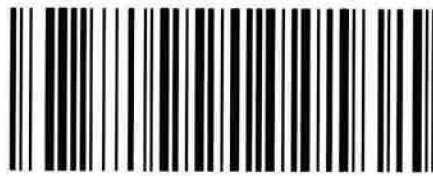




Office of
Environment
& Heritage



PGF001556

Your reference:
Our reference:

Email S. Murray. 3 Aug 2012
DOC12/32002 & FIL07/9391-05

Mr S Murray
Regional Director, Northern Region
Department of Planning and Infrastructure
Locked Bag 9022
GRAFTON NSW 2460

Received

31 AUG 2012

11/17920

North Coast

Steve

Dear ~~Mr Murray~~

Re: Offset Options Paper - Planning Proposal - Gilbert Corey Drive, South West Rocks, NSW.

Thank you for your email to the Office of Environment and Heritage (OEH), dated 3 August 2012 requesting comment on an Offset Options Paper (June 2012) ('the Paper') and other matters relating to a planning proposal for Lot 10, Gilbert Corey Drive, South West Rocks, NSW.

OEH has reviewed the Paper and detailed comments are provided in Attachment 1. Based on this review, OEH confirms that the required quantum of offsets for the planning proposal appear to exist in appropriate Catchment Management Authority subregions.

I advise that OEH has provided notional comment on this proposal previously to Kempsey Shire Council, a copy of which was forwarded to Mr Greg Yeates in your office. A copy of this letter, dated 13 September 2011, is at Attachment 2 for your information.

Should the proposal proceed to gateway determination OEH recommends that:

1. The proponent direct further attention to the Scribbly Gum Forest areas identified within the Kempsey LGA.
2. The proponent should confirm the actual availability of these lands for use as offsets by undertaking further investigation of other tenure, land use management factors and land owner attitudes. These factors may influence the future conservation value of these lands and their availability and consequently limit their suitability as offsets under the OEH offset principles. These principles are provided at Attachment 3.
3. The proponent consult further with OEH and the Department of Planning and Infrastructure to determine a mutually acceptable quantum of offset required. This may involve the provision of additional data to refine the accuracy of the current notional outcome.
4. Any rezoning of the land should be made strongly conditional on confirmation that an appropriate offset has been found and secured for conservation in perpetuity.

OEH notes that resolution of the offsetting issue forms only one consideration associated with any gateway determination for this planning proposal and remains willing to participate further in matters of relevance to it. In particular, resolution of issues relating to the construction of the South West Rocks ring road through or proximal to the proposal has potential to greatly alter any offsetting outcomes and the design of the proposal itself.

OEH would appreciate the opportunity to provide further comment on any draft gateway conditions prepared by your department prior to determination. If you require further information or clarification, please contact me on 02 6659 8272.

Yours sincerely

 29 August 2012

DIMITRI YOUNG
Regional Coordinator – North East
Office of Environment and Heritage

Attachments:	1	Detailed OEH comments on Offset Options Paper
	2	Letter from OEH to Kempsey Shire Council dated 13 September 2011
	3	Distribution of potential offset lands within Kempsey LGA.
	4	OEH offset principles.

ATTACHMENT 1: Detailed OEH Comments on Offset Options Paper – Gilbert Corey Drive

OEH's previous preliminary analysis in September 2011 using the gazetted BioBanking Assessment Methodology, concluded that approximately 9ha of Paperbark Forest (NR217), 199ha of Scribbly Gum Forest (NR228) and 16ha of Wet Heath (NR278) would be required for offsets (total 224ha) based on the proponent's estimates that 0.7ha, 13.6ha and 1.5ha respectively (total 15.8ha) would be removed within the proposed development footprint that would be enabled by the planning proposal. It is emphasised that this conclusion was not definitive and was presented purely as a basis for further discussion.

OEH's analysis also indicated that the Paperbark Forest and Wet Heath offset areas could be found within the Clarence Lowlands, Richmond-Tweed, Macleay Hastings and Coffs Coast-Escarpment Catchment Management Authority subregions, but importantly the Richmond-Tweed subregion did not apply to the Scribbly Gum Forest component.

A review of Table 1 in the Paper suggests that, after exclusion of the Richmond Valley local government area (LGA), the notionally required areas may still exist within the subregions although options for Scribbly Gum Forest within the Kempsey LGA appear somewhat limited and are apparently non-existent for Wet Heath. An extract from the Comprehensive Regional Assessment forest ecosystems mapping of the extant Scribbly Gum Forest on freehold lands (1574ha) within Kempsey LGA is at Attachment 2. This map concurs well with the maps provided in Figure 1B of the Paper.

OEH understands that some Councils may have concerns about relevant lands within their LGAs being used to offset development in other LGAs. From an ecological perspective, OEH's view is that offsets, which are located closer to the planning proposal area and located proximal to other vegetated or protected areas are preferred irrespective of the LGA in which they exist.

OEH therefore recommends that the proponent direct further attention to the Scribbly Gum Forest areas identified within the Kempsey LGA.

Although the Paper does not discuss the Paperbark Forest component, this is considered unlikely to be an issue given the vegetation type is widespread within the Kempsey LGA alone. There also appear to be substantial areas of extant Wet Heath, albeit in other LGAs.

OEH supports the logical method adopted by Ecobiological in the Paper and notes that a number of appropriate tenure exclusions have been applied to the identification of potential offset lands. OEH considers that a number of other tenure, land use management factors and land owner attitudes may also influence the future conservation value of these lands and consequently limit their applicability under the OEH offset principles (Attachment 3).

Should the proposal proceed to gateway determination, OEH suggests that further investigation of these factors may be required in order to confirm the availability of these lands for use as offsets.

With respect to the specific comments provided in the proponent's covering letter, dated 23 July 2012, OEH offers the following advice for consideration by the Department of Planning and Infrastructure:

1. OEH agrees that there may be additional areas of suitable vegetation available for use as offsets. Inaccuracies in the CRA vegetation mapping and classification on private lands are acknowledged.
2. OEH acknowledges that inconsistencies in offset negotiations have arisen previously both within and between Government agencies and developers. The BioBanking scheme was introduced in an effort to reduce these through the use of best practice science and since its uptake is voluntary, its outcomes are intended to provide a basis for further discussion.

3. The notional ratio outcome of about 14:1, derived from application of the BioBanking Assessment Methodology to the proposal by OEH in September 2011, necessarily required certain assumptions to be made by OEH and may well have been a lesser ratio outcome had the proponents made their detailed plot data and threatened species survey outcomes available for use as requested by OEH at a meeting in Kempsey Council chambers on 22 August 2011.

However, it should be remembered that the planning proposal area comprises forest with some of the highest conservation values remaining in the South West Rocks precinct. OEH advises that most acceptable offset ratio outcomes elsewhere where adequate information has been made available have ranged between 5:1 and 8:1.

4. The BioBanking Assessment Methodology is applied to the removal of vegetation within the development footprint to be enabled by the planning proposal and consequently the retained vegetation (24 ha of endangered ecological community) elsewhere on site could be arguably used as part of the offset requirement under negotiation.
5. Offsets need not be negotiated under Voluntary Planning Agreements (VPA) although, due to implications arising from court judgements, they are the preferred process where transfer into the formal reserve system is proposed. A VPA can be conditioned to have effect only after a rezoning is approved to provide additional certainty for the proponent. Offsets can also be secured under the BioBanking scheme where management funding is subsequently assured from a trust fund.
6. OEH does not accept that "existing offsetting mechanisms often add no value or are poorly derived". There are several instances on the public record where both successful development and conservation outcomes have been negotiated by OEH and local Councils under both VPAs and the BioBanking path.

OEH recommends that, should the planning proposal proceed to gateway determination, any rezoning of the land should be made strongly conditional on confirmation that an appropriate offset has been found and an agreement reached with the land owner regarding its conservation. This could be accomplished under the BioBanking provisions which would mean funds become available for conservation management of the offset.

Alternatively, OEH suggests that, should the intent be to eventually transfer the offset into the formal reserve system, such an agreement could be by way of a Planning Agreement under Section 93F of the *Environmental Planning and Assessment Act 1979*. There are a number of examples elsewhere in NSW where this approach has proved successful and mutually acceptable solutions to offset ratios found.



Office of Environment & Heritage

COPY

Your reference: 727; T5-116; LA 14256; GLR:GLR
Our reference: DOC11/39701 FIL07/9391-03
Date: 13 September 2011

Mr D Rawlings
General Manager
Kempsey Shire Council
PO Box 3078
WEST KEMPSEY NSW 2440

Att: Ms Georgia Rayner, Strategic Planning

Dear Mr Rawlings

Potential for environmental offsets for Lot 10 DP754396, Gilbert Cory Street, South West Rocks.

I refer to Council's letter dated 24 August 2011 seeking comment from the Office of Environment and Heritage (OEH) on the above matter. OEH notes this request is in response to advice from the Department of Planning and Infrastructure (DP&I) that the feasibility of such offsets must be established prior to inclusion of the land in Council's Local Growth Management Strategy (LGMS) and subsequently to any rezoning consideration.

At the outset, and despite its inclusion in the Mid North Coast Regional Strategy as a pre-existing urban investigation area, OEH has fundamental concerns with a proposal to develop land that is entirely covered by original native vegetation in good condition. It is contended that the entire lot is highly constrained, as the vegetation it supports is either listed as an endangered ecological community (EEC) or is known threatened species habitat (see below for further discussion).

The Regional Strategy states (page 32) that "Local environmental plans [LEPs] will protect and zone land with high environmental, vegetation, habitat, ... values for environmental protection." It also states on the Growth Areas maps that "Not all land identified within the growth Areas can be developed for urban uses. All sites will be subject to more detailed investigations to determine capability and future yield. Land that is subject to significant natural hazards and/or environmental constraints will be excluded from development."

The draft Mid North Coast Regional Conservation Plan reinforces the Regional Strategy in advocating the conservation planning principles: avoid direct impacts on high biodiversity value areas; mitigate indirect impacts and/or refine development footprints to minimise direct impacts, and only after exhausting all opportunities for avoidance, should offsets be contemplated. This proposal appears to be predicated on offsetting as a first step, not a last resort.

Furthermore, inclusion of Lot 10 in the LGMS should be based on the outcome of a comprehensive constraints analysis and not simply on whether environmental offsets are feasible or not. Such matters should include, but not be limited to, any priorities for the supply of additional urban lands, flooding and

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Office of Environment and Heritage, Department of Premier and Cabinet

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Federation House Level 7, 24 Moonee Street,
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drainage issues, infrastructure capacity and include a detailed master plan across the broader area. Because there are substantial areas east of the main South West Rocks township that have been recently rezoned for residential uses, there does not appear to be any short or medium term reason for proceeding with a planning proposal for Lot 10. It is also noted in Council's LGMS (Table 6.6) that the Spencerville to New Entrance (UIA 6) is the last of the areas in South West Rocks proposed for urban release and that any yield remains subject to protection of land with high biodiversity values. Consequently, there is time for a master planning exercise across the entire Spencerville to New Entrance precinct to be completed.

Notwithstanding the above concerns, the following comments are provided for your consideration.

1. The BioBanking methodology under Section 127B of the *Threatened Species Conservation Act 1995* (TSC Act) is the preferred means by which OEH assesses ecological impacts and the quantum of offset required to ensure an "improve or maintain" outcome. However, adoption of its outcomes is voluntary on the part of developers and/or other planning authorities. This means any final acceptance of offset type and quantum must rest with DP&I and/or Council. Any OEH recommendation remains advisory. It is emphasised that if the land was rezoned, the proponent could decline to provide offsets altogether, let alone offsets independently assessed via BioBanking as meeting an "improve or maintain" outcome.
2. In order to maximise "maintain or improve" outcomes for development areas identified in the Mid North Coast Regional Strategy and meet the State's NRM targets adopted in the draft NSW Biodiversity Management Strategy, OEH considers that offsets should be provided on lands which would otherwise remain unprotected. Offsets should also be identified based on OEH offset principles that place emphasis on like-for-like habitat requirements and complementarities. The latter means that offset land should complement protected high conservation value areas and/or identified wildlife corridors etc.
3. A number of ecological studies have established the presence of EECs and a variety of threatened species either on or with high potential to occur on the site. OEH notes that there continue to be discrepancies with respect to the mapping extent and identification of the EECs. In particular, the distribution of Paperbark, a key canopy dominant in the *Swamp sclerophyll forest on coastal floodplains of the NSW North Coast* EEC determination appears to have been narrowly interpreted. Certain areas containing Swamp Oak/Forest Oak as subdominants have been excluded from the mapped extent of EEC in the most recent assessment by Eco-biological P/L. These latter species are actually included in the sub-dominant canopy layers referred to in the formal determination. It is also noted that earlier studies by Kendall and Kendall P/L for the Kempsey Shire Council concluded that the site was covered almost entirely by EEC with the exception of the extreme south east and south west corners.
4. Agreement on the type and extent of EECs and threatened species' present is important in establishing the feasibility of any offsets because of the potential for "red flags" to be raised in the Biobanking methodology. "Red flags" are raised where an area of land contains high conservation value native vegetation in good condition that has been cleared in excess of 70% in the relevant CMA since 1750 or the presence of endangered ecological communities or the existence one or more threatened species that cannot withstand further loss of habitat. Under the BioBanking methodology, development of "red flag" areas must be avoided unless a specific variation is gained from the Director General (now the Chief Executive). Review of the "red flag" variation criteria with respect to this site reveals it is unlikely that a case could be made to vary the "red flags", should they be triggered.
5. There are a number of threatened species with high potential to occur on the proposed development site irrespective of the presence of EECs. These are species with specialist requirements and/or where their ecology is poorly known. Their response to offsetting cannot be adequately predicted based on ecosystem criteria under the BioBanking methodology. They include, but may not be limited to, the

Square-tailed Kite, Giant Barred Frog, Brush-tailed Phascogale, Common Planigale and possibly the Eastern Chestnut Mouse. The feasibility of offsetting would depend on adequate surveys demonstrating the presence of these species in appropriate numbers on any proposed offset site or, alternatively, detailed expert assessment of the development site to demonstrate conclusively that they do not occur.

6. Notwithstanding the discrepancies in EEC mapping discussed above and lack of information regarding fauna, OEH has conducted a notional Biobanking assessment based on the proposed development site. It is understood that Eco-biological P/L may have conducted a similar assessment. However the results in terms of offset credits required have not been made available to OEH, so a comparison of results, or of the data used, cannot be made. For the OEH analysis, "red flags" were ignored for the sake of deriving an outcome for further discussion. This assessment concluded that around 224ha of habitat would need to be found to offset removal of vegetation within the proposed development footprint (Paperbark 9ha, Scribbly Gum 199ha and wet heath 16ha).
7. An analysis of updated CRA forest ecosystem mapping within Kempsey LGA (the only LGA wide surrogate for Biobanking vegetation types on freehold lands that OEH has for Kempsey LGA) shows that about 10,040ha of Paperbark, 1,574ha of Scribbly Gum and 9ha of heath more generally are mapped over freehold lands within the LGA, based on a "like for like" basis (refer attached map). This indicates that that the wet heath proposed for development cannot be offset within the LGA and that some 13% of the potentially available Scribbly Gum would be required for this site alone, unless like for like requirements are relaxed. This reduces the possibility that future development in Scribbly Gum habitat can occur in accordance with the BioBanking methodology.
8. The above LGA-wide vegetation map also places the main concentration of Scribbly Gum forest in the Maria River area, with the South West Rocks occurrence being an isolated outlier. This isolation, within a viable-sized patch of vegetation in good condition, significantly increases its biodiversity value.
9. It is also important to realise that other constraints may apply over potential offset land that restricts its use as an offset. These constraints may relate to use of certain lands under the Regional Strategy (outside proposed growth areas or already approved for development), existing LEP zone, mineral titles, infrastructure covenants on title (future roads, reservoirs, telecommunications, power lines etc), areas already conserved under voluntary schemes (wildlife refuges, property agreements) and, above all, whether the owners in question wish to participate. Offset availability depends on these issues being addressed. Without detailed analysis of these matters and knowledge of land owner attitude, an assessment of the feasibility of offsetting remains theoretical.
10. The Biobanking outcomes also require the offsets for Scribbly Gum and Paperbark to be found in minimum patch sizes of 100ha and with a minimum canopy cover of 30%. These values reflect the good condition of the vegetation on site and the fact that it is contiguous with substantial areas of similar vegetation in the area. These are also matters to be addressed as part of determining the feasibility of offsetting in this instance.

In summary, OEH does not consider offsetting to be feasible in this case because of the following:

- the extent of EECs and potential direct and indirect impacts is unclear,
- the lack of knowledge about certain threatened species means offset requirements cannot be quantified,
- demonstrating, and finding, an adequate and enduring like-for-like offset area is problematic
- fragmentation of the site, being central to the broader vegetated area, is likely to further reduce the long term viability of local fauna, given that the New Entrance/Spencerville precinct is already isolated by development to the east and west and agriculture/estuary habitat north and south.

It is considered that a more suitable land use for this lot would be to use it as an offset area for developments of lesser impact elsewhere in the LGA.

It is noted that in the letter to Council from DoP&I dated 4 August 2011, it was stated that representatives of Wells Environmental Services liaised with the Coffs Harbour office of the former Department of Environment, Climate Change and Water in October 2010, and that it was agreed that offsetting would be dealt with under BioBanking provisions at DA stage for the development. OEH would like to confirm that it has no record or recollection of any meeting or phone conversation relating to the applicability of Biobanking to this proposal.

Finally, OEH emphasises that notional Biobanking offset analyses, such as the one described above, must be viewed without prejudice where overriding planning matters such as compliance with regional strategies, growth strategies and/or proposed LEPs are yet to be resolved.

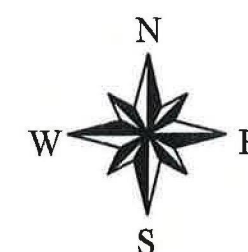
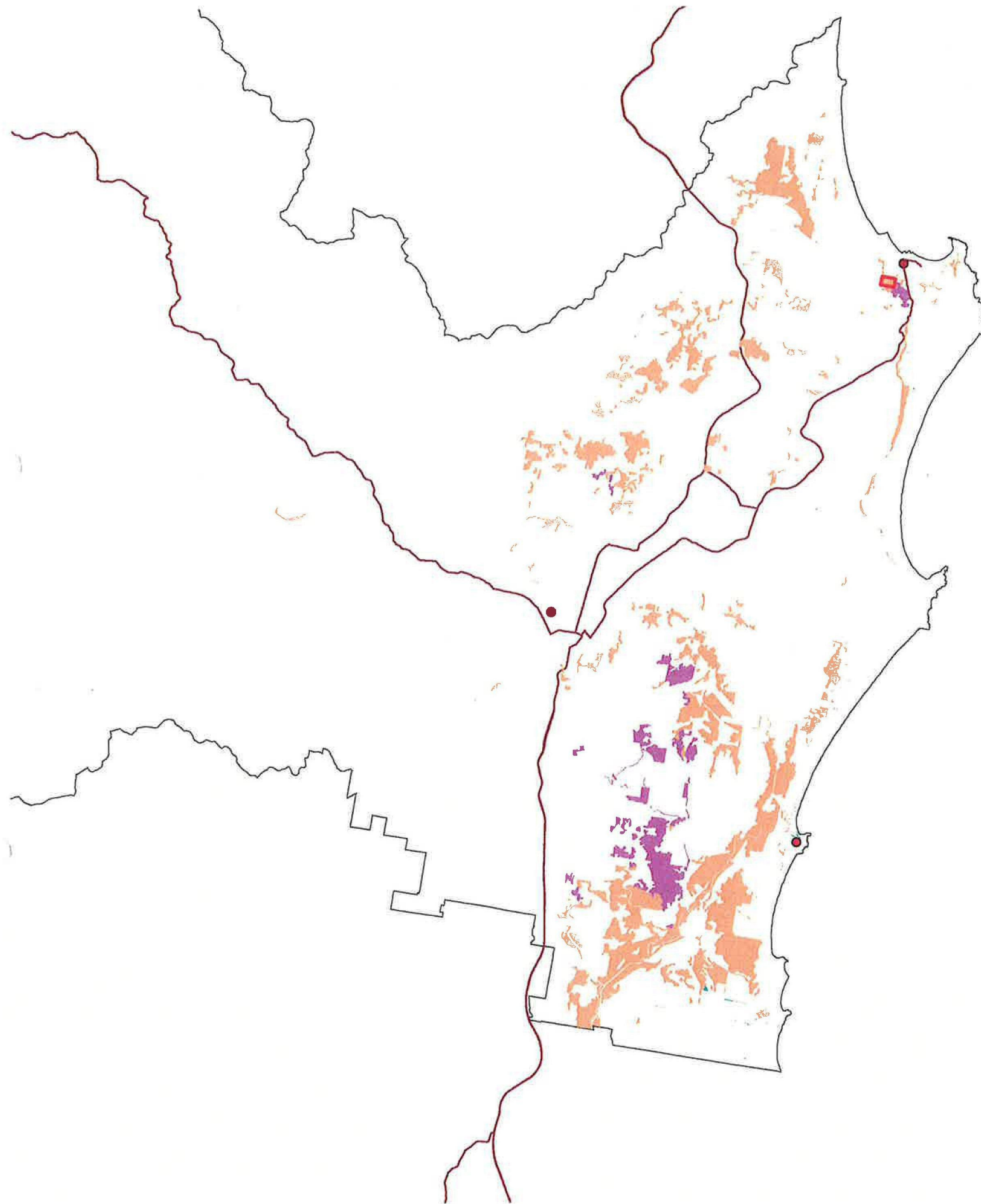
Thank you for the opportunity to provide comment on this proposal. Should you have any further enquiries, please contact Conservation Planning Officer, Mr John Martindale on telephone 02 6659 8222 or myself on telephone 02 6659 8256.

Yours sincerely



ESTELLE BLAIR
Acting Head, North Coast Planning Unit
Planning and Aboriginal Heritage Section – North East
Environment Protection and Regulation
Office of Environment and Heritage
Department of Premier and Cabinet

Cc: Greg Yeates, Department of Planning and Infrastructure, Grafton



Potential offset vegetation on freehold lands for Lot 10 DP754396



Department of
Environment and Climate Change NSW

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- Lot10_DP754396.shp
- Paperbark 10040ha.shp
- Heaths 9ha.shp
- Main Roads c.GA
- Scribbly Gum 1574ha.shp
- Towns (pop >1000) c.GA
- Kempsey_lga.shp

0 5 10 Kilometres

PROJECTION : AMG Zone 56 (AGD66)



Printed By
John Martindale
13 September 2011

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OEH Offsetting principles

1. **Impacts must be avoided first by using prevention and mitigation measures. Offsets are then used to address remaining impacts.** This may include modifying the proposal to avoid areas of biodiversity value or putting in place measures to prevent offsite impacts.
 - Clearing or development can only proceed where offsets (and conservation actions) improve or maintain biodiversity.
2. **All regulatory requirements must be met.** Offsets cannot be used to satisfy approvals or assessments under other legislation, for example, assessment requirements for Aboriginal heritage sites, polluting activities or other environmental impacts unless specifically provided for by legislation, or additional approvals.
3. **Offsets must never reward ongoing poor performance.** Offset schemes will not reward landholders who deliberately degrade or mismanage land in order to provide an offset. Offsets must not reward poorly designed developments.
4. **Offsets will complement other government programs.** A range of tools are required to achieve the NSW Government's conservation objectives, including the establishment and management of new conservation areas, regional parks and incentives for private landholders to manage for conservation purposes.
5. **Offsets must be underpinned by sound ecological principles.**
 - They must include the consideration of structure, function and compositional elements of biodiversity, including threatened species.
 - They must enhance biodiversity at a range of scales, that is, at the genetic, species and ecosystem levels.
 - They must consider conservation status of ecological communities.
 - They must ensure the long-term viability and functionality of biodiversity.

Biodiversity management actions, such as enhancement of existing habitat and securing and managing land of conservation value for biodiversity, can be suitable offsets. Reconstruction of ecological communities involves high risks and uncertainties and time delays for biodiversity outcomes. It is generally less preferable than other management strategies such as enhancing existing habitat.

6. **Offsets should aim to result in a net improvement in biodiversity over time.**
 - Enhancement of biodiversity in offset areas should be equal to or greater than the loss in biodiversity from the impact site.
 - Setting aside areas for biodiversity conservation without additional management or increased security is generally not sufficient to offset against the loss of biodiversity. Factors to consider include protection of existing biodiversity, time-lag effects, and the uncertainties and risks associated with actions such as revegetation.
 - Offsets may include enhancing habitat, reconstructing habitat in strategic areas to link areas of conservation value, or increasing buffer zones around areas of conservation value.
7. **Offsets must be enduring – they must offset the impact of the development for at least the period that the impact occurs.** All offsets must be secured by an appropriate legal mechanism. As impacts on biodiversity are likely to be permanent, the offset must also be permanent (secured by a conservation agreement or reservation and management for biodiversity). Wherever possible, offsets should be secured by a conservation agreement attached in perpetuity to the title of the land (eg. under s69 *National Parks & Wildlife Act 1974*). Where land is donated to a public authority or a private conservation organisation and managed as a biodiversity offset, it should be accompanied by resources for its management. If an appropriate legal mechanism to secure the offset is not possible, then the value of the offset will be reduced. Alternative mechanisms, such as land use planning zones, may be appropriate where they complement conservation agreements. However, such mechanisms alone do not necessarily provide long-term security. The security of the management agreement will be factored into the value of the offset.
8. **Offsets should be agreed prior to the impact occurring.** Offsets should minimise ecological risks from time-lags. Offset negotiations and actions should occur prior to the approval of the impact. For example, prior to the grant of a development consent. Where the offset involves rehabilitation or revegetation works it may be necessary to conduct this work well in advance of the development.

9. **Offsets must be quantifiable – the impacts and benefits must be reliably estimated.** Offsets should be based on quantitative assessment of the loss in biodiversity from the clearing or other development and the gain in biodiversity from the offset. The methodology for calculating the biodiversity loss and gain must be based on the best available science, be reliable and used for calculating both the loss from the development and the gain from the offset (Note that a state-wide computer based tool will be developed for Biobanking based on the tools developed for the *Native Vegetation Act 2003*). The best available information/data should be used when assessing impacts of biodiversity loss and gains from offsets. Offsets will be of greater value where they protect land with high conservation values, where management actions have greater benefits for biodiversity, where the offset areas are not isolated or fragmented, and the management for biodiversity is in perpetuity (eg. secured through a conservation agreement). Management actions must be deliverable and enforceable.
10. **Offsets must be targeted – they must offset impacts on a like-for-like or better basis.** Offsets should be targeted according to biodiversity priorities in the area, based on conservation status of ecological communities, presence of threatened species or their habitat, connectivity, and potential to enhance condition from management actions. Only ecological communities that are equal or greater in conservation significance to the type of ecological community lost should be used for offsets. One type of environmental benefit cannot be traded for another. For example, biodiversity offsets may also result in improvements in water quality or salinity but these benefits do not reduce the biodiversity offset requirements. However at a regional level it maybe ecologically of greater benefit to consolidate offsets by linking high conservation values across the landscape. This may involve offsets, which are spatially removed from the offset, or compromise different vegetation communities.
11. **Offsets must be located appropriately – they must offset the impact in the same region.** Wherever possible, offsets should be located in areas that have the same or similar ecological characteristics as the area affected by the development, in reasonable proximity to the region impacted.
12. **Offsets must be supplementary – they must be beyond existing requirements and not already be funded under another scheme.** An offset used in the past for another project cannot be used again to offset a new project. Areas that have received incentive funds from another process cannot be used for offsets. Existing protected areas on private land cannot be used for offsets unless additional security or management actions are implemented. Areas already managed by the government, for example national parks, flora reserves, nature reserves, karst conservation areas and crown reserves, cannot be used as offsets. In some cases, new management works on public lands could be used as an offset.
13. **Offsets and their actions must be enforceable – through development consent conditions, licence conditions, conservation agreements or a contract.** Offsets must be audited to ensure that the actions have been carried out, and monitored to determine that the actions are leading to positive biodiversity outcomes.