



APPROVAL

Divestment of Blocks 3 and 15, Section 22, Barton, Australian Capital Territory (EPBC 2017/8028)

This decision is made under sections 130(1) and 133(1) of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*. Note that section 134(1A) of the **EPBC Act** applies to this approval, which 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 condition.

Details

Person to whom the approval is granted (approval holder)	Department of Finance
ABN of approval holder	61 970 632 495
Action	To clear all vegetation from, and then sell, Blocks 3 and 15, Section 22, Barton, Australian Capital Territory (see EPBC Act Referral 2017/8028)

Approval 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 Provisions

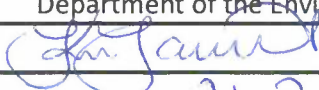
Listed Threatened Species and Communities	
Section 18	Approve
Section 18A	Approve

Commonwealth actions	
Section 28	Approve

Period for which the approval has effect

This approval has effect until 31 December 2038

Decision-maker

Name and position	Kim Farrant Assistant Secretary of Assessments and Waste Branch Department of the Environment and Energy
Signature	
Date of decision	21.2.19

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. To minimise the **impacts** of the approved action the approval holder must limit all vegetation **clearing** to within the **proposed action area**.
2. Prior to the **commencement of the action**, the approval holder must not constrain public access to the **proposed action area** unless there is a demonstrable safety or security reason to do so.

Compensation measures

3. To offset the **impacts** on 0.32 ha of **NTG**, the approval holder must ensure that 2.3 ha of **NTG** is **secured** within the **offset site** prior to the **commencement of the action**.
4. To offset the **impacts** on 1.46 ha of **GSM** habitat, the approval holder must ensure that 6.2 ha of **GSM** habitat is **secured** within the **offsite site** prior to the **commencement of the action**.

Note: Offset areas for NTG and GSM habitat may overlap as required.

5. Within 10 **business days** of **securing** the required offsets specified in conditions 3 and 4, the approval holder must provide the **Department** with **evidence** of the offset having been **secured** and the mechanism used to **secure** the offsets.
6. To compensate for the loss of **heritage values** as a result of the action, within 12 months of **commencement of the action**, the approval holder must submit to the **Department** and the National Archives of Australia, an archival record of **GSM** research conducted in the **proposed action area**, comprising a scientific review of previous research conducted at the site and a database of previous research reports and datasets. The archival record must be prepared in compliance with *How to Prepare Archival Records of Heritage Items (1998)* issued by the New South Wales Heritage Office or relevant ACT standard (where available).
7. To compensate for the loss of **heritage values** associated with the action, the approval holder must prepare and implement a **GSM** research plan in consultation with the ACT Government Environment, Planning and Sustainable Development Directorate, Parks and Conservation Service. The research plan must address one or more of the research priorities identified in the Conservation Advice for *Synemon plana* (golden sun moth).

The research plan must be submitted to the **Minister** for approval within 6 months of **commencement of the action**. The approved research plan must be implemented.

The approval holder must contribute \$100,000 to fund activities outlined in the research plan and in accordance with any deadlines prescribed by the research plan.

Offset management plan

8. To offset for impacts to **NTG** and **GSM** habitat (as described in conditions 3-4), the approval holder must submit an offset management plan for the protection of **protected matters** at the **offset site**, for the **Minister's** approval within 12 months of **commencement of the action**. Once the **Minister** approves the offset management plan, then the approved offset management plan must be implemented.
9. The offset management plan must be consistent with the **Department's Environmental Management Plan Guidelines**, and must include:
 - a. The offset management plan's environmental objectives relevant to **protected matters**, and must allow for access to the offset site including scientific research on **protected matters**;
 - b. A table of where the plan addresses relevant **EPBC Act** approval conditions;
 - c. A table of commitments made in the offset management plan to achieve the objectives, and a reference to where the commitments are detailed in the offset management plan;



- d. Details of the parties responsible for undertaking management actions;
- e. Reporting and review mechanisms, and documentation standards to demonstrate compliance with the offset management plan;
- f. An assessment of risks to achieving the offset management plan's environmental objectives and risk management strategies that will be applied;
- g. **Impact** avoidance, mitigation and/or repair measures, and their timing;
- h. A monitoring program, which must include:
 - i. measurable performance indicators;
 - ii. trigger values for corrective actions;
 - iii. the timing and frequency of monitoring to detect changes in the performance indicators and trigger values; and
 - iv. proposed corrective actions, if trigger values are reached.
- i. Description of long-term funding mechanism for measures outlined in the offset management plan.

Part B – Standard administrative conditions

Notification of date of commencement of the action

- 10. The approval holder must notify the **Department** in writing of the date of **commencement of the action** and the date of **commencement** of each stage of the action within 10 **business days** after the date of **commencement of the action** or the relevant stage of the action.
- 11. If the **commencement of the action** does not occur within 5 years from the date of this approval, then the approval holder must not **commence the action** without the prior written agreement of the **Minister**.

Compliance records

- 12. The approval holder must maintain accurate and complete **compliance records**.
- 13. 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 an independent auditor in accordance with section 458 of the **EPBC Act**, and or used to verify compliance with the conditions. Summaries of the result of an audit may be published on the **Department's** website or through the general media.

Preparation and publication of plans

- 14. The approval holder must:
 - a. submit **plans** electronically to the **Department** for approval by the **Minister**;
 - b. publish each **plan** on the **website** within 20 **business days** of the date the **plan** is approved by the **Minister** or of the date a revised **action management plan** is submitted to the **Minister**, unless otherwise agreed to in writing by the **Minister**;
 - c. exclude or redact **sensitive ecological data** from **plans** published on the **website** or provided to a member of the public; and
 - d. keep **plans** published on the **website** until the end date of this approval.

Annual compliance reporting

- 15. The approval holder must prepare a **compliance report** for each 12 month period following the date of **commencement of the action**, or as otherwise agreed to in writing by the **Minister**. The approval holder must:



- a. publish each **compliance report** on the **website** within 60 **business days** following the relevant 12 month period;
- b. notify the **Department** by email that a **compliance report** has been published on the **website** within five **business days** of the date of publication;
- c. keep all **compliance reports** publicly available on the **website** until this approval expires;
- d. exclude or redact **sensitive ecological data** from **compliance reports** published on the **website**; and
- e. where any **sensitive ecological data** has been excluded from the version published, submit the full **compliance report** to the **Department** within 5 **business days** of publication.

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

Reporting non-compliance

16. The approval holder must notify the **Department** in writing of any **incident**; non-compliance with the conditions; or non-compliance with the commitments made in **plans**. The notification must be given as soon as practicable, and no later than 10 **business days** after becoming aware of the **incident** or non-compliance. The notification must specify:
 - a. the condition which is or may be in breach; and
 - b. a short description of the **incident** and/or non-compliance.
17. The approval holder must provide to the **Department** the details of any **incident** or non-compliance with the conditions or commitments made in **plans** as soon as practicable and no later than 20 **business days** after becoming aware of the **incident** or non-compliance, specifying:
 - a. any corrective action or investigation which the approval holder has already taken or intends to take in the immediate future;
 - b. the potential **impacts** of the **incident** or non-compliance; and
 - c. the method and timing of any remedial action that will be undertaken by the approval holder.

Independent audit

18. The approval holder must ensure that **independent audits** of compliance with the conditions are conducted as requested in writing by the **Minister**.
19. For each **independent audit**, the approval holder must:
 - a. provide the name and qualifications of the independent auditor and the draft audit criteria to the **Department**;
 - b. only commence the **independent audit** once the audit criteria have been approved in writing by the **Department**; and
 - c. submit an audit report to the **Department** within the timeframe specified in the approved audit criteria.
20. The approval holder must publish the audit report on the **website** within 10 **business days** of receiving the **Department's** approval of the audit report and keep the audit report published on the **website** until the end date of this approval.

Revision of action management plans

21. The approval holder may, at any time, apply to the **Minister** for a variation to an **action management plan** approved by the **Minister** under conditions 7 or 8, or as subsequently revised in accordance with these conditions, 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**.



22. The approval holder may choose to revise an **action management plan** approved by the **Minister** under conditions 7 or 8, or as subsequently revised in accordance with these conditions, without submitting it for approval under section 143A of the **EPBC Act**, if the taking of the action in accordance with the RAMP would not be likely to have a **new or increased impact**.
23. If the approval holder makes the choice under condition 22 to revise an **action management plan** without submitting it for approval, the approval holder must:
- notify the **Department** in writing that the approved **action management plan** has been revised and provide the **Department** with:
 - an electronic copy of the RAMP;
 - an electronic copy of the RAMP marked up with track changes to show the differences between the approved **action management plan** and the RAMP;
 - an explanation of the differences between the approved **action management plan** and the RAMP;
 - the reasons the approval holder considers that taking the action in accordance with the RAMP would not be likely to have a **new or increased impact**; and
 - written notice of the date on which the approval holder will implement the RAMP (RAMP implementation date), being at least 20 **business days** after the date of providing notice of the revision of the **action management plan**, or a date agreed to in writing with the **Department**.
 - subject to condition 25, implement the RAMP from the RAMP implementation date.
24. The approval holder may revoke its choice to implement a RAMP under condition 22 at any time by giving written notice to the **Department**. If the approval holder revokes the choice under condition 22, the approval holder must implement the previous **action management plan** approved by the **Minister**.
25. If the **Minister** gives a notice to the approval holder that the **Minister** is satisfied that the taking of the action in accordance with the RAMP would be likely to have a **new or increased impact**, then:
- condition 22 does not apply, or ceases to apply, in relation to the RAMP; and
 - the approval holder must implement the **action management plan** specified by the **Minister** in the notice.
26. At the time of giving the notice under condition 25, the **Minister** may also notify that for a specified period of time, condition 22 does not apply for one or more specified **action management plans**.

Note: conditions 22, 23, 24 and 25 are not intended to limit the operation of section 143A of the **EPBC Act** which allows the approval holder to submit a revised **action management plan**, at any time, to the **Minister** for approval.

Completion of the action

27. Within 30 days after the **completion of the action**, the approval holder must notify the **Department** in writing and provide **completion data**.

Part C - Definitions

28. In these conditions, except where contrary intention is expressed, the following definitions are used:
- Action Management Plan(s)** means the **GSM** research plan and Offset management plan.
 - Business days** means a day that is not a Saturday, a Sunday or a public holiday in the Australian Capital Territory.



- c. **Cleared/ Clearing** means the removing, killing, destroying, poisoning, or burning of **vegetation** (but not including weeds – see the *Australian weeds strategy 2017 to 2027* for further guidance).
- d. **Commence/ Commencement of the action** means the first instance of any specified activity associated with the action including clearance of vegetation. Commencement does not include minor physical disturbance necessary to:
 - i. undertake pre-clearance surveys or monitoring programs;
 - ii. install signage and /or temporary fencing to prevent unapproved use of the **proposed action area**; and
 - iii. protect environmental and property assets from fire, weeds and pests, including erection or construction of fencing and signage, and maintenance or use of existing surface access tracks, if agreed in writing by the **Department**.
 - iv. Undertake geotechnical investigations.
- e. **Completion data** means an environmental report and spatial data information clearly detailing how the conditions of this approval have been met. The **Department's** preferred spatial data format is ESRI shapefile, including containing '.shp', '.shx' and '.dbf' files and other files capturing attributes including at least the EPBC reference and a '.prj' file or specification of the projection/geographic coordinate system used.
- f. **Completion of the action** means the time at which all conditions (except condition 27) have been fully met.
- g. **Compliance records** means all documentation or other material in whatever form required to demonstrate compliance with the conditions of approval in the approval holder's possession or that are within the approval holder's power to obtain lawfully.
- h. **Compliance reports** means written reports:
 - i. providing accurate and complete details of compliance, **incidents**, and non-compliance with the conditions and the **plans**;
 - ii. consistent with the **Department's Annual Compliance Report Guidelines** (2014)
 - iii. include a shapefile of any clearance of any **protected matters**, or their habitat, undertaken within the relevant 12 month period; and
 - iv. annexing a schedule of all **plans** prepared and in existence in relation to the conditions during the relevant 12 month period.
- i. **Department** means the Australian Government agency responsible for administering the **EPBC Act**.
- j. **EPBC Act** means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).
- k. **EPBC Act environmental offset policy** means the document: Department of Sustainability, Environment, Water, Population and Communities (2012). *Environment Protection and Biodiversity Conservation Act 1999 Environmental Offset Policy*. Commonwealth of Australia, Canberra.
- l. **Evidence** means documentation from the relevant authority showing that the offset has been **secured**.
- m. **GSM** means the golden sun moth (*Synemon plana*), listed as critically endangered under the **EPBC Act**.
- n. **Heritage values** (of a place) includes the place's natural and cultural environment having aesthetic, historic, scientific or social significance, or other significance, for current and future generations of Australians (S528 of EPBC Act).



- o. **Impact(s)/ Impacted** means any measureable direct or indirect disturbance/change that occurs as a result of any activity associated with the proposed action.
- p. **Incident** means any event which has the potential to, or does, **impact** on **protected matters**.
- q. **Independent audit(s)**: means an audit conducted by an independent and **suitably qualified person** as detailed in the *Environment Protection and Biodiversity Conservation Act 1999 Independent Audit and Audit Report Guidelines* (2015).
- r. **Minister** means the Australian Government Minister administering the **EPBC Act** including any delegate thereof.
- s. **New or increased impact** means a new or increased environmental **impact** or risk relating to any **protected matter**, when compared to the likely **impact** of implementing the **action management plan** that has been approved by the **Minister** under conditions 7 or 8, including any subsequent revisions approved by the **Minister**, as outlined in the *Guidance on 'New or Increased Impact' relating to changes to approved management plans under EPBC Act environmental approvals* (2017).
- t. **NTG** means the *Natural Temperate Grasslands of the South Eastern Highlands* ecological community listed as critically endangered under the **EPBC Act**.
- u. **Offset site** means the area within the green hatch (called 'Proposed Offset Area) on the map at Attachment 2.
- v. **Plan(s)** means any of the documents required to be prepared, approved by the **Minister**, and/or implemented by the approval holder and published on the **website** in accordance with these conditions (includes **action management plans** and/or strategies).
- w. **Proposed action area** means the areas shown as 'Block 3 and Block 15' on the map at Attachment 1.
- x. **Protected matter(s)** means matters protected by Part 3 of the **EPBC Act**, including **NTG** and **GSM**.
- y. **Secure/secured/securing** means long-term protection by
 - i. retaining ownership of Block 48 (in its entirety); and
 - ii. preventing any development of Block 48 (in its entirety) until the **offset site** has been established through a legal mechanism that establishes either a nature reserve overlay under the *Planning and Development Act 2007 (ACT)*, as amended and repealed; OR another legal mechanism that has been endorsed in writing by the **Minister**.
- z. **Sensitive ecological data** means data as defined in the Australian Government Department of the Environment (2016) Sensitive Ecological Data – Access and Management Policy V1.0.
- aa. **Suitably qualified person** means a 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.
- bb. **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 1 – Map showing the location of the proposed action area

Attachment 2 – Map of Block 48, Hall, ACT and the proposed offset site



Attachment 1 – Map showing the location of the proposed action area (marked as Block 3 and Block 15) including the York Park Conservation Area (yellow line)



Image Source: Environment and Planning Directorate, ACT Government (2016)

0 50 100 200m
1:5 000



Attachment 2 – Map of Block 48, Hall, ACT showing the site boundary (red line), and location of the proposed offset site (green hatch).



Image Source: Environment and Planning Directorate, ACT Government (2016)
Data Source: Block 48 Habitat Umwelt (2016b)

Legend

- Block 48 Boundary
- Proposed Offset Area
- State/Territory Boundary

FIGURE 1.2
Proposed Offset Area

