

15 July 2020

Our Reference: 20SYD - 16423

Marsden Park Developments Pty Ltd
920 Richmond Road,
P.O Box 262, Riverstone
NSW 2765

Attention: Michael Gray

Dear Michael,

Sydney Business Park Stage Three State Significant Development Application – Flora and Fauna Assessment / Biodiversity Development Assessment Report Waiver

This letter describes the assessment of biodiversity values for the above project. The State Significant Development Application (SSDA) will involve the development of large format warehousing and logistics, which will include clearing of vegetation, subdivision of land, road and drainage works, bulk earthworks, building construction and services. It is understood that the proposal may also include a temporary stormwater detention basin and associated infrastructure (Figure 1).

BIODIVERSITY CERTIFICATION

Eco Logical Australia has undertaken a review of the proposed development, including the temporary stormwater detention basin, and can confirm that the entire site is 'subject land' according to Part 7 (*Biocertification of the Sydney region growth centres SEPP and related EPIs*) of Schedule 7 to the *Threatened Species Conservation Act 1995* (TSC Act) (Figure 1).

In August 2017 the *Biodiversity Conservation Act 2016* (BC Act) was gazetted and repealed the TSC Act. Under section 43 of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017* (BC (Savings and Transitional) Regulation), the repeal of the TSC Act does not affect the operation of part 7 or 8 of Schedule 7 to that Act.

Section 8.4(2) of the BC Act describes the effect of biodiversity certification in relation to development under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). This section states '*an assessment of the likely impact on biodiversity of development on biodiversity certified land is not required for the purposes of Part 4 of the EP&A Act 1979*'.

Within the wider study area, there is an area to the west of the development, which is not biodiversity certified. The proposal does not involve disturbance to this area. Therefore, there will be no impacts to biodiversity values in the non-certified land.

STATE ENVIRONMENTAL PLANNING POLICY (SYDNEY REGION GROWTH CENTRES) 2006

The *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (Sydney Region Growth Centres SEPP) Appendix 5 *Marsden Park Industrial Precinct Plan* contains controls for the clearing of Existing Native Vegetation (ENV) and Native Vegetation Retention Areas (NVR) as shown on the Native Vegetation Protection Map.

Clause 6.5(4) of the Precinct Plan states:

The consent authority must not grant development consent for development on land to which this clause applies unless it is satisfied that the proposed development will not result in the clearing of any existing native vegetation (within the meaning of the relevant biodiversity measures under Part 7 of Schedule 7 to the Threatened Species Conservation Act 1995).

Although there is an area mapped as ENV in the wider study area, west of the development, (Figure 1), the proposal does not involve disturbance to this area. It is the understanding of the proponent that Blacktown City Council are currently undertaking studies to design a regional stormwater basin within this area, as outlined within the Indicative Layout Plan (ILP). There is no mapped NVR within the wider study area or development site. Therefore, these clauses do not apply.

SECRETARY'S ENVIRONMENTAL ASSESSMENT REQUIREMENTS AND THE BIODIVERSITY CONSERVATION ACT 2016

In accordance with Clause 7.9(2) of the BC Act, an application for State Significant Development is *to be accompanied by a biodiversity development assessment report (BDAR) unless the Planning Agency Head and the Environmental Agency Head determine that the proposed development is not likely to have any significant impact on biodiversity values.*

A Fact Sheet for BDAR Waivers advises:

A BDAR waiver will only be issued in limited circumstances where it is clearly demonstrated, based on information provided by a proponent in accordance with this fact sheet, that the proposed development is not likely to have any significant impact on biodiversity values. For example, internal works to an existing building or development on a brownfield site with no threatened species habitat. Development that requires clearing of native vegetation is likely to require a BDAR. If there is doubt regarding potential impacts, or where information is not made available, a BDAR waiver will not be issued.

This letter has therefore addressed Section 1.5 of the BC Act and Clause 1.4 of the *Biodiversity Conservation Regulation 2017* (BC Regulation), within Appendix B to assess the biodiversity values on site. As there are no impacts to biodiversity on non-certified land, this letter concludes that there will not be a significant impact to biodiversity values and that the proponent should seek a waiver from the Department of Planning, Industry and Environment (DPIE) for the preparation of a BDAR. This letter should be submitted in support of that application for a BDAR waiver.

BLACKTOWN CITY COUNCIL GROWTH CENTRE PRECINCTS DEVELOPMENT CONTROL PLAN 2010

Section 2.3.4.2 of the Blacktown City Council Growth Centres Precinct Development Control Plan 2010 (Blacktown Growth Centres DCP) contains provisions relating to native bushland and fauna habitat preservation. Table 1 outlines how the proposed development has considered such provisions.

Table 1: Blacktown Growth Centre Precincts DCP Controls

Liverpool Growth Centres Precinct DCP Clause	Comments
<p>Native trees and other vegetation are to be retained where possible by careful planning of subdivisions to incorporate trees into areas such as road reserves and private or communal open space.</p>	<p>The development site is wholly biodiversity certified. Retainment of existing trees will be considered within the Landscape Plans. Although patches of native vegetation are proposed for removal, this will be compensated through the planting of endemic street trees (where feasible) as well as the protection and management of mapped ENV areas in the vicinity of the development. Furthermore, the loss of native vegetation within biodiversity certified lands has been compensated through the strategic planning of the North West Growth Centre, through the use of biodiversity offsets.</p>
<p>Where practical, prior to development commencing, applicants are to:</p> <ul style="list-style-type: none"> • provide for the appropriate re-use of native plants and topsoil that contains known or potential native seed bank; and • relocate native animals from development sites. Applicants should refer to OEH's <i>Policy on the Translocation of Threatened Fauna in NSW</i>. 	<p>The development site is wholly biodiversity certified. Retainment of existing trees will be considered within the Landscape Plans. Although patches of native vegetation are proposed for removal, this will be compensated through the planting of endemic street trees (where feasible) as well as the protection and management of mapped ENV areas in the vicinity of the development. Furthermore, the loss of native vegetation within biodiversity certified lands has been compensated through the strategic planning of the North West Growth Centre, through the use of biodiversity offsets.</p> <p>If required, pre-clearance works to avoid accidental harm to native fauna species will be undertake prior to construction.</p>
<p>Within land that is in a Riparian Protection Area as shown on the figure in the relevant Precinct Schedule:</p> <ul style="list-style-type: none"> • all existing native vegetation is to be retained and rehabilitated, except where clearing is required for essential infrastructure such as roads; and • native vegetation is to be conserved and managed in accordance with the Riparian Protection Area controls at Appendix B. 	<p>The development site is not within land that is mapped as a Riparian Protection Area. Therefore, this clause does not apply.</p>
<p>Development on land that adjoins land zoned E2 Environmental Conservation is to ensure that there are no significant detrimental impacts to the native vegetation and ecological values of the E2 zone.</p>	<p>The development site area does not adjoin land zoned as E2 (Environmental Conservation). Therefore, this clause does not apply.</p>
<p>All subdivision design and bulk earthworks are to consider the need to minimise weed dispersion and eradication. If council believes that a significant weed risk exists, a Weed Eradication and Management Plan outlining weed control measures during and after construction is to be submitted with the subdivision DA.</p>	<p>If required, the proponent will prepare and implement a Weed Eradication and Management Plan.</p>
<p>A landscape plan is to be submitted with all subdivision development applications, identifying:</p> <ul style="list-style-type: none"> • all existing trees on the development site and those that are proposed to be removed or retained; 	<p>A Landscape Plan will be submitted with the SSDA.</p>

Liverpool Growth Centres Precinct DCP Clause	Comments
<ul style="list-style-type: none"> the proposed means of protecting trees to be retained during both construction of subdivision works and construction of buildings; proposed landscaping including the locations and species of trees, shrubs and ground cover to be planted as part of subdivision works; and the relationship of the proposed landscaping to native vegetation that is to be retained within public land, including factors such as the potential for weed or exotic species invasion and the contribution of the proposed landscaping 	

The selection of trees and other landscaping plants is to consider: A Landscape Plan will be submitted with the SSDA.

- The prescribed trees in **Appendix D**;
- The use of locally indigenous species where available;
- Contribution to the management of soil salinity, groundwater levels and soil erosion.

COMMONWEALTH STRATEGIC ASSESSMENT (ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999 (EPBC ACT))

On 28th February 2012, the Commonwealth Minister for the Environment announced that the program of development activities within the Growth Centres was approved under the EPBC Act Strategic Assessment process. Specifically, all actions associated with the development of the Western Sydney Growth Centres as described in the Sydney Growth Centres Strategic Assessment Program Report (Nov 2010) have been assessed at the strategic level and approved in regard to their impact on the following Matters of National Environmental Significance:

- World Heritage Properties
- National Heritage Places
- Wetlands of International Importance
- Listed threatened species and communities
- Listed migratory species

These decisions indicate that the Commonwealth is satisfied that the conservation and development outcomes that will be achieved through the Western Sydney Growth Centres Program will satisfy their requirements for environmental protection under the EPBC Act. Provided that development activity proceeds in accordance with the Growth Centres requirements (such as the Biodiversity Certification Order, the Growth Centres SEPP and DCPs, Growth Centres Development Code etc.) there is no requirement to assess the impact of development activities on Matters of National Environmental Significance within the Growth Centres and no requirement for referral of activities to the Commonwealth Department of Environment.

The site is therefore exempt from further assessment of threatened species and endangered ecological communities listed under the NSW BC Act or Commonwealth EPBC Act.

Where habitat for native fauna is to be removed such as hollow-bearing trees or dams, the works should be done in such a manner that minimises the risk of injury or death to native fauna. For this site we would recommend undertaking tree removal with the supervision of a qualified ecologist or fauna spotter/catcher to ensure fauna is relocated in an appropriate manner and that appropriate measures are taken to minimise fauna injury or death.

Should you have any questions on this matter, please contact me on (02) 9259 3745.

Regards,

A handwritten signature in black ink, appearing to read 'Rebecca', with a stylized flourish at the end.

Rebecca Ben-haim
Environmental Consultant

Appendix A Figures

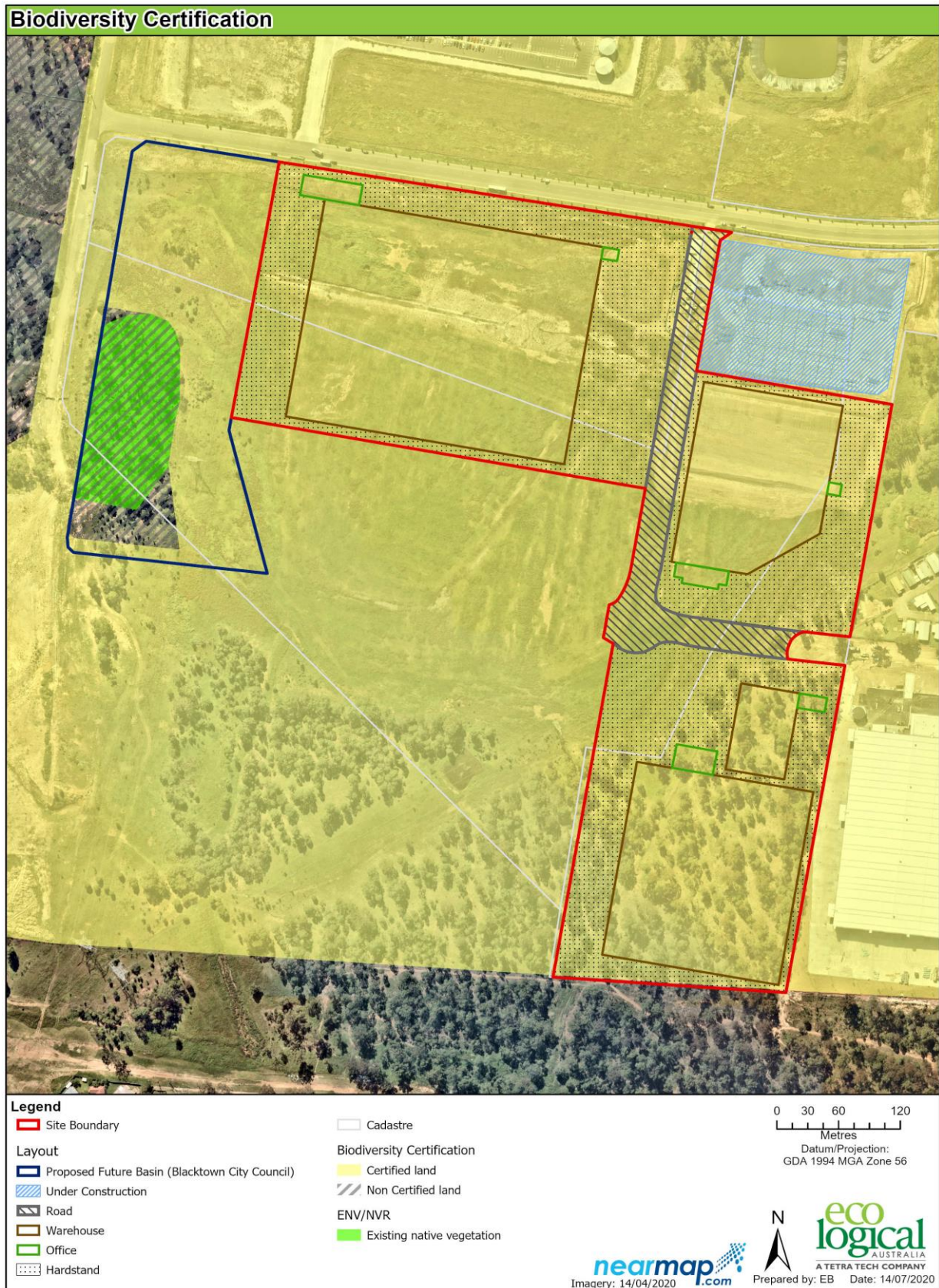


Figure 1 Biodiversity Certified Land and mapped Existing Native Vegetation in relation to the development area

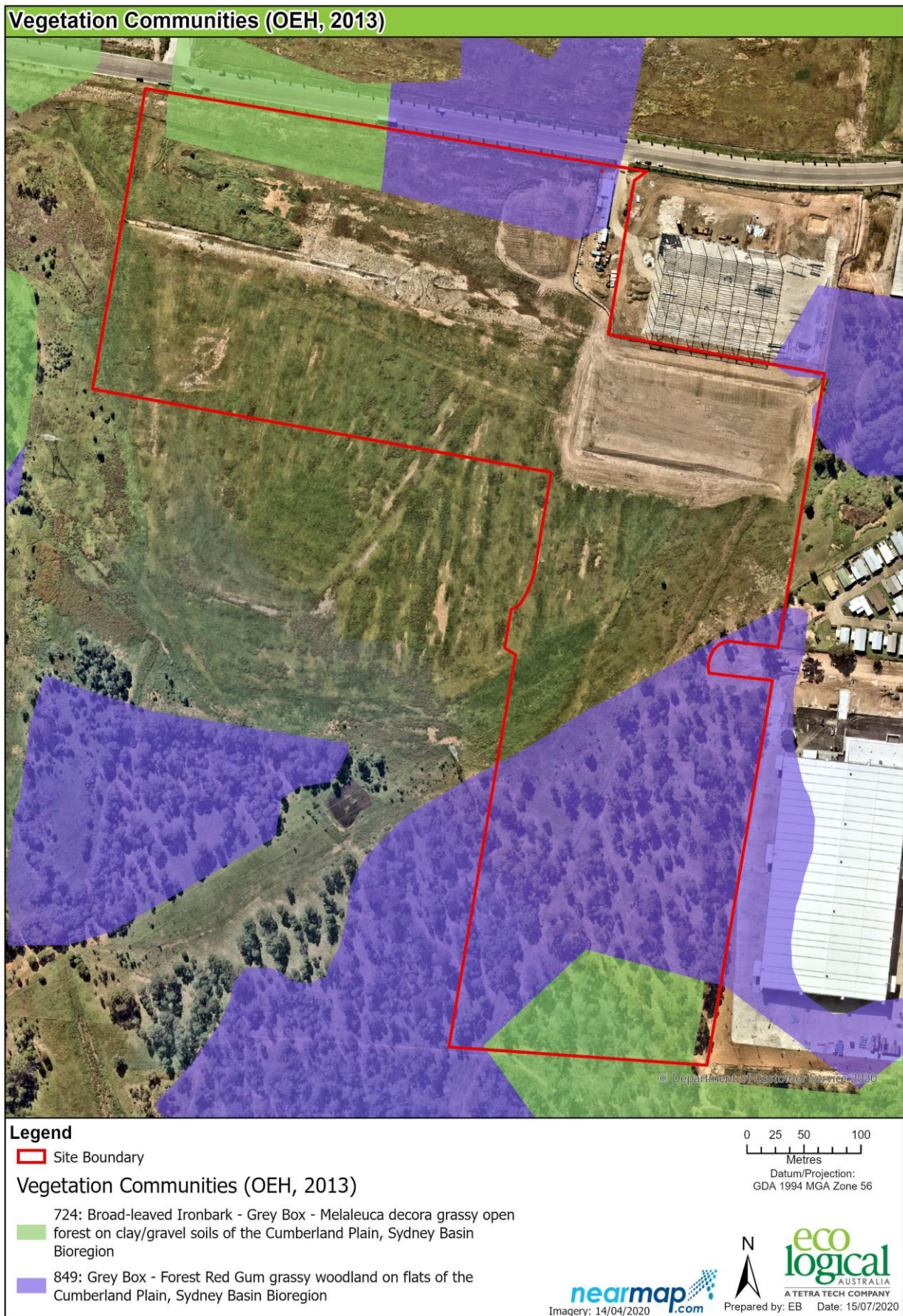


Figure 2: Previously mapped vegetation communities within the study are (OEH, 2013)



Figure 3: Previously recorded threatened fauna species within a 5 km buffer of the study area (BioNet)

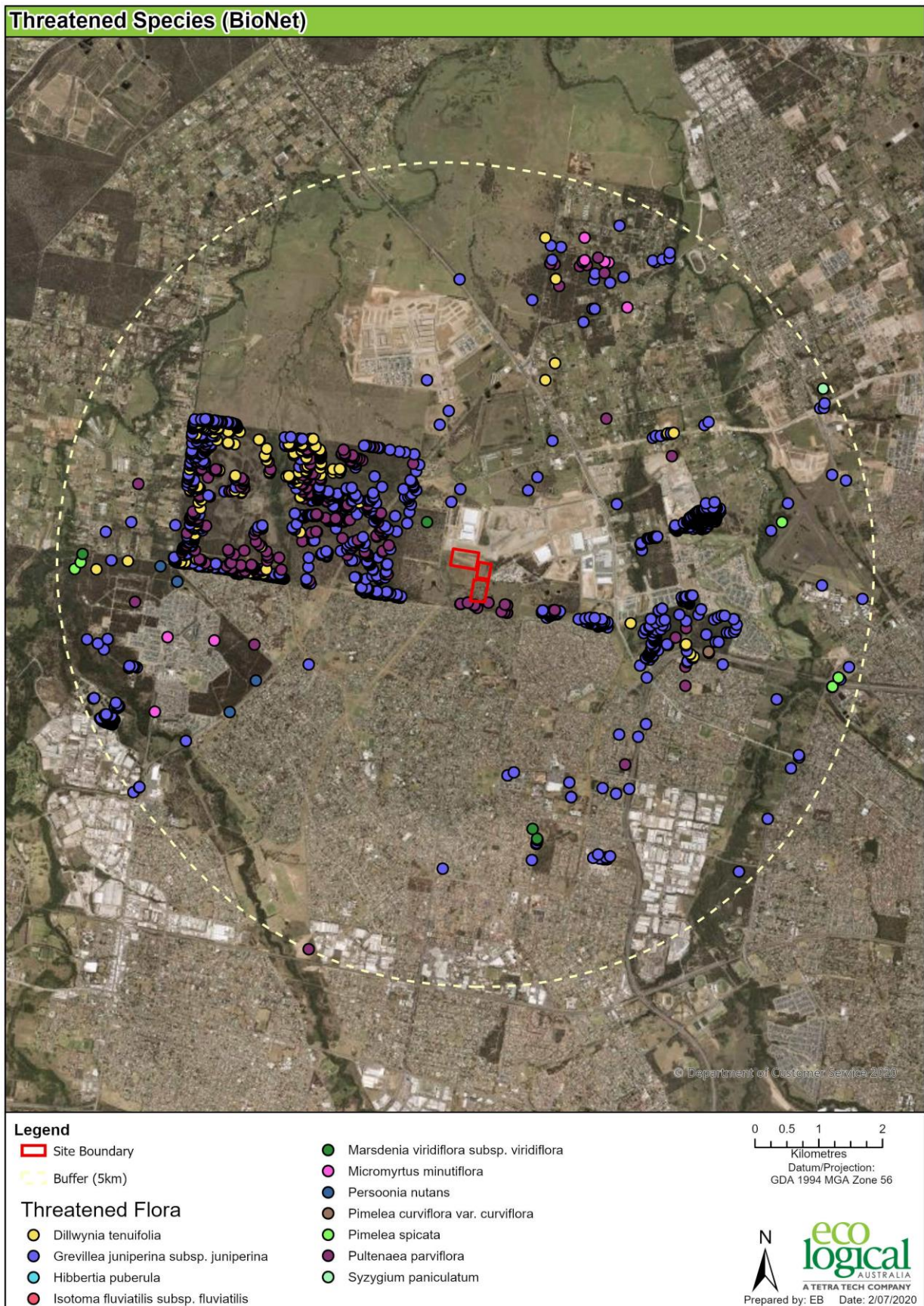


Figure 4: Previously recorded threatened flora species within 5 km of the study area (BioNet)

Appendix B BDAR Waiver

Table 2 Criteria to assess biodiversity under the BC Act and BC Regulation

Biodiversity Value	Meaning	Relevant	Discussion of values within subject site
Biodiversity Conservation Regulation (Clause 1.4)			
a) Threatened Species Abundance	The occurrence and abundance of threatened species or threatened ecological communities, or their habitat, at a particular site.	Yes	<p>Although there is existing threatened ecological communities present within the site (Figure 2), being Cumberland Plain Woodland, which is critically endangered under both the BC Act and EPBC Act and Shale Gravel Transition Forest, which is endangered under the BC Act and critically endangered under the EPBC Act, the entire development site is biodiversity certified.</p> <p>Section 8.4(2) of the BC Act describes the effect of biodiversity certification in relation to development under Part 4 of EP&A Act. This section states ‘<i>an assessment of the likely impact on biodiversity of development on biodiversity certified land is not required for the purposes of Part 4 of the EP&A Act 1979</i>’.</p> <p>One portion of the wider study area, west of the development site, is not biodiversity certified and is also mapped as ENV. No works are proposed within this area. It is the understanding of the proponent that Blacktown City Council are currently undertaking studies to design a regional stormwater basin within this area, as outlined within the ILP.</p> <p>No threatened species have previously been recorded within the study area. However, there is a population of <i>Pultenaea parviflora</i> directly south of the study area (Figure 4), which is endangered under the BC Act and vulnerable under the EPBC Act. The proposed development is not anticipated to impact on this species.</p> <p>Furthermore, the large patch of non-biodiversity certified vegetation to the west of the study area will be protected.</p>
b) Vegetation Abundance	The occurrence and abundance of vegetation at a particular site.	Yes	<p>Although the vegetation within the subject site is of relatively high abundance and biodiversity quality, the entirety of the development site is biodiversity certified. Areas within the wider study area to the west of the development site, that are not biodiversity certified, are not proposed to be impacted by the proponent and are intended to be protected and managed through the requirements of the Sydney Region Growth Centres SEPP. Furthermore, the patches of vegetation to the west and directly south of the study area, which are not biodiversity certified, are intended to be protected.</p>
c) Habitat Connectivity	The degree to which a particular site connects different areas of habitat of threatened species to	N/A	<p>Although the vegetation within the subject site is connected to a larger patch directly south of the study area, the vegetation proposed to be impacted is wholly biodiversity certified. There still remains existing vegetation between the two remnant patches to the west and south of the study area, which would be currently utilised by threatened species.</p>

Biodiversity Value	Meaning	Relevant	Discussion of values within subject site
	facilitate movement of those species across their range.		Section 8.4(2) of the BC Act describes the effect of biodiversity certification in relation to development under Part 4 of EP&A Act. This section states <i>'an assessment of the likely impact on biodiversity of development on biodiversity certified land is not required for the purposes of Part 4 of the EP&A Act 1979'</i> .
d) Threatened Species Movement	The degree to which a particular site contributes to the movement of threatened species to maintain their lifecycle.	N/A	The site contains remnant threatened ecological communities, which would provide habitat for the movement of threatened species. However, the majority of the study area is biodiversity certified. No areas of non-biodiversity certified land are proposed to be impacted by the proponent.
e) Flight Path Integrity	The degree to which the flight paths of protected animals over a particular site are free from interference.	N/A	The site contains remnant threatened ecological communities, which would provide habitat for the movement of threatened species. However, the entirety of the development site is biodiversity certified. No areas of non-biodiversity certified land are proposed to be impacted by the proponent.
f) Water Sustainability	The degree to which water quality, water bodies and hydrological processes sustain threatened species and threatened ecological communities at a particular site.	N/A	No natural water courses are present within the site. In its current state, the site does not contain water bodies or contribute to hydrological processes that sustain threatened species or ecological communities within or adjacent to the site.
Biodiversity Conservation Act (Clause 1.5 (2))			
a) Vegetation Integrity	The degree to which the composition, structure and function of vegetation at a particular site and the surrounding landscape has been altered from a near natural state.	N/A	Although there is existing threatened ecological communities present within the site (Figure 2), being Cumberland Plain Woodland and Shale Gravel Transition Forest, the entire development site is biodiversity certified. Section 8.4(2) of the BC Act describes the effect of biodiversity certification in relation to development under Part 4 of EP&A Act. This section states <i>'an assessment of the likely impact on biodiversity of development on biodiversity certified land is not required for the purposes of Part 4 of the EP&A Act 1979'</i> .
b) Habitat Suitability	The degree to which the habitat needs of threatened species are present at the particular site.	N/A	The study area is likely to provide suitable habitat for threatened species however, the proposed development is within biodiversity certified land. Section 8.4(2) of the BC Act describes the effect of biodiversity certification in relation to development under Part 4 of EP&A Act. This section states <i>'an assessment of the likely impact on biodiversity of development on biodiversity certified land is not required for the purposes of Part 4 of the EP&A Act 1979'</i> .