

From: MMEA Secretary
Sent: Monday, 23 September 2024 5:04 PM
To: Office of Sue Higginson
Subject: Approval of Manyana residential development under EPBC Act

Dear Ms Higginson,

I am writing to you in your position as Chair of Portfolio Committee No. 7 - Planning and Environment to advise you that on 20th September 2024, the delegate to the Federal Minister for the Environment and Water the Hon Tanya Plibersek approved with conditions the above residential development under the EPBC Act. Please find attached the Notification of Approval for your information.

You will be aware that Manyana Matters Environmental Association (MMEA) has been working with the support of the Red Head Villages communities since 2020 to protect the forest we call the Manyana Special Conservation Reserve, which will now be largely cleared to make way for this development. We believe that, despite the conditions, there will be irreversible and far-reaching environmental destruction.

Minister Plibersek has written to the NSW Minister for Planning and Public Spaces to bring this approval to his attention, in particular, pointing out that the proposed development is a "zombie" DA and noting that the NSW Government is presently conducting an Inquiry into historical development consents such as these. This letter is attached for your reference.

At the invitation of this Inquiry, MMEA recently attended a Roundtable to discuss the negative environmental and planning implications of historical development consents. We came away disillusioned and wrote to the Inquiry committee members expressing our frustration at the stated lack of appetite to address the problems. See attached letter.

In May this year, MMEA President Bill Eger and Founder Jorj Lowrey presented to the Inquiry into the planning system and the impacts of climate change on the environment and communities, chaired by you. We were grateful for this opportunity. We believe that your committee will find the above correspondence of relevance to your deliberations.

Please let me know if you require any additional information.

Yours sincerely

Jo Davey
Secretary

for and on behalf of
Manyana Matters Environmental Association Inc.





Notification of approval

Residential Development, Lot 172 DP 755923 and Lot 823 DP 247285, Manyana, NSW (EPBC ref 2020/8704)

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

Approved Action

person to whom the approval is granted (approval holder)	Manyana Coast Pty Ltd
ABN of approval holder	92 617 758 915
Action	To construct a residential development and ancillary infrastructure at Lot 172 DP 755923 and Lot 823 DP 247285, Manyana, NSW [See EPBC Act referral 2020/8704].

Approval decision

Decision	My decision on whether or not to approve the taking of the Action for the purposes of the controlling provision for the Action is as follows.	
	Controlling Provision	Decision
	Listed threatened species and communities (section 18 and section 18A)	Approved
Period for which the approval has effect	This approval has effect until 31 July 2042.	
Conditions of approval	The approval is subject to conditions under the EPBC Act as set out in Annexure A.	

Person authorised to make decision

name and position	Kate Gowland Branch Head Environment Assessments (NSW, ACT)
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Signature

date of decision	20 September 2024
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Annexure A

Note: Words appearing in **bold** have the meaning assigned to them at PART C – DEFINITIONS.

Part A – Operational Conditions

CLEARANCE LIMITS

- 1) To avoid and mitigate harm to **protected matters**, the approval holder must not take the Action outside the **Action area**.
- 2) To avoid and mitigate harm to **protected matters**, in taking the Action, the approval holder must not:
 - (a) **clear** within the **Reserve** excluding the pink polygon designated 'Pedestrian Footbridge' represented in Attachment A
 - (b) **construct** within the **Reserve** excluding the pink polygon designated 'Pedestrian Footbridge' represented in Attachment A
 - (c) **clear** more than 1.25 ha of **Grey-headed Flying-fox habitat**
 - (d) **clear** any **Littoral Rainforest** except:
 - i) within **Stage 4** where represented in Attachment B by the three orange shaded polygons designated 'Littoral Rainforest in Stage 4 0.04 ha', and
 - ii) where required under NSW legislation to provide the **Stage 3 APZ** within the area represented in Attachment B in yellow hatching within **Stage 3**
 - (e) **clear** more than 0.04 ha of **Littoral Rainforest** within **Stage 4**
 - (f) **clear** or **construct** within **Stage 3** except where required under NSW legislation to provide the **APZ**, or to implement the conservation measures specified in the approved Offset Management Plan required under condition 13.
- 3) Prior to the commencement of the action, the approval holder must **Legally Secure Stage 3**.
 - (a) The approval holder must provide evidence to the **department** demonstrating that **Stage 3** has been **legally secured** within **10 business days** following the date that **Stage 3** was **legally secured**.

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- 4) To avoid and mitigate **harm** from the Action to **Grey-headed Flying-fox**, the approval holder must not **clear** any of the **Grey-headed Flying-fox food trees** planted in accordance with conditions 7) and 8).

AVOIDANCE AND MITIGATION

- 5) To avoid and mitigate **harm to protected matters** as a result of the Action, the approval holder must implement conditions B1, B7, B8, B11, of the **NSW approval**, to the extent that they relate to **protected matters**.
- 6) To mitigate **harm** from the Action to **Grey-headed Flying-fox**, the approval holder must not commence **clearing** within:
 - (a) **Stage 1** prior to 1 September 2024
 - (b) **Stage 2** prior to 1 September 2024
 - (c) **Stage 4** prior to 1 February 2025
 - (d) **Stage 5** prior to 1 February 2027
 - (e) **Stage 6** prior to 1 February 2028.
- 7) To mitigate **harm** from the Action to **Grey-headed Flying-fox**, the approval holder must:
 - (a) plant at least 388 **Grey-headed Flying-fox food trees** in the **planting area**,
 - (b) ensure all planted **Grey-headed Flying-fox food trees** are 75-100 litres in volume at the time of planting,
 - (c) ensure that at least 388 **Grey-headed Flying-fox food trees thrive** in the **planting area** at least until the expiry of this approval, and
 - (d) register a positive covenant on the title of any lot created, part or all of which is in the **planting area**, requiring the purchaser and any future owner of that lot to ensure that any **Grey-headed Flying-fox food tree** planted in accordance with conditions 7 a) and 7 c) is maintained at least until the expiry of this approval.
- 8) To mitigate **harm** from the Action to **Grey-headed Flying-fox**, in planting **Grey-headed Flying-fox food trees** within the **planting area**, the approval holder must plant at least:
 - (a) 77 Coast Banksia (*Banksia integrifolia*), 8 Grey Ironbark (*Eucalyptus paniculata*) and 11 Swamp Mahogany (*Eucalyptus robusta*) within **Stage 1** prior to the first instance of **clearing** within **Stage 2**, apart from **clearing** for the purposes of any **APZ**
 - (b) 113 Coast Banksia (*Banksia integrifolia*) within **Stage 2** prior to the first instance of **clearing** within **Stage 4**, apart from **clearing** for the purposes of any **APZ**
 - (c) 42 Coast Banksia (*Banksia integrifolia*), 11 Grey Ironbark (*Eucalyptus paniculata*) and 7 Spotted Gum (*Corymbia maculata*) within **Stage 4** prior to the first instance of **clearing** within **Stage 5**, apart from **clearing** for the purposes of any **APZ**
 - (d) 35 Coast Banksia (*Banksia integrifolia*), 17 Grey Ironbark (*Eucalyptus paniculata*) and 7 Spotted Gum (*Corymbia maculata*) within **Stage 5** prior to the first instance of **clearing** within **Stage 6**, apart from **clearing** for the purposes of any **APZ**, and

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- (e) 52 Coast Banksia (*Banksia integrifolia*) and 8 Grey Ironbark (*Eucalyptus paniculata*) within **Stage 6** by the earlier of:
- i) within 12 months following the first instance of **clearing** within **Stage 6**, apart from **clearing** for the purposes of any **APZ**, or
 - ii) at least 5 years prior to the expiry date of this approval.

OFFSETS

- 9) To offset the **clearing** of the Action on 1.25 ha of **Grey-headed Flying-fox habitat**, the approval holder must, prior to the **commencement of the Action**, either:
- (a) **retire** the number of **biodiversity credits** determined by the **NSW Biodiversity Offsets Scheme** to compensate for the loss of and impact of the Action on 1.25 ha of **Grey-headed Flying-fox habitat**, or
 - (b) implement a Grey-headed Flying-fox Offset Management Plan approved by the **Minister** in accordance with condition 14.
- 10) If the approval holder elects to **retire biodiversity credits** in accordance with condition 9 (a), the approval holder must, prior to **commencement of the Action**, provide evidence to the **department** of the determination by the **NSW Biodiversity Offsets Scheme** as to how many **biodiversity credits** of what class are required to compensate for the loss of and impact of the Action on 1.25 ha of **Grey-headed Flying-fox habitat**, the date on which the **biodiversity credits** were **retired** and how many **biodiversity credits** of what class were **retired**.
- 11) To offset the **clearing** of the Action on 0.04 ha of **Littoral Rainforest** within **Stage 4** and any area of **Littoral Rainforest** to be **cleared** for the **APZ** in **Stage 3** the approval holder must, prior to the **commencement of the Action**, either:
- (a) **retire** the number of **biodiversity credits** determined by the **NSW Biodiversity Offsets Scheme** to compensate for the loss of and impact of the Action on 0.04 ha of **Littoral Rainforest** and the **clearing** of **Littoral Rainforest** for the **Stage 3 APZ**, or
 - (b) provide an offset in accordance with the **Environmental Offsets Policy** for the impacts to **Littoral Rainforest** as part of implementing the Offset Management Plan required under condition 13.
- 12) If the approval holder elects to **retire biodiversity credits** in accordance with condition 11 (a), the approval holder must, prior to **commencement of the Action**, provide evidence to the **department** of the determination by the **NSW Biodiversity Offsets Scheme** as to how many **biodiversity credits** of what class are required to compensate for the loss of and impact of the Action on 0.04 ha of **Littoral Rainforest** within **Stage 4** and the area of **Littoral Rainforest** to be **cleared** for the **APZ** in **Stage 3**, the date on which the **biodiversity credits** were **retired** and how many **biodiversity credits** of what class were **retired**.

Offset Management Plan(s)

- 13) Irrespective of the offsetting mechanism undertaken under condition 11 for **Littoral Rainforest**, the approval holder must submit a **Littoral Rainforest** Offset Management Plan to the **department** for the **Minister's** approval to manage the **Littoral Rainforest** retained in **Stage 3** and offset any impacts not otherwise offset. The approval holder must not **commence the Action** unless the **Minister** has approved the **Littoral Rainforest** Offset Management Plan in

writing. The approval holder must commence implementing the approved Offset Management Plan no later than the **commencement of the Action** and continue to implement it until the expiry of this approval. The **Littoral Rainforest** Offset Management Plan must meet the requirements set out in Attachment D. In addition to the requirements set out in Attachment D, the **Littoral Rainforest** Offset Management Plan must also include:

- (a) Quantification of the area of **Littoral Rainforest** that will be impacted by the **clearing**, edge effects from **Stage 1**, **Stage 2** and **Stage 4** and establishment of the **APZ** within **Stage 3**.
- (b) Measures to prevent new and ongoing impacts to **Littoral Rainforest**, including but not limited to impacts from weed encroachment and dumping of waste.
- (c) Details of, and a commitment to, install a **vehicle exclusion fence** around **Stage 3** to prevent car access and discourage pedestrian and domestic animal access.
- (d) Details of any proposed transfer of **Stage 3** to a registered entity responsible for land management activities and timeframes for the notification of the transfer to the **department**.

Note: The **Littoral Rainforest** Offset Management Plan for **Stage 3** can be incorporated into the Flora and Fauna Management Plan as required by the **NSW approval**.

- 14) If the approval holder does not **retire biodiversity credits** for the **Grey-headed Flying-fox** in accordance with condition 9 (a), the approval holder must, prior to **commencement of the Action**, submit a Grey-headed Flying-fox Offset Management Plan to the **department** for the **Minister's** approval. The approval holder must not **commence the Action** unless the **Minister** has approved the Grey-headed Flying-fox Offset Management Plan in writing. The approval holder must commence implementing the approved Offset Management Plan prior to the **commencement of the Action** and continue to implement it until the expiry of this approval. The Grey-headed Flying-fox Offset Management Plan must meet the requirements set out in Attachment D.
- 15) If the approval holder elects to prepare a Grey-headed Flying-fox Offset Management Plan in accordance with condition 9 (b), the approval holder must not **commence the Action** unless the offset site specified in the approved Grey-headed Flying-fox Offset Management Plan required in accordance with condition 14 has been **legally secured**. For the offset site specified in an approved Offset Management Plan, the approval holder must provide evidence to the **department** demonstrating that the offset site has been **legally secured** within **10 business days** following the date that the offset site was **legally secured**.

Note: The **Grey-headed Flying-fox** Offset Management Plan can be incorporated into the Flora and Fauna Management Plan as required by the **NSW approval**.

Part B – Administrative conditions

REVISION OF ACTION MANAGEMENT PLANS

- 16) The approval holder may, at any time, apply to the **Minister** for a variation to an action management plan approved by the **Minister** by submitting an application in accordance with the requirements of section 143A of the **EPBC Act**. If the **Minister** approves a revised action management plan (RAMP) then, from the date specified, the approval holder must implement the RAMP in place of the previous action management plan.

MODIFICATIONS TO STATE OR TERRITORY APPROVAL

- 17) The approval holder must notify the **department** in writing of any proposed change to the **NSW approval** that may relate to **protected matters**, including the modifications required to protect **Stage 3**, within 2 **business days** of formally proposing a change and within 5 **business days** of becoming aware of any proposed change.
- 18) The approval holder must notify the **department** in writing of any change to the **NSW approval** conditions, including the modifications required to protect **Stage 3**, that may relate to **protected matters**, within 10 **business days** of a change to conditions being finalised. This notification must include a copy of the finalised changes to the **NSW approval** conditions.

COMMENCEMENT OF THE ACTION

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

COMPLIANCE RECORDS

- 21) The approval holder must maintain accurate and complete **compliance records**.
- 22) If the **department** makes a request in writing, the approval holder must provide electronic copies of **compliance records** to the **department** within the timeframe specified in the request.

Note: **Compliance records** may be subject to audit by the **department**, or by an **independent** auditor in accordance with section 458 of the **EPBC Act**, and/or be used to verify compliance with the conditions. Summaries of the results of an audit may be published on the **department's website** or through the general media.

- 23) The approval holder must ensure that any **monitoring data** (including **sensitive ecological data**), surveys, maps, and other spatial and metadata required under the conditions of this approval are prepared in accordance with the '*Guidelines for biological survey and mapped data*, Commonwealth of Australia 2018', or as otherwise specified by the **Minister** in writing.
- 24) The approval holder must ensure that any **monitoring data** (including **sensitive ecological data**), surveys, maps, and other spatial and metadata required under the conditions of this approval are prepared in accordance with the '*Guide to providing maps and boundary data for EPBC Act projects*, Commonwealth of Australia 2021', or as otherwise specified by the **Minister** in writing.
- 25) The approval holder must submit all **monitoring data** (including **sensitive ecological data**), surveys, maps, other spatial and metadata and all species occurrence record data (sightings and evidence of presence) electronically to the **department** within 20 **business days** of monitoring activities being finalised.

ANNUAL COMPLIANCE REPORTING

- 26) The approval holder must prepare a **compliance report** for each 12-month period following the date of this approval decision, following **commencement of the action** (or as otherwise agreed to in writing by the **Minister**) until the **completion of the Action**; or until the expiry of the period for which the approval has effect, whichever is earlier.
- 27) Each **compliance report** must be consistent with the '*Annual Compliance Report Guidelines*, Commonwealth of Australia 2023'.

28) Each **compliance report** must include:

- (a) A map showing the layout of the Action, including the areas of works and boundaries of properties to be sold.
- (b) Accurate and complete details of compliance and any non-compliance with the conditions and the **plans**, and any **incidents**.
- (c) One or more **shapefile** showing all **clearing of protected matters**, and/or their habitat, undertaken within the 12-month period at the end of which that **compliance report** is prepared.
- (d) A schedule of all **plans** in existence in relation to these conditions and accurate and complete details of how each **plan** is being implemented.

29) The approval holder must:

- (a) Publish each **compliance report** on the **website** within 20 **business days** following the end of the 12-month period for which that **compliance report** is required.
- (b) Notify the **department** electronically, within 5 **business days** of the date of publication that a **compliance report** has been published on the **website**.
- (c) Provide the weblink for the **compliance report** in the notification to the **department**.
- (d) Keep all published **compliance reports** required by these conditions on the **website** until the expiry date of this approval.
- (e) Exclude or redact **sensitive ecological data** from **compliance reports** published on the **website** or otherwise provided to a member of the public.
- (f) If **sensitive ecological data** is excluded or redacted from the published version, submit the full **compliance report** to the **department** within 5 **business days** of its publication on the **website** and notify the **department** in writing what exclusions and redactions have been made in the version published on the **website**.

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

REPORTING NON-COMPLIANCE

30) The approval holder must notify the **department** electronically, within 2 **business days** of becoming aware of any **incident** and/or potential non-compliance and/or actual non-compliance with the conditions or commitments made in a **plan**.

31) The approval holder must specify in the notification:

- (a) Any condition or commitment made in a **plan** which has been or may have been breached.
- (b) A short description of the **incident** and/or potential non-compliance and/or actual non-compliance.
- (c) The location (including co-ordinates), date and time of the **incident** and/or potential non-compliance and/or actual non-compliance.

Note: If the exact information cannot be provided, the approval holder must provide the best information available.

32) The approval holder must provide to the **department** in writing, within 12 **business days** of becoming aware of any **incident** and/or potential non-compliance and/or actual non-compliance, the details of that **incident** and/or potential non-compliance and/or actual non-

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compliance with the conditions or commitments made in a **plan**. The approval holder must specify:

- (a) Any corrective action or investigation which the approval holder has already taken.
- (b) The potential impacts of the **incident** and/or non-compliance.
- (c) The method and timing of any corrective action that will be undertaken by the approval holder.

Note: Manyana Coast Pty Ltd (the approval holder) is responsible for reporting non-compliance on land that it owns and maintains, including the **Reserve** and the avoided land surrounding the **Littoral Rainforest**, and lots that remain in ownership of the approval holder. When lots are sold to landholders the approval holder ceases responsibility for reporting non-compliance in respect of activities occurring on the sold lots.

INDEPENDENT AUDIT

- 33) The approval holder must ensure that an **independent audit** of compliance with the conditions is conducted for every three-year period following the **commencement of the Action** until this approval expires (unless otherwise specified in writing by the **Minister**) in relation to any part of the site that remains in ownership of the approval holder.
- 34) For each **independent audit**, the approval holder must:
 - (a) Provide the name and qualifications of the nominated **independent** auditor, the draft audit criteria, and proposed timeframe for submitting the **audit report** to the **department** prior to commencing the **independent audit**.
 - (b) Only commence the **independent audit** once the nominated **independent** auditor, audit criteria and timeframe for submitting the **audit report** have been approved in writing by the **department**.
 - (c) Submit the **audit report** to the **department** for approval within the timeframe specified and approved in writing by the **department**.
 - (d) Publish each **audit report** on the **website** within 15 **business days** of the date of the **department's** approval of the **audit report**.
 - (e) Keep every **audit report** published on the **website** until this approval expires.
- 35) Each **audit report** must report for the three-year period preceding that **audit report**.
- 36) Each **audit report** must be completed to the satisfaction of the **Minister** and be consistent with the '*Environment Protection and Biodiversity Conservation Act 1999 Independent Audit and Audit Report Guidelines, Commonwealth of Australia 2019*'.

COMPLETION OF THE ACTION

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

Part C – Definitions

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In these conditions any bolded use of a word or term refers to the below definition of that word or term:

Action area means the location of the Action, represented in Attachment A by the zones enclosed within the red lines designated 'Site boundary' and the kerbs, gutters, footpaths, and associated drainage on Cunjurong Road, Curvers Drive and Sunset Strip.

APZ (Asset Protection Zone)¹ means the portion of the temporary and permanent bushfire protection area required under NSW legislation. The area where **APZs** may be established is represented at Attachment C in the portion of the yellow hatched zone titled 'Temporary APZs'. The portion of the permanent **APZ** that may be **cleared** within **Stage 3** must be the minimum that is required to comply with NSW legislation.

Audit report means a written report of compliance and fulfilment of the conditions attached to this approval, objectively evaluated against the audit criteria approved by the **department**.

Biodiversity credits means biodiversity credits in accordance with the **NSW Biodiversity Offsets Scheme**.

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

Clear, cleared or clearing means the cutting down, felling, thinning, logging, removing, killing, destroying, poisoning, ringbarking, uprooting, or burning of vegetation, but does not include control of weeds (including Weeds of National Significance and weeds listed under the Biodiversity Conservation Act 2016 (NSW)).

Commence the Action or Commencement of the Action means the date on which the first instance of any on-site **Clearing, Construction**, implementation of the offset management plan required by condition 13, or other physical activity associated with the Action is undertaken, but does not include minor physical disturbance necessary to:

- a) Undertake pre-clearance surveys or monitoring programs.
- b) Install signage and/or temporary fencing to prevent unapproved use of the **Action area**, so long as the signage and/or temporary fencing is located where it does not **harm any protected matter**.
- c) Protect environmental and property assets from fire, weeds, and feral animals, including use of existing surface access tracks.
- d) Install temporary site facilities for persons undertaking pre-commencement activities so long as these facilities are located where they do not **harm any protected matter**.

¹ An **APZ** is a requirement in accordance with the NSW PLANNING FOR BUSH FIRE PROTECTION, A guide for councils, planners, fire authorities and developers, NOVEMBER 2019 (or subsequent version), available at: rfs.nsw.gov.au/__data/assets/pdf_file/0005/174272/Planning-for-Bush-Fire-Protection-2019.pdf

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- e) Plant **Grey-headed Flying-fox food trees**.
- f) Demolish or remove existing structures and remove debris materials on the site.

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

Completion of the Action means the date when all stages of **construction** have been completed, and the management activities associated with the Action, including completion of commitments in the Offset Management Plan for **protected species**.

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

Compliance report means a written report of compliance with, and fulfilment of, the conditions attached to the approval.

Construct, Construction means:

- a) the erection of a building or structure that is, or is to be, fixed to the ground and wholly or partially fabricated on-site,
- b) any work which involves breaking of the ground (including pile driving) or bulk earthworks, excluding activities to plant **Grey-headed Flying-fox food trees**, and excluding revegetation activities required under the **NSW approval** in the **Reserve**,
- c) the laying of pipes and other prefabricated materials in the ground, and
- d) any associated excavation work.

Construct, Construction does not include the installation of temporary fences and signage, or the demolition or removal of existing structures and removal of debris materials on the site.

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

Environmental Management Plan Guidelines means the '*Environmental Management Plan Guidelines*, Commonwealth of Australia 2014'.

Environmental Offsets Policy means the '*Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy*, Commonwealth of Australia 2012'.

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

Grey-headed Flying-fox means the **EPBC Act** listed threatened species *Pteropus poliocephalus*.

Grey-headed Flying-fox food trees means plants of the following species: Coast Banksia (*Banksia integrifolia*), Grey Ironbark (*Eucalyptus paniculata*), Swamp Mahogany (*Eucalyptus robusta*) and Spotted Gum (*Corymbia maculata*).

Grey-headed Flying-fox habitat means areas containing plants of the following species: Grey Ironbark (*Eucalyptus paniculata*), Coast Banksia (*Banksia integrifolia*) and Turpentine (*Syncarpia glomulifera*).

Habitat quality means a measure of the overall viability of a site and its capacity to support **protected matters**, with respect to site condition, site context and species stocking rate and/or composition.

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

Incident(s) means any event which has the potential to, or does, **harm** any **protected matter**, by way of breach of a condition of this approval.

Independent means a person or firm who does not have any individual, financial*, employment* or family affiliation or any conflicting interests with the Action, the approval holder or the approval holder's staff, representatives, or associated persons.

*Other than for the purpose of undertaking the role for which an **independent** person is required.

Independent audit means an audit, conducted by an **independent** person who has professional qualifications, training, skills and/or experience related to the nominated subject matter and can give authoritative **independent** assessment, advice and analysis on performance relative to the subject matter using the relevant protocols, standards, methods and/or literature, as detailed in the 'Environment Protection and Biodiversity Conservation Act 1999 Independent Audit and Audit Report Guidelines, Commonwealth of Australia 2019'.

Legally secure, legally secured or **legal securement** means to secure a legal mechanism under relevant New South Wales legislation, in relation to a site, to provide enduring protection for the site against activities incompatible with conservation.

Littoral Rainforest means the **EPBC Act** listed threatened ecological community Littoral Rainforest and Coastal Vine Thickets of Eastern Australia Ecological Community. The location of **Littoral Rainforest** in the **Action area** is represented in Attachment B by the zone marked with within the green polygon designated as 'Littoral Rainforest (Ecological Surveys and Planning 2024)'.

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

Monitoring data means the data required to be recorded under the conditions of this approval.

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NSW approval means the NSW Government *Determination of Major Project No. 05-0059*, made under Section 75J(2) of the *Environmental Planning & Assessment Act 1979*, dated 8 July 2008, and as modified, if modified. At the date of this decision, the **NSW approval** can be accessed at the following webpage address:

https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachmentRef=MP05_0059%2120190628T042158.085%20GMT.

NSW Biodiversity Offsets Scheme means the Biodiversity Offsets Scheme under the *Biodiversity Conservation Act 2016 (NSW)*.

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

Planting area means the area where the approval holder must plant **Grey-headed Flying-fox food trees**, as committed to in Section 6.2.1 and Table 6.1 of the Preliminary Documentation Submission– Lot 172 // DP 755923 & Lot 823 // DP 247285, Manyana, NSW. Version 2.3, prepared for Ozy Homes Pty Ltd. The **planting area** excludes **Stage 3**.

Protected matter means the matters protected under a controlling provision in Part 3 of the **EPBC Act** for which this approval has effect, specifically the **Grey-headed Flying-fox** and the **Littoral Rainforest**.

Reserve means the location of the area to be designated for conservation, represented in Attachment A by the zone enclosed within the green dashed lines designated 'Reserve', excluding the pink polygon designated 'Pedestrian Footbridge'.

Retire, Retired means retirement of **biodiversity credits** in accordance with the Biodiversity Offset Scheme under the *Biodiversity Conservation Act 2016 (NSW)*, such that the **biodiversity credits** can no longer be bought or sold. **Retire** includes making payments into the NSW Biodiversity Conservation Fund to acquit outstanding biodiversity credit obligations.

Sensitive ecological data means data as defined in the '*Sensitive Ecological Data – Access and Management Policy V1.0, Commonwealth of Australia 2016*'.

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

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

Stage 1 means the location of the first stage of the Action, represented in Attachment C by the green shaded zone designated 'Stage 1' as well as the zone enclosed within the black polygon designated 'Infrastructure (to be constructed in Stage 1)'.

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Stage 2 means the location of the second stage of the Action, represented in Attachment C by the purple shaded zone designated 'Stage 2'.

Stage 3 means the location of the third stage of the Action that will not be developed, represented in Attachment C by the rust coloured zone designated 'Stage 3'.

Stage 4 means the location of the fourth stage of the Action, represented in Attachment C by the grey-blue shaded zone designated 'Stage 4' but not including the area within the black polygon designated 'Infrastructure (to be constructed in Stage 1)'.

Stage 5 means the location of the fifth stage of the Action, represented in Attachment C by the light blue shaded zone designated 'Stage 5' but not including the area within the black polygon designated 'Infrastructure (to be constructed in Stage 1)'.

Stage 6 means the location of the sixth stage of the Action, represented in Attachment C by the olive shaded zone designated 'Stage 6'.

Suitably qualified ecologist (for the purpose of preparing and implementing environmental management plans) means a person who has relevant professional qualifications and:

- a) at least 3 years of work experience writing and implementing management plans for the habitat of matters protected under a controlling provision in Part 3 of the **EPBC Act**,
- b) has implemented and reported on management plans for the habitat of matters protected under a controlling provision in Part 3 of the **EPBC Act**, and can demonstrate that the implementation of those plans achieved the desired **habitat quality** for habitat of those matters, and
- c) can give authoritative assessment and advice on offset management to improve the **habitat quality** of the habitat of matters protected under a controlling provision in Part 3 of the EPBC Act using relevant protocols, standards, methods and/or literature.

Thrive means the plantings have become established, are healthy and free from disease, are successfully growing and are capable of providing habitat or food for the **Grey-headed Flying-fox**.

Vehicle exclusion fence means a pole and wire or post and rail fence preventing vehicle access consistent with *Subdivision 18 Fences* (certain rural zones, environment protection zones and Zone R5) of the New South Wales *State Environmental Planning Policy (Exempt and Complying Development Codes)* 2008.

Website means a set of related web pages located under a single domain name attributed to the approval holder and available to the public.

Attachments

Attachment A – Action area

Attachment B – Area of Littoral Rainforest in Stage 3; Area of Littoral Rainforest in Stage 4 Permitted to be Cleared

Attachment C – Development Staging

Attachment D – Offset Management Plan requirements

Attachment A: Action area

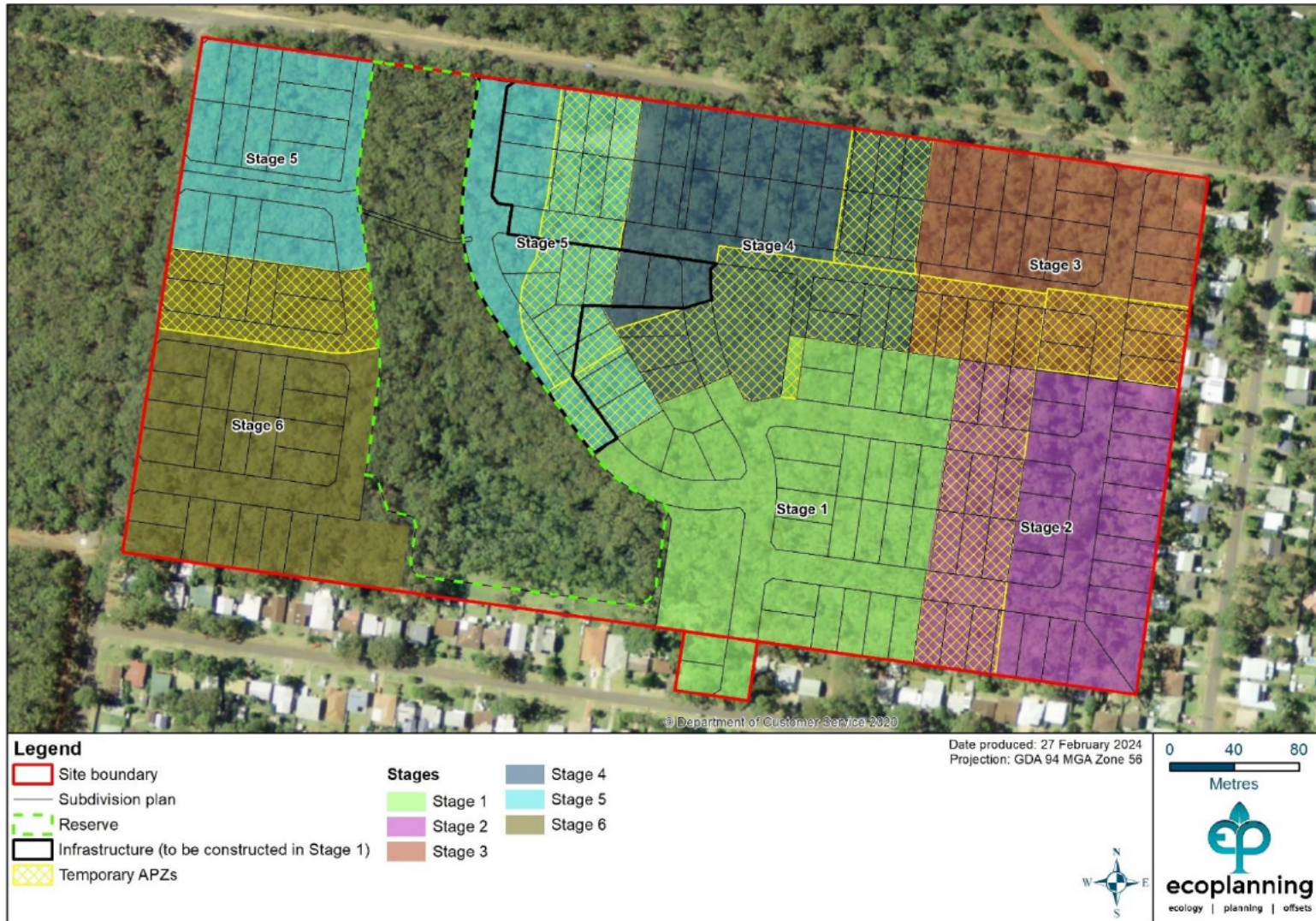


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Attachment B: – Area of Littoral Rainforest in Stage 3; Area of Littoral Rainforest in Stage 4 Permitted to be Cleared



Attachment C: Development Staging



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Attachment D – Offset Management Plan Requirements

The Offset Management Plan must meet the requirements of the **Environmental Offsets Policy** and the **Environmental Management Plan Guidelines** to the satisfaction of the **Minister**. The Offset Management Plan must be prepared by a **suitably qualified ecologist** and must include:

- a) Detailed information on the residual impacts to **protected matters** that will be compensated for by the offset (Note: the offset comprises the **legal securement** of the **Stage 3** offset site and the **habitat quality** improvements to be achieved at the offset site). This must include the area(s) of the relevant **protected matters** and **habitat quality** at all locations impacted by the Action which the offset is to address.
- b) The relevant **protected matters** and a reference to the **EPBC Act** approval conditions to which the Offset Management Plan refers.
- c) Detailed information and a **shapefile** specifying the location, area and boundaries of the proposed offset site.
- d) Detailed baseline information on the area(s) of habitat, its condition, and the presence (or not) of the **protected matters** at the **Stage 3** offset site.
- e) Commitments to achievable improved ecological benefits at the **Stage 3** offset site and the timeframes in which they will be achieved.
- f) A table summarising all commitments to achieve the proposed ecological benefits for **protected matters** at the **Stage 3** offset site, and a reference to where each commitment is detailed in the Offset Management Plan.
- g) Reporting and review mechanisms to inform the **department** annually regarding compliance with the management and environmental outcome commitments, and attainment and maintenance of the ecological benefits specified in the Offset Management Plan.
- h) An assessment of risks to achieving the ecological benefit(s) and what risk management measures and/or strategies will be applied to address these.
- i) A monitoring program, which must specify:
 - i) measurable performance indicators and the timeframes for their achievement to gauge attainment of the ecological benefits for the **protected matters**,
 - ii) trigger values for corrective measures, and
 - iii) the proposed timing (including season/time of day/frequency) methods and effort, and an explanation of how these will be effective for this purpose of monitoring to detect trigger values, changes in the performance indicators and to gather evidence that effectively demonstrates actual progress towards, attainment of and maintenance of the ecological benefits for the **protected matters**.
- j) Corrective measures to be implemented to ensure that the proposed ecological benefits for the **protected matters** are achieved or maintained if trigger values are reached or performance indicators are not achieved in the specified timeframes.
- k) Links to relevant referenced **plans** or conditions of approval (including state/territory approval conditions).
- l) How the **Stage 3** offset site will be protected, and ecological benefits maintained, at least until the expiry of the approval.



THE HON TANYA PLIBERSEK MP
MINISTER FOR THE ENVIRONMENT AND WATER

MB24-000838

The Hon Paul Scully MP
Minister for Planning and Public Spaces
GPO Box 5341
SYDNEY NSW 2001

Dear Minister

My delegate has recently approved a residential development at Manyana (EPBC 2020/8704) under the Australian Government's *Environment Protection and Biodiversity Act 1999*.

Under federal legislation, I can only consider the project's impacts on matters of national environmental significance. The project has been approved subject to 36 strict EPBC Act conditions, including:

- Stage three of the development is not able to proceed due to impact on the local environment.
- The area of Grey-headed Flying-fox habitat allowed to be cleared will be limited to just 1.25 hectares.
- 388 Grey-headed Flying-fox food trees must be planted in the project area.

This is the standard approach to the approval of matters under federal environment law. The advice of the experts is that this will mean there is no threat to threatened species.

I have also received comments from Fiona Phillips MP, the Member for Gilmore. Ms Phillips has advised me that she has significant concerns about the project. She says it is an inappropriate location for a housing development and only occurred because it was approved under a "zombie DA".

As you are aware, the federal government has no ability or authority to intervene in local planning or zoning decisions and determine whether this is in fact an appropriate location for housing. This is a matter for state and local governments. I can only regulate where a matter of national environmental significance is impacted.

I understand changes have previously been made to planning regulations relating to the lapsing of development consents in 2020. I'm aware that the NSW Legislative Assembly Committee on Environment and Planning is currently undertaking an inquiry into historical development consents. I bring this matter to your attention as the Minister responsible.

Yours sincerely

TANYA PLIBERSEK

cc: Member for Gilmore
Mrs Fiona Phillips MP

20.9.24



Manyana Matters Environmental Association acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea & community.

16th September 2024

Members of the Inquiry into Historical Development Consents -

Clayton Barr MP, Sally Quinnell MP, Judy Hannan MP, Kellie Sloane MP, Maryanne Stuart MP

cc Premier Chris Minns, Paul Scully MP, Penny Sharpe, MLC, Fiona Phillips MP, Liza Butler MP, Sue Higginson MLC, Cate Faehrmann MLC, Senator David Shoebridge

By email only

Re: Historical Development Consents Inquiry roundtable

Dear Members of the Inquiry,

We are writing to express our severe disappointment regarding the roundtable with NSW South Coast community environmental groups on 10 September 2024 in Nowra.

We are shocked by the news from the Committee that the Government has “no appetite” to address community concerns about the impact of historical development consents on cultural, indigenous or environmental heritage or on community safety. We question why the Government called this Inquiry if it had no genuine interest in addressing these concerns.

We understand that there are potential legal and compensation implications for retrospective changes in policy and we noted that the formal terms of reference had a strong focus on understanding the risks and implications of retrospective changes. However, the fact that the NSW Labor Government had initiated the Inquiry led us to believe that the government had come to understand that when circumstances change, so must policy. Insidious problems such as Zombie DA’s will require thinking outside the box.

Further, the explanation on the Inquiry website that accompanied the call for submissions suggested that committee members understood that there are significant threats posed by historical developments consents.

With this encouragement, Manyana Matters, a volunteer community-based organisation, alongside numerous other like-minded organisations, invested significant effort in preparing a submission to explain the threats to our environment and community posed by historical development consents. It bears stating that Manyana Matters has been seeking to draw attention to these threats for many years, and the establishment of this Inquiry was a source of great hope for us that the matter would finally be addressed.

Our submission called for two key actions:

- a. To undertake an audit of historical development consents being held by developers in NSW. Without this, the extent of the threats to our cultural, indigenous and environmental heritage cannot be known, and therefore, no informed decisions regarding historical development consents are even possible. Owners themselves could provide the database if they are required to register their DA’s by a set date, after which time their approval lapses if not declared.

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Manyana Matters Environmental Association Inc (INC2000534)

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Manyana Matters Environmental Association acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea & community.

- b. To place a moratorium on historical development consents and require them to be reassessed under current environmental and related cultural heritage laws. To not do this leads to the conclusion that our threatened species and habitats do not matter, or they take a back seat to private interests, particularly those who speculate on rising land values without regard for their impact on communities.

It was only 2 months ago that NSW Minister for the Environment, Heritage, Energy and Climate Change, [Penny Sharpe declared that biodiversity in NSW is in crisis](#), citing Dr Ken Henry's independent review of the Biodiversity Conservation Act 2023.

We agree. We saw this Inquiry as one path to remediating that. However, it seems that deeply held community concerns are to be ignored, and that the problems associated with historical development consents will not be addressed.

It is fair to say that, as well as being disappointed, we are disillusioned and angry. As members of this Committee of Inquiry, and therefore as policy and decision makers, you are entrusted to address the issues that affect our collective future. By not having the courage and foresight to take action on this matter, you potentially negatively impact communities, cultural heritage and biodiversity for generations to come.

If it's too onerous to change old laws, consider imposing some new ones:

- Require historical DA land owners to update their environmental and planning assessments to conform to current requirements before they commence.
- Impose a time frame on zombie approvals after which time they lapse if not completed, and have to go back to the drawing board.
- Put a mechanism in place giving government the power to pause all development approvals under exceptional, unforeseen circumstances. No one has a crystal ball and the Black Summer proved there needs to be this safety measure in place.

We urge you to seriously consider the submissions made to the Inquiry, including from community groups and local government, and to seek a path forward that can prevent further destruction of our environment and cultural heritage while meeting the genuine development needs of the state.

We implore you not to fall victim to private vested interests and instead to act for the communities that elect you.

Yours sincerely

William Eger
President
for and on behalf of Manyana Matters Environmental Association Inc.