

Biodiversity Certification of Land – Brimbin Recommendation Report

For conferring or refusing to confer Biodiversity Certification of land under Part 7AA of the
Threatened Species Conservation Act 1995

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Biodiversity Certification of Land – Brimbin

Recommendation Report

For conferring or refusing to confer Biodiversity Certification of land under Part 7AA of the *Threatened Species Conservation Act 1995*

Part 1: Background and documents considered

Name of recommending officer:	John Martindale
Decision makers:	Chief Executive, Office of Environment and Heritage Minister for the Environment
File / Folio number:	SF14/6614 DOC14/294457
Name of Planning Authority (applicant):	Greater Taree City Council
Date application received:	5 December 2014
Dates of public notification under s126N:	Brimbin Planning Proposal: 19 Nov 2013 – 19 Dec 2013 Biodiversity Certification Strategy: Biodiversity Certification Assessment Report: 2 Oct 2014 – 29 Oct 2014 Planning Agreement: 3 Oct 2014 – 30 Oct 2014

1.1 The proposal

Greater Taree City Council has applied for biodiversity certification under the NSW *Threatened Species Conservation Act 1995* of the development lands (Biodiversity Certification Area) identified in the Brimbin Planning proposal. The proposal is for a rezoning of predominantly cleared lands to enable the development of the township of Brimbin, and includes a suite of conservation measures as offsets to compensate for future impacts on biodiversity.

These conservation measures comprise the rezoning of vegetated lands of high conservation value covering approximately half of the site to environmental protection, with the subsequent addition of most of that land to the adjacent national parks estate (Brimbin Nature Reserve). This will result in a twenty-fold increase to the size of the nature reserve from 53 hectares to over 1000 hectares.

An assessment of the proposal has been undertaken in accordance with the Biodiversity Certification Assessment Methodology (BCAM) and lodged with the application. This assessment

has been reviewed by the Office of Environment and Heritage (OEH) as documented in the content of this Recommendation Report.

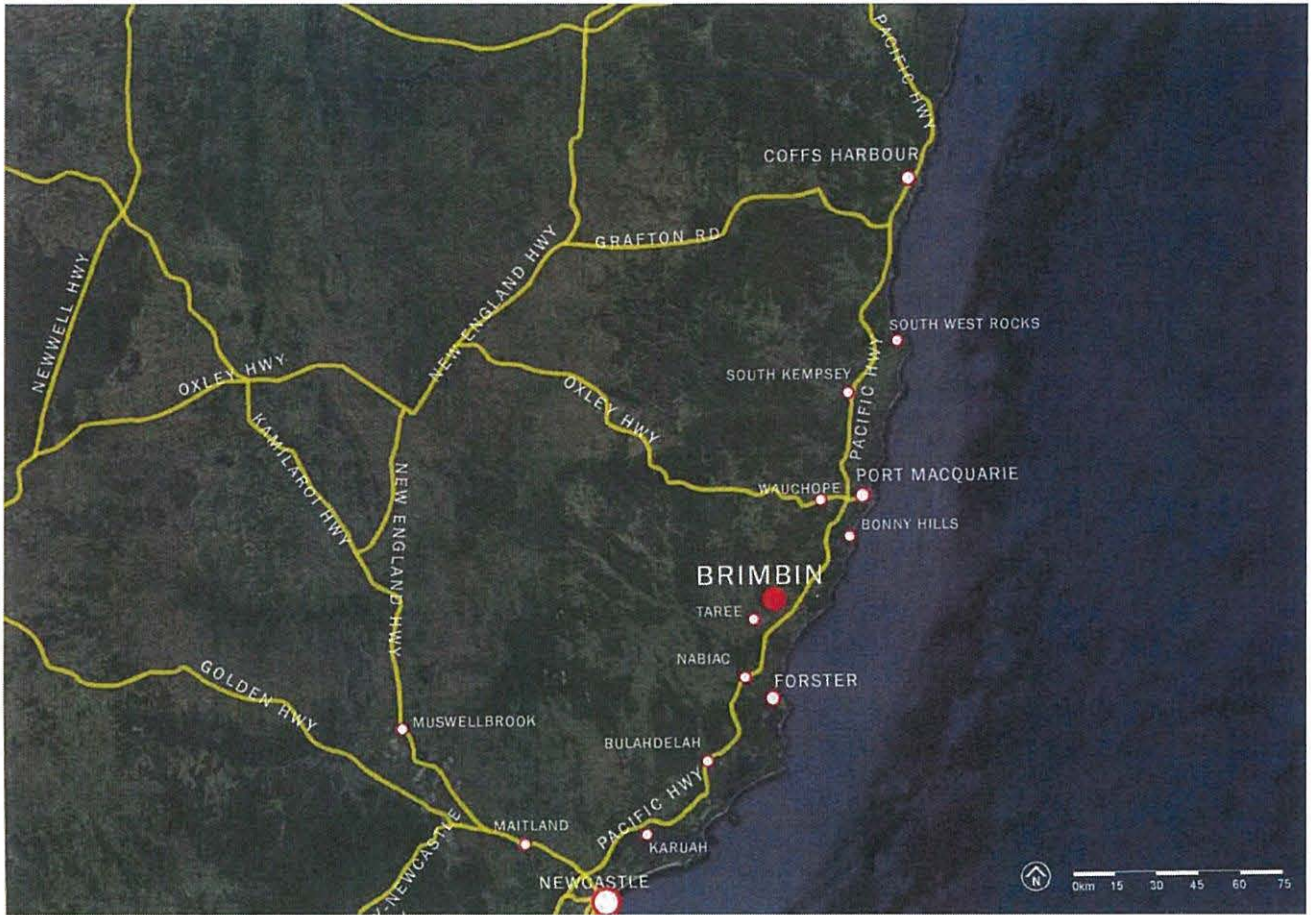
In order for the development lands (Biodiversity Certification Area) to be biodiversity certified, the Chief Executive of OEH¹, and the Minister for the Environment, will need to be satisfied in relation to certain matters outlined in the BCAM. These matters have been assessed by OEH, as also documented in the content of this Recommendation Report, for the Chief Executive and Minister, to consider in making their decisions.

1.2 History

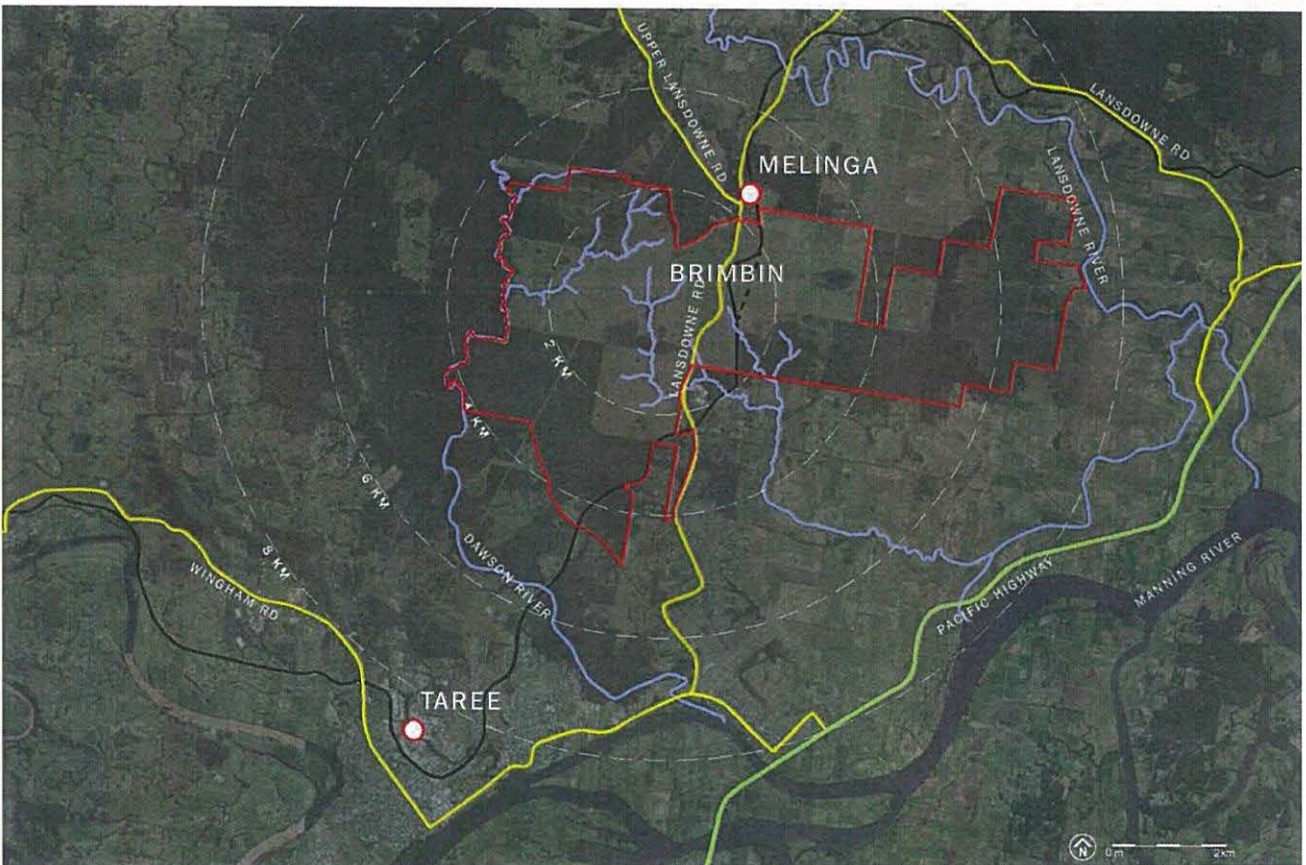
Brimbin has been proposed as an area for future development within the Greater Taree Local Government Area (LGA) since the completion of the Taree Wingham Urban Growth Plan in 1991. The site covers an area of 3,715 hectares (ha) and is located 8 kilometres north east of the existing Taree township on Lansdowne Road (Figure 1). It was identified as appropriate for industrial development by the Department of Planning in the Hunter Coastal Settlement Strategy in 1994.

Initial environmental assessments relating to industrial subdivision were commenced in 1997. However, these were substantially revised in 2004 following a change in ownership to the Roche Group (the current proponent) which saw the need for an expanded but more socially and environmentally integrated township that made greater use of the recreational and conservation potential of the Dawson River.

¹ The Biodiversity Certification Assessment Methodology refers to the Director General of the Department of Environment, Climate Change and Water NSW. In accordance with clause 7(3) of the Public Sector Employment and Management (Departments) Order 2011, together with clause 9(2)(b) of Administrative Arrangements Order 2014, any reference to the Director General of the Department of Environment, Climate Change and Water is to be construed as a reference to the Chief Executive of the Office of Environment and Heritage.



Regional location



Taree locality (Brimbin Assessment Area bounded in red – 3,715 ha)

Figure 1 Location of the Brimbin Biodiversity Certification proposal.

In 2009 the Department of Planning released the Mid North Coast Regional Strategy which identified lands potentially suitable for sustainable development of both urban release areas and employment lands at Brimbin. The Strategy indicated that such development would be subject to the completion of additional environmental assessments and the approval of appropriate amendments to the Greater Taree Local Environment Plan 2010 (LEP) to ensure that areas of high conservation value were protected.

Following completion of the environmental assessments, a conceptual Master Plan for Brimbin was prepared by the Roche Group which subsequently informed a Planning Proposal relating to the LEP amendment. This proposal was placed on public exhibition by Greater Taree City Council (the Council) in late 2013 and recommended that approximately half of the site be rezoned for environmental protection. This included the formal transfer of nearly 1,000 ha of land with high conservation values into the national park estate under a Planning Agreement pursuant to s93F of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Under Part 7AA of the *Threatened Species Conservation Act 1995* (TSC Act), the Council has now applied to the Minister for the Environment for Biodiversity Certification of the development land at Brimbin (Attachment A1). The application includes a Biodiversity Certification Strategy (Attachment A2 herein after “**the Strategy**”) and Biodiversity Certification Assessment Report (Attachment A3 herein after “**the Report**”), and the Planning Agreement (DOC15/50592) as one of the conservation measures. The Strategy and the Report were placed on exhibition by Council during October 2014 along with the Planning Agreement relating to the proposed land transfer. No public submissions were received.

1.3 The Biodiversity Certification Area

The development land proposed to be biodiversity certified is shown in pink on Figure 2 and described by cadastre in Table 1.

Table 1: Proposed Biodiversity Certification Area (as amended by Greater Taree City Council and agreed by the Roche Group in emails dated 17 February 2015).

DP Number	Lot
DP10304	1,3,4, part 6,7,10,12,13,14
DP1084130	1,2
DP14182	1,2,3,28
DP174722	1
DP314748	1
DP413456	18
DP530846	part 1, part 2 (includes 20m road access to eastern lots)
DP6031	4,5,7,27
DP754410	part 63 (excludes conservation land),140
DP754449	part 149 (includes 20m infrastructure buffer west of railway line), part 152, part 155 (20m infrastructure buffer west of railway line)
DP1084305	part 1 (20m infrastructure buffer west of railway line)
DP848750	part 81
DP78136	part 1 (20m infrastructure buffer east of power line)

The proposed Biodiversity Certification Area totals 1,666.2 ha and is currently comprised of:

1406.6 ha of cleared land

259.0 ha of native vegetation that attracts a landscape credit requirement

0.6 ha of exotic vegetation.

Development of the area will result in the removal of 7.4 ha of Endangered Ecological Community (EEC) as follows:

Swamp sclerophyll forest	0.8 ha
Subtropical coastal floodplain forest	3.3 ha
Swamp Oak floodplain forest	3.3 ha

The removal of 7.4 ha of EEC will require red flag variations to be approved and an application and justification to this effect forms part of the Biodiversity Certification application.

The Greater Taree LGA supports an Endangered Population of Narrow-leaved Red Gum, *Eucalyptus seeana*, and some of this is proposed to be removed within the Biodiversity Certification Area.

Removal of the Endangered Population requires an assessment of More Appropriate Local Data (MALD) under the BCAM to demonstrate that the species can withstand a temporary loss and that, accordingly, a red flag variation would not be required. The MALD assessment also forms part of the Biodiversity Certification application.

Within the native vegetation described above, 82.5 ha of potential habitat for the Koala and Brush-tailed Phascogale is proposed to be removed by development in the Biodiversity Certification Area and this attracts individual species credit requirements.

The Biodiversity Certification Area also includes two proposed infrastructure corridors 20 metres in width. One of these lies adjacent to the eastern edge of the existing Transgrid transmission line that bisects the Conservation Land in the west of the Assessment Area and the other lies adjacent to the western side of the railway line to the south. As infrastructure requirements are yet to be finalised, it is possible that these infrastructure corridors will not be required and, if not required, will become additions to the Conservation Land described below.

1.4 The Conservation Land

There are a number of conservation measures which can be implemented to ensure that the overall effect of Biodiversity Certification is to improve or maintain biodiversity values (Section 126L of the TSC Act).

The Council has proposed that the following conservation measures apply to the Conservation Land as shown in green in Figure 2 and described by cadastre in Table 2:

- The transfer of 936.5 ha to the National Parks and Wildlife Service (NPWS) under a Planning Agreement pursuant to Section 93F of the EP&A Act under an E1 zoning (national parks and nature reserves) with management funding to the value of \$1.1 million committed for five years under an approved Statement of Works. The Planning Agreement requires approval from the Minister (refer to DOC15/50592).
- The protection of 61.9 ha in E2 zones (environmental conservation) to be rezoned E1 under further amendments to the LEP and transferred into the nature reserve.
- The creation of a wildlife corridor 250 metres wide (39 ha) that will be protected and rehabilitated under an E2 zone and possibly funded under a BioBanking Agreement.

- The additional rezoning of Lot 63 DP754410 (152.5 ha) to E2 with replanting of the endangered *Eucalyptus seeana*.

Table 2: Proposed Conservation Land (as amended by Greater Taree City Council and agreed by the Roche Group in emails dated 17 February 2015).

DP Number	Lot	Conservation measure
DP1084305	1	E1 nature reserve
DP530846	part 1, part 2 (excludes 20m road access)	E1 nature reserve
DP754449	part 149, part 152, 154, 155 (excludes 20m buffer to west of railway)	E1 nature reserve
DP78136	part 1 (excludes 20m infrastructure buffer to east of power line)	E1 nature reserve
DP10304	part 6	E1 nature reserve
DP848750	part 81	E2 wildlife corridor
DP754410	part 63	E2 replanting

1.5 The retained land

The Biodiversity Certification application does not include 847 ha of retained land shown in yellow on Figure 2. This land includes the eastern area to be zoned E4 (environmental living) that will be subject to development constraints relating to wetland protection in Council's LEP.

The retained land includes riparian strips, lakes and steep areas over which certain development may be constrained but for which the specific location of infrastructure such as roads, power lines and bridges, is not yet known. The retained lands also include a buffer 10 metres wide around all vegetation within the Conservation Lands.

Once detailed planning for these areas is known, it is possible that some may be rezoned for further environmental protection and managed under a BioBanking Agreement. However, these lands are not necessary to support Biodiversity Certification of the currently identified development land.

1.6 The proposed rezoning

The Brimbin Planning Proposal includes the rezoning of the proposed development lands (Biodiversity Certification Area), Conservation and Retained Lands as shown in Figures 2 and 3. The lands zoned E1 and E2 are intended to be transferred into national parks estate under a Planning Agreement.

Part Lot 63, DP754410 (152.5 ha) will be included in the mapped E2 lands prior to adoption of the LEP amendment and may be added to the nature reserve under E1 at a later date.

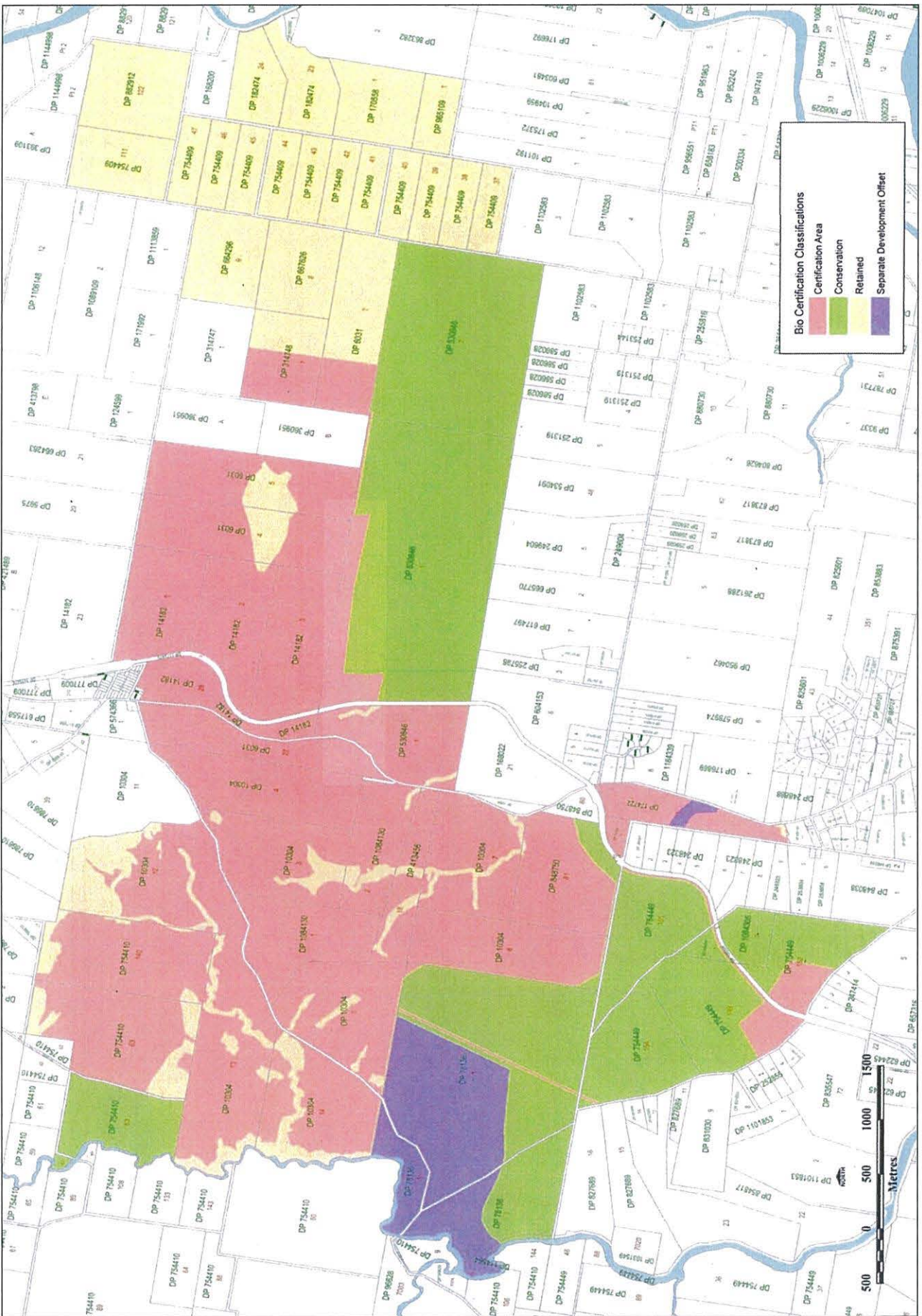
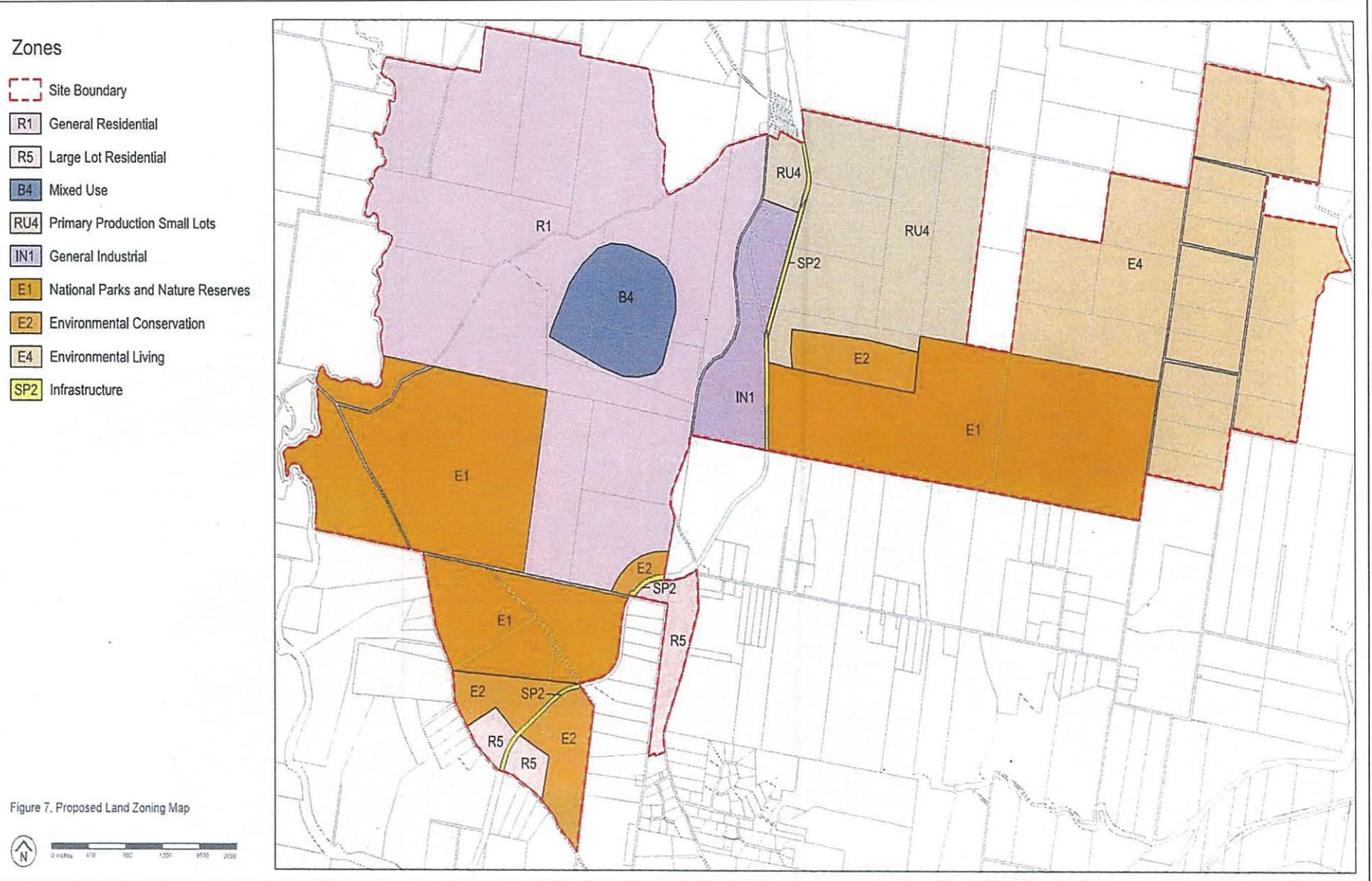


Figure 2 The assessment area including the development lands (pink) for which Greater Taree City Council is seeking Biodiversity Certification.

Figure 3 The proposed rezoning of the Biodiversity Certification, Conservation and Retained Lands.



1.7 Documents provided by the applicant that were considered:

1. Day, R (2013). Planning Proposal dated July 2013 prepared by Roberts Day for the Roche Group to support proposed LEP amendments by Greater Taree City Council.
2. Editorial revisions to cadastres in Supporting Paperwork – Recommendation Report 2, approved by Council and agreed by the Roche Group in emails dated 17 February 2015.
3. Niche Environment and Heritage (2014). Biodiversity Certification Strategy dated September 2014. Prepared for the Roche Group.
4. Niche Environment and Heritage (2014). Biodiversity Certification Assessment Report dated September 2014. Prepared for the Roche Group.
5. Planning Agreement pursuant to s93F of the EP&A Act between the Minister for the Environment, Greater Taree City Council and the Roche Group.
6. Pamplin, R (2014). Application Cover Letter dated 20 November 2014. Signed by Richard Pamplin, Senior Leader Strategic Planning, Greater Taree City Council.
7. Posselt, R (2014). Biodiversity Certification Application dated 20 November 2014. Signed by Ron Posselt, General Manager, Greater Taree City Council.

1.8 Other documents that were taken into consideration:

1. Biodiversity Certification Assessment Methodology (February 2011) and associated databases/profiles relating to vegetation types, vegetation benchmarks, threatened species, endangered populations and endangered ecological communities.
2. Biodiversity Certification Operational Manual – Stage 4: Applying for Biodiversity Certification and Appendices (draft 18 July 2013).
3. Biodiversity Certification Guide to Applicants (draft 18 July 2013).
4. Connell Wagner (2004). Flora and Fauna Report: Greater Taree City Council Brimbin Local Environment Study Baseline Environmental Assessment.
5. Australian Government Department of the Environment (2013). MNES Significant Impact Guidelines v1.1.
6. Environment Protection Zones LEP Practice Note (Department of Planning 2009).
7. Keith, D. (2004). Ocean shores to desert dunes: the native vegetation of New South Wales and the ACT. NSW Department of Environment and Conservation, Hurstville.
8. Mid North Coast Regional Conservation Plan (Office of Environment and Heritage draft December 2010).
9. Mid North Coast Regional Strategy (NSW Department of Planning March 2009).
10. Office of Environment and Heritage (2011). Concurrence Report - Lots 103 and 105 (DP1000408) George Booth Drive, West Wallsend, Lake Macquarie LGA. Unpublished report relating to existing offset to be transferred under the Planning Agreement.
11. Niche (2011). Brimbin Flora and Fauna Assessment. Unpublished report for Roche Group including customised updates to the Biometric Vegetation Types (BVT) database.
12. NSW Scientific Committee (2002). Final Determination, *Eucalyptus seeana* Endangered Population.
13. OEH (2012). Guidelines on appropriate mechanisms for securing biodiversity offsets.
14. Scotts, D. (2003). Key habitats and corridors for forest fauna: a landscape for conservation in north-east New South Wales. NPWS Occasional Paper 32.
15. Seidel, John (4 June 2013). Correspondence OEH BioBanking Team regarding customised updates to the BVT database.
16. Whelans Insites (2009). Lot 63 in DP75410 and part Lot 1 in DP530846, Landsdowne Road, Brimbin. Preliminary ecological constraints report for specific areas.

Part 2: Evaluation and recommendations

Matters considered

Biodiversity Certification may only be conferred on land where the Minister makes a determination that the conferral of Biodiversity Certification will improve or maintain biodiversity values.

Section 126P(1) of the TSC Act, states that:

"Biodiversity certification improves or maintains biodiversity values only if the Minister determines, on the basis of a biodiversity certification assessment, that the overall effect of biodiversity certification is to improve or maintain biodiversity values".

This is evaluated at Part 2.2 below. However, before the Minister makes his decision there are a number of matters for which the Chief Executive must be satisfied. These are evaluated in Part 2.1 below.

2.1 Matters for the Chief Executive to consider

This section evaluates the matters that are relevant for the Chief Executive to consider in order to be satisfied prior to making a recommendation to the Minister. These include proposed red flag variations (2.1.1), assessment of indirect impacts on biodiversity values (2.1.2), certification of more appropriate local data (2.1.3), assessment of expert and expert report (2.1.4), and planning instrument conservation measures (2.1.5).

2.1.1 Proposed red flag "variations"

Under BCAM, areas of land that are regarded as having high biodiversity conservation value are regarded as "red flag" areas. Red flag areas include areas of land which:

- contain an endangered ecological community (in moderate to good condition) listed under the TSC Act
- contain one or more threatened species identified in the Threatened Species Profile Database that cannot withstand further loss.

Where Biodiversity Certification is proposed to be conferred on land that is, or forms part of, a red flag area, Biodiversity Certification can only be considered to improve or maintain biodiversity values under Section 2.2 of the BCAM if:

a) the conferral of biodiversity certification on land does not directly impact on biodiversity values in a red flag area that is on land where certification is conferred

OR

b) the conferral of biodiversity certification on land does directly impact on biodiversity values in a red flag area but the Director General is satisfied, having considered the criteria in section 2.4, that impacts on the red flag area may be offset in accordance with the rules and requirements set out in section 10 of the methodology

AND

c) the direct impacts on the biodiversity values of land to which biodiversity certification is conferred are offset in accordance with the rules and requirements set out in section 10 of the methodology

AND

d) the Director General is satisfied that any indirect impacts on the biodiversity values of land to which biodiversity certification is conferred are appropriately minimised in accordance with section 6 of the methodology”.

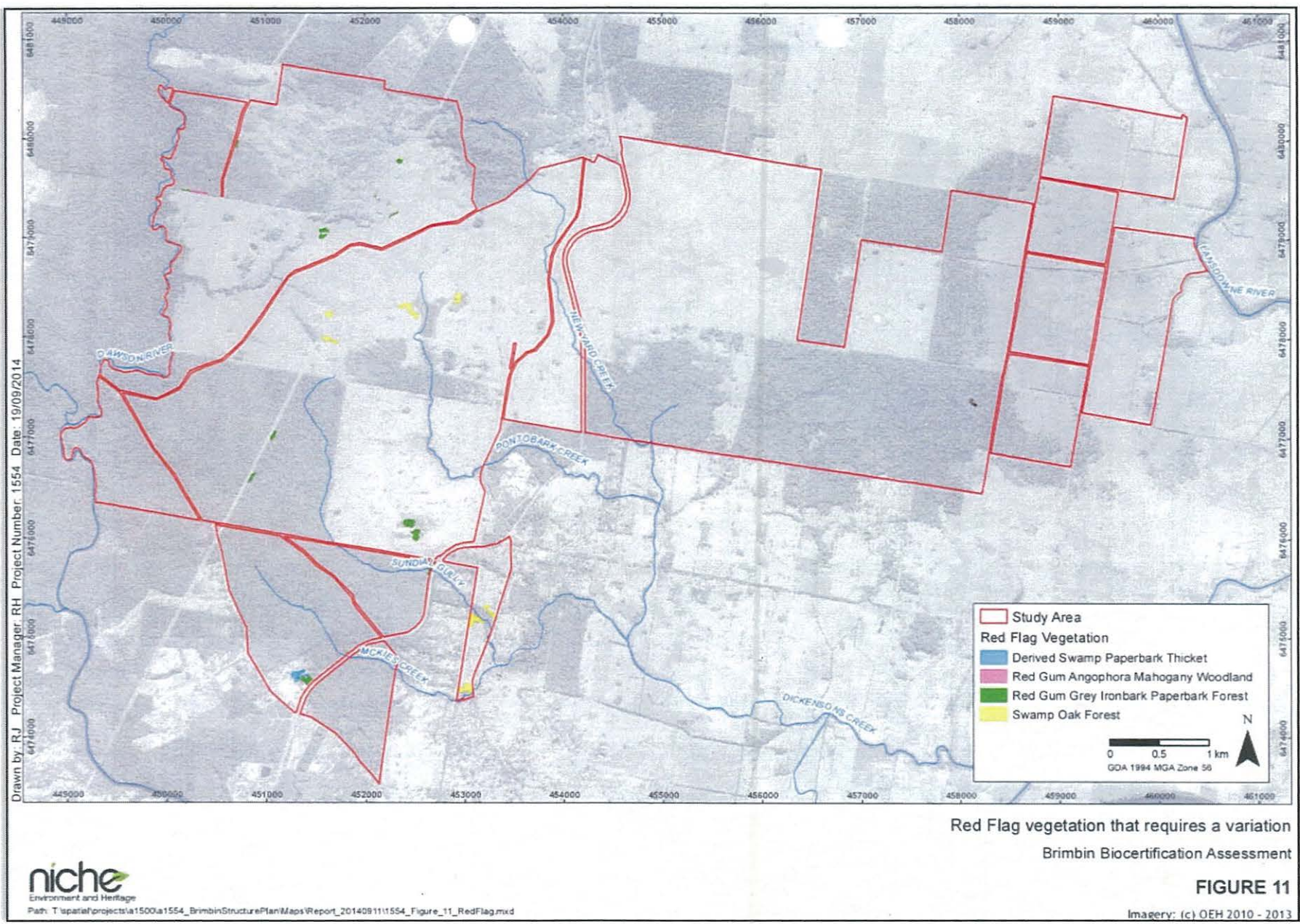
The Report (page 41 and Table 11) identifies three red flag areas in moderate to good condition in the proposed Biodiversity Certification Area as follows:

- 0.8 ha of Swamp Sclerophyll Forest Endangered Ecological Community
- 3.3 ha of Subtropical Coastal Floodplain Forest Endangered Ecological Community
- 3.3 ha of Swamp Oak Floodplain Forest Endangered Ecological Community.

**Note: There are 96 ha of Red Gum/ Iron Bark/ Paperbark in the certified area, of which 3.3 ha satisfies the BCAM EEC definition. The remainder comprises Narrow-leaved Red Gum, Eucalyptus seeana, which is an Endangered Population and is addressed separately using an assessment of More Appropriate Local Data (MALD).*

Figure 4 maps the extent of the vegetation types found in these three EEC red flag areas.

Figure 4: Red Flag Areas – Endangered Ecological Communities



A further 10.8 ha of Subtropical Coastal Floodplain Forest exists within the Biodiversity Certification Area but this is in "low" condition and therefore does not meet the red flag definition or require consideration by the Chief Executive.

Under section 3.4 of the BCAM the Chief Executive may certify that MALD can be used if it more accurately reflects the local conditions of the biodiversity certification assessment area. A MALD assessment has been completed as part of the Report (page 78) with respect to the occurrence of the *E. seeana* (Narrow-leaved Red Gum) Endangered Population. The MALD assessment concludes that the local population is substantially larger and more widespread than originally thought and can withstand further loss.

The Report (page 46) and the Strategy (Attachment A2) demonstrate that the Conservation Lands provide an adequate offset for any removal of Narrow-leaved Red Gum under the BCAM and a red flag variation for this endangered population is no longer required provided that the Chief Executive certifies that the use of local data is appropriate in lieu of that provided in the default BCAM databases.

The Report (page 46) concludes that 82.5 ha of habitat for the Brush-tailed Phascogale and Koala will be removed in the Biodiversity Certification Area. However, under the Strategy, the Conservation Land will more than adequately offset these species and consequently a red flag variation is considered unnecessary for these species.

In order for the Chief Executive to be satisfied that the impacts on a red flag area are able to be offset, each of the criteria in Sections 2.4.1 to 2.4.4 of the BCAM (where relevant) must be met.

Justification for the three EEC red flag variations above, the certification of MALD for the endangered population and the adequacy of the Koala and Brush-tailed Phascogale threatened species offsets are discussed further below in relation to Sections 2.4.1 to 2.4.4 of the BCAM. Section 3.3 of the Strategy addresses the red flag variations for each of the three identified EECs in detail.

BCAM Section 2.4.1 - Feasibility of options to avoid impacts on red flag areas

Section 2.4.1 of BCAM states that:

"The Director General must be satisfied that the feasibility of options to avoid impacts on red flag areas has been considered in the application for biodiversity certification. An application for biodiversity certification can address this requirement by demonstrating that:

- a) *all reasonable measures have been taken to avoid adverse impacts on the red flag areas and to reduce impacts of development on vegetation remaining within the biodiversity certification area*
- b) *appropriate conservation management arrangements cannot be established over the red flag area given its current ownership, status under a regional plan and zoning and the likely costs of future management.*

With respect to 2.4.1a), the Strategy describes the measures taken to avoid impact on each of the identified EEC red flag areas. Measures common to all three EECs include:

- Preparation of a Master Plan incorporating sensitive design principles
- Installation of perimeter roads to provide buffers and minimise indirect impacts
- Provision of EEC landscaping
- Protection of riparian buffers and hollow bearing trees
- Implementation of a weed and pest management plan
- Removal of stock.

High conservation value EEC in good condition has been avoided wherever possible and protected in E1 and E2 conservation areas (page 20 - table 8 in the Report) as follows:

EEC Red flag area	Removed	Conserved
Swamp sclerophyll forest	0.8ha (1.1%)	72.7ha (98.9%)
Subtropical coastal floodplain forest	3.3ha (1.4%)	230.4 ha (98.6%)
Swamp Oak floodplain forest	3.3ha (4.8%)	64.7ha (95.2%)

A further 495.1 ha of these EECs occur on retained lands where the majority will be protected under an E4 zone in the east of the study area and in riparian buffers elsewhere. Overall only 0.85% of the moderate to good EECs in the study area will be removed and over 99% will be protected. Table 8 also details a fourth EEC (freshwater wetlands) totalling 102.5 ha that occurs on retained lands and is totally avoided by the Biodiversity Certification Area.

With respect to 2.4.1b), the Strategy and the Report demonstrate that the 7.4 ha of EECs to be removed within the Biodiversity Certification Area exists in multiple (at least 20) small fragmented patches. Management of these fragments through the use of weed and pest management strategies is considered to be prohibitively expensive and labour intensive whilst delivering little if any conservation gain. This is due to the proximity of future urban development, the requirement to provide mandatory bushfire asset protection zones and the senescing of older trees leading to safety hazards. The fragments occur on private lands to be zoned for residential and industrial purposes as identified in the Mid North Coast Regional Strategy.

Recommendation:

That the Chief Executive be satisfied in accordance with Section 2.4.1 of the BCAM that the application for Biodiversity Certification has adequately considered the feasibility of options to avoid impacts on the three EEC red flag areas because the application demonstrates that:

- (a) All reasonable measures have been taken to avoid adverse impacts on the red flag areas and to reduce impacts of development on vegetation remaining within the Biodiversity Certification Area.
- (b) Appropriate conservation management arrangements cannot be established over the red flag areas given their current ownership, status under a regional plan and zoning and the likely costs of future management.

BCAM Section 2.4.2 – Additional assessment criteria for vegetation types

BCAM 2.4.2.1 - Viability must be low or not viable

Section 2.4.2.1 of BCAM states that:

“In making an assessment that the viability of biodiversity values in the red flag area is low or not viable, the Director General must be satisfied that one of the following factors applies:”

- a) *The current or future uses of land surrounding the red flag area where biodiversity certification is to be conferred reduce its viability or make it unviable. Relatively small areas of native vegetation surrounded or largely surrounded by intense land uses, such as urban development, can be unviable or have low viability because of disturbances from urbanisation, including edge effects.*
- b) *The size and connectedness of the vegetation in the red flag area where biodiversity certification is to be conferred to other native vegetation is insufficient to maintain its viability. Relatively small areas of isolated native vegetation can be unviable or have low viability.*
- c) *The condition of native vegetation in the red flag area where biodiversity certification is to be conferred is substantially degraded, resulting in loss of or reduced viability. Native vegetation in degraded condition can be unviable or have low viability. ‘Degraded condition’ means substantially outside benchmark for many of the vegetation condition variables as*

listed in Table 1 of the methodology (s.3.6.2), without the vegetation meeting the definition of low condition set out in section 2.3. Vegetation that is substantially outside benchmark due to a recent disturbance such as a fire, flood or prolonged drought is not considered degraded for the purposes of the methodology.

- d) *The area of a vegetation type in a red flag area on land where biodiversity certification is conferred is minor relative to the area containing that vegetation type on land subject to proposed conservation measures.*

Tables 5, 7 and 8 of the Strategy demonstrate that for each of the three EECs identified for removal in the Biodiversity Certification Area, factors (a), (b) and (d) apply. Current and future use of the land is likely to further reduce viability of these EEC remnants. These remnants are small (each averaging less than 0.4 ha) and unlikely to be provided with sufficient connectivity to promote viability when further isolated by residential and industrial development. These remnants represent 1.1% of the Swamp sclerophyll forest EEC, 1.4% of the Subtropical coastal floodplain forest EEC and 4.8% of the Swamp Oak floodplain forest EEC and, after considering the amounts to be conserved on retained land under the E4 zoning, comprise less than 1% of the total area of EECs to be conserved in the study area. The proposed removal of each of the three red flagged EECs is therefore considered to be of minor extent.

Recommendation:

That the Chief Executive be satisfied in accordance with Section 2.4.2.1 of the BCAM that:

- (a) The current or future uses of land surrounding the red flag area where biodiversity certification is to be conferred reduce its viability or make it unviable. Relatively small areas of native vegetation surrounded or largely surrounded by intense land uses, such as urban development, can be unviable or have low viability because of disturbances from urbanisation, including edge effects.
- (b) The size and connectedness of the vegetation in the red flag area where biodiversity certification is to be conferred to other native vegetation is insufficient to maintain its viability. Relatively small areas of isolated native vegetation can be unviable or have low viability.
- (c) The condition of native vegetation in the red flag area where biodiversity certification is to be conferred is substantially degraded, resulting in loss of or reduced viability. Native vegetation in degraded condition can be unviable or have low viability.
- (d) The area of a vegetation type in a red flag area on land where biodiversity certification is conferred is minor relative to the area containing that vegetation type on land subject to proposed conservation measures.

BCAM 2.4.2.2 - Contribution of red flag area to regional biodiversity values is low

Section 2.4.2.2 of the BCAM states that:

“The application for biodiversity certification must demonstrate to the satisfaction of the Director General that the red flag area on land proposed for biodiversity certification makes a low contribution to regional biodiversity values. In making an assessment that the contribution of the red flag area to regional biodiversity values is low, the Director General must consider the following factors for each vegetation type or critically endangered or endangered ecological community regarded as a red flag area:

- a) *relative abundance: that the vegetation type or critically endangered or endangered ecological community comprising the red flag area is relatively abundant in the region*

- b) *percent remaining is high: that the percent remaining of the vegetation type or critically endangered or endangered ecological community comprising the red flag area is relatively high in the region*
- c) *percent native vegetation (by area) remaining is high: that the percent remaining of all native vegetation cover in the region is relatively high.*

'Region' for the purposes of section 2.4.2.2 means the CMA subregion in which the red flag area is located and any adjoining CMA subregions".

For the purposes of this assessment, BCAM defines the region as the Catchment Management Authority² (CMA) subregion in which the red flag area is located and any adjoining CMA subregions. The red flag area is located in the Karuah-Manning CMA subregion which adjoins the Macleay-Hastings, Mummel Escarpment, Upper Hunter and Hunter CMA subregions.

Table 6 of the Strategy demonstrates that, in the Karuah-Manning, Macleay-Hastings, Mummel Escarpment, Upper Hunter and Hunter CMA subregions, there exists 16,379 ha of red flagged EEC as follows:

EEC Red Flag area	Red flag in region	Regional impact %
Swamp sclerophyll forest (SSF)	11,698.6ha	0.007
Subtropical coastal floodplain forest (SCFF)	487.5 ha	0.7
Swamp Oak floodplain forest (SOFF)	4,192.9 ha	0.08

The data indicates that for each red-flagged EEC, the area to be removed in the Biodiversity Certification Area comprises less than 1% of the regional distribution of each EEC. The total area of red flagged EEC to be removed in the Biodiversity Certification Area is 7.4 ha (or 0.046%) of the regional distribution and is highly fragmented and below benchmark in condition. 367.8 ha (or 2.25%) of these EECs in the region will be conserved in the E1 zoned conservation area and up to 495.1 ha (or 3.02%) in the retained E4 zoned lands.

Table 10 of the Strategy demonstrates the credit status under the BCAM for the vegetation types found in the three EECs as follows:

Vegetation Type	Area (ha)	EEC	Credits required	Credits available in E1 and E2 offsets	Credit surplus
HU591 - Paperbark	0.8	SSF	11	57	46
HU703 – Red Gum/Ironbark/Paperbark	3.3	SCFF	2083	3392	1309
HU943 – Swamp Oak	3.3	SOFF	95	734	639

As there is a credit surplus available, the loss of the three EECs in the Biodiversity Certification Area is adequately offset by the same vegetation types in the E1 and E2 conservation lands. Substantially more EEC is protected under the E4 lands but has not been subject to credit calculation because these lands are identified as retained in the application and the credit requirement is already met.

² The BCAM continues to adopt the CMA subregions as set out in the Environmental Outcomes Assessment Methodology established under the Native Vegetation Regulation 2013 and the CMA areas set out in Schedule 2 to the *Catchment Management Authorities Act 2003* immediately before its repeal. These administrative regions remain relevant despite the transition of Catchment Management Authorities (CMA) to Local Land Services offices.

Recommendation:

That the Chief Executive be satisfied in accordance with Section 2.4.2.2 of the BCAM that the red flag area on land proposed for biodiversity certification makes a low contribution to regional biodiversity values on the basis of consideration given to the following factors for each vegetation type or critically endangered or endangered ecological community regarded as a red flag area:

- (a) relative abundance: that the vegetation type or critically endangered or endangered ecological community comprising the red flag area is relatively abundant in the region
- (b) percent remaining is high: that the percent remaining of the vegetation type or critically endangered or endangered ecological community comprising the red flag area is relatively high in the region
- (c) percent native vegetation (by area) remaining is high: that the percent remaining of all native vegetation cover in the region is relatively high.

That the Chief Executive, having considered the criteria in Section 2.4 of the BCAM (as discussed above), be satisfied under Section 2.2b) of the BCAM that impacts on the three EEC red flag areas may be offset in accordance with the rules and requirements set out in Section 10 of the BCAM.

BCAM Section 2.4.3 - Additional assessment criteria for threatened species and endangered populations that cannot withstand further loss.

Section 2.4.3 of the BCAM states that:

“Where the red flag area contains a threatened species that cannot withstand further loss as defined in section 2.3 of the methodology, the application for biodiversity certification must demonstrate to the satisfaction of the Director General that:

- *the viability of the red flag area must be low or not viable in accordance with section 2.4.3.1*
- *the contribution to regional biodiversity values of the red flag area is low in accordance with section 2.4.3.2.”*

BCAM 2.4.3.1 - Viability must be low or not viable

Section 2.4.3.1 of the BCAM states that:

“The application for biodiversity certification must demonstrate to the satisfaction of the Director General that the viability of biodiversity values in the red flag area is low or not viable.” In making an assessment that the viability of biodiversity values in the red flag area is low or not viable, the Director General must be satisfied that one of the following factors applies:

- a) *The current or future uses of land surrounding the red flag area reduce its viability or make it unviable. Relatively small areas of threatened species habitat surrounded or largely surrounded by intense land uses, such as urban development, can be unviable or have low viability because of disturbances from urbanisation, including edge effects.*
- b) *The size and connectedness of vegetation in the red flag area to other native vegetation is insufficient to maintain its viability. Relatively small areas of isolated threatened species habitat can be unviable or have low viability.*
- c) *The condition of native vegetation in the red flag area is substantially degraded resulting in loss of or reduced viability. Native vegetation in degraded condition can be unviable or have low viability. ‘Degraded condition’ means substantially outside benchmark for many of the vegetation condition variables as listed in Table 1 of the methodology (s.3.6.2), without the vegetation meeting the definition of low condition set out in section 2.3. Vegetation that is*

substantially outside benchmark due to a recent disturbance such as a fire, flood or prolonged drought is not considered degraded for the purposes of the methodology.

- d) *The area of a red flag area containing a threatened species on land where biodiversity certification is conferred is minor relative to the area containing that threatened species on land subject to proposed conservation measures."*

The Strategy identifies 11 threatened fauna species and three threatened flora species that occur in the study area. Of these, four fauna species (Koala, Brush-tailed Phascogale, Black-necked Stork and Jacana) and three flora species (*Corybas dowlingii*, *Eucalyptus glaucina* and *E. seeana*) have potential to require species credits to be offset. The remaining species are considered as addressed by the BCAM under the more general landscape credit requirements.

Of the species with potential to require credits, only the Koala, Brush-tailed Phascogale and *E. seeana* may occupy habitat likely to be lost within the Biodiversity Certification Area. The other species are not recorded from the Biodiversity Certification Area, are protected within the E1 and E2 Conservation Areas and the retained E4 and riparian areas, and therefore do not require credits to be found.

The Strategy demonstrates that surplus credits are available in the E1 and E2 Conservation Areas for both the Koala (3,275 credit surplus) and the Brush-tailed Phascogale (3,776 credit surplus). Because these species are adequately offset under the BCAM and are not identified by BCAM as being unable to withstand further loss in the CMA, it is considered that approval for a red flag variation is not required from the Chief Executive for these two species.

Narrow-leaved Red Gum (*E. seeana*) is considered a relatively common species along the north coast of NSW and southern Queensland. However, its population in the Greater Taree LGA is approaching the southern limits of its distribution and is listed as endangered with only 50 isolated individuals being recorded at the time of listing. Consequently BCAM identified it as an endangered population unable to withstand further loss and subject to a red flag. However, more recent surveys for the species in the Brimbin Study Area have revealed a population in excess of 25,000 plants and even more in the LGA as a whole.

The applicant has therefore proposed the use of More Appropriate Local Data under Section 3.4 of the BCAM to justify removal of the red flag. Use of local data requires certification by the Chief Executive and is addressed in Appendix F of the Report and Section 2.1.3 below.

Recommendation:

That the Chief Executive be satisfied that a red flag variation is not required for the Koala and Brush-tailed Phascogale because:

- (a) the current or future uses of the land containing habitat for the two species will not reduce the viability of these species or make their populations unviable because the potential species habitat to be lost in the Biodiversity Certification Area is adequately offset by habitat protected in the Conservation Lands
- (b) the size and connectedness of habitat for these species within the Biodiversity Certification Area is small and isolated compared to that in the offset area
- (c) the condition of habitat within the Biodiversity Certification Area is substantially degraded compared to that in the Conservation Lands
- (d) the area of habitat loss within the Biodiversity Certification Area is minor compared to that in the Conservation Lands and both species are capable of withstanding further loss.

Subject to the use of certified local data as set out in Appendix F of the Report and Section 2.1.3 below, the *E. seeana* population is capable of withstanding further loss and does not require a red flag variation.

BCAM 2.4.3.2 - Contribution to regional biodiversity values is low

Section 2.4.3.2 of the BCAM states that:

"The application for biodiversity certification must demonstrate that the threatened species habitat in a red flag area makes a low contribution to regional biodiversity values."

In making an assessment that the contribution of the red flag area to regional biodiversity values for the species is low, the Director General must be satisfied that the relative abundance of the individual threatened species, threatened population or threatened species habitat on the land proposed for biodiversity certification is low relative to its abundance in the region.

'Region' for the purposes of section 2.4.3.2 means the CMA subregion in which the red flag area is located and any adjoining CMA subregions."

Figure 5 of the Report indicates that one record of the Koala was found in the Biodiversity Certification Area and none for the Brush-tailed Phascogale. Sections 2.3.3 and 3.5 of the Report indicate that adequate survey effort is available to support this result. In contrast, all other records for the Koala and Brush-tailed Phascogale occurred within the Conservation Area which will be protected under the E1 and E2 zoning.

Analysis of core Koala habitat under SEPP44 was conducted (page 38 of the Report) and concluded that the Biodiversity Certification Area was unlikely to represent core habitat as defined under the SEPP and that previous studies (Whelans Insites 2009) have found numerous records of the Koala in the Conservation Area and in suitable habitat adjacent to and elsewhere within the Greater Taree LGA.

Analysis of habitat offset credit requirements under the BCAM for the Koala and Brush-tailed Phascogale (Table 12, page 43 of the Strategy) concluded that credits were well in surplus as discussed in Section 2.4.3.1 above.

The Office of Environment and Heritage (OEH) Wildlife Atlas indicates that, as of January 2015, there were 11,326 records of Koala and 461 records of Brush-tailed Phascogale in the Karuah-Manning CMA subregion and its adjoining subregions as mapped in Figure 3 of the Strategy and shown in Figures 5 and 6 below. This indicates that the relative abundance of the Koala and Brush-tailed Phascogale on the proposed Biodiversity Certification area is low relative to their abundance in the region.

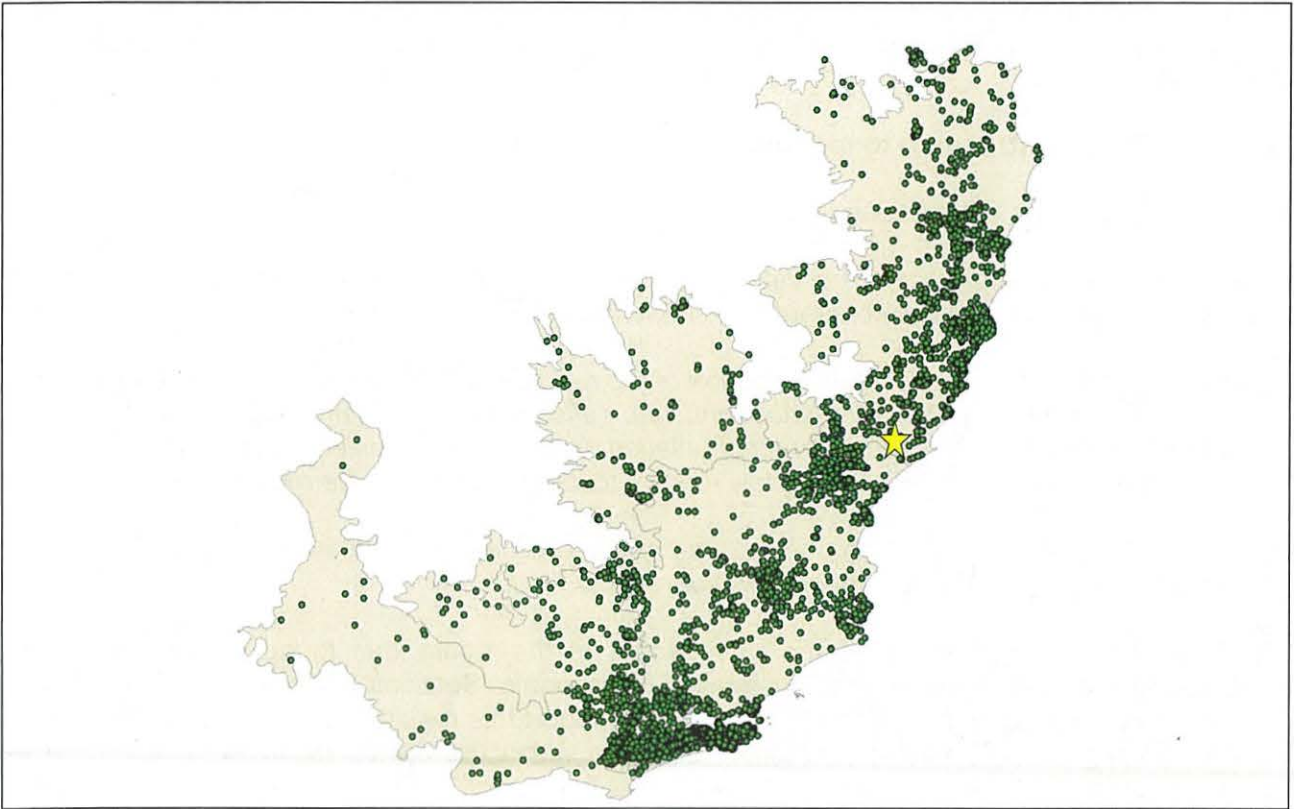


Figure 5: Distribution of Koalas in adjacent CMA subregions (11,326 Atlas records).

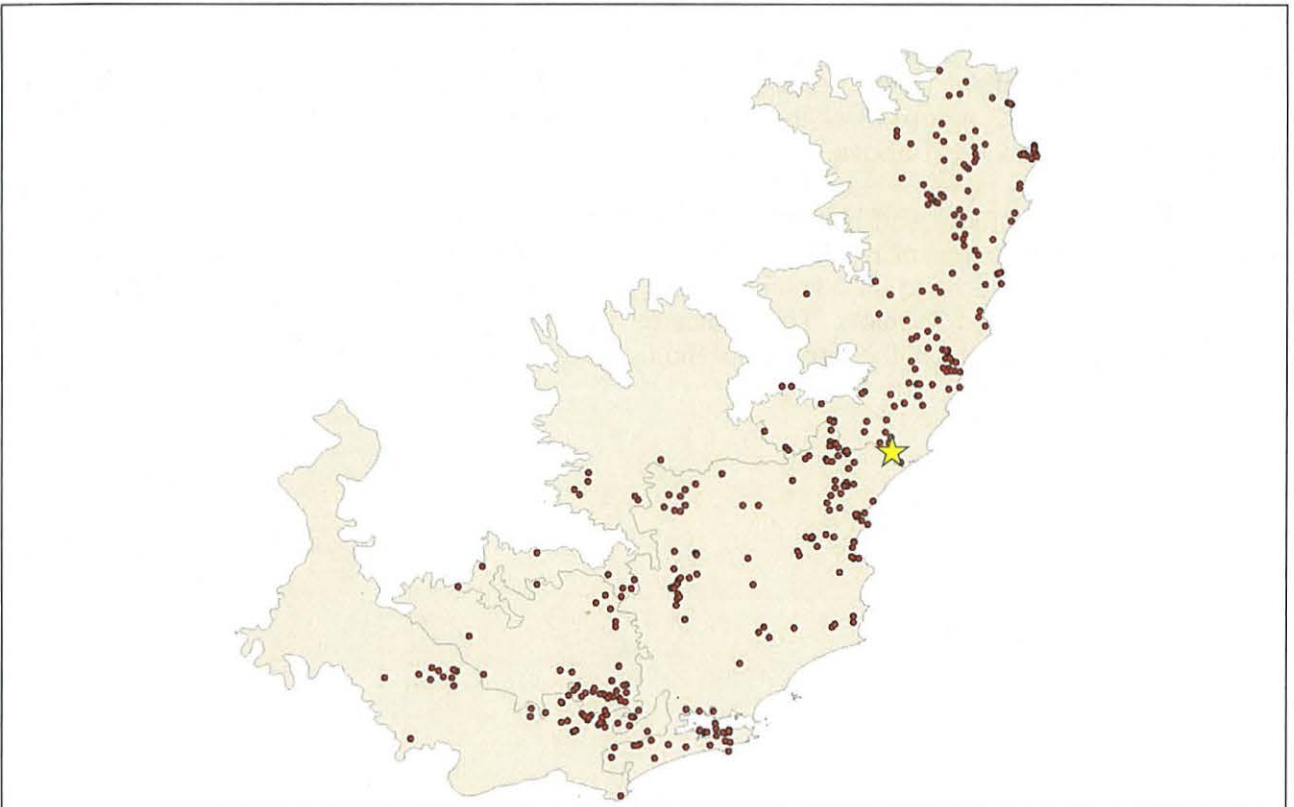


Figure 6: Distribution of Brush-tailed Phascogale in adjacent CMA subregions (461 Atlas records).

Figure 7 below shows records of *E. seeana* on the NSW North Coast (Plant Net online – Australian Virtual Herbarium AVH map from all major Australian herbaria). Other than the Endangered Population in the Greater Taree LGA which is now known to exceed 25,000 plants as a result of the current study, the species is widespread and considered common along the NSW North Coast and in south east Queensland. However, no extensive count information exists for the species as a whole (Appendix F of the Report).

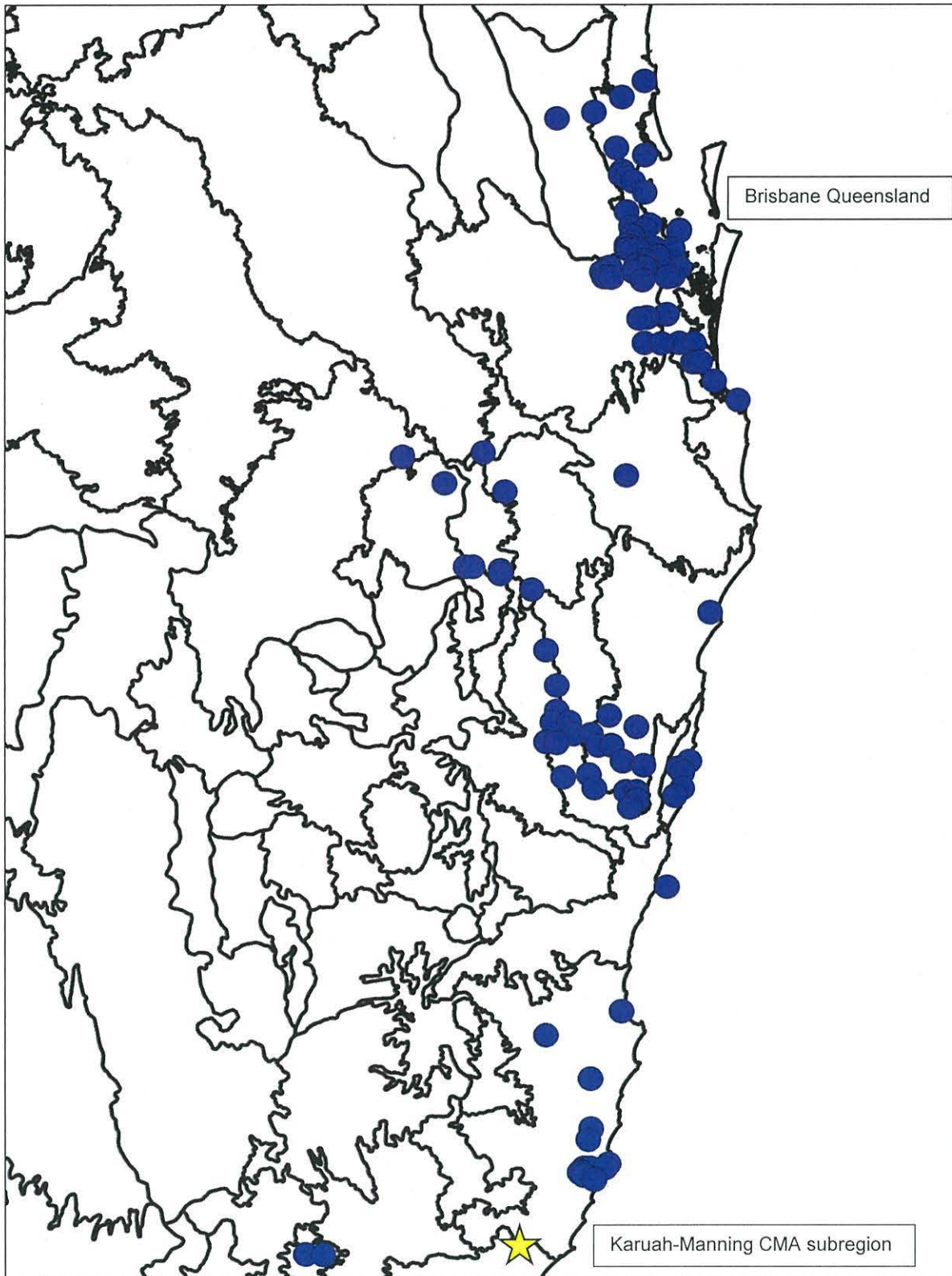


Figure 7: Known distribution of *E. seeana* in CMA IBRA subregions from herbarium records (PlantNet online).

Recommendation:

That the Chief Executive be satisfied that:

- (a) the habitat for the Koala, Brush-tailed Phascogale and *E. seeana* in the Biodiversity Certification Area makes a low contribution to regional biodiversity values because the relative abundance of the Koala, Brush-tailed Phascogale and *E. seeana* in the proposed Biodiversity Certification Area is low relative to their abundance in the region.

BCAM Section 2.4.4 – Additional assessment criteria for areas with regional or state biodiversity conservation significance

Section 2.4.4 of the BCAM states that:

"Where the red flag area has regional or state biodiversity conservation significance as defined in section 2.3 of the methodology, the application for biodiversity certification must demonstrate that conferring biodiversity certification on the red flag area:

- a) will not substantially reduce the width of a riparian buffer with regional or state biodiversity significance, or*
- b) will not substantially impact on the ecosystem functioning of a state or regional biodiversity link, this includes considering whether the impacts of conferring biodiversity certification will substantially reduce the migration, colonisation and interbreeding of plants and animals between two or more larger areas of habitat, and*
- c) will not significantly impact on the water quality of a major river, minor river, major creek, minor creek or a listed SEPP 14 wetland."*

Section 3.3.5 (page 36) of the Strategy identifies that the creek lines within the Assessment Area qualify as minor creeks and the Dawson River (along the western boundary) qualifies as a minor river of potential regional significance as defined under Section 2.3 and Appendix 1 of the BCAM. These creeks and rivers are protected by buffers of at least 20 metres and 30 metres wide respectively as required by the BCAM (see Figure 8) and will not be reduced in width. It is considered that a red flag variation is not required.

Further, the buffers are protected by E1 and E2 zoning within the Conservation Areas. Following more detailed master planning for infrastructure crossings (roads, pipelines, power, telecommunications etc.) it is likely that the majority of retained buffers will also be protected in additional E zones of at least 50 metres wide.

Consequently, Biodiversity Certification of the development lands will not substantially impact on any riparian buffers with regional or state significance and is unlikely to significantly impact on the water quality of any rivers, creeks or drainage lines. A red flag variation is not required.

There are no SEPP14 wetlands identified within the Assessment Area. However, the eastern area is flood prone (Figure 9) and contains EECs. The eastern lands are included in the Retained Lands and will be zoned E4 (Environmental Living) and made subject to specific clauses in the LEP requiring protection and restoration of the wetlands (Section 6.1 of Council's Planning Proposal). Consequently Biodiversity Certification of the development lands is unlikely to significantly impact on water quality of these wetlands or any SEPP14 wetland and a red flag variation is not required.

Figure 9 maps a wildlife corridor identified by OEH in its published Key Habitats and Corridors Study (Scotts 2003). The conservation value of this corridor is discussed in Section 2.5 of the Strategy.

The corridor runs generally east-west across the southern boundary of the Biodiversity Certification Assessment Area and its total area is 1,809.56 ha. However 1,037.22 ha is on freehold land outside the Brimbin proposal. Of the 772.34 ha inside Brimbin, 712.54 ha is protected in the Conservation Land and E4 Retained Land. This leaves 3.3% of the corridor potentially affected by Biodiversity Certification of the development land. Of this, a further 8.74 ha will be rehabilitated in an E2 zone whilst 4.52 ha are protected under an offset relating to another existing development in the vicinity at Cundletown. The remaining lands in the Biodiversity Certification Area covered by the mapped corridor are already cleared and the inclusion of appropriate urban tree plantings in this location will help improve connectivity further. Consequently, Biodiversity Certification is considered not likely to impact on the functioning of the regional biodiversity link.

Although this corridor can be considered a regional biodiversity link as defined under Section 3.7.2 of the BCAM and requires red flag assessment if impacted by the Biodiversity Certification Area, it should be noted that the Key Habitats and Corridors Study is based on modelled fauna habitat and the study emphasises that the derived corridor maps should be considered as a guide requiring more detailed confirmation on the ground.

The mapped link will not be affected by any removal of native vegetation or EECs in the Biodiversity Certification Area as it is already cleared and is largely protected elsewhere inside the Biodiversity Certification Assessment Area by the Conservation Lands. Outside the proposal, the link traverses high conservation value vegetation State Forest to the west of the proposal and the Cattai wetlands (Council owned) to the east. However, to the south, it is mapped across partially cleared lands where corridors 250 metres in width have been identified for protection in an E2 zone. Within the Biodiversity Certification Area, these will be revegetated to improve the functioning of the corridor and future connectivity between the conserved E1 and E2 lands. Council hopes to extend these rehabilitated corridors across adjacent freehold lands to further improve connectivity outside the southern boundary of the proposal in future.

It is considered that Biodiversity Certification will not substantially impact on ecosystem functioning of the regional biodiversity link and that this will be improved through the rehabilitation and rezoning of currently cleared lands both inside and outside the proposal. Wetland restoration to the east under a specific LEP clause will also promote connectivity.

Consequently, it is considered that a red flag variation is not required in relation to areas of state and regional biodiversity conservation significance.

Recommendation:

That the Chief Executive be satisfied that the application demonstrates Biodiversity Certification will not require the approval of a red flag variation with respect to the matters raised in Section 2.4.4 above because the proposal will not:

- (a) substantially reduce the width of riparian buffers with regional or state biodiversity significance because the buffers proposed are in excess of those required by the BCAM and are either
 - Protected in E1 and E2 zones; or
 - As far as possible, will not be developed on Retained Lands that may be subject to possible E zoning after master planning for infrastructure is completed.
- (b) substantially impact on the ecosystem functioning of a state or regional biodiversity link or substantially reduce the migration, colonisation and interbreeding of plants and animals between two or more larger areas of habitat, because most of the link is protected in conservation areas and subject to the rehabilitation of E2 zoned corridors in cleared areas to the south and of E4 zoned wetlands to the east.
- (c) significantly impact on the water quality of a major river, minor river, major creek, minor creek or listed SEPP14 wetland, because no SEPP 14 wetlands occur in the Biodiversity

Certification Area and all rivers and creeks are adequately buffered in accordance with the BCAM.





Figure 8: Riparian buffers (mid green) on retained lands outside E zoned lands.

Note: The E1 and E2 conserved lands are shown in pale green and the eastern E4 lands in pink. All riparian buffers are at least 20m or 30m in width and may be increased to 50m in later additions to the conservation zones.



Figure 9: Regional wildlife corridor (green hatch) and flood prone wetlands (white hatch).

Note: The E1 and E2 conserved lands are shown in pale green and the eastern E4 lands in pink. Most of the cleared areas within the corridor occur on lands outside the assessment area boundary (red) and may be rehabilitated.

2.1.2 Assessment of indirect impacts on biodiversity values

Section 6 of the BCAM states that:

"Where the application for biodiversity certification is also subject to a strategic assessment under the EPBC Act, the assessment of indirect impacts must include determining whether there will be any significant indirect impacts on the biodiversity values of World Heritage properties, places of National Heritage, Ramsar wetlands of international importance, or migratory birds in accordance with section 5 of the methodology.

The application for biodiversity certification must address to the satisfaction of the Director General, how the proposed ownership, management, zoning and development controls of the land proposed for biodiversity certification is intended to mitigate any indirect impacts on biodiversity values.

Where a proposed conservation measure is used to protect land that is a red flag area as defined in section 2.3, the area of the proposed conservation measure must include a buffer area to mitigate any negative indirect impacts from development following the conferral of biodiversity certification. The buffer area may be secured via a conservation measure and used to offset the impacts of biodiversity certification, or it may be a retained area in the biodiversity certification assessment area. The Director General must be satisfied that the size of the buffer area is appropriate to mitigate any negative indirect impacts from development following the conferral of biodiversity certification."

Although not required as a Strategic Assessment by the Australian Government Department of the Environment, impact on MNES is considered in the Strategy. The assessment was completed in accordance with *MNES Significant Impact Guidelines v1.1* (Australian Government Department of Environment 2013) and concludes that Biodiversity Certification of the development land is unlikely to have a significant impact as defined under Section 6 of the BCAM. Accordingly the proponent has determined not to refer.

An assessment of how indirect impacts are to be mitigated is provided in Sections 2.8 and 3.7 of the Strategy. Mitigation measures include:

- Adoption of buffers to vegetated and riparian lands of at least 10 metres wide but possibly up to 25 metres wide
- Construction of perimeter roads
- Additional buffer lands between perimeter roads and the Conservation Areas
- Rezoning of the Conservation Areas to E1 to be managed under a formal Plan of Management developed by NPWS and funded by the applicant under a Planning Agreement
- Replanting of other Conservation Lands to be rezoned E2
- Local streetscape planting and retention of native vegetation in the Certified Area
- Removal of stock and fencing of conserved lands
- Adoption of mitigation measures listed in the Planning Proposal as requirements for future development consent including the restoration and management of wetlands in the E4 zoned retained area, private management of environmental buffers and bushfire setbacks on freehold land
- Possible BioBanking of retained lands to provide funding for environmental management under a formal BioBanking Agreement, established under Section 7A of the TSC Act, with OEH.

The above measures satisfactorily address how indirect impacts on biodiversity values will be mitigated.

The Strategy indicates that all native vegetation in the Assessment Area has been buffered by at least 10 metres. Where these buffers fall adjacent to the Conservation Areas and the red flagged EEC vegetation therein, they have been considered as retained land and thus excluded from credit assessment for the offset. This has the effect of reducing the number of credits available in the Conservation Lands to offset those required from the Biodiversity Certification Area and is consistent with Section 6 of the BCAM.

Within the Biodiversity Certification Area, there is 259 ha of native vegetation that attract a credit requirement and this includes vegetation within a 10 metre buffer. The Strategy indicates that this buffer accounts for 9.5 ha that will be indirectly impacted by Biodiversity Certification of the development lands. The Report indicates that site management scores for these areas were reduced with respect to native and exotic ground cover meaning that the credit requirements within the Biodiversity Certification Area are increased.

Despite the reduction in credits available through the exclusion of buffers in retained land and the increase in credits required in the Biodiversity Certification Area through the reduction in site management scores, there remains a substantial surplus of credits available across the Assessment Area as shown in Table 1 of the Strategy. This demonstrates that the size of buffers to vegetated areas including red flagged EECs is adequate to mitigate or compensate for any negative indirect impacts.

It should also be noted that the width of buffers to Conservation Areas could be increased up to 25 metres once the final location of perimeter roads becomes known. Detailed engineering studies to confirm this will be completed at the master planning stage following Biodiversity Certification and rezoning approvals. Once confirmed, it is agreed under the Planning Agreement that these buffer lands (currently treated as retained) will be transferred into the Conservation Areas under additions to the E1 zone.

Recommendation:

That the Chief Executive be satisfied that any indirect impacts on the biodiversity values of the proposed Biodiversity Certification area are appropriately minimised in accordance with Section 6 of the BCAM because:

- (a) the application is not subject to a Strategic Assessment under the EPBC Act by the Australian Government Department of the Environment
- (b) the application addresses how the proposed ownership, management, zoning and development controls of the proposed Biodiversity Certification Area are intended to mitigate any indirect impacts on biodiversity values
- (c) the application demonstrates that the size of the buffer areas is appropriate to mitigate any negative indirect impacts from development following the conferral of Biodiversity Certification and that the buffers have either been included in conservation measures or identified as retained areas in the biodiversity certification assessment area
- (d) buffers of increased width up to 25 metres are likely to be added to the Conservation Areas and rezoned as E1 under a Planning Agreement once detailed engineering studies relating to the location of perimeter roads become available after Biodiversity Certification.

That the Chief Executive be satisfied under Section 2.2d) of the BCAM any indirect impacts on biodiversity values of land to which biodiversity certification is conferred are appropriately minimised in accordance with Section 6 of the methodology.

2.1.3 Certification of local data under Section 3.4 of BCAM

Section 3.4 of the BCAM states that:

"The Director General may certify that more appropriate local data can be used instead of the data in the Vegetation Types Database, Vegetation Benchmarks Database and the Threatened Species Profile Database. Local data may be used if the Director General is of the opinion that the data more accurately reflects local environmental conditions. In certifying the use of local data, the Director General must provide reasons for this opinion.

Benchmark data that more accurately reflect the local environmental conditions for a vegetation type may be collected from local reference sites, or obtained from relevant published sources using the procedures set out in Appendix 2.

The certified local data can then be used in applying the methodology in accordance with any procedures outlined in the Biodiversity Certification Operational Manual."

Appendix F of the Report provides a detailed assessment of MALD with respect to the Endangered Population of Narrow-leaved Red Gum, *E. seeana*, in the Greater Taree LGA, a proportion of which occurs within the Assessment Area. The use of MALD is intended to demonstrate that the species can withstand further loss and consequently removes the need for a red flag variation.

Table 11 of the Strategy summarises the credit status for *E. seeana* following application of the MALD. It demonstrates that the credits required (45,929) under the BCAM for the removal of *E. seeana* from the Biodiversity Certification Area can be satisfied by those available (80,706) on the E1 Conservation Lands.

An additional 3,534 credits are generated through the replanting of 589 stems within the E1 lands and a further 3,180 credits from the conserving and replanting of the E2 lands with 485 stems. It is also noted that the vegetation condition of the *E. seeana* individuals in the Biodiversity Certification Area is generally remnant regrowth compared to the older mature high conservation value growth with tree hollows found on the Conservation Lands.

Table 9 (page 28) of the Report concludes overall that 1,973 stems in good condition will be removed from the Biodiversity Certification Area whilst 22,161 stems will be conserved. The removed stems represent 7.7% of the population in the study area (including retained lands) which is considered "minor" in Appendix F (page 81) of the Report. However, it is proposed to replant at least 1,074 stems to help compensate for this loss and there are many more plants known across the broader distribution of the species.

Further some 1,242 stems are found as regrowth in low condition within the Biodiversity Certification Area. Aerial photography demonstrates that the area holding the regrowth was completely cleared by 1991 which demonstrates the ability of the species to revegetate quickly in the local area.

It is therefore concluded that the use of MALD to remove the need for a red flag variation is appropriate and justifies that the population of *E. seeana* can withstand further loss in the Brimbin Assessment Area.

Recommendation:

That the Chief Executive be satisfied under Section 3.4 of the BCAM that:

- (a) the use of MALD more accurately reflects local environmental conditions pertaining to the endangered population of *E. seeana* in the Assessment Area

- (b) certification of the data will allow its use in applying the methodology in accordance with any procedures outlined in the Biodiversity Certification Operational Manual
- (c) subject to the use of certified local data, the E. seeana population is capable of withstanding further loss and does not require a red flag variation.

2.1.4 Assessment of expert and expert report

Expert qualifications

Section 4.5 of the BCAM states that:

“An expert report may be obtained instead of undertaking a threatened species survey. An expert report must only be prepared by an expert. An expert is a person who is accredited by the Director General under section 142B(1)(b) of the TSC Act, or if arrangements for accreditation under section 142B(1)(b) are not in place, a person who, in the opinion of the Director General, possesses specialised knowledge based on training, study or experience to provide expert opinion in relation to the biodiversity values to which an expert report relates.”

“An expert report prepared for the purposes of this section must be prepared in accordance with any guidance provided in the Biodiversity Certification Operational Manual. The Director General may decide not to accept an expert report instead of a survey.”

Section 4.4 of the Strategy indicates that no expert reports have been required for this proposal because numerous surveys have been undertaken. Sections 2 and 3 of the Report discuss the results of previous survey work and effort associated with the current proposal.

Apart from some issues with the credit calculator relating to the availability and matching of various vegetation classification systems it is concluded that the survey data at hand is sufficient to support robust biodiversity conclusions. This is demonstrated by the list of species recorded in Appendices D and E of the Report and the impact assessments in the Appendices to the Strategy.

Recommendation:

That the Chief Executive be satisfied under Section 4.5 of the BCAM that:

- (a) Sufficient threatened species surveys and other biodiversity surveys have been completed to allow robust biodiversity conclusions regarding the Brimbin Biodiversity Certification application
- (b) An expert report is not required to support the Brimbin Biodiversity Certification application.

2.1.5 Planning instrument conservation measures

Section 8.1.3 of the BCAM states that:

“Conservation measures applied through a planning instrument are known as planning instrument conservation measures. Planning instrument conservation measures can be used to create ecosystem credits and species credits to offset the impacts of the conferral of biodiversity certification on the land.

Planning instrument conservation measures are only available to be used to offset the impacts of the proposed biodiversity certification where:

- (a) *the land proposed as a planning instrument conservation measure adjoins or is proximate to the land proposed for biodiversity certification*
OR

- (b) *the land proposed as a planning instrument conservation measure is within the biodiversity certification assessment area*
AND
- (c) *the land proposed as a planning instrument conservation measure is identified in the application for biodiversity certification*
AND
- (d) *the land proposed as a planning instrument conservation measure is not subject to any other proposed conservation measure in the application for biodiversity certification*
AND
- (e) *the relevant planning instrument is in place at the time the application for biodiversity certification is made*
OR
- (f) *the application for biodiversity certification includes written advice from the Minister for Planning, agreeing to support the proposed changes to the relevant planning instrument, within a reasonable timeframe from the date the application for biodiversity certification is made.*

Note: Where the planning instrument conservation measure is not in place at the time biodiversity certification is conferred, the Minister may, in approving the conservation measure, specify a time within which the conservation measure must be implemented. If the conservation measure is not implemented within that timeframe, the Minister may suspend certification until the conservation measure is implemented.

In addition, the following new provisions must be contained in the planning instrument applying to the land that is proposed as a planning instrument conservation measure:

- (g) *the land must be zoned E2 or E3 (or, for State Forest, RU3) or another suitable zone provided that the uses permitted on the site are unlikely to compromise the biodiversity values of the land*
AND
- (h) *a local provision setting out the development controls that will apply to protect the native vegetation and any other habitat for native species on the land to the satisfaction of the Director General.*

The provisions in the planning instrument relating to g) and h) will be considered 'new' if:

- *they are a direct result of the preparation of the application for biodiversity certification, or*
- *the Director General is satisfied that significant upgrades have occurred or are planned to occur to existing environmental protection zoning and development controls in order to achieve improvement in existing biodiversity values as a direct result of the preparation of the application for biodiversity certification.*

In determining what constitutes a 'significant upgrading' to existing zoning and development control provisions the Director General may consider:

- a) *the objectives of the proposed zone*
- b) *the permissible uses in the proposed zone*
- c) *the subdivision design, including configuration of lots, minimum lot sizes and/or options for lot averaging and lot clustering*
- d) *the development controls that will apply to future development within the zone*
- e) *any other matter the Director General considers relevant.*

The Strategy discusses the planning instrument conservation measures proposed for the Conservation Areas. Figure 2 above, maps the proposed conservation measures that will be subject to amendments to the planning instrument under a Planning Proposal that was placed on public exhibition late in 2013.

The proposed rezoning as exhibited is shown in Figure 3 above. The majority of the Biodiversity Certification Area is currently zoned RU1 (Primary Production) and RU4 (Small Holdings).

The conservation measures include the rezoning of 936.5 ha of high conservation land as E1 which will be transferred into the national parks estate under a Planning Agreement (DOC15/50592) pursuant to s93F of the EP&A Act. These lands attract a 100% credit rating under the BCAM. In accordance with Section 8.1.3 (f) of the BCAM, written approval for the transfer of these lands has been obtained from the Minister (see DOC15/50591, Attachment D).

In the Planning Agreement, there is also an additional 178.4 ha of land to be transferred into E1 under an existing offset requirement relating to a development at West Wallsend, but this land does not form part of the Biodiversity Certification Application and is already zoned E2.

A further 61.9 ha of land will be conserved under an E2 zoning and attracts a 25% credit rating. It is intended that these lands will also be transferred into the national parks estate under the Planning Agreement and will be rezoned E1 in subsequent amendments to the Planning Proposal. There are also two infrastructure corridors 20 metres wide identified that are currently included in the Biodiversity Certification Area which, if not required, will be added to the Conservation Land and rezoned E1.

Part Lot 63, DP754410 (152.5 ha) will also be zoned E2 in subsequent amendments to the Planning Proposal. A further 39 ha of E2 land will remain in wildlife corridors and rehabilitation areas.

The Planning Proposal also identifies the rezoning of 659.2 ha of retained land in an E4 zone that will be subject to specific wetland protection requirements under clause 7.9 of the proposed LEP Planning Proposal (see DOC15/50591, Attachment C).

There is 120.6 ha of riparian buffers, lakes and steep lands in the retained lands. Although these lands are classed as "retained" and do not attract any credits under the BCAM, they cannot be developed and will be managed primarily for conservation, possibly under a BioBanking Agreement.

The practice note for the use of Environment Protection Zones (E1, 2 and 4) (Department of Planning 2009) describes the uses permissible under each of the zones. Uses in E1 zones are only those permissible under the *National Parks and Wildlife Act 1974* and a Plan of Management and Statement of Works describing these uses has been prepared by NPWS for the Planning Agreement and accepted by the landowner. Under the Agreement the landowner agrees to fund management of the transferred E1 lands (and subsequent E2 lands to be rezoned E1) for five years to the value of \$1.1 million.

Management of the remaining E2 lands and E4 lands which are currently Retained Lands will be guided by a Development Control Plan (DCP) consistent with the LEP provisions to be completed by the Greater Taree City Council following finalisation of a Master Plan for these areas.

The Master Plan and DCP will be drafted to ensure sensitive design principles are applied in the planning of subdivision layouts and future developments, to minimise impacts on biodiversity values.

Perimeter roads will be provided to create separation between the Biodiversity Certified Area and the Conservation Areas with the residual land between each transferred into conservation areas under future LEP amendments once detailed engineering studies are completed.

This buffer will provide bushfire protection for adjacent residences and minimise the number of lots directly abutting high conservation value vegetation. This will discourage private property encroachments and should minimise indirect impacts such as garden waste dumping and 'tidying up' activities following occupation.

The proposed new E zones will provide a greater level of protection to the native vegetation than is currently afforded by the existing rural zones. The in principle support from the Department of Planning and Environment given to the Planning Proposal by virtue of its previous exhibition and the in principle agreement of the Minister for the Environment to accept the lands proposed for transfer should provide the Chief Executive with the confidence that this proposed rezoning will happen (see DOC14/43166 and attachments at Attachment D to briefing note DOC15/50591).

The Department of Planning and Environment initially required that the rezoning required for the proposal be made by December 2014. However, this has now been extended, upon application by Council, until such time as Biodiversity Certification is conferred by the Minister and the necessary amendments to the Planning Proposal have been completed.

The Planning Agreement relating to the transfer of the Conservation Land in accordance with the Minister's in principle agreement is included with the application (DOC15/50592) for the Minister's consideration. The Planning Agreement has been signed by the Council and the proponent (the Roche Group) and should be forwarded to the Minister for consideration along with the Biodiversity Certification application. The Planning Agreement requires the Conservation Land to be transferred to NPWS within six months of the conferral of Biodiversity Certification and rezoning being made (whichever is the latter).

Recommendation:

That the Chief Executive be satisfied in accordance with Section 8.1.3 of the BCAM that:

- (a) the land proposed as a planning instrument conservation measure adjoins or is proximate to the land proposed for biodiversity certification
- (b) the land proposed as a planning instrument conservation measure is within the biodiversity certification assessment area
- (c) the land proposed as a planning instrument conservation measure is identified in the application for biodiversity certification
- (d) the land proposed as a planning instrument conservation measure is not subject to any other proposed conservation measure in the application for biodiversity certification
- (e) the relevant planning instrument has been placed on public exhibition and will be adopted following biodiversity certification of the Brimbin Planning Proposal and execution of the Planning Agreement
- (f) the Minister for Planning has issued a Gateway Determination under s56 of the *Environmental Planning and Assessment Act 1979* for the planning proposal indicating that the proposal can proceed and requiring it to be publicly exhibited
- (g) the land proposed as a planning instrument conservation measure will be zoned E1 and E2 with the latter rezoned to E1 on transfer to the national parks estate
- (h) the proposed Biodiversity Certification Area and E4 lands will be subject to a Master Plan and Development Control Plan setting out local provisions relating to the protection of vegetation and wildlife habitat. Management of the E1 and E2 lands will be subject to the objectives of the NPW Act upon transfer to the national parks estate. The transfer of lands into the national parks estate is the result of biodiversity certification and significant upgrades to existing environmental protection zonings and development controls will occur.

That the Chief Executive be satisfied under Section 2.2c of the BCAM that the direct impacts on the biodiversity values of land to which biodiversity certification is conferred are offset in accordance with the rules and requirements set out in section 10 of the methodology.

2.2 Matters for the Minister to consider

2.2.1 Application for a minor variation under s.126Q of the TSC Act

Section 126Q of the *Threatened Species Conservation Act 1995* (TSC Act) states that:

- 1) *"The Minister may, for the purpose of a biodiversity certification assessment, permit a variation to be made to the biodiversity certification assessment methodology if the Minister is of the opinion that:
 - (a) the variation to the methodology is minor, and
 - (b) the variation would result in a determination that the overall effect of biodiversity certification is to improve or maintain biodiversity values, and
 - (c) strict adherence to the methodology is in the particular case unreasonable and unnecessary.*
- 2) *A variation to the biodiversity certification assessment methodology is not to be permitted if the Minister is of the opinion that the variation is inconsistent with the classification of a plant species as a threatened species or as a component of an endangered ecological community.*
- 3) *The Minister must cause his or her reasons for permitting a variation to be made to the biodiversity certification assessment methodology to be published on the website of the Department.*
- 4) *The regulations may make further provision for the circumstances in which the Minister may permit a variation to be made to the biodiversity certification assessment methodology under this section."*

Table 10 (page 41) of the Biodiversity Certification Strategy (the Strategy) demonstrates that all vegetation types to be removed within the Biodiversity Certification Area can be offset by "like for like" habitat within the E1 and E2 Conservation Land with the exception of Tallowood-Spotted Gum-Grey Gum grassy tall open forest (HU763). However, under the BCAM, the credit deficit for this type can be offset by a surplus available from other types within the same vegetation class (adopted by BCAM as those defined in Keith 2004).

The Strategy confirms that no minor variations to the BCAM are required because the offsetting of all vegetation types to be removed within the Biodiversity Certification Area can be met inside the Conservation Land within the confines of the existing BCAM rules.

Recommendation:

That the Minister note that no variations to the Biodiversity Certification Assessment Methodology under s126Q of the TSC Act are required.

2.2.2 Biodiversity Certification to be conferred only if biodiversity values are improved or maintained

Section 126P of the TSC Act states that:

- 1) *"For the purposes of this Part, biodiversity certification improves or maintains biodiversity values only if the Minister determines, on the basis of a biodiversity certification assessment, that the overall effect of biodiversity certification is to improve or maintain biodiversity values.*
- 2) *A biodiversity certification assessment is an assessment of the effect of biodiversity certification on biodiversity values.*
- 3) *A biodiversity certification assessment is to be made in accordance with the biodiversity certification assessment methodology, and not otherwise.*

4) This section applies to biodiversity certification as extended or modified under this Part in the same way as it applies to the conferral of biodiversity certification.”

Improve or maintain biodiversity values

The application demonstrates that landscape biodiversity values will be improved, as summarised below:

Plant Community Type (abbreviated)	Credits required	Credits available in E1 and E2 lands	Credit status (+ for surplus, - for deficit)
HU934 Cabbage Gum	0	87	+87
HU943 Swamp Oak	95	734	+639
HU591 Paperbark	11	57	+46
HU932 Swamp Mahogany	0	802	+802
HU703 Narrow-leaved Red Gum	2083	3392	+1309
HU783 Flooded Gum	0	20	+20
HU511 Blackbutt	140	1115	+975 (+71*)

Plant Community Type (abbreviated)	Credits required	Credits available in E1 and E2 lands	Credit status (+ for surplus, - for deficit)
HU762 Tallowwood, Grey Gum	181	1826	+1645
HU763 Tallowwood, Spotted Gum	3135	2231	-904*
Total	5645	10264	4619

* Note: The Strategy retires the deficit of 904 credits for HU763 against the surplus in HU511 at the vegetation class level in accordance with the BCAM offset rules.

On the basis that the red flag variations relating to the Endangered Ecological Communities (EEC) components within the above plant community types are approved (refer Chief Executive considerations in Section 2.11 above), the Conservation Lands offer an excess of 4,619 credits (45%) over that required by the BCAM, thereby confirming that landscape biodiversity values will be improved.

The application demonstrates that threatened species biodiversity values will be improved as summarised below:

Species	Credits required	Credits available in E1 and E2 lands	Credit status (+ for surplus, - for deficit)
<i>Eucalyptus glaucina</i> Slaty Red Gum	0	42	+42
<i>Eucalyptus seeana</i> Narrow-leaved Red Gum	45929	80706	+34777
<i>Corybas dowlingii</i> Red Helmet Orchid	0	6	+6
<i>Phascogale tapoatafa</i> Brush-tailed Phascogale	1650	5426	+3776
<i>Phascolarctos cinereus</i> Koala	2171	5426	+3255

On the basis that the use of More Appropriate Local Data is approved with respect to *E. seeana* (refer Chief Executive considerations in Section 2.1.3 above), the Conservation Lands provide an excess in credits for all threatened species with potential to be affected by the proposal thereby confirming that threatened species biodiversity values will be improved.

Assessment and measurement of landscape biodiversity values

The assessment and measurement of general biodiversity values has been reviewed by accredited Biodiversity Certification staff from OEH and found to be accurate.

The native vegetation extent has been mapped from ADS40 aerial photography on the ground and confirmed where necessary using hand held Global Positioning Systems. The plant community types have been identified and classified into different vegetation zones based on the condition and structure of the vegetation. The number of transect plots surveyed as part of the assessment is correct as discussed in Section 2.3 and mapped in Figure 3 of the Biodiversity Certification Assessment Report (the Report).

A copy of the Biodiversity Certification credit calculation tool (Version 1.08 as amended) was used by Niche Environment and Heritage consultants to calculate the credits required for the Biodiversity Certification Area as well as the conservation area. Use of this tool has been reviewed and it is confirmed that the data was entered correctly to calculate the site value scores (this is done automatically by the tool).

There was some minor adjustment of vegetation codes derived under earlier versions of the calculator, as shown in Appendix A of the Report, to ensure compliance with the current version. This was done in accordance with advice provided by the OEH BioBanking Team and found to be acceptable.

Assessment and measurement of threatened species biodiversity values

The Report provides details of the flora and fauna surveys conducted. Of the 171 plant species recorded in the Assessment Area, three are listed as threatened. Of the 107 fauna species recorded, 20 are listed as threatened. Each of these threatened species and their habitats are discussed in detail with a summary provided in Section 5.3 of the Report and a map of their locations in Figure 5.

The staff employed by Niche Environment and Heritage who carried out the fauna surveys have extensive experience in fauna survey and have been accredited by OEH to conduct BioBanking and Biodiversity Certification assessments.

Surveys were carried out on five occasions between June 2010 and September 2014 at optimum detection times for each of the threatened species identified with potential to occur in the Assessment Area. These surveys were conducted in accordance with accepted OEH survey guidelines. Together with the results of five earlier studies, it is considered that the survey effort expended is adequate and seasonally appropriate.

Matters of national environmental significance

An assessment of the impact on matters of national environmental significance (MNES) is provided in the Strategy. The assessment was completed in accordance with *MNES Significant Impact Guidelines v1.1* (Australian Government Department of Environment 2013).

Twenty four Commonwealth listed threatened or migratory fauna were considered to have moderate potential or are known to occur within the Assessment Area. Of these, habitat for six (New Holland Mouse, Hastings River Mouse, Australasian Bittern, Giant Barred Frog, Stuttering Frog and Square-tailed Kite) is protected within the Conservation Area and along riparian buffers.

Another thirteen are considered to be widespread and common migratory birds. Biodiversity Certification of the development lands will not impact on these threatened or migratory species.

The remaining six species (Regent Honeyeater, Swift Parrot, Large-eared Pied Bat, Spotted-tailed Quoll, Koala and Grey-headed Flying Fox) are assessed in relation to the criteria provided in the Australian Government Department of Environment guidelines. The assessment concludes that, for each of these species and criteria, Biodiversity Certification of the development lands will have either no impact or a low impact and it is therefore unlikely to have a significant impact as defined under Section 6 of the BCAM. The Strategy indicates that referral to the Australian Government Department of the Environment by the proponent (Roche Group) is not required.

The other possible MNES (Listed Threatened Ecological Communities; World Heritage Properties or National Heritage Places; Ramsar Wetlands of International Importance) do not occur within the Biodiversity Certification Area.

Offset rules for using species credits for Biodiversity Certification

The species credits generated for conservation measures may be used to offset the species credits required for the impacts of the conferral of Biodiversity Certification on the land in accordance with Section 2.2(c) of the BCAM, if both the following conditions are met:

- (a) the species credits generated for a conservation measure must relate to the same species or population as the species credits required for land proposed for certification, and*
- (b) the number of species credits required for a species impacted by the proposed Biodiversity Certification of land must be matched by the number of species credits for the species generated for a conservation measure.*

The Strategy demonstrates that the threatened species for which credits are required as a result of future development in the Biodiversity Certified Area are the same as those for which credits are generated in the Conservation Lands, and that there are excess credits for all of those species available. Both conditions required under Section 2.2(c) of the BCAM are therefore met.

Offset rules for using ecosystem credits

The ecosystem credits generated for conservation measures may be used to offset the ecosystem credits required for the impacts of Biodiversity Certification on the land proposed for Biodiversity Certification in accordance with Section 2.2(c) of the methodology, if the following conditions as set out in Section 10 of the BCAM are met:

- (a) the CMA subregion identified in attribute 1 of the credit profile for the conservation measure in Section 10.1 is the same as the subregion(s) identified in attribute 1 of the credit required for the land proposed for Biodiversity Certification; and*
- b) the vegetation type identified in attribute 2 of the credit profile for the conservation measure in Section 10.1 is the same as the vegetation type(s) identified in attribute 2 of the credit required for the land proposed for Biodiversity Certification in Section 10.1.*

The Strategy confirms that the credit profiles for both the Biodiversity Certification Area and the Conservation Land occur within the same CMA sub-region (Macleay-Hastings) within the Hunter Rivers CMA. The Strategy demonstrates that the credit profile for the vegetation types found in the Biodiversity Certified Area are the same as those found in the Conservation Lands at the Plant Community Type level (8 types) and the Vegetation Class level (one type) in accordance with the BCAM.

On the basis that the Chief Executive approves the Red Flag variations and the use of certified local data as recommended in Part 2.1 (above), it is considered that the improve or maintain biodiversity value requirements under Section 126R of the TSC Act will be met in accordance with the BCAM.

Recommendation:

That the Minister determines under Section 126P of the TSC Act:

- (a) on the basis of a Biodiversity Certification assessment for the Brimbin Planning proposal, the overall effect of Biodiversity Certification of the proposed Biodiversity Certification Area is to improve or maintain biodiversity values
- (b) the Brimbin Biodiversity Certification Assessment is an assessment of the effect of biodiversity certification on biodiversity values
- (c) the Brimbin Biodiversity Certification Assessment was carried out in accordance with the BCAM.

2.2.3 Consideration of other matters under Part 7AA of the TSC Act

Section 126N - Public notification requirements in relation to application

Section 126N of the TSC Act states that:

- 1) *"Land cannot be biodiversity certified unless the applicant has complied with the public notification requirements in relation to the application for biodiversity certification.*
- 2) *The public notification requirements in relation to an application for biodiversity certification are as follows:*
 - (a) *an applicant must publish notice of the application for biodiversity certification in a newspaper circulating generally throughout the State and on the applicant's website,*
 - (b) *the notice must invite the public to make submissions relating to the application before a closing date for submissions specified in the notice (being a date that is not less than 30 days after the date the notice is first published in a newspaper under this section),*
 - (c) *until the closing date for submissions, an applicant is to cause copies of the application to be exhibited at its principal office in New South Wales and on its website,*
 - (d) *an applicant must provide a report to the Minister that indicates the applicant's response to any submissions relating to the application that were received before the closing date.*
- 3) *A planning authority may vary its application for biodiversity certification (including its biodiversity certification strategy) as a consequence of any submission received following public notification of the application or for any other reason.*
- 4) *Further public notification of the application, as varied, is not required unless the Minister otherwise directs."*

The Biodiversity Certification Strategy dated September 2014 was exhibited by Greater Taree City Council between 2 October 2014 and 29 October 2014 in accordance with the OEH Biodiversity Certification Guidelines for Applicants. The Planning Agreement relating to the transfer of the Conservation Lands into the national parks estate was exhibited at the same time.

No public submissions on either document were received. Consequently the Council proceeded with the Biodiversity Certification Application to the Minister providing the Strategy and the Report as originally exhibited.

The lack of submissions could be taken as community support for the proposal given:

- The perceived need for urban and industrial expansion in the LGA
- The fact that the Biodiversity Certification Area is predominately cleared
- The Conserved Lands are of substantial size and generate credits well in excess of those required to satisfy the BCAM.

Recommendation:

That the Minister note the notification requirements for biodiversity certification in Section 126N of the TSC Act have been met and that there is no requirement to provide further notification.

Section 126R - Refusal to confer certification

Section 126R of the TSC Act states that:

- (1) *"The Minister must refuse to confer biodiversity certification if biodiversity certification does not improve or maintain biodiversity values.*
- (2) *In addition, the Minister may refuse to confer biodiversity certification:*
 - (a) *if the application for certification does not comply with this Part or the regulations, or*
 - (b) *if, in the opinion of the Minister, insufficient information is provided to enable biodiversity certification to be conferred, or*
 - (c) *if, in the opinion of the Minister, the certification application does not sufficiently address the biodiversity certification assessment methodology, or*
 - (d) *for any other reason the Minister considers sufficient."*

The following is a consideration of these matters:

(a) if the application for certification does not comply with this Part or the regulations

The application for Biodiversity Certification has been made in accordance with the requirements of the TSC Act. It is considered that the Biodiversity Certification application and this report demonstrate the ways in which Part 7AA has been addressed.

(b) if, in the opinion of the Minister, insufficient information is provided to enable Biodiversity Certification to be conferred

Sufficient information has been provided in the application in the form of maps, descriptions of the methodology used for assessment, the calculation of credits and the interpretation of the results. It is considered that the Minister would have no cause to refuse the application under Section 126R(2)(b).

(c) if, in the opinion of the Minister, the certification application does not sufficiently address the Biodiversity Certification Assessment Methodology

The application for Biodiversity Certification clearly describes the application of the BCAM. Sufficient information has been provided to enable the Chief Executive and the Minister to decide whether to approve three minor 'red flag variations' under Section 2.4 of the BCAM and the use of certified local data under Section 3.4. It is considered that the Minister would have no cause to refuse the application under Section 126R (2)(a).

(d) for any other reason the Minister considers sufficient

There appears to be no other reason why the Minister should not confer certification.

Recommendation

That the Minister notes that refusal to confer biodiversity certification under Section 126R of the TSC Act does not appear to be justified because the application:

- (a) Improves or maintains biodiversity values
- (b) Complies with Part 7AA of the Act and the regulations

(c) Has sufficiently addressed the Biodiversity Certification Assessment Methodology

(d) There are no other reasons considered sufficient to refuse the application.

2.2.4 Recommendation to confer Biodiversity Certification on the proposed Biodiversity Certification Area

It is recommended that under Part 7AA of the TSC Act, the Minister confer Biodiversity Certification on the proposed Biodiversity Certification Area by:

- Signing and dating the declarations in Section 4.2 below
- Signing and dating the order conferring Biodiversity Certification attached to the Briefing Note accompanying this report and approve its publication in the Government Gazette
- Signing and dating the three copies of the Planning Agreement in DOC15/50592

Recommending officer:



4 May 2015

JOHN MARTINDALE
Conservation Planning Officer, North East Region
Regional Operations

Part 3: List of documents before the decision maker

Key Document	
Attachment A1:	Cover letter from Greater Taree City Council Brimbin Biodiversity Certification Application dated 20 November 2014
Attachment A2:	Biodiversity Certification Strategy – September 2014
Attachment A3:	Biodiversity Certification Assessment Report – September 2014

Supporting Paperwork	
Attachment C:	Exhibited Planning Proposal: Rezoning of Land at Brimbin
Attachment D:	Copy of DOC14/43166: Previous Ministerial in principle approvals to acquire offset lands at Brimbin

Attachment E: Other documents that were taken into consideration	
1.	Biodiversity Certification Assessment Methodology (February 2011) and associated databases/profiles relating to vegetation types, vegetation benchmarks, threatened species, endangered populations and endangered ecological communities.
2.	Biodiversity Certification Operational Manual – Stage 4: Applying for Biodiversity Certification and Appendices (draft 18 July 2013).
3.	Biodiversity Certification Guide to Applicants (draft 18 July 2013).
4.	Connell Wagner (2004). Flora and Fauna Report: Greater Taree City Council Brimbin Local Environment Study Baseline Environmental Assessment.
5.	Australian Government Department of the Environment (2013). MNES Significant Impact Guidelines v1.1.
6.	Environment Protection Zones LEP Practice Note (Department of Planning 2009).
7.	Keith, D. (2004). Ocean shores to desert dunes: the native vegetation of New South Wales and the ACT. NSW Department of Environment and Conservation, Hurstville.
8.	Mid North Coast Regional Conservation Plan (Office of Environment and Heritage draft December 2010).
9.	Mid North Coast Regional Strategy (NSW Department of Planning March 2009).
10.	Office of Environment and Heritage (2011). Concurrence Report - Lots 103 and 105 (DP1000408) George Booth Drive, West Wallsend, Lake Macquarie LGA. Unpublished report relating to existing offset to be transferred under the Planning Agreement.
11.	Niche (2011). Brimbin Flora and Fauna Assessment. Unpublished report for Roche Group including customised updates to the Biometric Vegetation Types (BVT) database.
12.	NSW Scientific Committee (2002). Final Determination, <i>Eucalyptus seeana</i> Endangered Population.
13.	OEH (2012). Guidelines on appropriate mechanisms for securing biodiversity offsets.
14.	Scotts, D. (2003). Key habitats and corridors for forest fauna: a landscape for conservation in north-east New South Wales. NPWS Occasional Paper 32.
15.	Seidel, John (4 June 2013). Correspondence OEH BioBanking Team regarding customised updates to the BVT database.
16.	Whelans Insites (2009). Lot 63 in DP75410 and part Lot 1 in DP530846, Landsdowne Road, Brimbin. Preliminary ecological constraints report for specific areas.

Part 4: Decisions

4.1 Decisions of the Chief Executive

The Chief Executive must strike through the relevant wording to indicate his decision prior to signing this Section.

I, Terry Bailey, Chief Executive of the Office of Environment and Heritage, having considered this report and the attachments to this report:

Red flag variations for Swamp Sclerophyll Forest, Subtropical Coastal Floodplain Forest and Swamp Oak Floodplain Forest Endangered Ecological Communities (EECs)

1. **am satisfied / ~~am not satisfied~~** in accordance with Section 2.4.1 of the BCAM that the application for Biodiversity Certification has adequately considered the feasibility of options to avoid impacts on the three EEC red flag areas because the application demonstrates that:

- (a) all reasonable measures have been taken to avoid adverse impacts on the red flag areas and to reduce impacts of development on vegetation remaining within the Biodiversity Certification Area.
- (b) appropriate conservation management arrangements cannot be established over the red flag areas given their current ownership, status under a regional plan and zoning and the likely costs of future management.

2. **am satisfied / ~~am not satisfied~~** in accordance with Section 2.4.2.1 of the BCAM that:

- (a) the current or future uses of land surrounding the red flag area where biodiversity certification is to be conferred reduce its viability or make it unviable. Relatively small areas of native vegetation surrounded or largely surrounded by intense land uses, such as urban development, can be unviable or have low viability because of disturbances from urbanisation, including edge effects.
- (b) the size and connectedness of the vegetation in the red flag area where biodiversity certification is to be conferred to other native vegetation is insufficient to maintain its viability. Relatively small areas of isolated native vegetation can be unviable or have low viability.
- (c) the condition of native vegetation in the red flag area where biodiversity certification is to be conferred is substantially degraded, resulting in loss of or reduced viability. Native vegetation in degraded condition can be unviable or have low viability.
- (d) the area of a vegetation type in a red flag area on land where biodiversity certification is conferred is minor relative to the area containing that vegetation type on land subject to proposed conservation measures.

3. **am satisfied / ~~am not satisfied~~** in accordance with Section 2.4.2.2 of the BCAM that:

The red flag area on land proposed for biodiversity certification makes a low contribution to regional biodiversity values on the basis of consideration given to the following factors for each vegetation type or critically endangered or endangered ecological community regarded as a red flag area:

- (a) relative abundance: that the vegetation type or critically endangered or endangered ecological community comprising the red flag area is relatively abundant in the region
- (b) percent remaining is high: that the percent remaining of the vegetation type or critically endangered or endangered ecological community comprising the red flag area is relatively high in the region
- (c) percent native vegetation (by area) remaining is high: that the percent remaining of all native vegetation cover in the region is relatively high.

And that under Section 2.2b) of the BCAM the impacts on the three EEC red flag areas may be offset in accordance with the rules and requirements set out in Section 10 of the BCAM.

Red flag variation for the Koala and Brush-tailed Phascogale not required

4. **am satisfied / ~~am not satisfied~~** in accordance with Section 2.4.3.1 of the BCAM that the application for Biodiversity Certification demonstrates that red flag variations for the Koala and Brush-tailed Phascogale are not required because:
- (a) the current or future uses of the land containing habitat for the two species will not reduce the viability of these species or make their populations unviable because the potential species habitat to be lost in the Biodiversity Certification Area is adequately offset by habitat protected in the Conservation Lands
 - (b) The size and connectedness of habitat for these species within the Biodiversity Certification Area is small and isolated compared to that in the offset area
 - (c) The condition of habitat within the Biodiversity Certification Area is substantially degraded compared to that in the Conservation Lands
 - (d) The area of habitat loss within the Biodiversity Certification Area is minor compared to that in the Conservation Lands and both species are capable of withstanding further loss
 - (e) Subject to the use of certified local data, the *E. seeana* population is capable of withstanding further loss and does not require a red flag variation.

Contribution to regional biodiversity values is low

5. **am satisfied / ~~am not satisfied~~** in accordance with section 2.4.3.2 that the application for biodiversity certification demonstrates that the threatened species habitat in the red flag area makes a low contribution to regional biodiversity values because:
- (a) The habitat for the Koala, Brush-tailed Phascogale and *E. seeana* in the Biodiversity Certification Area makes a low contribution to regional biodiversity values because the relative abundance of the Koala, Brush-tailed Phascogale and *E. seeana* in the proposed Biodiversity Certification Area is low relative to their abundance in the region.

Areas of Regional or State biodiversity significance

6. **am satisfied / ~~am not satisfied~~** in accordance with Section 2.4.4 of the BCAM that Biodiversity Certification will not require the approval of red flag variations because the proposal will not:
- (a) substantially reduce the width of riparian buffers with regional or state biodiversity significance because the buffers proposed are in excess of those required by the BCAM and are either
 - Protected in E1 and E2 zones; or
 - As far as possible, will not be developed on Retained Lands that may be subject to possible E zoning after master planning for infrastructure is completed.
 - (b) substantially impact on the ecosystem functioning of a state or regional biodiversity link or substantially reduce the migration, colonisation and interbreeding of plants and animals between two or more larger areas of habitat, because most of the link is protected in conservation areas and subject to the rehabilitation of E2 zoned corridors in cleared areas to the south and of E4 zoned wetlands to the east.
 - (c) significantly impact on the water quality of a major river, minor river, major creek minor creek or listed SEPP14 wetland because no SEPP 14 wetlands occur in the Biodiversity Certification Area and all rivers and creeks are adequately buffered in accordance with the BCAM.

Indirect impacts

7. **am satisfied / ~~am not satisfied~~** that any indirect impacts on the biodiversity values of the proposed Biodiversity Certification area are appropriately minimised in accordance with Section 6 of the BCAM because:
- (a) the application is not subject to a Strategic Assessment under the EPBC Act by the Australian Government Department of the Environment
 - (b) the application addresses how the proposed ownership, management, zoning and development controls of the proposed Biodiversity Certification Area are intended to mitigate any indirect impacts on biodiversity values
 - (c) the application demonstrates that the size of the buffer areas is appropriate to mitigate any negative indirect impacts from development following the conferral of Biodiversity Certification and that the buffers have either been included in conservation measures or identified as retained areas in the biodiversity certification assessment area
 - (d) buffers of increased width up to 25 metres are likely to be added to the Conservation Areas and rezoned as E1 under a Planning Agreement once detailed engineering studies relating to the location of perimeter roads become available after Biodiversity Certification.

And that under Section 2.2d) of the BCAM any indirect impacts on biodiversity values of land to which biodiversity certification is conferred are appropriately minimised in accordance with Section 6 of the methodology.

Certification of More Appropriate Local Data (MALD) with respect to the endangered population of *Eucalyptus seeana* in the Greater Taree Local Government Area.

8. **certify** / ~~do not certify~~ in accordance with Section 3.4 of the BCAM that:
- (a) the use of MALD more accurately reflects local environmental conditions pertaining to the endangered population of *E. seeana* in the Assessment Area.
 - (b) certification of the data will allow its use in applying the methodology in accordance with any procedures outlined in the Biodiversity Certification Operational Manual
 - (c) subject to the use of certified local data, the *E. seeana* population is capable of withstanding further loss and does not require a red flag variation.

Expert Report

9. **am satisfied** / ~~am not satisfied~~ under Section 4.5 of the BCAM that:
- (a) sufficient threatened species surveys and other biodiversity surveys have been completed to allow robust biodiversity conclusions regarding the Brimbin Biodiversity Certification application
 - (b) an expert report is not required to support the Brimbin Biodiversity Certification application.

Planning instrument conservation measures

10. **am satisfied** / ~~am not satisfied~~ in accordance with Section 8.1.3 of the BCAM that:
- (a) The land proposed as a planning instrument conservation measure adjoins or is proximate to the land proposed for biodiversity certification
 - (b) The land proposed as a planning instrument conservation measure is within the biodiversity certification assessment area
 - (c) The land proposed as a planning instrument conservation measure is identified in the application for biodiversity certification
 - (d) the land proposed as a planning instrument conservation measure is not subject to any other proposed conservation measure in the application for biodiversity certification
 - (e) The relevant planning instrument has been placed on public exhibition and will be adopted following biodiversity certification of the Brimbin Planning Proposal and execution of the Planning Agreement
 - (f) The Minister for Planning has issued a Gateway Determination under s56 of the *Environmental Planning and Assessment Act 1979* for the planning proposal indicating that the proposal can proceed and requiring it to be publicly exhibited
 - (g) The land proposed as a planning instrument conservation measure will be zoned E1 and E2 with the latter rezoned to E1 on transfer to the national parks estate
 - (h) The proposed Biodiversity Certification Area and E4 lands will be subject to a Master Plan and Development Control Plan setting out local provisions relating to the protection of vegetation and wildlife habitat. Management of the E1 and E2 lands will be subject to the objectives of the NPW Act upon transfer to the national parks estate.

The transfer of lands into the national parks estate is the result of biodiversity certification and significant upgrades to existing environmental protection zonings and development controls will occur.

And that under Section 2.2c) of the BCAM the direct impacts on the biodiversity values of land to which biodiversity certification is conferred are offset in accordance with the rules and requirements set out in section 10 of the methodology.



Terry Bailey
Chief Executive
Office of Environment and Heritage

31 July 2015
Date

4.2 Decisions of the Minister

The Minister must strike through the relevant wording to indicate his decision prior to signing this Section.

I, Mark Speakman SC MP, Minister for the Environment, having considered this report and the attachments to this report:

1. **am satisfied / ~~am not satisfied~~** that:

- (a) Under s126Q of the TSC Act no variations are required to the Biodiversity Certification Assessment Methodology.
- (b) Under s126P of the TSC Act:
 - i. on the basis of a Biodiversity Certification Assessment for the Brimbin Planning proposal, the overall effect of Biodiversity Certification of the proposed Biodiversity Certification Area is to improve or maintain biodiversity values
 - ii. the Brimbin Biodiversity Certification Assessment is an assessment of the effect of biodiversity certification on biodiversity values
 - iii. the Brimbin Biodiversity Certification Assessment was carried out in accordance with the Biodiversity Certification Assessment Methodology.
- (c) The public notification requirements for biodiversity certification as required under Section 126N of the TSC Act have been met and that there is no requirement to provide further notification.
- (d) Refusal to confer biodiversity certification under Section 126R of the TSC Act is not justified because the application:
 - i. improves or maintains biodiversity values
 - ii. complies with Part 7AA of the Act and the regulations
 - iii. has sufficiently addressed the Biodiversity Certification Assessment Methodology
 - iv. there are no other reasons considered sufficient to refuse the application.

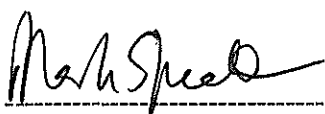
2. **sign / ~~refuse to sign~~** the three copies of the Planning Agreement in DOC15/50592.

3. under Part 7AA of the *Threatened Species Conservation Act 1995*:

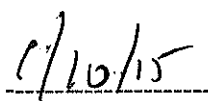
confer Biodiversity Certification on the proposed Biodiversity Certification Area by signing and dating the order conferring Biodiversity Certification attached to the Briefing Note accompanying this report and approving its publication in the Government Gazette.

or

~~refuse to confer Biodiversity Certification on the proposed Biodiversity Certification Area.~~



Mark Speakman SC MP
Minister for the Environment



Date