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Annual Compliance Report 2021 - 2022

14 Lot industrial subdivision, Lot 1 DP 106143 Burley
Road Horsley Park EPBC 2016/7744

CSR Building Products Pty Ltd

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1. Introduction

1.1 Project Background

CSR Building Products Pty Ltd (CSR) lodged a development application (893.1/2013) with Fairfield City Council in December 2013 to subdivide Lot 1 DP106143 into a 14 lot industrial subdivision, including one residual conservation lot (the study area). The development was approved by the NSW Land and Environment Court (Case CSR Building Products Ltd v Fairfield City Council [2015] NSWLEC 1284).

The 14 lot subdivision would occur over three stages and result in the creation of employment purposes, environmental conservation, public roads and associated stormwater infrastructure. The site (incorporating both development and conservation areas) is about 72.55 ha.

The development site is no longer used as a brick quarry and production facility. The majority of the site is cleared of vegetation. Some remnant patches of *Cumberland Plain Woodland and Shale Gravel Transition Forest in the Sydney basin bioregion* – a critically endangered community listed under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) are present in the study area.

The action was referred to the former Department of Environment and Energy (DotEE – now Department of Agriculture, Water and Environment ((DAWE)) due to a significant impact to *Cumberland Plain Woodland and Shale Gravel Transition Forest*. A referral was submitted in 2016 (EPBC 2016/7744). The proposed development was approved on 8 November 2017 with conditions.

Eco Logical Australia Pty Ltd (ELA) has prepared this Compliance Report on behalf of the proponent, CSR Building Products Pty Ltd, to assess compliance with the conditions for the period **November 2021 - November 2022** as set out in Industrial Subdivision of Lot 1 DP 106143, 327 – 335 Burley Road Horsley Park NSW (EPBC 2016/7744) (*Environment Protection and Biodiversity Conservation Act 1999* (EPBC) 2013/6979) approval signed 8 November 2017 (the Approval). This report has been prepared to address the requirements of Condition 11 (EPBC 2016/7744).

1.2 Project status

1.2.1 Commencement of works

Prior to the commencement of any works in the study area, sediment fencing, animal friendly fencing and *Phytophthora cinnamomic* controls were placed around the boundary of the Conservation Lot. These controls formed part of the conditions of consent and the Vegetation Management Plan (VMP) (Travers Bushfire and Ecology 2017) (**Appendix A**)

Stage 1 commenced on 9 November 2017 with the works limited to minor earthworks and tree clearing. Stage 1 has since been completed. Stage 2 commenced on 16 March 2018 with earthworks and tree clearing complete and construct of industrial infrastructure underway. Implementation of the VMP commenced with the protective fencing. On ground VMP works commenced in March 2018 and have continued throughout 2021-22, including weed management (**Appendix B**).

Bulk Earthworks in stage 3A are nearing completion, with the establishment of retaining walls in Stage 3B continuing and nearing completion. With respect to Stage 3C, the containment cell in stage 3C is estimated to be completed by mid – late 2023.

Sediment fencing and permanent fencing to prevent unlawful access has also been completed. Implementation of the Planting Plan in stages 1 and 2 commenced in mid-2020 and has been completed. Implementation of the planting plan in stage 3 is expected to be completed in 2023. Regular maintenance of the Managed Ecological Zone is being undertaken.

1.2.2 Securing the conservation lot

Consistent with condition 6 of the conditions of approval, the conservation area must be secured using a conservation mechanism within one year of the completion of the 10 year VMP. If this condition is not pursued, the proponent must adhere to condition 5(a) and legally secure the conservation area within two years of the commencement of works in stage 2.

The proponent liaised with the Department and secured the conservation area through the application of a Section 88B instrument under the NSW Conveyancing Act which outlines the following which is registered on title for the conservation lot:

- EPBC Act conditions of approval relevant to the conservation lot
- requirement to implement the VMP until such time as a Biodiversity Stewardship Agreement is established for the site
- the intention to manage and conserve the conservation lot in-perpetuity.

The Department agreed to the application of a Section 88B instrument provided that a Stewardship Agreement is established within one year of the completion of the VMP. The Section 88B instrument was registered with NSW Land Titles Office on 26 August 2019 and signed by all relevant parties (Appendix F).

A Biodiversity Stewardship Site Assessment Report, consistent with the *Biodiversity Conservation Act 2016* (BC Act) Biodiversity Assessment Methodology has been prepared and submitted to the then Department of Planning, Industry and Environment (DPIE) for assessment and approval. A site audit was conducted with the Biodiversity Conservation Trust and Eco Logical Australia on 7 December 2021 and it is expected that the Agreement will be finalised by June 2023.

The draft agreement from the Biodiversity Conservation Trust has been issued and is currently under negotiation. An updated contract is expected to be issued before the end of January 2023.

This will conserve and manage the Cumberland Plain Woodland and other ecological values in the conservation area (Appendix G).

1.2.3 Implementation of on-site works

The following works have also continued within the on-site conservation area;

- installation of fauna friendly fencing around the conservation lot
- installation of *Phytophthora cinnamomic* controls
- installation of sediment fencing
- commencement of earthworks in Stage 1 and 2 (completed), and Stage 3
- primary weed control
- maintenance weed control
- grassland weed control

- follow up weed control
- reintroduction of woody debris
- spreading recovered topsoil
- remediation of batters complete across all stages.

These undertakings are guided by the site-specific vegetation management plan prepared by Travers Bushfire and Ecology (2017) and implemented by ELA.

1.3 Variations

The proponent has not applied for any variations under the current EPBC Act approval.

1.4 Reason for this report

This report has been prepared in compliance with condition 11 of the EPBC Approval which states:

Within three months of every 12 month anniversary of the commencement of the action, the person taking the action must publish a report on their website addressing compliance with each of the conditions of this approval, including implementation of any management plans as specified in the conditions. Documentary evidence providing proof of the date of publication and non-compliance with any conditions of this approval must be provided the Department at the same time as the compliance report is published. Reports must remain on the website for the life of the approval. Reports must continue to be published until such time as advised by the Minister in writing.

ELA has prepared this compliance report on behalf of CSR examining compliance of the conditions set out by the then DotEE. As the works commenced 9 November 2017, the annual reporting is accordingly due 9 February following the subject reporting period (i.e. within 3 months of the 12-month anniversary). The following sub-sections discuss the conditions which required detail. Section 2 illustrates the compliance relative to each condition.

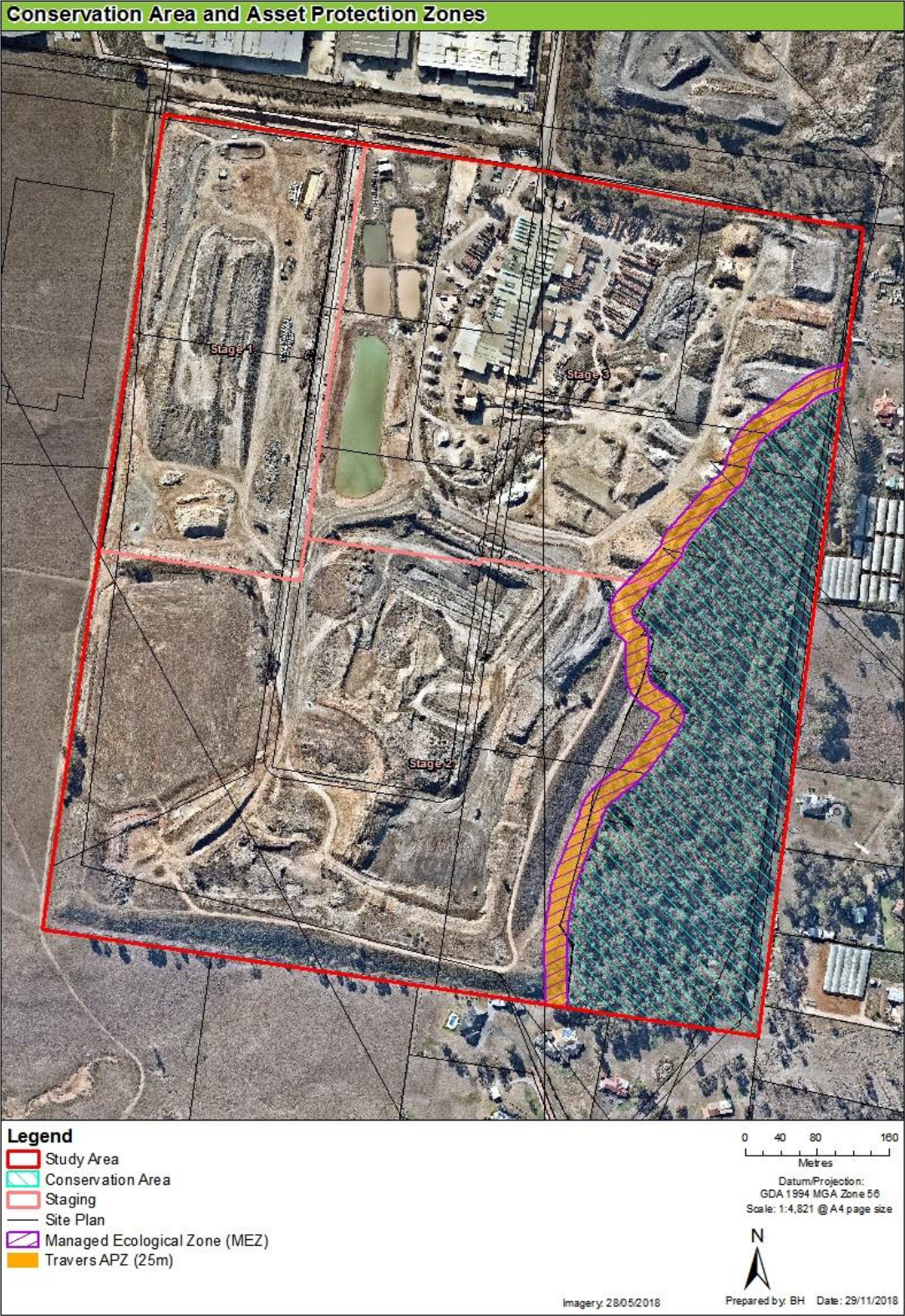


Figure 1: Staging map

2. Compliance reporting

The following table provides a summary of the approved condition and their respective compliance status, outcomes achieved and whether further action is required. Additional information for some of the conditions of approval are presented in **Section 3**.

Table 1: Compliance with conditions of approval

Number	Condition	Compliance Y/N	Date due	Status	Details
1	The approval holder must not clear more than 2.85 hectares of EPBC Act listed Cumberland Plain Shale Woodlands and Shale-Gravel Transition Forest (CPW) at the proposed action area.	Y	Ongoing	Ongoing	All clearing of EPBC Act CPW contained within approved development footprint and has not exceeded 2.85 ha. Currently 2.06 ha has been cleared (Figure 2)
2	Before commencement of the action, the approval holder must construct a fence around the conservation area, shown in the map at Appendix A. The fence must enclose the full conservation area along a boundary that has been located by a registered surveyor and must ensure the conservation area is a minimum 10.14 hectares in size.	Y	Prior to commencement of the action	Complete	Constructed prior to commencement of action (Appendix E).
3	The approval holder must not commence works in either Stage 2 or Stage 3 until it has commenced implementation of the Vegetation Management Plan (VMP) for the conservation area shown in the map at Appendix A. Once implementation of the VMP has commenced, it must continue as described in the VMP for the full period covered by the VMP.	Y	Prior to commencement of Stage 2 and Stage 3	Complete	Implementation of VMP commenced March 2018. Commenced with fencing and weed removal (Appendix E). Stage 2 works commenced on 16 March 2018. Permanent fencing around conservation area will be complete March 2020
4	No clearing of EPBC Act listed CPW may occur in the conservation area shown in the map at Appendix A. The approval holder also must not commence works in either Stage 2 or Stage 3 until it has implemented measures to prevent construction run-off from impacting CPW in the conservation area.	Y	Ongoing / prior to commencement of Stage 2 and Stage 3	Ongoing	No clearing in the conservation lot has occurred. Sediment fencing and exclusion fencing was constructed around the conservation lot in November 2017 and is maintained on a regular basis (Appendix E).

Number	Condition	Compliance Y/N	Date due	Status	Details
5a	<p>To compensate for the loss of 2.85 hectares of EPBC Act listed CPW and habitat for Grey-headed Flying-fox (<i>Pteropus poliocephalus</i>), the approval holder must:</p> <p>legally secure the conservation area shown indicatively in the map at Appendix A in perpetuity for conservation purposes. The offset mechanism used to legally secure the offset site must be in place within two years of the commencement of works in Stage 2, and must remain in place for the life of the approval, unless replaced as per Condition 6. The approval holder must:</p> <p>notify the Department within 30 calendar days of the offset mechanism being created</p> <p>notify the Department within 10 business days of the commencement of Stage 2</p>	Condition 6 pursued – BSSAR in preparation	2029	Ongoing	Subject to condition 6 (Section 3)
5b	not begin the transfer of ownership for any of the lots to be created by the action in Stage 2 or Stage 3 until the offset mechanism is in place and the Department has been satisfied of the mechanism's legal security (subject to Condition 6)	Y	Post creation of offset mechanism	Complete	Section 88B established in August 2019. Sales contract entered in to in October 2019. S88B will be followed by the establishment of a Stewardship Agreement. The draft agreement has been issued and is under negotiation.
5c	<p>implement the VMP dated 14 July 2017 across the conservation area (including buffer areas) as it relates to EPBC Act listed matters for at least 10 years from the date of this approval decision, including meeting the specified restoration performance targets in chapter 4.3, as well as an additional performance target of:</p> <p>at least four groundcover / grass plants characteristic of EPBC Act listed CPW per square metre within the conservation area</p>	Y	Prior to commencement of Stage 1	Ongoing	Commenced November 2017
5d	<p>prepare and implement a Planting Plan for the managed ecological zone (MEZ) adjoining the conservation area to achieve the quality metrics specified in the VMP, including but not limited to:</p> <p>at least six native groundcover / grass plants characteristic of EPBC Act listed CPW per square metre within the MEZ.</p>	Y	No timing specified	Ongoing	MEZ in stages 1, 2 and 3 were planted out as per the Planting Plan once land remediation was completed. Ongoing management of the MEZ is being implemented.

Number	Condition	Compliance Y/N	Date due	Status	Details
6a	<p>If the offset mechanism used to legally secure the offset site under Condition 5 was not biobanking or a Commonwealth-endorsed New South Wales Government successor mechanism, the offset mechanism must include:</p> <p>provisions requiring the consent of the Department before the mechanism may be removed</p>				
6b	<p>provisions requiring that, within one year of the expiry of the 10 year period covered by the VMP, the title holder must:</p> <p>secure a biobank site within the conservation area as shown in the map at Appendix A, through a Biobanking Agreement</p> <p>obtain an approved Biobanking Agreement, for the establishment of the Biobank site (required by Condition 6(b)(i)), with the NSW Office of Environment and Heritage. The Biobanking Agreement for the biobank site must:</p> <p>contain a specific reference to EPBC Act listed ecological communities and species impacted by the proposed action</p> <p>reference relevant EPBC Act guidelines and policies, and the requirements of these conditions</p> <p>prevent any future development activities</p> <p>include a provision that ensures the active conservation management of the biobank site to maintain the conservation area at the same quality metrics outlined in the VMP.</p>	Y	Within two years of commencement of Stage 2 (condition 5a)	Complete	Section 88B instrument implemented and placed on title on 26 August 2019

Number	Condition	Compliance Y/N	Date due	Status	Details
	<p>implement the Biobanking Agreement once it is established</p> <p>retire all credits generated by the Biobank site, and not use those credits to offset the impacts of another action nor allow another party to use those credits to offset the impacts of another action.</p> <p>If this Condition is activated, but the biobanking scheme no longer operates and has been replaced by an endorsed New South Wales Government successor mechanism, all references to biobanking in this Condition shall be taken to refer to equivalent provisions of the endorsed successor mechanism.</p>				
7	<p>The approval holder must include clauses in any sale contract covering the conservation area that require any buyer or buyers of land including all or part of the conservation area must:</p> <p>implement the VMP</p> <p>abide by, and implement any requirements of, the offset mechanism described in Condition 5</p> <p>not seek to remove, or consent to the removal of, the offset mechanism described in Condition 5 except with the consent of the Department</p> <p>not re-sell land including all or part of the conservation area unless any new sales contract or contracts transfer to the new buyer or buyers all obligations imposed under Condition 7 (including this obligation).</p>	Y	After the establishment of a conservation agreement for the conservation area	Complete	<p>Contracts of sale have been prepared for the following:</p> <p>Lot 201, Lot 202, Lot 204, Lot 206 6 Johnston Crescent Horsley Park between CSR Building Products Limited and ESR Investment Management 2 (Australia) Pty limited. Each agreement was entered in to on 31 October 2019.</p> <p>Lot 301 between CSR Building Products Limited and Digital Horsley Park, LLC. The agreement was entered in on 9 October 2020.</p> <p>Lot 305 and Lot 306 between CSR Building Products Limited and Horsley Park Developments Pty Ltd. The agreement was entered on 28 July 2021.</p> <p>Each agreement was formalised after the establishment of a legal instrument to secure the conservation area (established on 26 August 2019)</p>
8	The person taking the action must ensure that all appropriate hygiene measures are implemented for all works associated with the	Y	Before works commenced in conservation lot	Complete	Implemented through placement of boot wash down facility complete with dirt remover and spray disinfectant on 9 November 2017

Number	Condition	Compliance Y/N	Date due	Status	Details
	action, to prevent the spread of <i>Phytophthora cinnamomi</i> onto the site or the conservation area.				
9	Within 30 days after substantial commencement of the action, the person taking the action must advise the Department in writing of the actual date of commencement.	Y	Within 30 days of commencement of the action	Complete	8 December 2017 Wayne Pasalich of CSR emailed Kat Dunstan of DotEE (now DCCEEW) to notify of commencement of action.
10	The person taking the action must maintain accurate records substantiating all activities associated with or relevant to the conditions of approval, including measures taken to implement the VMP, the Planting Plan, the MEZ, the offset mechanism, and any Biobanking Agreement for the conservation area, and make them available upon request to the Department. Such records may be subject to audit by the Department or an independent auditor in accordance with section 458 of the EPBC Act, or used to verify compliance with the conditions of approval. Summaries of audits will be posted on the Department's website. The results of audits may also be publicised through the general media.	Y	After completion of each stage / reporting requirement	Ongoing	Reports available at https://www.csr.com.au/sustainability/workplace-health-safety-environment/environment/Horsley-Park-EPBC-Notices
11	Within three months of every 12 month anniversary of the commencement of the action, the person taking the action must publish a report on their website addressing compliance with each of the conditions of this approval, including implementation of any management plans as specified in the conditions. Documentary evidence providing proof of the date of publication and non-compliance with any conditions of this approval must be provided to the Department at the same time as the compliance report is published. Reports must remain on the website for the life of the approval. Reports must continue to be published until such time as advised by the Minister in writing.	Y	Within three months of every 12 month anniversary of the commencement of the action	Ongoing	Annual compliance report prepared by ELA with assistance from CSR and Calibre Group
12	Upon the direction of the Minister, the person taking the action must ensure that an independent audit of compliance with the conditions of approval is conducted and a report submitted to the Minister. The independent auditor must be approved by the Minister prior to the commencement of the audit. Audit criteria	N/A	N/A	N/A	Independent audit not requested during 21/22 compliance period

Number	Condition	Compliance Y/N	Date due	Status	Details
	must be agreed to by the Minister and the audit report must address the criteria to the satisfaction of the Minister.				
13	<p>The person taking the action may choose to revise a management plan, program or strategy approved by the Minister under Conditions 3, 5, or 10 without submitting it for approval under section 143A of the EPBC Act, if the taking of the action in accordance with the revised plan, program or strategy would not be likely to have a new or increased impact. If the person taking the action makes this choice they must:</p> <p>notify the Department in writing that the approved plan, program or strategy has been revised and provide the Department with an electronic copy of the revised plan, program or strategy;</p> <p>implement the revised plan, program or strategy from the date that the plan, program or strategy is submitted to the Department; and</p> <p>for the life of this approval, maintain a record of the reasons the approval holder considers that taking the action in accordance with the revised plan, program or strategy would not be likely to have a new or increased impact.</p>	N/A	N/A	N/A	No revisions have been requested during 21/22 compliance period
13A	The person taking the action may revoke their choice under Condition 13 at any time by notice to the Department. If the person taking the action revokes the choice to implement a revised plan, program or strategy, without approval under section 143A of the EPBC Act, the plan, program or strategy approved by the Minister must be implemented.	N/A	N/A	N/A	No revisions have been requested during 21/22 compliance period
13B	Condition 13A does not apply if the revisions to the approved plan, program or strategy include changes to environmental offsets provided under the plan, program or strategy in relation to a matter protected by a controlling provision for the action, unless otherwise agreed in writing by the Minister. This does not otherwise limit the circumstances in which the taking of the action in accordance with a	N/A	N/A	N/A	No revisions have been requested during 21/22 compliance period

Number	Condition	Compliance Y/N	Date due	Status	Details
	revised plan, program or strategy would, or would not, be likely to have new or increased impacts.				
13C	<p>If the Minister gives a notice to the person taking the action that the Minister is satisfied that the taking of the action in accordance with the revised plan, program or strategy would be likely to have a new or increased impact, then:</p> <p>Condition 13 does not apply, or ceases to apply, in relation to the revised plan, program or strategy; and</p> <p>The person taking the action must implement the plan, program or strategy approved by the Minister.</p> <p>To avoid any doubt, this condition does not affect any operation of Conditions 13, 13A and 138 in the period before the day the notice is given. At the time of giving the notice the Minister may also notify that for a specified period of time that Condition 13 does not apply for one or more specified plans, programs or strategies required under the approval.</p>	N/A	N/A	N/A	No revisions have been requested during 21/22 compliance period
13D	Conditions 13, 13A, 138 and 13C are not intended to limit the operation of section 143A of the EPBC Act which allows the person taking the action to submit a revised plan, program or strategy to the Minister for approval.	N/A	N/A	N/A	No revisions have been requested during 21/22 compliance period
14	If, at any time after five years from the date of this approval, the person taking the action has not substantially commenced the action, then the person taking the action must not substantially commence the action without the written agreement of the Minister.	N/A	N/A	Complete	The action has substantially commenced
15	Unless otherwise agreed to in writing by the Minister, the person taking the action must publish all management plans, reports, strategies, agreements referred to in these conditions of approval on their website. Each management plan, report, strategy, agreement must be published on the website-within one month of	Y	Within one month from DotEE approval	Ongoing	<p>Reports available at</p> <p>https://www.csr.com.au/sustainability/workplace-health-safety-environment/environment/Horsley-Park-EPBC-Notices</p>

Number	Condition	Compliance Y/N	Date due	Status	Details
	being approved by the Minister or being submitted under Condition 13(a).				

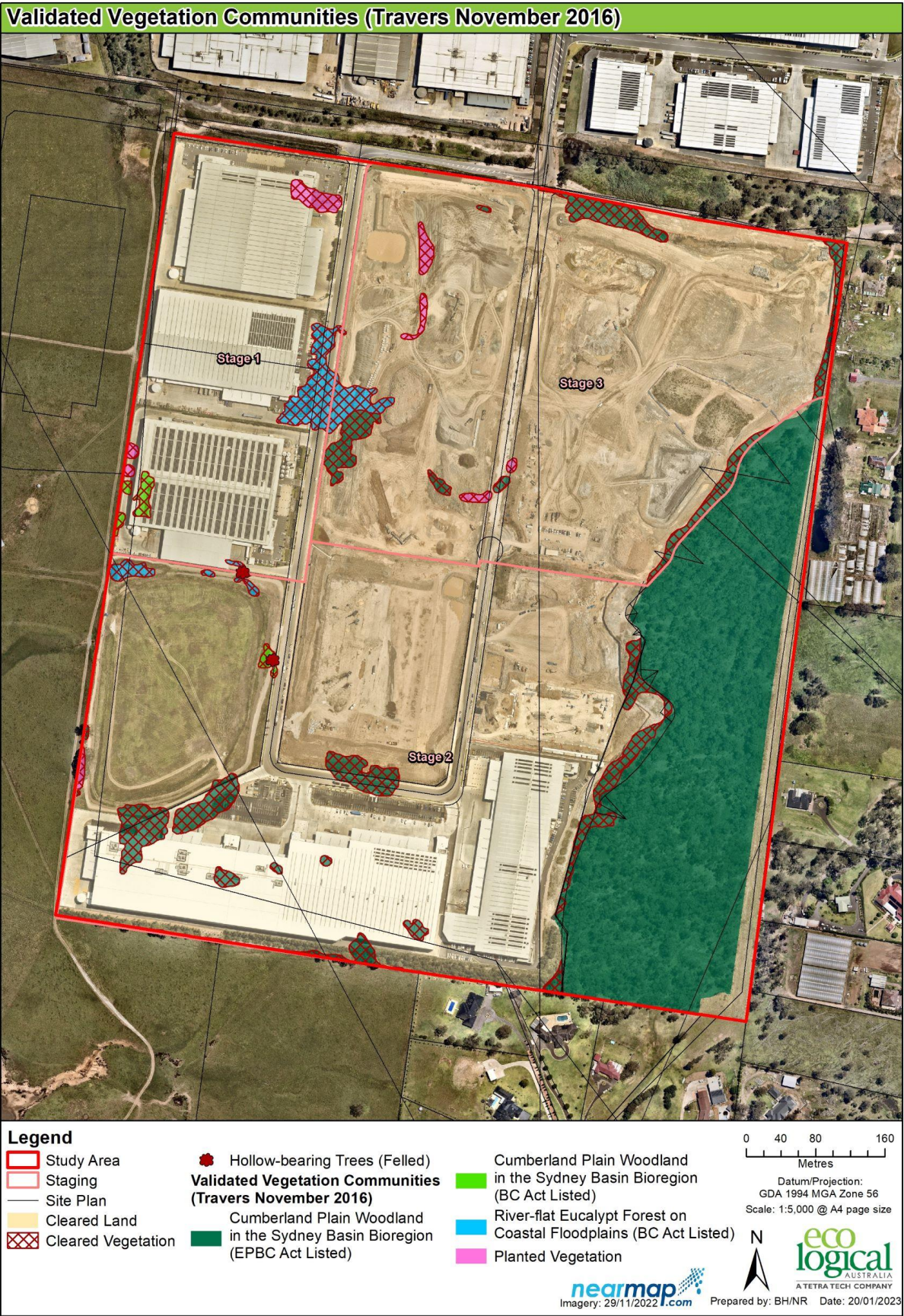


Figure 2: Cumberland Plain Woodland (EPBC Act) removed and retained in the study area (January 2023)

3. Additional information

3.1 Offset mechanism for the Conservation Lot

Condition 6 of the EPBC consent conditions specifies:

If the offset mechanism used to legally secure the offset site under Condition 5 was not biobanking or a Commonwealth-endorsed New South Wales Government successor mechanism, the offset mechanism must include:

- a. provisions requiring the consent of the Department before the mechanism may be removed*
- b. provisions requiring that, within one year of the expiry of the 10 year period covered by the VMP, the title holder must:*
 - i secure a biobank site within the conservation area as shown in the map at Appendix A, through a Biobanking Agreement*
 - ii obtain an approved Biobanking Agreement, for the establishment of the Biobank site (required by Condition 6(b)(i)), with the NSW Office of Environment and Heritage. The Biobanking Agreement for the biobank site must:*
 - contain a specific reference to EPBC Act listed ecological communities and species impacted by the proposed action*
 - reference relevant EPBC Act guidelines and policies, and the requirements of these conditions*
 - prevent any future development activities*
 - include a provision that ensures the active conservation management of the biobank site to maintain the conservation area at the same quality metrics outlined in the VMP.*
 - implement the Biobanking Agreement once it is established*
 - retire all credits generated by the Biobank site, and not use those credits to offset the impacts of another action nor allow another party to use those credits to offset the impacts of another action.*

If this Condition is activated, but the biobanking scheme no longer operates and has been replaced by an endorsed New South Wales Government successor mechanism, all references to biobanking in this Condition shall be taken to refer to equivalent provisions of the endorsed successor mechanism.

The proponent has chosen to place a Stewardship Agreement over the conservation lot consistent with 6(b); within one year of the expiry of the 10 year VMP.

The mechanism to secure the conservation lot for the interim period is a Section 88B instrument under the *NSW Conveyancing Act 1919*. Such an instrument is required under the court approval (case name *CSR Buildings Products Ltd v Fairfield City Council – 10634/2014*). The court order specifies that:

- 2. Prior to the issue of any subdivision certificate, written certification from a suitable qualified person(s) shall be submitted to the Principal Certifying Authority and Fairfield City Council, stating that all works, methods, procedures, control measures and recommendations approved by Council in the following reports have been completed as appropriate to each stage of development:*

- a. *b. Flora Fauna Assessment, prepared by Travers Bushfire and Ecology, File no.A13140TSS, dated 10 March 2014*

Recommendation 1 of the FFA specifies:

1. *An 88B instrument that requires the Conservation Lot and surrounding 25 m APZ to be managed in accordance with the approved Vegetation Management Plan (Travers Bushfire and Ecology 2017).*

The Department agreed to the application of a Section 88B instrument provided that a Stewardship Agreement is established within one year of the completion of the VMP. The Section 88B instrument was registered with Fairfield City Council on 26 August 2019 (Appendix F).

A Biodiversity Stewardship Site Assessment Report, consistent with the *Biodiversity Conservation Act 2016* (BC Act) Biodiversity Assessment Methodology has been prepared and submitted to Department of Planning, Industry and Environment (DPIE) for assessment and approval. A site audit was conducted with the Biodiversity Conservation Trust and Eco Logical Australia on 7 December 2021. A draft Agreement has been issued by the Biodiversity Conservation Trust and is currently under negotiation. It is expected that an updated contract will be issues prior to end January 2023. This will conserve and manage the Cumberland Plain Woodland and other ecological values in the conservation area (Appendix G).

4. Conclusion

Eco Logical Australia Pty Ltd, on behalf of CSR Building Products Pty Ltd has prepared this Compliance Report to fulfil condition 11, and in doing so, all conditions of the project Approval (EPBC 2016/7744). Since the commencement of the action there has been no non-compliances.

Appendix A - Vegetation Management Plan (Travers Bushfire and Ecology 2017)

Appendix B - VMP Implementation Progress Report (ELA 2022)

Appendix C - Planting Plan (ELA 2018)

Appendix D - Flora and Fauna Assessment Report (Travers Bushfire and Ecology 2017)

Appendix E - Site photos



Figure 3: Retention of hollow sections for installation in the conservation lot



Figure 4: Placing logs in conservation lot, sediment fencing and animal friendly fencing



Figure 5: Placement of retained logs and hollows in the conservation lot

Appendix F - Section 88B Instrument

Appendix G - Biodiversity Stewardship Site Assessment Report (ELA 2019)

