

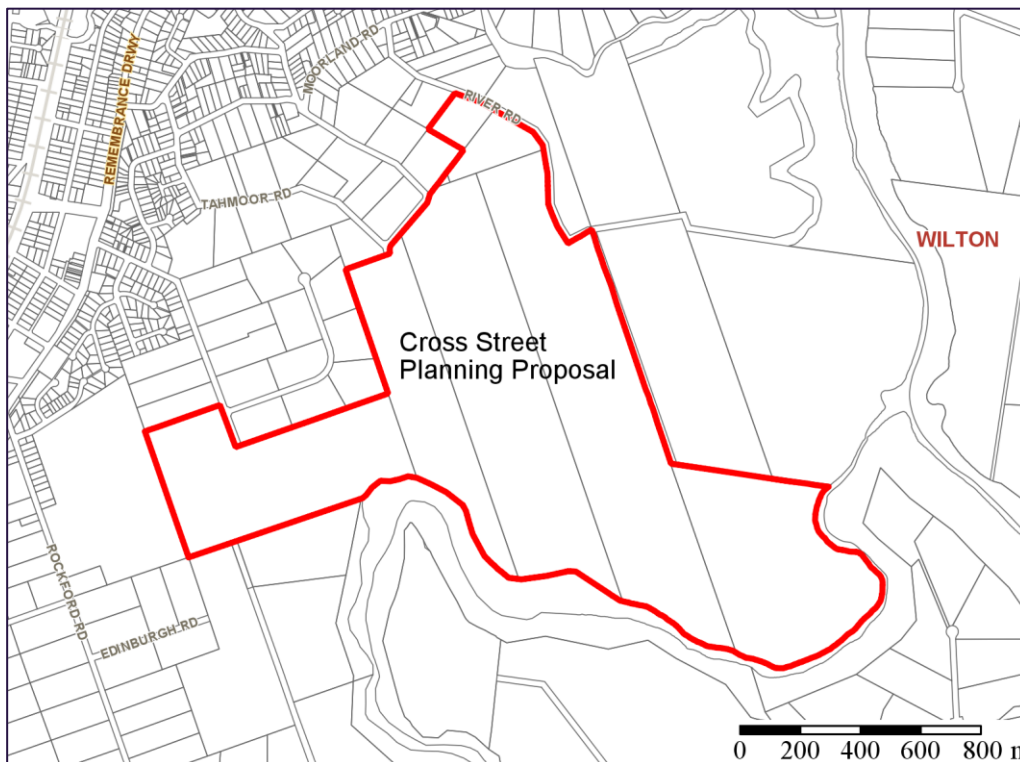
GR4 – Draft Application for Conferral of Biodiversity Certification for the Cross Street Planning Proposal site

GR4

Draft Application for Conferral of Biodiversity Certification for the Cross Street Planning Proposal Site

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Applicant:
Owner:

LOCATION MAP ↑
N
Urbis
Ingham Property Development Pty Ltd

Growth

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EXECUTIVE SUMMARY

- The purpose of this report is to inform Council about the Application for Conferral of Biodiversity Certification (Application) for the Cross Street Planning Proposal.
- The Application was placed on public exhibition with the Cross Street Planning Proposal and consultation was undertaken in accordance with Clause 126N of the now repealed Threatened Species Conservation Act 1995.
- The Application and a report on the public consultation will be submitted for approval to the Minister for the Department of Planning & Environment.
- Under legislation, a person who makes a relevant planning application or public submission is required to disclose any reportable political donations. The disclosure requirements extends to any person with a financial interest in the application or any associate of the person making a public submission. No disclosure of political donation has been made in association with this application.
- It is recommended that:
 - Council support the Application for conferral of Biodiversity Certification for the Cross Street Planning Proposal site with the amendments detailed in this report
 - The Application and a report on the public consultation be submitted to the Minister for Planning & Environment for approval
 - Negotiations commence with the Proponent to enter into a Voluntary Planning Agreement for dedication of the biobanked land to Council subject to satisfactory funding arrangements and works schedule attached to the Biobanking Agreement. A further report regarding these negotiations be provided to Council for consideration.
 - That Council delegate authority to the General Manager to sign the submission to the Minister for Planning & Environment.

REPORT

BACKGROUND

The Cross Street Planning Proposal proposes to rezone 155 ha of land to allow residential development for approximately 240 dwellings on land located between Cross Street, River Road, Bargo River Gorge and the end of Progress Street, East Tahmoor. The proposal also includes the rezoning of land for environmental conservation and environmental management purposes. The site contains a significant amount of remnant bushland with important biodiversity value that would be impacted from the proposal to rezone the land.

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A resolution to support the Planning Proposal was moved by Council at its Ordinary Meeting held 22 April 2014. Further studies and technical information were requested at subsequent Council Meetings on 17 November 2014 and 18 July 2016 to address the proposed buffer arrangements to the Bargo River Gorge and in relation to a Biocertification Strategy for the site. Council resolved the following at the meeting in July 2016:

- 1. That the Proponent be asked to amend the Cross Street Planning Proposal, Report on Interface with the Bargo River Gorge, dated April 2016 to exclude any future road reserve forming part of the 100m buffer to Bargo River Gorge.*
- 2. That Council request the Proponent provide a Biocertification Strategy that would result in permanently funded and managed conservation measures for the land proposed to be conserved.*
- 3. That Council delegate to the General Manager authority to sign the Biodiversity Certification Application for submission to the Minister for the Environment.*
- 4. That subject to the above change the amended Cross Street Planning Proposal, Report on Interface with the Bargo River Gorge and Biodiversity Certification Application with supporting document be placed on public exhibition during community consultation for the Planning Proposal.*

Only a "planning authority" as defined by Section 126G of the *Threatened Species Conservation Act 1995* ('TSC Act') may apply to the Minister for biodiversity certification which includes local councils.

The Draft Application for Conferral of Biocertification was sent to the NSW Office of Environment and Heritage on the 19th February 2018. Approval to exhibit the Draft Application which included the Biodiversity Assessment Report and Biocertification Strategy was received on the 27th March 2018. These documents were placed on public exhibition with the Cross Street Planning Proposal from Wednesday 11th April until Monday 14th May 2018.

DRAFT APPLICATION FOR CONFERRAL OF BIODIVERSITY CERTIFICATION

The Biodiversity Conservation Act 2016 commenced on the 25 August 2018 but the Biocertification assessment and strategy and Application for the site was prepared under the provisions of the now repealed TSC Act. Under the provisions of the Biodiversity Conservation (Savings and Transition) Regulation 2017 the Draft Application will therefore be assessed in accordance with Part 7AA of the TSC Act. The report placed on public exhibition included all three stages of the Biodiversity Certification process namely the:

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- Biodiversity Assessment Report (BAR)
- Biodiversity Credit Assessment Report
- Biodiversity Certification Strategy.

The Draft Application is proposing the following:

To protect and manage in perpetuity for conservation 75.45 ha of land of which 68.01 ha is existing native vegetation and 7.25 ha of cleared areas. The cleared areas will be revegetated as part of the proposed conservation measures. The conservation measures for this area include a combination of 100% conservation measures for E2 areas through the establishment of a Biobank site under Part 7A of the TSC Act 1995 and 25% conservation measures for E3 zoned land.

The lands proposed for E2 zoning and BioBanking at the top of the Bargo Gorge will enable continued wildlife movement near the gorge. To facilitate passive recreation in the BioBank site, indicative locations for walking trails have been identified. The exact locations of walking trails will be confirmed during preparation of the Biobank Agreement and may differ from those shown, but will not exceed the level of impact. Whilst the impact associated with the trails have been calculated, the trails themselves are not proposed to be biodiversity certified.

Conservation Measures

Under the Draft Application the conservation measures proposed are as follows:

- E2 areas will be transferred to Council as 'Permanently Managed and Funded Conservation Measures' (100% credits generated) in the form of a Biobank site
- E3 areas will be conserved under 'Planning Instrument Conservation Measures' as outlined in section 8.1.3 of the BCAM, which would generate 25% of the credits for offsets.

The landowner proposes to transfer the conservation E2 land to Council following the establishment of the proposed Biobank site. A section relating to the Biobanked land is provided elsewhere in this report.

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Statement of Commitments

The landowner will prepare and implement a Construction Environment Management Plan for vegetation clearing within the residential areas including a Fauna Pre-clearance protocol, to guide the development outlined in the Biocertification assessment and ensure that all direct and indirect impacts (e.g. Asset Protection Zones, utilities, access, stormwater run-off) are contained within the development footprint and appropriate mitigation measures are put in place to minimise indirect impacts to threatened vegetation and fauna habitats in the adjacent offset areas.

These measures will include, but not be limited to:

1. The proposed Biobank site will be assessed and submitted for registration within 6 months of Biocertification being conferred by the Minister and prior to any clearing. The BioBank Area will be actively managed from the commencement of construction.
2. All credits required for land to be certified will be purchased and retired from the on-site Biobank site prior to construction.
3. A Management Plan, including a Bushfire Management Plan that meets ecological burning regimes, will be prepared and implemented for the Biobank site on an annual basis in perpetuity.
4. Temporary and permanent protective fencing will be erected around all areas identified for conservation prior to clearing activities to minimise any inadvertent damage.
5. Pre-clearance surveys of threatened fauna will be undertaken in accordance with a Fauna pre-clearance protocol prior to any clearing of vegetation.
6. Protocols for clearing vegetation and adaptive reuse of vegetative material for restoration and habitat augmentation in areas indicated for restoration activity will be prepared and implemented

Access to Bargo Gorge and proposed public reserves

The Biocertification Strategy proposes walking trails from the end of Progress Street and from two other proposed streets within the site. Viewing platforms to Bargo Gorge are proposed with access from each of these trails. A picnic area is proposed on the western end of the site with access from the Progress Street walking trail.

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Biobanked land

A Biocertification Strategy for Cross Street Planning Proposal proposes to biobank land on the site. The landowner will enter into a Biobanking Agreement with the Office of Environment in the Department of Planning & Environment ('Department').

The Biobanked land is proposed to be dedicated to Council but this will be subject to a satisfactory Biobanking Agreement and costings and the landowner entering into a planning agreement which is satisfactory to Council.

It is proposed that the construction of walking trails, viewing platforms and safety fencing and provision of picnic facilities indicated in the Biocertification Strategy be provided by the proponent prior to the land being dedicated to Council. The land would also not be dedicated until after the biobanking credits are retired and all other management actions commenced and completed to the satisfaction of Council and sufficient funds are made available for maintenance of the biobanked land in perpetuity.

CONSULTATION

The Application for Conferral of Biodiversity Certification (Draft Application) was placed on public exhibition and community consultation undertaken in accordance with Clause 126N of the now repealed TSC Act.

In accordance with Clause 126N a notice was published in the Sydney Morning Herald on Tuesday 10 April 2018 and on Council's website on Wednesday 11 April 2018 and remained on the website for the whole consultation period. A hard copy of the application was available in the Council office and a notice was also published in a local newspaper. The Application which included a Biodiversity Assessment Report and Biocertification Strategy was placed on public exhibition from 11 April until 14 May 2018, a total period of 33 days.

A total of nine community submissions were received for both the Application for Conferral of Biodiversity Certification and the Planning Proposal. Only one submission made direct reference to the Biocertification application and other submissions indirectly referenced the Application in general comments about concerns related to the environment. Concerns raised in the community consultation are detailed below:



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Concerns	Comments
The Biodiversity Certification should be done by an independent body.	The Biodiversity Certification process has been undertaken by an independent accredited ecologist.
Need to ensure adequate funding for bush regeneration.	The E2 land along the Bargo River and across the site is proposed to be conserved through Biobanking. The Biobanking Agreement will include provisions for ongoing management, maintenance and bush regeneration.
Concern about possible future regular burning of E2 land.	An ecologically sensitive bushfire management plan would be included in Biobanking provisions.
Support for a regenerated 100m vegetation buffer along the Bargo Gorge zoned E2 to protect critically endangered communities.	Re-generation of critically endangered bushland including Shale Sandstone Transition Forest under a future Biobanking Agreement would include land within the 100 metre buffer.
Hope that the E2 land will eventually form part of a National Park.	Conserving ecologically significant land within an environmental conservation zone and a biobanking site would support progress towards a future National Park.
A vegetated buffer around the watercourses.	A vegetated riparian buffer is proposed around watercourses within the biobanked land.
The environmental land is supported but there is a concern that it will be abandoned similar to The Acres development adjoining.	The proposed Biocertification Strategy and biobanking will ensure that the environmental land is maintained and improved.

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Infrastructure Planning - Environmental Services

The Environmental Services section has reviewed the Application on exhibition and recommended that the Biocertification Strategy be updated to make specific reference to the identified importance of the Bargo Gorge as a koala habitat corridor and in brief dot points specify the intended approach for the achievement of the Improve and Maintain Biodiversity Outcome as defined by the Biodiversity Certification Assessment Methodology for the future biobanking agreement applying to the E2 lands. Otherwise the Strategy has addressed previous comments provided by Environmental Services and by the Office of Environment & Heritage.

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FORM OF APPLICATION FOR CONFERRAL OF BIOCERTIFICATION POST EXHIBITION

It is considered that no changes are necessary to the Application that was exhibited as a result of consultation undertaken. The exhibited version of the Application is supported by Council staff.

FINANCIAL IMPLICATIONS

This matter has no financial impact on Council's adopted budget or forward estimates. If a planning agreement is entered into with the landowner a financial assessment would be undertaken to ensure that there is no financial impact from any proposed provisions within the Agreement.

ATTACHMENTS

Nil

RECOMMENDATION

1. That Council support the Application for Conferral of Biodiversity Certification for the Cross Street Planning Proposal site being Lot C DP 374621 (85 Progress Street), Lots 1-6 DP 1128745 (Cross Street) and Lot 255 DP 10669 (100 River Road) Tahmoor.
2. That the Application for Conferral of Biocertification with amendments recommended by Environmental Services and a report on the public exhibition prepared in accordance with clause 126N of the now repealed Threatened Species Act 1995 and under the savings provisions of the Biodiversity Conservation Act 2016 be sent to the Minister for the Department of Planning & Environment for approval.
3. That negotiations commence with the Proponent to enter into a Voluntary Planning Agreement for dedication of the biobanked land to Council subject to satisfactory funding arrangements and works schedule attached to the Biobanking Agreement. A further report regarding these negotiations be provided to Council for consideration.
4. That Council delegate authority to the General Manager to sign the submission to the Minister for Planning & Environment.