



Approval

Hotel and carpark development, Block 14 Section 22, Barton, ACT – Stage 1 (EPBC 2012/6606)

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

Proposed action

person to whom the approval is granted Section 22 Barton Pty Ltd

proponent's ACN ACN: 144 701 459

proposed action To develop stage 1 of a mixed use development, including a carpark, retail frontage and hotel, on Block 14, Section 22, Barton, ACT [See EPBC Act referral 2012/6606].

Proposed approval decision

Controlling provision	Decision
Listed threatened species and communities (sections 18 & 18A)	approve

Conditions of approval

This approval is subject to the conditions specified below.

Expiry date of approval

This approval has effect until 30 July 2033.

Decision maker

name and position Charmayne Murray
Acting Assistant Secretary
South-Eastern Australia Assessment Branch

signature

date of decision 4 October 2013

Conditions attached to the approval

1. For the better protection of **golden sun moth** at **York Park**, the person taking the action must prepare a *Construction Environment Management Plan* (CEMP), in consultation with a **suitably qualified expert**, to manage **construction** impacts of the action. The CEMP must include, but not necessarily be limited to:
 - a) specified dates or seasonal markers for **construction** for the avoidance of the **golden sun moth** flying season;
 - b) measures to prevent runoff water associated with the action from entering **York Park**;
 - c) measures to prevent dust deposition, sedimentation and erosion associated with the action from impacting on **York Park**;
 - d) erection of a temporary **construction** fence, that minimises perching sites for aerial predators, to confine **construction** to at least 3 metres from the boundary of **York Park** (with the exception of works associated with Condition 1e));
 - e) rehabilitation / landscaping of all disturbed surfaces using vegetation and / or materials that are compatible with **golden sun moth** habitat (including consideration of weed invasion and shading impacts of trees and large shrubs); and
 - f) site induction protocols for workers to emphasise the significance of the **golden sun moth** and **York Park** and the importance of protecting it during **construction**.

The CEMP must be submitted to **the minister** for approval prior to **commencement** of the action, and once approved, must be implemented. The action must not commence until the CEMP has been approved. **SUBMITTED 20/12/13 AND APPROVED ON THE AND 21/5/14 - WORKS NOW COMPLETE**

2. For the better protection of **golden sun moth** at **York Park**, the approval holder must engage a **suitably qualified expert** to prepare a *Golden Sun Moth Monitoring Plan* (GSMMP) to monitor impacts of the action on the **golden sun moth** population at **York Park** (in consideration of the requirements of the conditions of this approval). The GSMMP must include, but not necessarily be limited to:
 - a) the aims of monitoring and specific questions to be addressed in determining the nature and degree of shading impacts caused by the action on **golden sun moth** (including their habitat);
 - b) parameters (biological, physical and / or meteorological) that will be measured or otherwise acquired to assess and interpret impacts and how they relate to answering the specific questions at Condition 2a);
 - c) techniques (physical and / or statistical) that will be used to identify / isolate impacts of the proposed action from impacts of other nearby features and activities;
 - d) methodology for seasonal surveys, including timing and effort (must be based on a before-after control-impact (BACI) design, conducted at an ecologically optimal time and of sufficient scope / intensity to answer the specific questions without producing pseudo-replication);
 - e) definition of baseline conditions of **golden sun moth** and its habitat at **York Park** that includes data from at least one winter and one flying season prior to any shading of **York Park** as a result of the action. Baseline should include, as a minimum, a quantitative site wide assessment of soil and grassland condition and site wide data on abundance and distribution of flying adult moths and pupal cases. Baseline may also draw on existing data from other sources where it can be demonstrated to be sound;

- f) definition of thresholds of potential concern (trigger levels); and
- g) any short-term remedial and management actions to be taken (and their timeframes) to arrest or reverse impacts where trigger levels are exceeded and monitoring to assess their efficacy.

The GSMMP must be submitted to **the minister** for approval prior to **commencement** of the action, and once approved, must be implemented. The action must not commence until the GSMMP has been approved. APPROVED 3 JULY 2014 - WORK COMPLETE

Note: It is the responsibility of the approval holder to determine whether permission of the owner / manager of York Park is required for any survey activities, particularly in the event that substantial disturbance is required. The department does not anticipate that any disturbance beyond light foot traffic and installation of removable survey markers should be required – destructive surveying techniques (eg collection of live larvae / pupae from within the soil column) are not anticipated and should not be undertaken without relevant permission from the owner / manager of York Park and the agreement of the department.

Note: This condition operates subject to Condition 5.

- 3. By the end of February each year, the approval holder must provide **the department** with a report, prepared by a **suitably qualified expert**, providing and assessing the monitoring data for the previous twelve (12) months against the baseline conditions as defined under Condition 2e), and concluding whether or not there has been a decline in the population of **golden sun moth** within the area of York Park shaded as a result of the action. This assessment may take into account regional population trends and local ecological conditions.

2014,2015 and 2016 Reports submitted
2017- fieldwork about to commence

Note: This condition operates subject to Condition 5.

- 4. If on the basis of the reports required by Condition 3 above, **the department** considers that declines in the population of **golden sun moth** within the area of York Park shaded as a result of the action, have occurred for three (3) consecutive years, then the approval holder may be required to engage a **suitably qualified expert** to prepare a *Biodiversity Offset Strategy* (BOS). The BOS must identify an offset based on another specified population of **golden sun moth** within the **Eastern Highlands bioregion**, consistent with **the department's offset policy**, detailing the following:

- a) the location of the specified population using a map and **shapefiles** describing **offset attributes**;
- b) management measures to maintain or improve habitat quality for the specified population;
- c) if not already in place, appropriate legal measures to acquire and / or provide enduring protection for the specified population from future development;
- d) details of an ongoing annual monitoring program to determine whether the management measures required under Condition 4b) are at least maintaining habitat quality at the offset site against defined baseline parameters;
- e) contingency measures should the monitoring required under Condition 4d) determine that habitat quality is not being maintained;
- f) administrative arrangements including funding, timeframes, roles and responsibilities; and
- g) how the proposal effectively offsets the ecological, historic and scientific values of the population of **golden sun moth** at York Park.

No correspondence has been received by Doma Group from DoEE to trigger condition 4 based on the submitted reports

The BOS must be submitted to **the minister** for approval within three (3) months of a request from **the department**. Implementation must commence once the BOS is approved, with the population being legally secured (if relevant) within 12 months of approval of the BOS.

Note: Where there is any doubt, **the department** will generally take the view that health / density of a **golden sun moth** population is the best measure of the "quality" of its habitat.

Note: This condition operates subject to Condition 5.

5. Monitoring and reporting requirements under Conditions 2 to 4 above may cease if **the department** agrees in writing that over any eight (8) year period, declines in the population of **golden sun moth** within the area of **York Park** shaded as a result of the action, for three (3) consecutive years, have not occurred. **CONDITION NOT YET TRIGGERED**

General conditions

6. Within thirty (30) days after the **commencement** of the action, the approval holder must advise **the department** in writing of the actual date of **commencement**. **COMPLETED 2/6/14**
7. The approval holder must maintain accurate records substantiating all activities associated with or relevant to the conditions of this approval, including measures taken to implement **management documents** required under the conditions of this approval, and make them available upon request to **the department**. Such records may be subject to audit by **the department** or an independent auditor in accordance with section 458 of the EPBC Act, or used to verify compliance with the conditions of this approval. Summaries of audits will be posted on **the department's** website. The results of audits may also be publicised through the general media.
LETTER RECEIVED 13/11/17 AND RESPONDED 21/11/17
8. Within three (3) months of every twelve (12) month anniversary of the **commencement** of the action, the approval holder must publish a report on their website addressing compliance with each of the conditions of this approval, including implementation of **management documents** required under the conditions of this approval. Documentary evidence providing proof of the date of publication and non-compliance with any of the conditions of this approval must be provided to **the department** at the same time as the compliance report is published.
<https://domagroup.com.au/property/little-national-2/>
9. Upon the direction of **the minister**, the approval holder must ensure that an independent audit of compliance with the conditions of this approval is conducted and a report submitted to **the minister**. The independent auditor must be approved by **the minister** prior to the commencement of the audit. Audit criteria must be agreed to by **the minister** and the audit report must address the criteria to the satisfaction of **the minister**.
NO DIRECTION HAS BEEN RECIEVED FROM THE MINISTER TO CONDUCT AN AUDIT
10. If the approval holder wishes to carry out any activity otherwise than in accordance with the **management documents** required under the conditions of this approval, the approval holder must submit to **the department** for **the minister's** written approval a revised version of that **management document**. The varied activity shall not commence until **the minister** has approved the varied **management document**, in writing. **The minister** will not approve a varied **management document**, unless the revised **management document** would result in an equivalent or improved environmental outcome over time. If **the minister** approves the revised **management document**, that **management document**, must be implemented in place of the **management document**, originally approved. **NOTED**

11. If the **minister** believes that it is necessary or convenient for the better protection of listed threatened species and communities (sections 18 & 18A) to do so, the **minister** may request that the approval holder make specified revisions to any **management document** required under the conditions of this approval and submit the revised **management document** for the **minister's** written approval. The approval holder must comply with any such request. The revised **management document**, when approved, must be implemented. Unless the **minister** has approved the revised **management document**, the approval holder must continue to implement the **management document** originally approved under the conditions of this approval. **NOTED**
12. If, at any time after five (5) years from the date of this approval, the approval holder has not **substantially commenced** the action, then the approval holder must not **substantially commence** the action without the written agreement of the **minister**.
ACTION IS NOW COMPLETE AND THE PROJECT FINISHED IN SEPT 15'
13. Unless otherwise agreed to in writing by the **minister**, the approval holder must publish all **management documents** referred to in the conditions of this approval on their website. Each **management document** must be published and maintained on the website within one (1) month of being approved.

Note: <https://domagroup.com.au/property/little-national-2/>

Elements of this approval assume that conditions and particular matters imposed under EPBC 2009/4871 and EPBC 2010/5548 will be complied with by the relevant parties. This should be taken into consideration when addressing issues of compliance with this approval. Variation of these conditions may be appropriate in response to future changes to the development context of York Park.

Definitions:

Commencement of the action (except in the sense of "**substantial commencement**") is the first instance of **construction**.

Construction means any physical alteration of the site of the action as a consequence of, or in preparation for, the action, including clearing of vegetation, earthworks, construction of permanent or temporary infrastructure (excluding fences and signage) and any use of heavy machinery. Construction includes preparatory works as well as rehabilitation or remediation works.

The department means the Australian Government department administering the EPBC Act.

The **Eastern Highlands bioregion** is the Interim Bioregionalisation of Australia (IBRA) bioregion of that name (refer www.environment.gov.au/parks/nrs/science/bioregion-framework/ibra/).

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

Golden sun moth means the species *Synemon plana*, listed as critically endangered under the EPBC Act.

Management documents include any and all documents required to be prepared under these conditions.

The minister means the Australian Government minister administering the EPBC Act.

Offset attributes mean an '.xls' file capturing relevant attributes of the Offset Area, including the EPBC reference ID number, the physical address of the offset site, coordinates of the boundary points in decimal degrees, the EPBC protected matters that the offset compensates for, any additional EPBC protected matters that are benefiting from the offset, and the size of the offset in hectares.

Offsets policy means the *Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy* (October 2012).

Shapefiles means ESRI ArcGIS Shapefiles, containing '.shp', '.shx.' and '.dbf' files and associated files. Shapefiles must include appropriate metadata capturing attributes including but not limited to the EPBC reference number of the action and details of the EPBC protected matters present within the offset, covenant or legal protection details, including type and identification. **The department** prefers shapefiles using the Geocentric Datum of Australia (GDA) 94.

Substantially commence means to erect any permanent infrastructure, excluding signage and fences, associated with the action.

Suitably qualified expert means a qualified botanist, ecologist, or environmental scientist with demonstrated expertise in the survey and management of **golden sun moth**.

York Park means the area identified as "York Park Conservation Site" at Appendix A.

