

Biodiversity Certification of Land: Redgum Ridge Estate Western Precinct

**Recommendation Report for the Chief Executive of the Office
of Environment and Heritage**

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

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1 BACKGROUND AND DOCUMENTS CONSIDERED

Name of recommending officer:	Chris Page, Senior Team Leader, Planning (Illawarra), South East Branch, Regional Operations Division
Name of decision maker:	Anthony Lean, Chief Executive, Office of Environment and Heritage
CM9 container and record numbers:	SF18/37068 and DOC18/325153
Name of Planning Authority (applicant):	Wollongong City Council
Date application received:	27 March 2018
Dates of public notification under Section 126N:	5 February 2018 – 9 March 2018

1.1 THE PROPOSAL

The application has been made by Wollongong City Council (WCC) on behalf of the landowner, Edenvell Pty Ltd.

The application proposes certification of 8.11 ha of land for development, and the retirement of biodiversity credits to achieve the required improve or maintain standard under the Biodiversity Certification Assessment Methodology (BCAM).

Contained within the BCAA is Biobanking Agreement (BA221) which is mapped as retained land. The BB site contains 46.82 ha of native vegetation, including two threatened ecological communities (TEC) and numerous individuals of one threatened flora species. See Figure 1.

Table 1 Land use

Land use	Area (ha)	Native vegetation extent (ha)
Land proposed for biodiversity certification	8.11 ha	4.59 ha
Land proposed for on-site conservation measures	NA*	NA*
Land proposed for off-site conservation measures	NA	NA
Retained lands	52.13 ha*	46.82 ha*
Total	60.24 ha	51.41 ha

*there are no on-site conservation measures proposed as the BCAA contains an approved Biobanking Agreement which covers 46.82ha of native vegetation. This is located within the retained

lands of the BCAA and will be the source of the credits required to meet the Improve or Maintain outcome under BCAM.

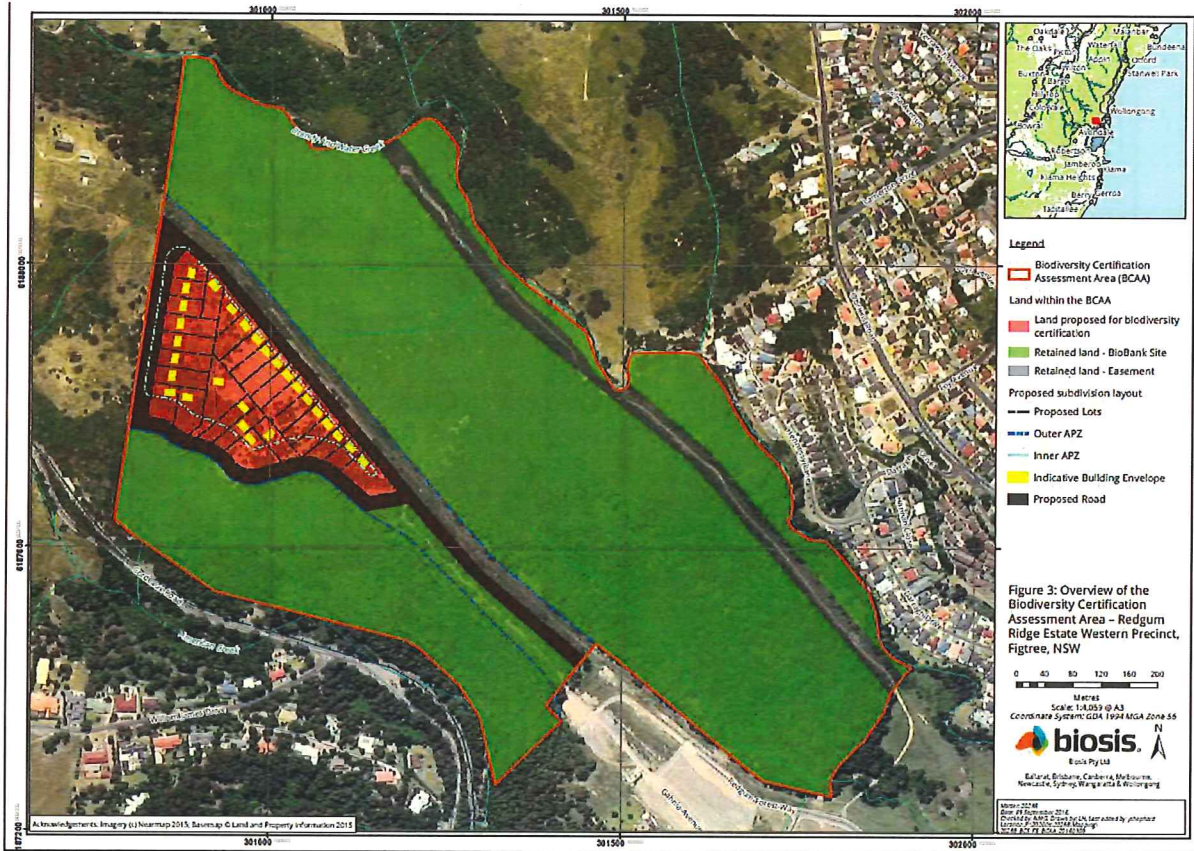


Figure 1: Biocertification Assessment Area

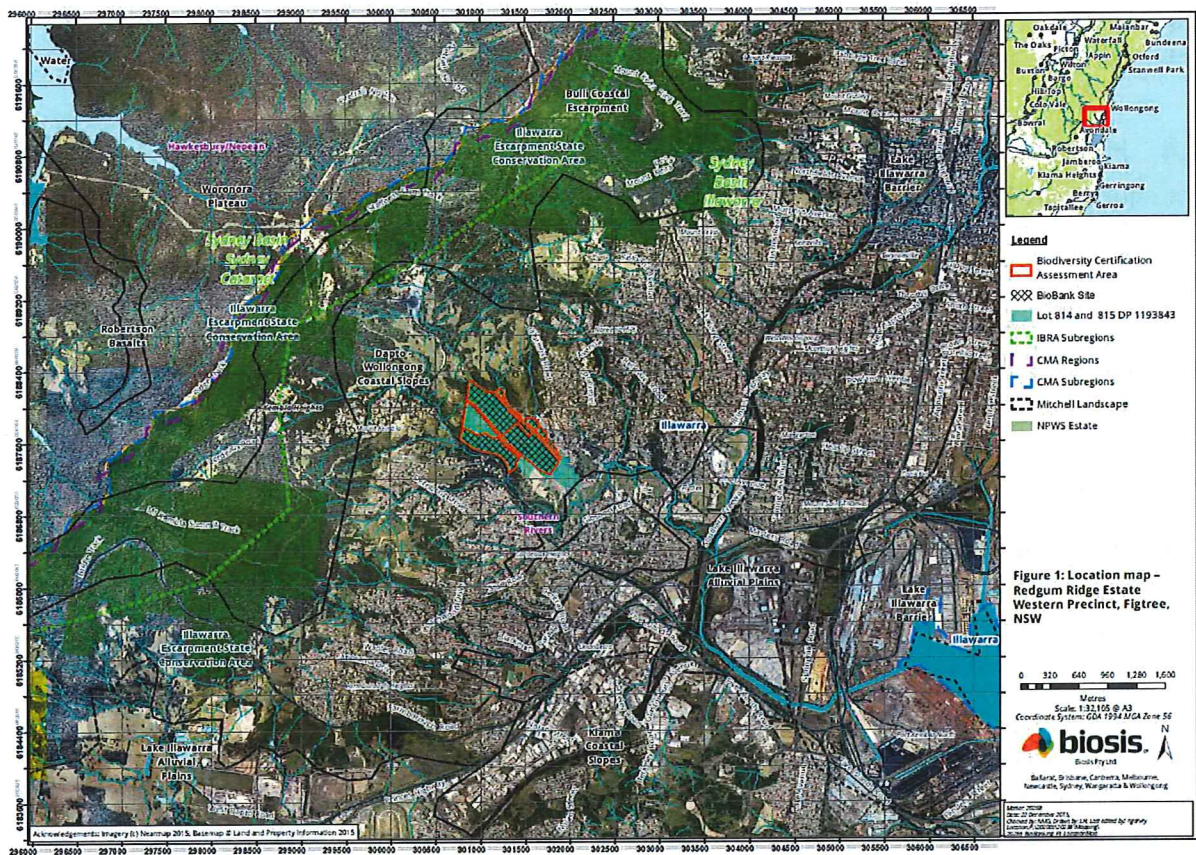


Figure 2: Strategic context and land ownership of BCAA

1.2 LAND OWNERSHIP

The land is owned by Edenvell Pty Ltd, a private landowner. It consists of lots 814 and 815 of DP11983843, within the Wollongong local government area. See Figure 2.

1.3 THE BIODIVERSITY CERTIFICATION APPLICATION

An application for biodiversity certification must follow the requirements of Part 7AA of the *Threatened Species Conservation Act 1995* (TSC Act) and the Biodiversity Certification Assessment Methodology (BCAM). In this respect, a biodiversity assessment and a biodiversity certification strategy have been prepared and submitted with the application.

The application was lodged with OEH on 27 March 2018. The application was prepared and lodged by Wollongong City Council (WCC) on behalf of the landowner, Edenvell Pty Ltd.

Nathan Garvey of Biosis (Accredited Assessor No. 0103) undertook the biodiversity assessment and prepared the biodiversity conservation strategy which underpins the application for certification.

The proposal was placed on public exhibition between 5 February and 9 March 2018. One submission was received as a result. The submission was minor in nature and did not require any amendments to the application.

The assessment and strategy have been reviewed by the Office of Environment and Heritage (OEH) as documented in this Recommendation Report. For development lands to be biodiversity certified (see biodiversity certification assessment area in Section 1.5 below) the OEH Chief Executive and Environment Minister will need to be satisfied in relation to certain matters outlined in the BCAM

and Part 7AA of the TSC Act. These matters have been assessed by OEH and those relevant to the Chief Executive are documented in this Recommendation Report.

1.4 HISTORY

The subject site has a long history of rezoning and planning investigations which stretch back as far as the late 1990's. The site has long been earmarked for some sort of residential development, however the ecological value of the site has long been an issue requiring resolution.

The current proposal to rezone the site from RU2 to a mix of E4 and E2 will facilitate limited development in the low conservation value portions of the site, whilst applying the highest conservation zoning to the remainder of high value environmental land. This reflects the topographic attributes where development is limited to the more level ridge-top area with the vegetation situated on relatively steep slopes.

To resolve the planning issues associated with the site, OEH worked with WCC and the landowner to develop a strategy that would facilitate limited development on lower value portions of the site, whilst affording long term protection for the areas of significant environmental value on the site. The biodiversity certification application is the result of this collaborative work.

1.5 THE BIODIVERSITY CERTIFICATION ASSESSMENT AREA

The proposed biodiversity certification assessment area (BCAA) is shown on Figure 3 and is described as lots 814 and 815 of DP11983843.

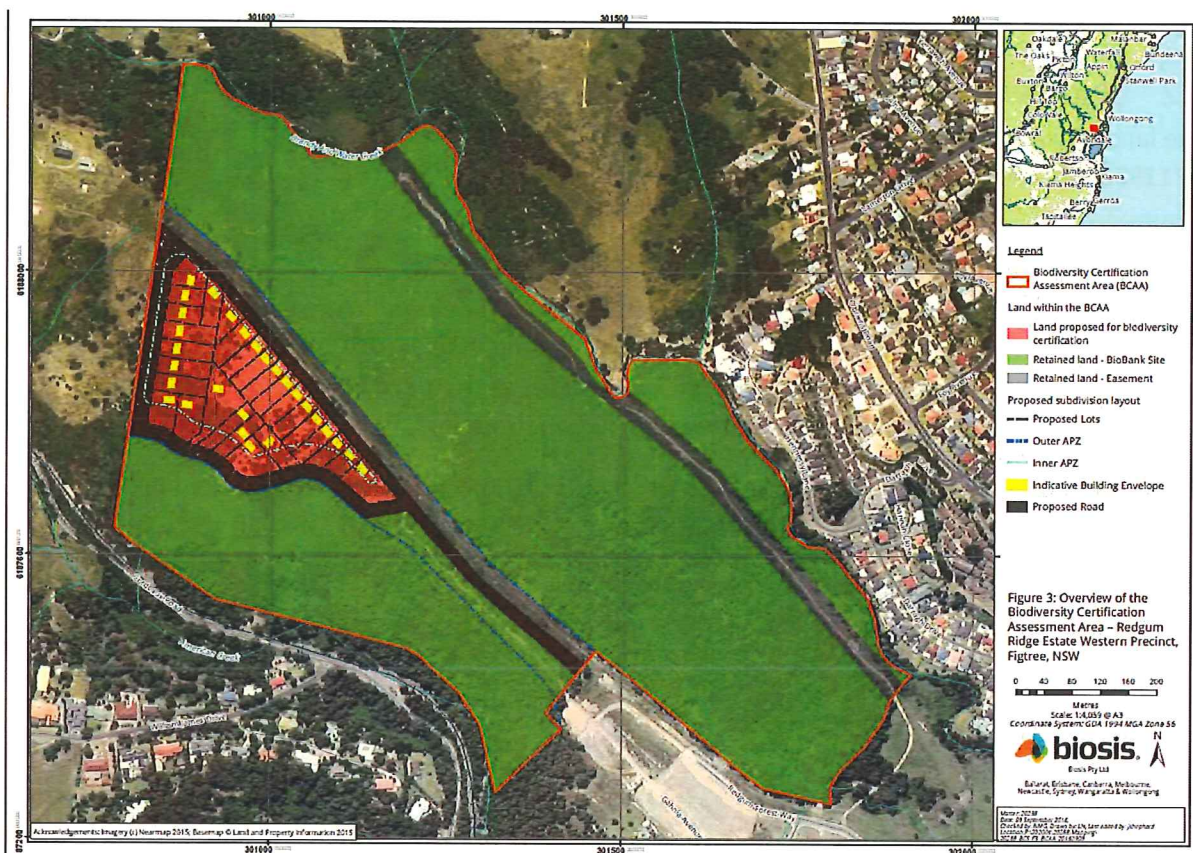


Figure 3: Biodiversity certification assessment area

1.5.1 Native vegetation impacts and credit requirements

The BCAA totals 60.24 ha and currently comprises 13.24 ha of cleared land and 46.82 ha of native vegetation.

The area proposed to be biodiversity certified (i.e. impacted) totals 8.11 ha and is currently comprised of 4.59 ha of native vegetation. Existing conservation measures are proposed to protect 46.82 ha of native vegetation within the BCAA. These are already protected under a Biobanking Agreement (BA221) and are represented as Retained Land – Biobank Site in Figure 1.

The remaining 5.31 ha of native vegetation in the BCAA lies in retained lands that were excluded from the assessment and hence are neither proposed to be biodiversity certified nor subject to conservation measures.

Development of the area to be biodiversity certified will require a total of 85 ecosystem credits to be retired to offset the impacts to native vegetation and associated habitat for ecosystem credit species. Table 2 shows the credits required per impacted vegetation type.

Table 2 Native vegetation types in the proposed biodiversity certification area

Biometric vegetation type name (BVT ID)	Equivalent under TSC Act/EPBC Act	Conservation status	Condition (Low or Mod-Good)	Area proposed for removal (ha)	Ecosystem credits required	Red flag?
SR652	NA	NA	Mod-Good	3.15 ha	54	No
SR545	Illawarra Lowlands Grassy Woodland	Endangered Ecological Community	Mod-Good	1.44 ha	31	Yes
Total				4.59 ha	85	

1.5.2 Species impacts and credit requirements

The area proposed to be biodiversity certified (i.e. impacted) does not contain any species credit species.

1.5.3 Red flag impacts

Section 2.3 of the BCAM states that:

“A red flag area is an area regarded as having high biodiversity conservation values. An area of land is regarded as a red flag area if it contains one or more of the following:

(a) a vegetation type that is greater than 70% cleared as listed in the Vegetation Types Database (that is, has 30% or less remaining of its estimated distribution in the catchment management authority (CMA) area before the year 1750), and the vegetation is not in low condition as defined in Box 1 [of the BCAM]

(b) a critically endangered or endangered ecological community listed under the TSC Act or EPBC Act, and the vegetation is not in low condition as defined in Box 1 [of the BCAM]

(c) one or more threatened species identified in the Threatened Species Profile Database that cannot withstand further loss in the CMA area because of one or both of the following:

- the species is naturally very rare, is critically endangered, has few populations or a restricted distribution*
- the species or its habitat needs are poorly known*

(d) areas of vegetation recognised as having regional or state biodiversity conservation significance. These areas are:

- land that is mapped or defined as a state or regional biodiversity link in accordance with section 3.7.2 of the methodology*
- a riparian buffer 40 m either side of a major river on the coast and tablelands or 100 m either side of a major river on the western slopes and plains*
- a riparian buffer 30 m either side of a minor river or major creek on the coast and tablelands or 60 m either side of a minor river or major creek on the western slopes and plains*
- a riparian buffer 20 m either side of a minor creek on the coast and tablelands or 40 m either side of a minor creek on the western slopes and plains*
- areas listed as a SEPP 14 wetland.*

Note: The definition of rivers and creeks is as defined in Appendix 1 [of the BCAM].”

Table 3 **Error! Reference source not found.** summarises the red flag area impacts relevant to the proposal. The red flag areas are also shown below in Figure 4. A red flag area may contain one or more of the above red flag types and therefore the sub-totals may not equate to the overall total of red flag area. The clearing of these red flag areas will require a red flag variation to be granted, which is evaluated in Section 2 of this Recommendation Report.

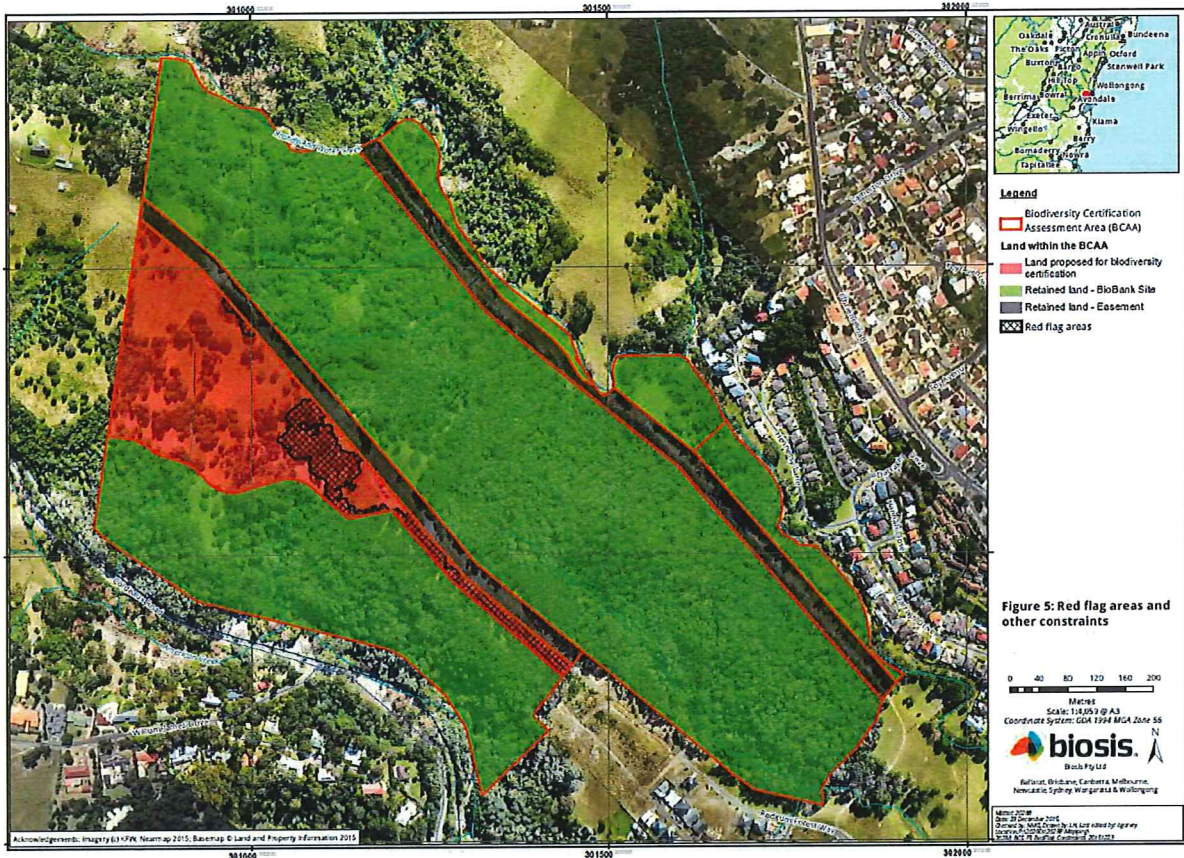


Figure 4: Red flag areas within the BCAA

Table 3 Critically endangered and/or endangered ecological communities not in low condition

Biometric vegetation type name (BVT ID)	Equivalent under TSC Act/EPBC Act	Sub-component type	Conservation status	Area proposed for removal (ha)
SR545	Illawarra Lowlands Grassy Woodland (TSC Act) Illawarra and south coast lowland forest and woodland ecological community	Forest Redgum-Thin-leaved Stringybark grassy woodland on coastal lowlands, southern Sydney Basin bioregion.	EEC CEEC	1.44 ha
Total				1.44ha

Table 4 Overcleared (>70%) vegetation types not in low condition

Biometric vegetation type name (BVT ID)	Sub-component type	Percentage cleared in CMA	Area proposed for removal (ha)
SR545	Forest Redgum-Thin-leaved Stringybark grassy woodland on coastal lowlands, southern Sydney Basin bioregion.	85%	1.44 ha
Total			1.44 ha

1.6 THE CONSERVATION LAND OR OTHER MEASURES

The majority of the BCAA is under an approved Biobanking Agreement (BA221). This area is shown as Retained Land – Biobank Site in Figure 1 and includes a total of 46.82 ha of native vegetation. The Biobank Agreement (BA221) generated total of 514 ecosystem and 632 species credits, of which 85 ecosystem credits will be retired by the conferring of certification. Included in this 46.82 ha are two TEC's including Illawarra Lowlands Grassy Woodland in the Sydney Basin Bioregion and Illawarra Subtropical Rainforest in the Sydney Basin Bioregion. In addition, the BB site contains numerous *Cynanchum elegans* (White-flowered wax plant) which is listed as Endangered under the NSW TSC Act 1995.

1.6.1 On-site conservation measure(s)

There are no on-site conservation measures proposed.

1.6.2 Off-site conservation measure(s)

There are no off-site conservation measures proposed.

1.6.3 Other conservation measure(s)

The biodiversity certification proposes the retirement of 85 ecosystem credits from BB221 which is located within the BCAA.

1.6.4 Biodiversity Certification Agreement(s)

No biodiversity certification agreement is proposed.

1.7 THE RETAINED LAND

Retained lands are neither certified lands nor conservation measures. Development proposals in these areas will continue to be regulated under the *Biodiversity Conservation Act 2016* (BC Act) and the EP&A Act.

The BCAA contains a total of 52.13 ha of retained lands. This includes a total of 46.82 ha of native vegetation within Biobanking Agreement BA221. The remainder of the retained lands contains an easement for an existing gas pipeline. This area is subject to regular mowing and maintenance and has therefore been excluded from certification of conservation lands.

1.8 LIST OF DOCUMENTS BEFORE THE DECISION MAKER

1.8.1 Documents provided by the applicant

- Biodiversity Certification Application (WCC, 2017)
- Redgum Ridge Western Precinct Biodiversity Certification Strategy (Biosis, 2017)
- Redgum Ridge Western Precinct Biodiversity Assessment Report (Biosis, 2017)

1.8.2 Other documents considered by the recommending officer

- Biobanking Agreement ID number: 221

2 EVALUATION AND RECOMMENDATIONS

Biodiversity certification may only be conferred on land where the Minister makes a determination that the conferral of the 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.”

However, before the Minister makes their decision there are a number of matters for which the Chief Executive of the OEH must be satisfied. These are evaluated in Section 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 to be satisfied prior to making a recommendation to the Minister. Table 5 lists the relevant matters and provides a link to the corresponding section of this Recommendation Report.

Table 5 Matters for the Chief Executive to consider that are relevant to this proposal

BCAM Section	Chief Executive’s Decisions	Report Section
2.2(b), (d), 2.4	Red flag variation requests	2.1.1
6.0	Indirect impacts	2.1.6

Note that the BCAM refers to the Director General of the Department of Environment, Climate Change and Water as the decision maker for these issues. All references to the Director General in this report are taken to be references to the Chief Executive of the OEH¹.

¹ Except where the reference is to the Director General of the Department of Planning (s9.4 of the BCAM); this reference is taken to be a reference to the Secretary of the Department of Planning and Environment.

2.1.1 Red flag variations under the Biodiversity Certification Assessment Methodology
Section 2.2 of the BCAM states that:

“Under the TSC Act, biodiversity certification may only be conferred on land where the Minister makes a determination, on the basis of a biodiversity certification assessment made in accordance with the methodology, that the conferral of biodiversity certification will improve or maintain biodiversity values. The methodology establishes the circumstances where biodiversity certification of the land is to be regarded as improving or maintaining biodiversity values.

Biodiversity values are to be regarded as being improved or maintained (as shown in the application for biodiversity certification) 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.

Evidence that the Director General is satisfied as to the matters set out under paragraphs (b) and (d) above will be submitted to the Minister with the application for biodiversity certification for a determination as to whether biodiversity certification improves or maintains biodiversity values.”

As summarised in Section 1.5.3, the proposed biodiversity certification of land does directly impact on biodiversity values in a red flag area. The CE OEH must be satisfied, having considered the criteria in Section 2.4 of BCAM, that the impacts on the red flag areas may be offset in accordance with the rules and requirements set out in Section 10 of the methodology.

Red flag areas - vegetation

The following sections and **Recommendations 1 to 4** relate to the criteria in Section 2.4 of BCAM and the extent to which they are satisfied for **impacts on vegetation red flag areas**.

Feasibility of options to avoid and minimise

Section 2.4.1 of the 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.”

Discussion:

The proposal has been designed to avoid as much red flag vegetation as possible and has limited impacts to a small, highly degraded portion of the vegetation. The BCAA contains approximately 47ha of native vegetation, across three different vegetation types, the majority of which is located within the approved Biobanking site. This degraded portion of the site represents a very small portion of the red flag vegetation type represented within the BCAA, comprising approximately 13% of the vegetation type from the subject site and 0.11% from within the region. The remainder is protected under Biobanking Agreement 221 (BA221). The small loss of red flag vegetation enables a practical development footprint to be utilised which is considered reasonable in the context of the site and the topographic constraints.

Recommendation 1:

That the CE OEH be **satisfied** in accordance with Section 2.4.1 of the Biodiversity Certification Assessment Methodology that the application for biodiversity certification has adequately considered the feasibility of options to avoid impacts on 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.

Additional assessment criteria for vegetation types

For a red flag area variation to be approved, viability of the red flag area must be low or not viable. Section 2.4.2.1 of the BCAM states:

“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 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 of benchmark for many of the vegetation condition variables as listed in Table 1 of the methodology (s3.6.2), without the vegetation meeting the definition of low condition set out in section 2.3. Vegetation that is substantially outside of benchmark due to a recent disturbance such as 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.”*

Discussion:

As noted above, the area of red flag vegetation within the BCAA is a small, degraded portion of the community. It is located within an area that is currently subject to grazing and mowing and therefore suffers from regular disturbance. It is largely restricted to representation by scattered canopy species over a highly managed and simplified understorey.

The portion of the site proposed for certification has long been identified as potential for development, subject to suitable management of the high value environmental land surrounding. The protection and management of this significant environmental land under BB221 will allow for the ongoing persistence of these portions of the site.

Overall, the area of red flag vegetation proposed for clearing is degraded, limited in extent and is subject to high levels of disturbance. It is considered low viability.

Recommendation 2:

That the CE OEH be **satisfied** in accordance with Section 2.4.2.1 of the Biodiversity Certification Assessment Methodology that the red flag area has low viability or is not viable because the application demonstrates 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.* **NOT APPLICABLE**
- 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.

Additionally, for a red flag area variation to be approved, the contribution of the red flag area to regional biodiversity values must be low. Section 2.4.2.2 of the BCAM states:

“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.”

Discussion:

The area of red flag vegetation proposed for clearing represents a degraded, small portion of the community. It is estimated that approximately 1268 ha of the Illawarra Lowlands Grassy Woodland TEC remains within the region. Therefore, the removal of 1.44ha of this vegetation community represents a loss of approximately 0.11% of this vegetation type found within the region.

The region has a high proportion of native vegetation remaining and therefore the proposed removal of a very small portion is minor in relation that that remaining.

Recommendation 3:

That the CE OEH be **satisfied** in accordance with Section 2.4.2.2 of the Biodiversity Certification Assessment Methodology that the red flag area on land proposed for biodiversity certification makes a low contribution to regional biodiversity values having considered that:

- 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.

Decision on whether impacts on vegetation red flags may be offset

Discussion:

The area of red flag vegetation proposed to be cleared represents a small, degraded and low value example of the community. It is subject to regular disturbance through grazing and mowing and is unlikely to be viable in the long term.

The removal represents a very small proportion of native vegetation of this particular vegetation community within the site, surrounds and region. Larger and higher quality portions of the community are located on the area designated as a Biobanking Agreement within the BCAA and therefore will be protected and managed in perpetuity. The retirement of 31 ecosystem credits associated with the Biobanking Agreement (BA221) will adequately offset the loss of a small degraded area of red flag vegetation from the subject site.

Recommendation 4:

That the CE OEH be **satisfied** in accordance with Section 2.2(b) of the Biodiversity Certification Assessment Methodology, having considered the criteria in Section 2.4, that the impacts on the red flag area may be offset in accordance with the rules and requirements set out in Section 10 of the methodology.

Red flag areas - threatened species

There are no red flag threatened species within the areas proposed for biodiversity certification.

Red flag areas - regional or state biodiversity conservation significance

There are no red flag areas – regional or state biodiversity conservation significance matters within the area proposed for biodiversity certification.

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.”*

Discussion:

The BCAA does not contain any areas of regional or state biodiversity conservation significance.

Recommendation 10:

That the CE OEH be **satisfied** in accordance with Section 2.4.4 of the Biodiversity Certification Assessment Methodology that the application has demonstrated that conferring biodiversity certification will not:

- a. Substantially reduce the width of riparian buffers with regional or state biodiversity significance
or
- 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
and
- c. Significantly impact on the water quality of a major river, minor river, major creek minor creek or listed SEPP14 wetland.

2.1.2 Equivalent undisturbed site

Section 3.3 of the BCAM states that:

“Vegetation that has been recently disturbed, or is regenerating after an event such as fire or flood, must be assessed on an equivalent site that is not disturbed in these ways. The equivalent, undisturbed site must be approved by the Director General.”

Discussion:

The BCAA does not contain any areas that would require assessment as an equivalent undisturbed site.

2.1.3 Certification of more appropriate local data

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.”

Section 4.1 of the BCAM states:

“The Director General may certify, in accordance with section 3.4 of the methodology, that more appropriate local data can be used instead of data in the Threatened Species Profile Database if the local data more accurately reflects the local environmental conditions of the biodiversity certification assessment area.”

Discussion:

The proposal does not include the use of any more appropriate local data.

2.1.4 Additional increase in gain resulting from conservation measure management actions
Section 3.6.4 of the BCAM states:

“The change in site value on land proposed for conservation measures is based on the improvement in the condition of biodiversity values on that land following implementation of the management actions listed in section 8.3 of the methodology.

The change in site value is determined as the difference in the current site value score and the predicted future site value score. The future site value score is determined by increasing the current condition attribute scores by the extent of the predicted gain for the condition attribute, according to Table 2. Any increase to the extent of improvement set out in Table 2 is limited to the additional allowable increase in Appendix 4 and must be approved by the Director General.”

Discussion:

The proposal does not include any request for additional gain in conservation measure management actions.

2.1.5 Assessment of expert and expert report
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.”

Discussion:

The proposal does not include any expert advice or expert report.

2.1.6 Indirect impact decisions under the Biodiversity Certification Assessment Methodology

The CE OEH must be satisfied that any indirect impacts on biodiversity values resulting from the conferral of biodiversity certification are appropriately minimised in accordance with Section 6 of the BCAM.

Section 6 of the BCAM states that:

“The area that is assessed for indirect impacts should extend as far as is necessary outside the land proposed for biodiversity certification, to assess any likely adverse indirect impacts on biodiversity values as a result of conferring biodiversity certification.

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.”

Discussion:

Indirect impacts associated with the proposed biodiversity certification have largely been restricted though the design of the area proposed for certification, including the location of perimeter roads and asset protection zones, and areas of retained land adjacent to the existing Biobanking site. These provide an appropriate buffer to areas of high environmental value located within the Biobanking site.

Stormwater within the area proposed for certification will be managed in accordance with the local council development controls and connected to an existing stormwater system. This will minimise impacts associated with the development of the site as proposed and any offset adverse impacts associated with stormwater management.

The application is not subject to a strategic assessment under the EPBC Act 1999 and therefore section 5 of the BCAM has not been included as part of this application for biodiversity certification. I

It is also worth noting that the red flag areas located within the Biobanking site will be buffered by other vegetation within the BB site, the retained lands within the BCAA and the perimeter road and APZ within the land proposed for certification. This will allow for indirect impacts upon red flag areas to be appropriately mitigated and managed.

Recommendation 16:

That the CE OEH be **satisfied**, in accordance with Section 2.2(d) of the Biodiversity Certification Assessment Methodology, 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 because the application demonstrates:

- a. That it is not subject to a Strategic Assessment under the *Environment Protection and Biodiversity Conservation Act 1999*
- b. 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. In accordance with Section 6 of the BCAM, the area that was assessed for indirect impacts extended as far as was necessary outside the land proposed for biodiversity certification, to account for any likely adverse indirect impacts on biodiversity values as a result of conferring biodiversity certification
- c. That the on-site conservation measures that protect red flag areas have a buffer, and 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 lands in the Biodiversity Certification Assessment Area.

2.1.7 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

Discussion:

No planning instrument conservation measures are proposed as part of the application for biodiversity certification.

2.1.8 Offsite conservation measures – survey intensity

Section 9.2 of the BCAM states that:

“The conservation measures set out in sections 8.1.1 and 8.1.2 of the methodology may be used outside the biodiversity certification assessment area to obtain biodiversity certification credits that will contribute to a determination that the conferral of biodiversity certification on land improves or maintains biodiversity values.

The number of ecosystem credits and species credits for biodiversity certification generated in respect of a conservation measure outside the biodiversity certification assessment area must be calculated in accordance with the Biodiversity Banking Assessment Methodology established under Part 7A of the TSC Act as if the conservation measure was to be established under a BioBanking Agreement.

For conservation measures other than a Biodiversity Banking agreement under Part 7A of the TSC Act, the Director General may give approval to vary the intensity of survey that is required to determine the number and type of biodiversity certification credits using the Biodiversity Banking Assessment Methodology.”

Discussion:

No off-site conservation measures are proposed as part of the application for biodiversity certification.

2.1.9 Variation to the offset rules – ecosystem credits

Section 10.2.1 of the BCAM states that:

“The Director General may approve a variation of the offset rules set out in section 10.2. Before varying the offset rules for using ecosystem credits, the Director General must be satisfied as to the matters set out in A and B below.

A. Firstly, before varying the offset rules for using ecosystem credits, the Director General must be satisfied that:

a) All reasonable steps have been taken to secure conservation measures that generate credits that match the credit profile specified for ecosystem credits required for biodiversity certification in section 10.1 of the methodology

OR

b) The cost of securing a conservation measure capable of generating credits to match the credit profile specified for ecosystem credits required for biodiversity certification in section 10.1 of the methodology is disproportionate to the overall cost of the conservation measures identified in the application for biodiversity certification

AND

c) The list of threatened species predicted to occur at the offset site is not significantly different to the list of threatened species that are assessed on land where biodiversity certification is proposed when assessed in accordance with section 4.2 of the methodology.

B. Secondly, in order to approve a variation of the offset rule in section 10.2, the Director General must also be satisfied that the alternate ecosystem credits are generated from conservation measures:

a) Located on land within the same IBRA region as the land proposed for biodiversity certification, regardless of the CMA subregions identified in attribute 1

AND

b) On land containing a vegetation type of the same vegetation class as the vegetation type specified in attribute 2 of the credit required for the land proposed for biodiversity certification as set out in section 10.1 of the methodology

OR

c) If paragraph (b) cannot be complied with, on land containing a vegetation type from the same vegetation formation as the vegetation type specified in attribute 3 of the credit required for the land proposed for biodiversity certification as set out in section 10.1 of the methodology.

Note: An application for a variation of the offset rules for using ecosystem credits for biodiversity certification must be included in the application for biodiversity certification.”

Discussion:

No variation to the offset rules are proposed as part of the application for biodiversity certification.

2.1.10 Variation to the offset rules – species credits

Section 10.4.1 of the BCAM states that:

“The Director General may approve a variation of the offset rules for using species credits set out in section 10.4, when satisfied as to the matters set out in both A and B below.

A. The Director General may only approve a variation of the offset rules for using species credits for biodiversity certification, by allowing the species credits generated for a conservation measure for another species to be used to offset the impacts of the conferral of biodiversity certification on land when satisfied that:

a) All reasonable steps have been taken to secure the number and types of species credits

AND

b) The species to which the species credit relates is not listed as critically endangered on the TSC Act

AND

c) A conservation measure in the form of a financial contribution for the value of the species credits in line with sections 9.3 and 9.3.1 of the methodology is not an appropriate conservation measure for this species.

Note: Where a financial contribution has been made in this situation, the financial contribution must be used for activities related to the ongoing conservation of the species.

B. In addition, the variation must only be approved where the Director General is satisfied that the alternate species credits:

a) Relate to a species or population from the same kingdom as the species identified in the credit profile in accordance with section 10.3 of the methodology

AND

b) Are generated from conservation measures located on land within the same IBRA region as the land proposed for biodiversity certification

AND

c) Where the species credit required for land proposed for biodiversity certification relates to a species or population listed in Schedule 1 of the TSC Act, it relates to a species or population listed in either Schedule 1 or 1A of the TSC Act

OR

d) Where the species credit required for land proposed for biodiversity certification relates to a species or population listed in Schedule 2 of the TSC Act, it relates to a species or population listed in either Schedule 1, 1A or 2 of the TSC Act.

Note: An application for a variation of the offset rules for using species credits for biodiversity certification must be included in the application for biodiversity certification.”

Discussion:

No variation to the offset rules are proposed as part of the application for biodiversity certification.

Biodiversity Certification of Land: Redgum Ridge Estate Western Precinct

**Recommendation Report for the Minister for the Environment,
Minister administering the *Threatened Species Conservation Act 1995***

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

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1 BACKGROUND AND DOCUMENTS CONSIDERED

Name of recommending officer:	Anthony Lean, Chief Executive, Office of Environment and Heritage
Name of decision maker:	Gabrielle Upton, Minister for the Environment, Minister administering the <i>Threatened Species Conservation Act 1995</i> .
CM9 container and record numbers:	
Name of Planning Authority (applicant):	Wollongong City Council
Date application received:	27 March 2018
Dates of public notification under Section 126N:	5 February 2018 – 9 March 2018

1.1 THE PROPOSAL

The application has been made by Wollongong City Council (WCC) on behalf of the landowner, Edenvell Pty Ltd.

The application proposes certification of 8.11 ha of land for development, and the retirement of biodiversity credits to achieve the required improve or maintain standard under the Biodiversity Certification Assessment Methodology (BCAM).

Contained within the BCAA is Biobanking Agreement (BA221) which is mapped as retained land. The Biobank site contains 46.82 ha of native vegetation, including two threatened ecological communities (TEC) and numerous individuals of one threatened flora species. See Figure 1.

Table 1 Land use

Land use	Area (ha)	Native vegetation extent (ha)
Land proposed for biodiversity certification	8.11 ha	4.59 ha
Land proposed for on-site conservation measures	NA*	NA*
Land proposed for off-site conservation measures	NA	NA
Retained lands	52.13 ha*	46.82 ha*
Total	60.24 ha	51.41 ha

*there are no on-site conservation measures proposed as the BCAA contains an approved Biobanking Agreement which covers 46.82ha of native vegetation. This is located within the retained

lands of the BCAA and will be the source of the credits required to meet the Improve or Maintain outcome under BCAM.



Figure 1: Biocertification Assessment Area

1.2 THE BIODIVERSITY CERTIFICATION APPLICATION

An application for biodiversity certification must follow the requirements of Part 7AA of the *Threatened Species Conservation Act 1995* (TSC Act) and the Biodiversity Certification Assessment Methodology (BCAM). In this respect, a biodiversity assessment and a biodiversity certification strategy have been prepared and submitted with the application.

The assessment and strategy have been reviewed by the Office of Environment and Heritage (OEH) as documented in this Recommendation Report and the Recommendation Report for the OEH Chief Executive. For development lands to be biodiversity certified (see biodiversity certification assessment area in Section 1.3 below) the OEH Chief Executive and Environment Minister will need to be satisfied in relation to certain matters outlined in the BCAM and Part 7AA of the TSC Act. These matters have been assessed by OEH and those relevant to the Environment Minister are documented in this Recommendation Report.

1.3 THE BIODIVERSITY CERTIFICATION ASSESSMENT AREA

An application for biodiversity certification must follow the requirements of Part 7AA of the *Threatened Species Conservation Act 1995* (TSC Act) and the Biodiversity Certification Assessment Methodology (BCAM). In this respect, a biodiversity assessment and a biodiversity certification strategy have been prepared and submitted with the application.

The application was lodged with OEH on 27 March 2018. The application was prepared and lodged by Wollongong City Council (WCC) on behalf of the landowner, Edenvell Pty Ltd.

Nathan Garvey of Biosis (Accredited Assessor No. 0103) undertook the biodiversity assessment and prepared the biodiversity conservation strategy which underpins the application for certification.

The proposal was placed on public exhibition between 5 February and 9 March 2018. One submission was received as a result. The submission was minor in nature and did not require any amendments to the application.

The assessment and strategy have been reviewed by the Office of Environment and Heritage (OEH) as documented in this Recommendation Report. For development lands to be biodiversity certified (see biodiversity certification assessment area in Section 1.5 below) the OEH Chief Executive and Environment Minister will need to be satisfied in relation to certain matters outlined in the BCAM and Part 7AA of the TSC Act. These matters have been assessed by OEH and those relevant to the Chief Executive are documented in this Recommendation Report.

1.4 THE CONSERVATION LAND OR OTHER MEASURES

The application for biodiversity certification proposes the retirement of 85 ecosystem credits, purchased from an existing Biobanking Agreement site (BAID221) located within the Biodiversity Certification Assessment Area (BCAA).

All relevant credits will be retired at the time of certification.

1.5 LIST OF DOCUMENTS BEFORE THE DECISION MAKER

1.5.1 Documents provided by the applicant

- Biodiversity Certification Application (WCC, 2017)

- Redgum Ridge Western Precinct Biodiversity Certification Strategy (Biosis, 2017)
- Redgum Ridge Western Precinct Biodiversity Assessment Report (Biosis, 2017)

1.5.2 Other documents considered by the recommending officer

- Biobanking Agreement ID number: 221

2 MATTERS FOR THE MINISTER TO CONSIDER

Biodiversity certification may only be conferred on land where the Minister makes a determination that the conferral of the 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 section evaluates the matters that are relevant for the Minister for the Environment to consider in accordance with the BCAM and Part 7AA of the TSC Act. **Table 2** lists the relevant matters and provides a link to the corresponding section of this Recommendation Report.

Table 2 Matters for the Minister to consider that are relevant to this proposal

BCAM Section	Minister’s Decisions	Report Section
8.1.3	Planning instrument conservation measures – timeframe to implement	2.1.1
TSC Act Section	Minister’s Decisions	Report Section
126N	Public notification requirements	2.1.2
126O, 126P	Biodiversity certification to be conferred only if biodiversity values are improved or maintained	2.1.3
126Q	Application for a minor variation to the assessment methodology	2.1.4
126H	Decision to confer certification on the proposed biodiversity certification assessment area	0

2.1.1 Planning instrument conservation measures – timeframe to implement

Section 8.1.3 of the BCAM states that:

“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.”

Discussion:

No planning instrument conservation measures are proposed as part of the application for biodiversity certification.

2.1.2 Public notification requirements

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.”*

Discussion:

The proposal was placed on public exhibition between 5 February and 9 March 2018. One submission was received as a result. The submission was minor in nature and did not require any amendments to the application.

Recommendation 2:

That the Minister be **satisfied** in accordance with Section 126N of the *Threatened Species Conservation Act 1995* that the public notification requirements for biodiversity certification have been met and that there is no requirement for further public notification.

2.1.3 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.”*

Improve or maintain biodiversity values

Section 2 of the BCAM defines the circumstances in which the conferral of biodiversity certification can be considered to improve or maintain biodiversity values:

“Biodiversity values are to be regarded as being improved or maintained (as shown in the application for biodiversity certification) 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.”

Discussion:

The proposed biodiversity certification of land does directly impact on biodiversity values in a red flag area. The OEH Chief Executive is satisfied that, having considered the criteria in Section 2.4, impacts on the red flag area may be offset in accordance with the rules and requirements set out in Section 10 of BCAM.

All other direct impacts on biodiversity values are offset in accordance with the rules and requirements set out in Section 10 of the methodology.

The OEH Chief Executive 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.

Assessment made in accordance with the Biodiversity Certification Assessment Methodology

Discussion:

The Redgum Ridge Western Precinct Biodiversity Assessment Report (Biosis, 2017) assesses the impacts of biodiversity certification on biodiversity values and has been made in accordance with the Biodiversity Certification Assessment Methodology.

Recommendation 3:

That the Minister be **satisfied** in accordance with Sections 126O and 126P of the *Threatened Species Conservation Act 1995* that on the basis of a biodiversity certification assessment for the Redgum Ridge Western Precinct proposal, the overall effect of biodiversity certification of the proposed biodiversity certification area is to improve or maintain biodiversity values.

2.1.4 Application for a minor variation to the methodology

Section 126Q of the 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 Office.*
- 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.”*

Discussion:

No variation to the methodology is proposed as part of the application for biodiversity certification.

2.1.5 Decision to confer biodiversity certification on the proposed biodiversity certification area

Discussion:

The OEH considers that the application for biodiversity certification has adequately addressed the requirements of the BCAM and that biodiversity certification will improve or maintain biodiversity values.

The conferral of biodiversity certification should be subject to the terms of the proposed Ministerial order attached to the accompanying Briefing Note.

Recommendation 5:

That the Minister **confer** biodiversity certification on the proposed biodiversity certification area in accordance with Section 126H of Part 7AA of the *Threatened Species Conservation Act 1995* by signing and dating this Decision Report, and 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.

Decisions of the OEH Chief Executive – biodiversity certification of Redgum Ridge Estate Western Precinct

The OEH Chief Executive must strike through the relevant wording (**bold text**) to indicate his decision prior to signing this Section.

I, Anthony Lean, Chief Executive of the Office of Environment and Heritage, having considered the *Biodiversity Certification of Land: Redgum Ridge Western Precinct Recommendation Report for the Chief Executive of the Office of Environment and Heritage* and the attachments to that report:

Red flag variations for vegetation red flag areas

1. am ~~satisfied/not satisfied~~ in accordance with Section 2.4.1 of the Biodiversity Certification Assessment Methodology (BCAM) that the application for biodiversity certification has adequately considered the feasibility of options to avoid impacts on red flag areas because the application ~~demonstrates/fails to demonstrate~~ 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/not satisfied~~ in accordance with Section 2.4.2.1 of the BCAM that the red flag area has low viability or is not viable because the application ~~demonstrates/fails to demonstrate~~ 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/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 having considered ~~that/that none of the following apply~~:

- 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.

- 4. am ~~satisfied/not satisfied~~ in accordance with Section 2.2(b) of the BCAM, having considered the criteria in Section 2.4, that the impacts on the red flag area may be offset in accordance with the rules and requirements set out in Section 10 of the BCAM.

~~Red flag variations for threatened species red flags~~

- ~~5. am **satisfied/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 threatened species red flag areas because the application **demonstrates/fails to demonstrate** 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.~~

- ~~6. am **satisfied/not satisfied** in accordance with Section 2.4.3.1 of the BCAM that the red flag area has low viability or is not viable because the application **demonstrates/fails to demonstrate** 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 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 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 threatened species habitat 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. 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 BCAM.~~

~~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.~~

~~7. am **satisfied/not satisfied** in accordance with Section 2.4.3.2 of the BCAM that the threatened species habitat that constitutes a red flag area on land proposed for biodiversity certification makes a low contribution to regional biodiversity values because the application **demonstrates/fails to demonstrate** that:~~

~~a. 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.~~

~~8. am **satisfied/not satisfied** in accordance with Section 2.2(b) of the BCAM, having considered the criteria in Section 2.4, that the impacts on the threatened species habitat that constitutes the red flag area may be offset in accordance with the rules and requirements set out in Section 10 of the BCAM.~~

~~*Red flag variations for areas of regional or State biodiversity conservation significance*~~

~~9. am **satisfied/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 red flag areas because the application **demonstrates/fails to demonstrate** 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.~~

~~10. am **satisfied/not satisfied** in accordance with Section 2.4.4 of the BCAM that conferring biodiversity certification will not:~~

~~a. Substantially reduce the width of riparian buffers with regional or state biodiversity significance, or~~

~~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, and~~

~~c. Significantly impact on the water quality of a major river, minor river, major creek minor creek or listed SEPP14 wetland.~~

~~11. am **satisfied/not satisfied** in accordance with Section 2.2(b) of the BCAM, having considered the criteria in Section 2.4, that the impacts on red flag areas of regional or state biodiversity conservation significance may be offset in accordance with the rules and requirements set out in Section 10 of the BCAM.~~

~~Approval of equivalent undisturbed site~~

- ~~12. approve/do not approve use of the nominated equivalent undisturbed site in accordance with Section 3.3 of the BCAM.~~

~~Certification of More Appropriate Local Data (MALD)~~

- ~~13. 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 of the assessment area.~~
- ~~b. the MALD can be used in applying the BCAM in accordance with any procedures outlined in the Biodiversity Certification Operational Manual.~~

~~For the following reasons:~~

~~Additional increase in gain (above the default gain) resulting from implementation of conservation management actions~~

- ~~14. approve/do not approve the use of the proposed additional and/or more tailored management actions and resulting additional gains in accordance with Section 3.6.4 and Appendix 4 of the BCAM.~~

~~Expert Report~~

- ~~15. am satisfied/not satisfied under Section 4.5 of the BCAM that:~~

- ~~a. is appropriately qualified to be considered an expert in the~~
- ~~b. The expert report and findings within can be accepted in place of targeted survey and applied in the BCAM.~~
- ~~c. The expert report has been prepared in accordance with the guidance provided in the Biodiversity Certification Operational Manual.~~

~~Indirect impacts~~

16. am ~~satisfied/not satisfied~~ that in accordance with Section 2.2(d) of the BCAM, that 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 because the application ~~demonstrates/fails to demonstrate:~~

- a. That it is not subject to a Strategic Assessment under the *Environment Protection and Biodiversity Conservation Act 1999*.
- b. 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. In accordance with Section 6 of the BCAM, the area that was assessed for indirect impacts extended as far as was necessary outside the land proposed for biodiversity certification, to account for any likely adverse indirect impacts on biodiversity values as a result of conferring biodiversity certification.
- c. That the on-site conservation measures that protect red flag areas have a buffer, and 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 lands in the biodiversity certification assessment area.

~~Planning instrument conservation measures~~

~~17. am **satisfied/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, 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 conservation measure is in place, or~~
- ~~f. The Minister for Planning has provided written advice agreeing to support the planning instrument conservation measure which is to be implemented within <timeframe>, and~~
- ~~g. The land proposed as a planning instrument conservation measure will be zoned <identify proposed zoning>, and~~
- ~~h. The land to be re-zoned will be subject to 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, and~~
- ~~i. The planning instrument conservation measure has been proposed as a direct result of the biodiversity certification application, or~~
- ~~j. Significant upgrades to existing environmental protection zoning and development controls have been proposed as a direct result of the biodiversity certification application.~~

~~Offsite conservation measures—survey intensity~~

~~18. **approve/do not approve** in accordance with Section 9.2 of the BCAM that the survey intensity required to determine the number and type of biodiversity certification credits created by the offsite conservation measure of <type of measure> located at <location> may be reduced as outlined in the <name and date of relevant report>~~

~~Variation to the offset rules—ecosystem credits~~

~~19. am **satisfied/not satisfied** in accordance with Section 10.2.1 of the BCAM that the matters set out in A and B are satisfied to allow a variation of the offset rules because the application **demonstrates/fails to demonstrate**:~~

~~A. Firstly, before varying the offset rules for using ecosystem credits:~~

- ~~a. All reasonable steps have been taken to secure conservation measures that generate credits that match the credit profile specified for ecosystem credits required for biodiversity certification in Section 10.1 of the methodology~~

~~or~~

~~b. The cost of securing a conservation measure capable of generating credits to match the credit profile specified for ecosystem credits required for biodiversity certification in Section 10.1 of the methodology is disproportionate to the overall cost of the conservation measures identified in the application for biodiversity certification~~

~~and~~

~~c. The list of threatened species predicted to occur at the offset site is not significantly different to the list of threatened species that are assessed on land where biodiversity certification is proposed when assessed in accordance with Section 4.2 of the methodology.~~

~~— B. Secondly, the alternate ecosystem credits are generated from conservation measures:~~

~~a. Located on land within the same IBRA region as the land proposed for biodiversity certification, regardless of the CMA subregions identified in attribute 1~~

~~and~~

~~b. On land containing a vegetation type of the same vegetation class as the vegetation type specified in attribute 2 of the credit required for the land proposed for biodiversity certification as set out in Section 10.1 of the methodology~~

~~or~~

~~c. If paragraph (b) cannot be complied with, on land containing a vegetation type from the same vegetation formation as the vegetation type specified in attribute 3 of the credit required for the land proposed for biodiversity certification as set out in Section 10.1 of the methodology.~~

~~20. **Approve/do not approve** a variation to the offset rules for ecosystem credits as set out in Section 10.2 of the BCAM.~~

~~Variation to the offset rules — species credits~~

~~21. am **satisfied/not satisfied** in accordance with Section 10.4.1 of the BCAM that the matters set out in A and B are satisfied to allow a variation of the offset rules because the application **demonstrates/fails to demonstrate:**~~

~~A. Firstly, before varying the offset rules for using species credits:~~

~~a. All reasonable steps have been taken to secure the number and type of species credits~~

~~and~~

~~b. The species to which the species credit relates is not listed as critically endangered on the *Threatened Species Conservation Act 1995* (TSC Act)~~

~~and~~

~~c. A conservation measure in the form of a financial contribution for the value of the species credits in line with Sections 9.3 and 9.3.1 of the methodology is not an appropriate conservation measure for this species.~~

~~B. Secondly, the alternate species credits:~~

~~a. Relate to a species or population from the same kingdom as the species identified in the credit profile in accordance with Section 10.3 of the methodology~~

~~and~~

~~b. Are generated from conservation measures located on land within the same IBRA region as the land proposed for biodiversity certification~~

~~and~~

~~c. Where the species credit required for land proposed for biodiversity certification relates to a species or population listed in Schedule 1 of the TSC Act, it relates to a species or population listed in either Schedule 1 or 1A of the TSC Act~~

~~or~~

~~d. Where the species credit required for land proposed for biodiversity certification relates to a species or population listed in Schedule 2 of the TSC Act, it relates to a species or population listed in either Schedule 1, 1A or 2 of the TSC Act.~~

~~22. Approve/do not approve a variation to the offset rules for species credits as set out in Section 10.4 of the BCAM.~~



6. JUNE. 2018

ANTHONY LEAN
Chief Executive
Office of Environment and Heritage

Date

DECISIONS OF THE MINISTER FOR THE ENVIRONMENT— BIODIVERSITY CERTIFICATION OF REDGUM RIDGE ESTATE WESTERN PRECINCT

The Minister must strike through the relevant wording (**bold text**) to indicate her decision prior to signing this Section.

I, Anthony Lean, Chief Executive of the Office of Environment and Heritage, as delegate of the Minister for the Environment, having considered the *Biodiversity Certification of Land: Redgum Ridge Western Precinct Recommendation Report for the Minister for the Environment* and the attachments to that report:

1. ~~require/do not require~~ in accordance with Section 8.1.3 of the Biodiversity Certification Assessment Methodology that the proposed ~~<name of>~~ planning instrument conservation measure, as agreed to in writing by the Minister for Planning, be implemented within ~~<timeframe>~~.
2. am **satisfied/not satisfied** in accordance with Section 126N of the *Threatened Species Conservation Act 1995* that the public notification requirements for biodiversity certification have been met and that there is no requirement for further public notification.
3. am **satisfied/not satisfied** in accordance with Sections 126O and 126P of the *Threatened Species Conservation Act 1995* that on the basis of a biodiversity certification assessment for the Redgum Ridge Western Precinct proposal, the overall effect of biodiversity certification of the proposed biodiversity certification area is to improve or maintain biodiversity values.
4. ~~am satisfied/not satisfied~~ in accordance with Section 126Q of the *Threatened Species Conservation Act 1995* that:
 - i. ~~The variation to the Biodiversity Certification Assessment Methodology (BCAM) is minor and~~
 - ii. ~~The variation would result in a determination that the overall effect of biodiversity certification is to improve or maintain biodiversity values and~~
 - iii. ~~Strict adherence to the BCAM is, in this particular case, unreasonable and unnecessary and~~
 - iv. ~~The variation is not inconsistent with the classification of a plant species as a threatened species or as a component of an endangered ecological community.~~
5. **confer/refuse to confer** biodiversity certification on the proposed biodiversity certification area in accordance with Section 126H of Part 7AA of the *Threatened Species Conservation Act 1995* by signing and dating this decision report, and by signing and dating the order conferring biodiversity certification attached to the Briefing Note accompanying this decision report and approving its publication in the Government Gazette.



6.6.2018

Anthony Lean
Chief Executive
Office of Environment and Heritage

Date