



ASSESSMENT REPORT

Section 75W Modification Tharbogang Quarry and Landfill (06_0334 MOD 1)

1. BACKGROUND

Griffith City Council (Council) own and operate the Tharbogang Quarry and Landfill Facility on approximately 357 hectares (ha) of land at McPhersons Range, Tharbogang in the Griffith Local Government Area (LGA). The site is located on a ridgeline approximately 9.5km northwest of the town of Griffith, where Council own a number of land holdings totalling 595 ha.

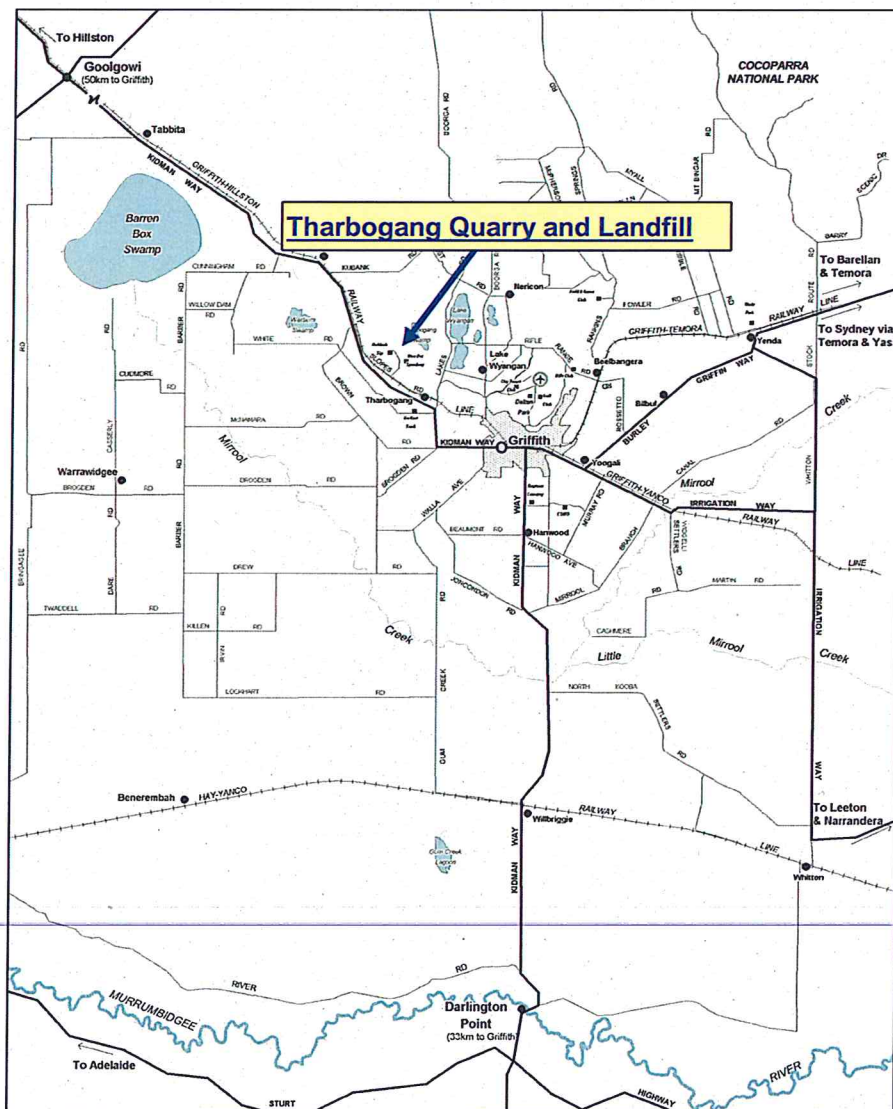


Figure 1: Project Location

On 8 July 2010, the Acting Deputy Director-General (as delegate for the Minister) granted approval to Council to expand operations at its existing Facility. This approval allowed the expansion of operations to include:

- 2 additional quarry pits (known as Pit 101 and Pit 103 - see Figures 2 & 3) on Lot 202 for the extraction of up to 315,000 tonnes per annum of quarry product, for up to 25 years, to provide road base and construction materials to the local market;
- expansion of land filling operations into the existing quarry voids once quarrying has ceased in those voids; and
- progressive rehabilitation of the site with shallow rooted shrub and ground cover species.

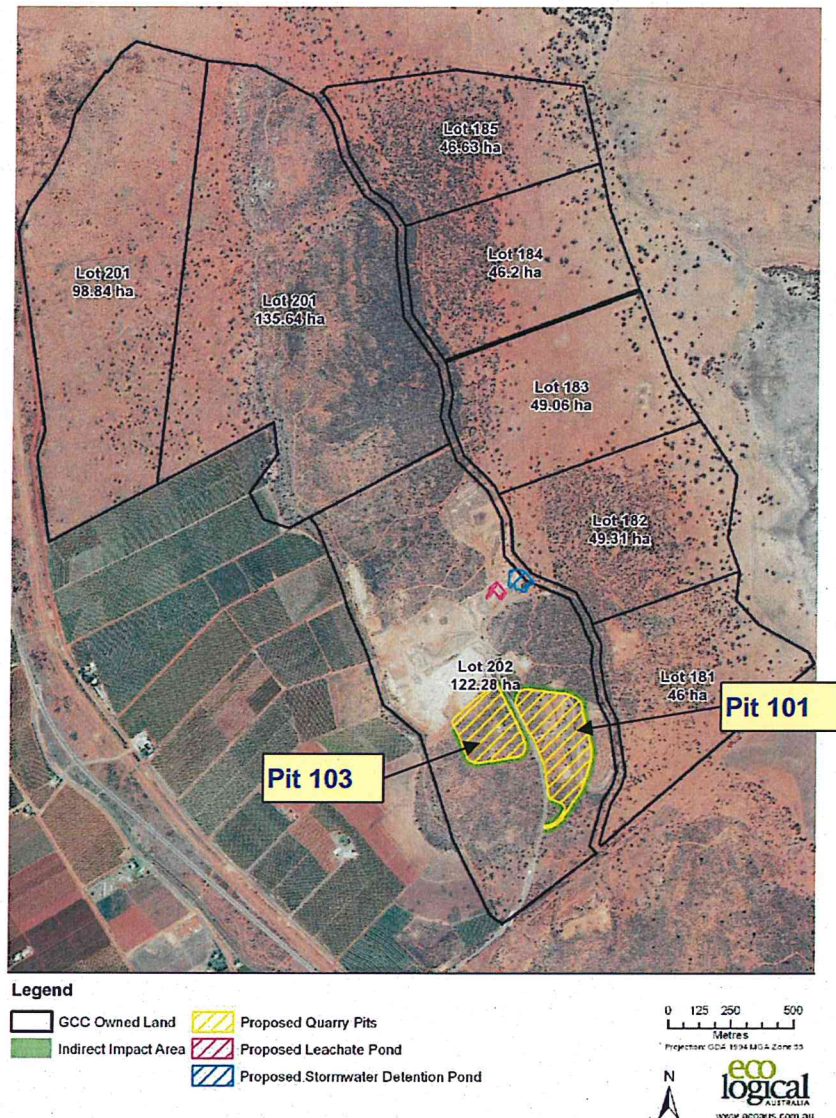


Figure 2: Approved quarry pits on Lot 202

The Environmental Assessment for the expansion project stated that 15.2 ha of vegetation would be removed as part of the proposal (from Lot 202). Lot 202 forms part of the McPhersons Range corridor, which contains the largest connected area of remnant vegetation in the LGA. The project would have the potential to impact on a number of threatened fauna species that are known to exist on the site.

To compensate these impacts, Council (using the 'Property Vegetation Plan' model), proposed an offset area of approximately 182.5 ha. This was considered adequate at the time and was included as a condition of approval (condition 45). Another condition (46) was included to ensure that a Biodiversity Offset Strategy (BOS) would be implemented and offset areas would be secured in perpetuity.

These offset areas as approved, are shown in Figure 3 below.

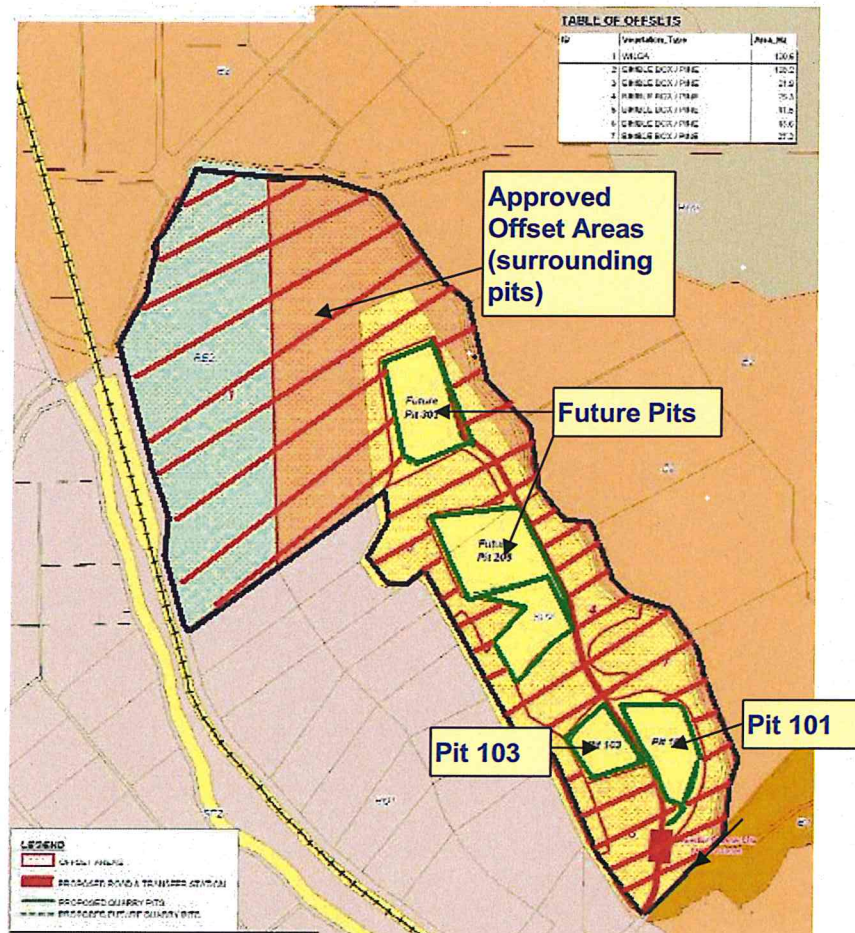


Figure 3: Approved offset areas (red striped areas)

2. PROPOSED MODIFICATION

As part of their implementation of the Biodiversity Offset Strategy required by Condition 46, Council's consultants (Eco Logical Australia) undertook additional detailed surveys and concluded that the actual amount of vegetation to be removed by the proposal had reduced from 15.2 ha down to 14.1 ha.

In addition, in the intervening period between the preparation of the initial Offset Strategy in 2007 and the Project Approval in 2010, the EPA introduced a new methodology for determining offsets for flora and fauna impacts. This methodology - the Biobanking Assessment Methodology (**BAM**), is now the EPA's preferred system for determining offsets for biodiversity impacts in NSW.

In 2011, the EPA and the Department agreed to the use of the BAM to calculate a revised 'quantum of offset required' based on the revised impact area and the collection of additional field data. The BAM expresses offsets as 'Biodiversity Credits' which can be subsequently translated to area.

The BAM found that an offset in the order of 35.52 ha would be required to offset the direct and indirect impacts for the clearing of 14.1 ha of 'Dwyer's Red Gum - White Cypress Pine - Currawang Shrubby Woodland', (**Red Gum Woodland**) which includes 5.5 ha of 'derived native grassland' (**DNG**).

As a result of the use of the BAM, Council are now requesting a modification to condition 45 which required an offset area of 182.5 ha (see **Appendix A** for a copy of the report supporting this application).

Although the BAM required an offset of 35.52 ha, the EPA was not comfortable supporting this as a revised offset given that the original offset area was approximately 182 ha. Following numerous meetings, negotiations and site inspections with the EPA, the final offset package was revised to include the protection and management of 95.31 ha, which would be protected on title in perpetuity.

The revised offset is within Council owned land which is adjacent to Lot 202 and contains 'Inland Grey Box - Poplar Box - White Cypress Pine Tall Woodland' (**Inland Grey Box**) and threatened fauna habitat which would not be directly or indirectly impacted by the development. In addition, this woodland is considered to be of higher conservation value than that which is to be cleared for the quarry pits (see Section 5).

Figure 4 below illustrates the locations of the approved quarry pits (shown as proposed) and the location of the modified Biodiversity Offset Area (BOA).

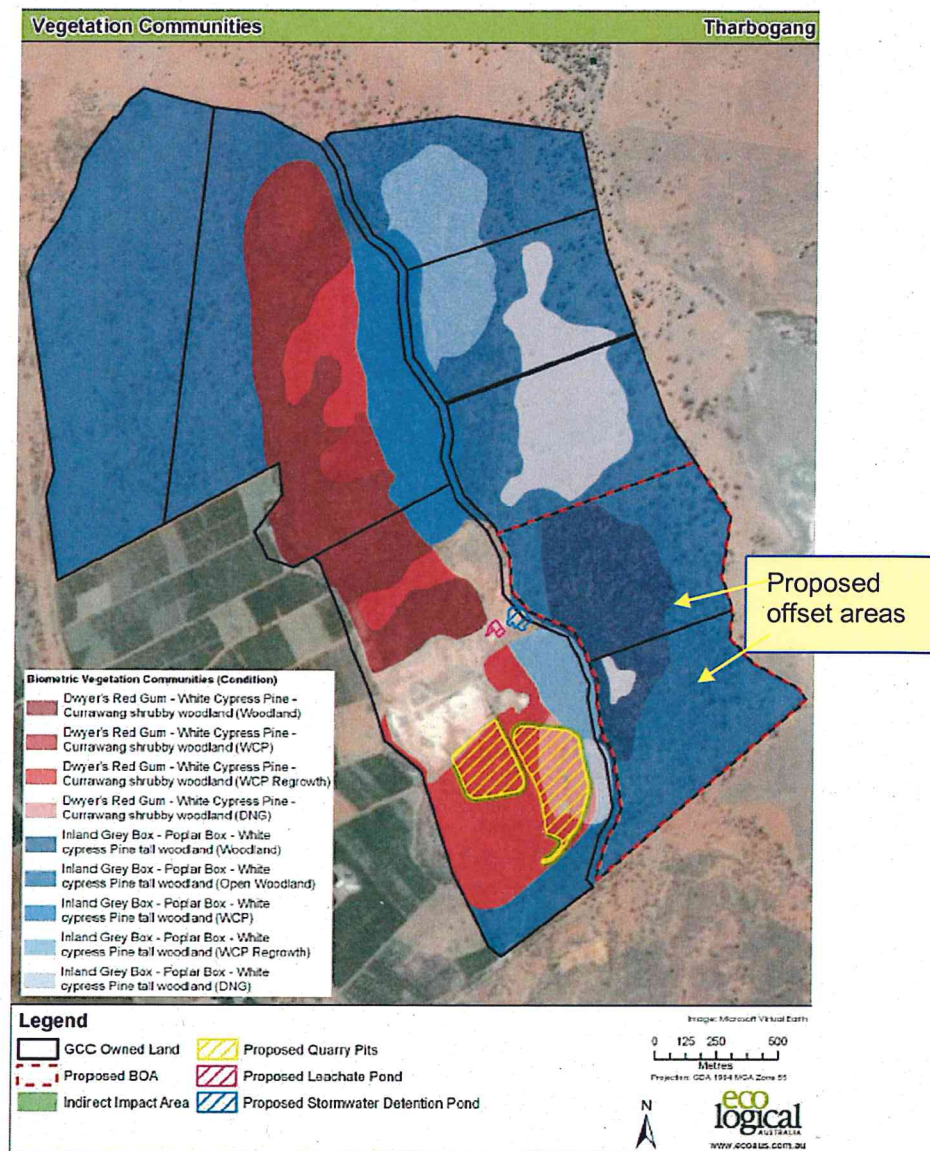


Figure 4: Proposed modifications to the offset areas, including revised vegetation communities

Section 5 of this report provides further discussion on the revision of the BOS.

3. STATUTORY CONSIDERATION

Approval Authority

The Minister was the approval authority for the original project approval, and is consequently the approval authority for this application.

The Minister has delegated his functions to determine Section 75W modifications to the Department where:

- the council has not made an objection;
- there are less than 10 public submissions objecting to the proposal; and
- a political disclosure statement has not been made in relation to the application.

There have been no submissions received from the public and council has not made an objection to the proposal. There has also been no political disclosure statement made for this application or for any previous related applications, and no disclosures made by any persons who have lodged an objection to this application.

Accordingly the application is able to be determined by the Executive Director, Major Projects Assessment under delegation.

Section 75W

In accordance with Clause 3 of Schedule 6A of the EP&A Act, section 75W of the Act as in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A, continues to apply to transitional Part 3A projects.

Under Section 75W of the EP&A Act, the Minister is obliged to be satisfied that what is proposed is indeed a modification of the original proposal, rather than being a new project in its own right.

The Department has reviewed the scale and nature of the proposed modification, and is satisfied that it can be characterised as a modification of the original project (as modified) as the environmental impacts of the proposed modification would be negligible (less vegetation would be cleared), the proposed modification would not change the essential function for which approval was granted and could be suitably regulated with some minor amendments to the existing conditions of approval.

It is therefore recommended that the Executive Director, Major Projects Assessment, as delegate of the Minister, agree that the modification request falls within section 75W of the EP&A Act.

4. CONSULTATION

Under Section 75W of the EP&A Act, the Minister is required to make the application publicly available on the Department's website. Upon receipt, the application was placed on the Department's website and following a review of the application, the Department did not believe formal public notification of the application was necessary. Notwithstanding, the Department sought comments from the Environment Protection Authority (EPA).

EPA made no objections to the proposed modification. The Department has considered its submission in its assessment of the modification.

A copy of the EPA's submission can be found in **Appendix B**.

5. ASSESSMENT

5.1 Flora and Fauna

As discussed in Section 2 above, the project requires the removal of 14.1 ha of Red Gum Woodland (revised down from 15.2 ha) in moderate condition, which includes 5.5 ha of derived native grassland (DNG).

The revised offset site of 95.31 ha is located on Council owned land to the east of the existing quarry and direct impact area of the approved expansion. The offset site (known hereafter as BOA) is adjacent to Tharbogang Swamp and Lake Wyangan, therefore providing a protected strategic corridor from the ridgeline corridor (where the quarry is located) to the swamp (see Figure 5 on next page).

The revised offset package includes the protection and active management of 95.31 ha of Inland Grey Box, in moderate condition, including 93.9 ha as intact remnants (Woodland or Open Woodland) and 1.4 ha of modified DNG. The offset provides an offset to impact ratio of approximately 7:1.

The Inland Grey Box community is highly cleared in the surrounding areas and poorly represented in the reserve system, with only 15% remaining of the original amount in the Murrumbidgee Catchment Management Authority (CMA) region. Conversely, around 80% of the Red Gum Woodland remains in the CMA region. Council's consultant's - Eco Logical Australia consider that the proposed offset would meet the 'like for like' or 'better' criteria.

All threatened fauna species recorded in the impact area also occur in the proposed offset area, providing 'like for like' threatened fauna habitat values.

Council propose to actively manage the BOA through the removal of grazing, active weed and feral animal control, fencing, monitoring and, where necessary assisted regeneration to enhance species richness in the long term.

The EPA raised no objections to the revised BOA. The Department has carefully considered the revised BOA - especially in relation to the significant reduction of the offset area.

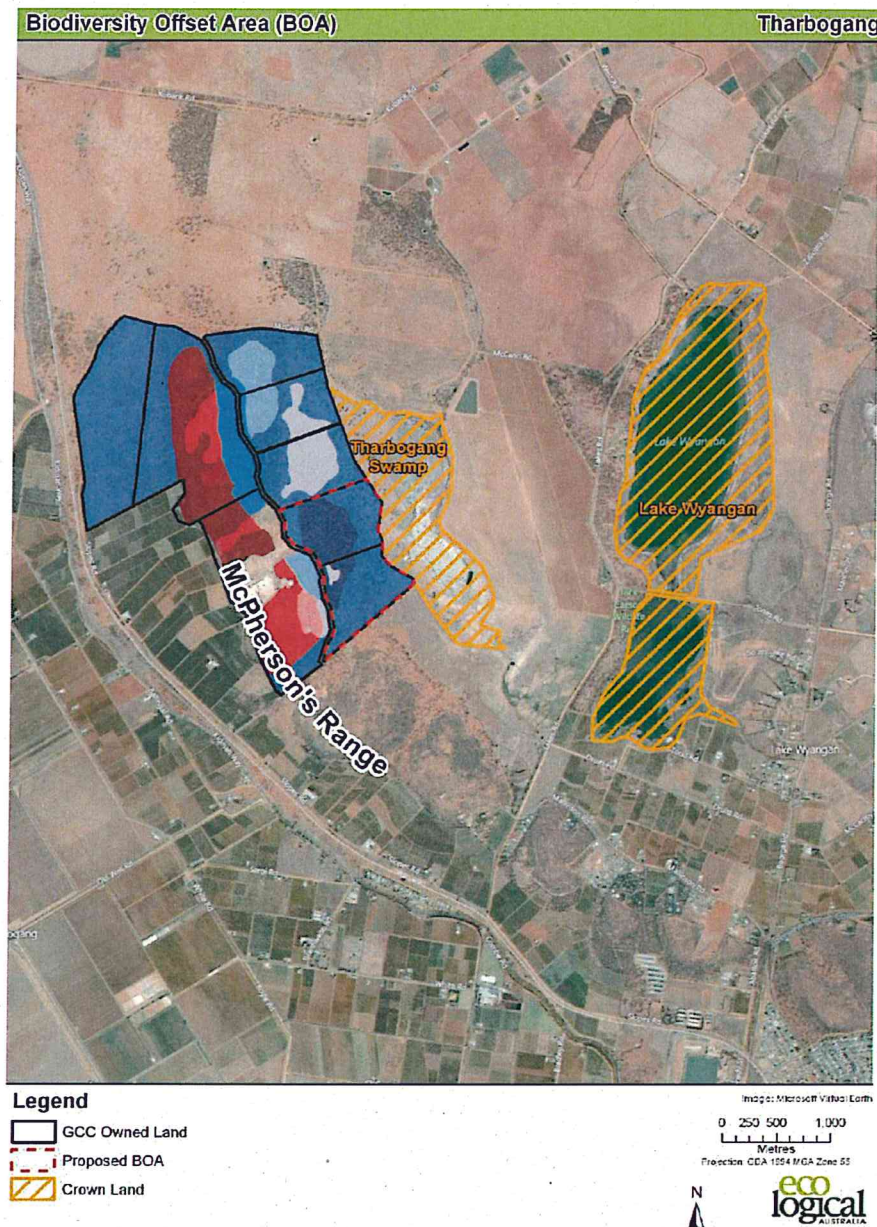


Figure 5: Proposed BOA and nearby swamp and lake

The Department considers that the revised BOA is adequate given that:

- the property vegetation plan model is not currently used for determining offsets for industrial developments and is a tool intended for clearing associated with rural (agricultural) land use;
- the Department and the EPA agreed to the use of the BAM in relation to the revised BOA;
- the BAM recommended an offset equivalent to 35 ha and Council has agreed to conserve a significantly larger area of 95 ha; and
- current EPA offset policy endorses the use of the BAM;

Condition 49 of the Project approval requires the preparation of a Biodiversity Offset Area (BOA) Management Plan. Council has proposed to prepare and implement this in consultation with the EPA and the Department following determination of this modification application. The BOA Management Plan would determine funds required for its implementation. The Department has recommended new conditions which require Council to:

- prepare and implement the BOA Management Plan within 12 months of the approval of this application;
- secure the BOA in perpetuity through a Biobanking Agreement or Conservation agreement within 12 months of approval of this application; and
- secure funding for the ongoing BOA management via a Biobanking Agreement, or other approved mechanism within six months of the approval of the BOA Management Plan.

There are also updated conditions which ensure that the BOA is secured in perpetuity before any clearing is undertaken on site.

6. RECOMMENDATION

The Department has assessed the merits of the proposal in accordance with the requirements of the EP&A Act. This assessment has found that the proposed modification is unlikely to cause any significant impacts.

The Department therefore accepts the revised offset area, and believes the proposal should be approved subject to minor amendments to the existing conditions of approval and new conditions which ensure that adequate funding is secured for the ongoing active management of the offset site.

7. RECOMMENDATION

It is RECOMMENDED that, as delegate for the Minister, the Executive Director, Major Projects Assessment:

- **consider** the findings and recommendations of this report;
- **determine** that the proposed modification is within the scope of section 75W of the EP&A Act;
- **approve** the application subject to conditions; and
- **sign** the attached notice of modification (**Appendix C**).

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