

Biodiversity Certification of Land - 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:	Tobi Edmonds
Decision makers:	Chief Executive, Office of Environment and Heritage Minister for the Environment
File / Folio number:	EF14/3347
Name of Planning Authority (applicant):	Eurobodalla Shire Council
Date application received:	2/9/14
Dates of public notification under s126N:	Original biodiversity certification Strategy: 23 April – 5 June 2013 Addendum was then re-exhibited from 30 April – 30 May 2014

Part 1.1 - Background and purpose of the application

History

In Broulee there is currently a land use conflict between the historical residential zoning and legislation protecting biodiversity and threatened species. Broulee was established in 1837 and since then has been incrementally developed as a coastal village. In 1982 a number of vegetated Lots in the village of Broulee were zoned 2(v) – Village (Eurobodalla Local Environment Plan (**LEP**) 1982). The owners of those lots began the process of staged development.

Incrementally the area was being cleared through the application of multiple development applications (**DA**). In 1995 *Threatened Species Conservation Act 1995* (**TSC Act**) was passed and 36 fauna species which occur in Broulee were listed under that Act. With the introduction of the TSC Act a species impact statement was required to accompany many of the DAs for Broulee. An example of this development pressure has been the construction of two new high schools and one large retirement home by clearing Bangalay Sand Forest from 1995 to 2005.

In 2005, *Bangalay Sand Forest of the Sydney Basin and South East Corner bioregions* (**Bangalay Sand Forest EEC**) was listed as an endangered ecological community (**EEC**) under the TSC Act. The vegetation which remains in the undeveloped parts of the current R2 – Low Density Residential zone at Broulee (see Figure 2 Attachment A1) meet the definition of Bangalay Sand Forest EEC under the TSC Act.

Since 2005 OEH has advised Eurobodalla Shire Council and developers that continued cumulative clearing of remnant Bangalay Sand Forest in the Broulee area is not acceptable and a more strategic approach to development is required. In 2011 OEH and Department of Planning and Environment provided financial support to carry out a biodiversity certification assessment of areas at Broulee and Moruya.

Eurobodalla Shire Council has now applied for biodiversity certification of areas at Broulee and Moruya (see Attachment A1).

Biodiversity certification area

The lands proposed to be biodiversity certified (**proposed biodiversity certification area**) is the land shown in Figures 1 (below).

It is comprised of:

- 36.4 ha within Broulee Village
- 100 ha at Moruya Airport and
- 7 ha around Moruya racecourse

The development of these areas will result in the removal of 76.4ha of Bangalay Sand Forest EEC including:

- 36.4 ha in Broulee village
- 33 ha at Moruya Airport and
- 7 ha at Moruya racecourse

All of these areas are Bangalay Sand Forest and part of the biodiversity certification application will include an application for a red flag variation. The biodiversity certification area also contains White-footed Dunnart (*Sminthopsis leucopus*). The clearing of this habitat will also require a red flag variation to be granted.

Conservation Measures

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

Eurobodalla Shire Council has proposed two conservation measures in the biodiversity certification application (see Figure 1 below):

- The entering into of a Biobanking agreement under Part 7A of the TSC Act over **405 ha** of Council land including—Lot 10 in Deposited Plan number 831878, Lot 12 in Deposited Plan number 831878, Lot 70 in Deposited Plan number 831111 (part lot), Lot 8 in Deposited Plan number 258299 (part lot), Lot 4 in Deposited Plan number 1090948 (part lot), Lot 11 in Deposited Plan number 771575 (part lot), Lot 41 in Deposited Plan number 1036166 (Lot 49 DP 1016474) (part lot); and
- The adoption of development controls under the EP&A Act that limit or prohibit development on land. In particular, the rezoning of parts of Lot 1 DP 825610; Lot 3 DP 633700; Lot 2 DP 825610; Lot 1 DP 1037342; Lot 64 DP 739830; Lot 34 DP 1138952 as E2 Environmental Conservation Zone.

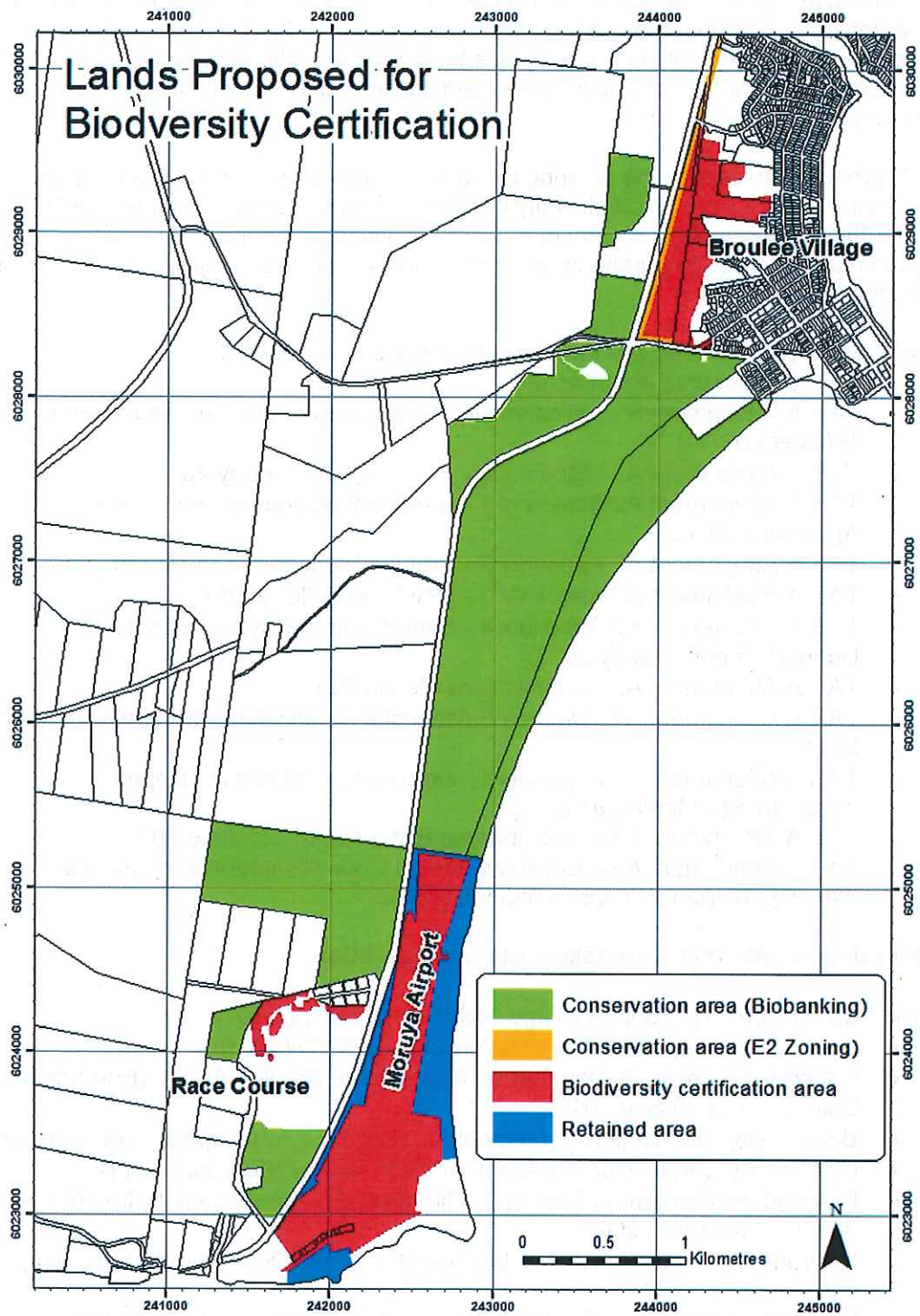


Figure 1 Assessment area for which Eurobodalla Shire Council is seeking biodiversity certification

Biodiversity certification agreement

Under section 8.1 of the Biodiversity Certification Assessment Methodology (BCAM), where the applicant proposed to enter into a Biobanking agreement as a conservation measure, but has not yet done so, that measure should be secured via

a biodiversity certification agreement. That section also provides that the proposal to enter into a Biobanking agreement must be secured via a biodiversity certification agreement if the Biobanking agreement is to be used to mitigate any negative indirect impact. The use of a biodiversity certification agreement is used in this instance.

ESC proposed to secure the entering into the Biobanking agreement over the area shown in Figure 1 through biodiversity certification agreements (Attachment A7). Under those agreements, owners of the land identified within the first Schedule of Attachment A7 agree to purchase, and retire, biodiversity credits generated from the proposed Biobank site.

Documents provided by the applicant that were considered:

The following documents are attached:

- TAB A Attachment A1 – Biodiversity Certification application and letter to Minister (2/9/14)
- TAB A Attachment A2 - Biodiversity Certification Strategy 2013
- TAB A Attachment A2 Appendix 1 - Broulee Biodiversity Certification Application 2013
- TAB A Attachment A2 Appendix 2 - Broulee Biocertification Report 2013
- TAB A Attachment A2 Appendix 3 - cPVP Bengello (2008)
- TAB A Attachment A2 Appendix 4 - Expert Report Keystone Ecological Dunnart Report (Ashby 2013)
- TAB A Attachment A3 - Submissions Report 2013
- TAB A Attachment A4 - Broulee Biodiversity Certification Strategy Addendum 2014
- TAB A Attachment A4 Appendix 1 - Broulee Biocertification Report - Addendum (7 March 2014)
- TAB A Attachment A5 – Submissions Report 2014 (24 June 2014)
- TAB A Attachment A6 – Email supporting Council's intention to apply a planning instrument conservation measure

Other documents that were taken into consideration:

- South Coast Regional Strategy (NSW Government 2007)
- South Coast Regional Conservation Plan (DECCW 2010)
- Conservation of the Yellow-bellied Glider in the Broulee Area – (Eurobodalla Shire Council 10 Sep 2013)
- Biodiversity Certification Agreements (Attachment A7) (signed August 2014)
- Biodiversity Certification Assessment Methodology (February 2011)
- Eurobodalla Settlement Strategy – Directions for Eurobodalla Shire 2006 – 2031(5 September 2006)
- Environment Protection Zones LEP practice Note (Department of Planning 2009)
- EnviroKey (2014). Species Impact Statement: Potato Point Fire Buffer Construction Works (Stage 2), Eurobodalla National Park, Far South Coast Region. A report prepared by EnviroKey for NSW Office of Environment and Heritage. Report No. EclA.0555.Final report. Version 1.0. 21 April, 2014

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.

Under s.126P of the TSC Act, biodiversity certification improves or maintains biodiversity values only if the Minister determines, on the basis of a biodiversity certification assessment carried out in accordance with the biodiversity certification methodology (**BCAM**), that the overall effect of biodiversity certification is to improve or maintain biodiversity values.

This is evaluated below at Part 2.2. However, before the Minister makes his decision there are a number of items that the Chief Executive needs to be satisfied of. These are evaluated in Part 2.1.

Part 2.1: Matters for the Chief Executive

2.1.1 Proposed red flag “variation”

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 if:

- (a) the Chief Executive is satisfied that:
 - (i) the impacts of certification on the red flag area may be offset in accordance with the rules and requirements set out in section 10 of the BCAM, **and**
 - (ii) 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 BCAM, **and,**
- (b) the direct impacts on 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 BCAM.

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.

The biodiversity certification application (Attachment A4) identifies two red flag areas in the proposed biodiversity certification area:

- 52.8 ha of Bangalay Sand Forest EEC in moderate to good condition (23.6 ha of Bangalay Sand Forest within the biodiversity certification area are in low condition and therefore do not trigger red flags) as shown on Figure 6 on page 17 of Attachment A4 Appendix 1. (**Bangalay Sand Forest EEC red flag area**); and
- 75.74 ha of land containing the White-footed Dunnart as shown on Figure 7 on page 17 of Attachment A4 Appendix 1 (**White-footed Dunnart red flag area**).

As the White-footed Dunnart was identified as present in the Bangalay Sand Forest, habitat for White-footed Dunnart and Bangalay Sand Forest EEC are considered to be the same red flag area. If approved, the red flag variation that is sought will cover both entities. This is based on the findings of the expert report (Ashby 2013), which predicted the presence of White-footed Dunnart across all of the vegetation zones which have been identified as Bangalay Sand Forest.

2.1.1(a) Red flag variation for Bangalay Sand Forest EEC and White-footed Dunnart Habitat

Response to red flag variation criteria under s. 2.4.1 of the BCAM – application must consider the feasibility of options to avoid impacts on red flag areas

Section 2.4.1 of BCAM requires the Chief Executive to be satisfied that the application for biodiversity certification considers the feasibility of options to avoid impacts on red flag areas.

The Broulee Biodiversity Certification Strategy 2013 (Attachment A2) addresses this at section 3.3.1.

Below I have evaluated whether or not the application demonstrates that the feasibility of options to avoid impacts on the Bangalay Sand Forest EEC red flag area has been considered in accordance with section 2.4.1 of the BCAM.

(a) All reasonable measures have been taken to avoid impacts on Red flag area

ESC's biodiversity certification application (Attachment A1 Figure 2) identifies the retention of a 40m wide buffer along George Bass Drive as a connectivity link. The vegetation within this buffer is Bangalay Sand Forest (and also White-footed Dunnart habitat) and was identified in the Yellow-Bellied Glider strategy (Conservation of the Yellow-bellied Glider in the Broulee Area - 10 Sep 2013). The retention of this buffer reduces the loss of Bangalay Sand Forest (and White-footed Dunnart habitat) by 8 ha and provides connectivity for other fauna which occur on site. This buffer is currently zoned R2 – Low density Residential and will be rezoned E2- Environmental Conservation as part of the proposed planning instrument conservation measure (this is addressed further in s.2.1.4 of this report).

The retention of the 40m buffer (which has been agreed to by all land owners (see Attachment A7) in an area identified for development demonstrates, that ESC has tried to avoid impacting on the Red Flag areas while still allowing a level of development.

(b) Appropriate conservation management arrangements cannot be established over Red Flag Areas given its current ownership, status under a regional plan, zoning and likely costs of future management

- Broulee was surveyed and gazetted as a settlement around 1840.
- The Eurobodalla LEP 1987 zoned the red flag areas as 2(v) – village and in the Urban LEP 1999 zoned the red flag areas, a combination of—2(g) - Residential General, 2(t) - Residential Tourism, 3(a) - Business and 6(a1) - Public Open Space. Subsequent to this, the Eurobodalla Local Environmental Plan 2012 currently zones the proposed biodiversity certification area as— R2 - Low Density Residential, RE1 - Public Recreation, R3 - Medium Density Residential and a small area of B2 - Local Centre
- The former and current zoning of the proposed biodiversity certification area for residential development, and the fact that it is mostly in private ownership, means there is no interest from the landowners to manage these lands for conservation as they are paying land tax at a high urban residential rate.
- The area is identified in Councils strategic planning policies as being suitable for urban uses (Eurobodalla Settlement Strategy)
- The land subject to this application for certification (with the exception of the Racecourse) is identified for further development in the 'South Coast Regional Strategy'

Half of the red flag areas are currently in private ownership. Any conservation management arrangements would need to be voluntary. As the land is zoned for residential development, the loss of income which would result from conservation, make any voluntary conservation management arrangements unrealistic.

Both the village of Broulee and the expansion of the Moruya Airport have been identified in 'South Coast Regional Strategy' as being important to sustaining the local and regional economy.

Based on the issues described above I consider that the appropriate conservation measures could not be established over all of the Red Flag areas

Recommendation: That the Chief Executive be satisfied in accordance with section 2.4.1 of the BCAM that the application for biodiversity certification considers the feasibility of options to avoid impacts on the Bangalay Sand Forest EEC red flag area because the application demonstrates that:

- (a) all reasonable measures have been taken to avoid adverse impacts on those red flag area and to reduce impacts of development on vegetation remaining within the biodiversity certification area; and
- (b) appropriate conservation management arrangements cannot be established over those red flag area

Response to red flag variation criteria under s. 2.4.2.1 of the BCAM - Viability must be low or not viable

For the Bangalay Sand Forest EEC red flag area, section 2.4.2 of BCAM requires the Chief Executive to be satisfied that the application demonstrates that the viability of biodiversity values in the Bangalay Sand Forest EEC red flag area is low or not viable.

ESC addresses this red flag criteria in s. 3.3.2 of the Broulee Biodiversity Certification Strategy 2013. Below I have evaluated whether or not the application demonstrates

that the viability of the red flag area is low or not viable in accordance with section 2.4.2.1 of BCAM.

- (a) *The current or future uses of lands surrounding the red flag area where biodiversity certification is to be conferred reduce its viability or make it unviable*

Currently there is no active management of the Red Flag areas. In the case of the Bangalay Sand Forest (and White-footed Dunnart habitat) at Broulee village I consider the long-term viability to be low due to impacts such as the creation of asset protection zones and potential under scrubbing under the new 10-50 Rule (Rural Fire Service 2014). Other impacts such as removal of coarse woody debris for firewood collection and fuel reduction, predation by domestic and feral animals and weed invasion and the lack of active management will continue to degrade the vegetation and fauna habitat values over time.

As these areas are likely to remain unmanaged, the cumulative impacts will reduce the viability of these pockets over time.

- (b) *The size and connectedness of the vegetation in the red flag area where biodiversity certification is to be conferred to other vegetation is insufficient to maintain viability*

The application does not address this criterion.

- (c) *The composition of native vegetation in the red flag areas where biodiversity certification is to be conferred is substantially degraded, resulting in a loss of or reduced viability*

The condition of pockets of vegetation around the airport have a reduced long term viability. This has been demonstrated by the results of the vegetation surveys which found that portions of the red flag area had been substantially degraded over time as a result of the operational management activities around the runways and in maintaining obstacle limitation surfaces. Some portions of the vegetation (zone 20) in the Red Flag area were found to have a site value score of <34 and subsequently downgraded to 'low condition', effectively removing it from the Red Flag Area. It is anticipated that the remaining vegetation within the proposed biodiversity certification area would continue to degrade over time.

- (d) *The area of a vegetation type in a red flag areas on land where Biodiversity Certification is conferred is minor relative to the area containing that vegetation type on land subject to proposed Conservation Measures*

The area of red flag vegetation in proposed biodiversity certification area is 15% of the total (moderate to good condition) Bangalay Sand Forest occurrence within assessment area (as defined in Figure 1 above). Of this 52.8 ha is proposed for Certification and 338 ha is proposed for conservation management.

I would consider that 52.8 ha of vegetation occurring over 17 patches of an average size of 3 ha to be minor in comparison to the 405 ha patch of contiguous vegetation (which includes the 338 ha of Bangalay Sand Forest) which will be subject to the conservation measures

Recommendation: That the Chief Executive be satisfied in accordance with section 2.4.2 of the BCAM that:

- (a) the current or future uses of lands surrounding the Bangalay Sand Forest EEC red flag area where biodiversity certification is to be conferred reduce its viability or make it unviable
- (b) the area of a vegetation type in the Bangalay Sand Forest EEC 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

- (c) the application demonstrates that the viability of biodiversity values in the Bangalay Sand Forest EEC red flag area is low.

Response to red flag variation criteria under s. 2.4.2.2 of the BCAM - Contribution of Red Flag Area to regional biodiversity values is low

For the Bangalay Sand Forest EEC red flag area, section 2.4.2 of BCAM requires the Chief Executive to be satisfied that the application demonstrates that the contribution of regional biodiversity values of that red flag area is low in accordance with section 2.4.2.2.

This is addressed at section 3.3.2 Broulee Biodiversity Certification Strategy 2013. Below I have evaluated whether or not the application demonstrates that the contribution of the red flag area is low or not viable in accordance with section 2.4.2.2 of the BCAM.

(a) relative abundance

- 7,575ha of Bangalay Sand Forest EEC have been mapped as occurring in the 'region'¹. Southern Rivers CMA
- 2,507ha of this community is represented in the reserve system.
- The amount of Bangalay Sand Forest EEC that would be impacted by the proposed biodiversity certification represents 1% of the area of Bangalay Sand Forest mapped within region (based on current mapping held by OEH).
- At this regional scale the amount of Bangalay Sand Forest EEC that would be impacted by the proposed biodiversity certification is not considered significant

From the figures above I would conclude that the relative abundance of Bangalay Sand Forest remaining in the region is high compared with the 52.8 ha of red flag Bangalay Sand Forest, proposed to be cleared.

(b) percent remaining is high

- The area proposed as the conservation measure represents 4% of the total regional extent of Bangalay Sand Forest.
- The use of Biobanking as the conservation measure will provide protection and funding of the site in perpetuity and will increase the area permanently protected by 12% to 2,819 ha.
- Of the 7,575 ha of Bangalay Sand forest within the region 99.3 % will remain protected by the TSC Act. Of this 37% will be protected and managed in perpetuity.

(c) percent native vegetation (by area) remaining is high

- Of the 1,527,058 Ha in the region, 1,232,129 ha (80.6%) are covered with native vegetation.

¹ defined as the former CMA subregion in which the biodiversity certification assessment is carried out and any adjoining subregions. These subregions are— Jervis, Ettrema, Bungonia, South east coastal ranges and south east coastal plains

- The removal of 77ha of the Red Flag areas (Bangalay Sand Forest and White-footed Dunnart habitat) would reduce the native vegetation extent in the region by 0.006% percent cover.
- These figures show that, the percentage of native vegetation remaining (by area (99.004%) in the region is high.

Recommendation: That the Chief Executive be satisfied that the application demonstrates that the contribution of regional biodiversity values of the Bangalay Sand Forest EEC red flag area is low in accordance with section 2.4.2.2.

Whether impacts on the red flag area may be offset

Recommendation: It is recommended that the Chief Executive, having considered the criteria in section 2.4 of the BCAM (as discussed above), be satisfied under section 2.2 of the BCAM that the impacts on the Bangalay Sand Forest EEC red flag area may be offset in accordance with the rules and requirements set out in section 10 of the BCAM.

Response to red flag variation criteria under s. 2.4.3.1 of the BCAM - Additional assessment criteria for threatened species that can't withstand further loss - Viability must be low or not viable

The Threatened Species Profile Database identifies the White-footed Dunnart as a species that cannot withstand further loss. Section 2.4.3 of the BCAM requires the Chief Executive to be satisfied that the application demonstrates that the viability of the White-footed Dunnart red flag area is low or not viable in accordance with section 2.4.3.1 of the BCAM.

This is addressed in section 3.3.3(i) of the Broulee Biodiversity Certification Strategy 2013

Below I have evaluated whether or not the application demonstrates that the viability of the White-footed Dunnart red flag area is low or not viable in accordance with section 2.4.3.1 of the BCAM.

(a) current or future uses of land surrounding the red flag area reduce its viability or make it unviable

- In both the Airport and Broulee Development Areas (see Figure 1 above), the impacts from current and future uses of adjacent land (residential and commercial developments) would be expected to affect the local population in time. These pressures would continue to act even if further development was not permitted through biodiversity certification
- As a result of existing approvals on land adjacent to this red flag area, the available habitat will decline and become more degraded through lack of management. Adjacent land clearing will also exacerbate the impacts of increased edge to area ratios that will favour weeds and feral predators. Cumulatively, these impacts will reduce the viability of the red flag area.

(b) the size and connectedness of vegetation in the red flag area to other native vegetation is insufficient to maintain its viability

- The application does not address this factor.

(c) the condition of native vegetation in the red flag area is substantially degraded resulting in loss of or reduced viability

- The application does not address this factor.

(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 Red Flag Area (White-footed Dunnart Habitat) in the proposed biodiversity certification area is 76.4 ha and represents about 16.6% of the total available White-footed Dunnart habitat within the assessment area. A 390 ha of equivalent habitat is proposed for conservation management to offset the impacts of conferring Certification. This represents a 5:1 offset ratio.
- Based on recent survey in nearby Eurobodalla National Park (EnviroKey 2014), there are thousands of hectares of suitable White-footed Dunnart habitat, (many of which are within the reserve system) in the South Coast Region.
- The mosaic of patches and abundance of fallen timber within the conservation areas, coupled with a documented ability of White-footed Dunnart to travel long distances and inhabit a range of different habitat types (EnviroKey 2014) indicate that the species would be able to exploit suitable areas within the broader forest complex.

Recommendation: That the Chief Executive be satisfied in accordance with section 2.4.3 of the BCAM that:

- (a) current or future uses of land surrounding the White-footed Dunnart red flag area reduce its viability or make it unviable
- (b) the area of the White-footed Dunnart red flag area on land where Biodiversity Certification is conferred is minor relative to the area containing that threatened species on land subject to proposed conservation measures; and
- (c) the application demonstrates that the viability of the White-footed Dunnart red flag area is low or not viable.

Response to red flag variation criteria under s. 2.4.3.2 of the BCAM - Contribution to regional biodiversity values is low

Section 2.4.3 of the BCAM requires the Chief Executive to be satisfied that the application demonstrates that the contribution to regional biodiversity values of the White-footed Dunnart red flag area is low in accordance with section 2.4.3.2 of the BCAM. In making this assessment, the Chief Executive must be satisfied that the relative abundance of the White-footed Dunnart on the proposed biodiversity certification area is low relative to its abundance in the area.

This is addressed at section 3.3.3 Broulee Biodiversity Certification Strategy 2013 as well as the information provided in the 'expert report' (Ashby 2013, Attachment A2 Appendix 4).

Below I have evaluated whether or not the application demonstrates that the contribution to regional biodiversity values of the red flag area is low or not viable in accordance with section 2.4.3.2 of the BCAM.

- There are 100 records of the species within the region

- Literature and recent surveys (EnviroKey 2014) indicates that low numbers of White-footed Dunnarts have been captured in a wide range of habitats from Fore-Dune Heathland to Montane Forest.
- The ability of the species to disperse and opportunistically use suitable habitat as it develops has been well documented.
- The Dunnart recorded in the 'development lands' is not at the limit of its known range.
- There is connectivity to other habitat areas including private and 'conservation area' lands.

Based on the information provided above I would conclude that the Dunnarts recorded in the Red Flag area represent 2 % of the number of records of this species within the region. This percentage may be even lower, given the cryptic nature of the species and the intensity of survey effort required to locate it.

Recommendation: It is recommended that the Chief Executive be satisfied in accordance with section 2.4.3 of the BCAM that:

- (a) the relative significance abundance of the White-footed Dunnart on the proposed biodiversity certification area is low relative to its overall population size in the region; and
- (b) the application demonstrates that the contribution to the regional population of the White-footed Dunnart red flag area is low. In making this assessment, the Chief Executive must be satisfied that the relative abundance of the White-footed Dunnart on the proposed biodiversity certification area is low relative to its abundance in the area.

Whether impacts on the red flag area may be offset

Recommendation: That the Chief Executive, having considered the criteria in section 2.4 of the BCAM, be satisfied under section 2.2 of the BCAM that the impacts on the White-footed Dunnart red flag area may be offset in accordance with the rules and requirements set out in section 10 of the BCAM.

2.1.2 Assessment of indirect impacts on biodiversity values

One of the matters the Chief Executive needs to be satisfied of, is 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.

In addition, under section 6 the Chief Executive must be satisfied that the application:

- addresses how the proposed ownership, management, zoning and development controls of the proposed biodiversity certification area is intended to mitigate any indirect impacts on biodiversity values; and
- the application demonstrates that the size of the buffer area is appropriate to mitigate any negative indirect impacts from development following the conferral of biodiversity certification.

Section 3.7 of the Broulee Biodiversity Certification Strategy 2013 addresses indirect impacts.

The planning associated with the Development Area has not yet progressed enough to contain specific details on how future developments will mitigate indirect impacts. However, the application has described the intention for the development control plan DCP to include all asset protection zones (APZs), roads and other infrastructure associated with the proposed developments to mitigate against indirect impacts on remnant vegetation adjoining the Broulee Development Area.

The Biodiversity Certification Report 2013 (Attachment A2) identified, that apart from the first 1-2 m at the bushland/cleared area interface, where there is increased weed abundance, the condition of the vegetation throughout the Development Area appears relatively unaffected by edge effects. Bird dispersed weeds such as Asparagus Fern and Bitou Bush, are scattered throughout the Broulee Development Area (and elsewhere in the locality) and are not any more prevalent at the bushland/cleared area interface. Only a few weed species, such as some exotic grasses, are more prevalent at the bushland /cleared area interface than elsewhere within the Development Area.

The application of a 10m buffer to mitigate the indirect impacts of future development is appropriate and is five times the width of the current level of indirect impacts. Table 2 (from Attachment A2) demonstrates how the number of credits required to offset the indirect impacts within the 10m buffer have been calculated.

Table 1: Indirect Impact Calculations (calculated using BCAM)

ZONE ID	AREA (HA)	CURRENT SITE VALUE	FUTURE SITE VALUE (REDUCING EXOTIC COVER BY 1)	REDUCTION IN SITE VALUE USED TO CALCULATE CREDITS	CREDITS REQUIRED
Zone 1	1.8	84.9	80.73	4.17	3
Zone 8	1.6	64.8	60.59	4.17	3
Zone 20	0.06	32.3	29.18	3.12	1

The indirect impacts that may result from certification, and which may affect adjoining vegetation, are already acting on the Development Area. Despite this, the White-footed Dunnart continues to occur within the Development Area. Under these circumstances, the Biodiversity Certification Report 2013 has assumed that the indirect impacts of the proposal on the White-footed Dunnart within lands adjoining the Development Area will not be any greater than the indirect impacts that are currently acting on these lands.

This assumption has merit as the most likely indirect impact will be predation by domestic cats. Cats would currently impact on the site and would be able to penetrate all areas of the White-footed Dunnarts current habitat. It is unlikely for the indirect impacts to increase.

Recommendation: That the Chief Executive be satisfied that:

- (a) any indirect impacts on the biodiversity values of the proposed biodiversity certification area are appropriately minimised in accordance with section 6 of the BCAM
- (b) the application addresses how the proposed ownership, management, zoning and development controls of the proposed biodiversity certification area is intended to mitigate any indirect impacts on biodiversity values; and

- (c) the application demonstrates that the size of the buffer area within the proposed 40m E2 zone and the Biobank Site to the south of Moruya Airport is appropriate to mitigate any negative indirect impacts from development following the conferral of biodiversity certification.

2.1.3 Assessment of expert and expert report

Expert qualifications

An expert report must only be prepared by a person accredited under s142B(1)(b) of the TSC Act or, if arrangements for accreditation under s142B(1)(b) are not in place, a person who, in the opinion of the Chief Executive, 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.

The expert report (included as part of the biodiversity certification application) used to calculate the species credits for White-footed Dunnart was completed by Elizabeth Ashby who is an accredited Biobanking Assessor under s.142B(1)(c) of the *Threatened Species Conservation Act 1995*.

There are currently no arrangements for the accreditation of experts under s. 142B(1)(b). Therefore the Chief Executive must form an opinion as to whether the author of the Expert Report possesses specialised knowledge based on training, study or experience to provide an expert opinion in relation to the White-footed Dunnart.

Ms Ashby's expert status is supported by an extensive resume at Attachment A2 Appendix 4 which includes publications on:

- The population dynamics of White-footed Dunnart (*Sminthopsis leucopus*) in Mumbulla State Forest near Bega on the south coast of New South Wales (see Lunney and Ashby 1987),
- Diet of the White-footed Dunnart (Lunney, Ashby, Grigg and O'Connell 1986)
- White-footed Dunnart as a prey item for introduced predators (Lunney, Triggs, Eby and Ashby 1990).

Accepting expert report instead of threatened species survey

Under section 4.5 of the BCAM, the Chief Executive must decide whether or not to accept an expert report instead of a threatened species survey to determine that the White-footed Dunnart is:

- unlikely to be present in the proposed biodiversity certification area, or
- likely to be present in the proposed biodiversity certification area.

Ms Ashby's report draws a number of conclusions including:

- The White-footed Dunnart is likely to be present in the conservation area.
- All of the required habitat features for the White-footed Dunnart are provided by the offset areas and it is her opinion that they should occur in all of the habitats other than the riparian, wetland and estuarine areas and those

patches dominated by weeds². This conclusion allowed the determination of a species polygon in accordance with section 4.3 of the BCAM.

- That previous attempts to trap the White-footed Dunnart in the conservation areas met the standard guidelines (between 0.1 and 0.19 traps/ha) but that these are too low. Ms Ashby has reported an appropriate trapping density would be 20 traps/ha, however this would not be reasonable over 400 ha.
- The size of the population of this species likely to occur in the development and offset areas is difficult to determine as their population patterns are dynamic. Ms Ashby's previous studies at Mumbulla Mountain found a population density of 0.06 individuals/ha. Therefore, while there is likely to be a population of White-footed Dunnart in the Broulee conservation area it is likely to be small.

Based on the information provided in the expert report it is likely that given the range of habitat types in which the White-footed Dunnart has been found across its distribution and the fact that the Conservation area is connected to the vegetation within the proposed biodiversity certification area where the Dunnart was located That a) there are likely to be other Dunnarts present within the conservation area and b) that the staging of development will allow the Dunnarts present within the proposed biodiversity certification area to move into the Conservation area over time.

Recommendation: That the Chief Executive in accordance with section 4.5 of the BCAM:

- (a) form the opinion that Ms Elizabeth Ashby possesses specialised knowledge based on training, study or experience to provide an expert opinion in relation to the White-footed Dunnart; and
- (b) decide to accept the expert report prepared by Ms Ashby instead of a threatened species survey to determine that the White-footed Dunnart is likely to be present in the conservation area.

2.1.4 Planning instrument conservation measure

Under section 8.1.3 of the BCAM, the Chief Executive must be satisfied that the proposed planning instrument will contain a local provisions setting out the development controls that apply to protect the native vegetation and any other habitat for native species on the land proposed for the planning instrument conservation measure.

This new planning instrument conservation measure will take the form of a rezoning, from the current R2 – Medium density residential zone to an E2 – Environmental conservation zone see Figure 2 (below). 26 Bangalay Sand Forest ecosystem credits and 12 White-footed Dunnart species credits will be generated by the creation of this new E2 Zone.

The practice note for the use of Environment Protection Zones (E2) (Department of Planning 2009) describes the E2 zone as being used for areas with high ecological values and conservation is the primary purpose. It provides for the highest level of protection outside of National Parks.

In the Eurobodalla Shire Council Local Environmental Plan 2012, the following activities are permitted (any other activity is prohibited) in the E2 zone—

² Council has removed these vegetation types from the areas used to calculate the species credits in the Biobanking tool.

Environmental facilities; Sewerage systems; Water recreation structures; Water supply systems. These activities present a low level of risk to the site but as the proposed E2 buffer will not be biodiversity certified, a species impact statement would likely need to be prepared for any impact to this area.

A Broulee Development Control Plan will be drafted to ensure sensitive design principles are applied in the planning of subdivision layouts and future developments. It is expected that perimeter roads will be required to create separation between retained vegetation (along George Bass Drive and Broulee Road) and residences for fire protection and also to minimise the number of created parcels abutting HCV vegetation. This will discourage private property encroachments and should minimise indirect impacts such as garden waste dumping and 'tidying up' activities following occupation.

The 40m buffer along George Bass Drive was originally identified as retained land in the biodiversity certification strategy 2013 to ensure that the biodiversity certification did not contravene ESC's Yellow Bellied Glider Strategy (2013). Following the exhibition it was decided that if the buffer was to be retained then it should generate some credit for the landowner and reduce the number of Biobank credits which would have to be purchased under the biodiversity certification agreement.

ESC has received an email from the A/Team Leader – Southern Region from NSW Planning and Environment (see Attachment A6) which states that there is "in principle support for the E2 Environmental Conservation Zone over land at Broulee" The in principle support will be subject to the approval of a Gateway Determination by the Minister for Planning.

The application of an E2 zone is also consistent with the biodiversity certification agreements which have been signed by the land owners within the biodiversity certification area (See Attachment A7 to the briefing note to which this report forms TAB A).

The proposed new E2 zone will provide a greater level of protection to the native vegetation than it is currently afforded by the R2 zone. The in principle support from NSW Planning and Environment should provide the Chief Executive with the confidence that this proposed rezoning will happen. The Order of biodiversity certification includes a condition in Schedule 3, which gives ESC 12 months in which to secure the E2 zoning.

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

- (a) the proposed planning instrument will contain a local provisions setting out the development controls that apply to protect the native vegetation and any other habitat for native species on the land proposed for the planning instrument conservation measure; and
- (b) significant upgrades have occurred to existing environmental protection zoning in order to achieve improvement in existing biodiversity values as a direct result of the preparation of the application for biodiversity certification



Figure 2: Location of proposed planning instrument conservation measure (E2 zone)

Part 2.2 – Matters for the Minister to consider

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

Minor variation to 8.4 of BCAM

It is proposed to vary the methodology by deleting the following paragraph from page 50

“Where a new conservation measure is proposed on land on which there are existing conservation obligations, the credits for the proposed conservation measure are calculated in accordance with section 8.2.1 and section 8.2.2 and then discounted in accordance with this section”.

Background

Part of the land which forms the proposed conservation area at Broulee was voluntarily conserved via a Conservation Property Vegetation Plan (cPVP) in March 2008. In the 2013 exhibition of the biodiversity certification strategy, ESC proposed to expand the cPVP and register it on title as the conservation measure. To use an existing cPVP as the conservation measure would have required a minor variation to the methodology.

Following public submissions on the 2013 exhibition, ESC decided to apply for a Biobanking agreement as the conservation measure. Part of the Biobanking approval process will include an application for the Minister to ‘vary to end’ the cPVP so that the Biobank site will not have existing management obligations under other legislation.

The Order to ‘vary to end the cPVP’ will be signed, after the order of biodiversity certification is to be signed if the minister is intending to biodiversity certify. This would mean that the cPVP would be in existence at the time of that decision. The application for the minor variation is to ignore the additionality of the exiting cPVP while considering biodiversity certification, on the basis that it would be removed as part of the process of approving the conservation measure.

Section 126Q of the Threatened Species Conservation Act 1995 permits minor variation to the Biodiversity Certification Methodology (2011) under the following circumstances:

a) the variation to the Methodology is minor

The variation requested simply enables a greater capacity to generate the required number of credits from available offset lands. Eurobodalla Shire Council was the first local government authority in the State to voluntarily enter into an in-perpetuity, on-title cPVP in March 2008. There are so few cPVPs voluntarily entered on public lands that a variation on this occasion will not result in a flood of similar requests or set a precedent of Policy challenge.

b) the variation would result in a determination that the overall effect of Biodiversity Certification is to improve or maintain biodiversity values

The Bengello lands were voluntarily conserved via a cPVP in March 2008. Before establishing this agreement over the land at Bengello, ESC sought advice from the then Department of Environment and Climate Change (DECC) on future eligibility of the lands as a Biobanking offset site, (refer to COUNCIL MINUTE 06/483, 20 December 2006). Advice confirming that the subject area would be eligible as a Biobanking site was received, the initiative was supported by the DECC, and in consideration of this response, ESC proceeded with placing the area under the formal conservation management agreement. Council submits that under these

circumstances, strict adherence to the Methodology is unfair and unreasonable, and requests support for a variation in the application of the Methodology on this occasion.

If granted, a variation will enable the statutory 'maintain or improve' test to be met as the credits generated for the Biobank site will only be discounted to the extent that would apply to general community land categorised as 'natural area' and subject to ESCs Plan of Management:

- c) strict adherence to the Methodology is in the particular case unreasonable and unnecessary**

The approval of the minor variation is the safest way to overcome this issue of addionality without risking the removal of all conservation measures. This is because, ESC could have applied for a 'vary to end' to Local Land Services and then applied BCAM. The risk with that approach is that the cPVP could be removed but if the Minister refused to confer biodiversity certification then there would be no conservation measure over an area of high biodiversity value and high value to the community.

I would recommend varying the methodology to allow the full credits to be calculated for the offset site under BCAM on the basis that if biodiversity certification is to be conferred the cPVP will be removed and a Biobanking agreement applied.

Recommendation: That the Minister form the view that:

- a) the variation to the Methodology is minor
- b) the variation would result in a determination that the overall effect of Biodiversity Certification is to improve or maintain biodiversity values
- c) strict adherence to the Methodology is in the particular case unreasonable and unnecessary

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

In this section I have considered whether or not the conferral of biodiversity certification on Broulee will improve or maintain biodiversity values. Under section 126R of the TSC Act, the Minister must refuse to confer biodiversity certification if it does not improve or maintain biodiversity values.

As outlined above, under section 126P of the TSC Act the Minister can only determine that biodiversity certification improves or maintains biodiversity values on the basis of a biodiversity certification assessment carried out in accordance with the BCAM.

Accordingly, I have evaluated whether or not there has been a biodiversity certification assessment in accordance with the BCAM below.

Improve or maintain biodiversity Values

Should the Chief executive approve the Red Flag variations as recommended in Section 2.1 (above) the improve or maintain test will be met. This is demonstrated in Table 2 (below)

Assessment and measurement of general biodiversity values

The native vegetation extent has been mapped on the ground using hand held GPS. 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 also correct. This work has been reviewed by staff from Regional Operations – Illawarra (Dr David Bain) as well as staff from Regional Operations - South East (Mr Tobi Edmonds) and found to be accurate.

I have reviewed the copy of the biodiversity certification credit calculation tool (BCC Tool) used by Ecological Australia to calculate the credits required for the biodiversity certification area as well as the conservation area and can confirm that the correct data was entered correctly into the BCC Tool to calculate the site value scores (this is done automatically by the tool).

Assessment and measurement of threatened species

The following 7 fauna species (whose presence/absence cannot be determined by vegetation type) were targeted for survey—Little Eagle, Square-tailed Kite, Osprey, Gang-gang Cockatoo, Giant Burrowing Frog, Brush-tailed Phascogale, and White-footed Dunnart. All of the staff who carried out the fauna surveys have extensive experience in fauna survey and I am confident in their abilities to carry out the surveys.

Surveys were carried out at optimum detection times for each species from 10 November 2011 to 24 August 2012. I would consider the person hours spent on the various surveys to be appropriate. As discussed above, an expert report has been used to predict the presence of White-footed dunnart on the Biobank site.

Matters of national environmental significance

Fauna:

I have reviewed the assessment of Matters of national environmental significance (MNES) (page 89 of Attachment A2 Appendix B) and agree with the conclusion that no EPBC listed species including migratory bird species, would be impacted by the biodiversity certification. The other 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 methodology, 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**

The White Footed Dunnart species credits required for the biodiversity certification area at Broulee and the Airport will be generated through application of Biobanking as the conservation measure. The generation of these credits relies on the expert report prepared by Elizabeth Ashby (see Part 2.3 above)

- (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.**

Table 2 (below) shows that the credits generated through the application of Biobanking as the conservation measure will result in an excess of White-footed Dunnart species credits than are required to offset development within the biodiversity certification area.

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 all of the following conditions 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;**

Both of the proposed conservation measures fall within the same CMA subregion (Bateman) as the land proposed to be biodiversity certified.

- 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.**

Table 2 (below) shows that the credits calculated in the Biobanking credit calculator are greater than the number of credits required under BCAM to offset the development within the biodiversity certification area. The biodiversity certification agreement will commit each of the landowners (including ESC) to purchase the number of Biobanking credits needed to offset the area and type and habitat that they will be clearing within the biodiversity certification area.

Table 2 – Matching the losses and gains in biodiversity, using the biodiversity certification credit calculator and the Biobanking credit calculator

Vegetation type name	Credits required (BCAM)	Credits required (indirect impacts)	Credits generated (BBAM)	Credits generated E2 zone	Credit status
Bangalay - Old-man Banksia open forest	2558	25	2636	26	79
Species Credits for White-footed Dunnart	1993	0	2432	12	451
Total	4551	25	5068	38	530

The credits generated by the proposed conservation measures will be greater than the credits required for the proposed biodiversity certification area under the BCAM and will be funded in perpetuity.

Recommendation: That the Minister determine under section 126P of the TSC Act, on the basis of a biodiversity certification assessment carried out in accordance with the BCAM as proposed to be amended, that the overall effect of biodiversity

certification of the proposed biodiversity certification area is to improve or maintain biodiversity values.

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

Section 126N - Public notification requirements in relation to application

During the public exhibition of the biodiversity certification proposal in 2013, 227 submissions were received (see Attachment A3). These submissions can be summarised as follows: 120 (54%) submissions communicated some level of support provided certain conditions were met or concerns addressed [109 of these being proforma type submissions]; 40 (18%) submissions supported the Strategy; 36 (16%) submissions were not in support of the proposal; and a further 28 (13%) made no direct statement or may have been general enquiries.

On the basis of these submissions ESC resolved to amend the proposal and change the conservation measure from an unfunded cPVP to a Biobank site which could be funded in perpetuity. This amended biodiversity certification proposal was then re-exhibited in 2014. During this exhibition 12 submissions were received (see Attachment A5). These submissions can be summarised as follows: 10 (83%) supported the amended strategy; 1 (8%) Objected to the principles of biodiversity certification and the Biobanking framework and 1 (8%) submission was received from the Department of Trade and Investment, highlighting that some areas of Bangalay Sand Forest in the proposed conservation area had also been identified as a potential sand resource in the local Mineral Resource Audit Mapping.

ESC has gone beyond their requirements to publically exhibit the changes to the biodiversity certification strategy. The dramatic reduction in submissions during the second exhibition demonstrates the communities support for the proposal.

Section 126R - Refusal to confer certification

Section 126R(2) of the TSC Act, states that the Minister may refuse to confer biodiversity certification:

- (a) if the application for certification does not comply with Part 7AA of the TSC Act 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. The report up to this point has demonstrated the ways in which Part 7AA has been addressed.

ESC's final application for biodiversity certification included the removal of two small areas from the biodiversity certification area described in the biodiversity certification strategy addendum (Attachment A4). This means that the area for

which ESC applied for biodiversity certification does not match the area in the strategy.

Technically this is inconsistent with s.126K(4) (which states that A biodiversity certification strategy is to identify the following— the land proposed for biodiversity certification). However, the biodiversity certification of the remaining area still meets the 'improve or maintain' test. In fact excluding the 0.6 ha from the biodiversity certification area provides 20 extra surplus credits available in the Biobank site.

I would recommend that the Minister should not use this minor inconsistency with s.126K(4) as cause to refuse the application under s. 126R (2)(a)

(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. Therefore I would recommend that the Minister would have no cause to refuse the application under s. 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 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 a 'red flag variation' under s. 2.4 of the BCAM.

I would recommend that the Minister would have no cause to refuse the application under s. 126R (2)(a)

(d) for any other reason the Minister considers sufficient

In my view there is no reason why the Minister should not confer certification.

Part 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 order conferring biodiversity certification in Attachment A8 to the Briefing Note to which this report forms TAB A and approve its publication in the Government Gazette.

Recommending officer:

Name: Tobi Edmonds
Position: Conservation Planning Officer
Group: Regional Operations
Branch: South
Region: South East

Part 3: List of documents before the decision maker

Document
Attachment A1 – Biodiversity Certification application and letter to Minister (2/9/14)
Attachment A2 - Biodiversity Certification Strategy 2013
Attachment A2 Appendix 1 - Broulee Biodiversity Certification Application 2013
Attachment A2 Appendix 2 - Broulee Biocertification Report 2013
Attachment A2 Appendix 3 - cPVP Bengello (2008)
Attachment A2 Appendix 4 - Expert Report Keystone Ecological Dunnart Report (Ashby 2013)
Attachment A3 - Submissions Report 2013
Attachment A4 - Broulee Biodiversity Certification Strategy Addendum 2014
Attachment A4 Appendix 1 - Broulee Biocertification Report - Addendum (7 March 2014)
Attachment A5 – Submissions Report 2014 (24 June 2014)
Attachment A6 – Email supporting Council's intention to apply a planning instrument conservation measure

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 variation for Bangalay Sand Forest EEC

1. **am satisfied / am not satisfied** in accordance with section 2.4.1 of the BCAM that the application for biodiversity certification considers the feasibility of options to avoid impacts on the Bangalay Sand Forest EEC red flag area because the application demonstrates that:
 - (a) all reasonable measures have been taken to avoid adverse impacts on that red flag area and to reduce impacts of development on vegetation remaining within the biodiversity certification area; and
 - (b) appropriate conservation management arrangements cannot be established over that red flag area
2. **am satisfied / am not satisfied** in accordance with section 2.4.2 of the BCAM that:
 - (a) the current or future uses of lands surrounding the Bangalay Sand Forest EEC red flag area where biodiversity certification is to be conferred reduce its viability or make it unviable
 - (b) the area of a vegetation type in the Bangalay Sand Forest EEC 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; and
 - (c) the application demonstrates that the viability of biodiversity values in the Bangalay Sand Forest EEC red flag area is low or not viable.
3. **am satisfied / am not satisfied** in accordance with section 2.4.2.2 of the BCAM that the application demonstrates that the contribution of regional biodiversity values of the Bangalay Sand Forest EEC red flag area is low.

Red flag variation for the White-footed Dunnart

4. **am satisfied / am not satisfied** in accordance with section 2.4.1 of the BCAM that the application for biodiversity certification considers the feasibility of

options to avoid impacts on the White-footed Dunnart red flag area because the application demonstrates that:

- (a) all reasonable measures have been taken to avoid adverse impacts on those red flag area and to reduce impacts of development on vegetation remaining within the biodiversity certification area; and
 - (b) appropriate conservation management arrangements cannot be established over those red flag area
5. **am satisfied / am not satisfied** in accordance with section 2.4.3 of the BCAM that:
- (a) current or future uses of land surrounding the White-footed Dunnart red flag area reduce its viability or make it unviable
 - (b) the area of the White-footed Dunnart red flag area on land where Biodiversity Certification is conferred is minor relative to the area containing that threatened species on land subject to proposed conservation measures; and
 - (c) the application demonstrates that the viability of the White-footed Dunnart red flag area is low or not viable.
6. **am satisfied / am not satisfied** in accordance with section 2.4.3 of the BCAM that:
- (a) the relative abundance of the White-footed Dunnart on the proposed biodiversity certification area is low relative to its abundance in the area; and
 - (b) the application demonstrates that the contribution to regional biodiversity values of the White-footed Dunnart red flag area is low. In making this assessment, the Chief Executive must be satisfied that the relative abundance of the White-footed Dunnart on the proposed biodiversity certification area is low relative to its abundance in the area.
7. having considered the criteria in section 2.4 of the BCAM, **am satisfied / am not satisfied** under section 2.2 of the BCAM that the impacts on the White-footed Dunnart red flag area may be offset in accordance with the rules and requirements set out in section 10 of the BCAM.

Indirect impacts

8. **am satisfied / am not satisfied** that:
- (a) any indirect impacts on the biodiversity values of the proposed biodiversity certification area are appropriately minimised in accordance with section 6 of the BCAM
 - (b) the application addresses how the proposed ownership, management, zoning and development controls of the proposed biodiversity certification area is intended to mitigate any indirect impacts on biodiversity values; and

- (c) the application demonstrates that the size of the buffer area to both the planning instrument, and Biobanking conservation measures is appropriate to mitigate any negative indirect impacts from development following the conferral of biodiversity certification.

Expert report

- 9. in accordance with section 4.5 of the BCAM:
 - (a) form the opinion that Ms Elizabeth Ashby **does / does not** possess specialised knowledge based on training, study or experience to provide an expert opinion in relation to the White-footed Dunnart; and
 - (c) decide to **accept / refuse to accept** the expert report prepared by Ms Ashby instead of a threatened species survey to determine that the White-footed Dunnart is likely to be present in the biodiversity certification area.

Planning instrument conservation measure

- 10. **am satisfied / am not satisfied** in accordance with section 8.1.3 of the BCAM that:
 - (a) the proposed planning instrument will contain a local provisions setting out the development controls that apply to protect the native vegetation and any other habitat for native species on the land proposed for the planning instrument conservation measure; and
 - (b) 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

Terry Bailey
Chief Executive
Office of Environment and Heritage

Date

4.2 Decision of the Minister

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

I, Robert Stokes, Minister for the Environment, having considered this report and the attachments to this report:

- 1. ~~am satisfied / am not satisfied~~ that:
 - a) the variation to the Methodology is minor
 - b) the variation would result in a determination that the overall effect of Biodiversity Certification is to improve or maintain biodiversity values
 - c) strict adherence to the Methodology is in the particular case unreasonable and unnecessary
- 2. ~~sign / refuse to sign~~ the biodiversity certification agreements at **Attachment A7**
- 3. determine under section 126P of the *Threatened Species Conservation Act 1995*, on the basis of the biodiversity certification assessment undertaken in accordance with the biodiversity certification assessment methodology as varied by me, that the overall effect of biodiversity certification of the proposed biodiversity certification area is **to improve or maintain biodiversity values / not to improve or maintain biodiversity values.**
- 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 in **Attachment A8** and approving its publication in the Government Gazette

~~or~~

~~refuse to confer biodiversity certification on the proposed biodiversity certification area.~~



Robert Stokes MP
Minister for the Environment

19.9.14.

Date