

Broulee Biodiversity Certification Strategy



Addendum 2014

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1 INTRODUCTION

1.1 Exhibition

Following a resolution of Council on 26th March 2013 (minute 13/62), the Broulee Biodiversity Certification Strategy was placed on public exhibition from 22nd April through to 5th June 2013.

The exhibited materials included; the formal application for Biodiversity Certification to the Minister for the Environment, the Broulee Biodiversity Certification Strategy (the Strategy) and associated appendices including the Broulee Biocertification Report (Ecological) and an expert report *Sminthopsis leucopus* White Footed Dunnart: Broulee Biocertification Area (Keystone Ecological).

A total of 227 submissions were received in response to the exhibition, the details of which, along with a submissions report (Appendix ii), were reported to Council on the 27th August 2013. As a result of this process and feedback received, and in accordance with a resolution of Council (13/242), key amendments have been made to the Strategy which are now presented in this Addendum Report.

1.2 Proposed Amendments

According to s126N(3) of the Act a planning authority may vary an application for Biodiversity Certification (including a Biodiversity Certification Strategy), as a consequence of any submission received or for any other reason. It is acknowledged that further public notification, as varied, is not required unless otherwise directed by the Minister.

However, given the importance of this process to the community and the level of interest communicated, Council committed to a re-exhibition of the Strategy, to demonstrate how concerns raised had been addressed where possible and practicable.

2 AMENDMENTS

2.1 Changes to the Development and Conservation Areas

A range of amendments to the exhibited Strategy were made, following Council endorsement (minute 13/242) of recommendations in the Submission Report (appendix ii). Among these amendments were additions to both the Conservation Area and Development Area, which consequently altered the Assessment area.

These changes are described in table 1 and in Appendix i, s2 Broulee Biodiversity Certification Assessment Addendum.

Table 1 Changes to the Assessment Area

Change	Description
Development Area	Additional 7.08Ha in the Moruya Racecourse. The vegetation to be affected was in Vegetation Zones 1, 8 and 9, and a new Vegetation Zone 23. Result: additional credit required from the development area.
	Reduction of 0.9Ha of clearing associated with a stockpile area on Lot 29 DP 1192460. The stockpile area was considered to be

	cleared land. Result: a reduction of credit required from the development area
	Approved development; establishment of a 2 ha asset protection zone on Lot 9 DP 1068530. This area was assigned to vegetation zone 9. Result: a reduction in the credit requirement from the Development Area.
	Approved development; establishment of a 0.49 ha APZ on Lot 20 DP 1174639. This area was assigned to vegetation zone 9. Result: a reduction in the credit requirement from the Development Area.
Conservation Area	Slight boundary adjustment to Conservation Area 8. Result: marginal reduction in credits generated from Conservation Area 8.
	Conversion of the 40m wide corridor east of George Bass Drive between Grant Street and Candalagan Drive from 'retained land' to 'Conservation Area'. A planning instrument Conservation Measure has been applied to this land as follows <ul style="list-style-type: none"> • Conservation Area 9 - Lot 1 DP 825610 and Lot 3 DP 633700 • Conservation Area 10 - Lot 2 DP 825610, Lot 1 DP 1037342, Lot 64 DP 739830, Lot 34 DP 1138952 and a 0.7 ha crown road parcel
	Removal of an existing 1.5 ha council depot area within Conservation Area 5. The stockpile area was considered to be cleared land. Result: a reduction of credit generated from Conservation Area 5.

Table 2: The Assessment Area

Assessment Area	Total Area	Area of Native Vegetation
Development Area	144	76
Conservation Area (Biobank Site)	405	404
Conservation Area (Planning Instrument)	8	8
Retained Area	44	44
Total	602	

Figure A: The Biodiversity Certification Assessment Area



Table 3: Development Area

Lot	Deposited Plan	Lot Area (Ha)	Certification Area (Ha)	Description	Credit (total req'd)*
4	1090948	232.8	100 (33)	Part lot. Airport. Bruce Cameron Drive.	EC 794, SP 857
3	633700	15.3	10.8	Part lot. Broulee Road.	EC 1526, SP 950
50	837279	1.0	0.3	Part lot. Broulee Road.	
28	1172003	12.1	8.0*	Part lot. Heath Street.	
9	1068530	9.4	9.0	Part lot. Adams way.	
13	1136019	2.1	2.0	Part lot. Heath Street.	
58	245167	7.4	2.7	Part lot. Captain Oldrey Park.	
2	718667	2.9	0.2	Part lot. Broulee Primary School.	
20	1174639	2.7	1.7	Part lot. Train Street.	
1	825610	2.3	0.7	Part lot. George Bass Drive.	
		0.8	0.8	Unformed crown road off Train Street	
11	1066592	6.38	0.4	Part lot. George Bass Drive.	
89	1093710	0.09	0.09	Corner Lot. Clarke Street.	
		0.3	0.3	Unformed road segment Clarke Street	
41	1036166	69.9	7.1	Racecourse	EC 264, SP 186
Total			144 (77)*		EC2583, SP1993

*EC Ecosystem Credit, SP Species Credit

*includes 0.9Ha cleared land

Table 4: Conservation Area

Offset #	Lot	Deposited Plan	Lot Area (Ha)	Conservation Area (Ha)	Description	Credit (total created)
1	70	831111	188.5	187**	Part Lot. George Bass Drive north of airport 'Bengello'	EC 1855, SP 944
5	70	831111	36.3	36.3	Part Lot. Corner George Bass Drive and Broulee Road	EC 302, SP 151
2	8	258299	61.3	61.4	Part Lot. George Bass Drive north of airport 'Bengello'	EC 699, SP 356
3	4	1090948	233	73.5	Part Lot. George Bass Drive, Williga (Y) Swamp	EC 839, SP 418
4	12	831878	10.6	10.6	Corner George Bass Drive and Broulee Road	EC 117, SP 58
6	10	831878	12	12	George Bass Drive, Illawong Swamp	EC 7, SP 4
7	11	771575	7.1	7.1	Part Lot. Donnelly Drive west of racecourse	EC 86, SP 43
8	41	1036166	17.1	17.1	Part Lot. Donnelly Drive south of racecourse	EC 191, SP 102
9*	3	633700	15.3	4.6	Part lot. Broulee Road, private tenure	EC 19, SP 9
	1	825610	2.3	1.6	Part lot. George Bass Drive, private tenure	
10*				0.02	Part Lot. Crown Road	EC 7, SP 3
	2	825610	0.4	0.4**	ESC community land, George Bass drive	
				0.7	Part Lot. Crown Road	
	1	1037342	10.9	0.8	Part lot. 61 Train Street, private tenure	
	34	1138952	0.22	0.2**	ESC community land, Martin Place	

	64	739830	0.02	0.02**	ESC community land	
	Total			413.7		

*Planning Instrument Conservation measure

**Existing obligations

2.2 Changes to the Conservation Measure applied

In consideration of the significant biodiversity values of the Conservation Areas and the community sentiment communicated through the exhibition process, an amendment has been made to ensure the highest level of security is afforded to the offset lands. This is achieved by applying a 'permanently managed and funded' conservation measure, instead of the previously nominated Property Vegetation Plan.

The Biobanking Assessment Methodology identifies the entering of a Biobanking Agreement as a higher order conservation measure which realises 100% of the ecosystem and species credits generated for a given conservation area.

An application to establish a Biobank site over Conservation Areas 1-8, has been prepared and is appended (Appendix iii), together with a Management Actions Template (Appendix iv)

As described in table 4: Conservation Area and Table 1: Changes to the Assessment Area, the Yellow-bellied Glider Corridor east of George Bass Drive between Grant Street and Candalagan Drive is now included in the Conservation Area. Rather than being part of the Biobank Site this area will be subject of a 'Planning Instrument Conservation Measure', being an E2 Environmental Conservation Zone.

This change results in a 25% credit entitlement from conservation areas 9 and 10. A 10% additionality discount applies to three of these lots which are categorised as community land and subject to an existing Eurobodalla Shire Council Plan of Management. Those areas subject to additional reduction as a result of existing obligations are identified in Table 4 and Appendix i, Broulee Biodiversity Certification Assessment Addendum.

2.3 Flow on effects

These relatively minor amendments have consequently resulted in slight adjustments to the following parts of the Broulee Biodiversity Certification Strategy 2013:

- Vegetation zones (3.3-3.5 of the Methodology)
- Threatened Species Polygons (s4 of the Methodology)
- Red Flag Areas (s2.3 of the Methodology)
- Indirect impacts (s6 of the Methodology)

All variations to above are described and presented in the appended Broulee Biodiversity Certification Assessment Addendum (Appendix i).

2.4 Native vegetation footprint (s3.2 of the Methodology)

The Assessment Area supports 525Ha of native vegetation in various condition states as mapped in figure B. Section 3 and Appendix 4 of the Biodiversity Certification Assessment Report 2013 and Appendix I Broulee Biodiversity Certification Assessment Addendum provide further information on vegetation within the Assessment Area.

Figure B: Native vegetation footprint



3 VARIATIONS

3.1 Minor variation to the methodology

Section 3.5 of the Broulee Biodiversity Certification Strategy 2013 formally requests the Ministers' consideration for a minor variation to the Biodiversity Certification Methodology (2011) provided for under section 126Q of the *Threatened Species Conservation Act 1995*.

The variation requested relates to certain lands (Lot 70 DP831111 and part Lot 4 DP 1090948) at Broulee voluntarily conserved via a Property Vegetation Plan (cPVP) in March 2008 (Appendix C of the Strategy). These lands, known as 'Bengello Forest' are categorised as community land and are presently zoned E2 (Environmental Conservation) in the Eurobodalla Local Environmental Plan 2012 (LEP).

This request is made to allow for full biodiversity credit generating potential to be realised from the lands which would otherwise be subject to credit discounting or additionality, on account of existing conservation obligations. The request is essentially for the existing PVP to be treated as a new Conservation Measure, and refers specifically to s8.4 and s8.1.2 of the Biodiversity Certification Methodology. Section 3.5 fully justifies this minor variation to the Methodology and responds to the relevant questions at 126Q of the *Threatened Species Conservation Act 1995*.

In this application, credit generation from Conservation Areas is calculated according to the Biodiversity Certification Assessment Methodology, with a Biobanking Agreement simply being one possible instrument to provide security to offset areas.

In relation to the Biobanking Assessment Methodology 2008 and clause 4 of the *Threatened Species Conservation (Biodiversity Banking) Regulation 2008*; the issue of existing obligations and additionality also has relevance.

Biobanking credit generation is similarly limited to situations where proposed land management actions are additional to any biodiversity conservation measures, or other actions that are already being carried out on the land, or, are required to be carried out under the following kinds of existing obligations:

- a restriction on use or public positive covenant under Part 4A of the *Crown Lands Act 1989*
- a conservation agreement entered into under the *National Parks & Wildlife Act 1974*
- a trust agreement entered into under the *Nature Conservation Trust Act 2001*
- any agreement entered into with a public authority under which the owner of the land receives funding for biodiversity conservation purposes (other than a biobanking agreement)
- in the case of publicly owned land, any legislative requirements to manage the land for biodiversity conservation purposes.

In considering the Conservation Areas described; the existing cPVP and Council's generic Plan of Management applying to specifically categorised undeveloped community lands would fall within the final category above and constitute existing obligations. Biodiversity credits therefore created in respect of such lands are to be subject to discounting.

However, clause 4(2) of the *Threatened Species Conservation (Biodiversity Banking) Regulation 2008*, effectively sets a sunset provision that land management actions specified in the types of agreement nominated above, if signed before 10 March 2009, do not constitute existing conservation management obligations.

Although the cPVP applied to this land does not technically meet the specifications above, it is equivalent in all respects, being voluntary in nature, applied in perpetuity through a public authority, made under the

authority of State legislation and requiring Ministerial approval to vary. The cPVP was signed before the 10th March 2009.

Despite this, the exclusion of cPVP's made under the *Native Vegetation Act 2003*, from clause 4(2), means that additionality applies to the subject lands whereas, conversely, a Voluntary Conservation Agreement (VCA) would exempt the same conservation actions from discounting for the purposes of Biobanking credit generation. In 2008, a cPVP was the most practical and readily accessible on-title conservation mechanism available to Council - VCAs were not being serviced by DECCW in the Eurobodalla Shire at the time.

It is considered unreasonable that Council should be effectively penalised on the basis of the form of agreement applied to the proposed offset lands when other conservation mechanisms, being equivalent in intent and function, are not regarded as existing conservation obligations. It is submitted that this would be an inequitable impediment to full credit generation IF a Biobanking credit assessment was the mechanism driving credit generation.

NOTE: An application to vary to end the Bengello Forest cPVP referred to above, has been made to, and is supported by South East Local Land Services. The Bengello cPVP may be terminated and effectively replaced by the applied Biobanking Agreement if approved by the Minister.

In regard to existing obligation created by Council's generic Plan of Management for community land and undeveloped reserves; the discounting rates for Biodiversity Certification and Biobanking are equivalent. Therefore the additionality valuation undertaken to meet the requirements of the Biodiversity Certification Methodology is taken to adequately address this issue for the purpose of applying a Biobanking Agreement to Conservation Areas.

3.2 Red flag variation (2.4 Methodology)

With reference to the Biodiversity Assessment Methodology, a conferral of Biodiversity Certification over the proposed development lands will directly impact on biodiversity values of 2 Red Flag entities; Bangalay Sand Forest and the White Footed Dunnart (Table 5, figures 6 & 7 Appendix i).

Red Flag	High conservation value		
Bangalay Sand Forest in the Sydney Basin and South East Corner Bioregion (Appendix H)(Figure 7) Biometric vegetation type: Bangalay – Old-man Banksia Open Forest	An endangered ecological community listed under the Threatened Species Conservation Act (not in low condition)		
	Area (Ha) within dvp & cons areas	Area (Ha) impacted	Area (%) impacted
	366.6	54.2	14.8
<i>Sminthopsis leucopus</i> White Footed Dunnart (Appendix I)(Figure 8)	Threatened species identified in the Threatened Species Profile Database that cannot withstand further loss in the CMA area because <ul style="list-style-type: none"> • The species is naturally very rare, has few populations or a restricted distribution • The species or its habitat needs are poorly known 		

	Area (Ha) within dvp & cons areas	Area (Ha) impacted	Area (%) impacted
	457.6	75.74	16.6

Table 5 Red Flag areas with reference to s2.3 of the Methodology

Section 3.3 of the Broulee Biodiversity Certification Strategy constitutes a formal application for a Red Flag variation. This section provides justification for the claim and demonstrates that the impacts of Certification on the red flag areas can be offset in accordance with the rules and requirements in section 10 of the Methodology. Amendments outlined in this document at 2.1 Changes to the Development and Conservation Areas, have resulted in variation to areas impacted as per table 5.

4 RESULTS - MATCHING LOSSES AND GAINS IN BIODIVERSITY

4.1 Ecosystem credits (s7.2 & 8 of the Methodology)

Ecosystem credits have been calculated for the impact produced by the proposed development and the improvements to biodiversity values through the management of the Conservation Areas identified. As described earlier, the ongoing management of the Conservation Areas will be secured using a

- 'permanently managed conservation measure', in areas 1-8 (a Biobanking Agreement), and
- 'planning instrument conservation measure' in areas 9 and 10 (E2 zone)

The credit entitlement for the Conservation Areas within the Assessment Area will therefore be 100% in areas 1-8 and 25% in areas 9 and 10.

In total, 2,583 credits are required for the land proposed to be developed (Table 6). These credits being required for the 'Bangalay – Old-man Banksia open forest' community (2,558 credits) plus an additional 25 credits for indirect impacts.

Due to existing obligations over conservation area 1 & 10 (in part), a discount of 10% has been applied to the credits generated by these conservation areas. Further detail on the number of credits generated on the lands proposed for conservation is presented in Appendix i and table 4.

The results of the assessment demonstrate that the Conservation Areas identified are sufficient to offset the impacts of the proposal, with a surplus of 1,538 credits. Therefore, excluding the impacts on Red Flag areas, the proposal meets the improve or maintain test required under the Methodology

VEGETATION NAME	TYPE	CREDITS REQUIRED	CREDITS REQUIRED (INDIRECT)	CREDITS GENERATED* (100%)&(25%)**	CREDIT STATUS
Bangalay - Old-man Banksia open forest		2558	25	3806	1223
Coast Banksia - Coast Wattle dune scrub		0	0	315	315
Total		2558	25	4121	1538

*credits generated also reduced by an additional 10% for Conservation Area 1 & parts Conservation Area 10

** Conservation Areas 9 & 10 (planning instrument conservation measure)

Table 6 Final ecosystem credit results

4.2 Species credits (s7.4 & 8 of the Methodology)

Species credits were calculated for the White Footed Dunnart, which was confirmed within the development footprint, and for which an expert report was prepared confirming habitat is present within the Conservation Areas.

The ongoing management of the conservation lands will be secured using a

- 'permanently managed conservation measure', in areas 1-8 (a Biobanking Agreement), and
- 'planning instrument conservation measure' in areas 9 and 10 (E2 zone)

The credit entitlement for the Conservation Areas within the Assessment Area will therefore be 100% in areas 1-8 and 25% in areas 9 and 10.

A total of 1993 credits are required to offset the impacts to 76 ha of White Footed Dunnart habitat (Table 7). The 416 ha of Conservation Area generates 2089 credits, subject to the expert report being accepted, resulting in a 95 credit surplus.

The results of the Assessment demonstrate that the Conservation Areas identified are sufficient to offset the impacts of Certification to the White Footed Dunnart. Therefore, excluding the impacts on Red Flag Areas, the proposal meets the 'improve or maintain' test required under the Methodology.

SPECIES NAME	CREDITS REQUIRED	CREDITS GENERATED* (100%)&(25%)**	CREDIT STATUS
White-footed Dunnart	1993	2089	95

*credits generated also reduced by an additional 10% for conservation area 1

** Conservation Areas 9 & 10 (planning instrument conservation measure)

Table 7 Final species credit results

4.3 Credit requirement (s7 methodology)

Following the assessment of values within the Development Area, credit requirements were determined based on section 7 of the Methodology. The results of this exercise are provided in table 8 below.

Development Area	Credits
Broulee (ecosystem credits)	1526
Broulee (species credits)	950
Moruya Airport (ecosystem credits)	794
Moruya Airport (species credits)	857
Moruya Racetrack (ecosystem credits)	264
Moruya Racetrack (species credits)	186

Table 8 Credit requirements of the Development Areas

5 BIODIVERSITY CERTIFICATION AGREEMENT

Division 8 of Part 7AA of the Threatened Species Conservation Act provides that the Minister may enter into an agreement with a person in connection with Biodiversity Certification. A Biodiversity Certification Agreement is proposed as part of this application; making provision for a number of the items outlined at 126ZH of the Act, being:

- Requiring Council to create Biodiversity Credit through the carrying out specified actions, or to refrain from carrying out specified actions on the 'conservation' lands the purpose of improving biodiversity values
- Requiring developers to purchase Biodiversity Credit at an appropriate time
- Specifying the present day value per biodiversity credit and applying an independently set index to reflect inflation
- Providing for the timing of the implementation of any of obligations in connection with biodiversity certification
- providing for monitoring, reporting and audit requirements

The Biodiversity Certification Agreement will be registered on title and binding to all future landholders as if they had entered into it. The Biodiversity Certification Agreement may be considered by Council when determining future development applications and conditions imposed on development consents requiring compliance with the Agreement.

6 CONCLUSION

The Biodiversity Certification Assessment Methodology (BCAM) has been used to conduct a Biodiversity Certification Assessment of proposed urban development in Broulee and development at Moruya Airport and the Moruya Racecourse.

Parts of the Conservation Area are affected by existing and proposed land management activities associated with the safe operation of Moruya Airport and the provision of bushfire hazard management adjoining the Broulee Development Area. The impact of these land management activities was acknowledged as far as is possible within the Methodology.

The ecosystem and species credits required and generated by the proposal were calculated based on the Methodology. The results of the assessment demonstrate that the Conservation Area identified is sufficient to offset the impacts of the proposal, (see table 6 & 7)

The proposal therefore meets the improve or maintain test required under the Methodology.

Under the Methodology a Red Flag variation is required and consideration by the Director General is requested in order to confer Biodiversity Certification over the Development Area. Details of the Red Flag variation and justification of claims in support of the same are detailed in 3.3 and 3.5 of the Broulee Biodiversity Certification Strategy 2013.

REFERENCES

Eurobodalla Shire Council (2013) Minutes of the Ordinary Meeting of Eurobodalla Shire Council, Tuesday 26th March 2013; Minute 13/62

Eurobodalla Shire Council (2013) Minutes of the Ordinary Meeting of Eurobodalla Shire Council, Tuesday 27th August 2013; Minute 13/242

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