DECISIONS OF THE MINISTER FOR THE ENVIRONMENT– BIODIVERSITY CERTIFICATION OF PORT MACQUARIE AIRPORT AND SURROUNDING LANDS

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

I, Anthony Lean, Chief Executive of the Office of Environment and Heritage, as delegate of the Minister for the Environment, having considered the *Biodiversity Certification of Land: Port Macquarie Airport and Surrounding Lands Recommendation Report for the Minister for the Environment* and the attachments to that 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 sections 126O and 126P of the *Threatened Species Conservation Act 1995* that on the basis of a biodiversity certification assessment for the Port Macquarie Airport and surrounding lands 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 4.2 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.

9 AUGUST 2018

ANTHONY LEAN **Date**
Chief Executive, Office of Environment and Heritage
As delegate of the Minister for the Environment

Biodiversity Certification of Land: Port Macquarie Airport and surrounding lands

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

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

Contents

1 BACKGROUND AND DOCUMENTS CONSIDERED

Name of recommending officer:	Dimitri Young, Senior Team Leader Planning, North East Branch
Name of decision maker:	Anthony Lean, Chief Executive, Office of Environment and Heritage
TRIM container and record numbers:	SF17/18514, DOC18/20035
Name of Planning Authority (applicant):	Port Macquarie – Hastings Council
Date application received:	10 February 2016
Dates of public notification under Section 126N:	17 May to 17 June 2016

1.1 THE PROPOSAL

The proposal involves the future:

- implementation of the Port Macquarie Airport Master Plan including:
    - development of land required for the ongoing operational use of the existing Port Macquarie Airport (maintenance of the runway strip and associated obstacle limitation surface (OLS);
    - extension and/or relocation of critical aviation-related infrastructure and facilities in accordance with the revised Civil Aviation Safety Authority (CASA) aerodrome standards;
    - development of employment and airport-related accommodation facilities within the Airport Business Park precinct and the establishment of flood-free road access to the Port Macquarie Airport.
- development of land proposed for residential and light industrial development in the Partridge Creek Residential, Partridge Creek Industrial, and West Lindfield neighbourhoods of the Thrumster Urban Release Area, located immediately south of the Port Macquarie Airport, and their associated roads, Asset Protection Zones (APZs), easements and fire trails.

The Port Macquarie Airport Master Plan is detailed in Figure 1 below with the overall proposal depicted in Figure 2 below.

The Port Macquarie Hastings Council (PMHC) anticipates that this is a long-term proposal spanning more than 20 years.

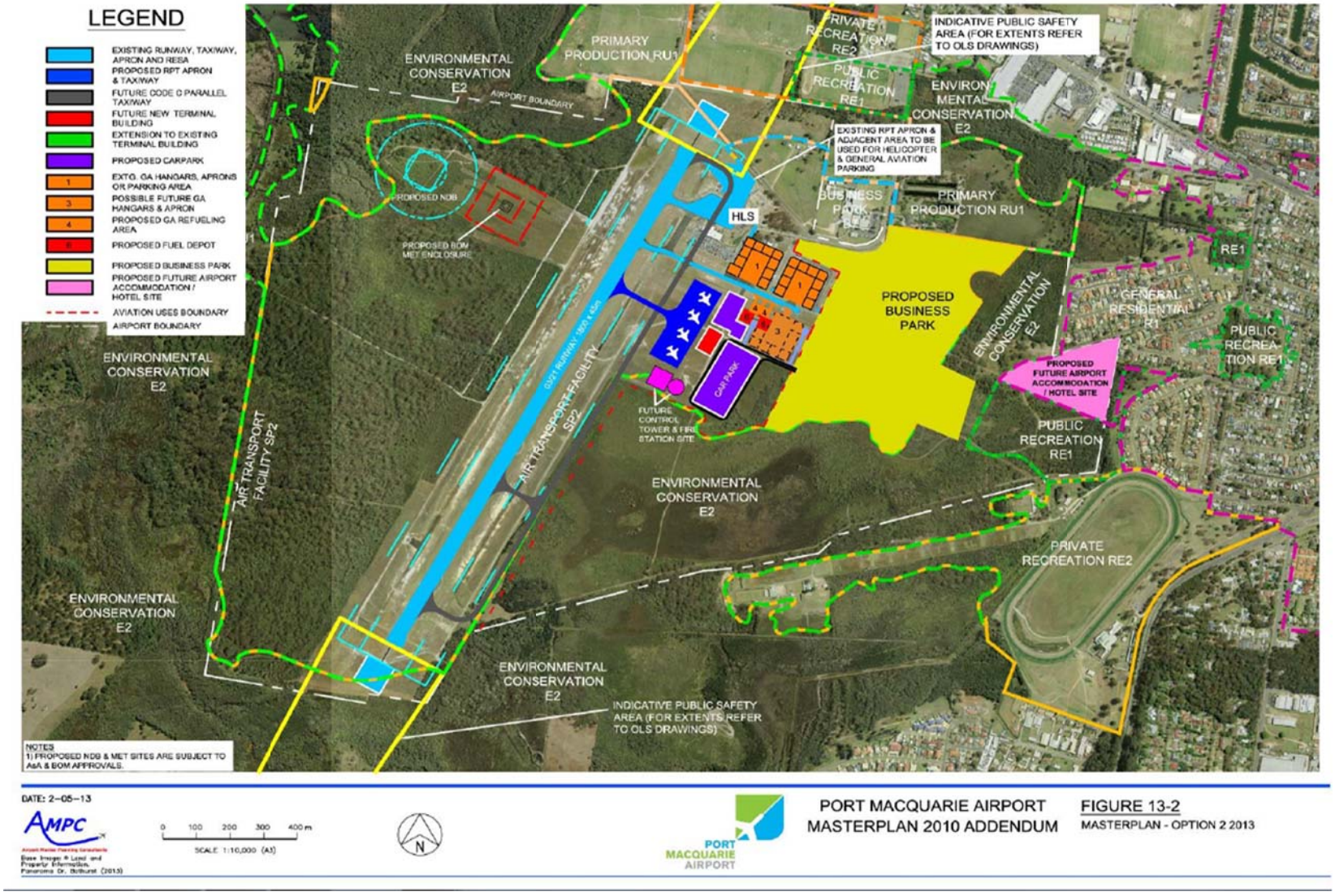

Figure 1: Port Macquarie Airport Master Plan

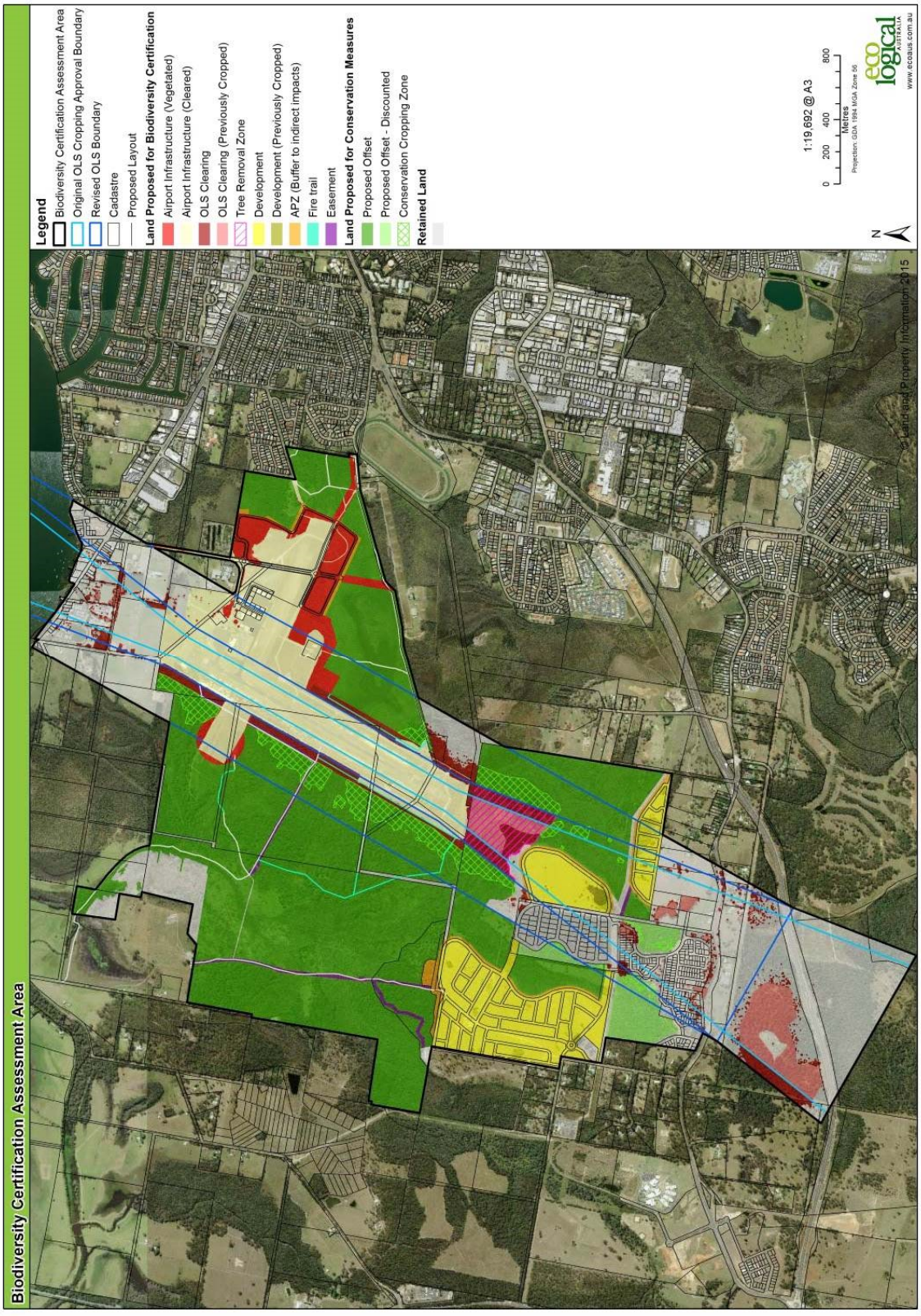

Figure 2: The proposal

1.2 LAND OWNERSHIP

The land proposed for biodiversity certification is owned by a range of private landholders, the PMHC, and the Crown, as depicted in Figure 3 below.

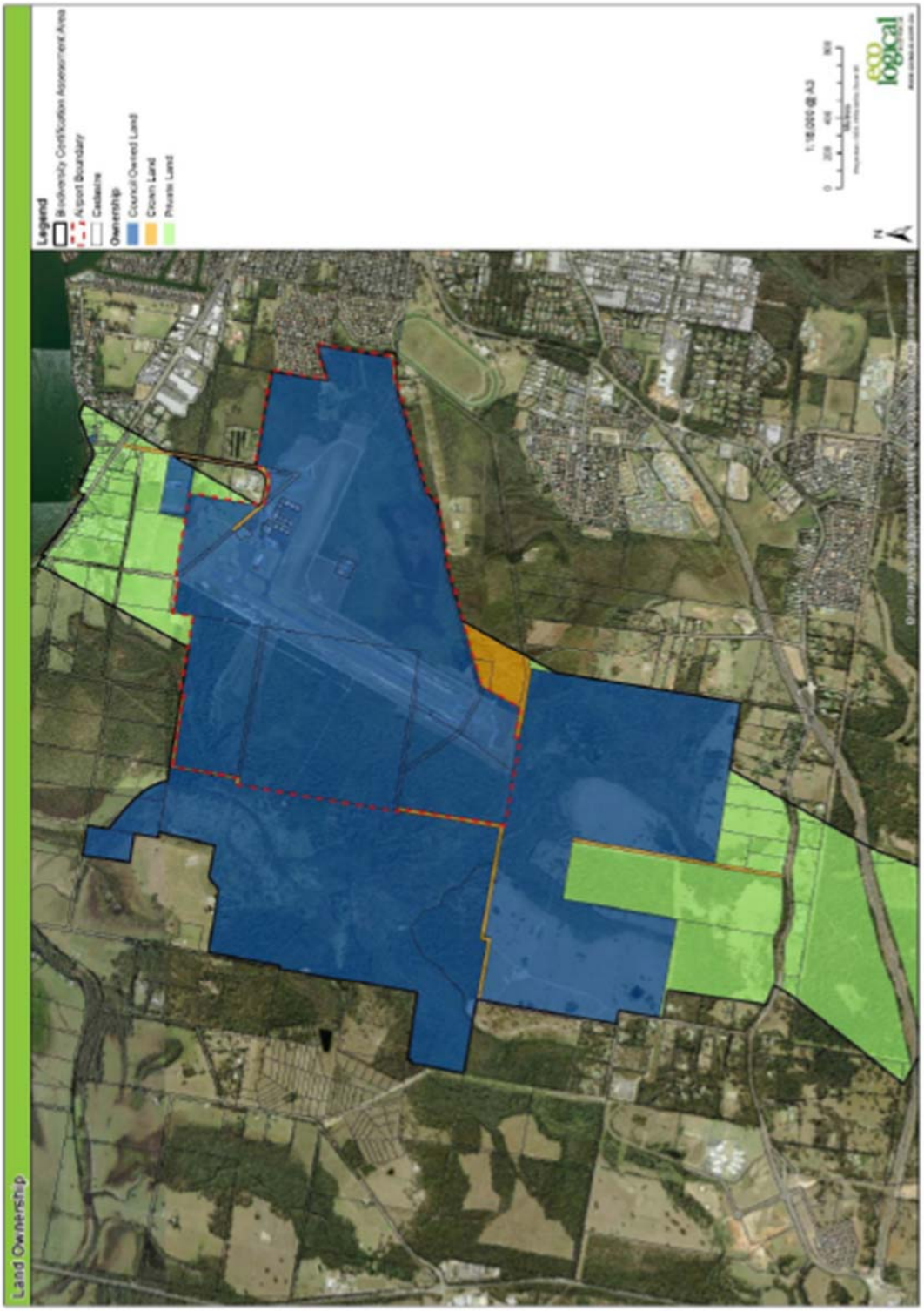

Figure 3: Land Ownership

The land proposed for biodiversity conservation is owned largely by the PMHC with a small portion of approximately 2.97ha owned by a private landholder (Ms June Christina L'Estrange). The PMHC has indicated to the NSW Office of Environment and Heritage (OEH) that this private landholder will be a party to the biobanking agreement over the part of her land (i.e. 2.97ha) that will form an on-site conservation measure for the biodiversity certification. This area of land is zoned E2 and E3 and has varying levels of existing obligations for maintenance and restoration as detailed in the PMHC Development Control Plan (DCP) 2013. This area is also identified to be transferred to the PMHC as part of the DCP.

1.3 THE BIODIVERSITY CERTIFICATION APPLICATION

A biodiversity certification application was lodged by the PMHC on 10 February 2016 and receipted by the OEH with exhibition requirements on 9 March 2016.

A biodiversity assessment of the proposal was undertaken by Eco Logical Australia Pty Ltd (ELA) in accordance with the Biodiversity Certification Assessment Methodology (BCAM) and a biodiversity certification assessment report strategy was lodged with the application.

After public exhibition, the biodiversity certification assessment report and strategy was subject to minor amendments to incorporate some issues raised in submissions. The PMHC adopted the amended report entitled '*Port Macquarie Airport Master Plan and Port Macquarie - Hastings Council owned land within the Thrumster Area 13 Urban Release Area: Biodiversity Certification Assessment Report & Biocertification Strategy—Application to Minister*' dated 24 October 2016 (hereafter referred to as the '**Biocertification Report'**) and then forwarded it and the response to submissions report to the OEH on 28 October 2016.

An application for biodiversity certification must follow the requirements of Part 7AA of the TSC Act, including the BCAM and the requirements of Section 126K of the TSC Act, i.e. be accompanied by a Biodiversity Certification Strategy (BCS). The OEH believes the application requirements have been met.

The OEH has reviewed the documents listed in Section 1.8 of this Recommendation Report, including the Biocertification Report. For development lands to be biodiversity certified (see biodiversity certification area in Section 1.3 below) the Chief Executive will need to be satisfied in relation to certain matters outlined in the TSC Act and the BCAM. These matters have been assessed by the OEH and are documented in this Recommendation Report at Section 2.1 for the Chief Executive.

1.4 HISTORY

The Port Macquarie Airport (the Airport) is owned and operated by the PMHC. **Section 1 of the Biocertification Report** provides project background and description in detail. In 2004, the PMHC adopted its first formal Master Plan for the Airport and its long-term plan to upgrade the Airport from a Civil Aviation Safety Authority (CASA) Code 3C Airport to Code 4C i.e. the Port Macquarie Airport Master Plan. However, prior to implementing the Port Macquarie Airport Master Plan, the airport required an upgrade to cater for the introduction of medium jet aircraft operations and comply with CASA Code 3C Aerodrome standards.

This airport upgrade required an Environmental Impact Statement (EIS) for its assessment under Part 4 of the *Environmental Planning and Assessment Act* 1979 (EP&A Act) due to impacts on endangered ecological communities, threatened species and their habitats, and SEPP 14 Coastal Wetlands.

The EIS was prepared by GHD (2008) and was approved on 24 February 2010 by the PMHC as the consent authority following consultation with the then Department of Planning and Infrastructure (DP&I) and the OEH. The airport upgrade proposal was subsequently modified in June 2010 (PMHC 2010 - DA 2008/184 & 2008/466).

The EIS outlined impacts to biodiversity in the form of 'cropping' native vegetation that was penetrating the Obstacle Limitation Surface (OLS) (31.22 ha) and the loss of koala habitat. The conditions of approval required all cropping activities to be undertaken in accordance with a Vegetation Management Plan and Koala Plan of Management (KPoM) and to avoid any impacts outside of the OLS, and to SEPP 14 wetlands. The KPoM required 200 Koala food trees to be planted in an area outside of the OLS and for these trees to be maintained for three years to compensate for the loss of Koala habitat.

In February 2012, the PMHC granted consent to an airport upgrade including a runway extension, expanded passenger terminal and car parking, which together with CASA approval, allowed the airport to operate as a full Code 4C airport (DA-2011/438) subject to the implementation of all the mitigation measures outlined in the Statement of Environmental Effects prepared by GHD 2011 (Port Macquarie Airport Upgrade Statement of Environmental Effects, July 2011).

The CASA subsequently made changes to Code 4C aerodrome standards in 2014. The revised standards are published in the Manual of Standards Part 139 – Aerodromes Version 1.12 November 2014 (Australian Government – Civil Aviation Safety Authority 2014), which include the Manual of Standards (MOS) Part 139 Amendment Instrument 2014 (No. 1). This is why the council requires another development consent for a further airport upgrade.

Following a review and analysis of the necessary approvals for the proposal, the PMHC identified that conferral of 'Biodiversity Certification' for the proposed biodiversity impacts in accordance with Part 7AA of the TSC Act and any additional Commonwealth Government *Environment Protection and Biodiversity Conservation Act* 1999 (EPBC Act) approvals required, combined with a commitment to implement recognised 'conservation measures' on the PMHC-owned land to '*improve or maintain*' overall biodiversity values within the assessment area, was the most strategic and sustainable approach to the management and offsetting of environmental impacts, whilst avoiding significant financial burden on the Port Macquarie-Hastings community.

The OEH held preliminary discussions with the PMHC in 2013, which resulted in support by the PMHC for the biodiversity certification approach of assessing the biodiversity impacts associated with implementing the Port Macquarie Airport Master Plan. As the assessment progressed, further discussions were held on the inclusion of land owned by the PMHC in the Thrumster Area 13 Urban Release Area into the biodiversity certification assessment.

1.5 THE BIODIVERSITY CERTIFICATION ASSESSMENT AREA

The Biodiversity Certification Assessment Area (BCAA) is shown in Figure 4 below and includes 146 lots/parcels of land.

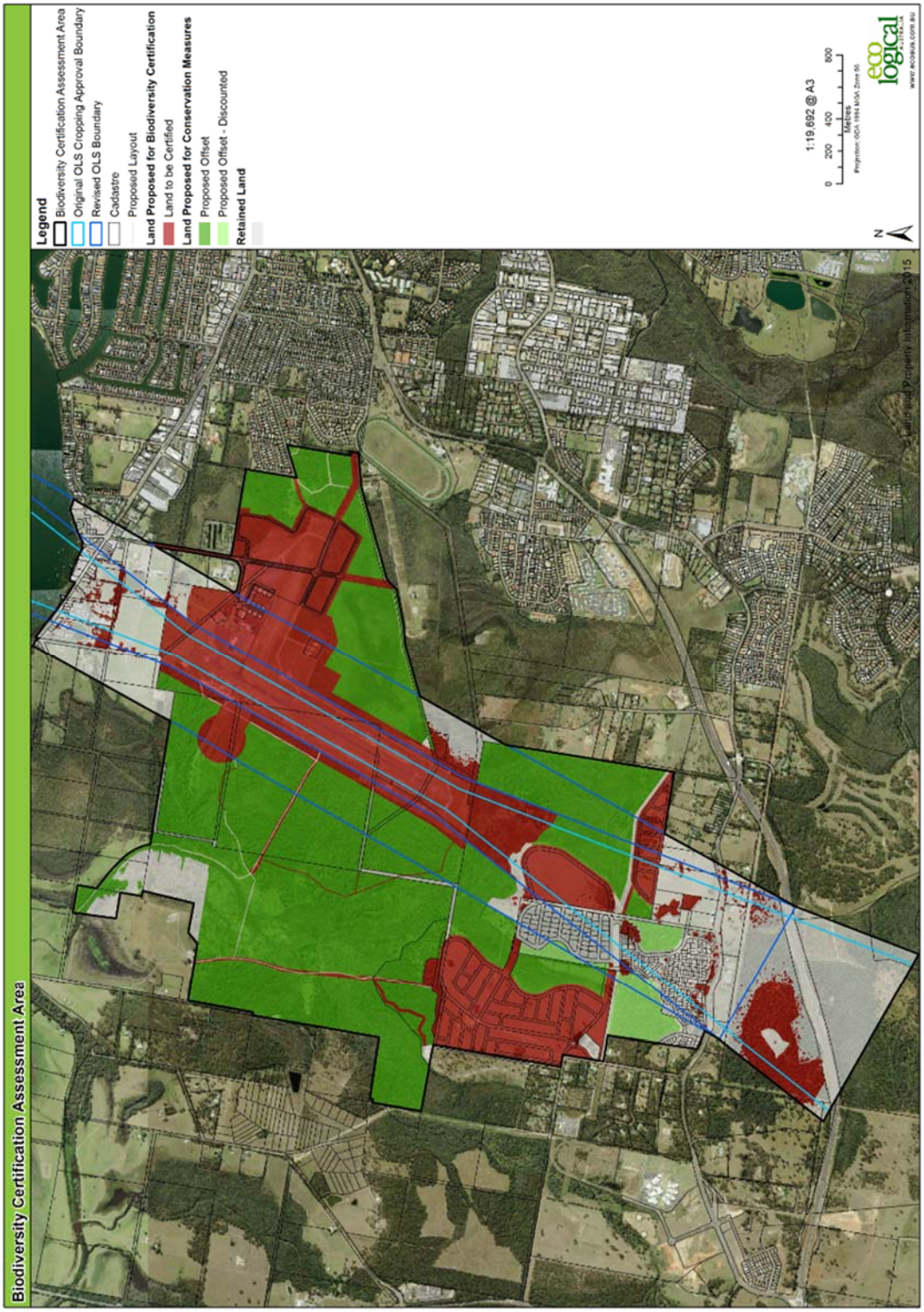

Figure 4: Biodiversity certification assessment area

1.5.1 Native vegetation impacts and credit requirements

The biodiversity certification assessment area totals 1024.48 ha and currently comprises 394.88 ha of cleared land and 629.6 ha of native vegetation.

The proposal will involve impacts on 118.5ha of native vegetation in the BCAA with 440.11 ha of native vegetation in the BCAA to be protected in a conservation measure. The remaining 71ha of native vegetation in the BCAA lies in retained lands that were excluded from the assessment and hence are neither proposed to be biodiversity certified nor subject to conservation measures.

The breakdown of land uses in the BCAA is set out in Table 1 below.

Table 1 Biodiversity certification land use breakdown in the BCAA

BCAA Footprint	Type of impact	Area (ha)	Total area (ha	Area of native vegetation (ha)	Total area of native vegetation (ha)
Land Proposed for Biodiversity Certification (Development)	Airport infrastructure	121.13	320.48	30.36	118.50
	OLS clearing	105.71		69.12	
	Development and APZ	85.37		11.12	
	Easement and fire trail	8.26		7.90	
Land Proposed for on-site Conservation Measures	Proposed offset	403.76	444.17	399.81	440.11
	Proposed offset - discounted	19.40		19.40	
	Conservation Cropping	20.32		20.32	
	Conservation Cropping - discounted	0.58		0.58	
Retained Lands (land excluded from this assessment)	Not applicable	259.84	259.84	71.00	71.00
Total		**1,024.48**		**629.60**	

Development in the BCAA will require a total of 3,741 ecosystem credits to be retired to offset the impacts to native vegetation and associated habitat for ecosystem credit species. **Figure 10 of the Biocertification Report** identifies the vegetation types and the plot locations used for the credit calculations. Table 2 below shows the credits required per impacted vegetation type.

Table 2 Native vegetation types in the proposed biodiversity certification assessment area

Biometric vegetation type name (BVT ID)	Total area of BVT in BCAA (ha)	Area for conservation (ha)	Area proposed for removal (ha)	Retained land (ha)	Ecosystem credits required for impact	Red flag?
Blackbutt - bloodwood dry heathy open forest on Quaternary sands of the northern North Coast (NR114)	41.63	38.58	2.89	0.16	103	no
Blackbutt - Tallowwood dry grassy open forest of the central parts North Coast (NR119)	161.44	78.04	39.09	44.30	1190	no
Grey Ironbark - Grey Gum open forest of the northern escarpment ranges of the North Coast (NR176)	6.74	0.00	5.97	0.77	242	no
Paperbark swamp forest of the coastal lowlands of the North Coast (NR217)	162.10	136.98	19.85	5.37	667	Yes
Scribbly Gum - Red Bloodwood heathy open forest of the coastal lowlands of the North Coast (NR228)	49.78	39.45	9.28	1.04	357	no
Swamp Mahogany swamp forest of the coastal lowlands of the North Coast (NR254)	23.48	17.72	2.66	0.10	97	Yes

Biometric vegetation type name (BVT ID)	Total area of BVT in BCAA (ha)	Area for conservation (ha)	Area proposed for removal (ha)	Retained land (ha)	Ecosystem credits required for impact	Red flag?
Swamp Oak swamp forest of the coastal lowlands of the North Coast (NR230)	16.25	9.21	6.07	0.52	111	Yes
Wallum sedgeland and rushland of near coastal lowlands of the North Coast (NR276)	22.84	22.05	0.52	0.27	12	no
Wet heathland and shrubland of coastal lowlands of the North Coast (NR278)	70.91	38.96	31.64	0.30	942	Yes
Coastal freshwater meadows and forblands of lagoons and wetlands (NR150)	74.42	56.12	0.51	17.79	20	Yes
Total	**629.60**	**437.11**	**118.48**	**70.62**	**3,741**	

1.5.2 Species impacts and credit requirements

The BCAA contains habitat for four species credit species. **Figures 14-17 in the Biocertification Report** identify the habitat for these four species within the BCAA and surrounding lands. Development in the BCAA will require a total of 5,861 species credits to be retired to offset the impacts.

All the species credit species are threatened fauna species as no threatened flora species were detected.

Table 3 below shows the credits required per impacted fauna species credit species.

Table 3 Fauna species credit species in the proposed biodiversity certification area

Species name	Conservation status	Habitat type	Area proposed for removal (ha)	Species credits required	Red flag?
Eastern Chestnut Mouse	Vulnerable	Wetland and heath habitat	52.52	1,382	no
Koala	Vulnerable	Eucalypt and paperbark forest	79.75	2,099	no
Squirrel Glider	Vulnerable	Eucalypt and paperbark forest	70.34	1,563	no
Wallum Froglet	Vulnerable	Wetland and heath habitat	61.26	817	no
Total *includes overlaps for some species			263.87*	5,861	

1.5.3 Red flag impacts

Section 2.3 of the BCAM states that:

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

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

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

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

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

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

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

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

Table 4 and 5 below summarise the red flag area impacts relevant to the proposal. A red flag area may contain one or more of the above red flag types and therefore the sub-totals may not equate to the overall total for that red flag area. **Figure 18 of the Biocertification Report** depicts these areas. The clearing of these red flag areas will require a red flag variation to be granted, which is evaluated in Section 2 of this Recommendation Report.

Table 4 Critically endangered and/or endangered ecological communities not in low condition

Biometric vegetation type name	Equivalent under TSC Act/EPBC Act	Conservation status	Area proposed for removal (ha)
Paperbark swamp forest of the coastal lowlands of the North Coast (NR217)	Swamp sclerophyll forest of coastal floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions	Endangered Ecological Community	5.37
Swamp Mahogany swamp forest of the coastal lowlands of the North Coast (NR254)	Swamp sclerophyll forest of coastal floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions	Endangered Ecological Community	0.10
Swamp Oak swamp forest of the coastal lowlands of the North Coast (NR230)	Swamp Oak floodplain forest of the NSW North Coast, Sydney Basin and South East Corner bioregions	Endangered Ecological Community	0.52
Coastal freshwater meadows and forblands of lagoons and wetlands (NR150)	Freshwater wetlands on coastal floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions	Endangered Ecological Community	0.51

Table 5 Vegetation with regional or state biodiversity conservation significance

Regional or State conservation significance type	Area proposed for removal (ha)
SEPP 14 Wetlands	13.36
Riparian buffers	1.34
State Biodiversity Link	0.32
Regional Biodiversity Link	36.12
Total ***overlap areas are included in total	51.14*

Figure 6 below shows all the red flag areas with the areas in red being those red flag areas that will be impacted by the proposal.

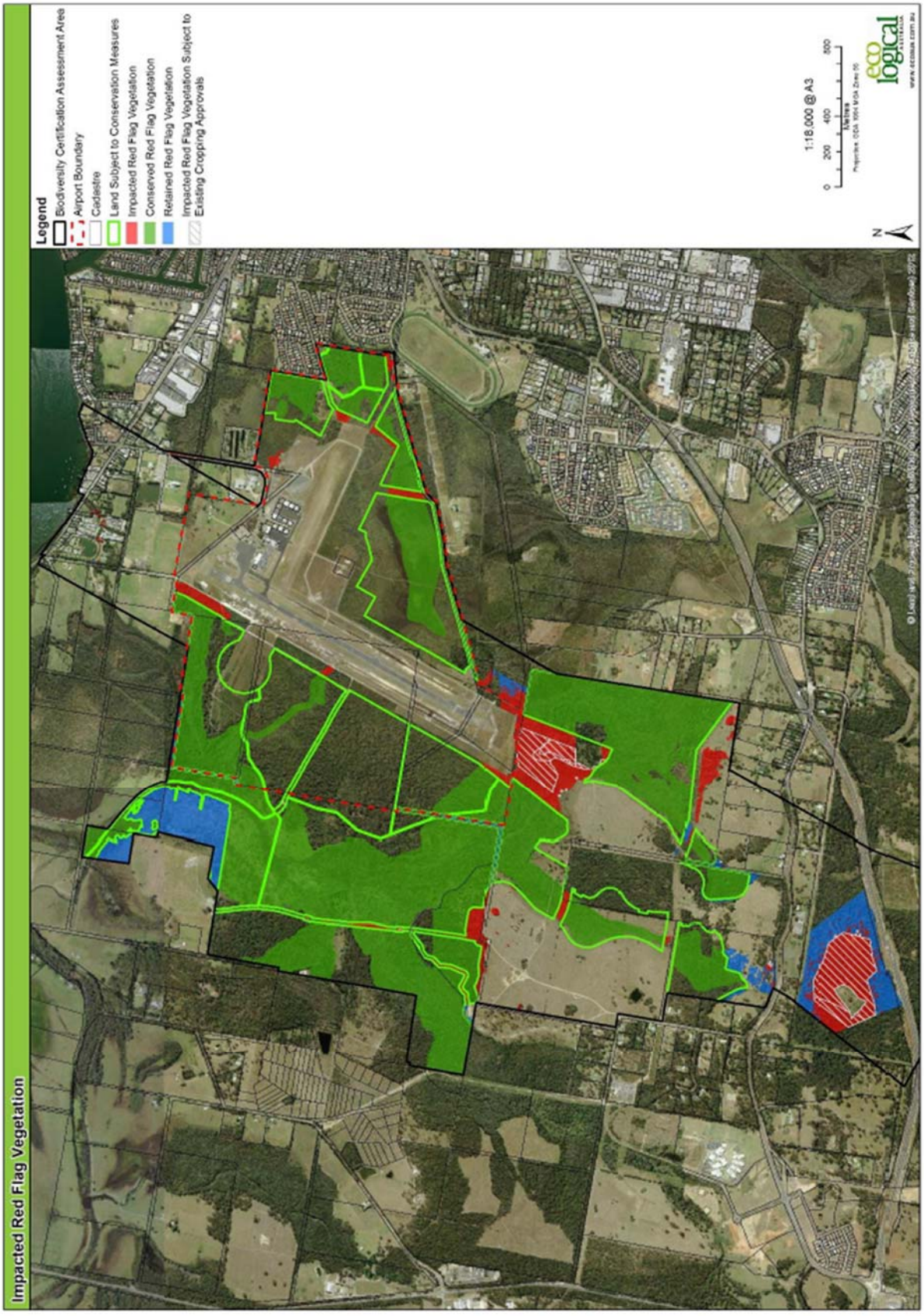

Figure 6: Red Flag Areas

1.6 THE CONSERVATION LAND OR OTHER MEASURES

1.6.1 On-site conservation measure(s)

The on-site conservation measure being used for the protection of the will be a biobanking agreement. This one agreement will cover most the offset requirement for the biodiversity certification **(refer Section 7.1 of the Biocertification Report)**.

Until the biobanking agreement is in place and the Total Fund Deposit is paid, the PMHC has committed to managing all of the on-site conservation lands in accordance with biobanking requirements and has provided a list of management activities that will be implemented. These conservation management activities include weed removal, replanting, fencing, pest control and rubbish removal. The requirements for management of these on-site conservation lands will form part of the Ministerial Order and the biodiversity certification agreement including the timing and location of these management activities.

Within the on-site conservation lands, there are areas where there are no existing legislative requirements to undertake management actions for conservation (i.e. Council owned SP2 Infrastructure, RE1 Recreation and Operational E2 land). However, the existing Private component of the on-site conservation lands has varying levels of existing obligations to manage land for conservation (i.e. 2.97 ha of E2 and E3 zoned private land within the Thrumster Area 13 Urban Release Area (URA) where the PMHC Development Control Plan 2013 requires maintenance and restoration of defined areas – labelled as 'Offset Discounted'). The biodiversity certification assessment has considered any existing management obligation and reduced the credits generated for these areas accordingly.

The PMHC has indicated to the OEH that this private landholder will be a party to the biobanking agreement over the part of her land (i.e. 2.97ha) that will form part of the conservation measures for the proposal. If this private landholder does not commit to entering a biobanking agreement, then the PMHC will be required to find the equivalent biodiversity credits off-site. This has been accounted for in the drafting of the biodiversity certification agreement.

There is also up to 20.9 ha of selective 'cropping' proposed in the on-site conservation lands for patches of isolated trees that may penetrate the OLS. These trees will be monitored and if growth exceeds OLS height limits, they will be cropped with hand held tools, all pruned material left in-situ to minimise disturbance to surrounding vegetation, and the trees poisoned to prevent regrowth. Poisoned trees will be left in-situ to provide hollow resources for hollow-dependent fauna and perching opportunities for raptors. These cropping areas in the on-site conservation lands have also been assessed as generating less credits per hectare to factor the potential for some of the larger trees to be impacted.

All the above lands proposed for on-site conservation total 444.17 ha (440.11 ha of which comprises native vegetation plus 4.06 ha of cleared land to be regenerated). This includes 4,087 ecosystem credits and 6,740 species credits. These areas will be secured via a biobanking agreement. It is proposed that a biodiversity certification agreement will allow the PMHC 12 months from conferral of biodiversity certification to apply for a biobanking agreement to the OEH.

Figure 7 below shows the proposed biobank site and the management areas. The management areas have been identified to provide a structured method for managing the large offset. The management areas will also be further detailed as part of the application for a biobanking agreement over the site.

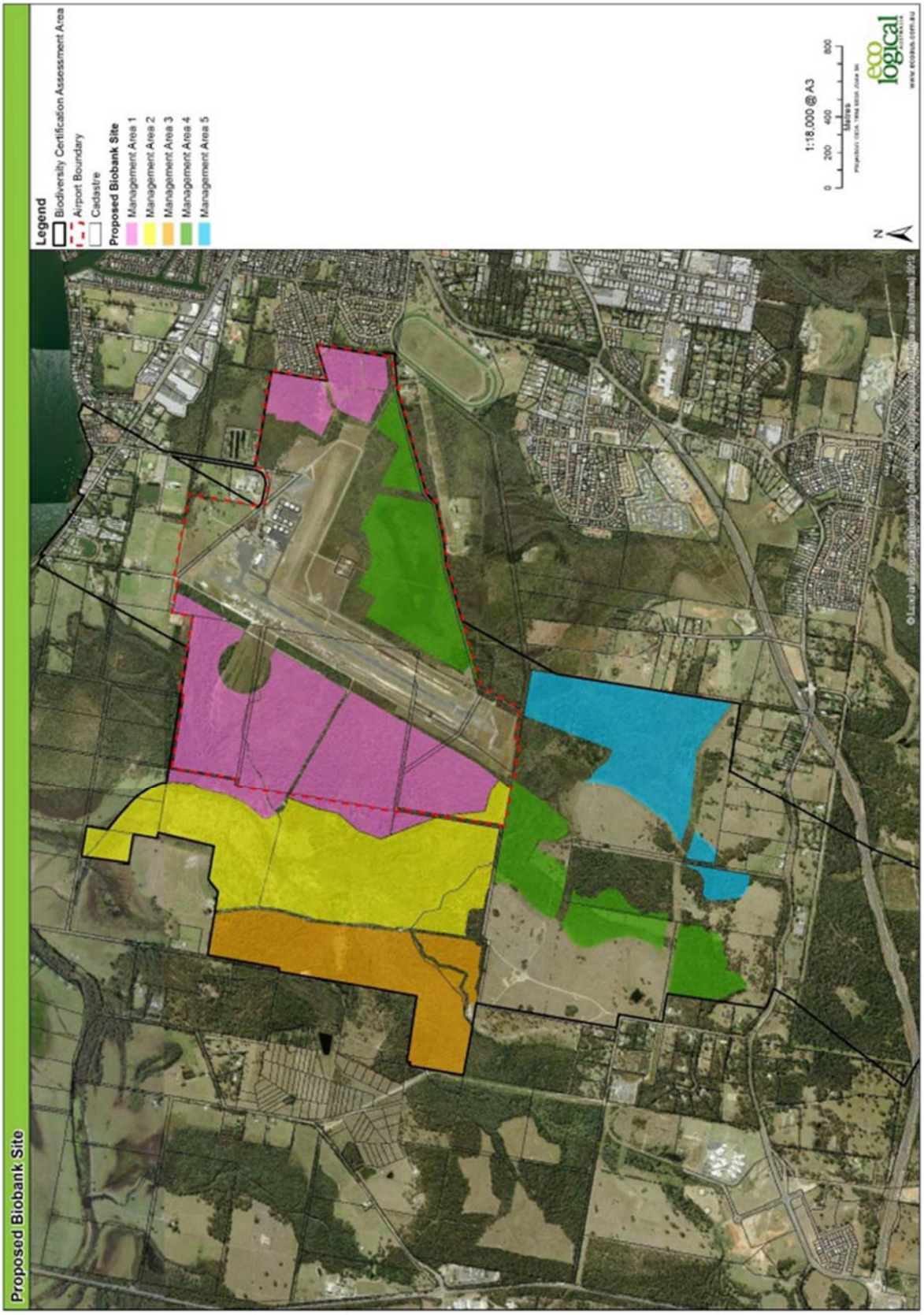

Figure 7: Proposed Biobanking management areas

1.6.2 Off-site conservation measure(s)

The **Biocertification Report** calculations identify that there will be a surplus of **798** ecosystem credits for some vegetation types generated by the proposed on-site conservation measures and a surplus of **879** species credits. As these credits are generated by a conservation measure from within the BCAA, all these 'surplus' credits (185 Dry Sclerophyll Forest credits, 479 Forested wetland credits (all EECs), and 134 Freshwater wetland credit (mostly EEC) and 11 Eastern Chestnut Mouse and 868 Wallum Froglet species credits), will be 'retired' as a condition of biodiversity certification. The retirement of these 'surplus' credits provides additional compensation for the impacts to red flag areas **(refer Section 7.1 of the Biocertification Report)**.

Although overall there is an identified credit surplus, there is a credit deficit for one ecosystem and one species credit species, comprising **452** credits for '*Blackbutt – Tallowwood dry grassy open forest*' (approximately 40 to 50 ha) and **323** credits for Koala (approximately 46 ha of Koala habitat). It is possible for one offset to satisfy both the species and ecosystem credit deficit. This deficit will be secured by the PMHC by either purchasing:

1. additional privately owned land within the PMHC local government area (LGA) offered for sale that provides the required credits; or
2. the required credits from registered BioBank sites in the PMHC LGA; or
3. the required credits from registered BioBank sites outside of the PMHC LGA; or
4. the required credits from the proposed Biodiversity Conservation Fund, once available.

It is proposed that this credit deficit will be detailed in a biodiversity certification agreement and the PMHC will have up to seven years to secure an appropriate offset for this deficit. This small part of the total offset, approximately 10%, will be an off-site conservation measure. Although this offset has not been identified yet, it is considered reasonable to provide the PMHC up to seven years to secure this offset as the proposed development is likely to be staged over a 20+ year timeframe. The PMHC has committed to secure this offset prior to any clearing that would generate the deficit credits.

1.6.3 Other conservation measure(s)

To retain and manage the functions of the regional biodiversity link immediately south of the runway, the PMHC proposes to implement a Vegetation Management Plan (VMP). This VMP will be an additional conservation measure within the land to be biodiversity certified. (**Section 4.2.1 of the Biocertification Report**).

Although a VMP is not specifically listed as a conservation measure, section 126L (o) of the TSC Act states that such measures can include '*any other measure that the Minister determines to be a conservation measure'*. The OEH is proposing that the preparation and implementation of a VMP will be a conservation measure. The VMP will restrict vegetation clearing activities to the minimal removal of the tallest trees whilst allowing most of the vegetation community to have limited disturbances.

The objective of the fauna habitat enhancement works that will be specified in the VMP is to maintain elements of the forest structure in the designated tree removal area to provide opportunities for fauna movement through the subject area and adjacent conserved vegetation. This may include the retention of small 'stepping stone' patches of tree cover (where these do not impact the objectives of the OLS), together with glider poles and ropes to encourage movement of arboreal fauna through the area.

The VMP will detail, as a minimum, the following actions:

- The retention of as much native vegetation as possible.
- Selective removal of larger trees only for air safety reasons. Trees requiring removal will be identified by analysis of lidar imagery that accurately shows the height of trees compared to the OLS requirements.
- Measures to maintain a link for arboreal fauna species (Koala and Squirrel Gliders) between conserved vegetation to the east and west of the runway, such as installing glider poles and ropes.
- Protocols for pre-clearance surveys and relocation of threatened fauna.
- Identification and implementation of revegetation and/or landscaping.
- Methods to avoid attracting water birds that pose a risk to aviation operations.
- Measures for the protection of water quality.

It is proposed that a biodiversity certification agreement will allow the PMHC 12 months from conferral to finalise the VMP to the satisfaction of the OEH. The VMP would apply to the tree removal zone as shown on Figure 8 below.

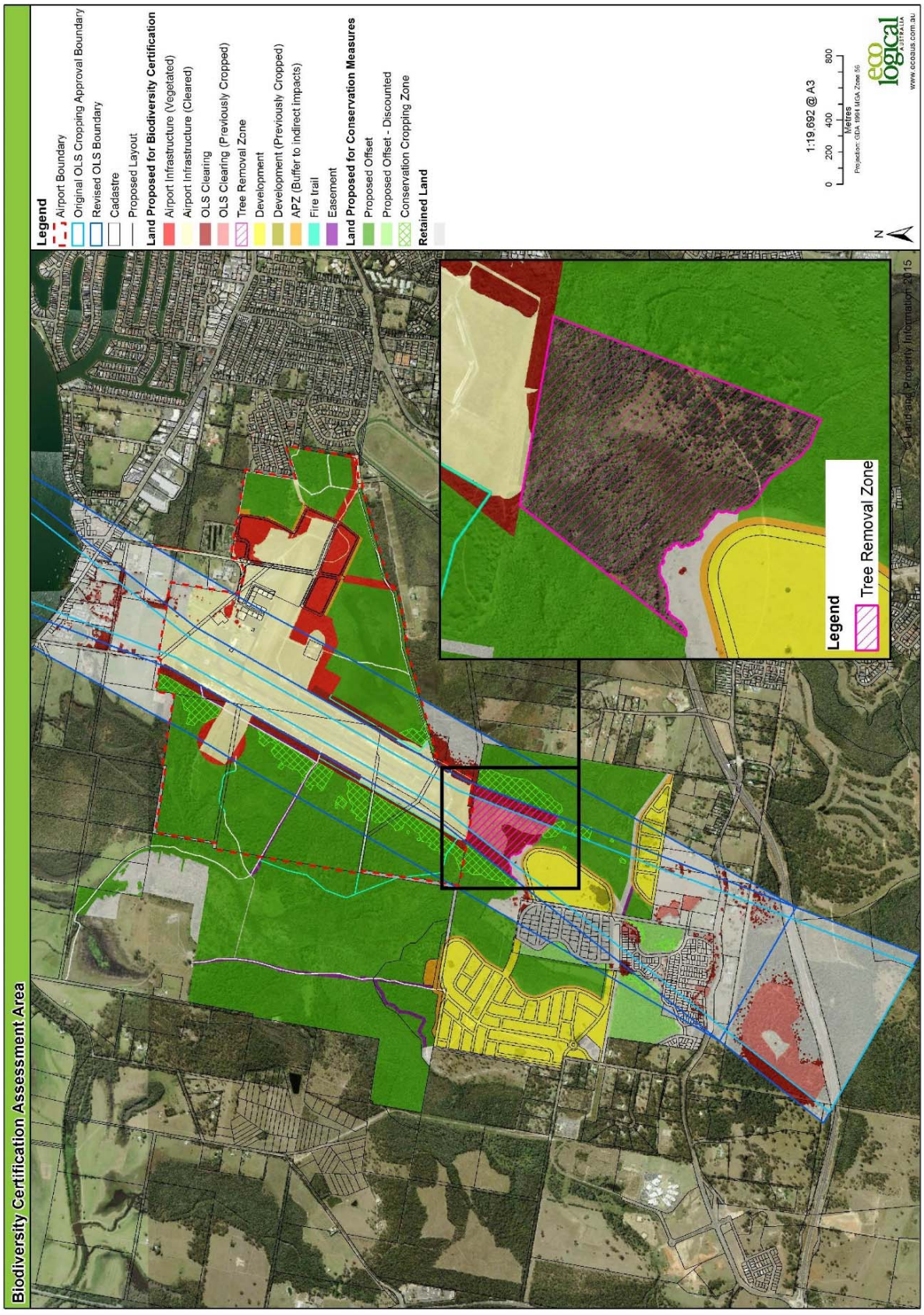

Figure 8: VMP area (tree removal zone only)

1.6.4 Biodiversity Certification Agreement(s)

A biodiversity certification agreement will be used to secure the VMP, biobanking agreement and the credit deficit requirement as follows:

- A VMP will be prepared by the PMHC for the Tree Removal Zone in the regional biodiversity link immediately south of the airport runway to the satisfaction of the OEH within **12 months** of conferral of biodiversity certification.
- The biobanking agreement application will be lodged to the OEH within **12 months** of conferral of biodiversity certification.
- The Total Fund Deposit **$2,321,990** will be paid to the OEH within **7 years** of conferral of biodiversity certification. All credits associated with the biobanking agreement will be retired at the payment of the Total Fund Deposit.
- The credit deficit for one ecosystem and one species credit species, being **452** credits for '*Blackbutt – Tallowwood dry grassy open forest*' and **323** credits for Koala, will be secured by the PMHC to the satisfaction of the OEH within **7 years** of conferral of biodiversity certification.

1.7 THE RETAINED LAND

Retained lands are neither biodiversity certified lands nor conservation lands. Development proposals in these areas will continue to be regulated under the *Biodiversity Conservation Act 2016* and the *Environmental Planning and Assessment Act 1979* (EP&A Act). **Figure 5 of the Biocertification Report** shows the area of retained land associated with the proposal.

1.8 LIST OF DOCUMENTS BEFORE THE DECISION MAKER

1.8.1 Documents provided by the applicant

1. '*Port Macquarie Airport Master Plan and port Macquarie-Hastings Council owned land within the Thrumster Area 13 Urban Release Area' – Biodiversity Certification Assessment Report & Biocertification Strategy – Application to Minister.* (DOC16/548565-7)
2. Biodiversity Certification Application form dated 10/02/2016 submitted by Port Macquarie-Hastings Council. (DOC16/74807-1)
3. Port Macquarie-Hastings Council Ordinary Council Meeting 10/08/2016, Post Exhibition report. (DOC16/548565-6)

1.8.2 Other documents considered by the recommending officer

1. Department of Environment and Conservation (DEC) 2004 *Threatened species survey and assessment; guidelines for developments and activities (working draft)* New South Wales Department of Environment and Conservation, Hurstville, NSW.
2. Department of Environment and Climate Change (DECC) 2008. *Vegetation Types Database*, NSW Department of Environment and Climate Change, Sydney. Available http://www.environment.gov.au/biobanking/VegTypeDatabase.html

3. Office of Environment and Heritage (OEH) 2015. *Biodiversity Certification Operational Manual*. Office of Environment and Heritage, May 2015.

4. Department of Environment, Climate Change and Water (DECCW) 2011. *Biodiversity Certification Assessment Methodology*. NSW Department of Environment Climate Change and Water, Sydney.

5. Eco Logical Australia (ELA) 2005. *A Vegetation Map for the Northern Rivers Catchment Management Authority to Support Application of the Biodiversity Forecast Toolkit*. Report prepared for the Northern Rivers Catchment Management Authority.

6. Office of Environment and Heritage (OEH) 2014. *Atlas of NSW Wildlife database*. Office of Environment and Heritage.

7. Port Macquarie Hastings Council (PMHC) 2010. *Port Macquarie Airport Master Plan 2010*, Port Macquarie Hastings Council.

8. Port Macquarie Hastings Council (PMHC) 2011. *Port Macquarie Hastings Urban Growth Management Strategy 2011*, Port Macquarie Hastings Council.

9. NSW Department of Planning 2009. Mid North Coast Regional Strategy, NSW Department of Planning.

10. Scotts, D. (2003). Key habitats and corridors for forest fauna: a landscape for conservation in north-east New South Wales. NPWS Occasional Paper 32

2 EVALUATION AND RECOMMENDATIONS

Section 126(O) states that the Minister may confer biodiversity certification only if biodiversity certification improves or maintains biodiversity values.

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

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

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

2.1 MATTERS FOR THE CHIEF EXECUTIVE TO CONSIDER

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

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

BCAM Section	Chief Executive's Decisions	Recommendation Report section
2.2(b)-(d), 2.4	Red flag variation requests	2.1.1
3.4	Local certified data – benchmarks	2.1.2
6.0	Indirect impacts	2.1.3
10.2.1	Variation to offset rules – ecosystem credits	2.1.4
10.4.1	Variation to offset rules – species credits	2.1.5

Note that the BCAM refers to the Director General of the Department of Environment, Climate Change and Water as the decision maker for these issues. All references to the Director General in this report are taken to be references to the Chief Executive of the Office of Environment and Heritage (OEH)[1].

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

2.1.1 Red flag variations under the Biodiversity Certification Assessment Methodology

Section 2.2 of the BCAM states that:

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

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

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

OR

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

AND

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

AND

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

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

As summarised in section 1.5.3 of this Recommendation Report, the proposed biodiversity certification of land does directly impact on biodiversity values in red flag areas. Section 2.2(b) of the BCAM states that the CE OEH must be satisfied, having considered the criteria in section 2.4 of the BCAM, that the impacts on the red flag areas may be offset in accordance with the rules and requirements set out in section 10 of the BCAM.

In accordance with section 2.3 of the BCAM 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 (the red flag areas relevant to this proposal are in **bold** below):

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

b) a critically endangered or endangered ecological community listed under the TSC Act or EPBC Act, and the vegetation is not in low condition

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 100m 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 40m either side of a minor creek on the western slopes and plains**
- **areas listed as a SEPP 14 wetland.**

<u>Red flag areas – EECs</u>

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 red flag areas comprising vegetation**.

Feasibility of options to avoid and minimise

Section 2.4.1 of the BCAM states that:

> *"The Director General must be satisfied that the feasibility of options to avoid impacts on red flag areas has been considered in the application for biodiversity certification. An application for biodiversity certification can address this requirement by demonstrating that:*
>
> *(a) All reasonable measures have been taken to avoid adverse impacts on the red flag areas and to reduce impacts of development on vegetation remaining within the biodiversity certification area*
>
> *(b) Appropriate conservation management arrangements cannot be established over the red flag area given its current ownership, status under a regional plan and zoning and the likely costs of future management."*

Discussion:

Measures to avoid adverse impacts

There is very little scope for exploring options to avoid adverse impacts on most red flag areas, such as endangered ecological communities, due to the position of most red flag areas immediately adjacent to the existing airport infrastructure. However, reasonable measures such as redesigning around other red flag areas have been used to minimise impacts to these areas. Alternative development layouts have been extensively considered by the PMHC and alternative options have been discussed with the OEH. All reasonable measures have been considered to avoid impacts on red flag areas. Section 4.2 of the Biocertification Report states '*Port Macquarie Airport is an existing operational airport and the revised OLS boundary and associated vegetation management requirements must be achieved to accord with CASA operating requirements as a Code 4C airport. Implementation of CASA requirements is critical to ensuring the safety of aircraft operations. The airport has existed and operated since 1955 and approval to operate the airport as a Code 4C airport was granted in 2013.The airport must also allocate areas for critical aviation-related infrastructure and facilities within the aviation uses precinct to comply with CASA Code 4C aerodrome standards and these must be in a configuration that maximises the efficiency and safety of airport operations. In this context, the opportunities for red flagged EEC areas to be avoided and for impacts on vegetation remaining within the OLS to be reduced and comply with CASA requirements and operational needs are limited*'. (**Section 4.2 of the Biocertification Report provides greater detail**)

The PMHC has assessed several alternative options to meet the OLS requirements including options that will result in only partial impacts rather than total clearing of some areas, to avoid and minimise impacts to the maximum extent possible. Up to 20.9 ha has been identified within land proposed for conservation measures for tree cropping only, and only if required. This area is labelled as 'conservation cropping' and includes areas where there are occasional trees that may require management based on predicted growth models and where vegetation does not require complete clearing. The OEH has liaised with the PMHC to identify that only single trees will be 'pruned' and subsequently poisoned to prevent regrowth. These trees will be left in-situ to provide fauna habitat (stags) and pruned material will not be removed from the site to minimise indirect impacts and other disturbances.

Appropriate Conservation Management

Appropriate conservation measures would not be feasible to establish over some of the red flag areas immediately adjacent to the airport infrastructure. Most of the red flag areas impacted are on the periphery of the existing development areas making the option of avoiding very difficult. The red flag areas that are within the biodiversity conservation land form part of a larger tract of vegetation and will be managed in accordance with a proposed biobanking agreement, which is one of the proposed conservation measures.

The LEP zonings for the majority of the proposed impact areas are SP2 Infrastructure and R1 General Residential. **Figure 6 of the Biocertification Report** shows the LEP zonings for the assessment area. There are some minor incursions into Environmental zoned land for the OLS provisions, however these cannot be avoided for the proposal.

Even if some of these red flag areas could be retained they would be relatively small and isolated and as such the likely costs to maintain and protect these areas would not be feasible.

Recommendation 1:

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

a. All reasonable measures have been taken to avoid adverse impacts on the red flag areas and to reduce impacts of development on vegetation remaining within the biodiversity certification area

b. Appropriate conservation management arrangements cannot be established over the red flag areas given their current ownership, status under a regional plan and zoning and the likely costs of future management.

Additional assessment criteria for vegetation types

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

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

(a) The current or future uses of land surrounding the red flag area where biodiversity certification is to be conferred reduce its viability or make it unviable. Relatively small areas of native vegetation surrounded or largely surrounded by intense land uses such as urban development, can be unviable or have low viability because of disturbances from urbanisation, including edge effects.

(b) The size and connectedness of the vegetation in the red flag area where biodiversity certification is to be conferred to other vegetation is insufficient to maintain its viability. Relatively small areas of isolated native vegetation can be unviable or have low viability.

(c) The condition of native vegetation in the red flag area where biodiversity certification is to be conferred is substantially degraded, resulting in loss of or reduced viability. Native vegetation in degraded condition can be unviable or have low viability. 'Degraded condition' means substantially outside of benchmark for many of the vegetation condition variables as listed in Table 1 of the methodology (s3.6.2), without the vegetation meeting the definition of low condition set out in section 2.3. Vegetation that is substantially outside of benchmark due to a recent disturbance such as fire, flood or prolonged drought is not considered degraded for the purposes of the methodology.

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

Discussion:

In making an assessment that the viability of biodiversity values in the red flag area is low or not viable, the CE must be satisfied that one of the above factors (a-d) applies. These criteria are applicable for the EEC's which are proposed to be impacted by the proposal.

In summary, the following red flag EEC areas have been satisfied by one or more of the listed criteria.

EEC red flag group	Section 2.3.2.2 criteria satisfied (a-d)
Swamp Sclerophyll Forest EEC (22.39ha)	A - current and/or future proposed land use surrounding the red flag area reduces its viability. C - red flag area is substantially degraded. D – the amount of the red flag area to be impacted is minor relative to the amount of that red flag area proposed to be conserved.
Swamp Oak Floodplain Forest EEC (0.75ha)	A - current and/or future proposed land use surrounding red flag area reduces viability. D – the amount of the red flag area to be impacted is minor relative to the amount of that red flag area proposed to be conserved.
Freshwater Wetlands (0.51)	D – the amount of the red flag area to be impacted is minor relative to the amount of that red flag area proposed to be conserved.

Based on satisfying the above criteria, the red flag areas are considered to have low viability. **(Section 4.2.2 of the Biocertification Report provides greater detail**)

Recommendation 2:

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

a. The current or future uses of land surrounding the red flag area where biodiversity certification is to be conferred reduce its viability or make it unviable. Relatively small areas of native vegetation surrounded or largely surrounded by intense land uses, such as urban development, can be unviable or have low viability because of disturbances from urbanisation, including edge effects.

b. ~~The size and connectedness of the vegetation in the red flag area where biodiversity certification is to be conferred to other vegetation is insufficient to maintain its viability. Relatively small areas of isolated native vegetation can be unviable or have low viability~~. Not relevant to application.

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.~~ Not relevant to application.

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

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

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

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

(b) Percent remaining is high: that the percent remaining of the vegetation type or critically endangered or endangered ecological community comprising the red flag area is relatively high in the region

(c) Percent native vegetation (by area) remaining is high: that the percent remaining of all native vegetation cover in the region is relatively high.

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

Discussion:

For the purposes of addressing this section of the BCAM the 'region' includes the Macleay Hastings, Carrai Plateau, Coffs Coast and Escarpment, Comboyne Plateau, Macleay Gorges, and Upper Manning CMA subregions, as shown in **Figure 23 of the Biocertification Report**.

a) Relative abundance: The abundance figures for each EEC in the region are as follows:

- Swamp Sclerophyll forest EEC covers approximately 23,000 ha of the region. The total impact of the proposal on this EEC is 22.39ha.
- Swamp Oak Floodplain Forest EEC covers approximately 1,200 ha of the region. The total impact of the proposal on this EEC is 0.75ha.

- Freshwater Wetlands EEC covers approximately 1,400 ha of the region. The total impact of the proposal on this EEC is 0.51ha.

This indicates that the red flag areas are relatively abundant in the region.

b) Percent remaining is high:

- The total impact on each EEC is identified above, and is a very small amount compared with the amount of each EEC in the region. As such it is considered that all the EEC's will still have a relatively high percent remaining in the region after the proposed clearing of these EEC's for the proposal.

c) Percent native vegetation by area remaining is high

- In total, 75% (1,058,054 ha) of the region contains native vegetation cover. The proportion of vegetation cover for five of the CMA subregions is high, with Upper Manning containing 99.7%, Macleay Gorges containing 95%, Carrai Plateau containing 94%, Comboyne Plateau containing 87% and Coffs Coast and Escarpment containing 83% vegetation cover. The CMA subregion, Macleay Hastings, in which the BCAA occurs, has been cleared to a greater extent and contains 62% native vegetation cover.
- Despite the clearing in the Macleay Hastings CMA, the percent of native vegetation in the region as a whole is high.

The above information in relation to criteria a-c, demonstrates overall that the red flag areas to be impacted make a low contribution to regional biodiversity values.

Recommendation 3:

That the CE OEH be **satisfied** in accordance with Section 2.4.2.2 of the Biodiversity Certification Assessment Methodology that the red flag area makes 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 area is relatively abundant in the region

b. Percent remaining is high: that the percent remaining of the vegetation type or critically endangered or endangered ecological community comprising the red flag area is relatively high in the region

c. Percent native vegetation (by area) remaining is high: that the percent remaining of all native vegetation cover in the region is relatively high.

Decision on whether impacts on vegetation red flags may be offset

Discussion:

Overall, the red flag criteria have been met and appropriate offsets are available to compensate for the loss of these areas. These red flag areas should be offset in accordance with section 10 of the BCAM.

Recommendation 4:

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

Red flag areas – regional or state biodiversity conservation significance

The following sections and **Recommendations 5 to 7** relate to the criteria in section 2.4.4 of BCAM and the extent to which they are satisfied for impacts on **regional or state biodiversity conservation significance red flag areas**.

For this proposal:

1. The width of a riparian buffer with regional or state biodiversity significance must not be substantially reduced
2. The ecosystem functioning of a state or regional biodiversity link, considering migration, colonisation and interbreeding of plants and animals between two or more larger areas of habitat, must not be substantially impacted,
3. The water quality of a listed SEPP 14 wetland must not be significantly impacted.

Feasibility of options to avoid and minimise

Discussion:

Measures to avoid adverse impacts

There is very little scope for exploring options to avoid adverse impacts on most red flag areas, including riparian buffers, state or regional biodiversity links and SEPP14 coastal wetlands, due to the position of most red flag areas immediately adjacent to the existing airport infrastructure. However, reasonable measures such as redesigning around other red flag areas have been used to minimise impacts to these areas. Alternative development layouts have been extensively considered by the PMHC and alternative options have been discussed with the OEH. All reasonable measures have been considered to avoid impacts on red flag areas. Section 4.2 of the Biocertification Report states '*Port Macquarie Airport is an existing operational airport and the revised OLS boundary and associated vegetation management requirements must be achieved to accord with CASA operating requirements as a Code 4C airport. Implementation of CASA requirements is critical to ensuring the safety of aircraft operations. The airport has existed and operated since 1955 and approval to operate the airport as a Code 4C airport was granted in 2013.The airport must also allocate areas for critical aviation-related infrastructure and facilities within the aviation uses precinct to comply with CASA Code 4C aerodrome standards and these must be in a configuration that maximises the efficiency and safety of airport operations. In this context, the opportunities for red flagged EEC areas to be avoided and for impacts on vegetation remaining within the OLS to be reduced and comply with CASA requirements and operational needs are limited*'. (**Section 4.2 of the Biocertification Report provides greater detail**)

The PMHC has assessed several alternative options to meet the OLS requirements including options that will result in only partial impacts rather than total clearing of some areas, to avoid and minimise impacts to the maximum extent possible. Up to 20.9 ha has been identified within land proposed for conservation measures for tree cropping only, and only if required. This area is labelled as 'conservation cropping' and includes areas where there are occasional trees that may require management based on predicted growth models and where vegetation does not require complete clearing. The OEH has liaised with the PMHC to identify that only single trees will be 'pruned' and subsequently poisoned to prevent regrowth. These trees will be left in-situ to provide fauna habitat (stags) and pruned material will not be removed from the site to minimise indirect impacts and other disturbances.

Appropriate Conservation Management

Appropriate conservation measures would not be feasible to establish over some of the red flag areas immediately adjacent to the airport infrastructure. Most of the red flag areas impacted are on the periphery of the existing development areas making the option of avoiding very difficult. The red flag areas that are within the biodiversity conservation land form part of a larger tract of vegetation and will be managed in accordance with a proposed biobanking agreement, which is one of the proposed conservation measures.

The LEP zonings for the majority of the proposed impact areas are SP2 Infrastructure and R1 General Residential. **Figure 6 of the Biocertification Report** shows the LEP zonings for the assessment area. There are some minor incursions into Environmental zoned land for the OLS provisions, however these cannot be avoided for the proposal.

Even if some of these red flag areas could be retained they would be relatively small and isolated and as such the likely costs to maintain and protect these areas would not be feasible.

Recommendation 5:

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

a. All reasonable measures have been taken to avoid adverse impacts on the red flag areas and to reduce impacts of development on vegetation remaining within the biodiversity certification area

b. Appropriate conservation management arrangements cannot be established over the red flag areas given their current ownership, status under a regional plan and zoning and the likely costs of future management.

Additional assessment criteria for areas with regional or state biodiversity conservation significance
Section 2.4.4 of the BCAM states that:

> *"Where the red flag area has regional or state biodiversity conservation significance as defined in section 2.3 of the methodology, the application for biodiversity certification must demonstrate that conferring biodiversity certification on the red flag area:*
>
> *(a) Will not substantially reduce the width of a riparian buffer with regional or state biodiversity significance, or*
>
> *(b) Will not substantially impact on the ecosystem functioning of a state or regional biodiversity link, this includes considering whether the impacts of conferring biodiversity certification will substantially reduce the migration, colonisation and interbreeding of plants and animals between two or more larger areas of habitat, and*
>
> *(c) Will not significantly impact on the water quality of a major river, minor river, major creek, minor creek or a listed SEPP 14 wetland."*

Discussion:

A) The proposal will reduce the riparian buffers on streams within the BCAA (**Figure 24 of the Biocertification Report**). However, the reduction is not considered to be substantial. The BCAA contains a total of 29.48 ha of riparian buffers of regional or state biodiversity significance. The amount impacted represents 4.55% of riparian buffers present in the BCAA which is less than 1.35ha. Approximately 90.58% of the riparian buffers in the BCAA occur on land proposed for conservation, with the remainder either located on land to be cropped or occurring in retained land.

B) State Biodiversity link - The proposal will impact 0.32 ha of vegetation within a state biodiversity link oriented North-South and identified in the Mid North Coast Regional Strategy (**Figure 25 of the Biocertification Report**). The impacted area represents a minor proportion of the state biodiversity link in the BCAA, with 3.45% of the proportion of the link within the BCAA impacted and a negligible proportion of the link as a whole, impacted. The impacts to the link are caused by two proposed access roads into the airport precinct that are currently largely cleared fire and management trails. Vegetation and habitat directly adjacent to the state biodiversity link to the west will be retained in the BCAA. While not within the boundary of the state biodiversity link, vegetation and habitat directly adjacent to the state link would continue to connect vegetation and habitat to the north and south of the impacted area within the biodiversity link, allowing for migration, colonisation and interbreeding of flora and fauna using this habitat. Hence, the ecosystem functioning of the state biodiversity link will not be substantially impacted by the proposal.

Regional Biodiversity link - The proposal will impact 36.12 ha of vegetation within a regional biodiversity link oriented East-West and identified in the Mid North Coast Regional Strategy. However, of the 36.12 ha of vegetation impacted, 18.89 ha or 52.54% has been previously approved for cropping at the southern end of the runway and to the south of Oxley Drive and 15.21 ha of the area approved for cropping has also been approved for a Private Native Forestry Operation. The total area to be impacted (36.12 ha) represents a moderate proportion (31.73%) of the regional biodiversity link in the BCAA. However, given the existing approvals for cropping

over part of this total impact area in the biodiversity link, the additional area to be impacted as part of the proposal comprises 17.23ha, which represents a small proportion (15.14%) of the regional biodiversity link in the BCAA.

The current approved cropping and Private Native Forestry Operation are existing impacts on the ecosystem functioning of the regional biodiversity link particularly in regards to the movement and interbreeding of some of the animals between the retained vegetation east and west of the runway. However, under the proposal significant areas of un-impacted vegetation will remain (and be protected for active conservation management) both east and west of the impacted area providing north-south connectivity, particularly for mobile fauna such as Koala and Squirrel Glider, between the protected conservation lands east and west of the main runway and national parks estate to the south of the BCAA.

Further, it is proposed to permanently remove trees only from the area immediately south of the runway. To retain and manage the functions of the reginal biodiversity link immediately south of the runway, the PMHC proposes to prepare and implement a Vegetation Management Plan (VMP). This VMP will be an additional conservation measure.

It is proposed to permanently remove trees only, for air safety reasons, from the area immediately south of the runway. The area is a paperbark forest, but the selective removal of larger trees and the retention of other vegetation strata will largely sustain the ecosystem functions in relation to fauna movements and the protection of water quality in the SEPP 14 coastal wetlands. The VMP will also aim to avoid attracting water birds that pose a risk to aviation operations. Where possible, some trees will be retained in the area south of the runway, and glider poles and ropes will be installed to maintain a link for arboreal fauna species between conserved vegetation to the east and west of the runway. There is also the potential to allow some low revegetation/landscaping in the land.

As such, overall, the ecosystem functioning of the regional biodiversity link is not considered to be substantially impacted by the proposal and management of the link will be detailed in a VMP for the proposal.

C) Removal or modification of vegetation from within listed SEPP 14 coastal wetlands or minor creeks could significantly impact water quality where clearing occurs in vegetation types categorised as belonging to the broad vegetation formations ‘freshwater wetland’ and ‘forested wetlands’ (**Figure 26 of the Biocertification Report**). However appropriate controls will be put in place to protect water quality during construction and operation of infrastructure.

The proposal will result in impacts on 13.36 ha of three SEPP 14 coastal wetlands by clearing vegetation for the flood free access road (0.97 ha), registered fire trail (0.13 ha), pipeline easement (0.16 ha), and revised OLS requirements at the southern end of runway (12.10 ha). Of these impacts, 4.41 ha or 33% is already approved for cropping within the SEPP14 boundaries and all the 12.10 ha of impacts on vegetation within SEPP 14 coastal wetlands to meet the OLS requirements will be partial impacts only, i.e. the cropping and poisoning of tress to prevent regrowth with the dead trees left in-situ. Controls associated with diverting water from structures associated with airport infrastructure and away from sensitive habitat areas will also be implemented as part of the development approval process. These controls will prevent adverse impacts to water quality on SEPP 14 coastal wetlands and Wallum Froglet habitat adjacent to vegetation that will be cleared for the proposal (where soil will be exposed by the removal of trees) and SEPP 14 coastal wetlands adjacent to artificial structures.

The impact on SEPP 14 coastal wetlands represents 10.49% of such wetlands in the BCAA.

It is unlikely that clearing in the origin of the two minor creeks would impact water quality. This is because the creeks impacted are first and second order streams, with the second order stream on the edge of the runway no longer receiving waters from any first order streams (the existing runway removed these streams), and the second order stream in the south forming from two very short first order streams i.e. it is not a well-established stream.

As stated above, a VMP will be developed for the southern end of the runway as a conservation measure to guide tree removal and provide for water quality mitigation measures.

No rivers are proposed to be impacted as part of the proposal.

Recommendation 6:

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

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

   or

b. Substantially impact on the ecosystem functioning of a state or regional biodiversity link or substantially reduce the migration, colonisation and interbreeding of plants and animals between two or more larger areas of habitat

   and

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

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

Discussion: The applicant has sufficiently addressed the criteria for impacts on regional or state biodiversity conservation significance red flag areas. As such these impacts may be offset, and the proposal has provided suitable offsets for the impacts to red flag areas in accordance with the BCAM**.**

Recommendation 7:

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

2.1.2 Certification of more appropriate local data

Section 3.4 of the BCAM states that:

> *"The Director General may certify that more appropriate local data can be used instead of the data in the Vegetation Types Database, Vegetation Benchmarks Database and the Threatened Species Profile Database. Local data may be used if the Director General is of the opinion that the data more accurately reflects local environmental conditions. In certifying the use of local data, the Director General must provide reasons for this opinion.*
>
> *Benchmark data that more accurately reflect the local environmental conditions for a vegetation type may be collected from local reference sites, or obtained from relevant published sources using the procedures set out in Appendix 2.*
>
> *The certified local data can then be used in applying the methodology in accordance with any procedures outlined in the Biodiversity Certification Operational Manual."*

Section 4.1 of the BCAM states:

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

Discussion:

The applicant requested that the OEH consider More Appropriate Local Data (MALD) for the benchmark ranges and the percent cleared value for '*Wet heathland and shrubland of coastal lowlands of the North Coast*' **(Section 3 of the Biocertification Report)**. The applicant provided a MALD request for the benchmark values for OEH's consideration. The MALD information applied expert opinion and consulted benchmark ranges for the same vegetation types in immediately adjacent Catchment Management Authorities (CMAs). It was considered that the condition of vegetation types should not vary between immediately adjacent CMAs as much as it might between more separated CMAs. **Table 14 of the Biocertification Report** provides the OEH revised benchmark ranges.

In relation to assigning a more appropriate percent cleared value for '*Wet heathland and shrubland of coastal lowlands of the North Coast*', the applicant consulted an unpublished vegetation mapping report undertaken for the Northern Rivers CMA (ELA 2005) which estimated the percent cleared figure for this vegetation type in the Northern Rivers CMA as 40%. Whilst unpublished, this report was prepared and submitted to a government organisation (i.e. Northern Rivers CMA) and the findings of the report have not been disputed to date. The applicant is not aware of better percent cleared estimates for this vegetation type.

The OEH subsequently convened a panel of its own ecologists and provided the applicant with benchmarks recommended for use in this assessment. The OEH also advised that there appeared to be a strong case to revise the percent cleared value for '*Wet heathland and shrubland of coastal lowlands of the North Coast*' to 40% cleared.

Accordingly, the applicant has used the revised OEH benchmarks and percent cleared values for this vegetation community. The OEH considers that this revised information provides more up to date and accurate information for this vegetation community.

Recommendation 8:

That the CE OEH **certify**, in accordance with Section 3.4 of the Biodiversity Certification Assessment Methodology, that:

a. The use of more appropriate local data (MALD) more accurately reflects local environmental conditions of the biodiversity certification assessment area

   and

b. The MALD can be used in applying the BCAM in accordance with any procedures outlined in the Biodiversity Certification Operational Manual,

for the following reasons:

- The updated OEH benchmarks more accurately reflects the local conditions of the vegetation community on the site.
- The updated percent cleared vegetation is considered to be a more accurate estimate than the information the OEH previously had.

2.1.3 Indirect impact decisions under the Biodiversity Certification Assessment Methodology

Section 2.2(d) of the BCAM requires that the CE OEH must be satisfied that any indirect impacts on biodiversity values resulting from the conferral of biodiversity certification are appropriately minimised in accordance with Section 6 of the BCAM.

Section 6 of the BCAM states that:

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

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

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

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

Discussion:

Indirect impacts have been considered in accordance with the BCAM and have been determined to be negligible on the basis that all direct impacts have been assessed on the assumption of complete loss of all biodiversity values including where these losses are only partial, e.g. for Asset Protection Zones associated with airport infrastructure, the proposed Airport Business Park, the PMHC-owned residential and industrial land within the Thrumster Area 13 Urban Release Area, and clearing of vegetation to ground level within the OLS. In effect, the APZ areas will provide a buffer between the employment and residential lands and the adjacent conservation areas, thereby mitigating and buffering any indirect impacts such as increased weeds, run-off, changed noise and light conditions. Similarly, the OLS clearing adjacent to the existing runway will result in an area of mown/slashed native vegetation, retaining several biodiversity values for a range of species, buffering any indirect impacts to the adjacent conservation areas. **Section 5.6 of the Biocertification Report** describes the indirect impacts of the proposal in detail.

The OEH has provided information to the applicant on how to calculate the indirect impacts of the proposal. The indirect impact areas have been identified adjacent to the direct impact areas and calculated as a partial loss. This partial loss calculation adds further credit requirements to the final offset package for the proposal. The OEH considers that this is a best-practice approach to identifying and calculating indirect impacts.

The biocertification proposal is not subject to a Strategic Assessment under the *Environment Protection and Biodiversity Conservation Act 1999*.

Recommendation 9:

That the CE OEH be **satisfied**, in accordance with Section 2.2(d) of the Biodiversity Certification Assessment Methodology, that any indirect impacts on the biodiversity values of land to which biodiversity certification is conferred are appropriately minimised in accordance with section 6 of the methodology because the application demonstrates:

a. That it is not subject to a Strategic Assessment under the *Environment Protection and Biodiversity Conservation Act 1999*

b. How the proposed ownership, management, zoning and development controls of the proposed biodiversity certification area are intended to mitigate any indirect impacts on biodiversity values. In accordance with Section 6 of the BCAM, the area that was assessed for indirect impacts extended as far as was necessary outside the land proposed for biodiversity certification, to account for any likely adverse indirect impacts on biodiversity values as a result of conferring biodiversity certification

c. That the on-site conservation measures that protect red flag areas have a buffer, and that the size of the buffer areas is appropriate to mitigate any negative indirect impacts from development following the conferral of biodiversity certification, and that the buffers have either been included in conservation measures or identified as retained lands in the Biodiversity Certification Assessment Area.

2.1.4 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

Discussion:

The variation request relates to using excess ecosystem credits from three vegetation communities to offset the deficit of other vegetation communities which have not been able to be fully offset on a like for like basis **(Section 6.1 of the Biocertification Report)**. It should be noted that for the three

vegetation types in deficit, a large proportion of the matching credit types was met on site, however the shortfall is subject to the variation.

The variation relates to the following vegetation communities:

- ecosystem credits generated for '*Blackbutt - bloodwood dry heathy open forest on Quaternary sands of the northern NSW North Coast Bioregion*' (40% cleared in CMA)or '*Scribbly Gum - Red Bloodwood heathy open forest of the coastal lowlands of the NSW North Coast Bioregion*' (25% cleared in CMA) will be used **for those required by** '*Grey Ironbark - Grey Gum open forest of the northern escarpment ranges of the NSW North Coast Bioregion*' (15% cleared in CMA) (all within the vegetation formation 'Dry sclerophyll forests')

- ecosystem credits generated for '*Paperbark swamp forest of the coastal lowlands of the NSW North Coast Bioregion and Sydney Basin Bioregion*' (75% cleared in CMA) or '*Swamp Mahogany swamp forest on coastal lowlands of the NSW North Coast Bioregion and northern Sydney Basin Bioregion*' (75% cleared in CMA) will be used **for those required by** '*Swamp Oak swamp forest of the coastal lowlands of the NSW North Coast Bioregion*' (75% cleared in CMA) (all within the vegetation formation 'Forested wetlands')

- ecosystem credits generated for '*Wallum sedgeland and rushland of near coastal lowlands of the NSW North Coast Bioregion*' (70% cleared in CMA) or '*Coastal freshwater meadows and forblands of lagoons and wetlands' (80% cleared in CMA)* will be used **for those required by** *'Wet heathland and shrubland of coastal lowlands of the NSW North Coast Bioregion' (40% cleared in CMA) (all within the vegetation formation 'Freshwater wetlands')*

The applicant has addressed the criteria in accordance with section 10.2.1 of BCAM as discussed below:

A) The OEH believes the PMHC has taken all reasonable steps to secure conservation measures on the available PMHC-owned land and private land within the BCAA that generated credits to match the credit profile for ecosystem credits. This included consideration of multiple alternative development footprints and modifications to the preferred footprint to minimise impacts and thus the number of credits required, and increasing the area of PMHC-owned land subject to conservation measures to generate the required number of credits. Thus, conservation measures were secured for all vegetation types impacted, except for '*Grey Ironbark - Grey Gum open forest of the northern escarpment ranges of the North Coast*', which was not present in the conservation areas.

   The list of threatened species predicted to occur within the similar vegetation types to be used as offsets instead of the impacted vegetation types, is not significantly different to the list assessed for the vegetation types impacted. Threatened species predicted to occur were generally very similar for vegetation types within the same formation.

B) The alternate ecosystem credits generated from conservation measures are located on land within the same IBRA region as the land proposed for biodiversity certification. The alternate ecosystem credits are located on land containing a vegetation type from the same formation as the vegetation type with credits required for the land proposed for biodiversity certification.

Accordingly, surplus credits generated within the BCAA are eligible to be used to account for the deficit of other vegetation types in accordance with the variation rules in the BCAM.

Recommendation 10:

That the CE OEH be **satisfied** in accordance with Section 10.2.1 of the Biodiversity Certification Assessment Methodology that the matters set out in A and B are satisfied to allow a variation of the offset rules because:

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

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

~~or~~

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

and

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

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

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

and

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

~~or~~

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

and

Recommendation 11:

That the CE OEH **approve** a variation to the offset rules for ecosystem credits as set out in Section 10.2 of the Biodiversity Certification Assessment Methodology.

2.1.5 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

Discussion:

Species credits were in deficit for Koala (323 credits). Species credits are in surplus for Eastern Chestnut Mouse (131), Squirrel Glider (203 credits) and Wallum Froglet (868). **(Section 6.2 of the Biocertification Report)**

The applicant has addressed the criteria in accordance with section 10.4.1 of BCAM as discussed below:

A) The OEH believes that the PMHC has taken all reasonable steps to secure the number and types of species credits on the available PMHC-owned land and private land within the BCAA. This included consideration of multiple alternative development footprints and modifications to the preferred footprint to minimise impacts and thus the number of credits required, and increasing the area of PMHC-owned land subject to conservation measures to generate the required number of credits. Thus, conservation measures were secured for all species impacted. The result of securing conservation measures was that all species credits requirements were met for three of the four species. Therefore, the variation request is only for one species, Koala.

   Whilst a significant proportion of Koala credits was generated by the on-site conservation measures (1,776 credits out of 2,099 credits required i.e. 84.61%), not all required Koala credits could be generated within the BCAA. The PMHC prefers to secure Koala credits from within the PMHC LGA and it is likely that these credits will be secured via the same site that is secured to meet the deficit of Blackbutt-Tallowwood credits. However, should this not be achieved, this request for variation is made to use 'surplus' species credits from within the BCAA.

B) In relation to the matters set out in Part B of Section 10.4.1 of BCAM, alternate species credits relate to species from the same kingdom: the species with surplus species credits, Squirrel Glider, Wallum Froglet and Eastern Chestnut Mouse, are all in the Kingdom Animalia. Notwithstanding this, it is proposed that surplus credits from Squirrel Glider and Eastern Chestnut Mouse are used to offset impacts to Koala prior to surplus credits from Wallum Froglet. Squirrel Glider and Eastern Chestnut Mouse are both mammals, and therefore more like Koala than Wallum Froglet, an amphibian species. The Squirrel Glider also utilises similar habitat to Koala.

   Alternate species credits are generated from conservation measures located on land within the same IBRA region as the land proposed for biodiversity certification. The four species for which alternate species credits relate are all listed as vulnerable species in Schedule 2 of the TSC Act. None of the species considered are listed as critically endangered on the TSC Act.

Hence, surplus credits generated within the BCAA are eligible to be used to account for the deficit of other species in accordance with the variation rules in the BCAM.

Recommendation 12:

That the CE OEH be **satisfied** in accordance with Section 10.4.1 of the Biodiversity Certification Assessment Methodology that the matters set out in A and B are satisfied to allow a variation of the offset rules because:

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

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

and

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

and

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

B. Secondly, the alternate species credits:

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

and

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

and

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

~~or~~

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

and

Recommendation 13:

That the CE OEH **approve** a variation to the offset rules for species credits as set out in Section 10.4 of the Biodiversity Certification Assessment Methodology.

DECISIONS OF THE OEH CHIEF EXECUTIVE – BIODIVERSITY CERTIFICATION OF PORT MACQUARIE AIRPORT AND SURROUNDING LANDS

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

I, Kate Wilson, Executive Director Regional Operations of the Office of Environment and Heritage as delegate of the Chief Executive of the Office of Environment and Heritage, having considered the *Biodiversity Certification of Land: Port Macquarie Airport and Surrounding Lands Recommendation Report for the Chief Executive of the Office of Environment and Heritage* and the attachments to the that report:

Red flag variations for vegetation red flag areas

1. am **satisfied/~~not satisfied~~** in accordance with Section 2.4.1 of the Biodiversity Certification Assessment Methodology (BCAM) that the application for biodiversity certification has adequately considered the feasibility of options to avoid impacts on red flag areas because the application **demonstrates/~~fails to demonstrate~~** that:

    a. All reasonable measures have been taken to avoid adverse impacts on the red flag areas and to reduce impacts of development on vegetation remaining within the biodiversity certification area

    b. Appropriate conservation management arrangements cannot be established over the red flag areas given their current ownership, status under a regional plan and zoning and the likely costs of future management.

2. am **satisfied/~~not satisfied~~** in accordance with Section 2.4.2.1 of the BCAM that the red flag area has low viability or is not viable because the application **demonstrates/~~fails to demonstrate~~** that:

    a. The current or future uses of land surrounding the red flag area where biodiversity certification is to be conferred reduce its viability or make it unviable. Relatively small areas of native vegetation surrounded or largely surrounded by intense land uses, such as urban development, can be unviable or have low viability because of disturbances from urbanisation, including edge effects.

    ~~b. The 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.~~ Not relevant to application

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

3. am **satisfied/~~not satisfied~~** in accordance with Section 2.4.2.2 of the BCAM that the red flag area on land proposed for biodiversity certification makes a low contribution to regional biodiversity values having considered **that/that none of** the following apply:

    a. Relative abundance: that the vegetation type or critically endangered or endangered ecological community comprising the red flag area is relatively abundant in the region.

    b. Percent remaining is high: that the percent remaining of the vegetation type or critically endangered or endangered ecological community comprising the red flag area is relatively high in the region.

    c. Percent native vegetation (by area) remaining is high: that the percent remaining of all native vegetation cover in the region is relatively high.

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

4. am **satisfied/~~not satisfied~~** in accordance with Section 2.2(b) of the BCAM, having considered the criteria in Section 2.4, that the impacts on the red flag 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 2.4.1 of the BCAM that the application for biodiversity certification has adequately considered the feasibility of options to avoid impacts on red flag areas because the application **demonstrates/fails to demonstrate** that:

    a. All reasonable measures have been taken to avoid adverse impacts on the red flag areas and to reduce impacts of development on vegetation remaining within the biodiversity certification area.

    b. Appropriate conservation management arrangements cannot be established over the red flag areas given their current ownership, status under a regional plan and zoning and the likely costs of future management.

6. 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.

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

Certification of More Appropriate Local Data (MALD)

8. **certify/~~do not certify~~** in accordance with Section 3.4 of the BCAM that:

    a. the use of MALD more accurately reflects local environmental conditions of the assessment area.

    b. the MALD can be used in applying the BCAM in accordance with any procedures outlined in the Biodiversity Certification Operational Manual.

For the following reasons:

- the MALD provides a more considered assessment of the benchmark values of the vegetation community, and
- the MALD provides a more accurate estimate of the percent cleared for the vegetation community.

Indirect impacts

9. am **satisfied/~~not satisfied~~** that in accordance with Section 2.2(d) of the BCAM, that any indirect impacts on biodiversity values of land to which biodiversity certification is conferred are appropriately minimised in accordance with section 6 of the methodology because the application **demonstrates/~~fails to demonstrate~~**:

    a. 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.

    b. That the on-site conservation measures that protect red flag areas have a buffer, and that the size of the buffer areas is appropriate to mitigate any negative indirect impacts from development following the conferral of biodiversity certification, and that the buffers have either been included in conservation measures or identified as retained lands in the biodiversity certification assessment area.

Variation to the offset rules – ecosystem credits

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

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

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

~~or~~

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

and

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

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

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

and

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

~~or~~

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

and

11. **Approve/~~do not approve~~** a variation to the offset rules for ecosystem credits as set out in Section 10.2 of the Biodiversity Certification Assessment Methodology.

Variation to the offset rules – species credits

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

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

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

and

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

and

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

B. Secondly, the alternate species credits:

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

and

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

and

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

~~or~~

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

and

13. **Approve/~~do not approve~~** a variation to the offset rules for species credits as set out in Section 10.4 of the Biodiversity Certification Assessment Methodology.

18.7.18

KATE WILSON **Date**
Executive Director Regional Operations
As delegate of the Chief Executive
Office of Environment and Heritage

Biodiversity Certification of Land: Port Macquarie Airport and surrounding lands

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

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

Contents

1 BACKGROUND AND DOCUMENTS CONSIDERED

Name of recommending officer:	Anthony Lean, Chief Executive, Office of Environment and Heritage
Name of decision maker:	Gabrielle Upton, Minister for the Environment, Minister administering the *Threatened Species Conservation Act 1995*
TRIM container and record numbers:	SF17/18514, DOC18/20035
Name of Planning Authority (applicant):	Port Macquarie – Hastings Council
Date application received:	10 February 2016
Dates of public notification under Section 126N:	17 May 2016 to 17 June 2016

1.1 THE PROPOSAL

The proposal involves the future:

- implementation of the Port Macquarie Airport Master Plan including:
    - development of land required for the ongoing operational use of the existing Port Macquarie Airport (maintenance of the runway strip and associated obstacle limitation surface (OLS);
    - extension and/or relocation of critical aviation-related infrastructure and facilities in accordance with the revised Civil Aviation Safety Authority (CASA) aerodrome standards;
    - development of employment and airport-related accommodation facilities within the Airport Business Park precinct and the establishment of flood-free road access to the Port Macquarie Airport.
- development of land proposed for residential and light industrial development in the Partridge Creek Residential, Partridge Creek Industrial, and West Lindfield neighbourhoods of the Thrumster Urban Release Area, located immediately south of the Port Macquarie Airport, and their associated roads, Asset Protection Zones (APZs), easements and fire trails.

The Port Macquarie Airport Master Plan is detailed in Figure 1 below with the overall proposal depicted in Figure 2 below.

The Port Macquarie Hastings Council (PMHC) anticipates that this is a long-term proposal spanning more than 20 years.

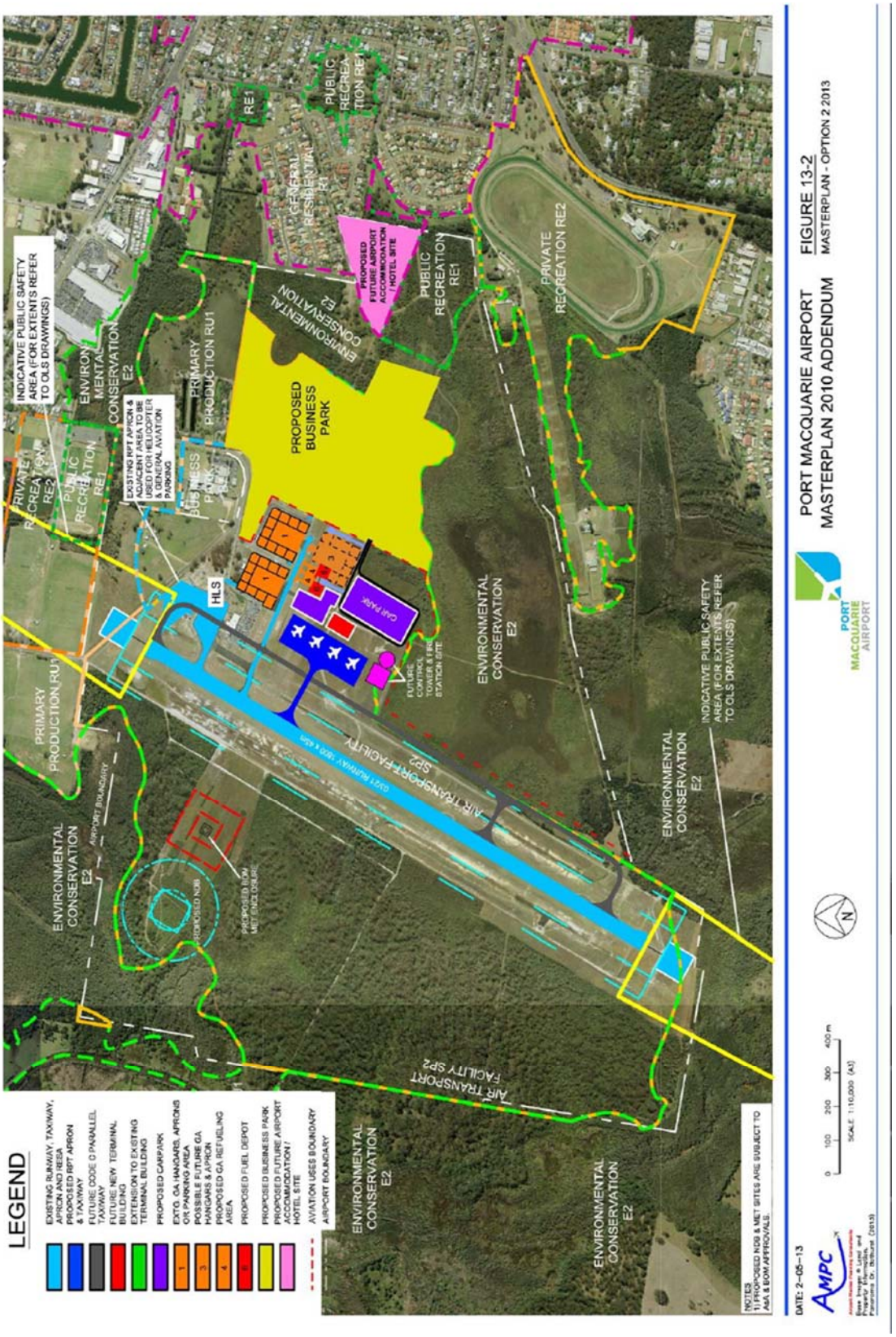

Figure 1: Port Macquarie Airport Master Plan

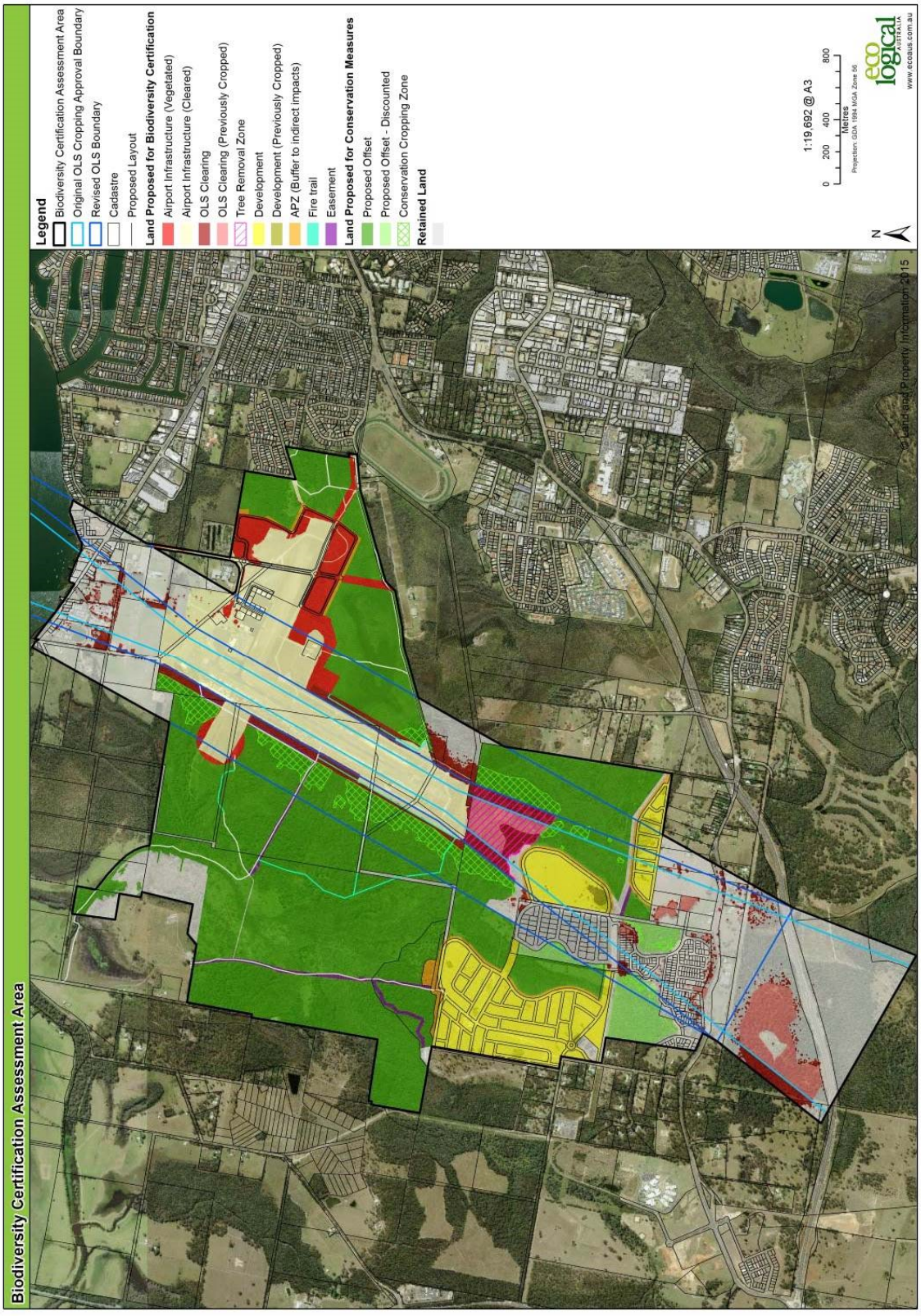

Figure 2: The proposal

1.2 THE BIODIVERSITY CERTIFICATION APPLICATION

A biodiversity certification application was lodged by the PMHC on 10 February 2016 and receipted by the OEH with exhibition requirements on 9 March 2016.

A biodiversity assessment of the proposal was undertaken by Eco Logical Australia Pty Ltd (ELA) in accordance with the Biodiversity Certification Assessment Methodology (BCAM) and a biodiversity certification assessment report strategy was lodged with the application.

After public exhibition, the biodiversity certification assessment report and strategy was subject to minor amendments to incorporate some issues raised in submissions. The PMHC adopted the amended report entitled '*Port Macquarie Airport Master Plan and Port Macquarie - Hastings Council owned land within the Thrumster Area 13 Urban Release Area: Biodiversity Certification Assessment Report & Biocertification Strategy—Application to Minister*' dated 24 October 2016 (hereafter referred to as the '**Biocertification Report'**) and then forwarded it and the response to submissions report to the OEH on 28 October 2016.

An application for biodiversity certification must follow the requirements of Part 7AA of the TSC Act, including the BCAM and the requirements of Section 126K of the TSC Act, i.e. be accompanied by a Biodiversity Certification Strategy (BCS).

1.3 THE BIODIVERSITY CERTIFICATION ASSESSMENT AREA

The Biodiversity Certification Assessment Area (BCAA) is shown in Figure 3 below and includes 146 lots/parcels of land. The BCAA totals 1024.48 ha and currently comprises 394.88 ha of cleared land and 629.6 ha of native vegetation

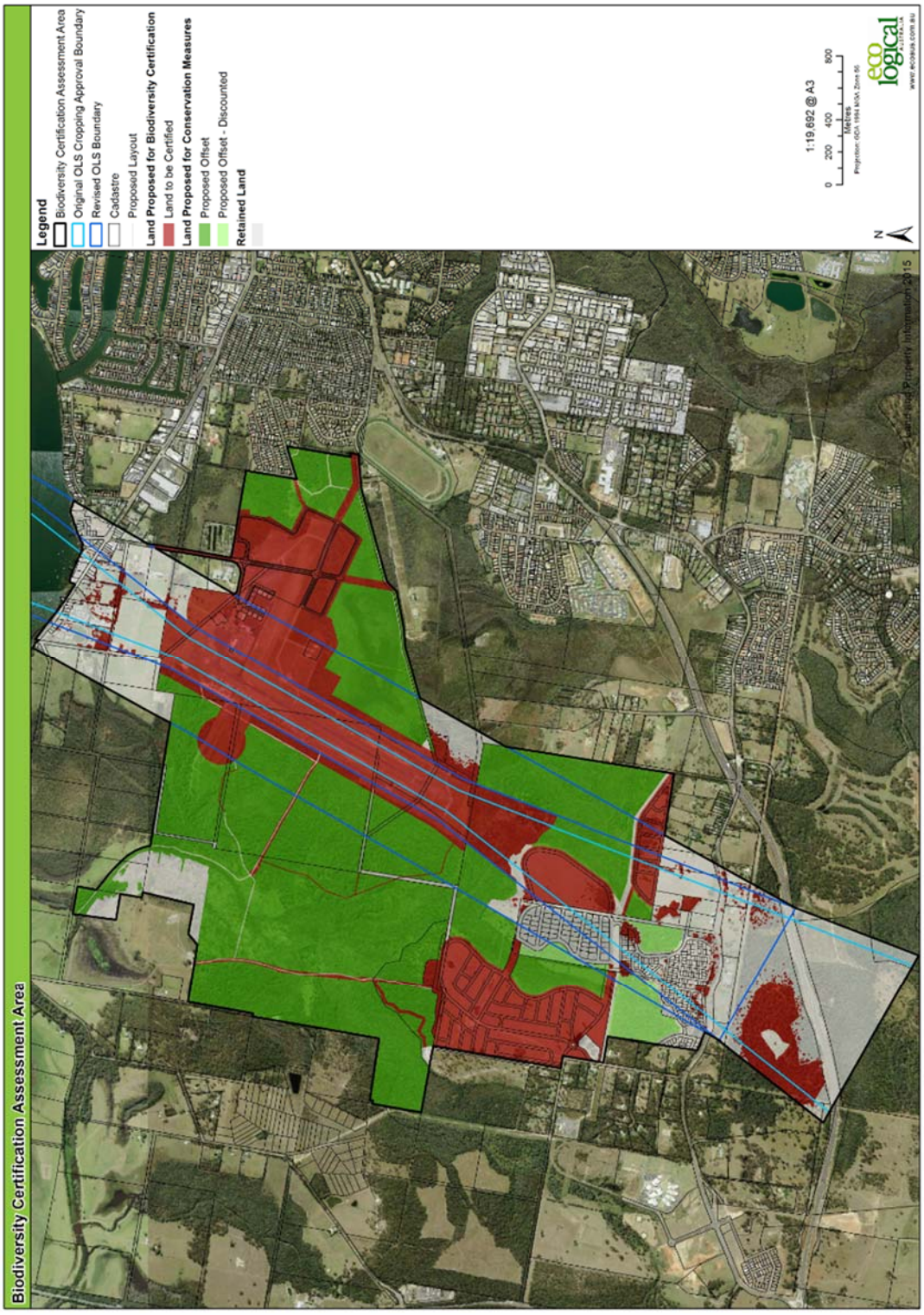

Figure 3: Biodiversity certification assessment area

1.4 LIST OF DOCUMENTS BEFORE THE DECISION MAKER

1.4.1 Documents provided by the applicant

1. '*Port Macquarie Airport Master Plan and port Macquarie-Hastings Council owned land within the Thrumster Area 13 Urban Release Area' – Biodiversity Certification Assessment Report & Biocertification Strategy – Application to Minister.* (DOC16/548565-7)

2. Biodiversity Certification Application form dated 10/02/2016 submitted by Port Macquarie-Hastings Council. (DOC16/74807-1)
3. Port Macquarie-Hastings Council Ordinary Council Meeting 10/08/2016, Post Exhibition report. (DOC16/548565-6)

1.4.2 Other documents considered by the recommending officer

1. Biodiversity Certification of Land: Port Macquarie Airport and surrounding lands - Recommendation Report for the Chief Executive of the Office of Environment and Heritage - For conferring or refusing to confer biodiversity certification of land under Part 7AA of the *Threatened Species Conservation Act 1995*

2. Department of Environment and Conservation (DEC) 2004 *Threatened species survey and assessment; guidelines for developments and activities (working draft)* New South Wales Department of Environment and Conservation, Hurstville, NSW.

3. Department of Environment and Climate Change (DECC) 2008. *Vegetation Types Database*, NSW Department of Environment and Climate Change, Sydney. Available http://www.environment.gov.au/biobanking/VegTypeDatabase.html

4. Office of Environment and Heritage (OEH) 2015. *Biodiversity Certification Operational Manual*. Office of Environment and Heritage, May 2015.

5. Department of Environment, Climate Change and Water (DECCW) 2011. *Biodiversity Certification Assessment Methodology*. NSW Department of Environment Climate Change and Water, Sydney.

6. Eco Logical Australia (ELA) 2005. *A Vegetation Map for the Northern Rivers Catchment Management Authority to Support Application of the Biodiversity Forecast Toolkit*. Report prepared for the Northern Rivers Catchment Management Authority.

7. Office of Environment and Heritage (OEH) 2014. *Atlas of NSW Wildlife database*. Office of Environment and Heritage.

8. Port Macquarie Hastings Council (PMHC) 2010. *Port Macquarie Airport Master Plan 2010*, Port Macquarie Hastings Council.

9. Port Macquarie Hastings Council (PMHC) 2011. *Port Macquarie Hastings Urban Growth Management Strategy 2011*, Port Macquarie Hastings Council.

10. NSW Department of Planning 2009. Mid North Coast Regional Strategy, NSW Department of Planning.

11. Scotts, D. (2003). Key habitats and corridors for forest fauna: a landscape for conservation in north-east New South Wales. NPWS Occasional Paper 32

2 MATTERS FOR THE MINISTER TO CONSIDER

This Recommendation Report evaluates the matters that are relevant for the Minister for the Environment to consider in accordance with the Biodiversity Certification Assessment Methodology (BCAM) and Part 7AA of the *Threatened Species Conservation Act 1995* (TSC Act). **Table** 1 below lists the relevant matters and the corresponding section of this Recommendation Report.

Table 1 Matters for the Minister to consider that are relevant to this proposal

TSC Act Section	Minister's Decisions	Recommendation Report section
126N	Public notification requirements	1.10
1260, 126P	Biodiversity certification to be conferred only if biodiversity values are improved or maintained	1.2
126H	Decision to confer certification on the proposed biodiversity certification assessment area	1.3

1.1 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:

The biocertification report was placed on public exhibition by the Port Macquarie Hastings Council (PMHC) from 17 May 2016 to 17 June 2016. The following information satisfies the above criteria:

- The biocertification report was placed on public exhibition from 17 May 2016 to 17 June 2016 at the PMHC's Port Macquarie office and made available on the PMHC's website. The exhibition was also notified in the Sydney Morning Herald (a newspaper circulating throughout NSW) and the Port Express, a local newspaper. In addition, all landowners within and adjoining the Biodiversity Certification Assessment Area (BCAA) were notified of the public exhibition by the PMHC in writing.
- The notice invited the public to make comments.
- Copies of the documents were available in soft copy on the PMHC's website and at its offices in hard copy.
- A response to submissions report was prepared by the PMHC and provided to the OEH for review.
- Following public exhibition, the PMHC made minor changes to the biocertification report, including changes to the ranking of existing conservation measures for the deficit in Blackbutt forest and koala credits, and changes to the statement of commitments to strengthen and clarify existing conservation measures.
- OEH considers that these minor changes did not warrant further public exhibition of the report.

Recommendation 1:

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.

1.2 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…"

Improve or maintain biodiversity values

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

> *"Biodiversity values are to be regarded as being improved or maintained (as shown in the application for biodiversity certification) if:*
>
> *(a) The conferral of biodiversity certification on land does not directly impact on biodiversity values in a red flag area that is on land where certification is conferred*
>
> *OR*
>
> *(b) The conferral of biodiversity certification on land does directly impact on biodiversity values in a red flag area but the Director General is satisfied, having considered the criteria in section 2.4, that impacts on the red flag area may be offset in accordance with the rules and requirements set out in section 10 of the methodology*
>
> *AND*
>
> *(c) The direct impacts on the biodiversity values of land to which biodiversity certification is conferred are offset in accordance with the rules and requirements set out in section 10 of the methodology*
>
> *AND*
>
> *(d) The Director General is satisfied that any indirect impacts on the biodiversity values of land to which biodiversity certification is conferred are appropriately minimised in accordance with section 6 of the methodology."*

Discussion:

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

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

The OEH Chief Executive is satisfied that any indirect impacts on the biodiversity values of land to which biodiversity certification is conferred are appropriately minimised in accordance with section 6 of BCAM.

The biocertification report assesses the impacts of biodiversity certification on biodiversity values and has been prepared in accordance with the Biodiversity Certification Assessment Methodology.

Recommendation 2:

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

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

Discussion:

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

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

Recommendation 3:

That the Minister **confer** biodiversity certification on the proposed 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 accompanying this report and approving its publication in the Government Gazette.

DECISIONS OF THE MINISTER FOR THE ENVIRONMENT– BIODIVERSITY CERTIFICATION OF PORT MACQUARIE AIRPORT AND SURROUNDING LANDS

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

I, Anthony Lean, Chief Executive of the Office of Environment and Heritage, as delegate of the Minister for the Environment, having considered the *Biodiversity Certification of Land: Port Macquarie Airport and Surrounding Lands Recommendation Report for the Minister for the Environment* and the attachments to that 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 sections 126O and 126P of the *Threatened Species Conservation Act 1995* that on the basis of a biodiversity certification assessment for the Port Macquarie Airport and surrounding lands 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 4.2 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 **Date**
Chief Executive, Office of Environment and Heritage
As delegate of the Minister for the Environment