

Notification of approval

Territory Battery Energy Storage System, Ginninderry, ACT (EPBC 2021/8884)

This decision is made under section 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)	NEOEN AUSTRALIA PTY LTD ACN 160 905 706
Action	To construct and operate a large-scale battery energy storage system in Ginninderry, ACT.(See EPBC Act referral 2021/8884).

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 December 2074	
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)
signature	faktoorlad
date of decision	⁷ 31 May 2024

Annexure A

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

Part A – Avoidance, mitigation, and compensation conditions

ACTION AREA BOUND

- 1) The approval holder must not:
 - a) clear outside of the Action area
 - b) construct outside of the Action area.

CLEARING LIMITS

- 2) The approval holder must not **clear** more than:
 - a) 6.19 hectares (ha) of Box Gum Woodland
 - b) 0.5 ha of Pink-tailed Worm-lizard habitat.

AVOIDANCE, MITIGATION AND COMPENSATION

- 3) To avoid harm to Pink-tailed Worm-lizard the approval holder must engage a suitably qualified field ecologist to undertake pre-clearance surveys of Pink-tailed Worm-lizard habitat to enable the successful relocation of any Pink-tailed Worm-lizard individuals present in the 0.5 ha of Pink-tailed Worm-lizard habitat to be cleared.
 - a) The approval holder must ensure that a **suitably qualified field ecologist** captures and safely relocates any **Pink-tailed Worm-Lizard** individuals identified in the 0.5 ha of **Pink-tailed Worm-lizard habitat** to be **cleared**, in accordance with the requirements of the **ACT Conservator of Flora and Fauna**.
- 4) To avoid **harm** to **protected matters** the approval holder must:
 - a) Notify the **department** of the date of commencement of **operation** of the site within 5 **business days**,
 - b) Not commence **operation** unless it has commenced **ecological restoration** of all impacted **Box Gum Woodland** in the **construction laydown area**,
 - c) Ensure ecological restoration is conducted by a suitably qualified ecologist, and
 - d) Ensure the **ecological restoration** of the impacted **Box Gum Woodland** is not inconsistent with the requirements of **Box Gum Woodland criteria** and the **Box Gum Woodland Recovery Plan**.
 - e) Restore **Box Gum Woodland** in the **construction laydown area** to its **preclearance state** prior to the **completion of the Action.**

ACTION MANAGEMENT PLANS

Construction Environmental Management Plan

- 5) Prior to the commencement of the action, the approval holder must submit a Construction Environmental Management Plan to the ACT Planning and Land Authority for endorsement, as specified by condition 8 of the Environmental Impact Statement Assessment Report as it relates to the monitoring, managing, avoiding, mitigating, offsetting, recording and reporting of impacts to protected matters.
- 6) The approval holder must not **commence the action** unless it has submitted to the **department** the endorsed Construction Environmental Management Plan.
- 7) To avoid and mitigate harm as a result of the Action on protected matters, the approval holder must commence implementing the endorsed Construction Environmental Management Plan no later than the commencement of the Action and continue to implement the endorsed Construction Environmental Management Plan until the commencement of operation of the site.

Environmental Management Plan

- 8) Prior to **operation**, the approval holder must submit an Environmental Management Plan to the **ACT Planning and Land Authority** for endorsement, as specified by condition 10 of the **Environmental Impact Statement Assessment Report** as it relates to the monitoring, managing, avoiding, mitigating, offsetting, recording, or reporting of impacts to **protected matters**. The approval holder must submit the endorsed Environmental Management Plan to the **department** prior to **operation**.
- 9) To avoid and mitigate harm to protected matters, the approval holder must commence implementing the endorsed Environmental Management Plan prior to commencing operation and continue to implement the endorsed Environmental Management Plan until completion of the Action.

OFFSET MANAGEMENT PLAN IMPLEMENTATION

- 10) To compensate for residual significant impacts of the Action on Box Gum Woodland the approval holder must, before commencement of the Action, submit to the department an Offset Management Plan proposing environmental offsets for impacts to Box Gum Woodland. The approval holder must not commence the Action unless the Offset Management Plan has been approved in writing by the Minister.
- 11) The approval holder must commence implementing the approved Offset Management Plan prior to the **commencement of the Action** and continue to implement the approved Offset Management Plan at least until the expiry date of this approval.
- 12) The approval holder must, within 5 **business days** of commencing implementation of the Offset Management Plan, notify the **department** of the date on which implementation of the Offset Management Plan commenced.

OFFSET MANAGEMENT PLAN DEVELOPMENT

- 13) The Offset Management Plan must meet the requirements of the **Environmental Offsets Policy** and the **Environment Management Plan Guidelines** to the satisfaction of the **Minister**.
- 14) 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. This must include the area(s) of habitat for protected matters and its condition and quality at all locations impacted by the Action which the offset is to address.
 - the relevant protected matters and a reference to the EPBC Act approval conditions to which the Offset Management Plan refers.
 - detailed information and a shapefile specifying the location, area and boundaries of the 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 **offset site**.
 - e) commitments to achievable improved ecological benefits at the **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 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:
 - 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 actions, 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 actions 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 not achieved in the specified timeframes.
 - k) links to relevant referenced plans or conditions of approval (including state/territory approval conditions), and

l) how the **offset site** will be protected, and ecological benefits maintained, at least until the expiry of the approval.

OFFSET SITE SECUREMENT

- 15) To compensate for the residual impacts of the Action on **Box Gum Woodland**, the approval holder must not **commence the Action** unless the **offset site** has been **secured**.
- 16) The approval holder must notify and provide evidence to the department in writing within five business days of the offset site being legally secured.
- 17) The approval holder must ensure that the **offset site** remains **secured** at least until the expiry date of this approval.

OFFSET MANAGEMENT PLAN COMPLETION CRITERIA

- 18) To ensure that the offset provides a conservation gain for **Box Gum Woodland** in accordance with the **Environmental Offsets Policy**, the approval holder must:
 - a) achieve the completion criteria specified in the approved Offset Management Plan within
 30 years of the commencement of the Action, and
 - b) once the completion criteria specified in the approved Offset Management Plan have been achieved, maintain or improve the condition of the **Box Gum Woodland** in the **offset site** for the remaining duration of this approval.
- 19) The approval holder must, within 20 business days of the 30th anniversary of commencement of the Action:
 - have the offset site assessed by an independent suitably qualified ecologist to determine
 if the completion criteria specified in the approved Offset Management Plan have been
 achieved, and
 - b) submit to the **department** a report prepared by a **suitably qualified ecologist** detailing the areas and condition of **Box Gum Woodland** present in the **offset site**, and
 - c) notify the **department** in writing of any completion criterion that has not been achieved and the likely reasons that the completion criteria have not been met.

Part B – Administrative conditions

SUBMISSION AND PUBLICATION OF PLANS

- 20) The approval holder must submit all **plans** required by these conditions electronically to the **department**.
- 21) Unless otherwise agreed to in writing by the **Minister**, the approval holder must publish each **plan** on the **website** within 15 **business days** of the date:
 - a) the **plan** is approved by the **Minister** in writing, if the **plan** requires the approval of the **Minister**, or
 - b) the **plan** is submitted to the **department** in accordance with a requirement of these conditions, if the **plan** does not require the approval of the **Minister**, or

- c) the plan is endorsed as specified under Environmental Impact Statement Assessment Report condition 8 which must be complied with in accordance with these EPBC Act conditions.
- 22) The approval holder must keep all **plans** required by these conditions published on the **website** until the expiry date of this approval.
- 23) The approval holder is required to exclude or redact sensitive ecological data from plans published on the website or otherwise provided to a member of the public. If sensitive ecological data is excluded or redacted from a plan, the approval holder must notify the department in writing what exclusions and redactions have been made in the version published on the website.

MODIFICATIONS TO STATE OR TERRITORY APPROVAL

- 24) The approval holder must notify the **department** in writing of any proposed change to the **ACT Development Application approval** that may relate to **protected matters** within 2 **business days**of formally proposing a change and within 5 **business days** of becoming aware of any proposed change.
- 25) The approval holder must notify the **department** in writing of any change to the **ACT Development Application approval** conditions 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 **ACT Development Application approval** conditions.

COMMENCEMENT OF THE ACTION

- 26) 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**.
- 27) The approval holder must not **commence the Action** later than 5 years after the date of this approval decision.

COMPLIANCE RECORDS

- 28) The approval holder must maintain accurate and complete **compliance records**.
- 29) 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.

- 30) 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.
- 31) 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.

32) 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 60 **business days** of each anniversary of the date of this approval decision.

ANNUAL COMPLIANCE REPORTING

- 33) The approval holder must prepare a **compliance report** for each 12-month period following the date of this approval decision (or as otherwise agreed to in writing by the **Minister**).
- 34) Each **compliance report** must be consistent with the 'Annual Compliance Report Guidelines, Commonwealth of Australia 2023'.
- 35) Each compliance report must include:
 - a) Accurate and complete details of compliance and any non-compliance with:
 - i) each condition attached to this approval decision,
 - ii) all commitments made in each plan, and
 - iii) if any incident occurred, each incident.
 - b) 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, and
 - c) A schedule of all **plans** in existence in relation to these conditions and accurate and complete details of how each **plan** is being implemented.
- 36) 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, and
 - 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

37) 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**.

- 38) 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,
 - A short description of the incident and/or potential non-compliance and/or actual noncompliance, and
 - 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.

- 39) 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-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, and
 - c) The method and timing of any corrective action that will be undertaken by the approval holder.

INDEPENDENT AUDIT

- 40) The approval holder must ensure that an **independent audit** of compliance with the conditions is conducted for every five-year period following the **commencement of the Action** until this approval expires (unless otherwise specified in writing by the **Minister**).
- 41) 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**,
 - 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**, and
 - e) Keep every **audit report** published on the **website** until this approval expires.
- 42) Each audit report must report for the five-year period preceding that audit report.
- 43) 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

- 44) 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.
- 45) 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

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

ACT Conservator of Flora and Fauna means the authority that administers approvals for the translocation of native flora and fauna in the Australian Capital Territory (ACT).

ACT Development Application approval means the approval for the Territory Battery Energy Storage - Belconnen (EIS202100027), granted under the *Planning and Development Act 2007* (ACT).

ACT Planning and Land Authority means the authority responsible for administering the *Planning and Development Act 2007* (ACT).

Action area means the location of the Action, represented in <u>Attachment A</u> by the enclosed by the solid RED line designated 'Proposal Area'.

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**.

Box Gum Woodland means the **EPBC Act** listed threatened ecological community *White box* – *Yellow box* – *Blakely's Red Gum Grassy Woodland and Derived Native Grassland*. The location of **Box Gum Woodland** in the **Action area** is represented in <u>Attachment A</u> by the areas shaded yellow and the areas shaded light green.

Box Gum Woodland criteria means the description of the ecological, key diagnostic criteria and conditions thresholds specific to **Box Gum Woodland**, as described in *Conservation Advice for the White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland*, Department of Climate Change, Energy, the Environment and Water (2023).

Box Gum Woodland National Recovery Plan means the adopted national recovery plan *National Recovery Plan for White Box - Yellow Box - Blakely's Red Gum Grassy Woodland and Derived Native Grassland,* Department of Environment, Climate Change and Water NSW (2010).

Business day means a day that is not a Saturday, a Sunday or a public holiday in Australian Capital Territory.

Clear or **clearing** means the cutting down, felling, thinning, logging, removing, killing, destroying, poisoning, ringbarking, uprooting, or burning of vegetation.

Commence the Action or commences the Action means the first instance of any on-site clearing, construction or other physical activity associated with the Action, but does not include minor physical disturbance necessary to:

- a) Undertake pre-clearance surveys or monitoring programs,
- 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, and
- 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**.

Commencement of the Action means the date on which the approval holder **commences the Action**.

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 on which all activities associated with this approval have permanently ceased and/or been completed.

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.

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) the alteration, maintenance, repair or demolition of any building or structure,
- c) any work which involves breaking of the ground (including pile driving) or bulk earthworks,
- d) the laying of pipes and other prefabricated materials in the ground, and
- e) any associated excavation work.

Construction does not include the installation of temporary fences and signage or undertaking pre-clearance surveys.

Construction laydown area means the area represented in <u>Attachment A</u> by the zone shaded red designated, 'construction laydown'.

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

Ecological restoration means actions and process taken to assist the recovery of an ecosystem.

Environmental Impact Statement (EIS) means the Territory Battery Revised Environmental Impact Statement, prepared by Umwelt (Australia), dated 2 February 2024.

Environmental Impact Statement Assessment Report means the March 2024 report submitted to the **department** under the *Planning and Development Act 2007* (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).

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

Incident means any event which has the potential to, or does, **harm** any **protected matter**.

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'.

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.

Offset site means the location of the offset, Registered Rural Block 1188, Tuggeranong, ACT, represented in <u>Attachment B</u> by the zone encompassed by the solid red line, designated 'Offset Area'.

Operation means any activity associated with enabling electric charge to enter the battery from the grid or enabling the battery to discharge electricity to the grid.

Pink-tailed Worm-lizard means the **EPBC Act** listed threatened species **Pink-tailed Worm-lizard** (*Aprasia parapulchella*).

Pink-tailed Worm-lizard habitat means the areas represented in <u>Attachment A</u> by the zones enclosed by black lines with diagonal hatching designated, 'Pink-tailed Worm-lizard habitat (Umwelt 2022)' or 'Pink-tailed Worm-lizard habitat - indicative (WSP 2018)'.

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

Preclearance state means the quality of **Box Gum Woodland** prior to the **commencement of the action,** specified as the score of the quality impacted in Table 4.5 of Appendix F3 of the **EIS,** derived as specified in the EPBC Act Offset Guide, Department of Sustainability, Environment, Water, Population and Communities, 2012.

Protected matter means a matter protected under a controlling provision in Part 3 of the **EPBC Act** for which this approval has effect.

Secure or **secured** means to provide enduring conservation protection on the title of land under mechanisms available in the ACT, or another enduring protection mechanism agreed to in writing by the **department**, to provide protection for the site against development incompatible with conservation.

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:

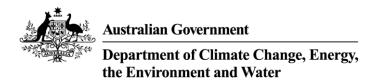
- a) '.shp', '.shx', '.dbf' files,
- b) a '.prj' file which specifies the projection or geographic coordinate system used, and
- c) an '.xml' metadata file that describes the shapefile for discovery and identification purposes.

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 **protected matters**,
- has implemented and reported on management plans for the habitat of protected matters, and can demonstrate the implementation of those pans achieved the desired habitat quality for habitat of protected matters, and
- c) can give authoritative assessment and advice on offset management to improve the habitat
 quality of the habitat of protected matters using relevant protocols, standards, methods
 and/or literature.

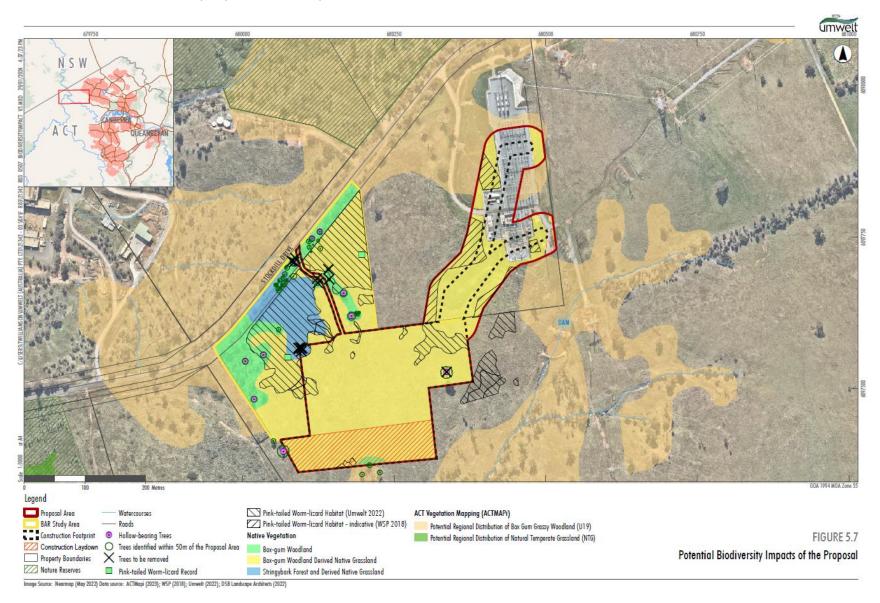
Suitably qualified field ecologist (for the purpose of undertaking environmental surveys) means a person who has relevant professional qualifications, at least 3 years of work experience designing and implementing surveys for Pink-tailed Worm-lizard and approval by the ACT Conservator of Flora and Fauna to relocate Pink-tailed Worm-Lizard individuals and who can give an authoritative assessment and advice on the presence of Pink-tailed Worm-lizard and safely relocate Pink-tailed Worm-Lizard individuals using relevant protocols, standards, methods and/or literature.

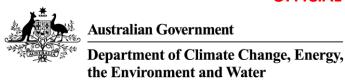
Website means a set of related web pages located under a single domain name attributed to the approval holder and available to the public.



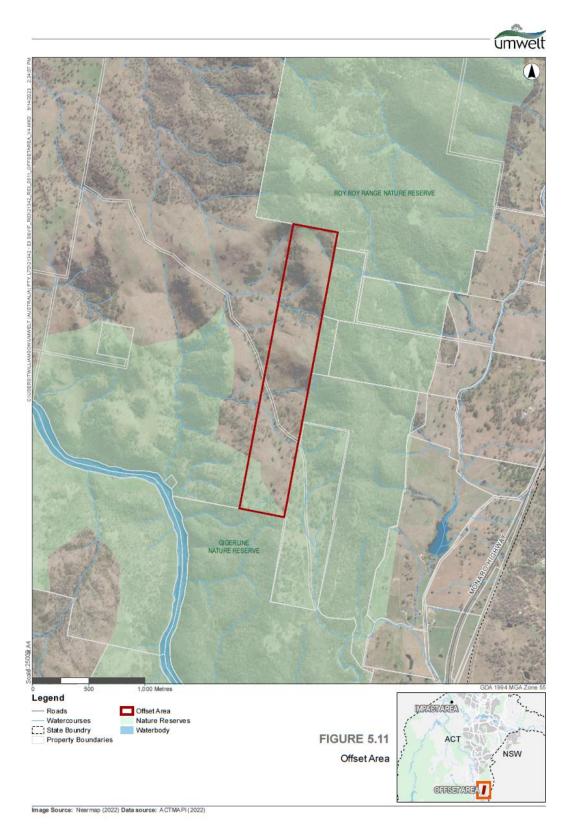
Attachments

Attachment A Potential Biodiversity Impacts of the Proposal.





Attachment B Proposed offset site



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