

EPBC Act Referral 2013/6732

# **Blackjack Creek Riparian Corridor and Channel Reconstruction**

## **Annual Compliance Report**

13 November 2017 to 13 November 2018

Report prepared by  
Gunnedah Shire Council  
PO Box 63  
GUNNEDAH NSW 2380

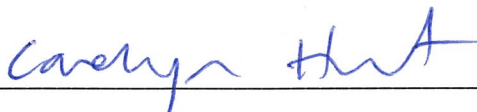
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Document History and Status

Issue	Revision	Issued To	Date	Reviewed	Approved
1	A	Internal	12/02/2019	C Hunt	C Hunt

**Declaration of Accuracy**

In making this declaration, I am aware that sections 490 and 491 of the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) make it an offence in certain circumstances to knowingly provide false or misleading information or documents. The offence is punishable on conviction by imprisonment or a fine, or both. I declare that all the information and documentation supporting this compliance report is true and correct in every particular. I am authorised to bind the approval holder to this declaration and that I have no knowledge of that authorisation being revoked at the time of making this declaration.

Signed 

Full name (please print) CAROLYN HUNT

Position (please print) MANAGER DEVELOPMENT & PLANNING

Organisation (please print including ABN/CAN if applicable) Gunnedah Shire Council – ABN 80 183 655 793

Date 22 MARCH 2019

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# 1. Description of activity

**EPBC Act Referral**

2013/6732

**Project Name**

Blackjack Creek Riparian Corridor and Channel Reconstruction

**Approval Holder**

Gunnedah Shire Council

**ABN**

80 183 655 793

**Approved Action**

To dredge, widen and realign a 2km section of the Blackjack Creek Gunnedah as described in the referral documentation received by the department for this proposal on 25 January 2013 (EPBC Act referral 2013/6732).

**Location of the Project**

Gunnedah NSW

Blackjack Creek – Riparian Corridor and Channel

**Person accepting responsibility for the report**

Carolyn Hunt

Manager Development & Planning

Gunnedah Shire Council

**Reporting Period Dates for the Report**

13 November 2017 to 13 November 2018

**Date of Preparation of the Report**

12 February 2019

**Details of Current Activities undertaken during the period covered by the report**

- Removal of vegetation (37 koala habitat trees)
- Completion of works – realignment and reconstruction of Blackjack Creek Riparian Corridor and Channel
- Re-vegetation of site

## 2. Compliance Table

Condition Number/ Reference	Condition – complete wording	Compliant/Non-Compliant/Not applicable	Evidence to support claims regarding compliance or non-compliance
1	The person taking the action must not remove more than 37 koala habitat trees as part of taking this action.	Compliant	<ul style="list-style-type: none"> <li>Trees were identified on site – GPS co-ordinates of trees - plan identifying tree location.</li> <li>Hold Point Notification HP008 – required contractor to ensure Superintendent’s Representative is contacted prior to tree removal.</li> <li>Marked and checked prior to removal and inspected by Council’s Superintendent’s Representative with contractor.</li> </ul>
2	To assist in mitigating the impacts of the proposal on the koala and koala habitat, the person taking the action must prepare and submit a VMP for the Minister’s written approval prior to commencement of the action. The VMP must include: (a) Management actions designed to rehabilitate lands disturbed by the action and improve its habitat value to koalas. This must include all lands identified in the map at Schedule 1 of this notice [EPBC Approval Decision Notice] as “Vegetated Riparian Zone”. (b) Management actions designed to improve the koala habitat value, including area and quality, of offset areas identified in the map at Schedule 1 of this notice as “7.29ha Offset in Unvegetated portion of Wandobah Reserve”. Including: (i) Planting of indigenous koala feed trees using locally sourced seed. (ii) Evidence that the proposed	Compliant  Compliant  Compliant  Non-Compliant  Compliant	<p>Vegetation Management Plan, Issue 3, Rev B, 22 November 2016 has been prepared and approved by the Minister on 3 February 2017.</p> <p>Management actions to rehabilitate disturbed lands are identified in the Vegetation Management Plan, Issue 3, Rev B, 22 November 2016, (approved by the Minister on 3 February 2017) - Sections 3 &amp; 4.</p> <p>Management actions to improve koala habitat value are identified in the Vegetation Management Plan, Issue 3, Rev B, 22 November 2016, (approved by the Minister on 3 February 2017) - Sections 3 &amp; 4.</p> <ul style="list-style-type: none"> <li>Indigenous Koala tree species were planted – White box , Blakely’s Red Gum, Yellow Box and other local species</li> <li>Locally sourced seeds were not utilised as they were not available (able to be collected and germinated). Further detail is provided in the Section 1.3 Correction of Non-Compliances.</li> </ul> <p>Evidence of effectiveness of proposed management actions is provided in the Vegetation Management Plan, Issue 3, Rev B, 22</p>

	<p>management actions to improve koala habitat are effective at improving koala habitat quality and area.</p> <p>(iii) A schedule of koala habitat restoration that compensates for the lag time between planting of trees and those trees having value as koala habitat.</p> <p>(c) An ecological monitoring program to monitor the success of the management actions in the VMP and define the measurable targets of management actions, performance indicators, and an adaptive management framework for the duration of the action's impact on koala habitat.</p> <p>The action must not commence until the VMP is approved by the Minister. The approved VMP must be implemented.</p>	<p>Compliant</p> <p>Compliant</p> <p>Compliant</p>	<p>November 2016, (approved by the Minister on 3 February 2017) - Sections 3 &amp; 4.</p> <p>Schedule of koala habitat restoration is identified in the Vegetation Management Plan, Issue 3, Rev B, 22 November 2016, (approved by the Minister on 3 February 2017) - Sections 3 &amp; 4.</p> <p>An ecological monitoring program is identified in the Vegetation Management Plan, Issue 3, Rev B, 22 November 2016, (approved by the Minister on 3 February 2017) - Section 5.</p> <p>The Vegetation Management Plan, Issue 3, Rev B, 22 November 2016 was approved by the Minister on 3 February 2017. Action commenced on 13 November 2017.</p>
<b>3</b>	<p>To ensure the long-term viability of the offset and mitigation measures the person proposing the action must prepare and submit a Management Plan for the whole of Wandobah Reserve for the Minister's written approval prior to commencement of the action. The Wandobah Reserve Management Plan must include:</p> <p>(a) Management actions designed to improve the value of the reserve for koala habitat, including:</p>	<p>Compliant</p> <p>Compliant</p>	<p>Wandobah Reserve Management Plan, Issue 1, Rev 1, 15 December 2014.</p> <p>The management actions to improve the value of the koala habitat in the reserve is identified in the Wandobah Reserve Management Plan, Issue 1, Rev 1, 15 December 2014.</p>

	<p>(i) Management of unauthorised access to and use of the reserve; and</p> <p>(ii) Management of koala predators that may access the reserve.</p> <p>(b) An ongoing ecological monitoring program to monitor the success of the management actions in the Wandobah Reserve Management Plan and define measureable targets of management actions, performance indicators, and an adaptive management framework for the duration of the action's impact on koala habitat.</p> <p>The action must not commence until the Wandobah Reserve Management Plan is approved by the Minister. The approved Wandobah Reserve Management Plan must be implemented, reviewed annually and made available on the website of the person proposing the action for the duration of the impact on koala habitat.</p>	<p>Compliant</p> <p>Compliant</p> <p>Compliant</p> <p>Non-compliant</p>	<p>Management of unauthorised access is identified in the Wandobah Reserve Management Plan, Issue 1, Rev 1, 15 December 2014. Installation of signage within Wandobah Reserve has been erected to discourage unauthorised access to and use of the reserve.</p> <p>Management of koala predators is identified in the Wandobah Reserve Management Plan, Issue 1, Rev 1, 15 December 2014. Installation of signage within Wandobah Reserve to maintain dogs on a leash when walking in the reserve.</p> <p>The proposed ongoing ecological management program is identified in the Wandobah Reserve Management Plan, Issue 1, Rev 1, 15 December 2014.</p> <p>The Wandobah Reserve Management Plan, Issue 1, Rev 1, 15 December 2014 was approved by Minister on 01 February 2015.</p> <p>Implemented by Council staff with regular reserve management practises.</p> <p>Publicly available on Council's website - <a href="http://www.gunnedah.nsw.gov.au/index.php/development/land-use-planning/floodplain-management">http://www.gunnedah.nsw.gov.au/index.php/development/land-use-planning/floodplain-management</a></p> <p>The Wandobah Reserve Management Plan has not been reviewed annually, which is further discussed in 1.3 Correction of Non-Compliances.</p>
4	<p>Prior to the commencement of the action the person taking the action must provide evidence to the Department of:</p> <p>(a) The land tenure of Wandobah Reserve including the legal mechanisms that ensure Council are able to manage the site as an offset area for in perpetuity of the</p>	<p>Compliant</p>	<p>An Access and Works Agreement has been signed by the Department of Industry and Gunnedah Shire Council (dated 01/05/2017) that ensures that Council are legally able to manage the site as an offset area for in perpetuity of the proposal.</p>

	proposal on koala habitat; and (b) Offset attributes, shapefiles and textual descriptions and maps to clearly define the location and boundaries of Wandobah Reserve.	Compliant	Offset attributes are mapped in the Wandobah Reserve Management Plan, Issue 1, Rev 1, 15 December 2014.
5	Within 30 days after the commencement of the action, the person taking the action must advise the Department in writing of the actual date of commencement.	Non-compliant	The Department was not contacted in writing within 30 days after the commencement of the action.  Contacted Department of the Environment and Energy by telephone on 17/04/2018 to seek guidance as to non-compliance. This non-compliance is discussed further in 1.3 Correction of Non-Compliance.
6	The person taking the action must maintain accurate records substantiating all activities associated with or relevant to these conditions of approval, including measures taken to implement the management plans described conditions 2 and 3, and make them available to the Department or an independent auditor in accordance with section 458 of the EPBC Act, or used to verify compliance with the conditions of approval. Summaries of audits will be posted on the Department's website. The results of audits may also be publicised through the general media.	Compliant	All Management plans have been published on Council's website - <a href="http://www.gunnedah.nsw.gov.au/index.php/development/land-use-planning/floodplain-management">http://www.gunnedah.nsw.gov.au/index.php/development/land-use-planning/floodplain-management</a> .  Draft report prepared and sent to Department of Environment for approval on 12 February 2019.  Once approved, the annual Compliance Report will be uploaded to Council's website.
7	Within three months of every 12 month anniversary of the commencement of the action, the person taking the action must publish a report on their website addressing compliance with each of the conditions of this approval, including implementation of the management plans described in conditions 2 and 3. Documentary evidence providing proof of the date of publication	Compliant	Draft report prepared and sent to Department of Environment for approval on 12 February 2019.  Once approved, the annual Compliance Report will be uploaded to Council's website.



	must be provided to the Department at the same time at the compliance report is published. Non-compliance with any of the conditions of this approval must be reported to the Department within 2 business days of becoming aware of the non-compliance.		
8	Upon the direction of the Minister, the person taking the action must ensure that an independent audit of compliance with the conditions of approval is conducted and a report submitted to the Minister. The independent auditor must be approved by the Minister prior to the commencement of the audit. Audit criteria must be agreed to by the Minister and the audit report must address the criteria to the satisfaction of the Minister.	Not applicable	No direction given to date.
9	If the person taking the action wishes to carry out any activity otherwise than in accordance with the management plans described in conditions 2 and 3, the person taking the action must submit to the Department for the Minister's written approval revised versions of those plans. The varied activity shall not commence until the Minister has approved the varied management plans in writing. The Minister will not approve a varied management plan unless the revised plan would result in an equivalent or improved environmental outcome overtime. If the Minister approves the revised management plan, that management plan must be implemented in place of	Not applicable	No variation proposed.

	the management plan originally approved.		
<b>10</b>	If the Minister believes that it is necessary or convenient for the better protection of listed threatened species and ecological communities to do so, the Minister may request that the person taking the action make specified revisions to management plans described in conditions 2 and 3 and submit the revised plans for the Minister's written approval. The person taking the action must comply with any such request. The revised approved plans must be implemented. Unless the Minister has approved the revised plans then the person taking the action must continue to implement the plans as originally approved.	Not applicable	No request has been made.
<b>11</b>	If, at any time after 5 years from the date of this approval, the person taking the action has not substantially commenced the action, then the person taking the action must not substantially commence the action without the written agreement of the Minister.	Not applicable	Approval was granted on 22 November 2013 and works commenced on 13 November 2017.
<b>12</b>	Unless otherwise agreed to in writing by the Minister, the person taking the action must publish the management plans described in conditions 2 and 3 on their website. The plans must be published on the website within 1 month of being approved.	Compliant	Management plans have been published on Council's website - <a href="http://www.gunnedah.nsw.gov.au/index.php/development/land-use-planning/floodplain-management">http://www.gunnedah.nsw.gov.au/index.php/development/land-use-planning/floodplain-management</a> .

### 3. Correction of Non-Compliances

Condition Number/ Reference	Condition – complete wording	Compliant/Non-Compliant/Not applicable	Response and Correction of non-compliance
2(b)(i)	Planting of indigenous koala feed trees using locally sourced seed.	Non-compliant	<p>Indigenous Koala tree species were planted, however the seeds were not sourced locally because of the lack of availability of a service to undertake the seed collection and propagation.</p> <p>Non-compliance was identified when preparing the Annual Compliance Report in February 2019 and identified in the report as a non-compliance.</p> <p>Non-compliance is unable to be corrected as trees have been planted.</p>
3	The action must not commence until the Wandobah Reserve Management Plan is approved by the Minister. The approved Wandobah Reserve Management Plan must be implemented, reviewed annually and made available on the website of the person proposing the action for the duration of the impact on koala habitat.	Non-compliant	<p>The Wandobah Reserve Management Plan is available on Council’s website. However, it has not been reviewed annually.</p> <p>The Plan has been implemented pre, during and post construction, with the exception of the completion of the annual monitoring report.</p> <p>Non-compliance was identified when preparing the Annual Compliance Report in February 2019 and identified in the report as a non-compliance.</p> <p>Non-compliance correction measure – completion of monitoring report will be completed and review of Wandobah Reserve Management Plan to be undertaken.</p>
5	Within 30 days after the commencement of the action, the person taking the action must advise the Department in writing of the actual date of commencement.	Non-compliant	<p>Non-compliance detected by Council Staff (Manager Development &amp; Planning) on 17/04/2018.</p> <p>Contacted Dept of the Environment and Energy by telephone on 17/04/2018 to seek guidance as to non-compliance. Message left but no return call provided to outline the required correction process.</p> <p>Actual Date of Commencement – 13 November 2017.</p> <p>Non-compliance correction measure – identified in annual compliance report.</p>

## 4. New Environmental Risks

Weather conditions restricting vegetation establishment and growth –

- Prolonged Dry Weather/Drought conditions – lack of rainfall and high temperatures have significantly impacted on the establishment of planted trees, even though the trees have been regularly watered
- Native animals eating/attacking vegetated areas due to drought conditions
- Replanting is proposed once the weather conditions become more favourable for tree establishment and less potential of attack from animals.

## 5. Other Information

Nil.

## **6. Appendices (available on Council's website)**

**6.1 Vegetation Management Plan, Issue 3, Rev B, 22 November 2016. \***

**6.2 Wandobah Reserve Management Plan, Issue 1, Rev 1, 15 December 2014. \***

**6.3 Access and Works Agreement – Department of Industry and Gunnedah Shire Council – dated 01/05/2017.**

**6.4 EPBC Approval 2013/6732.**

\* available on Council's website - <http://www.gunnedah.nsw.gov.au/index.php/development/landuse-planning/floodplain-management>.

## **Access and Works Agreement**

### **Blackjack Creek Riparian Corridor/Channel, Gunnedah**

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Department of Industry (ABN 72 189 919 072) (**Department**)

Gunnedah Shire Council (ABN 80 183 655 793) (**Council**)

#### **MARSDENS LAW GROUP**

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# Access & Works Agreement

## Parties

<b>Department</b>	<b>Name</b>	Department of Industry
	<b>Address</b>	PO Box 2185 DANGAR NSW 2309
	<b>ABN</b>	72 189 919 072
<b>Council</b>	<b>Name</b>	Gunnedah Shire Council
	<b>Address</b>	PO Box 63 GUNNEDAH NSW 2380
	<b>ABN</b>	80 183 655 793

## Background

- A The Department is the registered proprietor of the Land.
- B Council has requested and the Department has agreed to allow Council to use and occupy the Land for the purposes of undertaking the Works.
- C This agreement records the terms of the mutual promises between the parties in relation to the above.

## Operative Provisions

### 1 Definitions & interpretation

#### 1.1 Defined Terms

In this agreement, words beginning with a capital letter that are defined in Part 1 of **Schedule 1** have the meaning ascribed to them in that schedule.

#### 1.2 Interpretation

The interpretational rules contained in Part 2 of **Schedule 1** apply in the interpretation of this agreement.

### 2 General Principles

- (1) This agreement of the parties is:
- (a) made in consideration of, amongst other things, the mutual promises contained in this agreement; and
  - (b) set out in the Operative Provisions.



- 
- (2) The purpose of this agreement is to document the agreement reached between the parties with respect to Council using and occupying the Land to undertake the Works.
  - (3) The parties must at all times act in good faith and in a manner consistent with the attainment of the objects set out in paragraph (1).

### **3 Council as an Authority**

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#### **3.1 Consent authority**

The parties acknowledge that Council is an Authority with statutory rights and obligations pursuant to the terms of the *Local Government Act 1993* (NSW) and the *Environmental Planning & Assessment Act 1979* (NSW).

#### **3.2 Construction of Contract to fetter powers**

No term of this agreement is to be construed, or to operate, so as to fetter, restrict or otherwise interfere with the exercise of Council's powers as an Authority.

#### **3.3 Reading down of provisions**

If any provision of this agreement would, or could likely, operate so as to fetter, restrict or otherwise interfere with the exercise of Council's powers as an Authority then that provision is, to the extent necessary for it not to fetter, restrict or otherwise interfere with the exercise of Council's powers as an Authority:

- (1) be read down, if possible; or
- (2) severed from this agreement.

#### **3.4 Limit on Compensation**

The Department may not make any Claim on account of any action of Council that is carried out in Council's capacity as an Authority.

### **4 Access and Works**

---

#### **4.1 Grant of Access and Works**

- (1) Subject to this agreement and the Conditions, the Department grants Council (as well as Council's employees, agents and subcontractors) a right to use and occupy the Land for the purposes of undertaking the Works from the date of this agreement to the expiration of the Conditions.
- (2) Council must undertake the Works in accordance with this agreement and the Conditions.

#### **4.2 Acknowledgement**

The parties acknowledge that Council has obtained the appropriate approvals under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

#### **4.3 Use of the Land**

- (1) Council must:

- 
- (a) ensure the Works are undertaken properly and by experienced persons;
  - (b) cause as little inconvenience as is practicable to the Department;
  - (c) make good any collateral damage as a result of using and occupying the Land; and
  - (d) carry out and complete the Works:
    - (i) in accordance with the Conditions;
    - (ii) in accordance with any Australian Standards applicable to works of the same nature; and
    - (iii) in a proper and workmanlike manner.
- (2) Council indemnifies the Department in respect of any property damage or personal injury to any persons that is caused as a result of Council using and occupying the Land.
  - (3) Council releases the Department against all Claims as a result of Council using and occupying the Land.

#### **4.4 Term**

Council may use and occupy the Land from the date of this agreement until the expiration of the Conditions, being 31 December 2023.

#### **4.5 Insurances**

- (1) Council must effect and keep current and in force, the relevant insurance policies that a prudent person exercising its rights under this agreement would maintain, including but not limited to the following insurance policies:
  - (a) where applicable, workers compensation insurance under the *Workers Compensation Act 1987* (NSW) covering all persons employed or deemed to be employed by Council in connection with the conduct of the Works on the Land by Council; and
  - (b) Public liability insurance in the amount of \$20,000,000.00.
- (2) Council uses and occupies the Land at its own risk.
- (3) Council releases and indemnifies the Department against all Claims that may arise as a result of Council using and occupying the Land to undertake the Works except to the extent that any such Claim arises as a result of the negligence of the Department (their employees, agents, subcontractors and any other individual authorised by the Department).

#### **4.6 Works health and safety**

- (1) For the purposes of the *Work Health and Safety Act 2011* (NSW) and *Work Health and Safety Regulation 2011* (NSW) (**WH & S Legislation**), the Department:

- 
- (a) appoints Council as the “principal contractor” with respect to the Works on the Land; and
  - (b) authorises Council to exercise such authority as is necessary to enable Council to discharge the responsibilities imposed on a “principal contractor” under the WH & S Legislation.
- (2) Council must comply with all work health and safety requirements in relation to the Works
  - (3) Council indemnifies the Department against all costs, expenses, fines, losses or damage which the Department may suffer or incur by reason of, or arising out of, Council's failure to comply with the WH & S Legislation.

#### **4.7 Native Title Holders**

The parties acknowledge that all or part of the Land may be subject to Native Title or a Native Title claim or sites to which the *Native Title Act 1993* (Cth) and/or *Native Title Act (New South Wales) 1994* (NSW) apply.

### **5 Obligation to act in good faith**

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The parties must at all times:

- (1) cooperate and use their best endeavours to give effect to their rights and obligations set out in this agreement;
- (2) not unreasonably delay any action, approval, direction, determination or decision which is required of them;
- (3) make approvals or decisions that are required of them in good faith and in a manner consistent with the completion of the transactions set out in this agreement; and
- (4) be just and faithful in their activities and dealings with the other parties.

### **6 Dispute Resolution**

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#### **6.1 Notice of Dispute**

If a party believes that there is a Dispute then:

- (1) that party must give notice (**Dispute Notice**) in writing to the other party stating that there is a Dispute; and
- (2) the Dispute Notice referred to in paragraph (1) must outline:
  - (a) what the party believes the dispute to be; and
  - (b) what the party wants to achieve; and
  - (c) what the party believes will settle the Dispute.

#### **6.2 Notice of dispute**

- 
- (1) Both parties must use their best endeavours to settle a Dispute within fourteen (14) days of receiving the notice referred to in clause 6.1.
  - (2) If the Dispute cannot be resolved within fourteen (14) days of the notification under clause 6.1 then the dispute must be submitted to arbitration.
  - (3) The parties must agree to the appointment of an arbitrator with experience in resolving disputes of a similar nature to the Dispute.
  - (4) If agreement cannot be reached regarding the appointment of an arbitrator the parties agree to the appointment of an arbitrator nominated by the President of the Australian Commercial Disputes Centre.
  - (5) The arbitration will be conducted:
    - (a) by a single arbitrator; and
    - (b) in accordance with the arbitration rules of the Australian Commercial Disputes Centre; and
    - (c) in English; and
    - (d) in Sydney, Australia.
  - (6) The parties must do all such acts and things as are necessary to facilitate the expeditious hearing of the Dispute by the arbitrator.
  - (7) The costs of the arbitrator are to be borne:
    - (a) as ordered by the arbitrator; or
    - (b) in the absence of a direction from the arbitrator – equally by the parties.
  - (7) The decision of the arbitrator (in the absence of an error of law) is binding on both parties. Accordingly neither party is, after completion of the arbitration, entitled to commence proceedings to litigate the Dispute in any court of competent jurisdiction.

### **6.3 Exclusivity of dispute resolution procedure**

- (1) Both parties must adhere to the dispute resolution procedure set out in this clause.
- (2) The only time that either party may depart from the dispute resolution procedure set out in this clause is when urgent interlocutory relief is required to restrain a breach or threatened breach of this agreement.

## **7 Confidentiality**

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- (1) Each party must not disclose the Confidential Information except as permitted by the terms of this agreement.
- (2) The Confidential Information may be disclosed:

- 
- (a) where agreed to by the parties; or
  - (b) to the parties' professional advisers (including legal advisers), employees and financiers who are subject to a duty of confidentiality; or
  - (c) to any governmental or statutory authority where:
    - (i) the party is required to make disclosure in accordance with any provision of any legislation, regulation, statutory rule or ordinance; and
    - (ii) the disclosure is made only to the extent required.

## **8 Independent Legal Advice**

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The parties agree that they have:

- (1) obtained separate independent legal advice in relation to the terms of this agreement; and
- (2) had explained to them the consequence of any default in the performance of their obligations under this agreement; or
- (3) had the opportunity to obtain independent legal advice in relation to the terms of this agreement; and
- (4) not obtained such advice because they understand fully the obligations imposed on them under this agreement.

## **9 Administrative provisions**

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### **9.1 Costs**

Each party must pay any costs incurred in relation to the negotiation, execution and implementation of this agreement.

### **9.2 Notices**

- (1) Any notice, consent or other communication under this agreement must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
  - (a) delivered to that person's address; or
  - (b) sent by pre-paid mail to that person's address; or
  - (c) transmitted by facsimile to that person's address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
  - (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day; and

- 
- (b) if sent by pre-paid mail, on the third Business Day after posting; and
  - (c) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.
- (3) For the purpose of this clause the address of a person is the address set out in this agreement or another address of which that person may from time to time give notice to each other person.

### **9.3 Entire Agreement**

This agreement is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this agreement.

### **9.4 Waiver**

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

### **9.5 Cooperation**

Each party must sign, execute and deliver all agreements, documents, instruments and act reasonably and effectively to carry out and give full effect to this agreement and the rights and obligations of the parties under it.

### **9.6 Counterparts**

This agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

### **9.7 Amendment**

This agreement may only be amended or supplemented in writing signed by the parties.

### **9.8 Unenforceability**

Any provision of this agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

### **9.9 Governing law**

The law in force in the State of New South Wales governs this agreement. The parties:

- (1) submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this agreement; and

- 
- (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.
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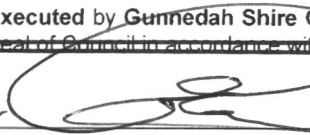
**Execution page**

Executed as a agreement


Dated: 11/5/2017

duly authorised officers pursuant to delegation from Council:

Executed by Gunnedah Shire Council by its ~~General Manager and Mayor by the affixing of the Common Seal of Council in accordance with resolution dated~~

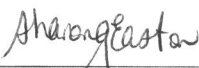
*11/5/17*  
  
\_\_\_\_\_  
General Manager (Signature)

*Eric John Croft*  
\_\_\_\_\_  
Name of General Manager (Print Name)

*11/5/17*  
  
\_\_\_\_\_  
Mayor (Signature)

*Ian McCulloch*  
\_\_\_\_\_  
Name of Mayor (Print Name)

Executed by the Department of Industry Skills and Regional Development by its duly authorised officers in the presence of:

  
\_\_\_\_\_  
Witness (Signature)

*Sharon Easton*  
\_\_\_\_\_  
Name of Witness (Print Name)

  
\_\_\_\_\_  
Authorised Officer (Signature)

*Scott Stanton*  
*Acting Manager North West*  
\_\_\_\_\_  
Name of Authorised Officer (Print Name)

*13 April 2017*



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**Schedule 1:**  
**Defined terms and Interpretation**

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**Part 1 - Definitions**

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<b>Authorities or Authority</b>	means (as appropriate) any: <ol style="list-style-type: none"><li>(1) federal, state or local government; or</li><li>(2) department of any federal, state or local government; or</li><li>(3) any court or administrative tribunal; or</li><li>(4) statutory corporation or regulatory body.</li></ol>
<b>Claim</b>	against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
<b>Conditions</b>	means the conditions of approval titled " <i>Approval Blackjack Creek, riparian corridor and channel reconstruction, Gunnedah, NSW (2013/6732)</i> ", being the document attached to this agreement as <b>Annexure A</b> .
<b>Confidential Information</b>	means the terms of this agreement and any other information disclosed by a disclosing party that is identified as being confidential or would be apparent to a reasonable person that such information was disclosed in confidence by the disclosing party.
<b>Dispute</b>	means a dispute regarding the operation of this agreement.
<b>Land</b>	means part Lot 7053 in Deposited Plan 1116141 being the land known as "Wandobah Reserve" as shown in the area hatched in the Plan.
<b>Native Title</b>	means the communal, group or individual rights and interests of Aboriginal peoples in relation to land or waters where: <ol style="list-style-type: none"><li>(1) the rights and interests are possessed under the traditional laws acknowledged and the traditional customs observed by Aboriginal peoples;</li><li>(2) the Aboriginal peoples, by those laws and customs, have a connection with the land or waters; and</li><li>(3) the rights and interests are recognised by the law of New South Wales or Australia.</li></ol>

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**Schedule 1:**  
**Defined terms and Interpretation**

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**Part 1 - Definitions**

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<b>Authorities or Authority</b>	means (as appropriate) any: <ol style="list-style-type: none"><li>(1) federal, state or local government; or</li><li>(2) department of any federal, state or local government; or</li><li>(3) any court or administrative tribunal; or</li><li>(4) statutory corporation or regulatory body.</li></ol>
<b>Claim</b>	against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
<b>Conditions</b>	means the conditions of approval titled " <i>Approval Blackjack Creek, riparian corridor and channel reconstruction, Gunnedah, NSW (2013/6732)</i> ", being the document attached to this agreement as <b>Annexure A</b> .
<b>Confidential Information</b>	means the terms of this agreement and any other information disclosed by a disclosing party that is identified as being confidential or would be apparent to a reasonable person that such information was disclosed in confidence by the disclosing party.
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<b>Land</b>	means part Lot 7053 in Deposited Plan 1116141 being the land known as "Wandobah Reserve" as shown in the area hatched in the Plan.
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<b>Offset Area</b>	means the areas labelled “7.29ha Offset in unvegetated portion of Wandobah Reserve” (tinted green) and “3.76ha Offset in VRZ” (tinted pink) as shown in the Plan.
<b>Plan</b>	means the plan titled “Vegetated Riparian Zone Extents Plan – Blackjack Creek” dated 3 December 2012, being the plan attached to this agreement as <b>Annexure D</b> .
<b>Vegetation Management Plan</b>	means the document titled “Blackjack Creek Riparian Corridor/Channel Reconstruction Vegetation Management Plan” dated November 2016, being the document attached to this agreement as <b>Annexure B</b> .
<b>Wandobah Reserve Management Plan</b>	means the document titled “Blackjack Creek Riparian Corridor/Channel Reconstruction Wandobah Reserve Management Plan” dated 15 December 2014, being the document attached to this agreement as <b>Annexure C</b> .
<b>Works</b>	means the Works outlined in the Conditions, including but not limited to: <ul style="list-style-type: none"> <li>(1) dredging, widening and realigning a 2km section of the Blackjack Creek as described in the Vegetation Management Plan and Wandobah Reserve Management Plan; and</li> <li>(2) managing the Offset Area in accordance with the Conditions.</li> </ul>

## Part 2 - Interpretational Rules

<b>clauses, annexures and schedules</b>	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement.
<b>variations or replacements</b>	a document (including this agreement) includes any variation or replacement of it.
<b>reference to statutes</b>	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
<b>singular includes plural</b>	the singular includes the plural and vice versa.
<b>person</b>	the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
<b>executors, administrators, successors</b>	a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
<b>dollars</b>	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.

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<b>calculation of time</b>	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
<b>reference to a day</b>	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
<b>accounting terms</b>	an accounting term is a reference to that term as it is used in accounting standards under the <i>Corporations Act 2001</i> (Cth) or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
<b>reference to a group of persons</b>	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
<b>meaning not limited</b>	the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
<b>next day</b>	if an act under this agreement to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
<b>next Business Day</b>	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
<b>time of day</b>	time is a reference to Sydney time.
<b>headings</b>	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement.
<b>agreement</b>	a reference to any agreement, agreement or instrument includes the same as varied, supplemented, novated or replaced from time to time.
<b>gender</b>	a reference to one gender extends and applies to the other and neuter gender.

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## **Annexure A – Conditions**

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**Australian Government**  
**Department of the Environment**

**Approval**  
**Blackjack Creek, riparian corridor and channel reconstruction, Gunnedah, NSW**  
**(2013/6732).**

This decision is made under sections 130(1) and 133 of the *Environment Protection and Biodiversity Conservation Act 1999*.

**Proposed action**

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**person to whom the approval is granted**      Gunnedah Council

---

**proponent's ABN**      ABN 80 183 655 793

---

**proposed action**      To dredge, widen and realign a 2km section of the Blackjack Creek Gunnedah as described in the referral documentation received by the department for this proposal on 25 January 2013 (EPBC Act referral 2013/6732).

**DECISION to approve:**

**Approval decision**

<b>Controlling Provision</b>	<b>Decision</b>
Listed threatened species and communities (ss 18, 18A)	Approve

**conditions of approval**

This approval is subject to the conditions specified below.

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**expiry date of approval**

This approval has effect until 31 December 2023

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**Decision-maker**

**name and position**

Mahani Taylor  
Acting Assistant Secretary  
South-Eastern Australia Environment Assessments

---

**Signature**

---

**date of decision**      22 November 2013

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### **Conditions of Approval:**

1. The person taking the action must not remove more than 37 koala habitat trees as part of taking this action.
2. To assist in mitigating the impacts of the proposal on the koala and koala habitat, the person taking the action must prepare and submit a Vegetation Management Plan (VMP) for the Minister's written approval prior to commencement of the action. The VMP must include:
  - a. Management actions designed to rehabilitate lands disturbed by the action and improve its habitat value to koalas. This must include all lands identified in the map at Schedule 1 of this notice as "Vegetated Riparian Zone".
  - b. Management actions designed to improve the koala habitat value, including area and quality, of offset areas identified in the map at Schedule 1 of this notice as "7.29ha Offset in Unvegetated portion of Wandobah Reserve". Including:
    - i. Planting of indigenous koala feed trees using locally sourced seed.
    - ii. Evidence that the proposed management actions to improve koala habitat are effective at improving koala habitat quality and area.
    - iii. A schedule of koala habitat restoration that compensates for the lag time between planting of trees and those trees having value as koala habitat.
  - c. An ecological monitoring program to monitor the success of the management actions in the VMP and define measurable targets of management actions, performance indicators, and an adaptive management framework for the duration of the action's impact on koala habitat.

The action must not commence until the VMP is approved by the Minister. The approved VMP must be implemented.

3. To ensure the long term viability of the offset and mitigation measures the person proposing the action must prepare and submit a Management Plan for the whole of Wandobah Reserve for the Minister's written approval prior to commencement of the action. The Wandobah Reserve Management Plan must include:
  - a. Management actions designed to improve the value of the reserve for koala habitat, including:
    - i. Management of unauthorised access to and use of the reserve
    - ii. Management of koala predators that may access the reserve
  - b. An ongoing ecological monitoring program to monitor the success of the management actions in the Wandobah Reserve Management Plan and define measurable targets of management actions, performance indicators, and an adaptive management framework for the duration of the action's impact on koala habitat.

The action must not commence until the Wandobah Reserve Management Plan is approved by the Minister. The approved Wandobah Reserve Management Plan must be implemented, reviewed annually and made available on the website of the person proposing the action for the duration of the impact on koala habitat.

4. Prior to the commencement of the action the person taking the action must provide evidence to the Department of:
  - a. The land tenure of Wandobah Reserve including the legal mechanisms that ensure council are able to manage the site as an offset area for in perpetuity of the proposal on koala habitat.
  - b. Offset attributes, shapefiles and textual descriptions and maps to clearly define the location and boundaries of Wandobah Reserve.
5. Within 30 days after the commencement of the action, the person taking the action must advise the Department in writing of the actual date of commencement.
6. The person taking the action must maintain accurate records substantiating all activities associated with or relevant to these conditions of approval, including measures taken to implement the management plans described in conditions 2 and 3, and make them available upon request to the Department. Such records may be subject to audit by the Department or an independent auditor in accordance with section 458 of the EPBC Act, or used to verify compliance with the conditions of approval. Summaries of audits will be posted on the Department's website. The results of audits may also be publicised through the general media.
7. Within three months of every 12 month anniversary of the commencement of the action, the person taking the action must publish a report on their website addressing compliance with each of the conditions of this approval, including implementation of the management plans described in conditions 2 and 3. Documentary evidence providing proof of the date of publication must be provided to the Department at the same time as the compliance report is published. Non-compliance with any of the conditions of this approval must be reported to the Department within 2 business days of becoming aware of the non-compliance.
8. Upon the direction of the Minister, the person taking the action must ensure that an independent audit of compliance with the conditions of approval is conducted and a report submitted to the Minister. The independent auditor must be approved by the Minister prior to the commencement of the audit. Audit criteria must be agreed to by the Minister and the audit report must address the criteria to the satisfaction of the Minister.
9. If the person taking the action wishes to carry out any activity otherwise than in accordance with the management plans described in conditions 2 and 3, the person taking the action must submit to the Department for the Minister's written approval revised versions of those plans. The varied activity shall not commence until the Minister has approved the varied management plans in writing. The Minister will not approve a varied management plan unless the revised plan would result in an equivalent or improved environmental outcome over time. If the Minister approves the revised management plan, that management plan must be implemented in place of the management plan originally approved.
10. If the Minister believes that it is necessary or convenient for the better protection of listed threatened species and ecological communities to do so, the Minister may request that the person taking the action make specified revisions to management plans described in conditions 2 and 3 and submit the revised plans for the Minister's written approval. The person taking the action must comply with any such request. The revised approved plans must be implemented. Unless the Minister has approved the revised plans then the person taking the action must continue to implement the plans originally approved.

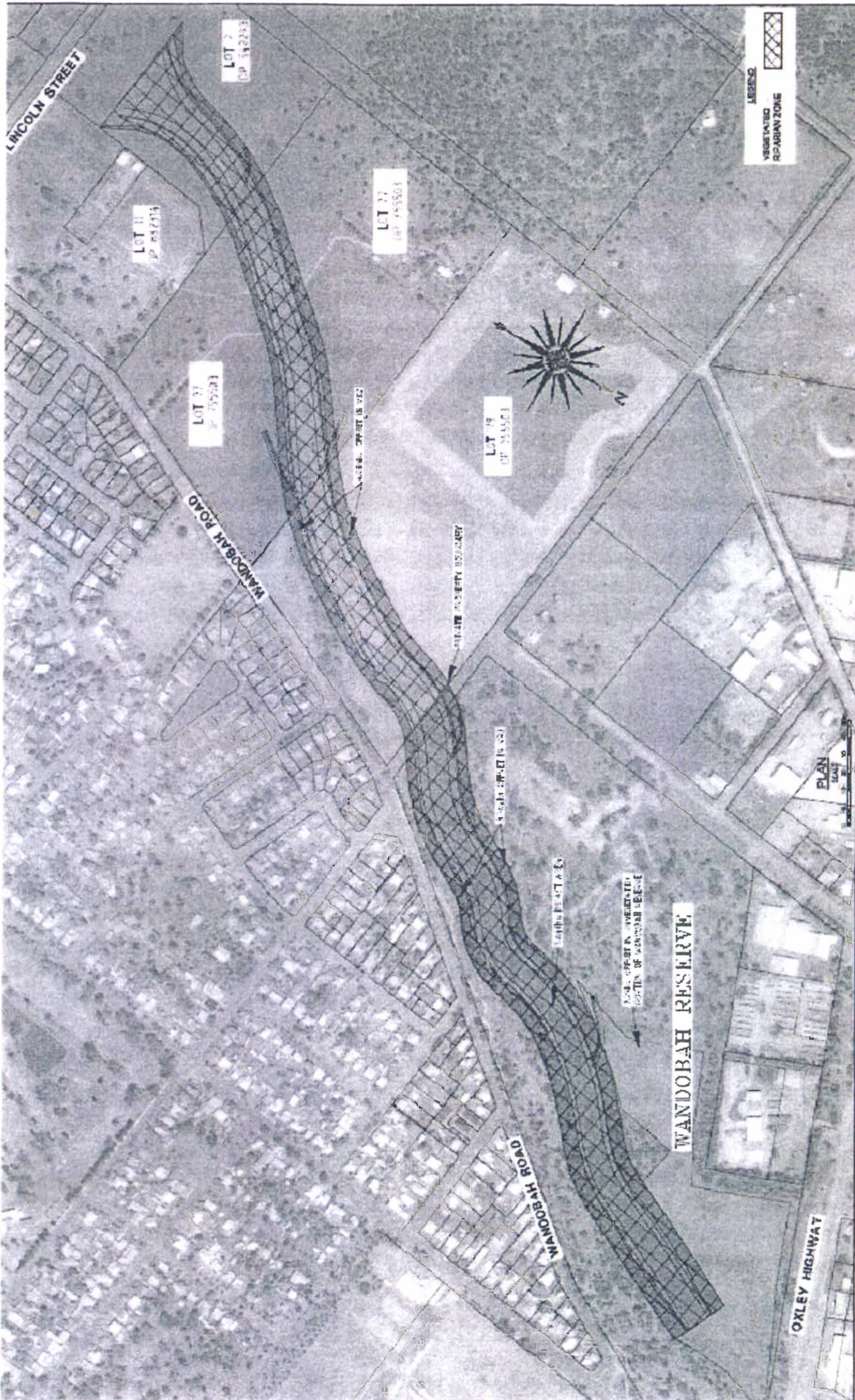


11. If, at any time after 5 years from the date of this approval, the person taking the action has not substantially commenced the action, then the person taking the action must not substantially commence the action without the written agreement of the Minister.
12. Unless otherwise agreed to in writing by the Minister, the person taking the action must publish the management plans described in conditions 2 and 3 on their website. The plans must be published on the website within 1 month of being approved.

### Definitions

- a) Department, the Australian Government Department administering the *Environment Protection and Biodiversity Conservation Act 1999*.
- b) Commencement, the earthworks, vegetation removal or construction of any infrastructure, associated with the proposed action.
- c) Koala habitat tree/s, are tree species that are used by koalas for food or shelter. Tree species used by koalas vary spatially and temporally and trees that can be considered koala habitat trees are often highly specific to the local area.
- d) Minister, the Minister administering the *Environment Protection and Biodiversity Conservation Act 1999* and includes a delegate of the Minister.
- e) Offset attributes, mean an '.xls' file capturing relevant attributes of the Offset Area, including the EPBC reference ID number, the physical address of the offset site, coordinates of the boundary points in decimal degrees, the EPBC protected matters that the offset compensates for, any additional EPBC protected matters that are benefiting from the offset, and the size of the offset in hectares.
- f) Shapefiles, means an ESRI Shapefile containing '.shp', '.shx' and '.dbf' files and other files capturing attributes of the Offset Area, including the shape, EPBC reference ID number and EPBC protected matters present at the relevant site. Attributes should also be captured in '.xls' format.

Schedule 1



<p>CONSTRUCTIVE SOLUTIONS PTY. LTD.          PO Box 1488, Tarragabri NSW 2340, Australia          Tel: (02) 6762 1565 Fax: (02) 6762 1569          Email: admin@constructivesolutions.com.au          www.constructivesolutions.com.au</p>		<p>Project No: <b>201201-035</b></p>
<p><b>GUNNEDAH SHIRE COUNCIL</b></p>		<p>Client: <b>A1</b></p>
<p><b>BLACKJACK CREEK RIPARIAN CORRIDOR &amp; CHANNEL RECONSTRUCTION</b></p>		<p>Drawn: <b>D8</b></p>
<p>03.12.2012</p>		<p>Scale: <b>PRELIMINARY</b></p>
<p><b>VEGETATED RIPARIAN ZONE EXTENTS PLAN - BLACKJACK CREEK</b></p>		
REV	DATE	DESCRIPTION
A	03.12.2012	ISSUED FOR REVIEW



**Australian Government**  
**Department of the Environment**

**Approval**

**Blackjack Creek, riparian corridor and channel reconstruction, Gunnedah, NSW (2013/6732).**

This decision is made under sections 130(1) and 133 of the *Environment Protection and Biodiversity Conservation Act 1999*.

**Proposed action**

**person to whom the approval is granted**

Gunnedah Council

**proponent's ABN**

ABN 80 183 655 793

**proposed action**

To dredge, widen and realign a 2km section of the Blackjack Creek Gunnedah as described in the referral documentation received by the department for this proposal on 25 January 2013 (EPBC Act referral 2013/6732).

**DECISION to approve:**

**Approval decision**

Controlling Provision	Decision
Listed threatened species and communities (ss 18, 18A)	Approve

**conditions of approval**

This approval is subject to the conditions specified below.

**expiry date of approval**

This approval has effect until 31 December 2023

**Decision-maker**

**name and position**

Mahani Taylor  
Acting Assistant Secretary  
South-Eastern Australia Environment Assessments

**Signature**

**date of decision**

22 November 2013

### Conditions of Approval:

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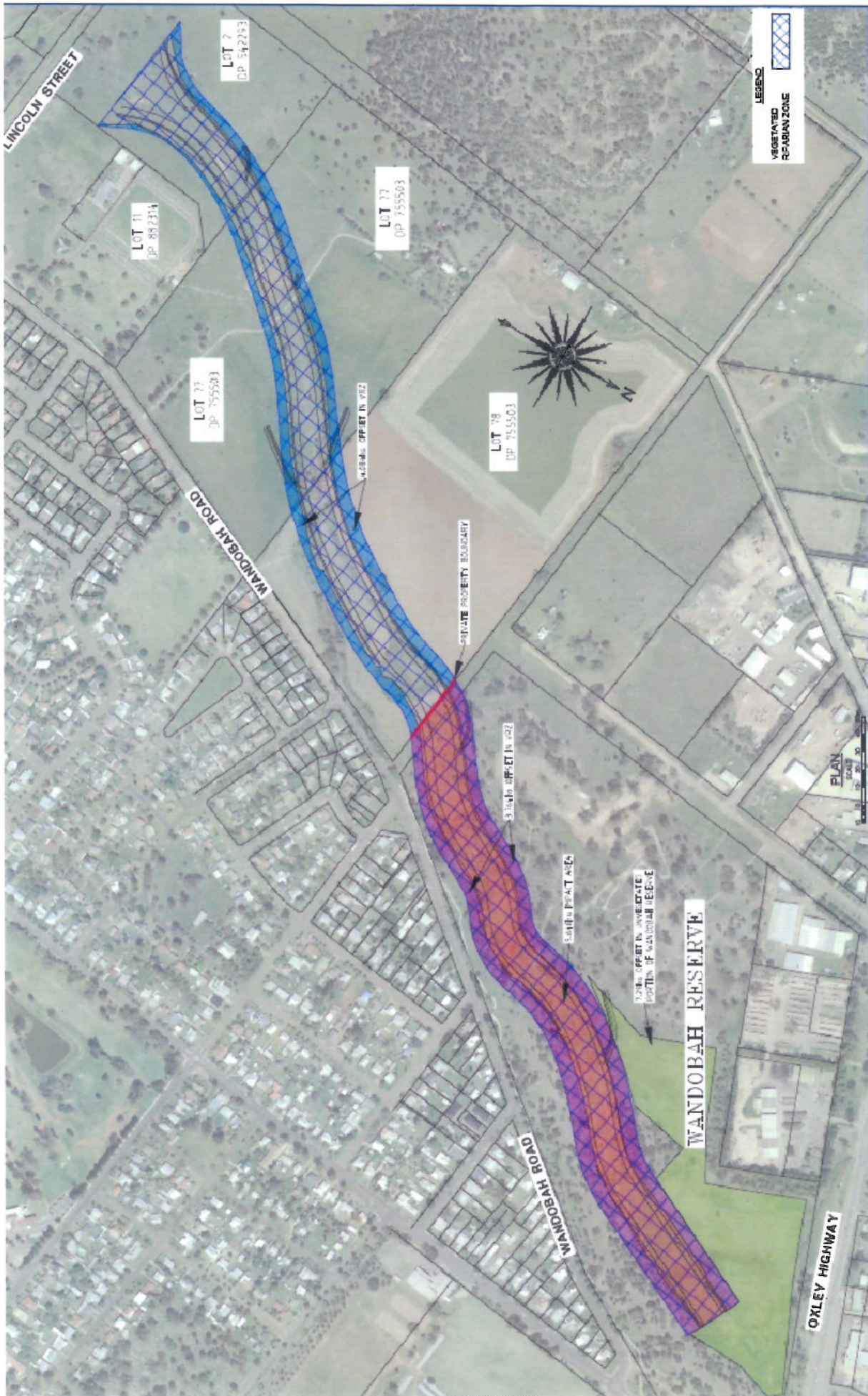
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5. Within 30 days after the commencement of the action, the person taking the action must advise the Department in writing of the actual date of commencement.
6. The person taking the action must maintain accurate records substantiating all activities associated with or relevant to these conditions of approval, including measures taken to implement the management plans described in conditions 2 and 3, and make them available upon request to the Department. Such records may be subject to audit by the Department or an independent auditor in accordance with section 458 of the EPBC Act, or used to verify compliance with the conditions of approval. Summaries of audits will be posted on the Department's website. The results of audits may also be publicised through the general media.
7. Within three months of every 12 month anniversary of the commencement of the action, the person taking the action must publish a report on their website addressing compliance with each of the conditions of this approval, including implementation of the management plans described in conditions 2 and 3. Documentary evidence providing proof of the date of publication must be provided to the Department at the same time as the compliance report is published. Non-compliance with any of the conditions of this approval must be reported to the Department within 2 business days of becoming aware of the non-compliance.
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- f) Shapefiles, means an ESRI Shapefile containing '.shp', '.shx' and '.dbf' files and other files capturing attributes of the Offset Area, including the shape, EPBC reference ID number and EPBC protected matters present at the relevant site. Attributes should also be captured in '.xls' format.

**Schedule 1**



		<b>GUNNEDAH SHIRE COUNCIL</b> BLACKJACK CREEK RIPARIAN CORRIDOR & CHANNEL RECONSTRUCTION		CONSTRUCTIVE SOLUTIONS PTY. LTD. PO Box 1494 Tamworth, NSW 2340 Australia Tel: (02) 6762 1999 Fax: (02) 6762 1999 Email: admin@constructivesolutions.com.au www.constructivesolutions.com.au	
Client	Design	Drawn	Checked	Project No.	Drawn by
				<b>A1</b>	
Design Date	Design No.	Design Stage	Design Status	Design No.	Design Status
03.12.2012	DB				<b>PRELIMINARY</b>
<b>VEGETATED RIPARIAN ZONE EXTENTS PLAN</b> <b>- BLACKJACK CREEK</b>					
REV	DATE	BY	DESCRIPTION		
A	03.12.2012	DB	ISSUED FOR REVIEW		



## VARIATION TO CONDITIONS ATTACHED TO APPROVAL

### Blackjack Creek, riparian corridor and channel reconstruction, Gunnedah, NSW EPBC 2013/6732

This decision to vary a condition of approval is made under section 143 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

#### Approved action

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**Person to whom the approval is granted**

Gunnedah Council  
ABN 80 183 655 793

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**Approved action**

To dredge, widen and realign a 2km section of the Blackjack Creek Gunnedah as described in the referral documentation received by the department for this proposal on 25 January 2013 (EPBC Act referral 2013/6732).

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#### Variation

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**Variation of conditions of approval**

The variation is:

Delete condition 9 attached to the approval dated 22 November 2013 and substitute with the conditions specified below.

Add definition for **new or increased impact**

**Note:** All other conditions and the definitions remain unchanged.

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**Date of effect**

This variation has effect on the date the instrument is signed

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#### Person authorised to make decision

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**name and position**

James Barker  
Assistant Secretary  
Assessments (Qld, Tas, Vic) and Governance Branch

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**Signature**

**Date of decision**

/ September 2017

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## Conditions attached to the approval

9. The person taking the action may choose to revise a plan approved by the Minister under conditions 2 and 3 without submitting it for approval under section 143A of the EPBC Act, if the taking of the action in accordance with the revised plan would not be likely to have a new or increased impact. If the person taking the action makes this choice they must:
- a) notify the **Department** in writing that the approved plan has been revised and provide the **Department**, at least four weeks before implementing the revised plan, with:
    - i. with an electronic copy of the revised plan;
    - ii. an explanation of the differences between the revised plan and the approved plan; and
    - iii. the reasons the person taking the action considers that the taking of the action in accordance with the revised plan would not be likely to have a **new or increased impact**.

9A. The person taking the action may revoke its choice under condition 9 at any time by giving written notice to the **Department**. If the person taking the action revokes the choice to implement the revised plan, without approval under section 143A of the **EPBC Act**, the plan approved by the **Minister** must be implemented.

9B. If the **Minister** gives a notice to the person taking the action that the **Minister** is satisfied that the taking of the action in accordance with the revised plan would be likely to have a **new or increased impact**, then:

- i. condition 9 does not apply, or ceases to apply, in relation to the revised plan; and
- ii. the person taking the action must implement the plan approved by the **Minister**.

To avoid any doubt, this condition does not affect any operation of conditions 9 and 9A in the period before the day the notice is given.

At the time of giving the notice, the **Minister** may also notify that for a specified period of time condition 9 does not apply for the plan required under the approval.

Conditions 9, 9A and 9B are not intended to limit the operation of section 143A of the **EPBC Act** which allows the person taking the action to submit a revised plan to the **Minister** for approval.

### Definition

**New or increased impact** is a new or increased environmental impact or risk relating to any matter protected by the controlling provisions for the action, when compared to the impact or risk arising from implementing the plan that has been approved by the **Minister**.