



APPROVAL

Callala Bay Residential Development, Jervis Bay, NSW (EPBC 2020/8637)

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

Details

Person to whom the approval is granted (approval holder)	Sealark Pty Limited
ABN of approval holder	81 075 795 587
Action	To undertake a residential development in Callala Bay, NSW [see referral EPBC 2020/8637]

Approval decision

My decision on whether or not to approve the taking of the action for the purposes of the controlling provision for the action is as follows.

Controlling Provisions

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

Period for which the approval has effect

This approval has effect until 30 April 2041.

Decision-maker

<i>Name and position</i>	Miriam Gerrick Acting Assistant Secretary Environment Assessments (NSW, ACT) Branch
<i>Signature</i>	
<i>Date of decision</i>	1 June 2021

Conditions of approval

This approval is subject to the conditions under the EPBC Act as set out in ANNEXURE A.

ANNEXURE A – CONDITIONS OF APPROVAL

Part A – Conditions specific to the action

1. The approval holder must not **clear** any **protected matters** outside of the **development footprint**.
2. The approval holder must not **clear** more than 1.10 ha of **Yellow Gnat-orchid habitat** within the **development footprint**.

Mitigation and management measures

3. To protect the **Yellow Gnat-orchid** individuals within the **Bushland Park**, the approval holder must, prior to the **commencement of the action**, construct temporary fencing that will effectively exclude all but people authorised to undertake conservation management to benefit the **Yellow Gnat-orchid** individuals from entering the proposed **Bushland Park**, and maintain the fencing and exclusion of all but authorised people from entering the proposed **Bushland Park** until **Shoalhaven City Council** takes ownership of the **Bushland Park**.
4. The approval holder must, prior to the **commencement of the action**, provide evidence to the **Department** that the temporary fencing of the **Bushland Park** has been constructed and what measures are in place to exclude unauthorised persons from entering the proposed **Bushland Park** until **Shoalhaven City Council** takes ownership of the **Bushland Park**.
5. For the protection of the **Yellow Gnat-orchid** in the **Bushland Park**, the approval holder must, prior to the **commencement of the action**, submit a Construction Environment Management Plan (CEMP) to the **Minister** for approval. The CEMP must include:
 - a. a description of the management actions that will be implemented prior to, during and following **construction** to protect the **Yellow Gnat-orchid**, including from stormwater discharge and road runoff, sediment and erosion control, unauthorised access and invasion by exotic species and weeds;
 - b. monitoring provisions (methods, timing, frequency and effort) for the population of **Yellow Gnat-orchid** within the **Bushland Park** that are suitable and effective for identifying the **Yellow Gnat-orchid** population and capable of identifying any trend suggesting possible decline of the health and/or size of the **Yellow Gnat-orchid** population;
 - c. measures to be implemented in the event that monitoring indicates a decline in the health or size of the **Yellow Gnat-orchid** population. The measures to be implemented must be based on the advice of an **orchid expert** and details of the qualifications and experience of the **orchid expert** must be included in the CEMP; and
 - d. provisions for reporting the results of the **Yellow Gnat-orchid** monitoring, which should include notifying the **Department** of any finding of concern and publishing monitoring data and findings in **compliance reports**.
6. The approval holder must not **commence the action** unless the **Minister** has approved the CEMP in writing. The approval holder must implement the approved CEMP until ownership of the **Bushland Park** is transferred to the **Shoalhaven City Council**.
7. The approval holder must notify the **Department** in writing of the date of registration of the last lot within 30 **business days** of the registration occurring.
8. The approval holder must continue to monitor and report on findings in relation to the population of the **Yellow Gnat-orchid** within the **Bushland Park** in accordance with the approved CEMP for five years after the registration of the last lot.

9. Prior to the completion of **construction**, the approval holder must provide the **Department** with details of how and when ownership and management of the **Bushland Park** will be transferred to the **Shoalhaven City Council** and evidence of the **Shoalhaven City Council** agreeing to take ownership of the **Bushland Park**.
10. The approval holder must provide the **Department** with written evidence of the date the **Bushland Park** is classified as **community land** under section 33 of the *Local Government Act 1993* (NSW) within 30 **business days** of the **Bushland Park** being classified as **community land** under the *Local Government Act 1993* (NSW).
11. Within 30 **business days** of the **Shoalhaven City Council** taking ownership of the **Bushland Park**, the approval holder must notify and provide evidence to the **Department** in writing that the transfer of ownership has occurred, and provide details of the management actions that the **Shoalhaven City Council** will implement to protect the **Yellow Gnat-orchid** in the **Bushland Park**.

Compensation measures

12. Prior to the **commencement of the action**, to compensate for the **clearing of Greater Glider habitat** and **Spot-tailed Quoll habitat**, the approval holder must **secure** at the **Lake Wollumboola BioBank site**, a minimum of 127.44 ha of **Greater Glider habitat** and **Spot-tailed Quoll habitat**.
13. Prior to the **commencement of the action**, to compensate for the clearing of 1.10 ha of **Yellow Gnat-orchid habitat** in the **development footprint**, the approval holder must **secure** 2 ha of **Yellow Gnat-orchid habitat** in the **Lake Wollumboola BioBank site**.
14. The approval holder must provide the **Biobanking Agreement** for the **Lake Wollumboola Biobank site** to the **Department**, prior to the **commencement of the action**.
15. The approval holder must implement the management actions stipulated in the **BioBanking Agreement** for the **Lake Wollumboola BioBank site** until ownership of the **Lake Wollumboola BioBank site** is transferred to **National Parks and Wildlife Services**.
16. Prior to the completion of **construction**, the approval holder must provide the **Department** in writing details of how and when ownership and management of the **Lake Wollumboola BioBank site** will be transferred to the **National Parks and Wildlife Services**.
17. Within 30 **business days** of the **National Parks and Wildlife Services** taking ownership and management of the **Lake Wollumboola BioBank site**, the approval holder must notify and provide evidence to the **Department** in writing that the transfer has occurred.

Part B – Standard administrative conditions

Notification of date of commencement of the action

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

Compliance records

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

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

Submission and publication of plans

22. The approval holder must:
- submit **plans** electronically to the **Department** for approval by the **Minister**;
 - publish each **plan** on the **website** within 20 **business days** of the date the **plan** is approved by the **Minister** or of the date a revised action management plan is submitted to the **Minister** or the **Department**, unless otherwise agreed to in writing by the **Minister**;
 - exclude or redact **sensitive ecological data** from **plans** published on the **website** or provided to a member of the public;
 - keep **plans** published on the **website** until the end date of this approval.
23. The approval holder must ensure that any **monitoring data** (including **sensitive ecological data**), surveys, maps, and other spatial and metadata required under the conditions of this approval, is prepared in accordance with the **Department's Guidelines for biological survey and mapped data** (2018) and submitted electronically to the **Department** in accordance with the requirements of the **plans**.

Annual compliance reporting

24. The approval holder must prepare a **compliance report** for each 12-month period following the date of **commencement of the action**, or otherwise in accordance with an annual date that has been agreed to in writing by the **Minister**. The approval holder must:
- publish each **compliance report** on the **website** within 60 **business days** following the relevant 12 month period;
 - notify the **Department** by email that a **compliance report** has been published on the **website** and provide the weblink for the **compliance report** within 5 **business days** of the date of publication;
 - keep all **compliance reports** publicly available on the **website** until this approval expires;
 - exclude or redact **sensitive ecological data** from **compliance reports** published on the **website**; and
 - where any **sensitive ecological data** has been excluded from the version published, submit the full **compliance report** to the **Department** within 5 **business days** of publication.

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

Reporting non-compliance

25. The approval holder must notify the **Department** in writing of any: **incident**; non-compliance with the conditions; or non-compliance with the commitments made in **plans**. The notification must be given as soon as practicable, and no later than 2 **business days** after becoming aware of the **incident** or non-compliance. The notification must specify:
- any condition which is or may be in breach;
 - a short description of the **incident** and/or non-compliance; and
 - the location (including co-ordinates), date, and time of the **incident** and/or non-compliance. In the event the exact information cannot be provided, provide the best information available.
26. The approval holder must provide to the **Department** the details of any **incident** or non-compliance with the conditions or commitments made in **plans** as soon as practicable and no later than 10 **business days** after becoming aware of the **incident** or non-compliance, specifying:
- any corrective action or investigation which the approval holder has already taken or intends to take in the immediate future;

- b. the potential **impacts** of the **incident** or non-compliance; and
- c. the method and timing of any remedial action that will be undertaken by the approval holder.

Independent audit

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

Revision of action management plans

30. The approval holder may, at any time, apply to the **Minister** for a variation to an action management plan approved by the **Minister** under condition 5 or as subsequently revised in accordance with these conditions, by submitting an application in accordance with the requirements of section 143A of the **EPBC Act**. If the **Minister** approves a revised action management plan then, from the date specified, the approval holder must implement the revised action management plan in place of the previous action management plan.

Completion of the action

31. Within 20 **business days** after the **completion of the action**, the approval holder must notify the **Department** in writing and provide **completion data**.

Part C - Definitions

In these conditions, except where contrary intention is expressed, the following definitions are used:

BioBanking Agreement has the meaning given under the under the *Threatened Species Conservation Act 1995 (NSW)*, as amended and repealed, or an equivalent under a successor mechanism under the *Biodiversity Conservation Act 2016 (NSW)*.

Bushland Park means the area of at least 2.71 ha indicatively shown by green and white shading designated as 'Retained pocket park' and 'concrete path' in the map at Attachment B.

Business day means a day that is not a Saturday, a Sunday or a public holiday in the state or territory of the action.

Clear, Cleared, Clearing means the cutting down, felling, thinning, logging, removing, killing, destroying, poisoning, ringbarking, uprooting or burning of vegetation (but not including weeds – see the *Australian weeds strategy 2017 to 2027* for further guidance).

Commencement of the action/commence the action means the first instance of any specified activity associated with the action including **clearing** and **construction**. **Commencement of the action** does not include minor physical disturbance necessary to:

- i. undertake pre-clearance surveys or monitoring programs;

- ii. install signage and /or temporary fencing to prevent unapproved use of the proposed action area;
- iii. protect environmental and property assets from fire, weeds and feral animals, and use of existing surface access tracks;
- iv. install temporary site facilities for persons undertaking the above activities so long as these are located where they have no **impact** on the **protected matters**.

Community land means land categorised as bushland under section 36J of the *Local Government Act 1993* (NSW).

Completion data means an environmental report and spatial data information clearly detailing the date, location, and the approved and actual total areas of **protected matters cleared**. The **Department's** preferred spatial data format is **shapefile**.

Completion of the action means all specified activities associated with the action have permanently ceased.

Compliance records means all documentation or other material in whatever form required to demonstrate compliance with the conditions of approval in the approval holder's possession or that are within the approval holder's power to obtain lawfully.

Compliance report/s means written reports:

- i. providing accurate and complete details of compliance, **incidents**, and non-compliance with the conditions and the **plans**;
- ii. consistent with the **Department's Annual Compliance Report Guidelines** (2014);
- iii. include a **shapefile** of any clearance of any **protected matters**, or their habitat, undertaken within the relevant 12 month period; and
- iv. annexing a schedule of all **plans** prepared and in existence in relation to the conditions during the relevant 12 month period.

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; preliminary site preparation work which involves breaking of the ground and/or **clearing** native vegetation; the laying of pipes and other prefabricated materials in the ground, and any associated excavation work; but excluding the installation of temporary fences and signage.

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

Development footprint means the area labelled 'development footprint' and shown in orange shading in the map at [Attachment A](#).

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

Greater Glider means the Greater Glider (*Petauroides volans*), listed as a vulnerable species under the **EPBC Act**.

Greater Glider habitat means species habitat preferred by the **Greater Glider** where the species may occur, and any known **Greater Glider** habitat. A list of key species habitat characteristics is given in the *Conservation Advice Petauroides volans greater glider*, which is available on the **Department's** website.

Impact/s means to cause any measurable direct or indirect disturbance/change as a result of any activity associated with the proposed action.

Incident(s) means any event which has the potential to, or does, **impact** on one or more **protected matter(s)** other than as authorised by this approval.

Independent audit(s) means an audit conducted by an independent and **suitably qualified person** as detailed in the *Environment Protection and Biodiversity Conservation Act 1999 Independent Audit and Audit Report Guidelines (2015)*.

Lake Wollumboola BioBank site means the five areas enclosed by light green lines and the northern 'site boundary' shown in red, designated in the map at Attachment C as 'Lake Wollumboola BioBank site (BA364)'.

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

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

National Parks and Wildlife Services means the NSW governmental organisation responsible for managing NSW national parks and reserves.

New or increased impact means a new or increased environmental **impact** or risk relating to any **protected matter**, when compared to the likely **impact** of implementing the action management plan that has been approved by the **Minister** under the conditions including any subsequent revisions approved by the **Minister**, as outlined in the *Guidance on 'New or Increased Impact' relating to changes to approved management plans under EPBC Act environmental approvals (2017)*.

Orchid expert means a person who has professional qualifications and at least three years of work experience managing or studying and preparing prescriptions for the management of the **Yellow Gnat-orchid** and can give an authoritative assessment and advice on the management requirements of the **Yellow Gnat-orchid** using relevant protocols, standards, methods and/or literature.

Plan(s) means any of the documents required to be prepared, approved by the **Minister**, implemented by the approval holder and/or published on the **website** in accordance with these conditions (includes action management plans and/or strategies).

Protected matters means the **Greater Glider, Spot-tailed Quoll, Yellow Gnat-orchid** and their habitats.

Secure/secured means ensure the long-term protection under a legal mechanism in accordance with the NSW Government's BioBanking Scheme created under the *Threatened Species Conservation Act 1995 (NSW)* as amended and repealed or an equivalent biodiversity offsetting mechanism under the *Biodiversity Conservation Act 2016 (NSW)*.

Sensitive ecological data means data as defined in the Australian Government Department of the Environment (2016) *Sensitive Ecological Data – Access and Management Policy V1.0*.

Shapefile means an ESRI Shapefile containing .shp, .shx, .dbf and prj files and other files capturing attributes of the area, including the shape (including specification of the projection or coordinate system), EPBC reference ID number and **EPBC Act protected matters** present at the relevant site. Attributes should also be captured in .xls format.

Shoalhaven City Council means the governing body responsible for administration of local government responsibilities in the Shoalhaven local government area.

Spot-tailed Quoll means the Spot-tailed Quoll (*Dasyurus maculatus maculatus – SE mainland population*), listed as an endangered species under the **EPBC Act**.

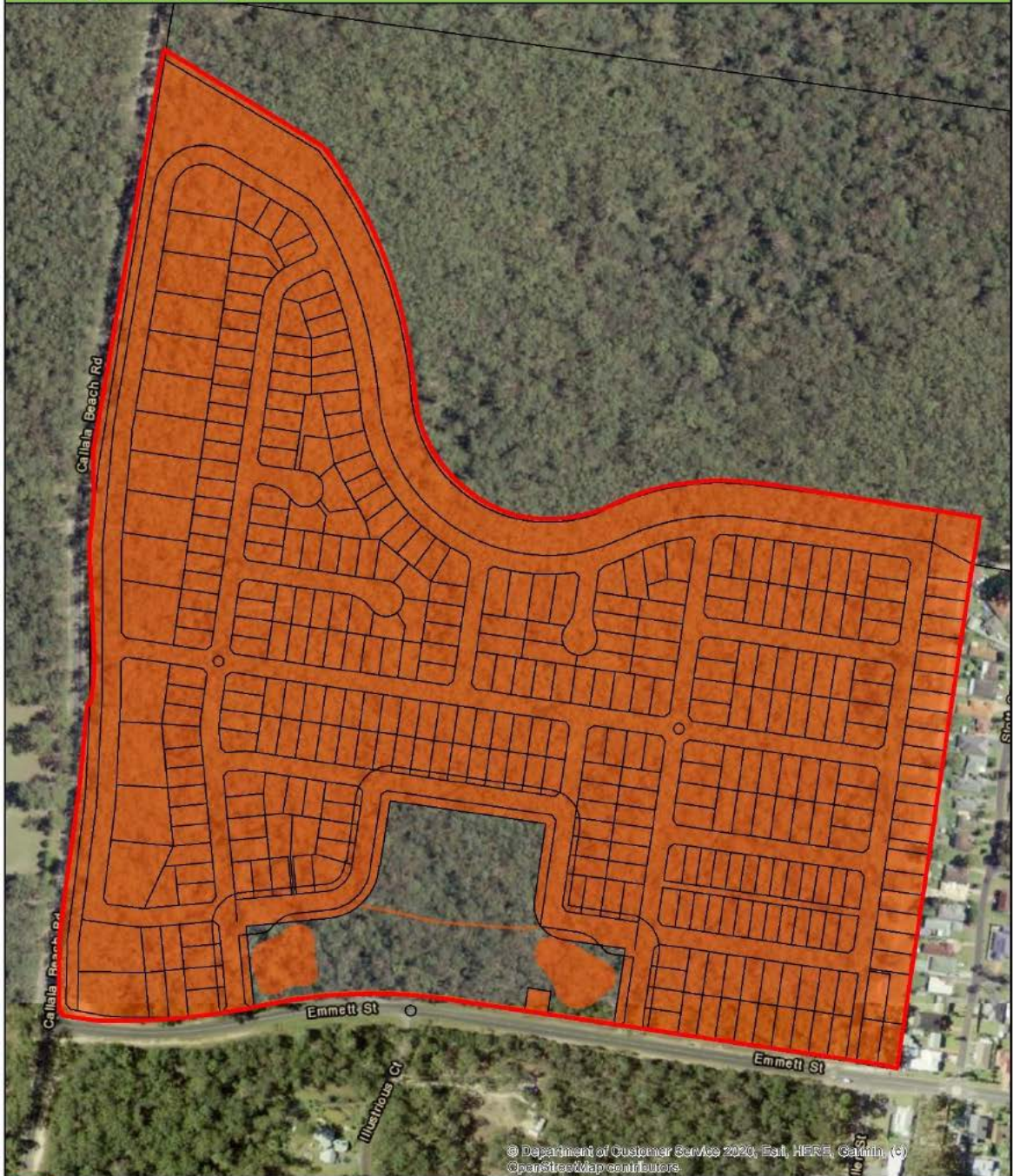
Spot-tailed Quoll habitat means species habitat preferred by the **Spot-tailed Quoll** where the species may occur, and any known **Spot-tailed Quoll** habitat. A list of key species habitat characteristics is given in the *Conservation Advice Dasyurus maculatus maculatus (southeastern mainland population) Spot-tailed Quoll* and *National Recovery Plan for the Spotted-tailed Quoll Dasyurus maculatus*, which are available on the **Department’s** website.

Suitably qualified person means a person with professional qualifications, training, skills and experience directly relevant to the subject matter of the audits.




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

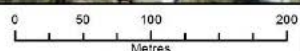
Yellow Gnat-orchid means the Yellow Gnat-orchid (*Genoplesium baueri*), listed as an endangered species under the **EPBC Act**.

Yellow Gnat-orchid habitat means species habitat preferred by the Yellow Gnat-orchid where the species may occur, and any known Yellow Gnat-orchid habitat. A list of key species habitat characteristics is given in the *Conservation Advice Genoplesium baueri (Yellow Gnat-orchid)* which is available on the **Department’s** website. The Yellow Gnat-orchid habitat to be cleared is shown by red shading designated as ‘extent of suitable habitat for *Genoplesium baueri*’ in the map at [Attachment C](#).



© Department of Customer Service 2020, Esri, HERE, Garmin, (c)
© OpenStreetMap contributors

-  Site Boundary
-  Development Footprint
-  Layout

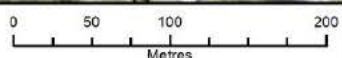


Datum/Projection:
GDA 1994 MGA Zone 56



© Department of Customer Service 2020, Esri, HERE, Garmin, (c) OpenStreetMap contributors

- Site Boundary
- Layout
- APZ
- Concrete footpath
- Retained pocket park
- Sewer easement (3m wide)
- Sewer pumping station
- Water quality pond

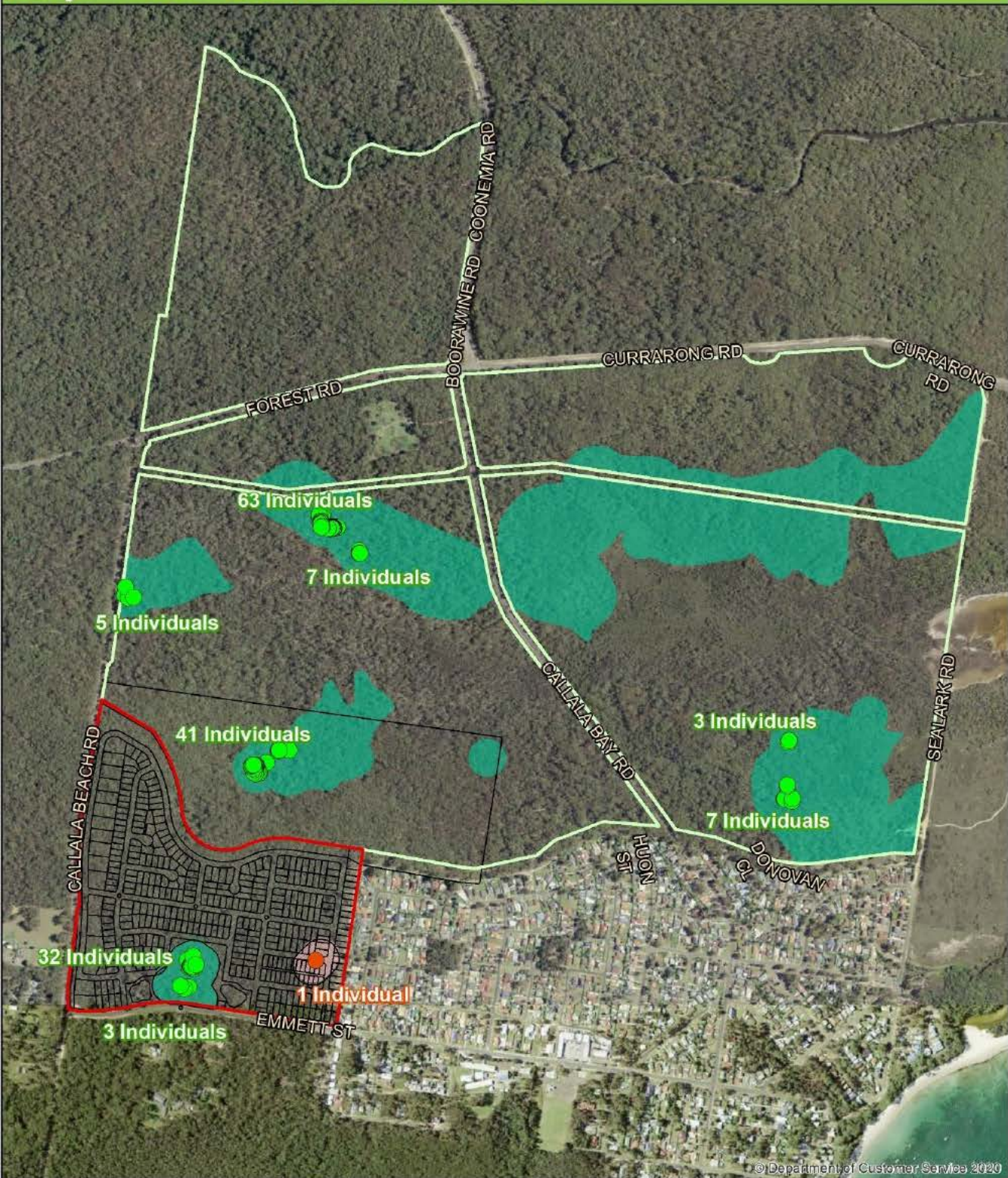


Datum/Projection:
GDA 1994 MGA Zone 56

N

eco
logical
AUSTRALIA
A TETRA TECH COMPANY

Prepared by: VH/NR Date: 29/10/2020



© Department of Customer Services 2020

<p>Site Boundary</p> <p>Lake Wollumboola Biobank Site (BA364)</p> <p>Layout</p>	<p>Impacted Threatened Species</p> <ul style="list-style-type: none"> ● <i>Genoplesium baueri</i> ELA (1 Individual in 2016) Extent of suitable habitat for <i>Genoplesium baueri</i> <p>Conserved Threatened Species</p> <ul style="list-style-type: none"> ● <i>Genoplesium baueri</i> ELA (161 Individuals in 2016) Extent of suitable habitat for <i>Genoplesium baueri</i> 	<p>0 100 200 400</p> <p>Metres</p> <p>Datum/Projection: GDA 1994 MGA Zone 56</p>
<p>N</p>		<p>eco logical AUSTRALIA A TETRA TECH COMPANY</p>
<p>Prepared by: VH/NR Date: 17/11/2020</p>		