

# Notification of approval decision Northbank Enterprise Hub (EPBC 2021/9058)

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 also 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**

Approved Action		
person to whom the approval	is Northbank Enterprise Hub Pty Ltd	
granted (approval holder)		
,	ACN: 063 271 625	
Approved Action	To establish a business and industrial park in Tomago,	New South
	Wales [See EPBC Act referral 2021/9058].	
Approval decision		
decision	My decision on whether or not to approve the taking of the Action for the purposes of each controlling provision for the Action are as follows	
	Controlling Provision	Decision
	Wetlands of international importance (section 16 and section 17B)	Approved
	Listed threatened species and communities (section 18 and section 18A)	Approved
	Listed migratory species (section 20 and section 20A)	Approved
period for which the approval has effect	This approval has effect until 1 March 2065.	
conditions of approval	The approval is subject to conditions under the EPBC Act Annexure A.	as set out in
Person authorised to make d	ecision	
name and position Sara	h Reachill	
Actir	ng Branch Head	
	ronment Assessments (NSW, ACT) Branch	
signature	3-3-3-3-3-3-3-3-3-3-3-3-3-3-3-3-3-3-3-	
date of decision 13 F	ebruary 2025	

# Annexure A

**Note:** Words and terms appearing in **bold** (excluding headings) have the meaning assigned to them at **Part C – Definitions**.

# Part A – Avoidance, mitigation, and compensation conditions

# **CLEARING LIMITS**

- 1) The approval holder must not:
  - a) clear outside of the Action area
  - b) construct outside of the Action area.
- 2) The approval holder must not clear any Coastal Swamp Oak Forest within the on-site offset.

# IMPLEMENTATION OF NSW APPROVAL CONDITIONS

3) To avoid and mitigate **harm** as a result of the Action on the **Hunter Estuary Wetlands**, the approval holder must comply with condition 29(a) of schedule 3 of the **NSW Approval**.

# **NSW APPROVAL ACTION MANAGEMENT PLANS**

# **Construction Environmental Management Plan**

4) To avoid and mitigate harm as a result of the Action on protected matters, the approval holder must comply with condition 1 of Schedule 4 of the NSW Approval, to the extent that it relates to protected matters.

# **ACTION MANAGEMENT PLANS**

# **Wetland Management and Monitoring Plan**

- 5) To avoid and mitigate harm on the Hunter Estuary Wetlands, the approval holder must prepare, in accordance with condition 30 of Schedule 3 of the NSW Approval, a Wetland Management and Monitoring Plan, and submit it to the department for the Minister's approval. In addition to the requirements of the Wetland Management and Monitoring Plan specified in Condition 30 of Schedule 3 of the NSW Approval, the Wetland Management and Monitoring Plan must address how the following environmental outcome will be achieved:
  - a) Prevent any avoidable **harm** to **protected matters** and mitigate unavoidable and accidental **harm** to **protected matters**.
- 6) The Wetland Management and Monitoring Plan must be prepared by a suitably qualified ecologist. All commitments, including environmental outcomes, management measures, corrective measures, trigger values and performance indicators in the Wetland Management and Monitoring Plan must be SMART and based on referenced or included evidence of effectiveness. The Wetland Management and Monitoring Plan must be consistent with the Environmental Management Plan Guidelines.

7) The approval holder must not **commence the Action** unless the **Minister** has approved the Wetland Management and Monitoring Plan in writing. The approval holder must implement the Wetland Management and Monitoring Plan approved by the **Minister** in writing until the expiry date of this approval.

# **OFFSETS**

- 8) To compensate for the residual significant impacts of the Action on **Coastal Swamp Oak Forest**, the approval holder must not **commence the Action** unless the **off-site offset** has been **secured**. Prior to the **commencement of the action**, the approval holder must provide the **department** with **evidence** of when the **off-site offset** was **secured** and what mechanism was used to **secure** the **off-site offset**. The approval holder must ensure that the **off-site offset** remains **secured** at least until the expiry date of this approval.
- 9) Also to compensate for the residual significant impacts of the Action on **Coastal Swamp Oak Forest**, the approval holder must not **commence the Action** unless either:
  - a) the on-site offset has been secured and the approval holder has provided the department with
    evidence of when the on-site offset was secured and what mechanism was used to secure the
    on-site offset

OR

- b) the approval holder has **secured** an alternative offset site as specified in an Offset Management Plan (OMP) approved by the **Minister** in writing, and the **Minister** has approved in writing a Coastal Swamp Oak Forest Restoration Management Plan (CSOMP), as provided for below.
- 10) If the approval holder secures the **on-site offset**, the approval holder must ensure that the **on-site offset** remains **secured** at least until the expiry date of this approval.
- 11) If the approval holder opts to **secure** an alternative offset site, the approval holder must submit an OMP specified by the **department** proposing an offset of equivalent or greater benefit than the **on-site offset**, to the **department** for approval by the **Minister**. The approval holder must not **commence the Action** unless the **Minister** has approved the OMP in writing. The approval holder must commence implementing the approved OMP no later than the **commencement of the Action** and continue to implement the approved OMP until the **completion of the Action**.
- 12) If the approval holder opts to **secure** an alternative offset site, the approval holder must, within 5 **business days** of commencing implementation of the approved OMP, notify the **department** of the date on which implementation of the OMP commenced. Prior to the **commencement of the action**, the approval holder must provide the **department** with **evidence** of when the alternative offset site specified in the approved OMP was **secured** and what mechanism was used to **secure** the alternative offset site. The approval holder must ensure that the alternative offset site specified in the approved OMP remains **secured** at least until the expiry date of this approval.

#### **REHABILITATION**

13) If the on-site offset cannot be secured, the approval holder must not commence the Action unless the Minister has approved a Coastal Swamp Oak Forest Restoration Management Plan (CSOMP) in writing. The approval holder must commence implementing the approved CSOMP no later than the commencement of the Action and continue to implement the approved CSOMP until the completion of the Action.

- 14) By implementing the CSOMP, the approval holder must successfully rehabilitate at least 4.7 ha of **Coastal Swamp Oak Forest** in the **on-site offset**.
- 15) The CSOMP must be prepared by a **suitably qualified ecologist**. All commitments, including environmental outcomes, management measures, corrective measures, trigger values and performance indicators in the CSOMP must be **SMART** and based on referenced or included evidence of effectiveness. The CSOMP must be consistent with the **Environmental Management Plan Guidelines**, and must specify:
  - a) actions to be undertaken for the rehabilitation of at least 4.7 ha of **Coastal Swamp Oak Forest** in the **on-site offset**,
  - measurable performance indicators and completion criteria and the timeframes for their achievement to gauge successful rehabilitation of the Coastal Swamp Oak Forest,
  - c) trigger values for corrective actions,
  - d) corrective actions to be implemented to ensure rehabilitation of the Coastal Swamp Oak Forest is achieved or maintained if trigger values are reached or performance indicators not achieved in the specified timeframes, and
  - e) a monitoring program to gauge the effectiveness of rehabilitation actions, including:
    - i) the timing (including season/time of day/frequency), effort and methods for monitoring and an explanation of how these will be effective to monitor for trigger values, changes in performance indicators and effectively demonstrate progress towards successful rehabilitation of the Coastal Swamp Oak Forest
    - ii) details on who will be responsible for implementing the monitoring program.
- 16) The approval holder must, within 5 **business days** of commencing implementation of the CSOMP, notify the **department** of the date on which implementation of the CSOMP commenced.

# Part B - Administrative conditions

# **REVISION OF ACTION MANAGEMENT PLANS**

Note: Section 143A of the **EPBC Act** entitles the approval holder to apply for the **Minister**'s approval of a revised version of a plan.

# SUBMISSION AND PUBLICATION OF PLANS

- 17) Wherever these conditions require the approval holder to submit any **plan** to the **department**, all such **plans** must be submitted to the **department** electronically.
- 18) 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**,
  - b) the **plan** is approved by the **NSW Planning Secretary** as required under a **NSW Approval** condition which must be complied with in accordance with these **EPBC Act** conditions.

- 19) The approval holder must keep all **plans** published on the **website**, in a format that is easily accessible and downloadable, from the first date which that **plan** must be published and until the expiry date of this approval. This requirement applies to all current and superseded versions of **plans**.
- 20) The approval holder is required to exclude or redact sensitive biodiversity data from any version of a plan before that plan is published on the website or otherwise provided to a member of the public. If sensitive biodiversity 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

- 21) The approval holder must notify the department in writing of any proposed change to the NSW Approval that may relate to protected matters within 5 business days of formally proposing such a change.
- 22) The approval holder must notify the **department** in writing of any change to the **NSW Approval** conditions that may relate to **protected matters**, within 10 **business days** of such a change to conditions coming into effect. Such notification must include a copy of the changed **NSW Approval** conditions showing what changes have been made.

#### COMMENCEMENT OF THE ACTION

- 23) 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**.
- 24) The approval holder must not **commence the Action** later than 5 years after the date of this approval decision unless otherwise specified in writing by the **Minister**.

# **COMPLIANCE RECORDS**

- 25) The approval holder must maintain accurate and complete **compliance records** and document the procedure for recording and storing **compliance records**.
- 26) 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.
- 27) The approval holder must ensure that any **monitoring 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.
- 28) The approval holder must ensure that any **monitoring 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.

29) The approval holder must submit all **monitoring 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** following the end of each **Annual Compliance Report period** (**ACR period**), except where otherwise specified in a **plan**.

# **ANNUAL COMPLIANCE REPORTING**

- 30) The approval holder must prepare a compliance report for each ACR period.
- 31) The approval holder must ensure each **compliance report** includes:
  - a) accurate and complete details of compliance and any non-compliance with:
    - each condition imposed under the NSW Approval, if a condition attached to this approval decision requires compliance with that NSW Approval condition,
    - ii) each condition attached to this approval decision, and
    - iii) all commitments made in each plan,
  - b) a schedule of all plans in effect in relation to these conditions during the ACR period,
  - c) accurate and complete details of how each plan was implemented during the ACR period, and
  - d) if any **incident** occurred, accurate and complete details of each **incident**.
- 32) The approval holder must ensure each **compliance report** is consistent with the *Annual Compliance Report Guidelines*, Commonwealth of Australia 2023.
- 33) The approval holder must, within 60 **business days** following the end of each **ACR period**, in a format that is easily accessible and downloadable, publish on the **website**:
  - a) each compliance report, and
  - a shapefile showing all clearing of protected matters, and their habitat, undertaken within the ACR period.
- 34) The approval holder must:
  - Exclude or redact sensitive biodiversity data from each compliance report and shapefile published on the website or otherwise provided to a member of the public.
  - b) If sensitive biodiversity data is excluded or redacted from a version of a compliance report published or otherwise provided to a member of the public, 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 or otherwise provided to a member of the public.
  - of If sensitive biodiversity data is excluded or redacted from a version of a shapefile published or otherwise provided to a member of the public, submit the full shapefile 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 or otherwise provided to a member of the public.

- 35) The approval holder must notify the **department** electronically, within 5 **business days** of each date of publication that the **compliance report** has been published on the **website**. In this notification, the approval holder must provide the **department** with the web address for where the **compliance report** and related **shapefile** are published on the **website**.
- 36) The approval holder must keep each **compliance report** and related **shapefile** published on the **website** from the first date which that **compliance report** must be published and until the expiry date of this approval.

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

# REPORTING NON-COMPLIANCE

- 37) The approval holder must notify the **department** electronically, within 5 **business days** of becoming aware of any **incident**. The approval holder must specify in each notification:
  - a) any condition or commitment made in a plan which has not been, or may have not been, complied with,
  - b) a short description of the **incident**, and
  - c) the location (if applicable, including co-ordinates), date and time of the incident.
- 38) The approval holder must provide to the **department** in writing, within 12 **business days** of becoming aware of an **incident**, the details of that **incident**. The approval holder must specify:
  - a) all corrective measures and investigations which the approval holder has already taken in respect of the **incident**,
  - b) the potential impacts of the incident,
  - c) the method and timing of any corrective measures that the approval holder proposes to undertake to address the **incident**, and
  - d) any variation of these conditions or revision of a **plan** that will be required to prevent recurrence of the **incident** and/or to address its consequences.

# **INDEPENDENT AUDIT**

- 39) The approval holder must ensure that an **independent audit** of compliance with the conditions is conducted for every **audit period**.
- 40) The approval holder must submit details of the proposed **independent auditor** and their qualifications to the **department** within 10 **business days** following the end of each **audit period**.
- 41) The approval holder must ensure the scope of each **independent audit** is sufficient to determine the compliance status for each condition of approval, and each commitment made in each **plan**.
- 42) The approval holder must ensure the criteria for each **independent audit** and the undertaking of each **independent audit** are consistent with the **Independent Audit and Audit Report Guidelines**.
- 43) The approval holder must submit an **audit report** to the **department** for written agreement from the **department** within 3 months following the end of each **audit period**, or as otherwise directed by the **Minister** in writing.

- 44) The approval holder must ensure each **audit report** is completed to the satisfaction of the **Minister** and is consistent with the **Independent Audit and Audit Report Guidelines** to the extent that the Guidelines are consistent with these conditions.
- 45) The approval holder must publish each **audit report** on the **website**, in a format that is easily accessible and downloadable, within 10 **business days** of the date the **department** agrees to that **audit report** in writing.
- 46) The approval holder must notify the **department** within 5 **business days** of the date the **audit report** is published on the **website**. In this notification, the approval holder must provide the **department** with the web address for where the **audit report** is published on the **website**.
- 47) The approval holder must keep each **audit report** published on the **website** from the first date which that **audit report** must be published and until the expiry date of this approval.

# **COMPLETION OF THE ACTION**

- 48) 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.
- 49) 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.

**Note:** Section 145C of the **EPBC Act** entitles the approval holder to request an extension to the period of effect of this approval.

# Part C - Definitions

Words and terms appearing in **bold** (excluding headings) have the meaning assigned to them in the list below:

**Action area** means the location of the Action, represented in <u>Attachment B</u> by the zone enclosed by the red line and designated 'Site Boundary of proposed action'.

Annual Compliance Report period or ACR period means the 12-month period prior to the date on which the approval holder submits the Annual Report required under condition 6 of the NSW Approval and each subsequent 12-month period following the submission of the Annual Report so as to align with the NSW annual reporting period, until the expiry date of this approval, unless otherwise specified in writing by the Minister.

**Audit period** means each subsequent five-year period following the **commencement of the Action** until the expiry date of this approval unless otherwise specified in writing by the **Minister**.

Audit report means a written report of an independent audit.

**Biodiversity data** means 'biodiversity data' as described in the *Policy on Accessing and Sharing Biodiversity Data*, Commonwealth of Australia 2024.

**Biodiversity Stewardship Agreement** means a legal agreement between the owner of a parcel of land and the Minister responsible for the *Biodiversity Conservation Act 2016* (NSW) to establish a biodiversity stewardship site and create biodiversity credits.

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

**Clear, cleared** or **clearing** means the cutting down, felling, thinning, logging, removing, killing, destroying, poisoning, ringbarking, uprooting, or burning of vegetation but does not include control of specified weeds and specified fire management (see the *Australian Weeds Strategy 2017-2027*, Commonwealth of Australia 2017 for further guidance).

**Coastal Swamp Oak Forest** means the threatened ecological community *Coastal Swamp Oak* (*Casuarina glauca*) Forest of New South Wales and South East Queensland ecological community listed as endangered under the **EPBC Act**.

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:

- Undertake pre-clearance surveys or monitoring programs.
- Install signage and/or fencing to prevent unapproved use of the Action area, so long as the signage and/or fencing is located where it does not harm any protected matter.
- Protect environmental and property assets from fire, weeds, and feral animals, including use of existing surface access tracks.
- 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.
- Install environmental monitoring equipment or other items associated with preliminary investigation (such as surveying, engineering or geotechnical studies) so long as the environmental monitoring equipment or other items associated with preliminary investigation is located where it does not harm any protected matter.
- undertake soil sampling or geotechnical investigations provided these cause only minor physical disturbance, will not harm any protected matter and are required in advance of commencement of site works.
- undertake environmental management, monitoring or investigation measures that will not harm any protected matters, including:
  - for the maintenance of drains and easements (including the removal of vegetation that
    obstructs the flow of water), in accordance with the Stormwater Water Management Plan
    (revision 8, dated 22 April 2024) and the Groundwater Management Plan (revision 4, dated
    19 April 2024) prepared in accordance with condition 2 of EPBC 2007/3433 and as approved
    by the department on 12 July 2024
  - for remediation of land (where required by the **NSW Approval**)
  - for the installation of groundwater monitoring wells

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 the approved Action have permanently ceased and/or been completed.

**Compliance records** means all documentation or other material in whatever form required to demonstrate compliance with these 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, these conditions (including compliance with commitments made in **plans**).

# **Construction** means:

- the erection of a building or structure that is, or is to be, fixed to the ground and wholly or partially fabricated on-site,
- the alteration, maintenance, repair or demolition of any building or structure,
- any work which involves breaking of the ground (including pile driving) or bulk earthworks,
- the laying of pipes and other prefabricated materials in the ground, and
- any associated excavation work.

**Construction** does not include the measures listed as exceptions to **commence the Action**.

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

**Environmental Management Plan Guidelines** means the *Environmental Management Plan Guidelines*, Commonwealth of Australia 2024.

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

Evidence means signed documentation from the relevant authority.

**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.

**Hunter Estuary Wetlands** means the Hunter Estuary Wetlands Ramsar Site, represented in <u>Attachment A</u> by the zones enclosed in blue lines and designated 'Ramsar Wetlands'.

# **Incident** means any:

- event which has the potential to, or does, harm any protected matter,
- potential non-compliance with these conditions, including the administrative requirements,
- actual non-compliance with these conditions, including the administrative requirements,
- potential non-compliance with one or more commitment made in a plan, and/or
- actual non-compliance with one or more commitment made in a plan.

**Independent audit** means an audit, conducted by an **independent auditor**, of compliance with and fulfilment of these conditions and the commitments made in **plans**, objectively evaluated against the audit criteria developed by the **independent auditor**, in accordance with the **Independent Audit and Audit Report Guidelines** to the extent that the Guidelines are consistent with these conditions.

**Independent Audit and Audit Report Guidelines** means the *Environment Protection and Biodiversity Conservation Act 1999 Independent Audit and Audit Report Guidelines*, Commonwealth of Australia 2019.

# Independent auditor 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,
- has demonstrated experience in undertaking government-regulated environmental compliance audits, and
- holds relevant professional qualifications and accreditations.

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

**NSW Approval** means the NSW Government Modification of Development Consent for the Northbank Enterprise Hub made under Section 4.55(2) of the *Environmental Planning & Assessment Act 1979*, for application number MP10\_0185, approved on 29 June 2014, as in effect on the date of this approval decision. At the date of this decision, the NSW approval can be accessed at the following webpage address: Northbank Industrial Facility | Planning Portal - Department of Planning and Environment.

NSW Planning Secretary means the Planning Secretary as defined in the NSW Approval.

**Off-site offset** means the area represented in <u>Attachment C</u> by the zones shaded orange and designated 'Meets EPBC Act Listing' but excluding the zone enclosed by the black solid line and cross-hatched with black lines designated 'Exclusion Area (not included in Biodiversity Offset Strategy)'.

**On-site offset** means the areas represented in <u>Attachment B</u> by the zones enclosed by the dashed green lines designated 'Offset Areas'.

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

**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 a **Biodiversity Stewardship Agreement**, or another enduring protection mechanism agreed to in writing by the **department**, to provide protection for the site against development incompatible with conservation.

<sup>\*</sup>Other than for the purpose of undertaking the role for which an independent person, or firm, is required.

**Sensitive biodiversity data** means **biodiversity data** which, if released, published or otherwise exposed, may result in **harm** to the relevant **protected matter** as a result of the intentional or unintentional misuse of that **biodiversity data**.

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

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

**SMART** means specific, measurable, achievable, relevant and time bound.

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

- 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 plans achieved the desired habitat quality for habitat of protected matters, and
- 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.

**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 – Maps of Hunter Estuary Wetlands Ramsar Site

Attachment B - Location of Action and On-site offsets

Attachment C – Location of Off-site offsets