

North Tuncurry Urban Release Area Biodiversity Certification Application

Response to public submissions

23 November 2022

Contents

1	Introduction	1
2	Response to issues raised	7
2.1	Biocertification Process and Method	7
2.2	Impacts to native vegetation, flora and fauna and wildlife corridors.....	18
3	Conclusion	25
4	References	27
Appendix A : Exhibited Biocertification Assessment report and Application (Eco Logical Australia, May 2022).....		28
Appendix B : Biocertification Assessment submissions		28
Appendix C : Planning Proposal submissions		28
Appendix D : Response to BCD submission.....		28
Appendix E : Response to MCC submission		28

List of figures

Figure 1: Proposed North Tuncurry Urban Release Area Master Plan (as exhibited)3

Figure 2: Biocertification outcomes of proposed Masterplan (land proposed for biodiversity certification, retention or registration of a Biodiversity Stewardship)4

Figure 3: Revised Master Plan (amending perimeter roads) as requested by the RFS26

List of tables

Table 1: Summary of issues raised by submission type/number5

Table 2: Response to submissions specifically addressing the Biodiversity Certification Assessment Methodology (BCAM) and the Biodiversity Credit Assessment Report (BCAR) 7

Table 3: Response to submissions addressing general concerns about environmental impacts and impacts to native flora and fauna18

Terms and acronyms used in this report

Abbreviation	Description
APZ	Asset Protection Zone
BAM	Biodiversity Assessment Methodology (BC Act 2016)
BBAM	BioBanking Assessment Methodology (TSC Act 1995)
BC Act	<i>NSW Biodiversity Conservation Act 2016</i>
BCA	Biodiversity Certification application
BCAA	Biodiversity Certification Assessment Area
BCAM	Biodiversity Certification Assessment Methodology
BCAR	Biodiversity Certification Assessment Report
Biodiversity Certification	An assessment process for areas of land that are proposed for development provided for under the TSC and BC Acts. The process identifies land that can be developed and measures to offset the impacts of development, either within the BCAA and/or outside of the BCAA.
BCF	Biodiversity Conservation Fund
BCT	Biodiversity Conservation Trust
BSA	Biodiversity Stewardship Agreement
BTP	Brush-tailed Phascogale (<i>Phascogale tapoatafa</i>)
CEEC	Critically Endangered Ecological Community
CEMP	Construction Environmental Management Plan
DAWE	Commonwealth Department of Agriculture, Water and the Environment
DOP	former NSW Department of Planning (now part of DPE)
DPE	NSW Department of Planning and Environment
DPIE	Former NSW Department of Planning, Industry and Environment (now DPE)
EES	Environment, Energy and Science Group (part of DPIE)
EMP	Environmental Management Plan
EP&A Act	<i>NSW Environmental Planning and Assessment Act 1979</i>
EPBC Act	<i>Commonwealth Environment Protection and Biodiversity Conservation Act 1999</i>
EPP	Eastern Pygmy Possum (<i>Cercartetus nanus</i>)
HBT	Hollow Bearing Tree
LEP	Local Environment Plan
LGA	Local Government Area
LNP	Long-nosed Potoroo (<i>Potoroos longipes</i>)
MCC	MidCoast Council

Abbreviation	Description
NTURA	North Tuncurry Urban Release Area
OEH	former NSW Office of Environment and Heritage (now part of DPIE)
PoM	Plan of Management
RFS	NSW Rural Fires Service
SEPP	NSW State Environmental Planning Policy
TMO	Tuncurry Midge Orchid (<i>Genoplesium littorale</i>)
TSC Act	Now repealed NSW <i>Threatened Species Conservation Act 1995</i>
WSUD	Water Sensitive Urban Design

1 Introduction

Eco Logical Australia (ELA) was engaged by Landcom to prepare a report responding to submissions on the Biodiversity Certification Assessment Report for the North Tuncurry Urban Release Area (NTURA). The NTURA is a proposed rezoning and mixed use development of the North Tuncurry State Significant Site (SSS) at Tuncurry on the NSW mid north coast in the MidCoast Local Government Area (LGA) (ELA 2022) (**Appendix A** – Exhibited Biocertification Assessment report dated May 2022).

The exhibited Master Plan for the NTURA is shown in **Figure 1** whilst **Figure 2** shows the biocertification outcomes of the assessment (i.e. land proposed for biocertification, land to be ‘retained’ and land subject to conservation measures (registration of a Biodiversity Stewardship Site)).

An application for the conferral of biodiversity certification can only be made by a planning authority. The Department of Planning and Environment (DPE) is the applicant for biodiversity certification.

DPE must give notice of its intention to seek biodiversity certification in accordance with the public notification requirements of Section 126N of the now repealed *Threatened Species Conservation Act* 1995 (TSC Act), which states:-

126N Public notification requirements in relation to application

- (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.

The application was exhibited concurrently with the Planning Proposal (Ethos Urban 2020) to rezone the land proposed for biodiversity certification for 45 days between 2 May and 17 June 2022 with copies of the application and associated reports available for viewing at the Department of Planning and Environment Office in Stewart St, Newcastle, or by downloading from the Departments website. Public notice’s regarding the exhibition were published in the Sydney Morning Herald and Daily Telegraph on 11 May 2022.

The exhibition period exceeded the statutory 28 day requirement.

Four submissions were received on the biocertification assessment (two from Government agencies (the Department of Planning and Environment’s Biodiversity Conservation Division and MidCoast Council) and two from members of the public) (**Appendix B**).

A further 127 submissions (7 from government agencies, 1 from a community organisation and 119 from community members) were received on the planning proposal, of which 27 referred to conservation/ecological/ threatened species issues. Some submissions were made on both the biocertification assessment and the planning proposal (**Appendix C**).

All submissions were reviewed and comments noted.

The majority of community submissions were quite broad in nature and raised similar issues such as:-

- Impacts of clearing native vegetation
- Impacts on wildlife corridors
- Impacts on flora and fauna habitat
- Impacts on threatened flora and fauna habitat
- Impacts on local Koala populations and Koala habitat
- Impacts on Glossy Black Cockatoo habitat trees
- Impacts on nesting shore birds and migratory waders

One community submission and the two government agency submissions raised issues specifically to do with the biocertification assessment and the Biocertification Assessment Methodology (BCAM), including:-

- Age of survey data
- Survey methodology to detect Brush-tailed Phascogale, Eastern Pygmy-possum and Long-nosed Potoroo and need to undertake additional surveys in accordance with current BAM survey guidelines
- Impacts of the 2019/2020 summer wildfire and need to re-survey the study area
- Impacts on 'red flag' species – Tuncurry Midge Orchid
- The scale of impacts and edge effects
- Certainty of offsets (particularly those associated with the impacts of Stage 12 onwards)

This report provides a summary of the submissions and the applicant's response to these submissions as required by s126N(2)(d) and whether any changes or additions to the original documentation will be made as a result of these submissions.

All comments have been grouped by "issue/theme" and are presented in **Table 1** and responded to in **Section 2**. Comments that have been raised by more than one submission have been grouped to avoid repetition.

The BCD and MCC submissions have been responded to in detail (see **Appendix D** and **E** respectively).



Figure 1: Proposed North Tuncurry Urban Release Area Master Plan (as exhibited)



Figure 2: Biocertification outcomes of proposed Masterplan (land proposed for biodiversity certification, retention or registration of a Biodiversity Stewardship)

Table 1: Summary of issues raised by submission type/number

Submission Number	BCD	MCC	RFS	Biocert # 2	Biocert Sub 1 #486457	BioCert Sub 2 #485603	#9	#12	#14	#22	#35	#36	#44	#47	#48	#50	#52	#56	#61	#81	#84	#86	#89	#93	#102	#104	#105 & #106	#109	#111	#112	#114	#115	Total
Biocertification process and method issues																																	
Inadequacy of assessment report	X	X				X																											3
F&F survey methods not appropriate (winter surveys)	X	X		X		X																						X					5
Measures to avoid impacts	X	X				X																											3
Consideration of long term indirect impacts to F&F (noise, domestic animals)	X	X				X																											3
Consideration of edge effects	X	X				X																											3
Impacts to Red Flags	X	X				X																											3
Assessment of cumulative impacts	X	X				X																											3
Inadequate Biodiversity Offsets	X	X				X																X											4
Improve or Maintain outcome not achieved	X	X				X																			X			X					5
Offset areas are not secure	X	X				X																			X								4
																																	0
General Conservation Issues																																	0
Concerns for environmental loss /Impacts to natural environment				X			X																	X				X	X			X	6
Impact of clearing native vegetation on flora and fauna / Concerns over habitat Loss									X	X	X	X		X	X			X	X							X		X		X	X		13
Impacts on wildlife corridors																		X								X							2
Need to protect flora and fauna								X																									1
Need to protect threatened flora and fauna (Concerns over 14 threatened species on-site				X														X				X		X		X	X	X	X	X			9

North Tuncurry Urban Release Area - Biodiversity Certification – response to public submissions

Submission Number	BCD	MCC	RFS	Biocert # 2	Biocert Sub 1 #486457	BioCert Sub 2 #485603	#9	#12	#14	#22	#35	#36	#44	#47	#48	#50	#52	#56	#61	#81	#84	#86	#89	#93	#102	#104	#105 & #106	#109	#111	#112	#114	#115	Total
Impacts to TMO, Koala, BTP, LNP																				X					X								2
Impacts to local Koala population and habitat									X	X		X							X				X	X			X						7
Impacts to Glossy Black Cockatoo																				X		X											2
Impacts to nesting shore birds and migratory waders																		X				X		X									3
9 Mile Beach should be a conservation area													X																				1
Need to retain heathland and mature eucalypts for fauna species																		X															1
Impacts of housing and APZs																					X												1
What provisions have been made for bushfire prone zones			X																			X											2
What provisions have been made to protect wildlife from road kills																						X											1
Concerns over impacts of increased traffic on dunes									X						X																		0
Need to maintain 4WD access to 9 Mile Beach																	X																1
Concerns over impacts to Littoral rainforest																X																	1
Concerns about flooding and sea level rise																X											X				X		3
Sub-totals	10	10	1	3	0	10	1	1	2	2	1	2	1	1	1	2	1	5	2	2	1	7	1	4	3	3	3	5	2	1	2	2	
Support or Object to proposal	Not Stat ed	Suppo rts	Not Stat ed	Objects	Neutral	Objects	Ob jec ts	Supp orts	Obje cts	Obje cts	Obje cts	Obj ects	Objec ts	Objec ts	Neutr al	Objec ts	Suppo rts	Objec ts	Objec ts	Objec ts	Neutr al	Neutr al	Objec ts	Objec ts	Objec ts	Objec ts	Objec ts	Objec ts	Objec ts	Objec ts	Objec ts	Objec ts	

2 Response to issues raised

Table 2: Response to submissions specifically addressing the Biodiversity Certification Assessment Methodology (BCAM) and the Biodiversity Credit Assessment Report (BCAR)

2.1 Biocertification Process and Method			
Comments	Raised in submissions	Response	Relevant Section of ELA report
Age of survey data			
The survey data is more than 5 years old and does not comply with current (BAM) standards	BCD & MCC Submissions Submission #485603	The assessment has been submitted under the Biodiversity Conservation (Savings and Transitional) Regulation 2017 and has been prepared in accordance with the BCAM 2011 (and its associated guidelines), not the BAM 2016 or 2020). There is no reference to age of survey data in any of the statutory guidelines relevant to the BCAM. Survey data is not required to be compliant with the BC Act, BCDs most recent survey guidelines or Councils DCP. The BCAR has been prepared to comply with the BCAM (2011) and the requirements of the SSS study issued by the Dept of Planning in 2011. Species surveys of the study area commenced in 2005 and have continued through 2008, 2010-2012, 2013, 2014, 2015, 2016, 2020 and 2021 as documented in the Assessment Report – and represent a comprehensive, long term assessment of the biodiversity values of the study area. At the time the application was submitted to OEH in 2015 and accepted as 'adequate for exhibition' in 2019, despite there being no legal	Tables 1-4 and Appendix B of the BCAR

2.1 Biocertification Process and Method			
Comments	Raised in submissions	Response	Relevant Section of ELA report
Cannot 'assume' that BTP and EPP are 'absent'	Submission #485603	requirement regarding the age of the survey data, the data used to calculate ecosystem credits <u>was less than 5 years old</u>. As the EPP and BTP have been <u>assumed</u> to be present across ALL suitable habitat in the BCAA, <u>a survey is not required</u> (Refer to Step 4 in Section 4.3 of BCAM which states that a species polygon can be identified on assumed presence). The age of survey data for these species is irrelevant. The assessment has not 'assumed' that BTP and EPP are 'absent' based on the 2020 surveys. The assessment has assumed that <u>these species are still present</u> (This is consistent with the advice from the Species Expert in BCD (Dr Todd Soderquist) who advised that if the species had been previously recorded in an area, and the condition of the habitat in that area has not changed significantly, then the species should be 'assumed' to still be present).	Refer to Section 2.3.6 of the BCAR
The Assessment has not taken into account the effects of the 2019/20 bushfires on BTP and EPP	BCD & MCC Submissions Submission #485603	The 2019/20 bushfires impacted part of the northern part of the study area (approx. 10-20%), however, the area of habitat for BTP and EPP had not been significantly impacted, and accordingly the species were expected to still be present (given previous records of the species in the study area and previous advice from the then OEH) and the impact and offset credit calculations reflect this.	Refer to Section 2.3.6 of the BCAR
Have not assessed the impacts of the 2019/20 bushfires on TMO	BCD & MCC Submissions	Following the 2019/20 wildfires, Landcom commissioned ELA to undertake two post fire surveys of TMOs within the NTURA (March 2021 and March 2022) to assess whether the fires had impacted the species in the proposed conservation areas.	Refer to Section 2.2.3 of the BCAR

2.1 Biocertification Process and Method			
Comments	Raised in submissions	Response	Relevant Section of ELA report
		Consistent with Dr Griffiths's findings at Nabiac, ELA confirmed that the species had survived the fires, had flowered post fires and was able to be located in equivalent numbers at previously known locations in both unburnt and burnt areas (this is consistent with the ecology of the species and similar species in the Genoplesium/Corunastylis genus that have responded well in other post fire monitoring studies). Conversely, TMO was not able to be relocated at a number of sites in the proposed development footprint where the species had been previously recorded and the orchid park, not because of disturbances, but because of a lack of disturbance (i.e. the open areas where the species prefers had become over grown by regenerating shrubs, making the habitat unsuitable). No changes required to Assessment Report	
Adequacy of Flora and Fauna studies and methods			
Surveys were undertaken in winter when BTP, EPP and LNP are not active/more difficult to detect	Submission # 485603	Flora and Fauna surveys of the study area have been undertake since 2005 and have covered spring, summer, autumn and winter. Despite not been recorded in winter 2020, BTP and EPP have been <u>assumed to still be present</u> in the study area (as advised by BCD) as they have previously been recorded in the site. The time of year that the 2020 surveys were undertaken for these species is therefore irrelevant.	Table 1 and Appendix B of the BCAR
Inadequate survey methods for LNP	BCD and MCC Submission	LNP were surveyed for by ERM (2005;2010) and RPS (between 2010-2012) and not recorded. The project proposes to permanently protect 330 ha of suitable habit for LNP on-site that would provide habitat for this species, if present. No changes required to Assessment Report	Table 1 and Appendix B of the BCAR

2.1 Biocertification Process and Method			
Comments	Raised in submissions	Response	Relevant Section of ELA report
In adequacy of Assessment Report (has not demonstrated avoid and minimise)			

The proposal occupies and expansive, not compact footprint and does not reflect an “avoid – minimise – offset biodiversity planning hierarchy	MCC Submission	The assessment report has considered the totality of impacts, both direct and indirect, and follows a number of iterations of the Masterplan since the original proposal was first submitted in 2011 to avoid and minimise impacts to areas of high conservation value (as required by the BCAM). The urban footprint is compact and surrounded by perimeter roads, comprising the required bushfire asset protection zones (APZs), consistent with the Planning for Bushfire Protection guidelines (which also means that residential blocks do not immediately adjoin conservation areas). The proposed conservation areas will be permanently protected by registration of a Biodiversity Stewardship Agreement which includes in perpetuity conservation management funding. The offset areas will be signed posted, have appropriate fencing, do not include any APZs, will be subject to the implementation of an agreed management plan, will be subject to annual monitoring, audit and compliance, will prohibit vehicles (other than management vehicles) and domestic animals. The management plan will have opportunities to adapt/modify management actions based on changed circumstances and will take into account current information from the proposed TMO research program to enhance the site for TMOs, which may include the continuation of the current ‘disturbance’ regime and maintenance of edge habitats in the western corridor to promote orchid abundance. Section 1 and 3 of Assessment Report to be revised to summarise the alternative footprints considered to avoid and minimise impacts	Figure 2 of BCAR
--	-----------------------	---	-------------------------

2.1 Biocertification Process and Method			
Comments	Raised in submissions	Response	Relevant Section of ELA report
Consideration of edge effects			
APZs are likely to have unintended impacts to retained vegetation	MCC Submission	The urban footprint is compact and surrounded by perimeter roads, comprising the required bushfire asset protection zones (APZs), consistent with the Planning for Bushfire Protection guidelines (which also means that residential blocks do not immediately adjoin conservation areas). No vegetation in the proposed offset areas will need to be burnt to provide bushfire protection to the development. No changes required to Assessment Report	Refer to Bushfire Assessment (RPS 2019)

2.1 Biocertification Process and Method			
Comments	Raised in submissions	Response	Relevant Section of ELA report
Western offset is unlikely to be effective as an in perpetuity offsets for TMO due to increased edge effects	Submission # 485603	The western offset area is some 250m wide at its narrowest point and includes a powerline maintenance corridor which is maintained by Essential Energy. The corridor includes a significant proportion of the local TMO population. The proposed footprint was modified to retain this corridor and the TMO habitat within it (as requested by the then Office of Environment and Heritage (OEH)). Under appropriate management, and informed by the proposed TMO Research Program, it is expected that the corridor will provide a valuable in perpetuity reserve for TMOs. Whilst the proposed development will create a new 'edge' to this corridor, it is quite likely that this edge will provide additional preferred habitat for TMOs that like many orchid species, is more abundant on the edge of sympathetically managed fire trails and easements. No changes required to Assessment Report	Refer to Fig 14 of BCAR
Impacts to Red Flags not avoided			
Impacts to TMO, a Critically Endangered Species	Several Community Submissions Submission #485603	Landcom has gone to great lengths since 2011, in consultation with OEH/BCD and Council to propose a Masterplan that is sensitive to the status of the TMO and avoids impacts to over 97% of known sites where the species has been recorded. The proposed 4 ha orchid reserve was included after a request by OEH to avoid impacts to 74 plants recorded at that location and has been	Refer to Appendix J1 and J2 of the BCAR

2.1 Biocertification Process and Method			
Comments	Raised in submissions	Response	Relevant Section of ELA report
		designed to ensure that the patch will remain viable in terms of connectivity and orchid pollinators TMO is a red flag species that is required to be avoided under the BCAM. A red flag variation request has been made for the impacts to 63 individual TMOs on the basis that the impacts are '<i>minor relative to the proportion of the population being protected</i>' (i.e. <3% of the local TMO population will be impacted, 63% protected in proposed on-site BSA site and 34% retained. Subject to the Secretary's approval of the red flag variation request, the proposal can meet and improve or maintain outcome. No changes required to Assessment Report	Refer to Section 4 of the BCAR
Application does not achieve an 'improve or maintain' outcome			
The inadequate bushland protection and conservation measures will not enable the maintenance and improvement in biodiversity outcomes.	Submission #485603	An 'improve or maintain' outcome is described in Section 2 of the BCAM and is achieved if 'red flag' areas are avoided and all impacts are offset by the number of required credits (or the Director-General of OEH is satisfied that impacts to red flag areas may be offset in accordance with the variation criteria in s2.4 of the BCAM). In accordance with the BCAM, conservation measures may be secured within the BCAA (Section 8) or outside of the BCAA (Section 9). Subject to the Director –General approval of the red flag variation requests for impacts to TMO (Section 4 of the assessment report), the conservation measures proposed in the assessment (both on-site and off-site measures) will generate all the required credits for impacts to all vegetation types and all species credit species.	Section 2.4, 8 & 9 of BCAM and Section 4 of the BCAR

2.1 Biocertification Process and Method			
Comments	Raised in submissions	Response	Relevant Section of ELA report
		As such, and in accordance with the BCAM, the proposal is considered to meet an 'improve or maintain' outcome. The proposed conservation measures will permanently protect, manage and restore some 312 ha of forest and heathland on-site and the equivalent of a further 300-400 ha of off-site offsets by either the registration of additional BSAs, purchase and retirement of either Biobanking or Biodiversity Offset Scheme credits or payment in to the Biodiversity Conservation Fund (following an application of 'reasonable credit equivalence'). The management of the offset areas includes improving the quality and extent of vegetation and restoration of currently cleared areas. No changes required to Assessment Report	
The Offset Package is inadequate			
Concerns regarding the lack of certainty about credits required to offset the development Offsets are not adequate (as they do not offset the full project (Stages 13-25))	MCC Submission	Section 5.7.4 of the BCAR and the Statement of Commitments in Section 5.7) outline how the required offsets will be met including both on-site (providing for all impacts associated with Stages 1-12) and off-site offsets (Stages 13 onwards). These commitments and their timing were discussed with OEH/BCD extensively and BCD issued a letter in 2019 stating that all of the ecological issues raised by OEH had been addressed satisfactorily, including the Staging of credit retirement for Stages 1-12 and 13-25 and the options available to secure the residual off-site offsets for Stage 13 onwards. The commitments state that Stages 13 onwards will <u>not commence</u> until offsets have been secured and that these offsets may be secured by	Refer to Figure 37 and Section 5 of the BCAR

2.1 Biocertification Process and Method			
Comments	Raised in submissions	Response	Relevant Section of ELA report
Offsets are not in perpetuity (re impacts of predicted sea level rise)		registering a BSA over land owned by MidCoast Council at Nabiac, and/or purchasing credits from the market place and/or from the Biodiversity Conservation Fund (BCF) following a request for a 'Statement of Reasonable Equivalence'. The BCAR does not need to provide any other certainty than the above, as the option to purchase credits from the BCF prior to commencing any stage is an option available to every proponent of a development application in NSW. This new option, introduced under the BC Act, applies to assessments under the TSC Act such as the NTURA, i.e. <u>there is no longer</u> a requirement for an application for Biodiversity Certification to demonstrate that all offset requirements have been secured <u>prior to the Minister making a determination</u>, so long as the offsets have been <u>secured prior to the commencement of that stage</u> of development (this is confirmed by the BCT issuing a certificate of credit retirement). No changes required to the Assessment Report The on-site offsets proposed are in perpetuity and not short term/temporary offsets, as suggested by Council. BCD sought legal advice regarding the 'in perpetuity' nature of conservation commitments on land subject to sea-level rise and was advised that such commitments met the requirements of BCAM. Regardless of this, the 'eastern' corridor largely comprises Vegetation Zone 13 which generates 'surplus' credits for the assessment and does not meet the 'like for like' credit requirements of the impacted vegetation types, has not been used to meet the offset requirements of the project and thus provide a 'buffer' to the rest of the	Refer to Section 5 of the BCAR

2.1 Biocertification Process and Method			
Comments	Raised in submissions	Response	Relevant Section of ELA report
Offset areas are not secure (there is no land manager identified)	Submission #485603	on-site offset area. Similarly this area does not generate any species credits for TMO, Brush-tailed Phascogale or Eastern Pygmy Possum No changes required to Assessment Report The proposed on-site offset areas are currently owned by the Department of Crown lands, who will also own and be legally responsible for the management the proposed Biodiversity Stewardship site. The Department of Crown lands manages numerous parcels of land across NSW for conservation within the Crownland portfolio. Landcom held extensive discussions with the former OEH and NPWS regarding the potential transfer of land to the Minister for the Environment as an addition to the Darawank Nature Reserve, but at the time, OEH indicated that they did not want the land. Landcom is open to further discussions regarding the transfer of this land to NPWS and/or Council, and regardless of the outcomes of these discussions, the land will be legally secured, with a fully funded, in perpetuity conservation covenant and managed by the Department of Crown lands in the interim. No changes required to Assessment Report	Refer to Section 5 of the BCAR

Table 3: Response to submissions addressing general concerns about environmental impacts and impacts to native flora and fauna

2.2 Impacts to native vegetation, flora and fauna and wildlife corridors			
Comments	Raised in submissions	Response	Relevant Section of Assessment Report
Threats and cumulative impacts to EECs			
Impact of clearing native vegetation on flora and fauna	14,22,35,36,47,48,56,61,86,104,109,114,115	Impacts to native vegetation and areas of high conservation value are addressed via the avoid and minimise process undertaken in the development of a Master Plan for the site that considered multiple options to avoid and minimise impacts to the areas with the highest biodiversity values.	Refer to Section 1 and 4 of BCAR
Impacts on wildlife corridors	56, 104	The proposed Master Plan retains connectivity to Darawank Nature Reserve in the North and the Wallamba River to the west of the study area. Connectivity to the south of the study area is already fragmented by the existing development of Tuncurry and the Wallamba River	Refer to Section 3 and Figure 26 of the BCAR
Need to protect flora and fauna	9	The proposed project will permanently protect approx. 330 ha within the study area as a Biodiversity Stewardship site providing habitat for the threatened species recorded on-site. The equivalence of a further 300-400 ha of off-site offsets will also be secured by either the registration of additional BSAs, purchase and retirement of either Biobanking or Biodiversity Offset Scheme credits or payment in to the Biodiversity Conservation Fund (following an application of 'reasonable credit equivalence') prior to the commencement of Stage 13	Refer to Figure 2 and Section 5.2 of the BCAR
Need to protect threatened flora and fauna (Concerns over 14 threatened species on-site)	Biocert #2, 56,86,93,104,105, 106,109,11,112	The proposed project will permanently protect approx. 330 ha within the study area as a Biodiversity Stewardship site providing habitat for the threatened species recorded on-site. The equivalence of a further 300-400 ha of off-site offsets will also be secured by either the registration of additional BSAs, purchase and retirement of either Biobanking or Biodiversity Offset Scheme	Refer to Figure 2 and Section 5.2 of the BCAR

2.2 Impacts to native vegetation, flora and fauna and wildlife corridors			
Comments	Raised in submissions	Response	Relevant Section of Assessment Report
		credits or payment in to the Biodiversity Conservation Fund (following an application of 'reasonable credit equivalence') prior to the commencement of Stage 13.	
Impacts to TMO, Koala, BTP, LNP	81, 102	Over 2,400 Tuncurry Midge Orchids (TMOs) have been recorded in the study area since 2008 of which 63 (< 3%) will be impacted). 97% of the known sites where the TMO has been consistently recorded will be permanently protected or retained in an existing electricity transmission line corridor and subject to an adaptive management program informed by a rigorous monitoring and research program. The Koala and Long-nosed Potoroo have not been recorded in the study area despite over 15 years of targeted surveys. Despite Koalas being recorded in the North Tuncurry area (Chapmans Rd area), the habitat in the study area comprises only occasional browse species, of which nearly 70 ha of the highest quality potential habitat adjacent to Darwank Nature Reserve will be permanently protected. The majority of the site comprises Banksia Heathland and Dune Vegetation which is not preferred habitat for the Koala. Both the Brush-tailed Phascogale and Eastern Pygmy Possum have been recorded in the study area and are 'presumed' to still be present, despite not being recorded in 2020, as their habitat is still in good condition and was not affected by the 2019/20 bushfires. 277 ha of habitat for these species, connected to Darawank Nature Reserve will be permanently protected in the study area.	Refer to Figures 21-23 and Section 5.2 of the BCAR
Impacts to local Koala population and habitat	14,22,36,61,89, 93.105,106	The Koala has not been recorded in the study area despite over 15 years of targeted surveys. Despite Koalas being recorded in the North Tuncurry area (Chapmans Rd area), the habitat in the study area comprises only occasional	Refer to Section 2.3.4 of the BCAR

2.2 Impacts to native vegetation, flora and fauna and wildlife corridors			
Comments	Raised in submissions	Response	Relevant Section of Assessment Report
		browse species, of which nearly 70 ha of the highest quality potential habitat adjacent to Darwank Nature Reserve will be permanently protected. The majority of the site comprises Banksia Heathland and Dune Vegetation which is not preferred habitat for the Koala.	
Brush-tailed phascogale and Eastern Pygmy Possum	Biocert # 2 #48560	The site is important for Brush-tailed Phascogale (and Eastern Pygmy Possum) and that this species has been recorded on the site and within the Golf Course clubhouse (which is stated in the BCAR) and that the large area is likely to support a viable population of these species, that has not been significantly impacted by the 2019/20 wildfires as greater than 80% of the site was not burnt. Both the Brush-tailed Phascogale and Eastern Pygmy Possum have been ‘presumed’ to still be present, despite not being recorded in 2020, as their habitat is still in good condition. 277 ha of habitat for these species, connected to Darawank Nature Reserve will be permanently protected in the study area. The equivalence of a further 300-400 ha of off-site offsets will also be secured for BTP and EPP by either the registration of additional BSAs, purchase and retirement of either Biobanking or Biodiversity Offset Scheme credits or payment in to the Biodiversity Conservation Fund (following an application of ‘reasonable credit equivalence’) prior to the commencement of Stage 13 onwards.	Refer to Figures 22 and 23 of the BCAR
Long-nosed Potoroo	Submission #485603	The Long-nosed Potoroo has not been recorded in the study area despite over 15 years of targeted surveys despite other very cryptic and difficult to detect species being recorded (EPP, BTP and NHM). However, regardless of whether the species has been recorded or not, a significant area of suitable habitat (330 ha) is being permanently protected for this and other species not	Refer to Figures 21-23 and Section 5.2 of the BCAR

2.2 Impacts to native vegetation, flora and fauna and wildlife corridors			
Comments	Raised in submissions	Response	Relevant Section of Assessment Report
		required to be assessed under the BCAM, that may persist in the locality such as Spot-tailed Quoll and Squirrel Glider).	
Impacts to Glossy Black Cockatoo	81, 86	The proposed project will permanently protect approx. 330 ha within the study area as a Biodiversity Stewardship site providing habitat for the threatened species recorded on-site. The equivalence of a further 300-400 ha of off-site offsets will also be secured by either the registration of additional BSAs, purchase and retirement of either Biobanking or Biodiversity Offset Scheme credits or payment in to the Biodiversity Conservation Fund (following an application of 'reasonable credit equivalence') prior to the commencement of Stage 13	Refer to Figure 2 and Section 5.2 of the BCAR
Impacts to nesting shore birds and migratory waders	56, 86, 93	As stated in the BCAR, the observation of Pied Oystercatchers were not of breeding sites but of birds on open ocean beaches. This species prefers to nest in more sheltered sites as evidenced by the number of breeding records from the Wallace Lake estuary.	
9 Mile Beach should be a conservation area	44	The Dune vegetation along the eastern side of the study area adjacent to the proposed development, which includes parts of 9 Mile Beach will be permanently protected and managed as a BSA site	Refer to Figure 2 in the BCAR
Need to retain heathland and mature eucalypts for fauna species	56	The proposed project will permanently protect approx. 330 ha within the study area as a Biodiversity Stewardship site providing habitat for the threatened species recorded on-site. A further 300-400 ha of habitat will also be secured in the region prior to the commencement of Stage 13. This includes heathland and mature eucalypts for fauna species.	Refer to Figure 2 and Section 5.2 of the BCAR
Impacts of housing and APZs	84	The Master Plan for the site has been designed to incorporate all of the required Asset Protection Zones (APZs) in the perimeter roads that surround	Refer to Section 3.7 of the BCAR

2.2 Impacts to native vegetation, flora and fauna and wildlife corridors			
Comments	Raised in submissions	Response	Relevant Section of Assessment Report
		the development. These APZs have been incorporated into the impact calculations. A minor amendment will be made to the Master Plan to accommodate a request made by the RFS regarding access along perimeter roads.	
What provisions have been made for bushfire prone zones	RFS, 86	The Master Plan for the site has been designed to incorporate all of the required Asset Protection Zones (APZs) in the perimeter roads that surround the development. These APZs have been fully incorporated into the impact calculations. A minor amendment will be made to the Master Plan to accommodate a request made by the RFS regarding access along perimeter roads	Refer to Section 3.7 of the BCAR
What provisions have been made to protect wildlife from road kills	86	As a residential area, local roads will have a 50kph speed limit and may have traffic calming devices such as chicanes and speed bumps to reduce the impact on local wildlife. These measures will be provided in more detail in the Construction Environment Management Plan	Refer to Section 5.7 of the BCAR
Impacts of increased traffic on dunes / 4WD Access should be maintained to 9 Mile Beach	14, 47, 52	The development will prohibit vehicle access to the beach/dune area adjacent to the development other than for authorised and emergency vehicles (Council and Surf Rescue). The Dune vegetation along the eastern side of the study area adjacent to the proposed development will be permanently protected and managed as a BSA site. The area will be fenced and sign posted to deter access and form part of the seabird monitoring program. 4WD access to 9 Mile Beach north of the development will be maintained as an existing use	Refer to Figure 2 and Section 5.7.6 in the BCAR
Uncertainty due to lack of EPBC Approval	MCC	A draft Public Environment report for the North Tuncurry mixed use site was submitted to the Commonwealth Department of Agriculture, Water and the	See Exhibited EPBC PER

2.2 Impacts to native vegetation, flora and fauna and wildlife corridors			
Comments	Raised in submissions	Response	Relevant Section of Assessment Report
		Environment (DAWE) in August 2021 for 'adequacy review' and exhibited between June and July 2022 (in parallel with the rezoning and biocertification application). Similar to this biocertification application, following consideration of submissions a final application will be made to DAWE for determination. Any approval to be issued under the EPBC Act is completely separate to the NSW assessment process	Report (ELA 2022)
Development will not 'improve' biodiversity outcomes	MCC Submission # 485603, 102, 109	An 'improve or maintain' outcome is described in Section 2 of the BCAM and is achieved if 'red flag' areas are avoided and all impacts are offset by the number of required credits (or the Director-General of OEH is satisfied that impacts to red flag areas may be offset in accordance with the variation criteria in s2.4 of the BCAM). In accordance with the BCAM, conservation measures may be secured within the BCAA (Section 8) or outside of the BCAA (Section 9). Subject to the Director –General approval of the red flag variation requests for impacts to TMO (Section 5 of the assessment report), the conservation measures proposed in the assessment (both on-site and off-site measures) will generate all the required credits for impacts to all vegetation types and all species credit species. As such, and in accordance with the BCAM, the proposal is considered to meet an 'improve or maintain' outcome.	Section 2.4, 8 & 9 of BCAM and Section 4 and 5 of the Biocertification Assessment report, May 2022

2.2 Impacts to native vegetation, flora and fauna and wildlife corridors			
Comments	Raised in submissions	Response	Relevant Section of Assessment Report
		The proposed conservation measures will permanently protect, manage and restore some 312 ha of forest and heathland on-site. The equivalence of a further 300-400 ha of off-site offsets will also be secured by either the registration of additional BSAs, purchase and retirement of either Biobanking or Biodiversity Offset Scheme credits or payment in to the Biodiversity Conservation Fund (following an application of 'reasonable credit equivalence') prior to the commencement of Stage 13. The management of the offset areas includes improving the quality and extent of vegetation and restoration of currently cleared areas.	

3 Conclusion

Of the issues raised in the four biocertification and 127 planning proposal submissions, the majority related to general impacts on biodiversity in the study area. Only the BCD, MCC and Submission #485603 raised specific issues to do with compliance with the BCAM (or more precisely, current survey guidelines and BAM requirements) and the adequacy of offsets (in size, location, type and timing of securing).

ELA considers that the assessment report has addressed the matters required by the BCAM, other than providing sufficient information on the measures taken to avoid and minimise impacts to biodiversity values (not a specific requirement of the BCAM) and red flag areas specifically (a BCAM requirement at Section 2.4.1) and subject to securing the required credits (either via the registration of additional BSAs, purchase and retirement of credits from registered Biobank and/or Biodiversity Stewardship or payment into the Biodiversity Conservation Fund (prior to the commencement of each Stage of development), can meet an Improve or Maintain outcome, as defined by the BCAM.

However, following a review of the relevant issues raised in the exhibition period, the Biocertification Assessment report will need to be updated to accommodate some minor amendments to the Master Plan raised by the Rural Fire Service. This will result in relatively minor changes to the overall credits required/credits generated and will not increase impacts to TMO. The BCAR will also be updated to make the measures taken to avoid and minimise impacts to biodiversity values during the extensive planning and consultation phase of the proposal clearer.

The revised Master Plan footprint is shown at Figure 3.

The BCAR will be updated once BCD has considered this response to submissions report and provided any further comments. It is intended that the update will use the same biodiversity data (i.e. plot data, survey results and threatened species records/habitat polygons) as in the original application submitted to the Minister in July 2019 and captured by the Savings and Transitional provisions of the BC Act as per the Ministerial Order dated November 2017.

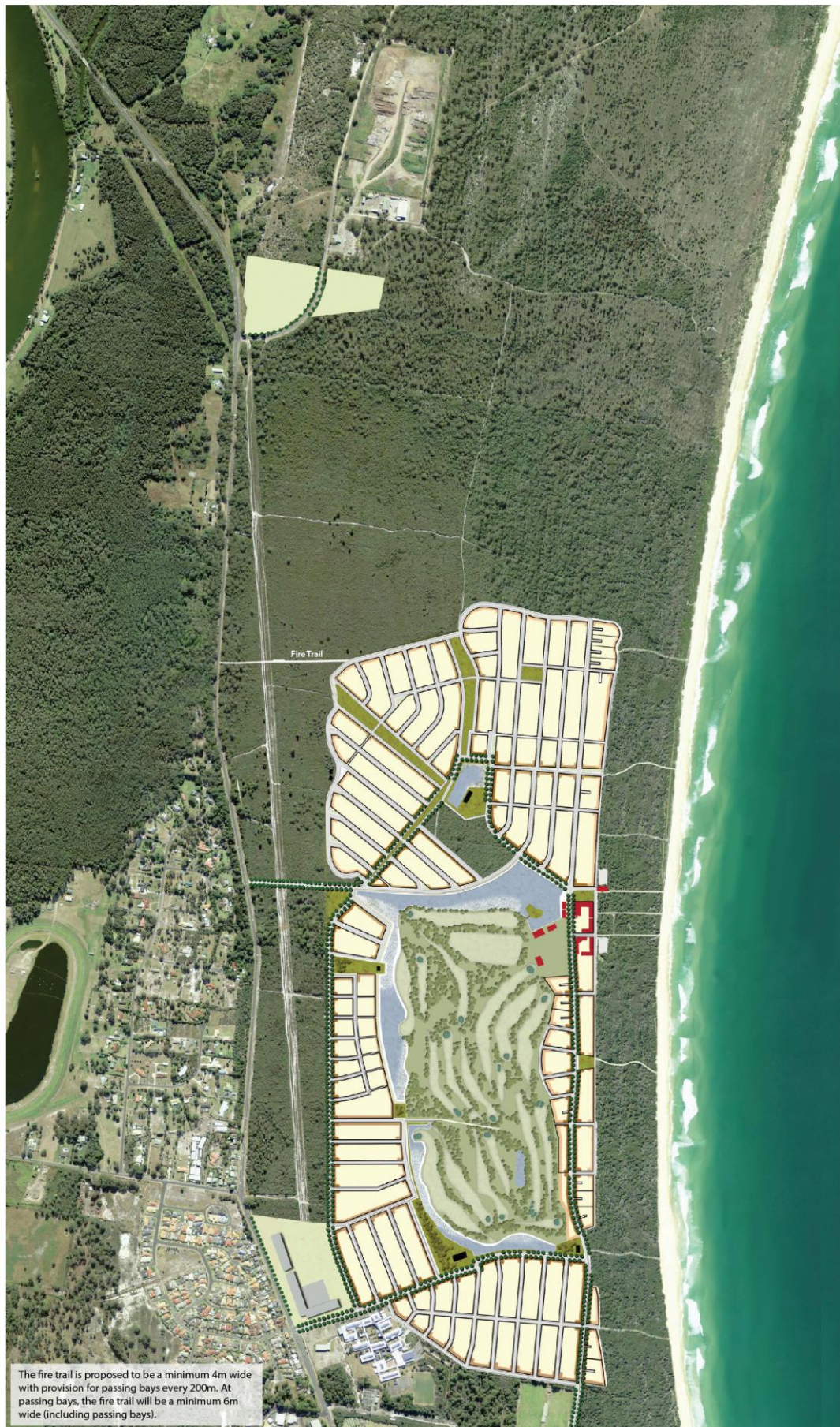


Figure 3: Revised Master Plan (amending perimeter roads) as requested by the RFS

4 References

DEECW 2011. Biodiversity Certification Assessment Methodology. NSW Department of Environment, Climate Change and Water, February 2011.

ELA 2022. North Tuncurry Urban Release Area – Biodiversity Certification Assessment Report & Biodiversity Certification Strategy. Report prepared for Department of Planning, Industry and Environment, May 2022.

ERM 2005 North Tuncurry Ecological Constraints and Opportunities. Report prepared for Landcom by ERM, October 2005.

ERM 2010a. Crown Land off The Lakes Way North Tuncurry Ecological Assessment. Report prepared for Landcom by ERM, 12 January 2010.

ERM 2010b. Ecology Assessment of Crown Land at North Tuncurry – Tuncurry Midge Orchid Survey. Letter to Landcom from ERM, 12 January 2010.

FloraSearch 2013. Pollination of the Tuncurry Midge Orchid (*Genoplesium littorale*). Report prepared for Landcom, June 2013.

FloraSearch 2014 *Pollination of the Tuncurry Midge Orchid (Corunastylis littoralis) Supplementary Information*. Report prepared for Landcom NSW by Flora Search, June 2014.

FloraSearch 2018. Efficacy of the 'Orchid Reserve' and 'Orchid Pollinator Corridors' in the proposed North Tuncurry Development. Letter to Landcom dated 27 April 2018. FloraSearch, Orange, NSW.

NSW Government Gazette No. 126 of 24 November 2017. Proposed Applications for Biodiversity Certification Order 2017.

OEH 2015 Biodiversity Certification – Guide for applicants. NSW Office of Environment and Heritage, May 2015.

RPS 2012a. *Ecological Inventory Report – North Tuncurry*. Unpublished report prepared for Landcom, March 2012.

RPS 2019. Bush Fire Assessment Report North Tuncurry Development Project. Report prepared for Landcom, 8 March 2019

Appendix A : Exhibited Biocertification Assessment report and Application (Eco Logical Australia, May 2022)

Provided as a separate Pdf document with names of submitters removed for privacy reasons.

Appendix B : Biocertification Assessment submissions

Provided as a separate Pdf document with names of submitters removed for privacy reasons.

Appendix C : Planning Proposal submissions

Provided as a separate Pdf document with names of submitters removed for privacy reasons.

Appendix D : Response to BCD submission

Provided as a separate Pdf document with names of submitters removed for privacy reasons

Appendix E : Response to MCC submission

Provided as a separate Pdf document with names of submitters removed for privacy reasons.
