

27 October 2022

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Orchard Hills North Future Development – Consistency Assessment of Planning Proposal with Cumberland Plain Conservation Plan

Dear Paul,

As requested, we have prepared an assessment of the consistency of the Planning Proposal prepared for Orchard Hills North (the 'Subject Site') against the allowances of the Cumberland Plain Conservation Plan (CPCP).

We have concluded that impacts to Threatened Ecological Communities under the Planning Proposal are less than what would be allowed if all 'Certified - Urban Capable Land' under the CPCP was cleared. Further to this, all mitigation measures required under Chapter 13, Part 13.5 of *State Environmental Planning Policy (SEPP) (Biodiversity and Conservation) 2021* will be implemented for any future DAs within the Subject Site. Therefore, we expect the Planning Proposal is considered to be consistent with the CPCP. The results of our assessment are documented in **Appendices A** and **B** to this letter.

If you have any questions, please do not hesitate to contact me, or Mikael Peck at our Sydney office on 02 9868 1933.


Yours sincerely,

A handwritten signature in dark ink, appearing to read 'David Robertson'.

David Robertson
Director
david.robertson@cumberlandecology.com.au

APPENDIX A :

Consistency Assessment of Orchard Hills Future Development with the Cumberland Plain Conservation Plan



A.1. Introduction

Cumberland Ecology has been requested by Legacy Property to assess the consistency of a Planning Proposal for consistency with the Cumberland Plain Conservation Plan (CPCP). The Planning Proposal is for a rezoning to facilitate residential development referred to as 'Orchard Hills North', the impact area of which is hereafter referred to as the 'Subject Site' (**Figure 1**).

The Subject Site, as per vegetation mapping undertaken by Cumberland Ecology in October 2022 (**Figure 1**), contains occurrences of three Threatened Ecological Communities (TECs), some areas of urban plantings containing a mix of native and exotic species, and large areas of grassland largely dominated by exotic grass species. The TECs present are:

- River-flat Eucalypt Forest, listed as an Endangered Ecological Community (EEC) under the NSW *Biodiversity Conservation Act 2016* (BC Act) and a Critically Endangered Ecological Community (CEEC) under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act);
- Cumberland Plain Woodland, listed as a CEEC under the BC Act and the EPBC Act; and
- Swamp Oak Floodplain Forest, listed as an EEC under the BC Act and EPBC Act.

The CPCP allows for urban growth and development in Western Sydney by planning areas for proposed development, while at the same time setting aside areas of native vegetation for conservation to offset loss in development areas. The CPCP does this by meeting the requirements for strategic biodiversity certification under the BC Act and strategic certification under the EPBC Act (yet to be approved by the Commonwealth).

Under the CPCP development can be undertaken in areas planned for development, defined as being 'Certified - Urban Capable Land', without undertaking biodiversity assessments and offsetting, as biodiversity offsetting is to be undertaken at the regional level, in areas shown on the plan as 'Avoided Land'. **Figure 2** identifies the CPCP's land categories within the Subject Site. **Figure 2** also shows the Biodiversity Values (BV) mapping within the Subject Site. The BV mapping is prepared by the Department of Planning and Environment, which identifies land with high biodiversity value that is particularly sensitive to impacts from development and clearing.

The purpose of this letter is to assess the consistency of the Planning Proposal with the CPCP, to reassure Penrith City Council that future development within the Subject Site that the Planning Proposal will facilitate, is consistent with the CPCP. This includes the identification of mitigation measures to be implemented for any future development application (DA) within 'Certified - Urban Capable Land' as required by Chapter 13, Part 13.5 of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* and detailed in the *Cumberland Plain Conservation Plan Mitigation Measures Guidelines* (the 'Guidelines') (see **Appendix B**).

The Guidelines require any DA submitted within Certified - Urban Capable land under the CPCP to demonstrate mitigation measures for threatened ecological communities and species (Part 2 of the Guidelines) will be implemented.

A.2. Methods and Results

Utilising GIS software, Cumberland Ecology compared impacts to mapped occurrences of TECs under the Planning Proposal (**Figure 1**) to impacts to TECs if all vegetation within areas mapped as 'Certified - Urban Capable Land' under the CPCP was removed (**Figure 3**). The results of this analysis are shown in **Table 1** and indicate substantially less areas of TECs will be cleared under than the Planning Proposal to what is permissible without offsetting under the CPCP.

Table 1 Comparison of impacts on TECs between the Planning Proposal and the CPCP

Vegetation Community	Area (ha) Cleared		Area (ha) Retained	
	Planning Proposal	CPCP	Planning Proposal	CPCP
Cumberland Plain Woodland	1.51*	2.06	0.57	0.01
Cumberland Plain Woodland DNG	0.36	0.36	0	0
River-flat Eucalypt Forest	1.6**	1.57	1.87	1.74
Swamp Oak Floodplain Forest	0.52***	1.12	1.3	0.69
Total	3.99	5.11	3.74	2.44

Table Key: *0.63 ha of the Cumberland Plain Woodland, **0.78 ha of River-flat Eucalypt Forest and ***0.04 ha of Swamp Oak Floodplain Forest will have clearing of understorey only and there will be some canopy retention

In addition to the comparisons made above, areas of mapped vegetation were assessed against the mapping of 'Avoided Land' under the CPCP within the Subject Site. This is shown in **Figure 4**. Small areas of River-flat Eucalypt Forest which occur in the south-east of the Subject Site will have clearing of the understorey undertaken with the canopy retained.

Appendix B includes Part 2 of the Guidelines to demonstrate that appropriate mitigation measures will be implemented at the DA stage to ensure potential impacts on threatened ecological communities and species are appropriately mitigated. Therefore, any future DAs within Certified – Urban Capable Land are expected to be consistent with Chapter 13, Part 13.5 of *State Environmental Planning Policy (Biodiversity and Conservation) 2021*.

A.3. Conclusion

Substantially less area of TECs will be cleared under the Planning Proposal compared to what is permissible under the CPCP. Under the Planning Proposal some small areas of River-flat Eucalypt Forest would have understorey and ground layer vegetation removed within an area mapped as Avoided Land under the CPCP, however greater areas of TEC vegetation will be conserved under the Planning Proposal compared to what is proposed under the CPCP.

For these reasons it is evident that future development facilitated by the Planning Proposal will result in a better outcome to biodiversity values in the subject site, compared to what is permissible under the CPCP. Further to this, all future DAs will implement the required mitigation measures to appropriately minimise impacts on TECs and threatened species. As such it is expected the Planning Proposal would be considered consistent with the CPCP.

APPENDIX B :

Cumberland Plain Conservation Plan Mitigation Measures Guidelines




Table 2 Cumberland Plain Conservation Plan Mitigation Measures Guidelines and proposed implementation

Objective	Mitigation Requirements	Implementation
Threats to threatened ecological communities 1. Mitigate indirect and prescribed impacts from urban and industrial development, infrastructure and intensive plant agriculture on threatened ecological communities, species and their habitat. (Commitment 5 from the CPCP). 2. Mitigate indirect and prescribed impacts from urban, industrial, and infrastructure development on the Southern Sydney koala population to best-practice standards and in line with advice from the NSW Chief Scientist and Engineer, and in accordance with Appendix E of the CPCP (Commitment 7 of the CPCP). 3. Manage priority pest species in strategic locations in the Cumberland subregion to reduce threats to protected land (Commitment 16 of the CPCP).	<p>For all development on certified-urban capable land, the following controls apply:</p> <p>Site design 17. Erect temporary protective fencing around retained biodiversity onsite to be protected, or biodiversity immediately adjoining the site, before construction begins. 18. Implement an open structure design for roads adjacent to known populations of Cumberland Plain land snail, in accordance with actions under the Save our Species Program (run by the department's former Environment, Energy and Science group, 2020, known since 1 April 2022 as Environment and Heritage).</p> <p>Fauna translocation 19. Prepare a pre-clearance native fauna survey immediately before the clearing of native vegetation to ensure that arboreal mammals, roosting and hollow-using birds, bats and reptiles are restricted from accessing any vegetation to be cleared and are translocated clearing. Translocation may require a licence from the department's Environment and Heritage group under the Translocation Operational Policy.</p> <p>Weed mitigation 20. Implement mitigation measures to manage weeds during construction and operation to protect adjacent flora populations. Follow the guidance in the Cumberland Plain Conservation Plan Weed Control Implementation Strategy.</p>	<p>To be implemented for each DA (as required).</p> <p>No known populations of Cumberland Plain Land Snail present within the subject site.</p> <p>To be implemented for each DA (as required).</p> <p>To be implemented for each DA (as required).</p>

Objective	Mitigation Requirements	Implementation
	Pest control 21. A qualified expert must prepare a pest control strategy to be carried out during construction. This must be done in accordance with best practice for chemical use to reduce the risk of secondary poisoning (from poison such as Pindone or second-generation rodenticides).	To be prepared for each DA (as required).
Threats to threatened species and habitat condition 1. Mitigate indirect and prescribed impacts from	Pet containment 1. Contain domestic cats and dogs within certified-urban capable land, consistent with relevant council guidelines.	To be included in the site-specific Development Control Plan.

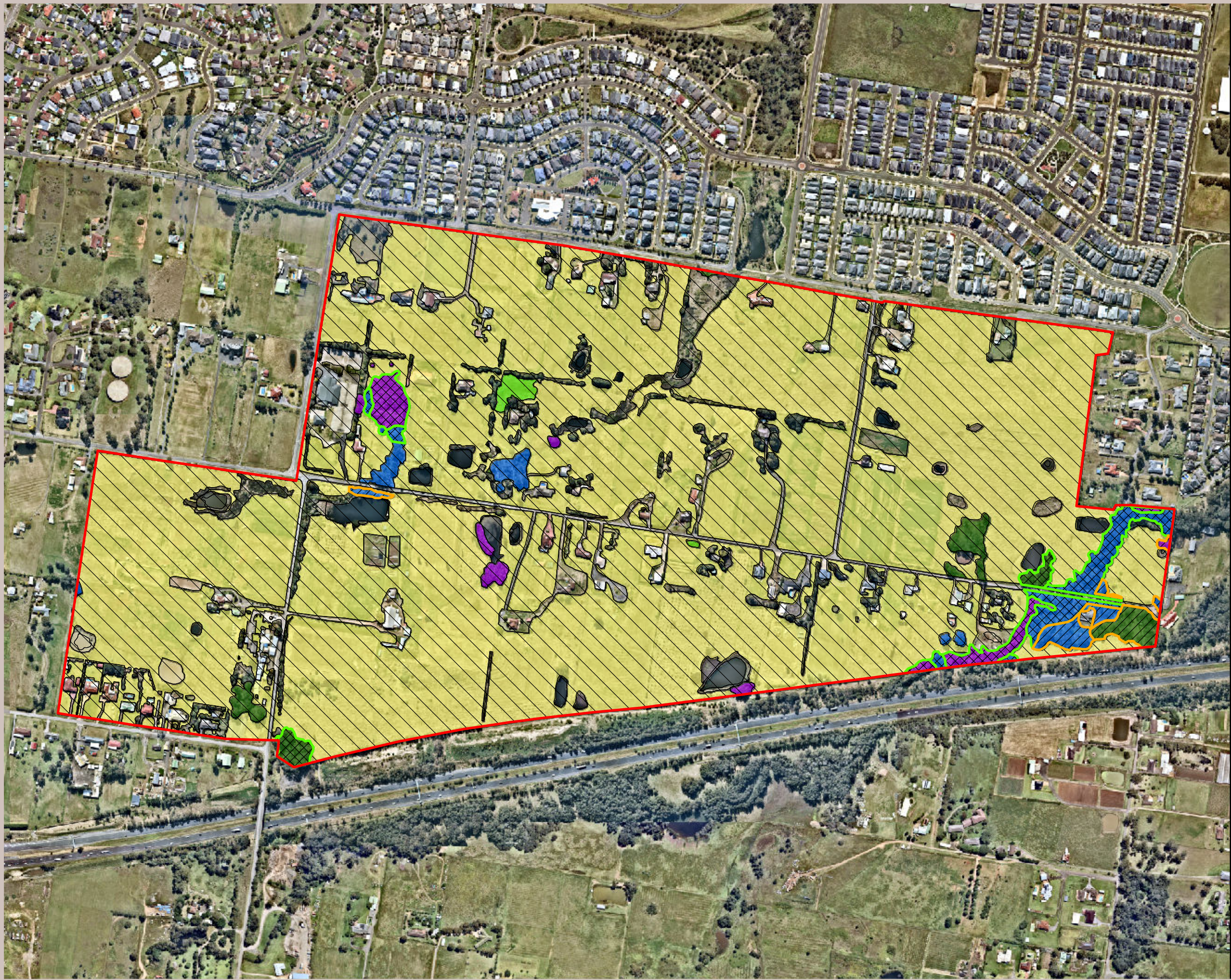
Objective	Mitigation Requirements	Implementation
<p>urban and industrial development, infrastructure and intensive plant agriculture on threatened ecological communities, species and their habitat. (Commitment 5 from the CPCP).</p> <p>2. Manage priority pest species in strategic locations in the Cumberland subregion to reduce threats to protected land (Commitment 16 of the CPCP).</p> <p>3. Manage fire in strategic locations in the Cumberland subregion to support the maintenance of biodiversity values on conservation land. (Commitment 17 of the CPCP).</p> <p>4. Support new or existing programs to control key diseases affecting threatened species and ecological communities in the Cumberland subregion. (Commitment 18 of the CPCP).</p>	<p>Habitat protection</p> <p>2. Avoid impacts to habitat features, including:</p> <p>3. Retaining large and dead native trees (>50 cm diameter at breast height) that are not a safety risk and that provide habitat for threatened species</p> <p>4. Avoiding impacts to soil within the dripline of the retained trees.</p> <p>5. Provide setbacks from development for grey-headed flying fox camps and raptors, if present on or adjacent to the site as below:</p> <p>a. Species: Grey-headed flying fox Control: Grey-headed flying fox camps require a 100 m setback to any development. The setback area should be maintained free of flying fox roosting habitat.</p> <p>b. Species: Raptors (birds of prey) Control: Raptor nests require a 500 m circular setback from where nests are in undisturbed bushland, or a minimum circular setback distance of 250 m where nests are closer to existing development.</p> <p>Owl nests require a 100 m circular setback from where nests are.</p>	<p>To be implemented for each DA (as required).</p> <p>No Grey-headed Flying-fox camps within the Subject Site or within adjacent lands.</p> <p>To be implemented for each DA (as required), noting that no raptor nests or owl nests have been recorded within the Subject Site.</p>

Objective	Mitigation Requirements	Implementation
	<p>6. Undertake pre-construction surveys before removing or disturbing human-made structures and before microbats go into torpor– an inactive state that conserves energy. This is to retain roosting habitat for microbat species. Retain man-made roosting habitat including mine shafts, storm water tunnels, old or derelict buildings, bridges and culverts, where possible, and ensure any individuals are dispersed or relocated in accordance with best practice.</p> <p>7. Apply best-practice site hygiene protocols to manage the potential spread of Phytophthora and myrtle rust from adjacent land to avoided land, in accordance with the Arrive Clean, Leave Clean: Guidelines (Commonwealth of Australia, 2015).</p>	To be implemented for each DA (as required)
	<p>Fire management</p> <p>8. Undertake fire hazard management within Asset Protection Zones in the Greater Macarthur Growth Area to protect and enhance the Pimelea spicata (spiked rice flower) species in accordance with species mapping in the Cumberland Plain Assessment Report.</p>	Not relevant. Subject Site is not within the Greater Macarthur Growth Area.
<p>Riparian protection and waterways</p> <p>1. Mitigate indirect and prescribed impacts from urban and industrial development, infrastructure and intensive plant agriculture on threatened ecological communities, species and their habitat. (Commitment 5 of the CPCP).</p>	<p>Waterway protection</p> <p>1. Ensure development adjacent to the southern and western boundaries of Commonwealth land comprising the Orchard Hills Defence Establishment mitigates impacts to surface water flows and the water quality of Blaxland Creek.</p>	Not relevant. Subject Site is not adjacent to Orchard Hills Defence Establishment.

Objective	Mitigation Requirements	Implementation
	Riparian protection 2. Retain areas of the Proteaceae shrubs for the Eastern Pygmy Possum (<i>Cercartetus nanus</i>) along or adjacent to riparian areas to improve and maintain habitat connectivity in accordance with species mapping in the Cumberland Plain Assessment Report.	To be implemented for each DA (as required), noting that no Proteaceae shrubs have been recorded within the Subject Site.

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FIGURES



Legend

- Subject Site**
- Vegetation Community**
- Swamp Oak Floodplain Forest
 - River-flat Eucalypt Forest
 - Exotic Dominated Grassland
 - Cumberland Plain Woodland DNG
 - Cumberland Plain Woodland
- Proposed Impact**
- Cleared
 - Partially Cleared
 - Retained

Image Source:
Image © Nearmap
(11/09/2022)
Cumberland Plain Conservation Plan
August 2022
NSW Department of Planning and Environment

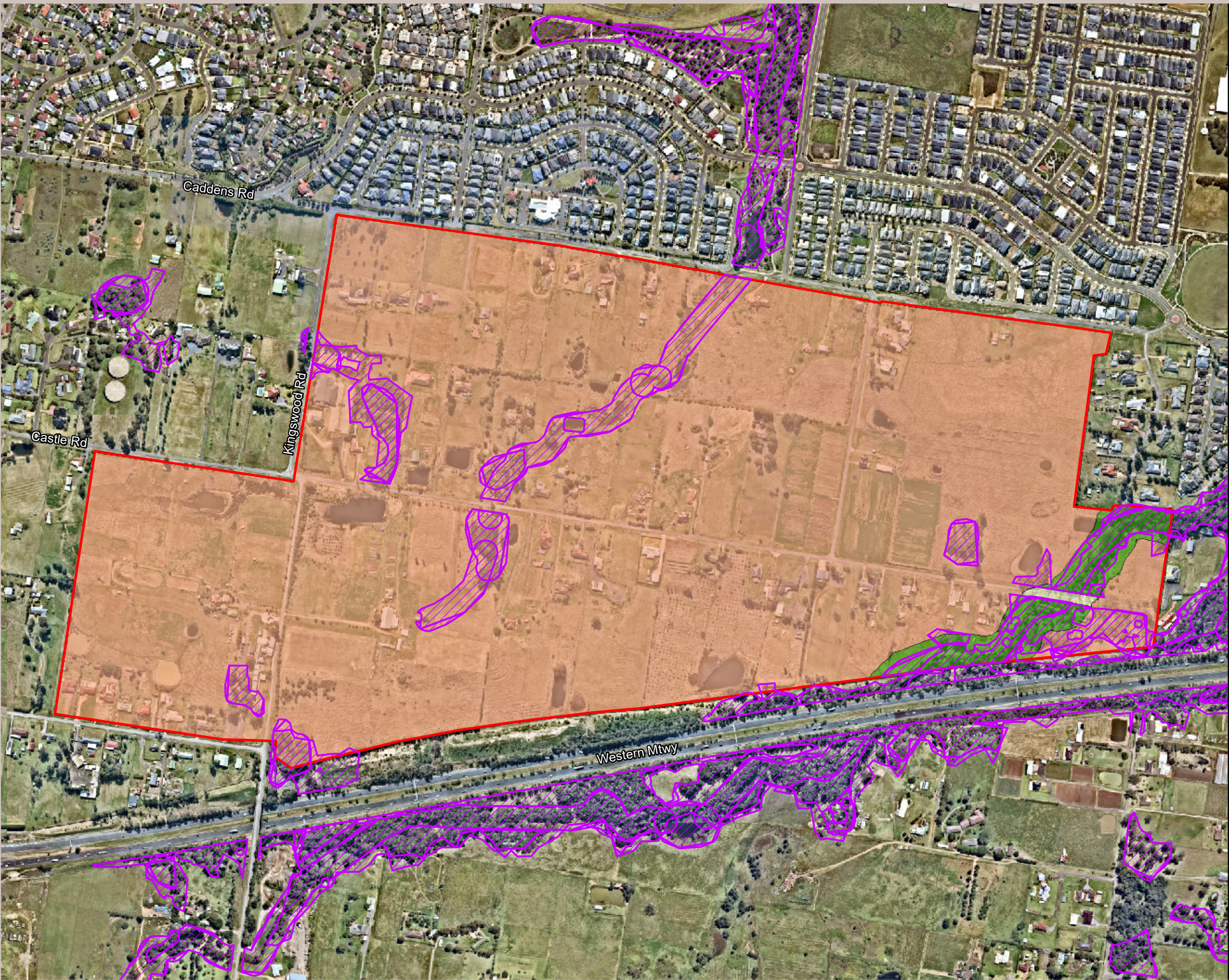


Coordinate System: MGA Zone 56 (GDA 94)



0 50 100 150 200 m

Figure 1. Impacts to vegetation under the Planning Proposal



Legend







-  Subject Site
-  Biodiversity Values Mapping
- Land Category**
 -  Certified - Urban Capable Land
 -  Excluded Land
 -  Avoided Land

Image Source:
Image © Nearmap
(18/02/2022)
Cumberland Plain Conservation Plan
August 2022
NSW Department of Planning and Environment
Biodiversity Values Map
Dated: 04/10/2022
© State Government of NSW
and Department of Planning
and Environment 2018 
Coordinate System: MGA Zone 56 (GDA 94)

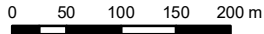


Figure 2. CPCP land categories and BV mapping within the Subject Site



Legend

- Subject Site
- Impacts to TECs under the CPCP**
- Swamp Oak Floodplain Forest
- River-flat Eucalypt Forest
- Cumberland Plain Woodland DNG
- Cumberland Plain Woodland

Image Source:
Image © Nearmap
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Cumberland Plain Conservation Plan
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NSW Department of Planning and Environment



Coordinate System: MGA Zone 56 (GDA 94)

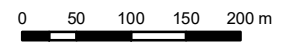
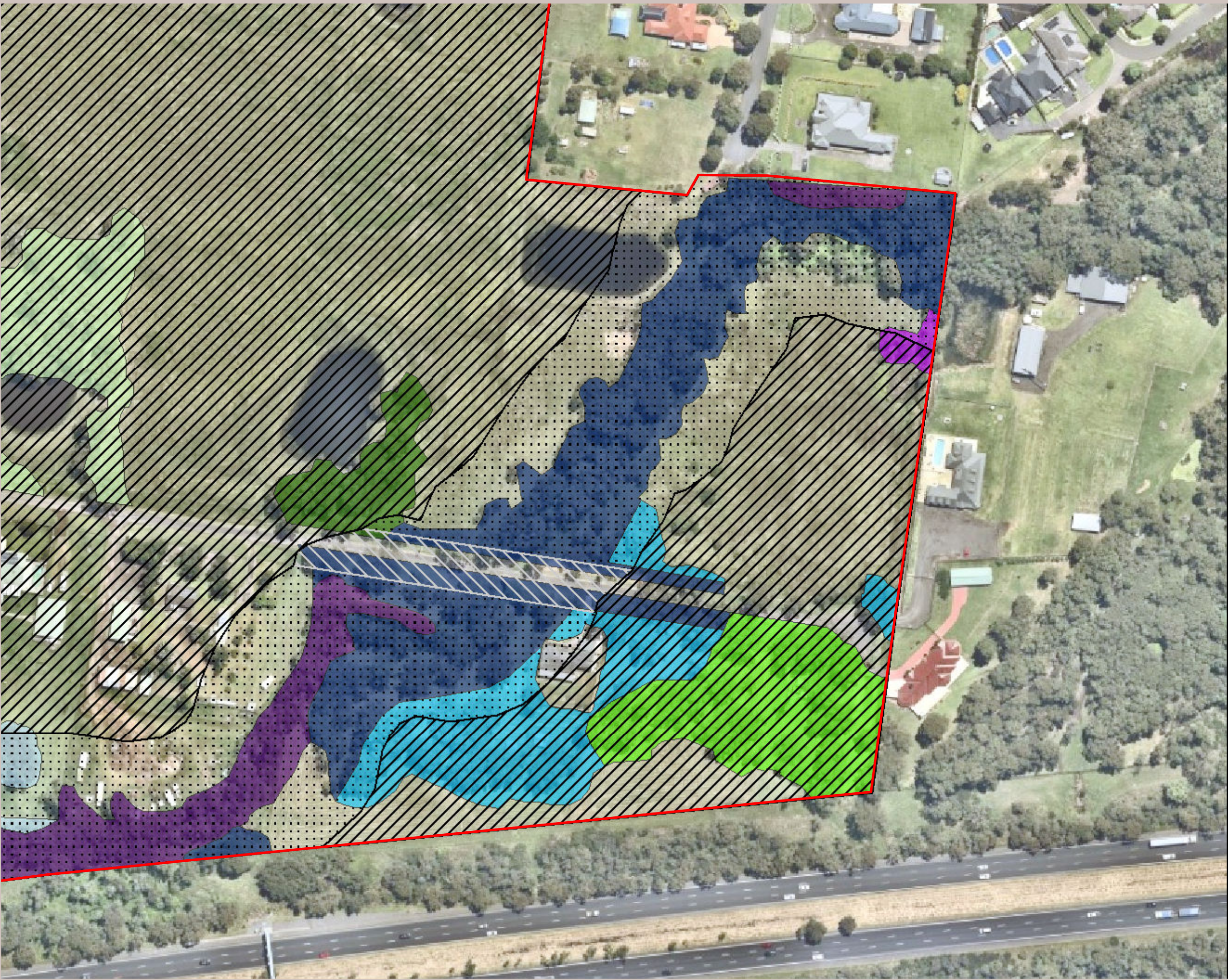


Figure 3. Impacts to TECs under the CPCP















- Legend**
-  Subject Site
- Cumberland Plain Conservation Plan**
-  Certified - Urban Capable Land
-  Avoided Land
-  Excluded Land
- Impacts to TECs**
-  Cumberland Plain Woodland to be Retained
-  Cumberland Plain Woodland to be Partially Cleared
-  Cumberland Plain Woodland to be Cleared
-  River-flat Eucalypt Forest to be Retained
-  River-flat Eucalypt Forest to be Partially Cleared
-  River-flat Eucalypt Forest to be Cleared
-  Swamp Oak Floodplain Forest to be Retained
-  Swamp Oak Floodplain Forest to be Partially Cleared

Image Source:
Image © Nearmap
(18/02/2022)

Coordinate System: MGA Zone 56 (GDA 94)



0 50 m

Figure 4. TEC clearing under the Planning Proposal and CPCP Avoided Land