

Bingara Gorge EPBC 2014 / 7400 Annual Compliance  
Report 2021 - 2022

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**Prepared for Bingara Development Pty Ltd**

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Template 2.8.1

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# 1. Introduction

## 1.1 Project background

Bingara Gorge is an 1,800 lot residential development south west of Sydney near Wilton. The development footprint includes associated infrastructure, conservation land, open space, parklands and community recreation areas and covers 274.83 ha (incorporating both development and conservation lands). A majority of the development areas consist of cleared land or disturbed vegetation which has resulted from former agricultural land uses including cattle grazing.

The project was referred to the then Commonwealth Department of Environment and Energy (DotEE) (now Department of Climate Change, Energy, Environment and Water (DCCEEW), herein referred to as 'the Department' throughout this report) on 9 December 2014 under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The Department determined that the proposed action was a controlled action. A preliminary documentation was prepared, and the proposed action was approved on 3 December 2019.

Eco Logical Australia Pty Ltd (ELA) has prepared this compliance report on behalf of the proponent, Bingara Development Pty Ltd (Bingara Development), to assess compliance with the conditions for the period from May 2021 – July 2022 as set out in the EPBC Act conditions of approval (EPBC 2014 / 7400).

## 1.2 Project status

### 1.2.1 Prior to the commencement of the action

As per condition 3 of the approval, Lendlease provided the Department with evidence that Environmental Protection & Recreation (EP&R) lands were transferred with the registration of Community Plan Lot 1 DP270536 to the ownership of the Community Association "BG Environment" registered on 9 Oct 2012. The Department approved the Bingara Gorge Environmental Management Plan, referred to in conditions 2, 7, 8 and 9, on 6 May 2019.

### 1.2.2 Commencement of works

The proposed action commenced on 23 May 2019 in Stage 1, including bulk earthworks within stages 1J, 1K, 4AB, 4CD and Greenbridge Stage 5D (Table 1). Development staging is presented in Figure 1.

**Table 1: Indicative stages of the Bingara Gorge development**

Stage	Approximate timeframe	Components
Stage 1	2018 - 2020	Golf "Y" Bridge, Stringybark Creek Road Bridge, Greenbridge East, Fairways East (Stages 1J, 1K and Country Club Stage 2), Telstra Tower and Greenbridge Stage 5D, Stage 4AB
Stage 2	2020 - 2023	Golf Town, Fairways North, Stage 4CD
Stage 3	2023 - 2025	Fairways North (remainder) and Fairways West.
Stage 4	2024 - 2025	Golf Town North

### 1.3 Variations

A variation to the EMP is in progress and seeks amendments to permissible management actions in the EMP boundary. The EMP updates also clarify the roles and responsibility of the Ranger, and any other contractors working in proximity to the EMP lands.

Consistent with condition 23, the Department was consulted with regarding the EMP revisions.

Following the completion of a new bushfire assessment, the approved Environmental Management Plan (EMP; ELA 2019 v5) will be amended to reflect the reduction in residential lots in Stage 4. Portions of the footprint previously attributed to residential development would be used as bushfire Asset Protection Zones (APZs). This change in footprint will not result in a new or increased impact and is detailed in **Section 3.1**. Subject to Condition 23, the Department will be notified of the revised EMP.

### 1.4 Change of approval holder

The previous approval holder; Lendlease Communities (Wilton) requested to transfer EPBC 2014 / 7400 to Bingara Development Pty Ltd on 9 August 2021. The Department approved the request to transfer on 11 April 2022 to Bingara Development Pty Ltd (ACN 650 165 763) as trustee of the Bingara Gorge Development Trust (ABN 60 259 568 989) (Appendix I).

### 1.5 Reason for this report

This report has been prepared consistent with Condition 15 of the approval (EPBC 2014/7400) which states:

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

- a. publish each compliance report on the website within 60 business days following the relevant 12 month period;*
- b. notify the Department by email that a compliance report has been published on the website within five business days of the date of publication; and*
- c. keep all compliance reports publicly available on the website until this approval expires.*

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

ELA has prepared this compliance report on behalf of Lendlease determining the compliance of the conditions set out by the Department. As the works commenced on 23 May 2019, the annual reporting is due 13 August 2022 (i.e., 60 business days within the 12-month anniversary). The following sections outline compliance relevant to each condition and additional information relevant to the action.



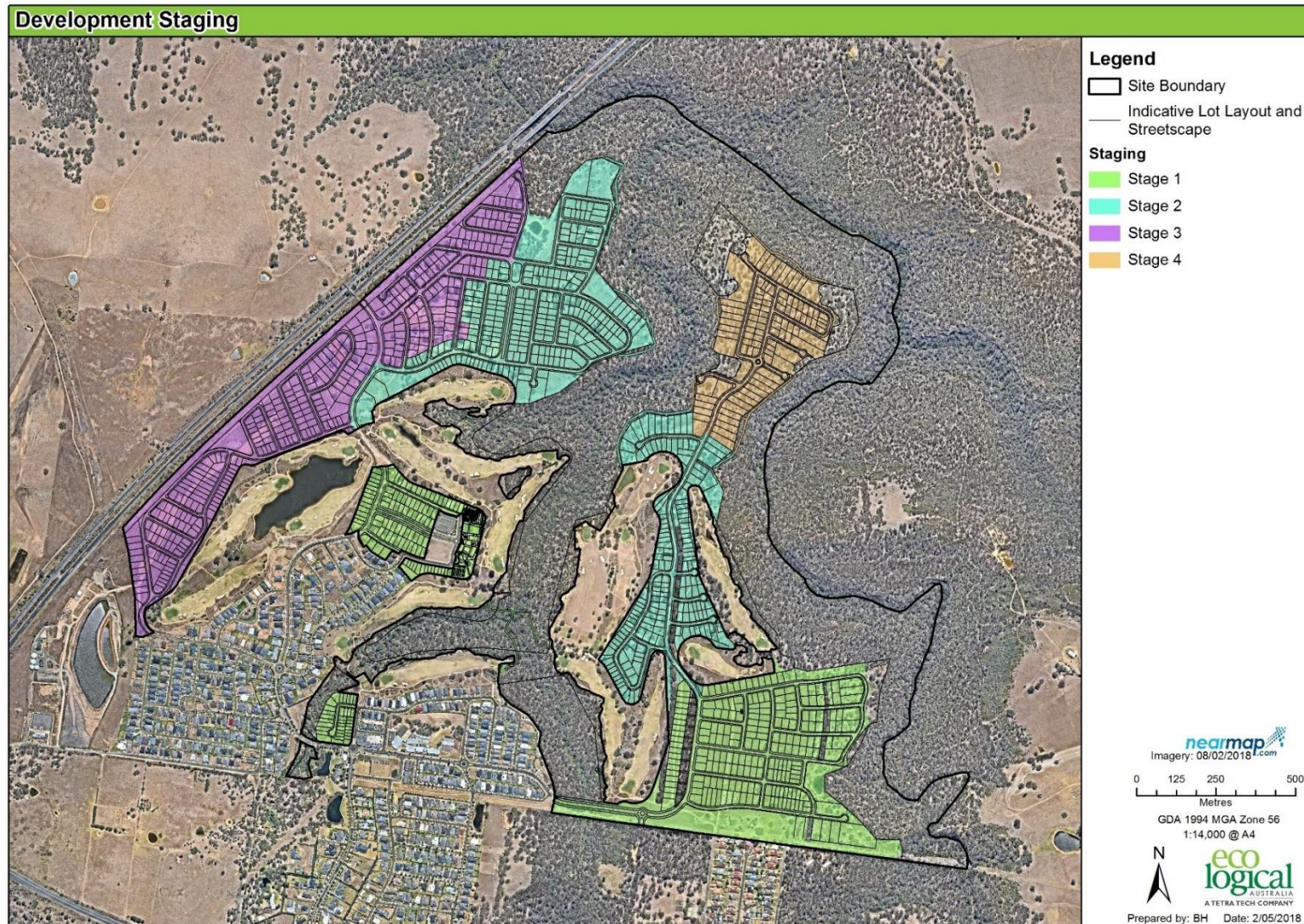


Figure 1: Development staging at Bingara Gorge EPBC 2014 / 7400

## 2. Compliance reporting

Condition approvals for this action (EPBC 2014/7400), and their compliance status, are presented in Table 2.

**Table 2: Compliance with conditions of approval**

Condition No.	Condition	Compliance Y / N	Date due	Details
1	The approval holder must ensure that clearing of protected matters is limited to the area designated for 'development' in Attachment 1.	Potential non-compliance	Ongoing	The former approval holder (Lendlease) became aware of a potential non-compliance of this condition on 7 May 2021 and first notified the Department days on 10 June 2021 ( <b>Appendix A</b> ). Additional information was provided on 13 May 2021 and a second response provided on 25 May 2021 ( <b>Appendix B</b> ). Investigations and communication with the Department regarding this potential incident was ongoing throughout May – December 2021. Lendlease made a precautionary notification of a potential incident on 9 July 2021. With respect to both notifications, a formal warning was issued to the former approval holder on 20 January 2022 (Appendix C).
2	To minimise impacts on protected flora in the EP&R Lands for the life of the approval, the approval holder must erect fencing in the locations shown on the plan in Attachment 2 and signage regarding the purpose of restricting access. The design and location of fencing and signage, and measures to maintain the fence and signage at least until the end date of this approval, must be specified in the Environmental Management Plan (EMP) required under conditions 7 - 9.	N/A	The approved EMP ( <b>Appendix D</b> ) states that fencing be erected "on a stage by stage basis, referring to the adjoining	Temporary fencing has been applied adjacent to works that have commenced in Stage 1 and Stage 2. Fencing has not been erected in stage 4 because no works have commenced in this stage. Stage 4 is due to commence in 2024-2025 ( <b>Appendix A</b> ).



Condition No.	Condition	Compliance Y / N	Date due	Details
			stage of development"	Lendlease made a precautionary notification of a potential incident on 9 July 2021. A formal warning was issued (Appendix C).
3	Prior to the commencement of the action, to compensate for the impacts of the action on protected matters, the approval holder must provide evidence to the Department demonstrating that the EP&R Lands have been dedicated for environmental protection and community recreation, in accordance with the Planning Agreement of 2 October 2012 at Attachment 5, to be owned and managed by a Community Association under the <i>Community Land Management Act 1989</i> (NSW).	Y	Prior to commencement of the action	Lendlease provided evidence to the Department on 8 May 2019 ( <b>Appendix E</b> ). The action commenced 23 May 2019.
4	Prior to the commencement of stage 4, to offset the impacts of the action on 8.42 hectares of SSTF as a result of stage 4, the approval holder must secure a minimum of 18.3 hectares of SSTF at the Fernhill North West biobanking site.	N/A	Prior to the commencement of stage 4	Stage 4 to commence 2024-2025. Bingara Development holds a Sale and Purchase Agreement of Biodiversity Credits ( <b>Appendix F</b> ).
5	To offset the impacts of the action on 9.85 hectares of SSTF as a result of stage 4, the approval holder must submit for the Minister's approval, an offset proposal in accordance with the EPBC Act environmental offsets policy. Stage 4 of the action must not commence unless the Minister approves the offset proposal and the offset is secured.	N/A	Prior to the commencement of stage 4	Stage 4 to commence 2024-2025.
6	Within 10 business days of securing the relevant offset specified in Condition 4 and Condition 5, the approval holder must provide the Department with evidence of when the offset was secured and what mechanism was used to secure the offset.	N/A	Prior to the commencement of stage 4	Stage 4 to commence 2024-2025.
7	For the protection of protected matters in the EP&R Lands, the approval holder must submit an EMP for the Minister's approval. If the Minister approves the EMP, then the approved EMP must be implemented.	In progress	The EMP must be approved prior to commencement of the action (as per Condition 8)/ Implementation of the EMP is ongoing	EMP submitted February 2019 and approved 6 May 2019 ( <b>Appendix G</b> ). Implementation of EMP commenced with the installation of temporary fencing adjacent to Stage 1 works.

Condition No.	Condition	Compliance Y / N	Date due	Details
8	The approval holder must not commence the action unless the Minister has approved the EMP in writing.	Y	Prior to commencement of the action	EMP approved 6 May 2019 ( <b>Appendix G</b> ). Action commenced 23 May 2019.
9	<p>The EMP must be consistent with the Department's Environmental Management Plan Guidelines, and must include:</p> <ol style="list-style-type: none"> <li>The EMP environmental objectives, relevant to protected matters and a reference to EPBC Act approval conditions, including condition 2, to which the EMP refers;</li> <li>A table of commitments made in the EMP to achieve the objectives, and a reference to where the commitments are detailed in the EMP;</li> <li>Details of the parties responsible for undertaking management actions;</li> <li>A description of the management actions that will be implemented pre, during and post construction, including for stormwater discharge and road runoff, sediment and erosion control, invasion by exotic species and weeds, and fencing and access;</li> <li>Hygiene protocols to minimise the risk of spread of <i>Phytophthora cinnamomi</i>;</li> <li>Reporting and review mechanisms, and documentation standards to demonstrate compliance with the EMP;</li> <li>An assessment of risks to achieving the EMP environmental objectives and risk management strategies that will be applied;</li> <li>Impact avoidance, mitigation and/or repair measures, and their timing; and</li> <li>A monitoring program, which must include: <ol style="list-style-type: none"> <li>measurable performance indicators;</li> <li>trigger values for corrective actions;</li> <li>the timing and frequency of monitoring to detect changes in the performance indicators and trigger values; and</li> <li>proposed corrective actions, if trigger values are reached.</li> </ol> </li> </ol>	Y	Prior to commencement of the action	The EMP is consistent with the Department Guidelines and includes items a to i ( <b>Appendix D</b> ). EMP approved 6 May 2019.
10	The approval holder must notify the Department in writing of the date of commencement of the action and the date of commencement of each stage of the	Y (Stage 1)	Within 10 business days after the date of	Lendlease notified the Department that Stage 1 commenced on 23 May 2019 with a letter dated 30 May 2019 ( <b>Appendix H</b> ).

Condition No.	Condition	Compliance Y / N	Date due	Details
	action as shown in Attachment 4 within 10 business days after the date of commencement of the action or the relevant stage of the action.		the commencement of each stage of the action	The commencement of Stage 2 was notified during the non-compliance communication in 2021.
11	If the commencement of the action does not occur within 5 years from the date of this approval, then the approval holder must not commence the action without the prior written agreement of the Minister	Y	December 2023	The action was approved 3 December 2018 and commenced 30 May 2019.
12	The approval holder must maintain accurate and complete compliance records.	Y	Ongoing	Lendlease and Bingara Gorge Development maintains and stores records internally.
13	If the Department makes a request in writing, the approval holder must provide electronic copies of compliance records to the Department within the timeframe specified in the request.	Y	N/A	Electronic copies of compliance records have not been requested by the Department during 2021/2022 compliance period.
14	The approval holder must: <ul style="list-style-type: none"> <li>a. submit plans electronically to the Department for approval by the Minister;</li> <li>b. publish each plan on the website within 20 business days of the date the plan is approved by the Minister or of the date a revised action management plan is submitted to the Department, unless otherwise agreed to in writing by the Minister; and</li> <li>c. keep plans published on the website until the end date of this approval.</li> </ul>	Y	b. Within 20 business days of the date the plan is approved c. Until 1 November 2038	Website: <a href="https://bingaragorge.com.au/resources">https://bingaragorge.com.au/resources</a>
15	The approval holder must prepare a compliance report for each 12 month period following the date of commencement of the action, or as otherwise agreed to in writing by the Minister. The approval holder must: <ul style="list-style-type: none"> <li>a. publish each compliance report on the website within 60 business days following the relevant 12 month period;</li> <li>b. notify the Department by email that a compliance report has been published on the website within five business days of the date of publication; and</li> </ul>	Y	a. Within 60 business days following each 12-month period b. within five business days of the date of publication	2021/2022 Annual compliance report prepared by ELA with assistance from Bingara Development. Website: <a href="https://bingaragorge.com.au/resources">https://bingaragorge.com.au/resources</a>

Condition No.	Condition	Compliance Y / N	Date due	Details
	c. keep all compliance reports publicly available on the website until this approval expires.		c. Until 1 November 2038	
16	<p>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 two business days after becoming aware of the incident or non-compliance. The notification must specify:</p> <ul style="list-style-type: none"> <li>a. the condition which is or may be in breach; and</li> <li>b. a short description of the incident and/or non-compliance.</li> </ul>	Y	Within two business days of becoming aware of the incident or non-compliance	Lendlease became aware of a potential incident on 7 May 2021 and notified the Department on 10 May 2021 ( <b>Appendix A</b> ). Additional information was provided on 13 May 2021. Lendlease made a precautionary notification of a potential incident on 9 July 2021. Both notifications were resolved with the issuing of a formal warning (Appendix C).
17	<p>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:</p> <ul style="list-style-type: none"> <li>a. any corrective action or investigation which the approval holder has already taken or intends to take in the immediate future;</li> <li>b. the potential impacts of the incident or non-compliance on protected matters; and</li> <li>c. the method and timing of any remedial action that will be undertaken by the approval holder.</li> </ul>	Y	Within 10 business days of becoming aware of the incident or non-compliance	Lendlease notified the Department on 10 May 2021 and further details were provided on 13 May 2021 ( <b>Appendix A</b> ). Details specified by this condition were provided to the Department on 25 May 2021. The notification was resolved with the issuing of a formal warning (Appendix C). The associated updates to the EMP have been made and submitted to the Department for review.
18	The approval holder must ensure that independent audits of compliance with the conditions are conducted as requested in writing by the Minister.	N/A	N/A	Independent audits not requested during 2021/2022 compliance period.
19	<p>For each independent audit, the approval holder must:</p> <ul style="list-style-type: none"> <li>a. provide the name and qualifications of the independent auditor and the draft audit criteria to the Department;</li> <li>b. only commence the independent audit once the audit criteria have been approved in writing by the Department; and</li> <li>c. submit an audit report to the Department within the timeframe specified in the approved audit criteria.</li> </ul>	N/A	N/A	Independent audits not requested during 2021/2022 compliance period.

Condition No.	Condition	Compliance Y / N	Date due	Details
20	The approval holder must publish the audit report on the website within 10 business days of receiving the Department's approval of the audit report and keep the audit report published on the website until the end date of this approval.	N/A	N/A	Independent audits not requested during 2021/2022 compliance period.
21	The approval holder may, at any time, apply to the Minister for a variation to an action management plan approved by the Minister under condition 7, or as subsequently revised in accordance with these conditions, by submitting an application in accordance with the requirements of section 143A of the EPBC Act. If the Minister approves a revised action management plan (RAMP) then, from the date specified, the approval holder must implement the RAMP in place of the previous action management plan.	N/A	N/A	A variation was requested during 2021/2022 compliance period to update the EMP in response to the formal warning that was issued as a result of the non-compliance. The revised EMP was submitted to the Department for review.
22	The approval holder may choose to revise an action management plan approved by the Minister under condition 7, or as subsequently revised in accordance with these conditions, without submitting it for approval under section 143A of the EPBC Act, if the taking of the action in accordance with the RAMP would not be likely to have a new or increased impact on protected matters.	N/A	N/A	Revisions that do not require resubmission to DCCEEW were not requested during 2021/2022 compliance period.
23	<p>If the approval holder makes the choice under condition 22 to revise an action management plan without submitting it for approval, the approval holder must:</p> <ol style="list-style-type: none"> <li>a. notify the Department in writing that the approved action management plan has been revised and provide the Department with: <ol style="list-style-type: none"> <li>i an electronic copy of the RAMP;</li> <li>ii an electronic copy of the RAMP marked up with track changes to show the differences</li> <li>iii between the approved action management plan and the RAMP;</li> <li>iv an explanation of the differences between the approved action management plan and the RAMP;</li> <li>v iv. the reasons the approval holder considers that taking the action in accordance with the RAMP would not be likely to have a new or increased impact on protected matters; and</li> <li>vi written notice of the date on which the approval holder will implement the RAMP (RAMP implementation date), being at least 20 business days after the date of providing notice of the revision of</li> </ol> </li> </ol>	N/A	N/A	Revisions that do not require resubmission to DCCEEW were not requested during 2021/2022 compliance period.



Condition No.	Condition	Compliance Y / N	Date due	Details
	<p>the action management plan, or a date agreed to in writing with the Department.</p> <p>b. subject to condition 25, implement the RAMP from the RAMP implementation date.</p>			
24	The approval holder may revoke its choice to implement a RAMP under condition 22 at any time by giving written notice to the Department. If the approval holder revokes the choice under condition 22, the approval holder must implement the previous action management plan approved by the Minister.	N/A	N/A	Revisions that do not require resubmission to DCCEEW were not requested during 2021/2022 compliance period.
25	<p>If the Minister gives a notice to the approval holder that the Minister is satisfied that the taking of the action in accordance with the RAMP would be likely to have a new or increased impact on protected matters, then:</p> <p>a. condition 22 does not apply, or ceases to apply, in relation to the RAMP; and</p> <p>b. the approval holder must implement the action management plan specified by the Minister in the notice.</p>	N/A	N/A	Revisions that do not require resubmission to DCCEEW were not requested during 2021/2022 compliance period.
26	At the time of giving the notice under condition 25, the Minister may also notify that for a specified period of time, condition 22 does not apply for one or more specified action management plans.	N/A	N/A	Revisions that do not require resubmission to DCCEEW were not requested during 2021/2022 compliance period.
27	Within 30 days after the completion of the action, the approval holder must notify the Department in writing and provide completion data.	N/A	Within 30 days after the completion of the action	The action has not been completed.

## 3. Additional information

### 3.1 Revision of the EMP

Following the May 2021 incident, ELA has become aware of an inconsistency within the EMP regarding golf holes that are adjacent to the EP&R lands. Holes 8 and 16 require play over the gorge and the EMP is intended to prescribe management actions of these areas to ensure that golf play can continue, and the EP&R lands are managed appropriately. The EMP currently reads holes 8 and 11 require play over the gorge which is incorrect. The EMP was updated to amend this error and was submitted to the Department for review. The review of the revised EMP is currently on hold and is yet to be approved by the Department.

### 3.2 May 2021 and June 2021 Incident

Lendlease notified a potential incident to the Department on 10 May 2021 with further information provided on 13 May 2021. This incident is further detailed in **Appendix A** and **Appendix B**. Lendlease made a precautionary notification of a potential incident to the Department on 9 July 2021. A formal warning was issued by the Department on 20 January 2022 for both incidents (Appendix C).



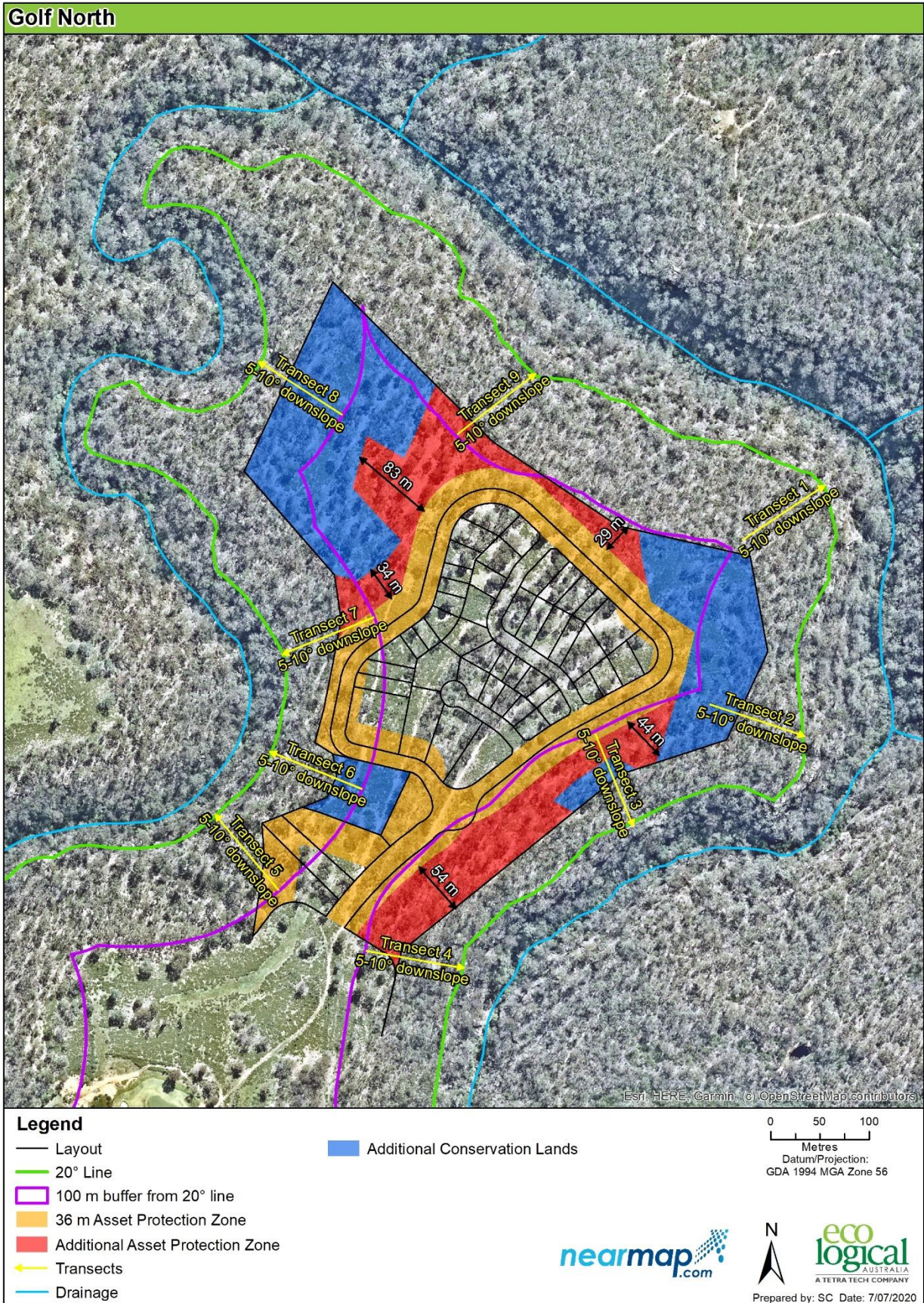


Figure 2: Revised Asset Protection Zones (ELA 2020)



## 4. Conclusion

Eco Logical Australia Pty Ltd, on behalf of Bingara Development Pty Ltd, has prepared this Compliance Report to fulfil Condition 15 of the approval (EPBC 2014/7400). Since the commencement of the action, there have been two potential non-compliances of Condition 1, with both occurring in previous reporting years. All associated documentation has been provided as appendices to this report.

Appendix A – Notification under Condition 16 of EPBC Approval 2014/7400 - Bingara Gorge staged residential development, NSW (Lendlease 10 May 2021 and Lendlease 13 May 2021)



## Appendix B – Notification under Condition 17 of potential incident in relation to EPBC Approval 2014/7400 Bingara Gorge staged residential development, NSW (Lendlease 25 May 2021)

## Appendix C - Formal warning issued for Notifications made under Condition 16 and Condition 17 of EPBC 2014 / 7400

## Appendix D – Bingara Gorge Environmental Management Plan (Eco Logical Australia 2019)

## Appendix E – EPBC 2014/7400 – Part A Condition 3 (Lendlease 8 May 2019)

## Appendix F – Sale and Purchase Agreement of Biodiversity Credits (Illawarra Coal Holdings Pty Ltd and Lendlease Communities (Australia) Limited)



## Appendix G – EPBC 2014/7400: Bingara Gorge staged residential development – Environmental Management Plan (DAWE 6 May 2019)

## Appendix H – EPBC 2014/7400 – Part B condition 10 (Lendlease 30 May 2019)

## Appendix I - Approval for Request to Transfer

