

Biodiversity Certification of Land: El Caballo Blanco, Gledswood and Camden Lakeside Residential Estate

Recommendation Report

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

Chief Executive and Minister's decisions checklist

Part 7AA of the *NSW Threatened Species Conservation Act 1995* (TSC Act) and the Biodiversity Certification Assessment Methodology (BCAM) identify a range of decisions that can or must be made by the Office of Environment and Heritage Chief Executive and the Minister for Environment in conferring biodiversity certification.

The following checklist identifies the decisions relevant to this proposal. Decisions not relevant to this proposal are not discussed further in this report.

BCAM Section	Chief Executive's Decisions	Relevant to this Proposal
2.2b), d), 2.4	Red flag variation requests	✓
3.3	Equivalent undisturbed site	
3.4	Local certified data – benchmarks	
3.6.4	Additional increase in gain from management actions	
4.1	Local certified data – Threatened Species Profile Database	
4.5	Experts and expert reports	
6.0	Indirect impacts	✓
8.1.3	Planning instrument conservation measures	
9.2	Offsite conservation measures – survey intensity	
9.4	Special infrastructure contributions	
10.2.1	Variation to offset rules – ecosystem credits	
10.4.1	Variation to offset rules – species credits	
TSC Act Section	Minister's Decisions	Checkbox
126N	Public notification requirements	✓
126P	Biodiversity certification only if biodiversity values are improved or maintained	✓
126Q	Application for a minor variation to the assessment methodology	
126H	Decision to confer biodiversity certification on proposed biodiversity certification area	✓

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1 BACKGROUND AND DOCUMENTS CONSIDERED

Name of recommending officers	Richard Bonner and Ray Giddins
Name of decision maker	Anthony Lean, Chief Executive, Office of Environment and Heritage Gabrielle Upton, Minister for the Environment, Minister administering the <i>Threatened Species Conservation Act 1995</i>
CM9 container and record numbers	SF14/40834, DOC17/624493, DOC17/28022
Name of Planning Authority (applicant)	Camden Council
Date application received	4 April 2017
Dates of public notification under section 126N	22 February – 24 March 2017

1.1 THE PROPOSAL

In accordance with Part 7AA of the *Threatened Species Conservation Act 1995* (TSC Act)¹, Camden Council has applied for biodiversity certification of 47.45 hectares (ha) of land proposed for development identified within the *El Caballo Blanco, Gledswood and Camden Lakeside residential estate Biodiversity Certification Assessment Report and Strategy, version 5, 10 February 2017* (BCARS).

The biodiversity certification application was submitted by council following the rezoning of the El Caballo Blanco, Gledswood and Camden Lakeside (ECBGCL) residential estate from rural in 2009 and 2013 to residential. Sekisui House Australia Holdings Pty Ltd (SHAH) and its subsidiary entities², the developers of the ECBGCL residential estate, prepared the biodiversity certification application in consultation with council and the Office of Environment and Heritage (OEH).

The biodiversity certification application includes the implementation of off-site conservation measures entailing the purchase and retirement of biodiversity credits from biobanked sites and/or payment to the Biodiversity Conservation Fund managed by the NSW Biodiversity Conservation Trust. No on-site conservation measures are proposed.

For land to be biodiversity certified, the Chief Executive OEH and Minister for the Environment must be satisfied in relation to certain matters outlined in the BCAM. These matters have been assessed by OEH and are documented in this report.

¹ The TSC Act 1995 was repealed on 24 August 2017 and replaced by the *Biodiversity Conservation Act 2016* (BC Act). In accordance with section 36 of the *Biodiversity Conservation (Savings and Transition) Regulation 2017*, the Minister may determine an application for biodiversity certification under Part 7AA of the TSC Act 1995 (as if that Act had not been repealed) if satisfied that the application substantially complies with Part 7AA of that Act.

² Sekisui House Australia Pty Ltd, SH Camden Valley Pty Ltd as trustee for the SH Camden Valley Unit Trust and SH Camden Lakeside Pty Ltd as trustee for the SH Camden Lakeside Unit Trust

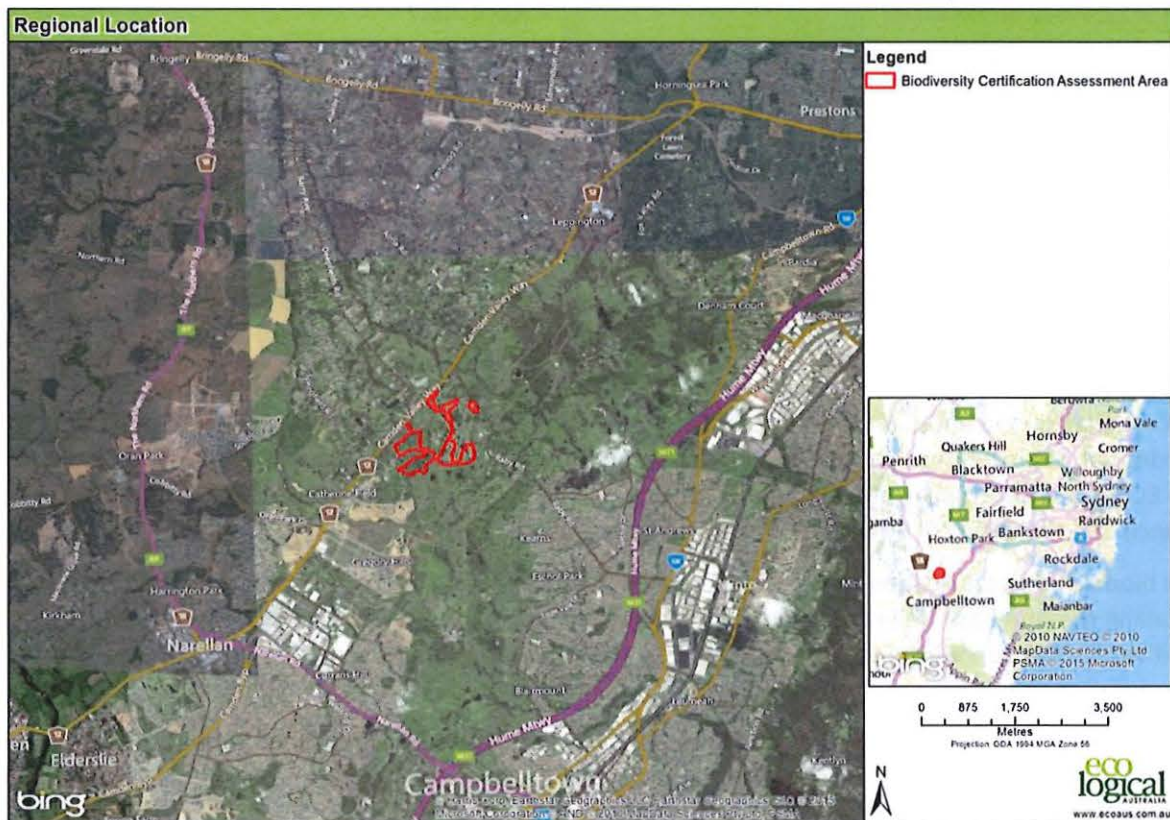
1.2 HISTORY

1.2.1 Background

The ECBGCL residential estate is a staged residential development comprising 630 lots associated with an existing golf course at Gledswood Hills (50 Raby Road) within the Camden Local Government Area approximately 8 km north-east of Camden. It is an irregular shaped land parcel bound by Camden Valley Way to the north-west, Raby Road to the north-east and a water canal, owned by Sydney Water Corporation, to the south and east (Figure 1).

The estate is surrounded by existing biodiversity certified land including the Turner Road, Catherine Fields and East Leppington precincts of the South West Growth Centre. Immediately north-east of the ECBGCL residential estate is the Emerald Hills Estate development which was conferred biodiversity certification under the TSC Act in December 2015.

Figure 1: Regional location of the proposed El Caballo Blanco, Gledswood and Camden Lakeside Biodiversity Certification Area



1.2.2 The Camden Lakeside and El Caballo Blanco and Gledswood rezonings

In 2004, council resolved to prepare a draft Local Environmental Plan for land within the Central Hills area at Gledswood Hills, known as the Camden Lakeside and El Caballo Blanco and Gledswood rezonings. The subsequent planning proposals were supported by a Local Environment Study prepared and publicly exhibited in November 2007 and February 2009 for Camden Lakeside and for El Caballo Blanco and Gledswood respectively. The Local Environment Study was supported by specialist studies including flora and fauna assessments prepared in 2005 and 2007 and a Vegetation Management Strategy prepared in 2011.

The rezoning proposals for Camden Lakeside and El Caballo Blanco, and separately for Gledswood, were gazetted in May 2009 and March 2013 respectively. The Camden Local Environmental Plan was

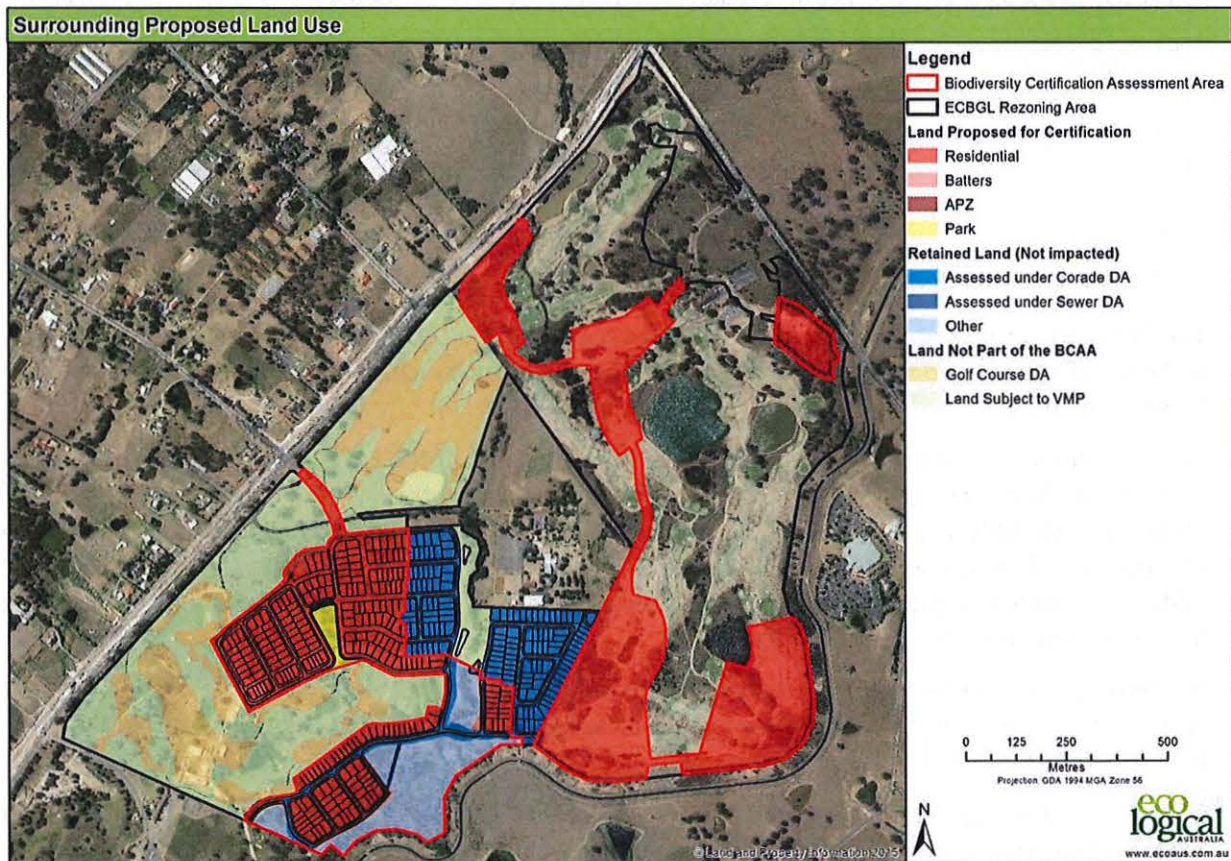
subsequently amended to rezone the estate primarily R1 General Residential with smaller areas zoned RE2 Private Recreation and E2 Environmental Conservation. Prior to rezoning, the site was zoned RU2 Rural Landscape and used for agricultural purposes (primarily horse agistment and cattle grazing).

The Camden Lakeside component of the ECBGCL residential estate includes part of the existing Camden Lakeside Golf Course which contains considerably disturbed and modified vegetation as a result of constructing the original golf course in the 1990's.

1.2.3 Development applications

In 2015, council approved development applications (DAs) within the ECBGCL residential estate for the El Caballo Blanco and Gledswood Hills golf holes and driving range (Golf Course DA), the Corade Residential Development (Corade DA) and the Riley's Creek sewer carrier main (Sewer DA) which are excluded from the proposed biodiversity certification area. Figure 2 shows the location of these DA areas, the biodiversity certification assessment area (BCAA) and the proposed biodiversity certification area.

Figure 2: Relationship between other Development Applications within the El Caballo Blanco, Gledswood and Camden Lakeside Residential Estate, the biodiversity certification assessment area, and the proposed biodiversity certification area.



1.3 THE BIODIVERSITY CERTIFICATION ASSESSMENT AREA AND PROPOSED BIODIVERSITY CERTIFICATION AREA

The BCAA is 56.10 ha and comprises all or part of Lot/DPs: 1201/1187381, 50/1175424, 50/1221870, 101/1206855, and 1203/1187381. The BCAA includes 19.83 ha of native vegetation comprised of one biometric vegetation type. The remaining 36.27 ha is classified as cleared land (ie unvegetated, exotic pasture and planted vegetation).

The proposed biodiversity certification area is 47.45 ha comprising 14.01 ha of native vegetation and threatened species habitat and 33.44 ha of cleared land. The remaining 8.65 ha of land within the BCAA not included within the proposed biodiversity certification area is retained land: 5.82 ha of which is vegetated and managed under a Vegetation Management Plan as an offset to meet *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) offset requirements. The retained land also includes a proposed access road associated with a DA by a separate landholder adjacent to the BCAA.

There are no on-site conservation measures within the proposed biodiversity certification area. Off-site conservation measures entail the purchase and retirement of biodiversity credits from registered Biobank sites or payment to the Biodiversity Conservation Fund.

Table 1 and Figure 3 detail the proposed biodiversity certification area, the retained land and the relevant areas of native vegetation.

Table 1: Proposed biodiversity certification area, the retained land and the relevant areas of native vegetation

	Area (ha)	Native vegetation (ha)	Cleared land (ha)
Proposed biodiversity certification area	47.45	14.01	33.44
Retained land	8.65	5.82	2.83
On-site conservation measures area	0	0	0
Total	56.10	19.83	36.27

1.3.1 OEH consultation

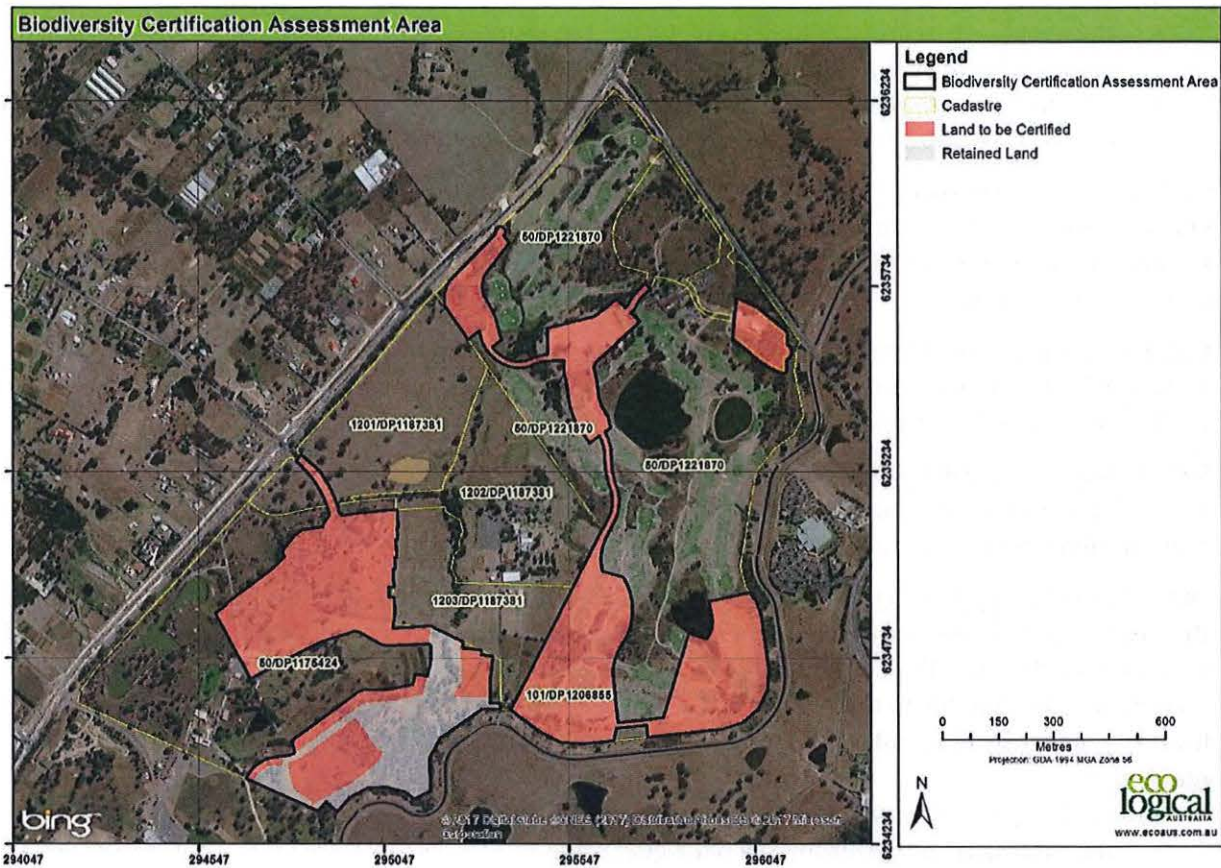
The BCAA, the proposed biodiversity certification area, and the conservation measures detailed in the BCARS, were developed following advice provided by OEH to council and SHAH’s ecological consultants, EcoLogical Australia.

OEH first discussed a proposal for the biodiversity certification of the ECBGCL residential estate with council, SHAH and EcoLogical Australia on 16 December 2014. At this meeting OEH expressed concerns about the suitability and feasibility of ‘retrofitting’ biodiversity certification to land that had already been rezoned for urban development as it did not accord with the biodiversity certification principle of addressing biodiversity issues up front. It was recognised, however, that OEH could not refuse to accept an application for biodiversity certification.

A summary of all written advice provided by OEH and key events relevant to the proposed biodiversity certification of the ECBGCL residential estate is provided below. A copy of OEH’s advice is in Tab D to DOC17/624493.

OEH advice of 18 February 2015 – OEH advised council and EcoLogical Australia that an application for biodiversity certification outside a strategic planning process was possible provided the requirements of the BCAM were satisfied. In accordance with the biodiversity certification provisions (Part 7AA) of the TSC Act, critical issues that must be considered include an assessment of impacts on red flag areas (RFAs), the offsetting of any direct and indirect impacts on biodiversity values and evidence that an ‘improve or maintain’ outcome would be achieved. OEH also advised that any proposed planning instrument measures must be new measures for the purposes of biodiversity certification.

Figure 3: The biodiversity certification assessment area and proposed biodiversity certification area



OEH advice of 22 May 2015 – OEH clarified previous advice to council on the discounting of biodiversity credits under the BCAM. Specifically, this related to the commencement of conservation measures within an existing Voluntary Planning Agreement which had only partly commenced within the ECBGCL residential estate.

OEH advice of 30 September 2015 – Following a site visit with council and EcoLogical Australia on 8 September 2015, council was advised of OEH’s acceptance of a revised vegetation map for the BCAA.

OEH advice of 5 February 2016 – In late November 2015, council referred a draft (version 2, 6 November 2015) BCARS for the ECBGCL residential estate to OEH for comment. OEH raised issues regarding:

- the status of an existing planning agreement (and a proposed variation) over some of the estate
- council’s support for the (then) proposed transfer, restoration and on-going management of land to council as a conservation measure
- the availability, commitment to (and details of) off-site ecosystem and species credits
- RFA variation requirements and need for these to be satisfactorily addressed
- the requirement to satisfactorily address indirect impacts
- the need for additional information for some species credit species and how they have been considered in the assessment process.

These matters were considered and addressed over the subsequent eight months which culminated in a revised draft BCARS (version 3, 31 October 2016).

OEH advice of 14 December 2016 – Following a review of the revised draft BCARS (version 3), OEH advised council that additional information was required for two issues:

- the avoidance of impacts to RFAs to ensure the proposal met the ‘improves or maintains biodiversity values’ test of biodiversity certification
- how the proposed ownership, management, zoning and development controls for the ECBGCL biodiversity certification is intended to mitigate any indirect impacts on biodiversity values.

OEH advice of 14 February 2017 – Council submitted an application for the biodiversity certification of the ECBGCL residential estate to OEH on 22 December 2016 seeking authority to exhibit version 4 (19 December 2016) of the BCARS. OEH approved exhibition subject to the inclusion of additional information and minor corrections.

Public exhibition of biodiversity certification application – Council publicly exhibited the ECBGCL residential estate biodiversity certification application supported by version 5 of the BCARS (10 February 2017) between 22 February and 24 March 2017.

Submission of Biodiversity Certification package to the Minister – Council formally applied to the Minister for the Environment for biodiversity certification of the ECBGCL residential estate on 4 April 2017 advising that no submissions were received on the BCARS during the public exhibition period.

OEH advice of 13 and 27 October 2017 – Following provision of a draft, OEH discussed various matters in the Biodiversity Certification Agreement at a meeting with SHAH on 5 October 2017. Acknowledging the provisions of the recently commenced *Biodiversity Conservation Act 2016* (BC Act), OEH agreed to the acceptance of payments to the Biodiversity Conservation Fund and the purchase of appropriate credits from any biobank site as options for retiring the required biodiversity credits. Agreement was also reached on:

- the trigger for the retirement of biodiversity credits
- the provision and quantum of a bank guarantee
- a sunset date for the retirement of all biodiversity credits.

1.3.2 Native vegetation impacts and credit requirements

The BCAA is within the Cumberland subregion of the Hawkesbury Nepean Catchment Management Area with all remnant native vegetation being *Cumberland Plain Woodland in the Sydney Basin Bioregion*, a Critically Endangered Ecological Community under the BC Act and EPBC Act. The biometric vegetation type is *Grey-Box – Forest Red Gum grassy woodlands on flats of the Southern Cumberland Plain, Sydney Basin Bioregion*. The extent and distribution of native vegetation in the BCAA is shown in Figure 4.

Development of the ECBGCL residential estate will result in the clearing of 14.01 ha of Cumberland Plain Woodland, of which 12.57 ha is in moderate to good condition and the remaining 1.44 ha is in low condition. In addition, an allowance been made for indirect impacts outside the proposed biodiversity certification area based on a 5% reduction in vegetation condition up to 20 m from the development boundary of stages 4 to 8. The total area of indirectly impacted Cumberland Plain Woodland vegetation is calculated to be 2.86 ha and is shown in Figure 10.

Under the BCAM, the land proposed for biodiversity certification requires a total of 296 Cumberland Plain Woodland (HN528) ecosystem credits to be retired to offset the impacts of clearing. This comprises of 293 and 3 ecosystem credits to address direct and potential indirect impacts respectively. The ecosystem credit requirements and details of the vegetation impacted are summarised in Table 2.

Figure 4: Native vegetation within the biodiversity certification assessment area

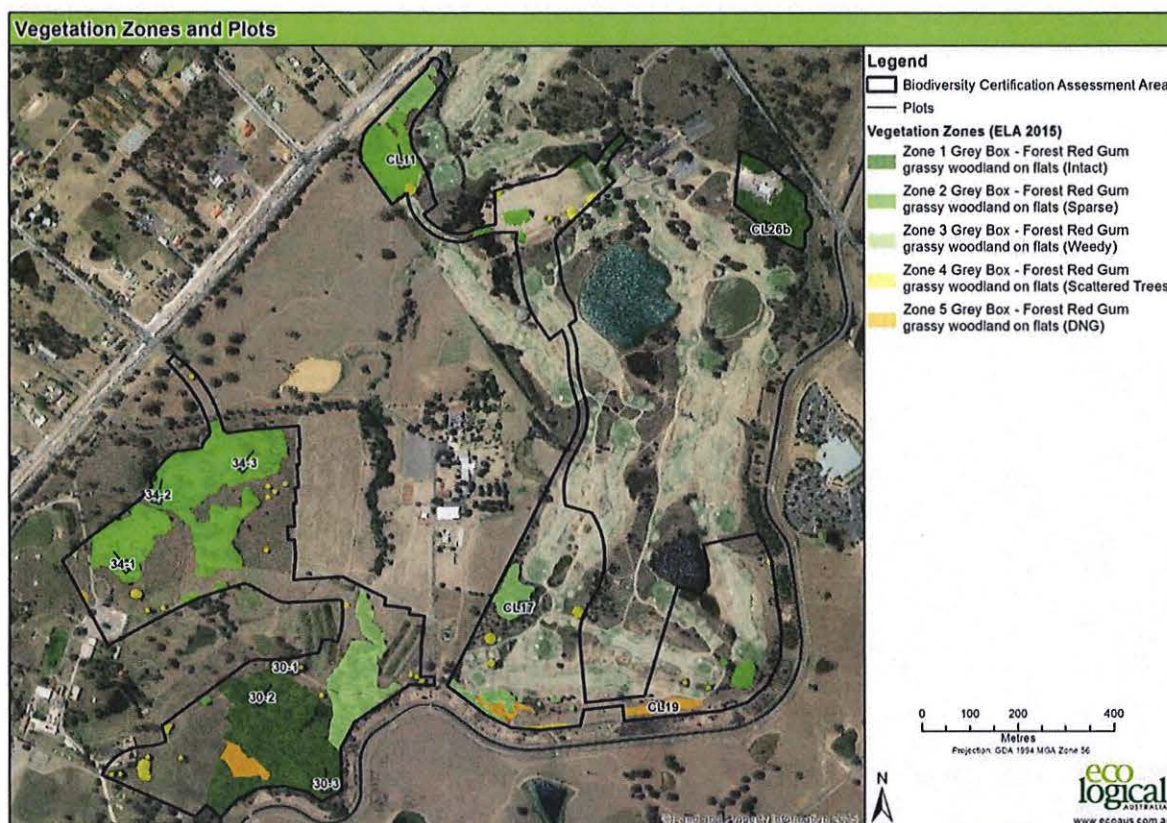


Table 2: Native vegetation type and ecosystem credit requirements in the proposed biodiversity certification area

Biometric vegetation type name/ID/Equivalent under TSC Act/EPBC Act/Conservation status	Condition	Area cleared (directly impacted)	Ecosystem credits required for direct impacts	Area indirectly impacted	Ecosystem credits calculated for indirect impacts ²
Grey-Box – Forest Red Gum grassy woodlands on flats of the Southern Cumberland Plain, Sydney Basin Bioregion/HN528/Cumberland Plain Woodland in the Sydney Basin Bioregion/Critically Endangered Ecological Community	Moderate to Good	12.57 ¹	282	2.33	2.93
	Low	1.44	11	0.53	0.05
Totals		14.01	293	2.86	3³

¹ Red flag areas (restricted to directly impacted moderate to good condition HN528 vegetation)

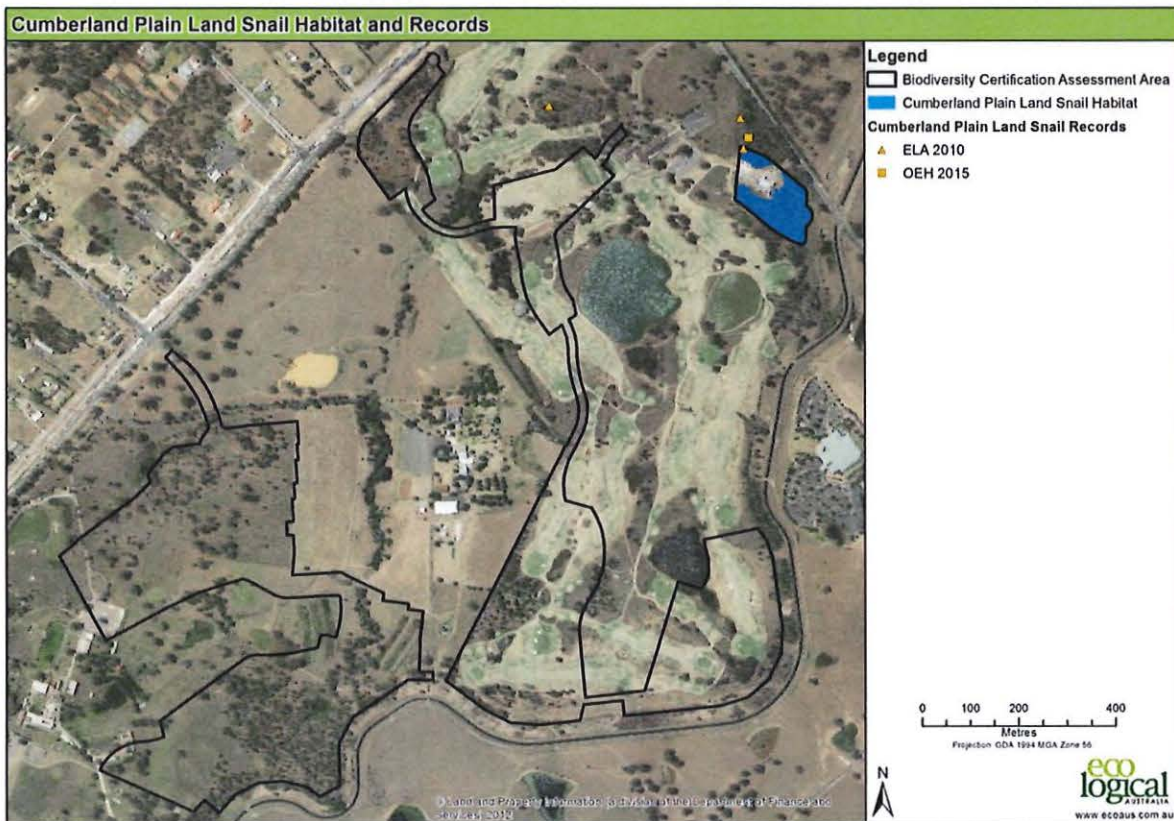
² Indirect impacts are assumed to be a 5% reduction in the condition of vegetation up to 20 m from the development boundary of stages 4 to 8.

³ Rounded to nearest whole number.

1.3.3 Species impacts and credit requirements

The proposed biodiversity area contains 1.34 ha of habitat for *Meridolum corneovirens* (Cumberland Plain Land Snail), listed as an endangered species under the BC Act, which will be cleared within stage 6 of the development (see Figures 5 and 6). Under the BCAM, a total of 18 species credits are required to be retired to offset the loss of Cumberland Plain Land Snail habitat. These species credits were retired on 10 October 2017 in anticipation of (and for the purposes of) the biodiversity certification. A copy of the species credit retirement statement is included in DOC17/624493, Tab D.

Figure 5: Impacts on Cumberland Plain Land Snail habitat within the proposed biodiversity certification area



1.3.4 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].'

Within the proposed biodiversity certification area, 12.57 ha satisfies conditions 2.3(a) and 2.3(b) of the BCAM and is therefore of high biodiversity conservation value. These red flag areas (RFAs) include 0.08 ha of vegetation that is also recognised as having regional or state biodiversity conservation significance as it satisfies condition 2.3(d), being a riparian buffer 20 m either side of a minor creek. Table 3 summarises the RFAs within the proposed biodiversity certification area in accordance with section 2.3 criteria of the BCAM.

The remaining 1.44 ha of Cumberland Plain Woodland vegetation within the proposed biodiversity certification area is in low condition and therefore does not have high biodiversity conservation value under the BCAM.

There are no species considered likely to have habitat within the BCAA that trigger a red flag.

Table 3: Red flag areas within the proposed biodiversity certification area in accordance with section 2.3 criteria of the BCAM.

Biometric vegetation type name (ID)	BCAM red flag area criteria (section 2.3 of the BCAM)	Area proposed for removal (ha)*
Grey-Box – Forest Red Gum grassy woodlands on flats of the Southern Cumberland Plain, Sydney Basin Bioregion (HN528)	Overcleared (>70%) vegetation types not in low condition [section 2.3(a)]	12.57
	Critically endangered and/or endangered ecological communities not in low condition [section 2.3(b)]	12.57
	Vegetation with regional or state biodiversity conservation significance - vegetation within a riparian buffer [section 2.3(d)]	0.08
Total		12.57

* An area of land is regarded as an RFA if it meets one or more of the criteria detailed in section 2.3 of the BCAM. The total RFA may therefore not equate to an addition of all red flag criteria areas.

The clearing of vegetation in an RFA requires the granting of a red flag variation – this is considered in section 2.1.1. A request for a variation of the offsets rules has also been made and is addressed in section 2.1.2.

1.4 THE CONSERVATION LAND OR OTHER MEASURES

There are several conservation measures which can be implemented to ensure the overall effect of biodiversity certification is to improve or maintain biodiversity values (section 126L of the TSC Act). This section discusses the conservation measures for the proposed biodiversity certification area.

1.4.1 On-site conservation measures

No on-site conservation measures are proposed.

1.4.2 Off-site conservation measures

Two proposed off-site conservation measures are proposed by the BCARS. These are detailed below and summarised in Table 4.

Grey Box – Forest Red Gum grassy woodland on flats of the Southern Cumberland Plain, Sydney Basin Bioregion

To offset the direct and indirect impacts on *Grey Box – Forest Red Gum grassy woodland on flats of the Southern Cumberland Plain, Sydney Basin Bioregion* (HN528) vegetation within the proposed biodiversity certification area, the BCARS proposes the required 296 ecosystem credits be retired in stages as detailed in section 1.4.3 from the proposed Hampden Vale Biobank site which is located within the adjoining Wollondilly Shire Local Government Area but same Cumberland Plain Catchment Management Area subregion. The proposed Hampden Vale Biobank agreement application was submitted to OEH on 20 October 2016 for registration of 300 ecosystem credits for HN528. Assessment of this application is expected to be finalised by early 2018.

In accordance with the 2016 biodiversity reforms and provisions of the recently commenced BC Act, OEH has agreed that in addition to the retiring of HN528 credits from the proposed Hampden Vale Biobank site, the required offsets can be addressed by:

- retiring HN528 credits from any appropriate biobanked site; or
- making payment(s) to the Biodiversity Conservation Fund as calculated by the Biodiversity Offset Payment Calculator.

On 30 June 2017, SHAH purchased and retired 50 HN528 credits to partly offset impacts in stage 3 of the proposed biodiversity certification area. A copy of this Credit Retirement Report is included in DOC17/624493, Tab D.

Cumberland Plain Land Snail

To offset the direct impacts on Cumberland Plain Land Snail habitat within the proposed biodiversity certification area, SHAH acquired and retired 18 species credits from the registered Summer Hill biobank site on 10 October 2017. The Summer Hill biobank site is also located within the adjoining Wollondilly Shire Local Government Area but the same Cumberland Plain Catchment Management Area subregion.

Table 4: Summary of off-site conservation measures proposed by the Biodiversity Certification Assessment Report and Strategy

Off-site conservation measure	Credits retired	
	Ecosystem	Species
Purchase and retirement of ecosystem (HN528) credits from a registered Biobank site (Hampden Vale, 140 Rotherwood Road, Razorback – Agreement ID: 250)	296	-
Purchase and retirement of Cumberland Plain Land Snail species credits from registered Biobank site (Summer Hill, 895 Barkers Lodge Road, Lakesland - Agreement ID: 100)	-	18

1.4.3 Staging plans for off-site conservation measures

The BCARS proposes the ecosystem credits required to offset the biodiversity impacts within the proposed biodiversity certification area be retired in accordance with the staged development timeframe shown in Figure 6 and detailed in Table 5. The number and type of credits to be retired is based on the area of vegetation calculated to be cleared in each stage of development.

As noted in 1.4.2, 50 HN528 credits and all the required species credits for the Cumberland Plain Land Snail have been retired in anticipation of the biodiversity certification of the ECBGCL residential estate.

In accordance with the biodiversity conservation agreement, no clearing of native vegetation within each stage of development can occur until a certificate of credit retirement equivalent to the required credits for that stage has been issued by OEH.

Table 5: Indicative staging of development and retirement of ecosystem credits proposed by the biodiversity certification assessment report and strategy

Stage	Likely timeframe	Area of Grey Box - Forest Red Gum grassy woodland on flats impacted (ha) ¹	Proportion of total vegetation impacted	BBAM ² credits required	Cumulative total BBAM ² credits	Indirect Impacts
Stage 1	0-2 Years	4.23	30.18	88	88	-
Stage 2	2-3 Years	2.02	14.45	42	130	-
Stage 3	3-4 Years	1.82	12.96	38	168	-
Stage 4	2-3 Years	0.55	3.93	12	180	1
Stage 5	3-4 Years	2.05	14.60	43	223	-
Stage 6	3-4 Years	1.34	9.58	28	251	-
Stage 7	4-6 Years	1.42	10.14	30	281	1
Stage 8	5-7 Years	0.58	4.16	12	293	1
Total		14.01	100	293	293	3

¹ Directly impacted area only

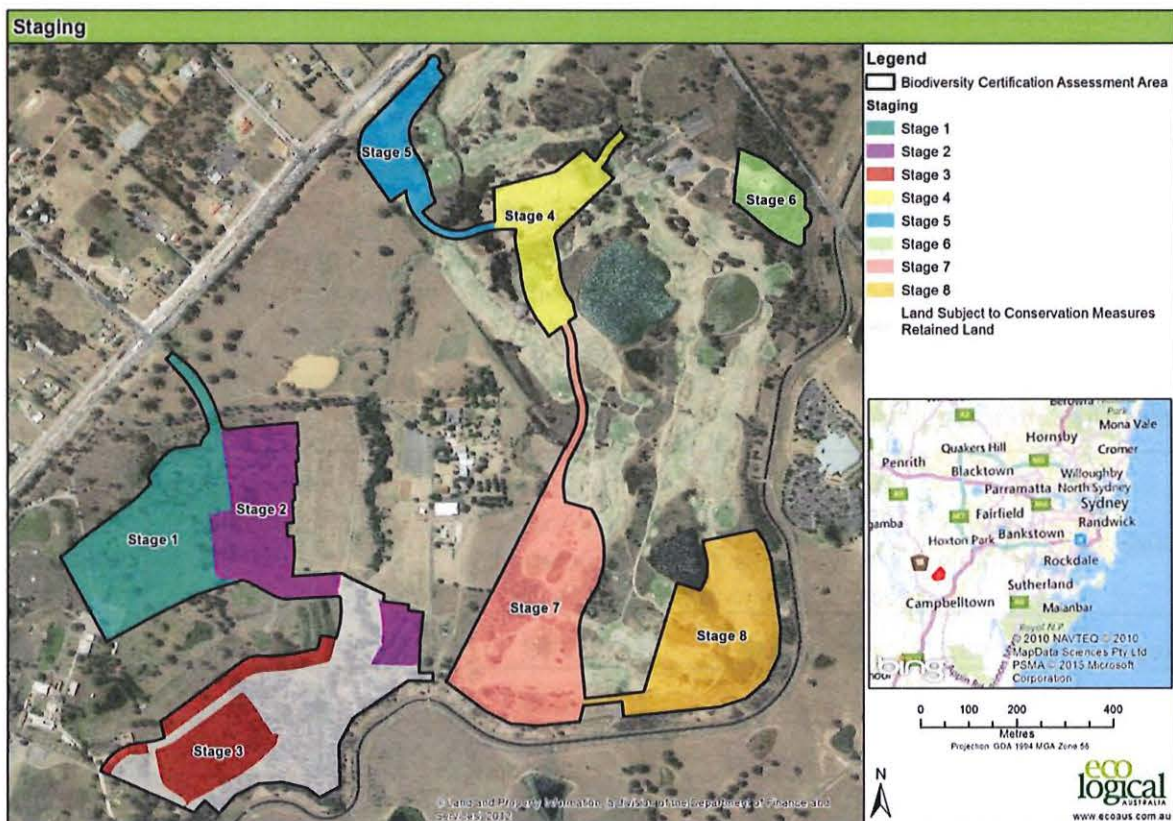
² BioBanking Assessment Methodology, OEH (2014)

1.4.4 Biodiversity Certification Agreement

As discussed in 1.4.2, the BCARS proposes two off-site conservation measures at two biobank sites to address the required offset credits. Since the BCARS, OEH agrees that the retirement of the relevant credits from any biobanked site or payments to the Biodiversity Conservation Fund are also acceptable conservation measures.

On 10 October 2017, all the 18 species credits required to offset impacts on Cumberland Plain Land Snail habitat were purchased and retired.

Figure 6: Indicative stages for the ECBGCL residential estate



On 30 June 2017, 50 credits of the required 296 HN528 credits were purchased and retired. To secure delivery of the remaining 246 of HN528 credits, a biodiversity conservation agreement signed by SHAH was prepared by OEH Legal Services in accordance with section 8.1 of the BCAM (DOC17/624493, Tab C). The biodiversity conservation agreement prohibits the clearing of vegetation within each development stage of the proposed biodiversity certification area until the required remaining ecosystem credits have been purchased and retired or an appropriate deposit for the Biodiversity Conservation Fund has been made. Other security measures incorporated with the biodiversity conservation agreement include:

- the provision of a \$4.6 million bank guarantee to the Minister which will be adjusted by applying the methodology of the offsets payment calculator established under Division 6 of Part 6 of the BC Act as HN528 credits are purchased and retired
- registration of the biodiversity conservation agreement on the applicable land titles
- retiring of all HN528 credits by 1 January 2028
- incorporation within the Ministerial Order as the approved conservation measure.

1.5 THE RETAINED LAND

Within the BCAA, 8.65 ha is identified as retained land (ie land not proposed for development or subject to conservation measures). Approximately 70% of the retained land (5.82 ha) is vegetated and managed in accordance with a Vegetation Management Plan as an offset to meet an EPBC Act offset requirement (see Table 1 and Figure 3).

2 EVALUATION AND RECOMMENDATIONS

Biodiversity certification can 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 matter is evaluated in section 2.2, however, before the Minister makes a decision, there are several matters for which the Chief Executive, OEH must be satisfied. These are evaluated in section 2.1.

2.1 MATTERS FOR THE CHIEF EXECUTIVE, OEH TO CONSIDER

This section evaluates the matters that are relevant for the Chief Executive, OEH to consider in order to be satisfied prior to making a recommendation to the Minister. Table 6 lists the relevant matters and provides a link to the corresponding section of this report.

Table 6: Matters for the Chief Executive, OEH to consider that are relevant to this proposal

BCAM Section	Chief Executive's Decisions	Report Section
2.2b), d), 2.4	Red flag variation requests	2.1.1
3.3	Equivalent undisturbed site	2.1.2
3.4	Local certified data – benchmarks	2.1.3
3.6.4	Additional increase in gain from management actions	2.1.4
4.1	Local certified data – Threatened Species Profile Database	2.1.3
4.5	Experts and expert reports	2.1.5
6.0	Indirect impacts	2.1.6
8.1.3	Planning instrument conservation measures	2.1.7
9.2	Off-site conservation measures – survey intensity	2.1.8
10.2.1	Variation to offset rules – ecosystem credits	2.1.9
10.4.1	Variation to offset rules – species credits	2.1.10

Note: 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, OEH³.

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.'*

³ Except where the reference is to the Director General of the Department of Planning (section 9.4 of the BCAM); this reference is taken to be a reference to the Secretary of the Department of Planning and Environment.

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 1.3, development in the proposed biodiversity certification area directly impacts on RFAs. The Chief Executive, OEH must be satisfied, having considered the criteria in section 2.4 of the BCAM, that the impacted RFAs will be offset in accordance with the rules and requirements set out in section 10 of the BCAM.

The BCARS identifies a number of RFAs in the proposed biodiversity certification area (see Figure 7). The total 12.57 ha of vegetation within the RFAs is the vegetation type *Grey-Box – Forest Red Gum grassy woodlands on flats of the Southern Cumberland Plain, Sydney Basin Bioregion* (biometric vegetation type ID: HN528) - a component of the critically endangered ecological community Cumberland Plain Woodland. The RFAs also include 0.08 ha of this vegetation within a riparian buffer.

The following sections and recommendations 1 to 4 relate to the criteria in section 2.4 of the BCAM and the extent to which they are satisfied for impacts on vegetation RFAs.

Feasibility of options to avoid and minimise impacts on red flag areas

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

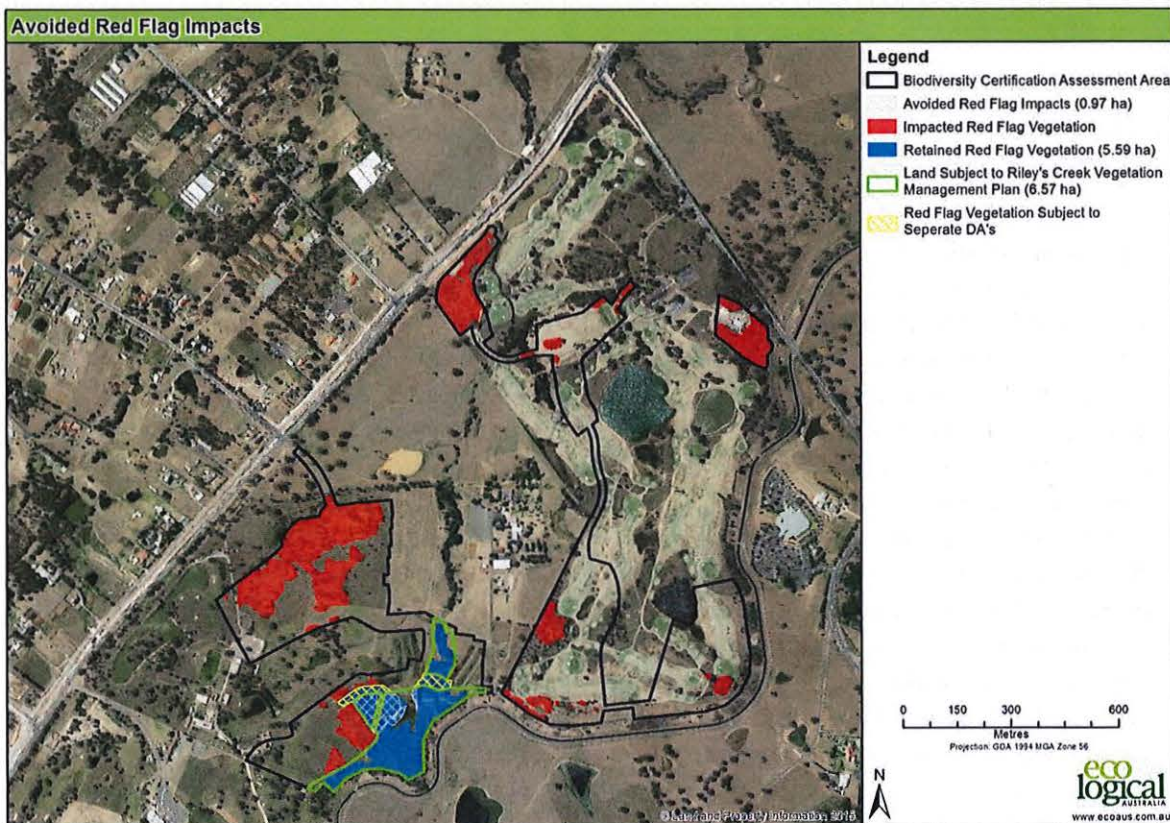
Avoidance and minimising impacts

At the commencement of the biodiversity certification assessment process, the land proposed for biodiversity certification included all the land zoned General Residential in the Camden Local

Environmental Plan 2010 resulting in impacts to 13.94 ha of RFA vegetation. Following consultation with Camden Council and OEH in 2015 and 2016, the precinct boundaries, road and subdivision layouts within the proposed biodiversity certification area were modified multiple times to avoid and reduce impacts to RFA vegetation. These modifications resulted in an avoidance of impacts to 0.97 ha in Stage 3 which will be included in the 6.57 ha of 'retained land' subject to the Riley's Creek Vegetation Management Plan (see Figure 7).

It should also be noted that of the 12.57 ha of RFA vegetation, 0.41 ha is included within the bushfire asset protection zone of the proposed development area footprint and 0.43 ha in an 'urban' park within proposed stage 2 and 3. While counted as fully impacted, it is unlikely the biodiversity values of the 0.84 ha of the RFA vegetation in these areas will be completely impacted.

Figure 7: Avoided red flag vegetation within the biodiversity certification assessment area



Appropriate conservation measures

The BCARS notes that most of the impacted RFAs are currently zoned R1 General Residential or RE2 Private Recreation. Under Camden Local Environmental Plan 2010, there is no requirement to manage these RFAs for conservation purposes. As a result of their highly fragmented nature, impacts from future surrounding urban land uses, and the high edge to area ratios, it is considered highly likely the biodiversity values of the RFA vegetation would be degraded and lost in the medium to long term. Should any future land owner decide to conserve the biodiversity values of these RFAs, the costs would be significant.

Recommendation 1 (Feasibility of options to avoid impacts on red flag areas where biodiversity certification is conferred):

That the Chief Executive, OEH be **satisfied**, in accordance with section 2.4.1 of the BCAM, that the application for biodiversity certification has adequately considered the feasibility of options to avoid impacts on 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: viability must be low or not viable

For an RFA variation to be approved, the viability of the RFA 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

The BCARS separates the RFAs within the biodiversity certification assessment area into 5 groups. These are mapped in Figure 8 and summarised in Table 7.

Figure 8: Impacted 'Red Flag' areas within the biodiversity certification assessment area

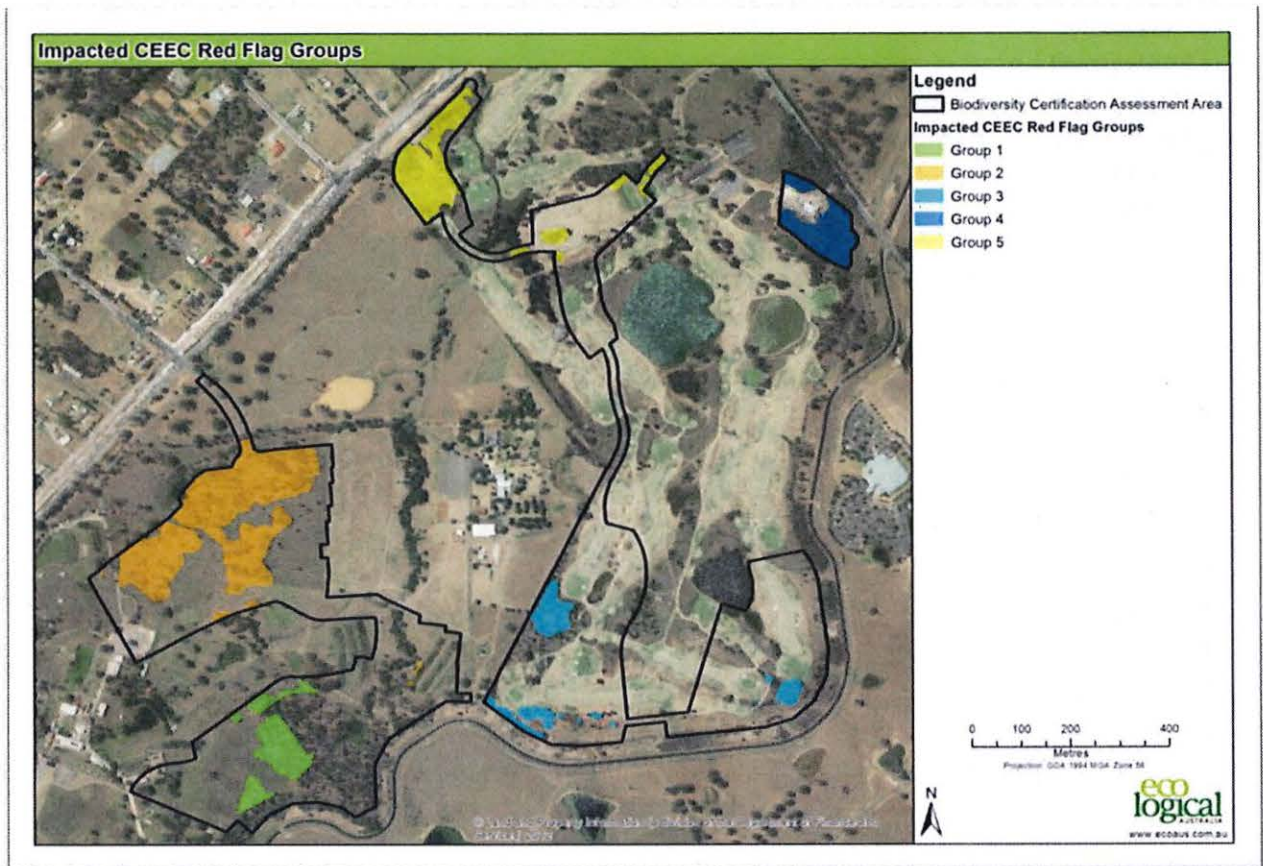


Table 7: Red flag groups within proposed biodiversity certification area

Critically Endangered Ecological Community red flag group ¹	Veg zone ID	Ancillary code	Location	Area impacted (ha) ²
1	1	Intact	Within stage 3 of the proposed biodiversity certification area on land zoned as general residential (R1) [see Figure 6]	1.37
	2	Sparse		0.04
2	2	Sparse	Within stages 1 and 2 of the proposed biodiversity certification area on land zoned as general residential (R1) and private recreation (RE2) [see Figure 6]	6.06
	3	Weedy		0.05
3	2	Sparse	Within stages 7 and 8 of the proposed biodiversity certification area on land zoned as general residential (R1) [see Figure 6]	0.24
	3	Weedy		1.05
4	1	Intact	Within stage 6 of the proposed biodiversity certification area on land zoned as general residential (R1) [see Figure 6]	1.36
5	1	Intact	Within stages 4 and 5 of the proposed biodiversity certification area on land zoned as general residential (R1) and private recreation (RE2) [see Figure 6]	0.24
	2	Sparse		1.72
	3	Weedy		0.45
Total				12.57

¹ Biometric vegetation type/red flag vegetation: *Grey-Box – Forest Red Gum grassy woodlands on flats of the Southern Cumberland Plain, Sydney Basin Bioregion.*

² Rounded to nearest 0.01 ha.

The BCARS provides the following details on the application of the section 2.4.2.1 BCAM viability criteria to the RFA groups.

Current and future land use surrounding the red flag areas

Land surrounding the group 1 and 2 RFAs (stages 1, 2 and 3) are open exotic-grassed areas that have historically been used for cattle grazing. These land uses have reduced, and will continue to reduce biodiversity values and viability of these RFAs.

Development permissible under Camden Local Environmental Plan 2010 means that in the future these RFAs will be substantially surrounded by urban development. Although two of the group 1, and the two group 2 patches are contiguous with retained vegetation within the proposed biodiversity certification area, it is likely urban development on the majority of boundaries will significantly reduce viability.

Size and connectedness

Many remnant patches of vegetation are isolated or have limited connectivity. Vegetation within the group 3 RFA (stages 7 and 8), for example, consist of 10 patches ranging in size from 0.004 ha to 0.58 ha which are considered to have very limited viability in the medium to long term.

Vegetation is substantially degraded

While vegetation within RFA groups 2, 4 and 5 (stages 1, 2, 4, 5 and 6), are primarily from zones 1 and 2, they have site value scores of 42 and 48, respectively, which is not significantly greater than the 'low condition' site value score of 34. In addition, the majority of the condition variables for vegetation within that part of RFA group 5 (stages 4 and 5) in zone 3 are outside of benchmark.

The total Red Flag Areas are minor compared to that in proposed conservation measures

The factor was not considered in the BCARS.

Conclusions

The BCARS has demonstrated that at least one of the section 2.4.2.1 BCAM viability criteria applies each of the RFA groups. All of the RFAs are therefore considered to have low biodiversity values or not be viable.

Recommendation 2 (viability must be low or not viable):

That the Chief Executive, OEHL be **satisfied**, in accordance with section 2.4.2.1 of the BCAM, that the red flag areas have low viability or are not viable because the biodiversity certification application demonstrates that at least one of the following factors applies to the red flag areas:

- a. The current or future uses of land surrounding the red flag areas 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 areas 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 areas 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. ✗

Additional assessment criteria for vegetation types: contribution of the red flag areas to regional biodiversity values is low

In addition to requiring an application for biodiversity certification to demonstrate that the viability of RFAs are low or not viable, the BCAM also requires that the contribution the RFAs make to regional biodiversity values is low. In making an assessment of contribution, section 2.4.2.2 of the BCAM states '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 BCARS determined the regional extent of the RFA vegetation type (*Grey-Box – Forest Red Gum grassy woodlands on flats of the Southern Cumberland Plain, Sydney Basin Bioregion*) using datasets from vegetation mapping in the Cumberland, Yengo, Pittwater, Burratorang, Wollemi and Sydney Cataract Catchment Management Area subregions. For the purposes of section 2.4.2.2 of the BCAM, this area is the region within which the BCAA is located. This region was also used to calculate the percent of the RFA vegetation type and the percent of all native vegetation remaining.

Relative abundance

The BCARS found there is 17,839 ha of Grey Box – Forest Red Gum grassy woodland vegetation mapped within the region. Of this, 6,711 ha is of the condition classes A, B and C used in National Parks and Wildlife Service (2002) (ie vegetation with canopy cover greater than 10%). This means that the RFAs within the proposed biodiversity certification area respectively represents 0.07% and 0.19% of the regional and 'A, B and C class' totals.

It should be noted that OEH (unpublished data) has found from BioBanking assessments that a significant percentage of sites mapped with canopy cover less than 10% contain vegetation in Moderate-Good condition. OEH therefore considers the total regional area with which the RFA vegetation should be compared is between 6,711 and 17,839 ha and that this vegetation type is relatively abundant within the region.

Percent remaining

As the BCARS notes, there are no data sources that allow an accurate prediction of the original distribution of the RFA vegetation type within the defined region. It is therefore difficult to determine the remaining area of vegetation within the region as a percentage of the original distribution in the region, so information on the percent remaining in the Hawkesbury Nepean Catchment Management Area (5%), the Sydney Metro Catchment Management Area (15%), and on the Cumberland Plain (7.7% for all vegetation in A, B or C condition [greater than 10% canopy cover] and 20.5% for all mapped vegetation). This approach is accepted, noting the data is from OEH published reports.

Percent native vegetation remaining

The BCARS calculates the percent native vegetation remaining in the region by intersecting OEH statewide vegetation mapping with the defined region and concluded 76% of the native vegetation cover of the region remains. The BCARS view that the percent native vegetation remaining in the region is high is considered appropriate.

Considerations

In relation to the matters above, it is important to note that they only need to be considered by the BCARS to demonstrate that *'the red flag area on land proposed for biodiversity certification makes a low contribution to regional biodiversity values'*.

It is considered the BCARS has demonstrated that the RFA vegetation type is relatively abundant in the region and that the percent native vegetation remaining in the region is high.

While the BCARS has not demonstrated that the percent remaining of the vegetation type comprising the RFAs is relatively high in the region, in considering these matters in total, the BCARS has demonstrated

that the RFAs on land proposed for biodiversity certification makes a low contribution to regional biodiversity values.

Recommendation 3 (contribution of the red flag areas to regional biodiversity values is low):

That the Chief Executive, OEH be **satisfied** in accordance with section 2.4.2.2 of the BCAM, that the red flag areas make a low contribution to regional biodiversity values having considered:

- a. relative abundance: that the vegetation type or critically endangered or endangered ecological community comprising the red flag areas 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 areas 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 red flag area vegetation may be offset

Development following biodiversity certification will impact on RFAs and therefore a red flag variation is required. As discussed above, it is agreed the BCARS demonstrates that the red flag variation criteria have been satisfactorily addressed and these impacts may be offset. It is therefore recommended that the Chief Executive, OEH having considered the criteria in in section 2.4 of the BCAM, be satisfied under section 2.2b) of the BCAM, that impacts on the RFAs may be offset in accordance with the rules and requirements set out in section 10 the BCAM.

Recommendation 4 (impacts on the red flag areas may be offset):

That the Chief Executive, OEH be **satisfied** in accordance with section 2.2b) of the BCAM, having considered the criteria in section 2.4, 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.

Feasibility of options to avoid and minimise impacts on threatened species and endangered population red flag areas and additional assessment criteria for threatened species that cannot withstand further loss

Where threatened species and endangered population RFAs exist, the Chief Executive, OEH must be satisfied that the biodiversity certification application has adequately considered the feasibility of options to avoid impacts on these in accordance with section 2.4.1 of the BCAM.

Where an RFA contains a threatened species that cannot withstand further loss, the viability of the RFAs must be low or not viable for an RFA variation to be approved. Section 2.4.3.1 of the BCAM states that: 'In making an assessment that the viability of biodiversity values in the red flag area is low or not viable, the Director General must be satisfied that one of the following factors applies:

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

definition of low condition set out in section 2.3. Vegetation that is substantially outside benchmark due to a recent disturbance such as a fire, flood or prolonged drought is not considered degraded for the purposes of the methodology.

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

Additionally, for an RFA variation to be approved, the contribution of the RFA to regional biodiversity values must be low. Section 2.4.3.2 of the BCAM states that: *'In making an assessment that the contribution of the red flag area to regional biodiversity values for the species is low, the Director General must be satisfied that the relative abundance of the individual threatened species, threatened population or threatened species habitat on the land proposed for biodiversity certification is low relative to its abundance in the region.'*

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

Discussion

As there are no red flag species within the proposed biodiversity certification area this matter does not need to be considered by the Chief Executive, OEH. Recommendations that relate to criteria in section 2.4 of BCAM and the extent to which they are satisfied for impacts on threatened species or endangered population RFAs are therefore not required.

Feasibility of options to avoid and minimise impacts on regional or state biodiversity conservation significance red flag areas

An RFA of 0.08 ha due to it being vegetation that has regional or state biodiversity conservation significance (a riparian buffer) will be impacted. This RFA also meets the RFA vegetation criteria as it is an over cleared and critically endangered ecological community not in low condition. Measures taken to avoid and minimise impacts on RFAs is considered in the discussion above preceding Recommendation 1.

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.'*

Riparian buffers

RFAs and the area of regional or state biodiversity conservation significance (riparian buffer 20 m either side of a minor creek) within the proposed biodiversity certification area is shown in Figure 9.

It is noted that the riparian buffer area contains 0.1 ha of the *Grey-Box – Forest Red Gum grassy woodlands on flats of the Southern Cumberland Plain, Sydney Basin Bioregion* critically endangered ecological community.

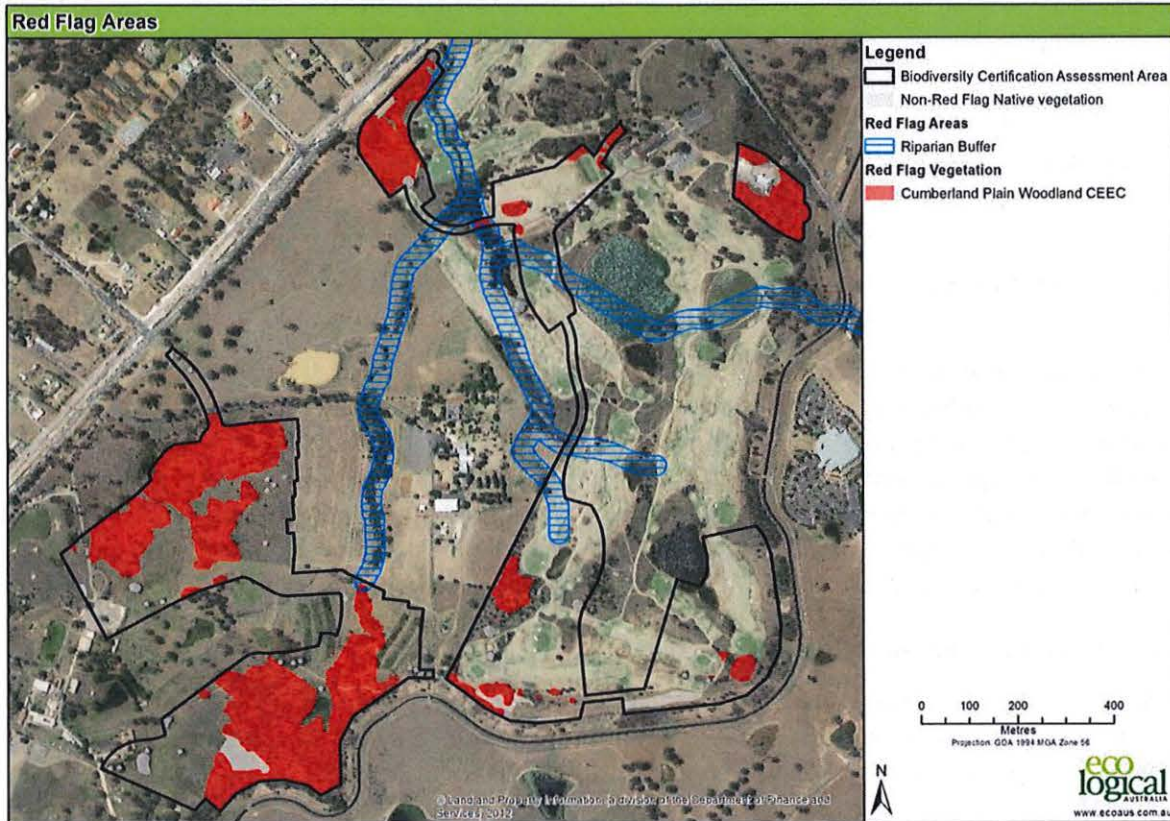
The BCARS also notes that many of the original streams that provide these riparian buffers no longer exist due to the earlier development of the golf course.

The riparian buffer will be crossed by road at one point impacting on a distance of approximately 17 m along the buffer. At the other two points where vegetation will be removed within the buffer, the width is reduced from 40 m to 34 m and 27 m. A total of 0.08 ha of RFA vegetation with the riparian buffer will be impacted.

State or regional biodiversity link

There are no state or regional biodiversity links within the proposed biodiversity certification area.

Figure 9: Red flag areas and riparian buffers areas within the proposed biodiversity certification area



Water quality

The BCARS notes that the waterways within the proposed biodiversity certification area have been significantly modified due to earth works associated with the development of Lakeside Golf Course in the 1990's. It is argued that the clearing of 0.08 ha of vegetation from within the riparian buffer RFAs is unlikely to significantly impact on water quality. Impacts on water quality will be mitigated by the implementation of sediment and erosion control measures during construction of the residential development.

Conclusion

It is considered that the clearing of RFA vegetation within the riparian corridor will not substantially reduce the width of or water quality within the riparian buffer.

Recommendation 5 (additional assessment criteria for areas with regional or state biodiversity conservation significance):

That the Chief Executive, OEH be **satisfied** in accordance with section 2.4.4 of the BCAM 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.

Decision on whether impacts on regional or state biodiversity conservation significance red flag areas may be offset

Development following biodiversity certification will impact on 0.08 ha of RFA vegetation that are of regional or state biodiversity conservation significance as they are within a riparian buffer. In the preceding discussion, it is noted the conferral of biodiversity certification would not substantially reduce the width of the riparian buffer and that the impacts of the RFA vegetation may be offset. It is therefore recommended that the Chief Executive, OEH, having considered the criteria in in section 2.4 of the BCAM, be satisfied under section 2.2b) of the BCAM that impacts on the RFAs may be offset in accordance with the rules and requirements set out in section 10 the BCAM (refer to recommendation 4).

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.'*

As no part of the proposed biodiversity certification area has been recently disturbed or is regenerating from a recent disturbance there is no need for the Chief Executive, OEH to approve the use of an equivalent, undisturbed site and no recommendation is required in this regard.

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.'*

In advice provided by OEH on 30 September 2015 to the assessor preparing the BCARS, it was agreed the benchmarks for *Grey-Box – Forest Red Gum grassy woodlands on flats of the Southern Cumberland Plain, Sydney Basin Bioregion* could be modified as those in the Vegetation Benchmarks Database are considered inaccurate. OEH accepted that 'local' benchmark data for fallen logs and hollow trees could be used.

As this is a correction of an error in the Vegetation Benchmarks Database, no formal application for modification was made. As such, it is not necessary for the Chief Executive, OEH to certify that this modification was undertaken in accordance with section 3.4 of the BCAM and no recommendation is required for the purposes of this application.

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."

As no on-site conservation measures are proposed, no management actions are necessary. Section 3.6.4 and Appendix 4 of the BCAM are therefore not relevant to this biodiversity certification application and no recommendation is required in this regard.

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.

As no expert report has been submitted, section 4.5 of the BCAM is therefore not relevant to this biodiversity certification proposal and no recommendation is required in this regard.

2.1.6 Indirect impact decisions under the Biodiversity Certification Assessment Methodology

The Chief Executive, 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 from stages 1 to 3 will be addressed by development controls in accordance with an existing planning agreement between council and SHAH. DAs lodged on land within these stages will trigger a requirement to prepare and implement a Vegetation Management Plan which has the objective of restoring and enhancing remnant Cumberland Plain Woodland on the Lakeside Golf Course surrounding the proposed biodiversity certification area.

To address the indirect impacts of stages 4 to 8 (which are not subject to the planning agreement) and based on the expert judgements of the assessor and OEH, it is assumed these will be limited to a 20 m zone from the development boundary (this area is shown in Figure 10). To quantify the indirect impacts, the area of vegetation has been calculated then multiplied by a factor by based on the number of credits required per hectare to offset the total loss of each vegetation zone and a 5% reduction in condition. A total of three ecosystem credits has been calculated to offset the indirect impacts of stages 4 to 8.

In addition to these measures, SHAH have committed to preparing and implementing a Construction Environmental Management Plan to ensure appropriate mitigation measures (eg protective fencing and vegetation clearing protocols) are in place to minimise potential indirect impacts.

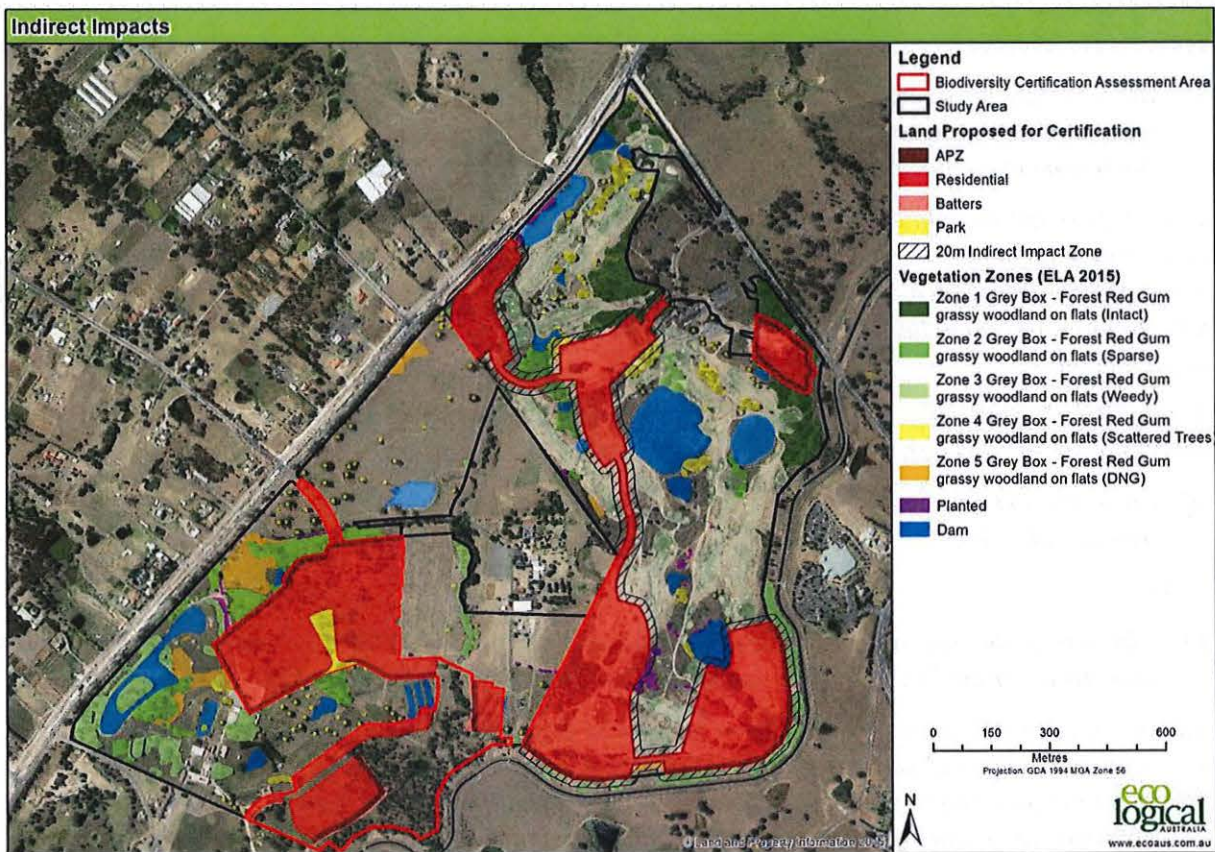
These measures to minimise and offset indirect impacts are considered adequate.

It is noted that no conservation measures (BioBanking agreement, zoning) are proposed to protect land that is an RFA, so no buffers are required. In addition, no land within the proposed biodiversity certification area is subject to strategic assessment under the EPBC Act.

Recommendation 6 (indirect impacts are appropriately minimised):

That the Chief Executive, OEH be **satisfied**, in accordance with section 2.2d) of the BCAM, 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 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.

Figure 10: Indirect impact zone



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*
- e) *Any other matter the Director General considers relevant."*

As no planning instrument conservation measures are proposed in the proposed biodiversity certification area, section 8.1.3 of the BCAM is not applicable to this biodiversity certification application and no recommendation is required in this regard.

2.1.8 Off-site 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.'

As all off-site conservation measures entail the purchase and retirement of biodiversity credits from biobanked sites and/or payments to the Biodiversity Conservation Fund there is no option to vary the survey intensity and, therefore, the Chief Executive, OEH is not required to approve any variation in accordance with section 9.2 of the BCAM and no recommendation is required in this regard.

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.'

As no variation to the offset rules has been sought as part of this biodiversity certification application, the Chief Executive, OEH is not required to be satisfied in accordance with section 10.2.1 of the BCAM and no recommendation is required in this regard.

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.”

As no variation to the offset rules has been sought as part of this biodiversity certification application, the Chief Executive, OEH is not required to be satisfied in accordance with section 10.4.1 of the BCAM and no recommendation is required in this regard.

2.2 MATTERS FOR THE MINISTER FOR THE ENVIRONMENT TO CONSIDER

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 *Threatened Species Conservation Act 1995* (TSC Act). Table 8 lists the relevant matters and provides a link to the corresponding section of this report.

Table 8: Matters for the Minister to consider that are relevant to this proposal

TSC Act Section	Minister's Decisions	Report Section
126N	Public notification requirements	2.2.1
126P	Biodiversity certification to be conferred only if biodiversity values are improved or maintained	2.2.2
126Q	Application for a minor variation to the assessment methodology	2.2.3
126H	Decision to confer certification on the proposed biodiversity certification assessment area	2.2.3

2.2.1 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

Council publicly exhibited the biodiversity certification application for the El Caballo Blanco, Gledswood and Camden Lakeside (ECBGCL) residential estate supported by the *ECBGCL residential estate Biodiversity Certification Assessment Report and Strategy, version 5, 10 February 2017* (BCARS) between 22 February and 24 March 2017. A printed copy of the application, the BCARS and other supporting documents was made available at council's administration office and libraries during the exhibition period. An electronic copy was made available on council's website. A notice advertising the application was published in the 18-19 February 2017 edition of the Sydney Morning Herald and the 21 February 2017 edition of the Macarthur Chronicle.

Council advised the Minister for the Environment via the Chief Executive, OEH on 4 April 2017 that no submissions were received on the BCARS during the public exhibition period.

Recommendation 1 (public notification requirements):

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.

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

Section 126P of the TSC Act states that:

- (1) *'For the purposes of this Part, biodiversity certification improves or maintains biodiversity values only if the Minister determines, on the basis of a biodiversity certification assessment, that the overall effect of biodiversity certification is to improve or maintain biodiversity values.'*
- (2) *A **biodiversity certification assessment** is an assessment of the effect of biodiversity certification on biodiversity values.*
- (3) *A biodiversity certification assessment is to be made in accordance with the biodiversity certification assessment methodology, and not otherwise.*
- (4) *This section applies to biodiversity certification as extended or modified under this Part in the same way as it applies to the conferral of biodiversity certification.'*

Under section 126R(1) of the TSC Act, *'the Minister must refuse to confer biodiversity certification if biodiversity certification does not 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 development of land proposed for biodiversity certification by the BCARS will directly impact on red flag areas. Section 2.1.1 of this report recommends the Chief Executive, OEHL be satisfied that having considered the criteria in section 2.4 of the BCAM, the impacts on the red flag areas will be offset in accordance with the rules and requirements set out in section 10 of the BCAM.

Section 2.1.1 of this report also recommends that the Chief Executive, OEH be 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 BCAM.

In relation to accepted impacts on red flag areas, biodiversity values are improved or maintained where they are offset in accordance with section 10 of the BCAM.

The BCARS assesses the impacts of biodiversity certification on biodiversity values which has been made in accordance with the BCAM.

Recommendation 2 (improve or maintain biodiversity values):

That the Minister be **satisfied** in accordance with section 126P of the *Threatened Species Conservation Act 1995* that on the basis of a biodiversity certification assessment for the El Caballo Blanco, Gledswood and Camden Lakeside residential estate proposal, the overall effect of biodiversity certification of the proposed biodiversity certification area is to improve or maintain biodiversity values.

2.2.3 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

As no application for a minor variation to the BCAM has been made as a part of this application, the Minister is not required to be satisfied that a variation has been made in accordance with section 126Q of the TSC Act.

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

Recommendation 3:

That the Minister **confer** biodiversity certification on the proposed El Caballo Blanco, Gledswood and Camden Lakeside residential estate biodiversity certification area in accordance with Part 7AA of the *Threatened Species Conservation Act 1995* by signing and dating the declarations in section 4.2 of this report, and by signing and dating the order conferring biodiversity certification attached to the briefing note (DOC17/624493) accompanying this report and approving its publication in the NSW Government Gazette.

LIST OF DOCUMENTS BEFORE THE DECISION MAKER

2.3 DOCUMENTS RELEVANT TO THE DECISION (DOC17/624493)

Tab A1 – Biodiversity Certification Application and letter to the Minister for the Environment from Camden Council dated 4 April 2017

Tab A2 - El Caballo Blanco, Gledswood and Camden Lakeside Residential Estate Biodiversity Certification Assessment Report and Strategy (BCARS) dated 10 February 2017

2.4 OTHER DOCUMENTS CONSIDERED (DOC17/624493, TAB D)

- 2.4.1 Office of Environment and Heritage (2015a) to Camden Council, OEH response - El Caballo Blanco and Camden Lakeside Biodiversity Certification proposal (18 February 2015)
- 2.4.2 Office of Environment and Heritage (2015b) to Philip Scott, OEH advice on Voluntary Planning Agreement - El Caballo Blanco and Camden Lakeside Biodiversity Certification proposal (22 May 2015)
- 2.4.3 Office of Environment and Heritage (2015c) to Camden Council, OEH advice on revised vegetation mapping and planted vegetation for El Caballo and Camden Lakeside following 8 September 2015 site visit (30 September 2015)
- 2.4.4 Office of Environment and Heritage (2016a) to Camden Council, OEH advice on draft report and credit calculator El Caballo Blanco and Camden Lakeside (5 February 2016)
- 2.4.5 Office of Environment and Heritage (2016b) to Camden Council, OEH advice on draft BCARS El Caballo Blanco, Gledswood Hills and Camden Lakeside - Version 3, 31 October 2016 (14 December 2016)
- 2.4.6 Office of Environment and Heritage (2017a) to Camden Council, OEH advice - Approval to exhibit El Caballo Blanco, Gledswood Hills and Camden Lakeside (14 February 2017)
- 2.4.7 Office of Environment and Heritage (2017b) to Mills Oakley, OEH advice following 5 October 2017 meeting on biodiversity certification agreement (13 October 2017)
- 2.4.8 Office of Environment and Heritage (2017c) to Mills Oakley, OEH additional advice following 5 October 2017 meeting on biodiversity certification agreement (27 October 2017)
- 2.4.9 Credit Retirement Report, Species, 18 Cumberland Plain Land Snail credits (6 November 2017)
- 2.4.10 Credit Retirement Report, Ecosystem, 50 HN528 credits (30 June 2017)
- 2.4.11 Voluntary Planning Agreement El-Caballo-Blanco-Gledswood-and-East-Side-Site (8 May 2012)
- 2.4.12 Owners consent for Ministerial Order (8 December 2017)
- 2.4.13 Department of Environment, Climate Change and Water (2011), Biodiversity Certification Assessment Methodology
- 2.4.14 Office of Environment and Heritage (2014), BioBanking Assessment Methodology
- 2.4.15 Section 36 biodiversity certification proposals under TSC Act—pending applications

3 DECISIONS

3.1 DECISIONS OF THE CHIEF EXECUTIVE

*The 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 this report and the attachments to this 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 at least one of the following factors applies to the red flag areas:
 - 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 areas on land proposed for biodiversity certification makes a low contribution to regional biodiversity values because the application ~~demonstrates/fails to demonstrate~~, 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.

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

- 4. am ~~satisfied/not satisfied~~ In accordance with section 2.2b) of the BCAM, having considered the criteria in section 2.4, 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 BCAM.

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

- 5. 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.

Indirect impacts

- 6. am ~~satisfied/not satisfied~~ that in accordance with section 2.2d) 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~~ 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.



Anthony Lean
Chief Executive
Office of Environment and Heritage

1 FEBRUARY 2018
Date

3.2 DECISIONS OF THE MINISTER

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

I, Gabrielle Upton, Minister for the Environment, having considered this report and the attachments to this report:

1. 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.
2. am ~~satisfied/not satisfied~~ in accordance with section 126P of the *Threatened Species Conservation Act 1995* that on the basis of a biodiversity certification assessment for the El Caballo Blanco, Gledswood and Camden Lakeside residential estate proposal, the overall effect of biodiversity certification of the proposed biodiversity certification area is to improve or maintain biodiversity values.
3. ~~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 the declarations in section 3.2 of this 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.



ANTHONY LEAN, CHIEF EXECUTIVE
AS DELEGATE FOR

Gabrielle Upton MP

Minister for the Environment

28/5/2018

Date