

The approval holder undertakes the following measures:

**Conservation measures**

1. The setting up of biodiversity banking area over the Conservation Area on a biobanking holder and the establishment of all biodiversity credits required.

2. The restoration of 150 two-year old biodiversity credits in the area marked as the proposed action site on the biobanking holder.

3. The establishment of 150 biodiversity credits, of which 100 Koala credits, in the area marked as the proposed action site on the biobanking holder.

4. The retention of all biodiversity credits, as listed on the biobanking holder, to the Biodiversity Stewardship Agreement in the public register with S.I. 130.

**Timing of the implementation of conservation measures**

5. The conservation measures as set out in clause 4 above, must be implemented within ten months from the date of this decision notice.

6. The Department reserves the right to vary the decision notice at any time during the implementation of this decision notice.

**Further information**

Goverment 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
21. Compliance with the Biodiversity Certification Agreement

Prior to the commencement of any works on the land, the following items must be completed:

a. Evidence of the submission of a Biodiversity Certification Agreement.

b. Evidence that the Federal Government has approved the Plan of Management under Condition 3.7 of the approval issued under the EPBC Act 1999.

c. Evidence that the Federal Government has approved a Plan of Management for Condition 7 of the approval issued under the EPBC Act 1999.

Prior to the commencement of any works:

The following conditions of consent must be complied with prior to the commencement of any works on the land:

22. New Office of Environmental and Heritage

Any works must comply with the following:

a. An Aboriginal Heritage Impact Plan (AHIP) for the proposed works must be prepared and submitted to the National Heritage Council for approval.

b. The AHIP must include a detailed description and mapping as outlined on page 5 of the application for an Aboriginal Heritage Impact Permit for an urban environment.

c. Request for an AHIP with the Aboriginal Community undertaken as part of the AHIP application must be in accordance with the Aboriginal Cultural Heritage Consultation Guidelines.

d. The AHIP application must include an adequate mitigation strategy, including an archaeological storage mitigation program, designed to ensure that the outcomes are consistent with the objectives of the EPBC Act.

23. Biobanking agreement: ID number 239

- Noorumba identified (not West Appin)

2019 Jul 24th, Gilead Earthworks DA:
3866/2017/DA-CW
Conditions of Consent - EPBC Biobank retirement is condition 21.

**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.