

ASSESSMENT REPORT

Cobaki Lakes Residential Community Development Concept Approval MP 06_0316 (MOD 9)

1. INTRODUCTION

This report is an assessment of a request to modify the Concept Plan Approval for the Cobaki Lakes Residential Community Development (MP 06_0316 MOD 9) in the Tweed Shire local government area (LGA).

The request has been lodged by Leda Manorstead Pty Ltd (the Proponent) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks approval to:

- reduce the total offset requirement for the loss of 3.8 ha of Swamp Sclerophyll Forest (SFF) Endangered Ecological Community (EEC) from 22.77 ha to 14 ha
- reclassify 0.01 ha of Lowland Rainforest on Floodplain EEC to Lowland Rainforest EEC and reduce the on-site offset from 13.3 ha to 12.96 ha (-0.34 ha).

The current offset requirements for the SFF and Lowland Rainforest on Floodplain EECs were determined under MP 06_0316 MOD 1 (MOD 1). During the assessment of MOD 1, the Department engaged an independent expert (Umwelt) to assess the offset requirements for the proposal.

Umwelt found the proposed 13.3 ha offset area to compensate for the loss of 0.11 ha of Lowland Rainforest on Floodplain EEC was sufficient. However, the proposed 6.77 ha offset area to compensate for the loss of 3.8 ha of SSF EEC was insufficient. To address this shortfall, a new condition was imposed requiring the provision of a 6.77 ha onsite offset plus additional lands (either on or off-site) in the order of 16 ha, resulting in a total offset area of 22.77ha.

The Proponent contends the offsets determined by the Umwelt review need to be revisited because it was based on a desktop review rather than actual survey data. The Proponent also seeks to recalculate the offsets using the BioBanking Assessment Methodology 2014 (BBAM) rather than the BBAM 2008 used in the Umwelt review. Based on the revised methodology, the Proponent calculated that 128 ecosystem credits would be required to offset the loss of 3.8 ha of SSF EEC which is 64 credits less than the credits determined by Umwelt. The Proponent concluded this would reduce the total offset area from 22.77 ha to 14 ha (comprising - 1.64 ha on site and - 8.77 ha off-site).

Tweed Shire Council (Council) and the Office of Environment and Heritage (OEH) raised concern about the reduced offset for the SFF EEC and the proposed reclassification of Lowland Rainforest on Floodplain EEC to Lowland Rainforest EEC. The OEH also raised concern that the proposal did not adequately reflect the ecological integrity of the vegetation in 2008 which should be the baseline ecological condition for the offset calculation. No public submissions were received.

Given the complex nature of the proposal, the Department engaged Ecological Australia (ELA) to provide a further independent review of the request and provide advice on appropriate offsets for the loss of EECs from the site.

In summary, the ELA review concluded:

- the use of the 2016 vegetation survey is acceptable as it generally reflects the state of the vegetation at the time the original biodiversity assessments for the site were completed (2008);
- the offsets recommended in the Umwelt review were based on the correct application of the offset policy applicable at the time of determination of MOD 1;
- the Proponent has not applied the requirements of the Framework for Biodiversity Assessments 2014 (FBA) correctly to calculate the revised offsets; and
- there is insufficient information to support the proposed reclassification of the Lowland Rainforest on Floodplain EEC, however the proposed offset area remains sufficient.

Based on the findings of the ELA review, the Department does not support reducing the total offset requirements for the SSF EEC. The Department considers there are no compelling reasons to support changing the methodology to determine the SSF EEC offsets, particularly given the Umwelt review was found to be correct. Further, if the offsets were to be determined under the FBA, the Department considers that the policy should be applied in full. While the Department considers the overall quantum of SSF EEC should be maintained, it supports reducing the onsite offset component for the SSF EEC, given it is minor and the BBAM and FBA permit offsetting the balance via the retirement of ecosystem credits, or the payment of funds into the OEH's Biodiversity Conservation Trust.

With regard to the proposed reclassification of the Lowland Rainforest on Floodplain EEC, the Department agrees with the ELA review that there is insufficient information to support its reclassification. However, the Department's assessment concludes the proposed reductions in on-site offset for Lowland Rainforest on Floodplain EEC is acceptable as the proposal would continue to provide sufficient offsets for the removal of this vegetation.

2. SUBJECT SITE

The site is located on the New South Wales and Queensland State border, approximately 1.5 kilometres (km) west of the Gold Coast Airport and approximately 6 km inland of Tweed Heads. The site location is shown in **Figure 1**.



Figure 1: Site location (source: Google Maps)

Adjoining the site to the east is a wetland, protected under *State Environmental Planning Policy No. 14 - Coastal Wetlands*, Cobaki Creek and the Cobaki Broadwater. Remnant vegetation is located to the west and north of the site. Agricultural land primarily used for cattle grazing adjoins the site to the south and north-west. To the south-west is a golf course.

3. APPROVAL HISTORY

On 6 December 2010, the then Minister for Planning granted Concept Approval for the Cobaki Lakes Residential Community Development (MP 06_0316). The approval permits the following:

- residential development to cater for approximately 5,500 dwellings;
- town and neighbourhood centres with retail and commercial uses;
- community facilities and school sites;
- open space;
- wildlife corridors;
- protection and rehabilitation of environmentally sensitive land;
- road corridors and utility services infrastructure;
- water management areas; and
- road, pedestrian and bicycle networks.

The Concept Approval also included a site-specific Development Code to guide future development and built form across the site.

The Concept Approval has been the subject of several modification requests as outlined in **Table 1** below.

Table 1: Summary of Modification Requests

MOD	Modification	Current Status
1	New biodiversity offset arrangements and administrative changes to conditions	Approved on 29/05/13
2	Changes to the land use distribution and building heights to accommodate a university campus in the Town Centre	Withdrawn
3	Reclassification of 3.8 ha of Swamp Sclerophyll Forest on Coastal Floodplains EEC	On hold
4	Revisions to the location of school sites, commercial centres and cultural heritage parks	Approved on 31/09/17
5	Changes to permit private water and wastewater services and associated amendments to the Cobaki Development Code	Approved on 29/09/17
6	Changes to the height limits to permit buildings up to 15 storeys	Withdrawn
7	Changes to the Cobaki Development Code	Approved on 26/10/17
8	Changes to the height limits to permit buildings up to 8 to 12 storeys	SEARS issued on 21/12/17

4. PROPOSED MODIFICATION

The modification request, as amended by the Proponent's Response to Submissions (RTS), seeks approval to re-word Term C19(2) and Statement of Commitment (SOC) 4.8.2 of the Concept Plan to:

- reduce the on-site offset requirements for the SSF EEC from 6.77 ha to 5.13 ha;
- retire 128 SSF ecosystem credits to offset the residual impacts associated with clearing 3.8 ha of SSF EEC on-site;
- reclassify 0.01 ha of Lowland Rainforest on Floodplain EEC to Lowland Rainforest EEC and reduce the on-site offset from 13.3 ha to 12.96 ha (-0.34 ha); and
- implement an Amended Site Revegetation and Regeneration Plan to reflect the proposed changes to the offset arrangements and the reclassification of the Lowland Rainforest on Floodplain EEC.

The proposed modifications to the offset requirements are summarised in **Table 2** and are depicted in **Figures 2 to 5**.

Table 2: Summary of Proposed Changes to Biodiversity Offset Areas

Offset EEC	Area Impacted (ha)	Offset Approved Under MP 06_0318 MOD 1	Proposed Offset	Change in Ha
Swamp Sclerophyll Forest (SSF)	3.8	6.77 on-site, plus additional land off site ¹ in an area agreed with OEH	5.13 on-site, plus the retirement of 128 ecosystem credits ²	- 1.64 ha (on-site), and - 8.77 ha (equivalent to - 64 ecosystem credits)
Lowland Rainforest	0.1	13.3 ha on-site	12.96 ha on-site	- 0.34 ha (on-site)
Lowland Rainforest on Floodplain	0.01			

Note¹: The note in Term B19 states 16 ha may be required off-site to offset the reduction in the SSF EEC offset area approved under MOD 1.

Note²: The provision of 128 ecosystem credits is equivalent to an area of approximately 14 ha of land.

The Proponent advised the modifications to the SSF EEC offsets should be recalculated based on vegetation survey data and the BBAM 2014. The Proponent also advised that the changes to the SSF EEC offsets are required to:

- permit clearing within the on-site offset areas to facilitate the construction of the drainage and road infrastructure approved for the Cobaki Parkway (north and south); and
- reflect the location of the bioretention basins identified in the Stormwater Quality Concept Plan approved under the Cobaki Central Open Space Project Application (MP 08_0200).

In addition, the Proponent advised the reclassification of 0.01 ha of Lowland Rainforest on Floodplain EEC is required to correct its mapping error which resulted in land outside the floodplain being classified as EEC.

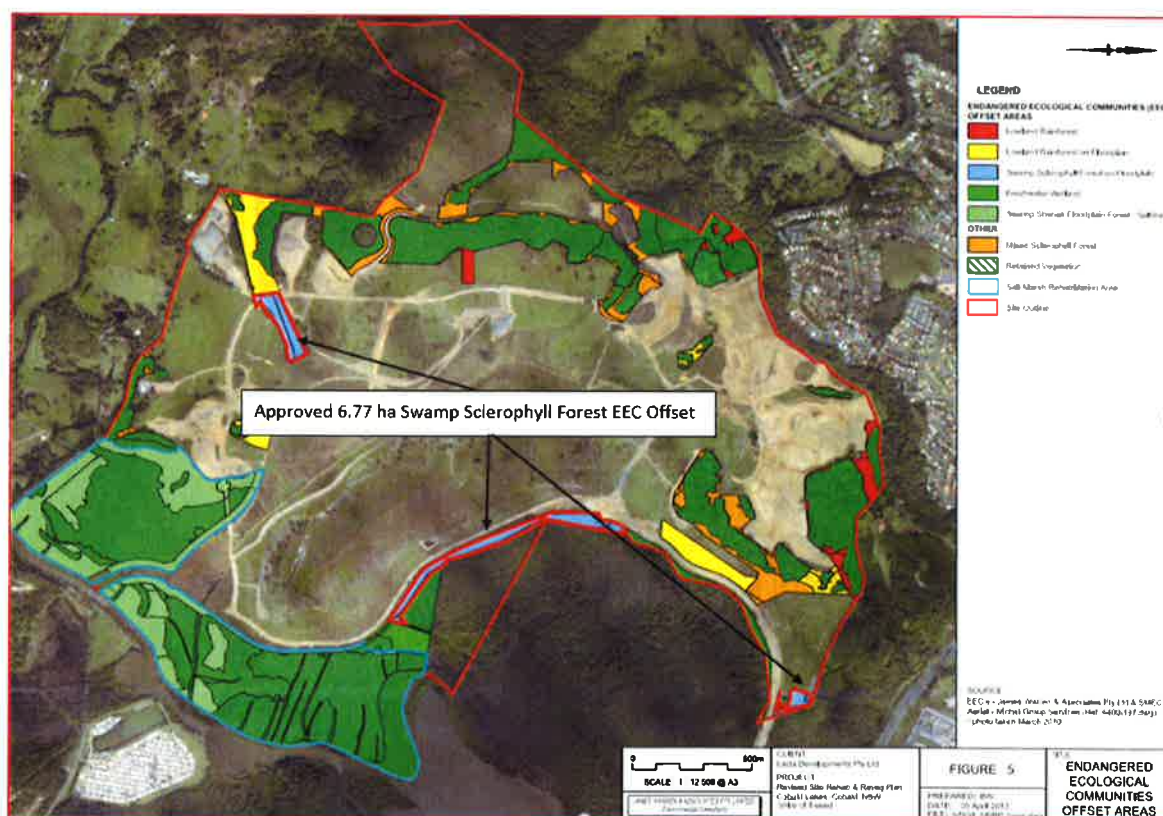


Figure 2: Approved Swamp Sclerophyll Forest EEC Offset (source: Revised Site Revegetation and Regeneration Plan (JWA, 2013))

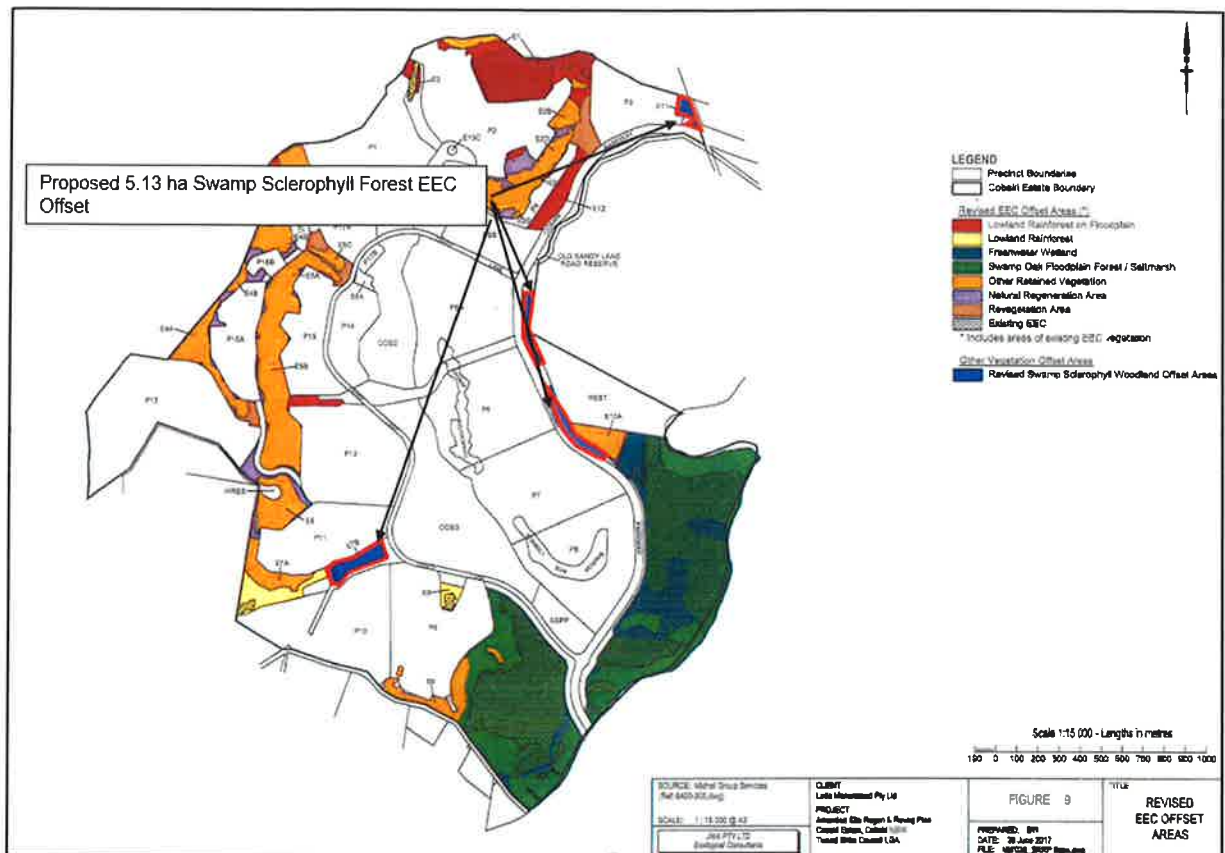


Figure 3: Proposed Swamp Sclerophyll Forest EEC Offsets (source: Amended Site Revegetation and Regeneration Plan (JWA, 2017))



Figure 4: Area of Lowland Rainforest on Floodplain EEC currently identified on-site (source: Revised Site Revegetation and Regeneration Plan (JWA, 2013))

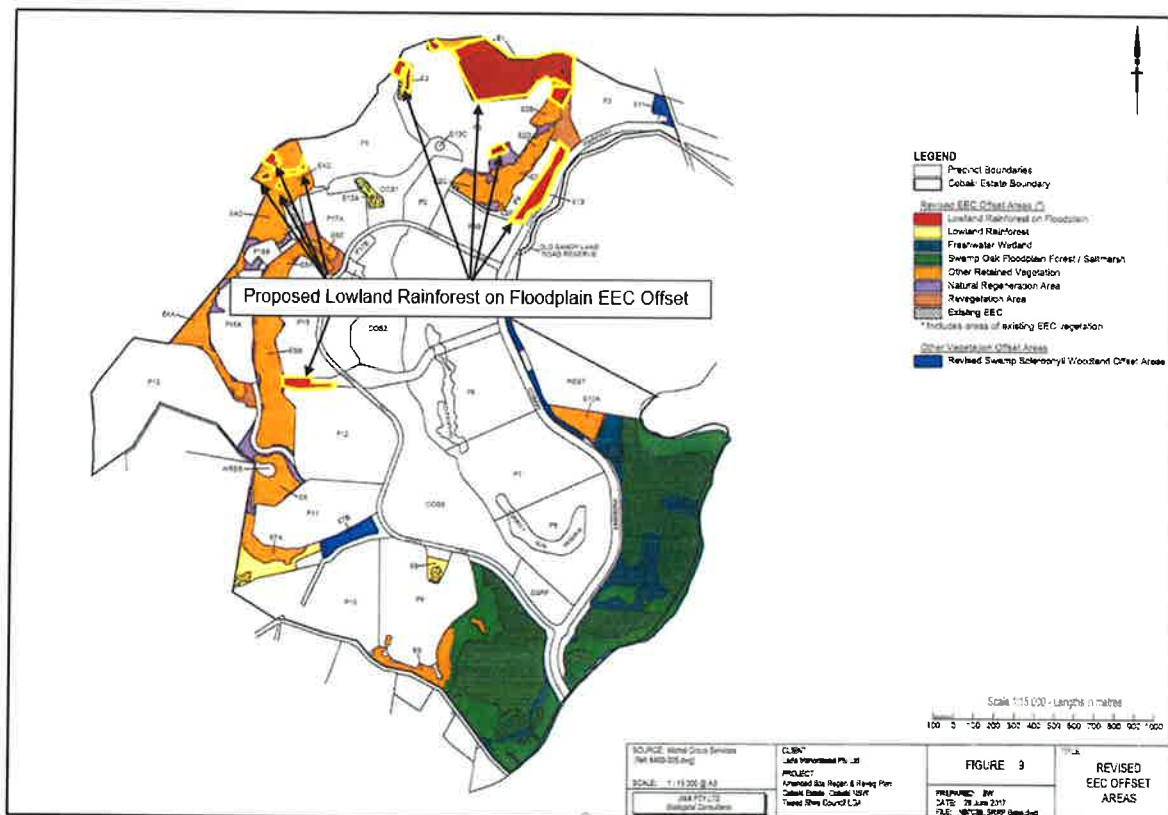


Figure 5: Proposed Areas of Lowland Rainforest on Floodplain EEC (source: Revised Site Revegetation and Regeneration Plan (JWA, 2017))

5. STATUTORY CONSIDERATION

5.1 Section 75W

The project was originally approved under Part 3A of the EP&A Act. The project is a transitional Part 3A project under Schedule 2 to the EP&A (Savings, Transitional and Other Provisions) Regulation 2017. The power to modify transitional Part 3A projects under section 75W of the Act as in force immediately before its repeal on 1 October 2011 is being wound up – but as the request for this modification was made before the ‘cut-off date’ of 1 March 2018, the provisions of Schedule 2 (clause 3) continue to apply. Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the Minister (or his delegate) may approve or disapprove the carrying out of the project under section 75W of the EP&A Act.

The Department is satisfied the proposed changes are within the scope of section 75W of the EP&A Act, and the proposal does not constitute a new application.

5.2 Approval Authority

The Independent Planning Commission (the Commission) may determine the request under delegation as Tweed Shire Council objected to the proposal.

6. CONSULTATION

The Department made the modification request publicly available on its website and consulted with Tweed Shire Council (Council) and the Office of Environment and Heritage (OEH). A summary of the agency submissions is provided below.

Council objected to the modification request for the following reasons:

- the proposal would decrease the SSF EEC offsets from 22.7 ha (6.77 ha on-site and 16 ha offsite) to 14 ha;
- the shortfall in the on-site offset area should be addressed by expanding the approved SSF

- EEC rehabilitation areas;
- the request does not consider the relationship between the Concept Plan and the site-wide offset strategy currently under preparation to satisfy the requirements of DA15/1026;
- the Draft Offset Strategy seeks to change the layout of the on-site offset areas. These changes would:
 - reduce patch sizes and increase edge effects in several rehabilitation areas;
 - reduce the extent of the vegetation corridor between Precincts 10 and 11;
 - reduce the long-term viability of several environmental protection areas; and
 - increase maintenance costs for Council.
- the engineering requirements for the project have not been fully resolved and further reductions to the on-site offset areas may be required. Continued prioritisation of engineering requirements over on-site offsets is not supported by Council; and
- proposed Term C19(2) is inconsistent with the requirements of the Revised Ecological Assessment (April 2013).

In addition, Council queried whether the requirements of the Tweed Coast Comprehensive Koala Plan of Management (KPOM) apply to the modification request.

The **OEH** did not object to the modification request, however it raised the following concerns:

- the proposal would decrease the total offsets required for the clearing of 3.8 ha of SSF EEC from 22.7 ha (6.77 ha on-site and 16 ha offsite) to approximately 14 ha;
- the proposed offsets for the SSF EEC are inconsistent with the recommendations of the Umwelt review;
- the management regime and development activity undertaken in and around the SSF EEC since the determination of the Concept Plan may have reduced the ecological integrity of this EEC. Accordingly, the vegetation surveys undertaken in 2016 should not be relied upon to determine the ecosystem and species credits required to offset the SSF EEC;
- the Proponent should quantify the ecological integrity of the SSF EEC at the time of the determination of the Concept Plan, and update the Biodiversity Assessment Report (BAR) and biobanking calculations for the development to reflect this information;
- there are discrepancies between the Proponent's BAR and biobanking calculations; and
- the proposal does not include any justification to support the reclassification of the Lowland Rainforest on Floodplain EEC.

No **public** submissions were received.

7. RESPONSE TO SUBMISSIONS

On 6 September 2017, the Proponent provided a RTS. The RTS did not propose any changes to the scope of the modification request, however it provided the following clarifications:

- Term C19(2) of the Concept Approval does not require the provision of a 16 ha off-site offset. Accordingly, the proposal would not reduce the quantum of the SSF offset from 22.7 ha to 14 ha;
- the site was utilised more intensively for agricultural purposes at the time of determination of MOD 1. As such, there is no need to amend the BAR;
- the request seeks approval to provide a 5.13 ha on-site offset for the SSF EEC, and 128 SSF ecosystem credits to compensate for the residual impacts on this EEC; and
- the Revised Site Revegetation and Regeneration Plan (2013) approved under MOD 1 combines the offset requirements for the Lowland Rainforest EECs. The Amended Site Revegetation and Regeneration Plan (2017) would continue to combine the offset requirements for the Lowland Rainforest EECs, however it would reduce the on-site offset for these EECs by 0.34 ha (1.41 %). This reduction is considered inconsequential.

The RTS was referred to Council and the OEH for comment. Both agencies maintained their concerns regarding the ecological impacts of the modification request.

8. ASSESSMENT

The key issues associated with the proposed modification are:

- changes to the offset requirements for the SSF EEC; and
- the reclassification of the Lowland Rainforest on Floodplain EEC and associated amendments to the offset requirements for the Lowland Rainforest communities.

All other issues have been considered in **Table 2** below.

8.1 Quantum of Offsets for the Swamp Sclerophyll Forest EEC

The Concept Plan originally permitted the removal of 3.8 ha of SSF EEC, subject to the Proponent rehabilitating 15.73 ha of SSF EEC on-site in accordance with the Site Revegetation and Rehabilitation Plan (2010).

Following the approval of the Concept Plan, the Proponent lodged a section 75W modification request seeking approval to reduce the on-site offset for the SSF EEC from 15.73 ha to 6.77 ha. This request was sought on the basis the conditions of approval for DA10/0801 prohibited the use of the central drainage reserve as an environmental offset.

To determine an appropriate offset for the SSF EEC, the Department engaged Umwelt to undertake a BioBanking Assessment of the proposal. In summary, the Umwelt review used the Biobanking Assessment Methodology (BBAM 2008), to determine the offset requirements for the proposal. This assessment concluded:

- 192 ecosystem credits would be required to offset the loss of 3.8 ha of SSF EEC;
- the proposed on-site offset would be equivalent to 42 ecosystem credits;
- an area equivalent to 150 ecosystem credits would be required to address the shortfall in biodiversity credits for the SSF EEC; and
- using the OEH's credit converter, 150 ecosystem credits would equate to an area of approximately 16 ha.

The Department adopted the recommendations of the Umwelt review in-full and recommended a new condition requiring the Proponent to provide a 6.77 ha SSF EEC offset on-site plus additional lands on or off-site in the order of 16 hectares. This condition was supported by the Commission as part of its determination of MOD 1.

The Proponent argues that the offsets determined by the Umwelt review need to be revisited because the BBAM 2008 calculations were based on a desktop review of the vegetation and not actual survey data. The Proponent also seeks to recalculate the offsets using the BBAM 2014 rather than the BBAM 2008 used in the Umwelt review.

Both the OEH and Council raised concern about the proposed reduction in the offsets for the SSF EEC. The OEH also advised it does not support assessing the ecological integrity of the site in its most recent state. This is because the quality of vegetation may have declined over time thereby impacting the number of credits required to offset the proposal. The OEH also advised:

- the methodology outlined in the Umwelt review should be used to recalculate the offset requirements for the proposal; and
- the Biodiversity Certification Credit Calculator does not need to be used for the proposed modification as a credit requirement will be sufficient to identify a suitable offset.

ELA Review

Given the technical nature of the issues in contention, the Department engaged ELA to review the potential biodiversity impacts of the modification request. A copy of this report is provided at **Appendix C**.

In summary, the review concluded:

- aerial photographs of the site demonstrate a deterioration in the condition of vegetation

between 2013 and 2016. However, the site values identified in the BAR generally reflect the condition of the vegetation in 2008. Therefore, the use of the 2016 vegetation survey would have a negligible impact on the offset requirements for the proposal;

- the Umwelt review was based on the correct application of the offsetting methodology applicable at the time of determination of MOD 1 (BBAM 2008);
- the Proponent has not applied the FBA correctly as the landscape score calculations do not include the impact of removing all plant community types (PCTs) associated with the proposal, and the EEC multiplier was not applied. These errors would reduce the number of ecosystem credits required to offset the proposal from 192 credits to 128 credits; and
- should the Department seek to use the FBA in lieu of the Umwelt methodology, the policy should be applied correctly. This would require revisions to the landscape score calculations (to include all PCTs proposed for removal), the application of the EEC offset multiplier, and consider whether species credits would be required for the proposal.

The Proponent provided a submission on the recommendations of the Peer Review on 9 February 2018. This submission advised:

- the BAR was based on advice from the OEH which confirmed it is acceptable to assess the impacts on individual PCTs in isolation from other PCTs that may be affected by the proposal; and
- the BAR seeks to exclude the use of the EEC multiplier as the SSF vegetation is outside the floodplain and is not located on soil types identified in the NSW Scientific Committee's Final Determination for the SSF EEC.

ELA reviewed the Proponent's submission and advised:

- the BBAM 2008 and 2014 require an assessment of all vegetation proposed for removal in the calculation of the landscape score; and
- the Proponent has not provided sufficient justification to exclude the application of the EEC multiplier, as it has not addressed the principles for classifying SSF vegetation communities as an EEC as identified in the NSW Land and Environment Court's judgement for *Motorplex (Australia) Pty Limited v Port Stephens Council 2007 (NSW LEC 77)*.

Department's Consideration

The Department considers there are two key issues to consider in determining whether it is appropriate to reduce the SSF EEC offsets. These are:

- whether it is appropriate to recalculate the offset based on the results of the 2016 vegetation survey; and
- whether it is appropriate to use a different methodology to determine the SSF EEC offsets.

Use of 2016 Vegetation Surveys

The Proponent seeks to recalculate the SSF EEC offset based on the results of vegetation surveys undertaken in 2016, rather than the desk top review undertaken by Umwelt.

The ELA review assessed aerial photographs of the site between 2009 and 2016 to determine whether any significant changes have occurred to the quality and distribution of vegetation since the completion of the original ecological assessments for the Concept Plan.

The ELA review noted there has been a minor deterioration in the condition of the vegetation on-site. However, the site values identified in the BAR generally reflect the quality of the vegetation at the time the original ecological assessments were conducted (2008). Further, the review notes the plot data estimated by Umwelt was very close in value to the field data collected by JWA in 2016. Therefore, the use of the 2016 vegetation surveys would not reduce the quantum of offsets required to mitigate the removal of 3.8 ha of SSF EEC on-site.

Accordingly, the Department raises no objection to the use of the JWA plot data to determine the quantum of offsets applicable to the proposal.

Changes to the Methodology used to Calculate the SSF EEC Offsets

The Department notes the Proponent seeks to use a different methodology to determine the offsets for the SSF EEC. It now seeks to use the FBA and the BBAM 2014 calculator, rather than the BBAM 2008 to determine the quantum of the offsets for the SSF EEC.

The Department notes the Proponent's BAR was not based on the correct application of the FBA because:

- it did not calculate the loss of all PCTs associated with the proposal; and
- did not apply the EEC multiplier.

This would reduce the number of ecosystem credits required to offset the clearing of 3.8 ha of SSF EEC from 192 credits to 128 credits.

The Proponent contends the EEC multiplier should not be applied on the basis that:

- the soil land zone type on which trees occur is inconsistent with floodplain soils as required by the Scientific Determination; and
- the community did not occur at or below the 1 in 100-year recurrence line as is required by the Scientific Committee Final Determination.

The Department has reviewed the Proponent's justification and has concluded it fails to consider the implications of the NSW Land and Environment Court's judgement in *Motorplex (Australia) Pty Limited v Port Stephens Council 2007 (NSW LEC 77)* on the basis that this judgement concluded:

- definition of the term 'floodplain' contained in the NSW Scientific Committee's Final Determination for the SSF EEC is expansive to ensure it extends to all landforms potentially associated with coastal floodplains, rather than being limited to land within the 100-year average recurrence interval; and
- the NSW Scientific Committee's Final Determination for the SSF EEC requires Proponent's to consider other descriptors (i.e. floristic, species assemblage, location, ecological and biotic factors) prior to concluding SSF vegetation falls outside the scope of the NSW Scientific Committee's definition for this EEC.

Consequently, the Department considers the EEC multiplier should be applied to the SSF EEC and if the FBA were to be used to recalculate the offsets, the policy should be applied in full. This would include recalculating the landscape score including all PCTs proposed for removal and applying an EEC multiplier of three. In addition, any revised assessment would need to consider whether species credits would be required for the Little Bentwing-bat and the Wallum Froglet.

The Department is also satisfied that Umwelt applied the correct offsetting methodology applicable at the time of determination. As such, the Department considers the Umwelt methodology should continue to be used to determine the quantum of offsets for the SSF EEC. The Department also notes OEH support this position.

Based on the Umwelt methodology and the reduced on-site offset of 5.13 ha (equivalent to 33 ecosystem credits) the proposal would require 159 ecosystem credits to ensure a total of 192 ecosystem credits will be provided to offset the clearing of 3.8 ha of SSF EEC. The Department has recommended modifications to Term C19(2) to ensure this occurs.

8.2 Reclassification of the Lowland Rainforest on Floodplain EEC

The modification request seeks approval to reclassify 0.01 ha of Lowland Rainforest on Floodplain EEC to Lowland Rainforest EEC and reduce the size of the on-site offset from 13.30 ha to 12.96 ha (-0.34 ha). The Proponent advised the proposed reclassification of the Lowland Rainforest on Floodplain EEC is required to rectify its mapping error which resulted in vegetation outside the floodplain being classified as Lowland Rainforest on Floodplain EEC.

The Department notes both the Council and the OEH advised insufficient justification has been provided to support the proposed reclassification of the Lowland Rainforest on Floodplain EEC and the proposed reduction in the on-site offset area for the Lowland Rainforest communities.

ELA Review

The Department requested ELA consider the proposed reclassification of the Lowland Rainforest on Floodplain EEC in its review. In summary, the review concluded:

- insufficient information has been provided to support the proposed reclassification of this EEC. However, as the PCTs currently on-site are common to both Lowland Rainforest communities, the proposed changes to the Revised Revegetation and Regeneration Plan would result in a neutral biodiversity outcome;
- the Umwelt Review considered the impact of clearing both Lowland Rainforest EECs together and was based on the correct application of the offsetting methodology applicable at the time of determination of MP 08_0418 MOD 1 (BBAM 2008);
- the Umwelt methodology demonstrates an appropriate offset would be provided on-site even if both EECs were assessed separately; and
- whilst the proposal would reduce the size of the on-site offset area by 0.34 ha, the proposal would continue to provide an appropriate offset.

Department's Consideration

The Department agrees with the ELA review that there is insufficient information to support the proposed reclassification of the Lowland Rainforest on Floodplain EEC. Notwithstanding, the Department notes that as both Lowland Rainforest communities are comprised of the same PCTs, the offset requirements are the same regardless of their classification.

The Department has reviewed the proposed 0.34 ha reduction in the on-site offset areas for the Lowland Rainforest on Floodplain EEC and concludes the proposal is acceptable as the offset areas identified in the Amended Site Regeneration and Revegetation Plan would continue to generate sufficient ecosystem credits to offset the removal of this vegetation.

8.3 Other issues

Table 2: Assessment of other issues

Issue	Comment	Recommendation
<i>Reductions to the on-site offsets</i>	<ul style="list-style-type: none"> • Council raised concern about reducing the on-site offsets for the SFF EEC (from 6.77 ha to 5.13 ha) and Lowland Rainforest EEC (from 13.3 ha to 12.96 ha). • The Department has considered the Council's concerns and whilst it is preferable to provide on-site offsets, the Department notes the proposed reduction in on-site offsets is minor and both the BBAM and FBA permit offsetting to occur via the retirement of ecosystem credits, or the payment of funds into the OEH's Biodiversity Conservation Trust. • The Department also notes OEH did not raise any concerns with the proposed reduction of on-site offsets. 	No additional Conditions or amendments necessary.
<i>Impacts on approved rehabilitation and revegetation areas</i>	<ul style="list-style-type: none"> • Council raised concern about modifying the location and distribution of the rehabilitation and revegetation areas to accommodate site infrastructure as: <ul style="list-style-type: none"> ▪ the construction of bioretention basins 9 and 10 would compromise the biodiversity values of rehabilitation areas 7 and 8 and would increase management costs for Council; and ▪ adding 0.51 ha to rehabilitation area 3 may compromise the delivery of the public open space in this location. • The Department has reviewed Council's concerns and has concluded: <ul style="list-style-type: none"> ▪ the BBAM 2004 and 2014 consider patch size and edge effects. As such, the biodiversity impacts of the proposed modification can be offset via the retirement of additional ecosystem credits, or the payment of funds into the OEH's Biodiversity Conservation Trust; and ▪ there is sufficient land available on-site to ensure the delivery of public open space across the Concept Plan area and these matters can be resolved with Council as each stage is developed. 	No additional Conditions or amendments necessary.

<i>Modifications to the Amended Revegetation and Regeneration Plan</i>	<ul style="list-style-type: none"> The modification request includes an Amended Site Revegetation and Regeneration Plan which reflects the proposed changes to the on-site offset areas for the SSF, Lowland Rainforest and Lowland Rainforest on Floodplain EECs. The Department has reviewed the Amended Site Revegetation and Regeneration Plan and notes it includes changes to offset for other vegetation communities which are outside the scope of this modification request. In addition, the proposed Plan seeks to reclassify the SSF EEC. To address this issue, the Department has recommended a new term of approval requiring the Proponent to update the Amended Site Revegetation and Regeneration Plan within three months of the date of determination of MP 08_0316 MOD 9 to: <ul style="list-style-type: none"> reflect the offset requirements identified in Term C19(2); and identify the SSF vegetation as an EEC; ensure no areas of Lowland Rainforest on Floodplain EEC within the on-site offset areas are reclassified; and <p>remove any changes to the offset areas outside the scope of this modification request.</p>	The Proponent provide an Amended Site Revegetation and Regeneration Plan within three months of the date of determination of MP 06_0318 MOD 9.
<i>Impacts on Koalas</i>	<ul style="list-style-type: none"> Council queried whether the Tweed Coast Comprehensive KPOM applies to the modification request. The Department has reviewed the provisions of the Tweed Coast Comprehensive KPOM and has concluded it does not apply to the assessment of Part 3A proposals. The Department also notes that based on the results of targeted and historic site surveys, the Proponent's BAR concludes suitable Koala habitat exists within the Swamp mahogany community. However, as there is no evidence of Koalas utilising this habitat, no Koala species credits are required to offset the impacts of the proposal. The OEH reviewed the results of the Proponent's BAR and confirmed no Koala species credits would be required to offset the clearing of 3.8 ha of Swamp Sclerophyll Forest EEC. The Department's assessment therefore concludes no Koala offsets are required as a result of this proposal. 	No additional conditions or amendments necessary

9. CONCLUSION

The Department has assessed the modification request and supporting information in accordance with the relevant requirements of the EP&A Act.

Based on the ELA review, the Department does not support reducing the total offset requirements for the SSF EEC. The Department considers there are no compelling reasons to support changing the methodology to determine the SSF EEC offsets, particularly given the Umwelt review was found to be correct. If the offsets were to be determined under the FBA, the Department considers that the policy should be applied in full. In addition, the Department agrees with the ELA review that there is insufficient information to support reclassifying the Lowland Rainforest on Floodplain EEC.

However, the Department's assessment concludes the proposed reductions in on-site offset for Lowland Rainforest on Floodplain EEC is acceptable as the proposed offset remains sufficient. Further, the Department supports reducing the onsite offset component for the SSF EEC, given it is minor and the BBAM and FBA permit offsetting the balance via the retirement of ecosystem credits, or the payment of funds into the OEH's Biodiversity Conservation Trust.

The Department therefore considers the project is approvable subject to the modified Terms of Approval. The modification request is hereby presented to the Independent Planning Commission for determination.

Recommended by:



Anthony Witherdin
Director
Modification Assessments



Anthea Sargeant 6/3/18
Executive Director
Key Sites and Industry Assessments

APPENDIX A: NOTICE OF MODIFICATION

A copy of the recommended notice of modification can be found on the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8602

APPENDIX B: SUPPORTING INFORMATION

The following supporting documents and supporting information to this assessment report can be found on the Department of Planning and Environment's website as follows:

1. Modification request

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8602

2. Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8602

3. Response to Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8602

APPENDIX C: ELA PEER REVIEW

The ELA independent review can be found on the Department of Planning and Environment's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8602