



Department of Planning and Environment

# **Recommendation report - standard biodiversity certification application**

**Recommendation Report for the delegate of  
Minister for Energy and Environment, for  
conferring or refusing to confer biodiversity  
certification of land under Part 8 of the  
*Biodiversity Conservation Act 2016*  
Biodiversity certification application for  
45 Murrumbidgee Road, Chain Valley Bay**

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## Executive summary

The Proponent (MHE Property) is seeking necessary approvals for a proposed Manufactured Home Estate (MHE) and subdivision at 45 Mullyway Drive, Chain Valley Bay, within the Central Coast Council Local Government Area (LGA) of NSW. On 12 March 2021, the Biodiversity and Conservation Division (BCD) Hunter Central Coast Planning team received an application for biodiversity certification to address the biodiversity impacts of the proposed development.

Standard biodiversity certification has been selected by the Proponent to address impacts to biodiversity and assessment under the *Biodiversity Conservation Act 2016* (BC Act). The proponent has sought biodiversity certification at the rezoning stage for certainty at the development application stage. The Biodiversity Certification Assessment Report (BCAR) finds that the development will impact some habitat for a threatened ecological community (TEC) and threatened species; however, the impacts are considered acceptable as outlined in this Recommendation Report.

The proposal would provide for approximately 18 R2 low density residential lots and 1 RE2 Private Recreation lot to facilitate the development of a MHE (of approximately 142 homes) as well as 1 C2 Environmental Conservation lot.

A total of 8.41 hectares (ha) would be certified for development, representing approximately 79.3% of the assessment area. Of the 8.41 ha to be certified 1.17 ha is comprised of native vegetation in good to poor condition, the remaining area is comprised of grassland and disturbed areas. Vegetation of the site that is of high biodiversity value will be retained as Avoided and Conservation Land comprising 2.2 ha or 20.7% of the assessment area. The overall balance of Certified Land compared to Avoided and Conservation Land is consistent with the avoid and minimise hierarchy, with residual impacts to be offset, as outlined in the BC Act and the Biodiversity Assessment Method (BAM).

Impacts of the proposal will be mitigated by implementation of a Biodiversity Management Plan (BMP), Stormwater Strategy and Biodiversity Certification Agreement (BCA). Unavoidable impacts will be offset by the retirement of credits via payment into the Biodiversity Conservation Fund (BCF).

**BCD recommends that the proposal is suitable for biodiversity certification under section 8.2 of the *Biodiversity Conservation Act 2016*.**

# 1. Purpose of document

This report provides a recommendation to the decision-maker, as delegate to the Minister for Environment, on whether to confer biodiversity certification under section 8.2 of the BC Act. It documents the Department's review of the application against the requirements of the BC Act and the BAM.

The Minister's power to confer or refuse to confer biodiversity certification for non-strategic applications under Part 8 of the BC Act has been delegated to band 2 and 3, Senior Executives of the Department.

<b>Name of recommending officer:</b>	<b>Sarah Warner, Senior Conservation Planning Officer, Department of Planning and Environment</b>
Name of decision-maker	Brendan Bruce, A/Deputy Secretary, Biodiversity, Conservation and Science, Department of Planning and Environment, as delegate to the Minister for Energy and Environment
CM9 container and record numbers:	Container: SF22/91721 This recommendation report: DOC22/671334-4
Name of applicant/s:	MHE Property Co Pty Ltd ATF MHE Land Trust 3
Date application received:	12 March 2021
Dates of public notification under section 8.6(3):	4 May 2022 – 3 June 2022 (Daily Telegraph & Central Coast Advocate) 9 May 2022 – 8 June 2022 (Vivacity company website) 24 May – 23 June 2022 (DPE 'Have your say website')

# 2. Documents before the decision-maker

Tab	Document
1	Decision Report
2	Biodiversity Certification Order
3	Biodiversity Certification Agreement
4	Recommendation Report
5	Application for Biodiversity Certification
6	The proponents Biodiversity Certification Assessment Report
7	Stormwater Management Strategy
8	Correspondence from the Credit Supply Task Force
9	Correspondence from the Minister for Planning
10	Conservation Measures Implementation Plan

## 3. Overview of application

### 3.1 Background

The Biodiversity Certification Area for 45 Malloway Drive, Chain Valley Bay covers 10.61 ha of land within the Central Coast Council local government area. The site is surrounded by a State Recreation Area to the north, vacant vegetated land to the east, an existing Manufacture Home Estate (MHE) to the west and land to the south that is currently subject to a planning proposal (PP\_2017CCOAS\_003\_02) for low density development and ongoing conservation. The site can be divided into three distinct areas:

- a dwelling and ancillary development in the north of the site
- a generally cleared area predominately used for rural purposes through the majority and centre of the site
- a heavily vegetated area along the southern boundary of the site.

The Proponent seeks to develop the site in a way that maintains the biodiversity values on-site while allowing development in the areas of lower quality vegetation. The proposal has been designed to limit future development impact to the high biodiversity value in the south of the site.

#### Current and proposed land use

The Planning Proposal, that was consistent with, and running parallel with, the Biodiversity Certification Application, has recently been approved. The site was rezoned from C3 Environmental Management under the Central Coast Consolidated LEP 2022 to:

- RE2 to facilitate development of a Manufactured Home Estate
- R2 to allow low-density residential lots
- C2 Environmental Conservation Zone to improve conservation of:
  - the TEC Swamp Sclerophyll Forest on Coastal Floodplains
  - mapped 'important area' habitat for the critically endangered Swift Parrot
  - breeding habitat for the Masked Owl
  - part of a regional corridor.

The recently approved planning proposal also amended the lot size control in the area proposed to be rezoned R2 to 450 m<sup>2</sup>.

The proposed development is consistent with the Central Coast Regional Plan 2041 and North Wyong Structure Plan (NWSSP) that identify the site for future residential purposes and as a regional biodiversity corridor in the south.

#### Reason for certification application

The proponent has sought biodiversity certification at the rezoning stage for certainty at the development application stage.

#### Summary of the proposal

The application for Biodiversity Certification was made by Travers Bushfire Ecology (the Accredited Assessors) on behalf of the Proponent.

The biodiversity certification assessment area covers approximately 10.61 ha. The following is proposed:

- in perpetuity protection of 2.2 ha Avoided and Conservation Land that is of high biodiversity value being comprised of:
  - the TEC Swamp Sclerophyll Forest on Coastal Floodplains - Plant Community Type (PCT) 1718 Swamp Mahogany – Flax-leaved Paperbark Swamp Forest on coastal lowlands of the Central Coast, Sydney Basin Bioregion
  - mapped important area habitat for the critically endangered Swift Parrot
  - a known Masked Owl breeding site
  - vegetation and habitat that forms part of a regional biodiversity corridor.
- Biodiversity Certification of 8.41 ha of land for development. Biodiversity attributes and impacts associated with the certification of this land are summarised below:

Impacted plant community type/ TEC	Area impacted (ha)	Number of ecosystem credits
PCT 1636 Scribbly Gum Red Bloodwood <i>Angophora inopina</i> heathy woodland on lowlands of the Central Coast, Sydney Basin Bioregion	7.1 ha*	32**

\*1.17ha of PCT 1636 in good to poor condition and 6ha of PCT1636\_grassland

\*\*ecosystem credits also account for three confirmed threatened micro bat species the Large Bent-winged Bat (*Miniopterus orianae oceanensis*), Little Bent-wing Bat (*Miniopterus australis*) and East Coast Free-tailed Bat (*Mormopterus norfolkensis*).

Impacted species	Area of habitat	Number of species credits
Swift Parrot <i>Lathamus discolor</i>	0.03 ha	1
Southern Myotis <i>Myotis Macropus</i>	7.1 ha	49
Masked Owl <i>Tyto novaehollandiae</i>	0.04 ha	1
Brushed- tailed Phascogale <i>Phascogale tapoatafa</i>	1.2 ha	35

## History of the proposal

Central Coast Council resolved to prepare a Planning Proposal for 45 Malloway Drive Chain Valley Bay (PP-2021-691) (RZ/3/2019) on 23 March 2020.

Gateway Determination for the Planning Proposal was granted by the DPIE on 28 July 2020 subject to several conditions.

Central Coast Council initially forwarded the Planning Proposal, a Biodiversity Constraints Assessment Report provided by Travers Bushfire and Ecology (September 2019) and a masked owl report prepared by John Young to the Department (BCD) for comment on 22 September 2020.

The BCD wrote to Central Coast Council on 15 October 2020 with several recommendations including that:

- further ecological surveys be conducted
- the development footprint be reduced to protected masked owl breeding habitat as per owl specialist recommendations

- the proposed C2 (Environmental Conservation) zone be aligned with the C2 zone on adjacent properties.

The BCAR (Version 1, March 2021), including application form and supporting documents, was received by the BCD on 12 March 2021. Subsequent BCAR versions (Version 2, August 2021, and Version 3, January 2022) were then provided to address BCD requests, including request to:

- address potential edge effects to the Swamp Sclerophyll Forest EEC
- minimise indirect impacts such as light and noise
- justify PCTs selected
- complete targeted flora surveys
- include ecosystem credit species
- justify the exclusion of species credit species
- provide further information regarding SAll for the Swift Parrot
- agreement on the location of the C2 boundary
- address hydrological impacts to the EEC and threatened species habitat
- justify of exclusion of candidate species
- provide more information regarding the legally binding conservation mechanism to be used to protect the conservation land.

Issues raised by BCD were identified as being reasonably addressed and / or as being resolvable via recommended conditions as part of the BCA.

The BCAR (Version 3) was publicly exhibited between May 2022 and June 2022. No comments were received.

### 3.2 The biodiversity certification assessment area

The proposed Biodiversity Certification Assessment Area (BCAA) is shown in Figure 1 and is described as Lot 5 DP 1228880, 45 Malloway Drive, Chain Valley Bay.

The land proposed for Biodiversity Certification totals 8.41 ha with the Avoided and Conservation Land comprised of 2.2 ha.

Land use	Area (ha)	Native vegetation extent (ha)	% total of BCAA
Biodiversity certification assessment area (BCAA)	10.61	3.62	100
Land proposed for biodiversity certification (land to be developed)	8.41	7.1*	79.3
Retained land (land within the BCAA that is not proposed for certification)	Nil	Nil	Nil
Avoided and conserved land (land that is avoided and conserved for biodiversity reasons)	2.2	2.2	20.7

\*1.17ha of PCT 1636 in good to poor condition and 6ha of PCT1636\_grassland

## Maps

A series of maps have been included in the section below to provide a visual reference to the distribution of biodiversity values across the assessment area. Each impacted threatened entity is included in a map. These maps have been presented as a standalone section to provide an initial visual reference for the rest of the report. All maps in this Recommendation Report have been created using data supplied by the authors of the BCAR.

Figure 1 shows the Biodiversity Certification Assessment area, Land proposed for Biodiversity Certification, Avoided Land and Conservation Land.

Figure 2 shows the proposed land uses.

Figure 3 shows the distribution of PCTs, vegetation zones and habitat trees, also restoration targets from the draft CMIP.

Figure 4 shows the species polygon used to determine species credit requirements for the southern myotis, brush-tailed phascogale and Masked Owl.





Figure 5 shows the species polygon used to determine species credit requirements for the critically endangered Swift Parrot.

Figure 6 Mapped Important habitat for the critically endangered Swift Parrot.





Produced by H. C. BCO Planning; 30/11/2022  
 Document Path: P:\Work\ROG\Projects\Planning\Central Coast\MulloyRoad\_45\MulloyRoad\_45.mxd

-  Biodiversity certification assessment area
-  Land proposed for biodiversity certification
-  Avoided land
-  Conservation land



Datum/Projection: GCS GDA 1994



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**Figure 1** - Biodiversity certification assessment area, land proposed for biodiversity certification, avoided land and conservation land.

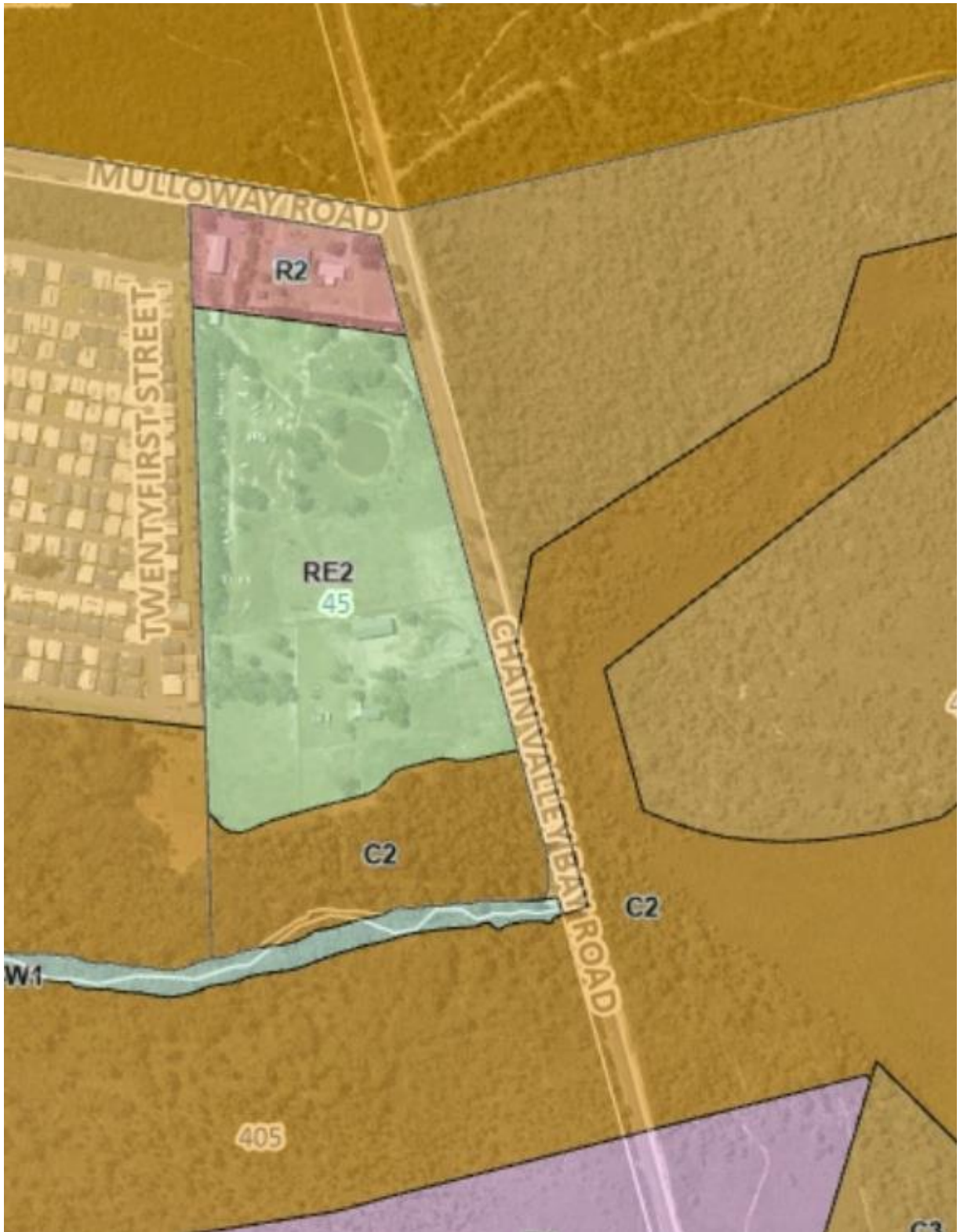
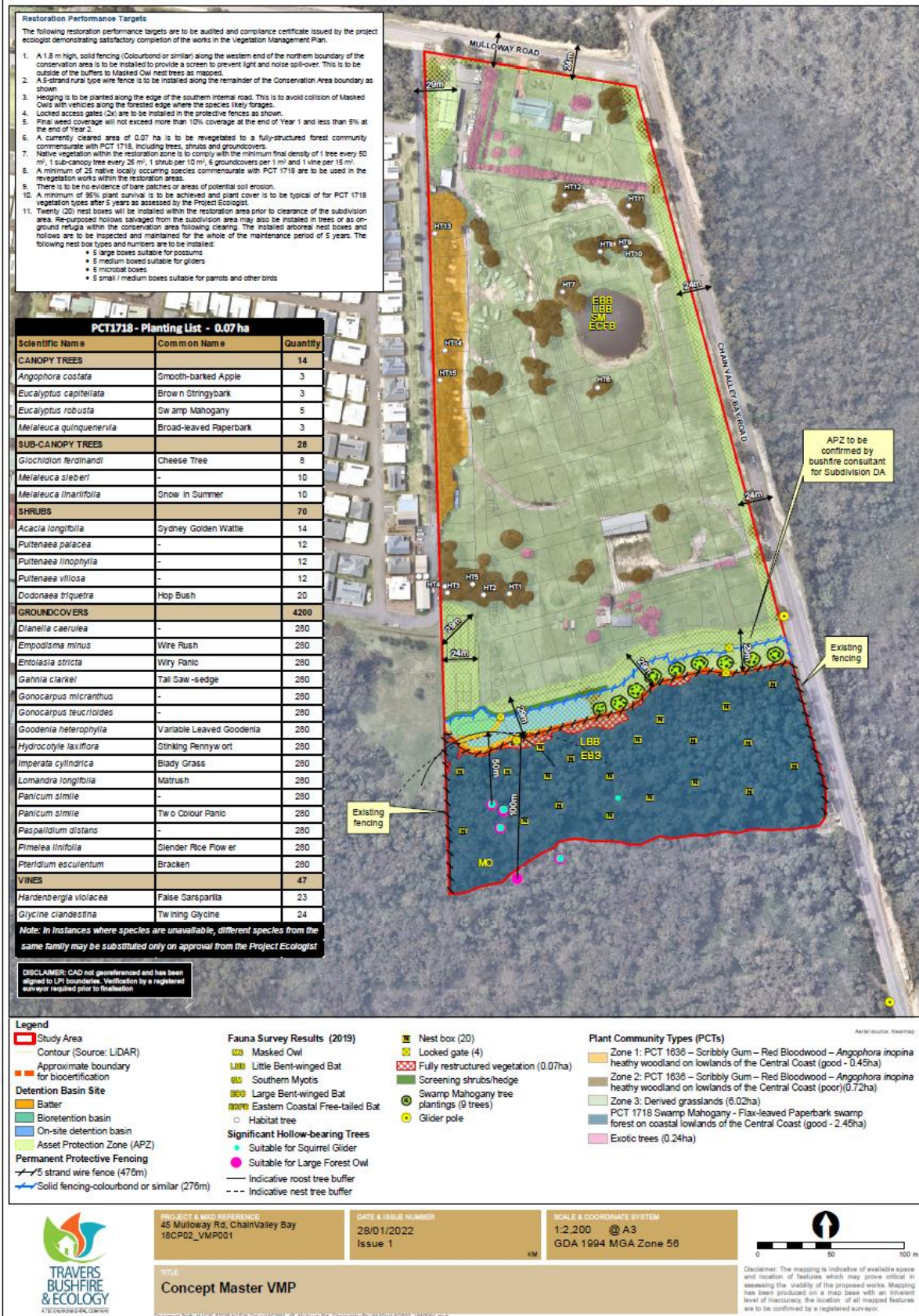


Figure 2 - Land Zoning Map 2022





**Figure 3 - The distribution of PCTs, vegetation zones, habitat trees and vegetation management strategies.**



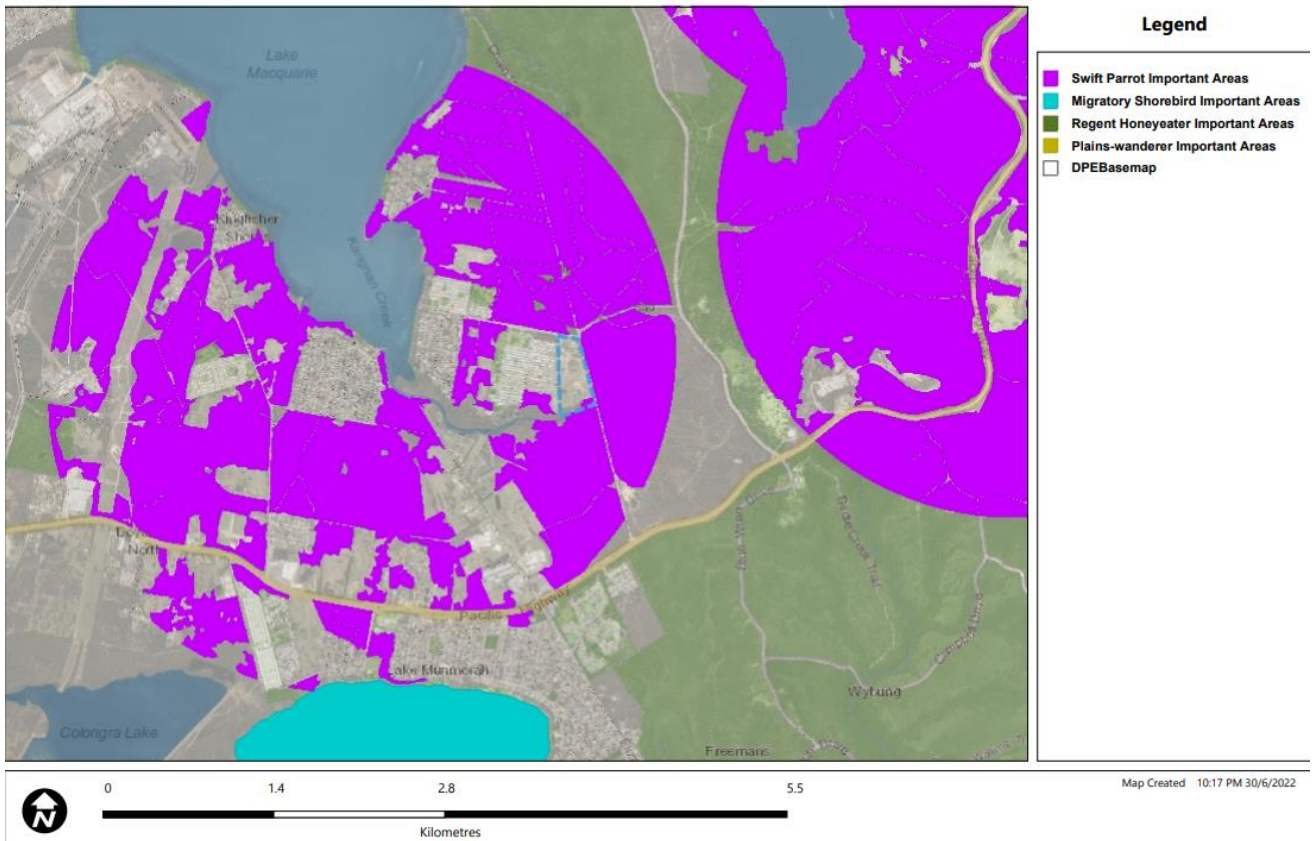


**Figure 4** - The species polygon used to determine species credit requirements for the southern myotis, brush-tailed phascogale and masked owl.



**Figure 5** - The species polygon used to determine species credit requirements for the critically endangered Swift Parrot.





**Figure 6** - Mapped Important habitat for the critically endangered Swift Parrot.

### 3.3 Land ownership

The holding comprises entirely of Lot 5 DP 1228880, 45 Mullyoway Drive Chain, Valley Bay. Applicants need to be legal owners of the land (registered on the Certificate of Title) proposed for certification or have obtained written approval from the legal owners of the land proposed. MHE Property (the proponent) have obtained written approval for biodiversity certification from the legal owners.

### 3.4 Parties to the application

The following person/s or body/s are proposed parties to the application for biodiversity certification:

Party Name (ABN/ACN if relevant)	Contact
MHE Property Co Pty Ltd ATF MHE Land Trust 3	+6142 5555 383 Tom Copping tom@vivacityproperty.com.au
Carol Richardson (the Landowner)	

## 4. Matters for the decision-maker to consider

For lands to be biodiversity certified, the decision-maker must be satisfied in relation to certain matters outlined in Part 8 of the BC Act. These matters have been assessed by DPE-EHG and documented in this Recommendation Report.

BC Act section	Matters to be considered by the decision-maker
<b>Consultation and public notification</b>	
8.6(1)	Consultation with local council
8.6(2)	Consultation with Minister for Planning
8.6(3)	Public notification requirements
<b>Biodiversity considerations</b>	
6.5 8.8	Impacts likely to have serious and irreversible impacts on biodiversity values
6.2(d) 6.13	Measures taken to avoid and minimise impacts
<b>Overall assessment</b>	
8.7	Whether approved conservation measures adequately address the likely impacts on biodiversity values

## 5. Consultation and public notification

### 5.1 Consultation with the Credit Supply Task Force

BCD consulted with the Credit Supply Task Force. On 7 November 2022, the Director for the Credit Supply Task Force responded with confirmation of in principle support to establishment of a BSA over the avoidance areas (Tab 8). Information provided in the response from the Credit Supply Task Force has been incorporated into the BCA and BCO.

### 5.2 Consultation with Local Council

Consultation with the applicant, Central Coast Council and BCD has been ongoing throughout the assessment process. Consultation is summarised in Appendix 8-12 of the BCAR.

#### Discussion

Most issues raised by Central Coast Council were reasonably addressed with potential exception of concern raised regarding the location of the proposed C2 zone boundary and avoidance / minimisation of impacts to the EEC and mapped important Swift Parrot habitat. BCD had similar concerns for these issues and has recommended conditions as part of the BCA and BMP to resolve these remaining issues.

### Recommendation

That the decision-maker be **satisfied** that the requirements for consultation with the local council of the area set out in section 8.6(1) of the BC Act and clause 8.4 of the BC Regulation have been met.

## 5.3 Consultation with Minister for Planning

### Discussion

Consultation with the Minister of Planning regarding this application was undertaken on two occasions. A presentation was provided to the Director Hunter Directorate Local and Regional Planning and the package was provided to the Minister for his review. The delegate for the Minister for Planning provided a response regarding this proposal on the 19 January 2023 that there were no further comments.

### Recommendation

That the decision-maker be satisfied that consultation with the Minister for Planning has occurred in accordance with section 8.6(2) of the BC Act.

## 5.4 Public notification

Section 8.6 of the BC Act sets out the requirements for public notification of the application.

Details of consultation	Discussion
Was consultation under s 8.6 of the BC Act followed?	The application was advertised as per s8.6 of the BC Act (see below).
Time period application was on exhibition	The BCAR and supporting documentation was: <ul style="list-style-type: none"><li>notified in the local Central Coast Advocate and state-wide Daily Telegraph from 4 May 2022 to 3 June 2022</li><li>exhibited on the front page of the Vivacity company website from 9 May 2022 to 8 June 2022</li><li>exhibited on the 'Have your say' website from 23 May inviting comments until 23 June, providing an extended period for comments.</li></ul>
Number of submissions received	No submissions were received.
Is the application varied as a result of submissions? Please provide details.	No

### Recommendation

That the decision-maker be **satisfied** that the public notification requirements in section 8.6(3) of the BC Act have been met and that further public notification is not required.



## 6. Biodiversity considerations

### 6.1 Measures to avoid or minimise impacts

Section 7 of the BAM sets out strategies and actions to be taken to avoid or minimise impacts on biodiversity values. The land proposed for certification should avoid or minimise impacts to land with existing biodiversity values before offsets are proposed to compensate for any residual impacts.

#### Land that is avoided

The proposed development has been designed to avoid direct impact to biodiversity values identified on site (Figure 1). The Avoided Land is comprised of the TEC Swamp Sclerophyll Forest on Coastal Floodplains (PCT 1718 Swamp Mahogany – Flax-leaved Paperbark Swamp Forest on coastal lowlands of the Central Coast, Sydney Basin Bioregion). Other biodiversity attributes of the Avoided Land include mapped important area habitat for the critically endangered Swift Parrot, a known Masked Owl breeding site and parts of a regional biodiversity corridor. The Avoided and Conservation land comprise 2.2ha of the 10.6ha Biodiversity Certification Assessment Area. The Biodiversity Certification Agreement also requires that a Biodiversity Stewardship Site be pursued over the Avoided and Conservation Lands.

#### Mitigative Measures

The BCAR proposes a Vegetation Management Plan as a mitigation measure to limit the biodiversity impacts on Avoided Land. As outlined in the BCA, the VMP is to be updated to a Biodiversity Management Plan (BMP) to also include fauna management considerations. The BMP is to be prepared by a suitably qualified ecologists and will need approval from the BCD prior to its implementation. A Conservation Measures Implementation Plan has been provided that would be considered as part of the BMP approval process (Tab 10). Provisions regarding the timing of delivery of the BMP are provided in the BCA. The BMP will provide the overarching strategy to maintain biodiversity values across the Avoided and Conservation Land and mitigate impacts during construction in the Certified Land. The BMP and its implementation will:

- assist with rehabilitation, ecological restoration, and ongoing maintenance of retained TEC vegetation
- protect Masked Owl breeding habitat and Swift Parrot mapped important area habitat (Figure 3)
- guide pre-clearance inspections and dewatering of the dam within the biodiversity certified area to mitigate impacts to residing fauna
- guide installation / monitoring of compensatory habitat such as nest boxes and glider poles
- ensure major construction works, including construction of the sedimentation dam and internal roads, are undertaken outside the Masked Owl breeding period of May–August
- ensure other mitigation measures identified in the BCAR are implemented.

#### Avoiding and minimising indirect impacts

Indirect impacts can be divided into impacts that could occur because of construction activities, in the relative short term, or possible ongoing non-construction related indirect impacts. The following indirect impacts could occur because of the proposed development:

- increased sedimentation of the receiving ecosystem
- increased noise, vibration, and dust during construction

- weed introduction and/or spread during construction and occupation
- incidental damage or removal of retained native vegetation and habitat during construction and occupation
- increase in pest animal populations because of increased human activity during occupation
- edge effects due to increased human activity during occupation.

The proposed development reduces the likelihood of indirect impacts by enacting the following principles to avoid and minimise impacts to native vegetation and habitat:

- locating the project in areas where the native vegetation or threatened species habitat is in the poorest condition as much as possible to reduce the risk of impacting areas in better condition
- reducing the overall clearing footprint
- making provisions for the demarcation, ecological restoration, rehabilitation and/ or ongoing maintenance of retained native vegetation and habitat as outlined in the biodiversity certification agreement as to be refined in the BMP.

Given the BCA requires the BMP to be approved prior to implementation, and the measures outlined in the BCAR, BCD are confident a suitable BMP will be prepared and implemented.

A Stormwater Management Strategy (Northrop, 21/12/2021) will also be implemented to avoid changes in hydrology or increases in pollution to the Avoided and Conservation Land. If unmitigated, the proposal could lead to a long-term increase in volume and velocity of water entering the EEC indefinitely. This would be caused by the construction of hard surfaces including internal roads, driveways and buildings that would create more surface runoff during rainfall events. It is expected that these impacts will be avoided through appropriate stormwater management that will divert stormwater into the detention basin (Northrop, December 2021) such that hydrological process in the TEC may persist under natural scenarios.

### **Avoiding and minimising prescribed impacts**

Prescribed impacts that could occur because of the proposed development include:

- impacts of development on the habitat of threatened species or ecological communities associated with non-native vegetation
- impacts of development on the connectivity of different areas of habitat of threatened species that facilitate the movement of those species across their range and impacts of development on movement of threatened species that maintain their lifecycle.

Impacts to habitat within non - native vegetation has been accounted for under direct impacts.

Regarding connectivity, regionally significant connectivity will be retained and protected in the Avoided and Conservation Lands.

### **Impacts that are uncertain**

BCD has considered the nature and extent of impacts that are uncertain. Mitigative measure recommended in the BCA and described above are considered to reasonably mitigate impacts that are uncertain.

### **Justification for impacts that are not avoided**

The application will impact some habitat for threatened species such as the Masked Owl, Swift Parrot, Southern Myotis, Little Bent-wing Bat, Large Bent-winged Bat and East Coast Free-tailed Bat (see Figures 4 and 5) as well as buffering areas to the TEC. On balance the BCD is satisfied these environmental impacts can be adequately managed and mitigated

and consider the protection of Avoided Land for biodiversity purposes a reasonable outcome.

### **Protecting Avoided Land**

Avoided Land will be protected by the Biodiversity Certification Agreement that includes requirements to protect and manage biodiversity values.

## **6.2 Serious and irreversible impacts**

Section 8.8 of the BC Act sets out requirements regarding serious and irreversible impacts. If the Minister is of the opinion that the proposed biodiversity certification is likely to have serious and irreversible impacts, the Minister is required to take those impacts into consideration in determining the application and determine whether there are any additional and appropriate measures that will minimise those impacts.

### **Discussion:**

An assessment of potential serious and irreversible impacts for the recorded Large Bent-winged Bat, Little Bent-winged Bat and Swift Parrot was undertaken as part of the BCAR. This assessment followed the *Guidance to assist a decision-maker to determine a serious and irreversible impact* guidelines. BCD has reviewed the serious and irreversible impact assessments for provided in the BCAR. Key points of this assessment are summarised below.

### **Large Bent-winged Bat and Little Bent-winged Bat**

The Large Bent-winged Bat and Little Bent-winged Bat were recorded foraging at both passive ultrasonic recording devices within the study area during 2019 survey. These species are allocated to species credit class for breeding habitat only. Species sensitivity to loss is indicated by the Threatened Biodiversity Data Collection (TBDC) as 'moderate'. Species sensitivity to potential gain for breeding is 'very high'. 'Potential breeding habitat' as defined by *The BAM Bat Guide* for these species includes 'caves, tunnels, mines or other structures known or suspected to be used'. No such habitat exists within the study area or nearby, therefore there will be no likely SAIL on Large Bent-winged Bat or Little Bent-winged Bat.

### **Swift Parrot**

The proposed development will impact 0.03 ha of mapped important area habitat for the critically endangered Swift Parrot (Figure 5). The remainder of mapped important habitat will be protected in the Avoided Land. The layout was also amended to ensure all Swamp Mahogany trees, an important feed tree for the Swift Parrot, are retained on site.

There are no other important feed trees to be impacted on the site such as Spotted Gum, Forest Red Gum or Blackbutt except for Red Bloodwood trees. Red Bloodwood trees are listed as a Swift Parrot food tree within the Departments species profile. While it is unknown how many Red Bloodwood trees will be impacted the proposal will impact approximately 1.17ha of PCT 1636 Scribbly Gum Red Bloodwood *Angophora inopina* heathy woodland.

Assessment under Section 9 of the BAM is summarised below:

- a. *the impact on the species' population (Principles 1 and 2) presented by:*
  - i. *an estimate of the number of individuals (mature and immature) present in the subpopulation on the subject land (the site may intersect or encompass the subpopulation) and as a percentage of the total NSW population, and*

While there are no records of the Swift Parrot on site it has been recorded within the vicinity of the site. Based on these observations and other knowledge of localised habitat use by

Swift Parrot, it is possible that anywhere between 1 and over 100 birds may utilise the foraging potential within the study area on any given winter.

*ii. an estimate of the number of individuals (mature and immature) to be impacted by the proposal and as a percentage of the total NSW population, or*

It is difficult to estimate the number of individuals to be impacted. It is possible that anywhere between 1 and over 100 birds may utilise the site.

*b. impact on geographic range (Principles 1 and 3) presented by:*

*i. the area of the species' geographic range to be impacted by the proposal in hectares, and a percentage of the total AOO, or EOO within NSW*

The TBDC does not specify the total Area of Occupancy (AOO), or Extent of Occurrence (EOO) within NSW.

*ii. the impact on the subpopulation as either: all individuals will be impacted (subpopulation eliminated); OR impact will affect some individuals and habitat; OR impact will affect some habitat, but no individuals of the species will be directly impacted*

If individuals are impacted by the loss of potential winter foraging trees, then this impact would be minimal given the comparative extent of remaining Swamp Mahogany in the retained portions of the study area and the surrounding locality.

*iii. to determine if the persisting subpopulation that is fragmented will remain viable, estimate (based on published and unpublished sources such as scientific publications, technical reports, databases or documented field observations) the habitat area required to support the remaining population, and habitat available within dispersal distance, and distance over which genetic exchange can occur (e.g. seed dispersal) and pollination distance for the species*

Based on the area of habitat to be impacted by comparison to the extent of other locally available winter foraging habitat, it is not likely that this impact extent will cause the population to become less viable (Figure 6).

*iv. to determine changes in threats affecting remaining subpopulations and habitat if the proposed impact proceeds, estimate changes in environmental factors including changes to fire regimes (frequency, severity); hydrology, pollutants; species interactions (increased competition and effects on pollinators or dispersal); fragmentation, increased edge effects, likelihood of disturbance; and disease, pathogens and parasites. Where these factors have been considered elsewhere in relation to the target species, the assessor may refer to the relevant sections of the BDAR or BCAR.*

The current threat of aggressive native species on these fringes of winter flowering habitat will be expected to equally persist. As noted by Roderick & Igwesen (2014) direct observations have been made in Lake Macquarie of native species including Rainbow Lorikeets (*Trichoglossus haematodus*), Noisy Friarbirds (*Philemon corniculatus*) and Noisy Miners (*Manorina melanshowing*) showing aggression towards Swift Parrot.

## **Summary**

In general, most of the comments against the guideline criteria suggest a serious and irreversible impact is not likely. In considering the overall assessment, BCD is of the opinion that the balance of impacts compared to Avoided Land will avoid a serious and irreversible impact for this entity. Crucial to this balance is the securing of and appropriate management of Avoided Land into the future. The appropriate management of the Avoided Land, that could otherwise continue to potentially degrade with current land uses is a positive outcome

in the opinion of BCD and an outcome that reduces the likelihood of a serious and irreversible impact.

### **Recommendation**

That the decision-maker determine, in accordance with section 6.5 of BC Act, that the clearing of native vegetation and loss of habitat on land proposed for biodiversity certification **is not** likely to have serious and irreversible impacts on biodiversity values.

## **7. Whether approved conservation measures adequately address likely impacts**

The Minister may only confer certification if satisfied (having regard to the BCAR) that the approved conservation measures under the biodiversity certification adequately address the likely impacts on biodiversity values of the biodiversity certification of the land.

### **7.1 BCAR prepared in accordance with the BAM**

A BCAR is a report prepared by an accredited person assesses in accordance with the BAM the biodiversity values of the land proposed for biodiversity certification. The BCAR has been reviewed by the Department of Planning and Environment as documented in this Recommendation Report.

#### **Discussion:**

The Biodiversity Certification Assessment Report Lot 5 DP 1228880 45 Malloway Drive Chain Valley Bay was prepared by Michael Sheather-Reid (Accredited Assessor No. BAAS17085), George Plunkett (Accredited Assessor No. BAAS19010) and Lindsay Holmes (Accredited Assessor No BAAS17032) accredited in accordance with s 6.10 of the BC Act.

BCD have reviewed the BCAR and application, it is consistent with the BAM 2020.

### **7.2 Impacts on native vegetation and habitat**

The BCAA totals 10.61 ha. Impact to approximately 7.1 ha of native vegetation is proposed. Of the 7.1 ha of native vegetation to be impacted, 1.17 ha is comprised of good to poor condition PCT 1636 Scribbly Gum Red Bloodwood *Angophora inopina* heathy woodland on lowlands of the Central Coast, Sydney Basin Bioregion. The remaining 6 ha is a previously cleared remnant (i.e. PCT 1636 grassland).

#### **Ecosystem credit requirements**

Ecosystem credits are used to offset the impacts on threatened ecological communities, threatened species habitat for species that can be reliably predicted to occur on the subject land and other PCTs.

Development of the land for biodiversity certification will require a total of 32 ecosystem credits to be retired to offset the impacts to native vegetation and associated habitat for ecosystem credit species. Table 1 in Appendix 1 shows the credits required per impacted vegetation type.

#### **Species credit requirements**

Species credits are used to offset the residual impacts on threatened species that cannot be reliably predicted to occur on the land for certification. Presence is determined by important habitat maps, survey, or an expert report. Where an expert report is used, the Department requires evidence of Departmental approval of expert status.



The land proposed for Biodiversity Certification contains habitat for 4 species credit species. Development of the land would require a total of 86 species credits to be retired to offset the impact. Table 2 in Appendix 1 shows the credits required per impacted species.

### **Prescribed impacts**

Two types of prescribed biodiversity impacts could occur because of the proposed development:

- Impacts of development on the habitat of threatened species or ecological communities associated with non-native vegetation
- impacts of development on the connectivity of different areas of habitat of threatened species that facilitates the movement of those species across their range and impacts of development on movement of threatened species that maintains their lifecycle.

Discussion regarding avoidance and minimisation of prescribed impacts is provided above in Chapter 6. No additional offsets are required for prescribed impacts.

### **Indirect impacts**

Indirect impacts can be divided into impacts that could occur because of construction activities, in the relative short term, or possible ongoing non-construction related indirect impacts. The following indirect impacts could occur because of the proposed development:

- increased sedimentation of receiving waterways
- increased noise, vibration, and dust during construction
- weed introduction and/or spread during construction and occupation
- incidental damage or removal of retained native vegetation and habitat during construction and occupation
- increase in pest animal populations because of increased human activity
- during occupation
- edge effects due to increased human activity during occupation.

Measures to avoid and minimise indirect impacts are discussed above in Chapter 6. No additional offsets are required for indirect impacts.

## **7.3 Proposed conservation measures**

Section 8.3(2) of the BC Act identifies the measures that can be specified in the order conferring biodiversity certification as approved conservation measures to offset the impacts on biodiversity values of the clearing of native vegetation and the loss of habitat on biodiversity certified land. Non-strategic applications must offset the impacts of the certification of land by retiring biodiversity credits.

Division 6 of Part 6 of the BC Act enables a person who is required to retire biodiversity credits to make a payment instead to the BCF of the value of the credits in accordance with the offset's payment calculator.

Name of credit	Number of credits	In accordance with like-for-like, or variation rules?	Current credit holder/ proposed BSA/ BCF payment <sup>1</sup>	Timing of purchase/ retirement of credits
PCT 1636 Scribbly Gum Red Bloodwood <i>Angophora inopina</i> heathy woodland on lowlands of the Central Coast, Sydney Basin Bioregion	32	Like for like	BCF Payment	Prior to the issuing of the first subdivision certificate
Swift Parrot <i>Lathamus discolor</i>	1	Like for like	BCF Payment	Prior to the issuing of the first subdivision certificate
Southern Myotis <i>Myotis Macropus</i>	49	Like for like	BCF Payment	Prior to the issuing of the first subdivision certificate
Masked Owl <i>Tyto novaehollandiae</i>	1	Like for like	BCF Payment	Prior to the issuing of the first subdivision certificate
Brushed- tailed Phascogale <i>Phascogale tapoatafa</i>	35	Like for like	BCF Payment	Prior to the issuing of the first subdivision certificate

### Retirement of biodiversity credits

The conservation measures available to the Minister in granting certification for a standard biodiversity certification application is limited to:

- a. the retirement of credits
- b. measures to avoid and minimise the impact on biodiversity values.

Measures to avoid and minimise the impact on biodiversity value have been provided in Chapter 6.

### Recommendation:

That the decision-maker be satisfied in accordance with section 8.7(1) of the BC Act that, having regard to the biodiversity certification assessment report, the approved conservation measures under the biodiversity certification adequately address the likely impacts on biodiversity values of the biodiversity certification of the land.

## 8. Decision on the application

The Minister may, by order published in the Gazette, confer biodiversity certification on specified land in accordance with this Part (section 8.2 BC Act).

Section 8.5 of the BC Act sets out the grounds on which the Minister may decline to deal with an application for biodiversity certification or confer biodiversity certification.

Accordingly, Minister may decline to deal with an application for biodiversity certification or to confer biodiversity certification:

- if the application for certification has not been duly made
- insufficient information has been provided to enable the conferral of biodiversity certification
- for any other reason the Minister considers sufficient.

### **Discussion:**

The BCAR draft version 3 was made available to members of the public in May 2022 and June 2022. The public were invited to make comment on the BCAR. No public comments were received during this time. BCD believe this is due to the long history of the project, which has included a Planning Proposal. As such, the project would have had substantial notification to the local community.

DPE-EHG considers that the application for biodiversity certification has adequately addressed the requirements of the BAM and that the proposed conservation measures under the biodiversity certification adequately address the likely impacts on biodiversity values of the biodiversity certification of the land (section 7 above).

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

### **Recommendation**

That the decision-maker confer biodiversity certification on land specified in the order in accordance with section 8.2 of the BC Act by signing and dating this Decision Report, and by signing and dating the order conferring biodiversity certification attached to the Briefing Note accompanying this report and approving its publication in the Government Gazette.



# Appendices

## Appendix 1 - Native vegetation impacts and credit requirements

**Table 1** Ecosystem credits required to offset the proposed biodiversity certification of land

Impacted plant community type/ TEC	Area impacted (ha)	Number of ecosystem credits	IBRA sub-region	Plant community type(s) that can be used under like for like offset rules
PCT 1636 Scribbly Gum Red Bloodwood <i>Angophora inopinata</i> heathy woodland on lowlands of the Central Coast, Sydney Basin Bioregion	7.1 ha	32	Wyong IBRA Sub Region or Any IBRA subregion that is within 100 kilometres of the outer edge of the impacted site.	Sydney Coastal Dry Sclerophyll Forests This includes PCTs: 1138, 1253, 1625, 1636, 1638, 1776, 1778, 1782, 1786

**Table 2** Species credits required to offset the proposed biodiversity certification of land

Impacted species	Area of habitat	Number of species credits	IBRA sub-region
Swift Parrot <i>Lathamus discolor</i>	0.03 ha	1	Any in NSW
Southern Myotis <i>Myotis Macropus</i>	7.1 ha	49	Any in NSW
Masked Owl <i>Tyto novaehollandiae</i>	0.04 ha	1	Any in NSW
Brushed- tailed Phascogale <i>Phascogale tapoatafa</i>	1.2 ha	35	Any in NSW

## Appendix 2 – Proposed credit retirement

Name of credit	BBAM or BAM credit <sup>2</sup>	Number of credits	In accordance with like-for-like, or variation rules?	Current credit holder/ proposed BSA/ BCF payment <sup>3</sup>	Timing of purchase/ retirement of credits
<b>Ecosystem credits</b>					
<b>PCT 1636</b> Scribbly Gum Red Bloodwood <i>Angophora inopina</i> heathy woodland on lowlands of the Central Coast, Sydney Basin Bioregion	<b>BAM</b>	<b>32</b>	<b>Like for like</b>	<b>BCF Payment</b>	<b>Prior to the issuing of subdivision certificates</b>
<b>Species credits</b>					
Swift Parrot <i>Lathamus discolor</i>	<b>BAM</b>	<b>1</b>	<b>Like for like</b>	<b>BCF Payment</b>	<b>Prior to the issuing of subdivision certificates</b>
Southern Myotis <i>Myotis Macropus</i>	<b>BAM</b>	<b>49</b>	<b>Like for like</b>	<b>BCF Payment</b>	<b>Prior to the issuing of subdivision certificates</b>
Masked Owl <i>Tyto novaehollandiae</i>	<b>BAM</b>	<b>1</b>	<b>Like for like</b>	<b>BCF Payment</b>	<b>Prior to the issuing of subdivision certificates</b>
Brushed- tailed Phascogale <i>Phascogale tapoatafa</i>	<b>BAM</b>	<b>35</b>	<b>Like for like</b>	<b>BCF Payment</b>	<b>Prior to the issuing of subdivision certificates</b>

## Appendix 3 - Credit summary

List the name and number of all ecosystem and species credits required for the land where biodiversity certification is proposed. Against each required credit, list the name and number of credits to be retired (or payment into the Biodiversity Conservation Fund (BCF) as an alternative to retiring credits).

Credit requirement				Proposed offset measures			Surplus or deficit
Ecosystem/species	Name of credit	Credit class	No. credits required for land proposed for certification (A)	Retirement of credits or payment into the BCF	Name of credit to be retired or obligation to be met by payment into the BCF	Number of credits to be retired (B) or obligation to be met by payment into the BCF	Number of credits in surplus or deficit (B-A)
<b>Ecosystem</b>	<b>PCT 1636</b>	Sydney Coastal Dry Sclerophyll Forests This includes PCTs: 1138, 1253, 1625, 1636, 1638, 1776, 1778, 1782, 1786	<b>32</b>	TBC	PCT 1636 within the Wyong , Hunter, Pittwater and Yengo or any IBRA subregion that is within 100 kilometres of the outer edge of the impacted site.	<b>32 credits</b>	NIL
<b>Species</b>							
	Swift Parrot <i>Lathamus discolor</i>		<b>1</b>	TBC		<b>1</b>	NIL
	Southern Myotis <i>Myotis Macropus</i>		<b>49</b>	TBC		<b>49</b>	NIL
	Masked Owl <i>Tyto novaehollandiae</i>		<b>1</b>	TBC		<b>1</b>	NIL
	Brushed-tailed Phascogale <i>Phascogale tapoatafa</i>		<b>35</b>	TBC		<b>35</b>	NIL