



Department of Planning, Housing and Infrastructure
Key Sites and Regional Assessments
4 Parramatta Square, 12 Darcy Street
PARRAMATTA NSW 2150

Attention: Mr Michael Doyle

Dear Mr Doyle

RE: Modification Report for the Bilambil Heights Concept Plan Modification 3 (MP08_0234 MOD 3)

Thank you for your email dated 28 November 2024 about the Concept Plan Modification request at Bilambil Heights seeking comments from the Conservation Programs, Heritage and Regulation Group (CPHR) of the NSW Department of Climate Change, Energy, the Environment and Water. I appreciate the opportunity to provide input and apologise for the delay in responding.

CPHR has responsibilities relating to biodiversity (including threatened species and ecological communities, or their habitats), flooding, and coastal processes and associated hazards, and provides comment on issues affecting National Parks and Wildlife Service estate

We have reviewed the documents supplied and advise that several issues are apparent with a range of assessments. These issues are discussed in detail in **Attachment 1** to this letter.

Based on the evidence presented in **Attachment 1** of this submission, CPHR recommends:

- a. The Minister for Planning (or their delegate) determines the proposed amendments to the approved concept plan do not satisfy the provisions that allow for the ongoing use of section 75W of the *Environmental Planning and Assessment Act 1979*. Instead, consideration be given to listing the 'Elysian' project site on Schedule 2 - State significant development – identified sites of the State Environmental Planning Policy (Planning Systems) 2021 to enable contemporary assessment of the likely biodiversity impacts of the proposed amendments via a modification application, supported by a Biodiversity Development Assessment Report (BDAR).

If these recommendations above are accepted, CPHR looks forward to BDAR review.

- b. If the project remains as a 75W modification, we recommend that the applicant addresses the biodiversity issues raised throughout **Attachment 1** of this response prior to determination.

If you have any further questions about this issue, please contact Mr Ian Gaskell, Senior Conservation Planning Officer North East, CPHR, on 8289 6323 or at ian.gaskell@environment.nsw.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Bill Larkin', with a long horizontal flourish extending to the right.

BILL LARKIN
A/Senior Team Leader Planning North East
Conservation Programs, Heritage and Regulation Group

2 April 2025

Enclosure: Attachment 1: Detailed DCCEEW CPHR Comments – Modification Report for the Bilambil Heights Concept Plan Modification 3 (MP08_0234 MOD 3)

Attachment 1: Detailed DCCEEW CPHR Comments – Modification Report for the Bilambil Heights Concept Plan Modification 3 (MP08_0234 MOD 3)

The Conservation Programs, Heritage & Regulation Group (CPHR) of the NSW Department of Climate Change, Energy, the Environment and Water has reviewed the following supplied documents:

- Ecological Assessment volumes 1-3, prepared by JWA Pty Ltd, dated April 2009 (EA 2009)
- Revised Ecological Assessment prepared by JWA Pty Ltd, dated August 2010 (REA 2010)
- Revised Site Rehabilitation and Pest Management Plan prepared by JWA Pty Ltd, dated August 2010 (SRPMP 2010)
- Elysian Urban Design Report prepared by RPS, dated 26 November 2024 (EUDR 2024)
- Modification of Concept Plan Report prepared by RPS, dated 19 November 2024 (MCPR)
- Updated Concept Plan Package prepared by RPS, dated 19 November 2024 (UCPP 2024)
- Revised Ecological Assessment prepared by JWA Pty Ltd, dated 19 November 2024 (REA 2024)
- Revised Site Rehabilitation and Pest Management Plan prepared by JWA Pty Ltd, dated 19 November 2024 (RSRPMP 2024)
- Landscape Master Plan prepared by RPS, dated 19 November 2024 (LMP 2024)
- Bushfire Assessment Report prepared by Bushfire Certifiers, dated 17 November 2024 (BAR 2024)
- Revised Statement of Commitments prepared by RPS, dated 19 November 2024.
- Traffic & Transport Assessment prepared by Bitzois Consulting, dated 26 November 2024 (TTA 2024).
- Preliminary Engineering Report prepared by Morton Urban Solutions, dated November 2024 (PER 2024)

Based on our review of the abovementioned documents we provide the following comments.

The appropriate planning pathway to assess and determine the proposed project amendments requires further consideration

CPHR understands the 'Elysian' project is deemed to be a transitional (repealed) Part 3A project under the *Environmental Planning and Assessment Act 1979* (EP&A Act) because of Schedule 2 of the *Environmental Planning (Savings, Transitional and Other) Regulation 2017* (STO Reg). The STO Reg relates, amongst other matters, to the winding up of the EP&A Act's Part 3A provisions.

We also understand the application to modify the approved concept plan has been made in accordance with the Clause 3BA of Schedule 2 of the STO Reg. Clause 3BA(5) states (noting the cutoff date is 1 March 2018) that:

A concept plan may continue to be modified under section 75W pursuant to a request lodged on or after the cut-off date (whether or not the project is or has ceased to be a transitional Part 3A project), but only if the Minister is satisfied that—
(a) the proposed modification is to correct a minor error, misdescription or miscalculation, or
(b) the proposed modification is of minimal environmental impact, or
(c) the project to which the concept plan as modified relates is substantially the same as the project to which the concept plan currently relates (including any modifications previously made under section 75W).

CPHR is of the view the material presented by the applicant suggests that a-c above cannot be satisfied, as demonstrated below.

The MOD does not correct a minor error, misdescription or miscalculation.

Section 3.3 of the MCPR confirms the primary purpose of the Concept Plan Approval (CPA) MOD is to:

“update the existing Concept Plan to reflect the finalised long term development vision of the project. In addition, in updating the Concept Plan and the form of development proposed, the modification will facilitate development that can be more responsive to the market over time and introduces a revised layout that has considered updated regulatory requirements (i.e. Bushfire mapping)”.

It is our view the purpose of the CPA MOD is to amend the development form in response to changes in housing and commercial development demand and not to correct a minor error, misdescription or miscalculation and so does not satisfy Schedule 2_Clause 3BA(5)(a) of the STO Reg.

The CPA MOD increases the impact on threatened flora species

Within the development footprint, the CPA permitted the removal of 217 threatened plants consisting of 8 different species. In contrast, the REA 2024 confirms the CPA MOD will remove a total of 454 individual threatened plants consisting of 9 different species.

The CPA MOD more than doubles the number of threatened flora individuals to be impacted by the development when compared to the original application. The REA 2024 offers no explanation on why an additional 237 threatened flora individuals were not detected during biodiversity studies for the original CPA. Importantly, 3 species, the fine-leaved tuckeroo (*Lepiderema pulchella*), durobby (*Syzygium moorei*) and smooth scrub turpentine (*Rhodamnia rubescens*), are listed as species at risk of a serious and irreversible impact (SAIL) under the provisions of the *Biodiversity Conservation Act 2016* (BC Act). The CPA MOD proposes to remove an additional 197 SAIL listed fine-leaved tuckeroos from the development footprint

Figures 7A – 7E of the REA 2024 identify the location of threatened flora species to be either impacted and/or retained as part of the development. Assessing the impact of the development on the number of individuals of each threatened flora species is difficult as Figures 7A–7E only assign a red dot and a code number to those individuals to be impacted by the development. Despite, Appendix 2 of the REA 2024 containing code numbers for retained threatened flora species, the codes do not appear on Figures 7A – 7E. Consequently, it is unknown where retained threatened flora individuals occur on the site or which individuals will be subject to habitat enhancement as part of the RSRPMP 2024. For assessment purposes, Figures 7A – 7E require revision to address these uncertainties.

To achieve suitable grades for Road 38 the CPA MOD also proposes to expand the development footprint outside those areas that were approved under the CPA. The area of the modified development footprint is depicted in Figure 1 below.



Figure 1: Red line depicts the boundary of the approved development footprint. Green polygon indicates the expansion to the footprint. Yellow dots indicate threatened plants to be retained as part of the CPA issued in 2010.

Although, not identified in the REA 2024, the revised development footprint will result in the loss of threatened flora individuals that were to be retained as part of the CPA.

Table 1 below confirms the additional threatened flora individuals to be impacted by the CPA MOD.

Table 1 Additional threatened flora to be removed because of the MOD request. (Source: Appendix 5 of EA 2009.)

260	Sweet myrtle	<i>Austromyrtus fragrantissima</i>	7m	0545 144, 6879 417
	Rough-shelled bush nut	<i>Macadamia tetraphylla</i>	2m	
	Fine-leaved tuckeroo	<i>Lepiderema pulchella</i>	1.5m	
261	Fine-leaved tuckeroo	<i>Lepiderema pulchella</i>	2m	0545 127, 6879 402
	" "	" "	1m	
	Rough-shelled bush nut	<i>Macadamia tetraphylla</i>	2m	

The additional removal of threatened flora depicted in Figure 1 and Table 1 increases the impacts on biodiversity values above those were approved under the CPA. Despite the Tree Retention coding associated with Figure 7A it appears the relocated Spine Road will result in additional impacts to threatened flora.

It also appears the REA 2024 has not considered the bulk earthwork plans when defining the boundary of the development. Consequently, it would appear the bulk earthworks will result in the loss of additional threatened flora, which are identified in the REA 2024 as being retained. Examples, of these discrepancies are depicted in Figures 2 and 3 below.

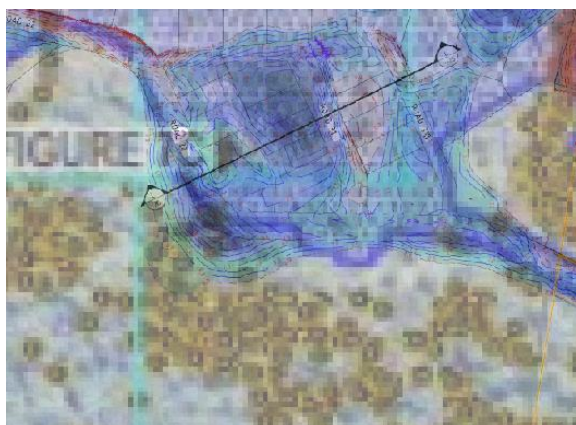


Figure 2: Road 22. Highlighting Bulk earthworks (contours) are located outside of the development boundary depicted (thick blue line) identified in REA 2024. Orange dots depict the location of threatened species of flora.

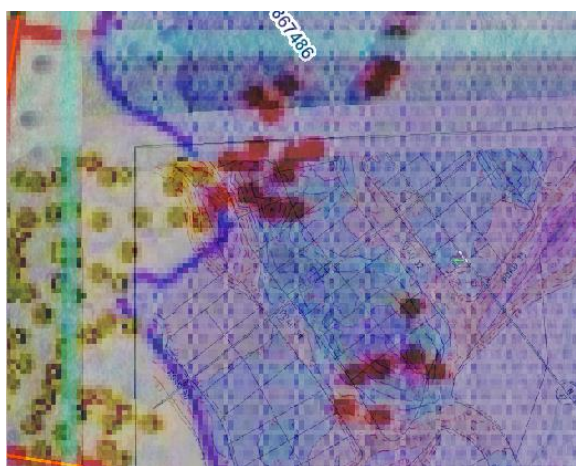


Figure 3: Road 38. Highlighting Bulk earthworks (contours) are located outside of the development boundary depicted (thick blue line) identified in REA 2024. Orange dots depict the location of threatened species of flora.

Section 5.5.2.2 of REA 2010 and the EAR 2010 confirm:

- a 10m vegetated buffer is to be established to the rainforest Threatened Ecological Community (TEC) growing within the subject site
- a 5m buffer is to be established around all retained species of threatened flora.

Figures 23A and B of REA 2010 provide a series of cross-sections depicting the locations and indicative treatment for the buffer areas. The cross-sections show vegetated buffer areas comprised of gently angled batters.

In contrast, the engineering plans contained in the PER for the CPA MOD propose to construct retaining walls up to a height of 4 m. It is unclear, from the documentation whether the revised development footprint has complied with the required buffer requirements. It is also unclear how construction of the retaining walls will be undertaken without impacting retained TECs, threatened flora and the buffer areas.

On 22 December 2024, CPHR advised that Figure 4.1 of the LMP identified a pedestrian path to be established within the Conservation Area, which contains lowland rainforest TEC and numerous threatened flora and fauna species. In response, RPS provided additional information dated 29 January 2025 stating the pedestrian path does not form part of the Concept Approval.

Based on that response, CPHR has undertaken a further review of the plans contained in the LMP and that review has confirmed additional pathways that form part of the Pedestrian Circulation Strategy, and the Elysian Landscape Masterplan are also located within TECs and known threatened species habitat. We also note, the plans that depict the location and configuration of proposed pathways are inconsistent throughout the LMP.

The subject pathways are also depicted in the UCPP plan set and the EUDR. Furthermore, although incorrectly depicted in the UCPP Street Network Plan, it appears that several bushfire trails are located within TEC's and areas containing threatened flora that are included in the 2024 RSRPMP.

The construction of the pathway network depicted in the above documents will create additional impacts to biodiversity that were not assessed as part of CPA issued in 2010.

It is our view the CPA MOD is not of minimal environmental impact as it will more than double the number of threatened flora to be impacted by the proposal and so does not satisfy Schedule 2 Clause 3BA(5)(b) of the STO Reg.

CPHR Recommendation

1. The Revised Ecological Assessment prepared by JWA Pty Ltd, dated 19 November 2024 (REA 2024) be amended to accurately identify all threatened flora to be impacted by the development.
2. Through avoidance the development be modified to further reduce impact of the development on threatened species of flora.

The CPA MOD increases the impact on threatened fauna species

CPHR notes, the CPA MOD has relocated the Spine Road away from the significant rainforest communities that are located along the southern boundary of the development site. CPHR welcomes this outcome.

The pink underwing moth (*Phyllodes imperialis smithersi*) is listed as endangered under the BC Act. We note the pink underwing moth was not detected during biodiversity studies for the CPA. In contrast, REA 2024 confirms pink underwing moth caterpillars were recorded at 5 locations throughout the subject site. Importantly, the occurrence of caterpillars indicates the site is a

breeding site for the pink underwing moth. Two of the recorded locations are adjacent to proposed Road 22.

Based on the information provided, the proposed road will likely fragment known pink underwing moth habitat.

The development as proposed will isolate the northern breeding habitat of the pink underwing moth (see Figures 4 and 5 below) from the species' breeding habitat to the south of the proposed road. Aside from the pink underwing moth, the area to the north of the road is ecologically significant as it is lowland rainforest TEC that contains over 80 individual threatened plants.

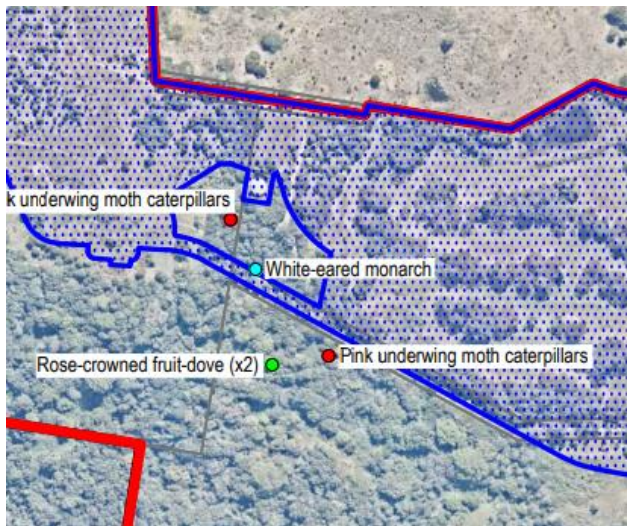


Figure 4: Location of the pink underwing moth. Vegetation is lowland rainforest TEC.

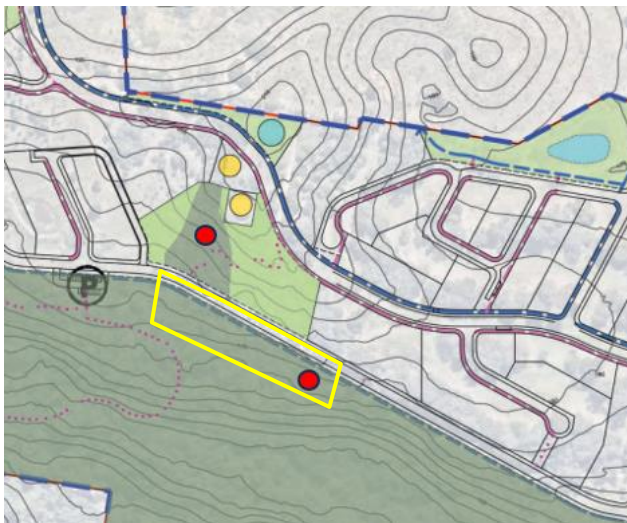


Plate 5: Proposed road fragmenting pink underwing moth (red circles). Dotted purple line indicates proposed pathway. Yellow polygon indicates the section of road recommended for removal.

It is our view the CPA MOD is not of minimal environmental impact as it will increase the impact on threatened fauna by impacting the threatened pink underwing moth and so does not satisfy Schedule 2_Clause 3BA(5)(b) of the STO Reg.

CPHR Recommendation

3. The impact on the threatened pink underwing moth be further reduced by efforts to avoid impacts on the habitat of this species.

The proposal will impact trial threatened flora planting areas

On 22 December 2024 CPHR advised the impact of the CPA MOD on 3 threatened flora species trial planting areas. In response Page 3 of the RPS states the “*trial planting of vegetation that was not pre-existing at the time of the original application*”.

In this respect, the Director General’s Environmental Assessment Requirements confirm the Concept Plan was exhibited from 19 August 2009 to 18 September 2009. The Ecological Assessments (EAs) Volumes 1-3 prepared by James Warren and Associates (JWA), dated April 2009 confirm by 22 September 2008 a total of 9181 plants including 1,941 threatened flora individuals were planted in the three (3) offset areas depicted in Figures 6 and 7 below.

Based on the above information, the threatened species offset (trial) plantings precede the lodgement of the Concept Plan application to the consent authority. Consequently, it is CPHR’s opinion that the trial plantings formed part of the applicant’s original CPA.

In addition, RPS indicates there is no requirement for the applicant to protect the trial planting areas, as they did not form part of the 2010 RSRPMP. This is incorrect as Section 5.1.3.5 and Figure 16 of the 2009 EA and Annexure 1 of the 2010 RSRPMP confirm the trial planting areas form part of the threatened flora offsets package proposed by the applicant (refer to Figure 6 below).

CHPR notes, Condition of Approval A2(1) requires the development of to be carried out in accordance with ecological assessments prepared by James Warren and Associates. The 3 trial planting were included in those documents.

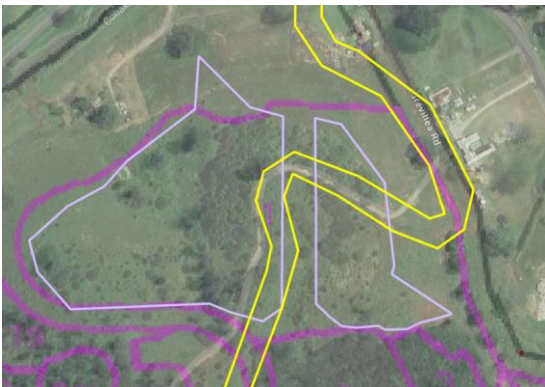


Figure 6: Aerial photograph taken around 2021. Dark purple polygon represents Restoration Area 1 (RA1) from the 2010 RSRPMP. Lilac polygons confirming the condition of an existing threatened flora offset area within RA1. The proposed Spine Road (yellow polygon) passes through the offset area.



Figure 7: Aerial photograph around 2021 confirming the condition of an existing threatened flora offset area (purple polygon) and the proposed development footprint (green polygon) is to be located within the offset area.

CPHR estimate the 3 trial offset areas comprise a total of 6.57 ha. Based on a tree planting spacing of 1.8 m, the 9181 plants should have covered an area of approximately 3 ha. Our review of Nearmaps from 20 July 2010 until 22 December 2024 has confirmed the planting works were not completed.

Furthermore, Figure 8 of the 2024 REA partially maps the vegetation growing within the purple polygon in Plate 6 above, as brushbox /camphor laurel forest rather than rainforest, which is inconsistent with the planting schedules contained in Appendix 6 of the JWA EA dated 2009.

In addition, the REA 2024 does not map any threatened flora growing within offset (trial) areas depicted in Figure 6 above, even though Figure 7D of the REA 2024 confirms appropriately 80 to 90 threatened plants are located within the offset area depicted above in Figure 7.

The lack of threatened plants recorded within the offset areas may be attributed to one or more of the following scenarios:

- these areas were not surveyed as part of the current CPA MOD application
- the planting works were never undertaken
- the plantings were a failure.

It is our view the CPA MOD is not of minimal environmental impact as it will increase the impact on threatened flora by impacting areas set aside under the CPA for planting with threatened flora species and so does not satisfy Schedule 2 Clause 3BA(5)(b) of the STO Reg.

CPHR Recommendation

4. The impacts on threatened flora be further reduced by avoiding the existing offset areas depicted in Section 5.1.3.5 and Figure 16 of the 2009 Environmental Assessment (EA) and Annexure 1 of the 2010 Revised Site Rehabilitation and Pest Management Plan (RSRPMP).

The CPA MOD has included land that was not part of the CPA

The CPA MOD proposes to relocate the Spine Road to the eastern portion of the site. Although not clearly documented, the CPA MOD seeks to amend the timing of the formation of the Spine Road corridor from Stage 7 to Stage 1.

Despite the Spine Road now forming part of the Stage 1 development, Figures 11A (2007 surveys) and 11B (2023 surveys) of the REA 2024 confirm only limited flora and fauna surveys were undertaken in the vicinity of the new Spine Road location.

Figure 11B confirms the survey effort for fauna was restricted to 2 call playback locations in the vicinity of the proposed extended Spine Road. The proposed location of the Spine Road is likely to result in additional ecological impacts including the loss of vegetation and impacts to fauna by vehicle strikes etc. The proposed Spine Road is also located within land (RA 1 and RA 17) that was to be rehabilitated as part of the approved 2010 RSRPMP. Importantly, the CPA issued in 2010 did not assess the ecological impact of the Spine Road in its new location.

The bulk earthworks plans (Drawings 44401-ALL-SK47 and 44401-ALL-SK48) depict the construction of 3 additional roads (roads 50-52) that are not included in the REA 2024 and/or any other documents contained in the CPA MOD application. These roads did not form part of the CPA issued in 2010.

As described in Section 3.3.1 of the MCPR, the CPA MOD proposes to increase the footprint of the proposed development which includes the area depicted in Figure 1 above. This portion of the site is identified as Rehabilitation Area (RA) 32 in the 2010 RSRPMP.

In addition, the LMP identifies constructed pedestrian paths, Asset Protection Zones (APZ's), a vegetated swale and koala exclusion fencing are to be established within the Conservation Area (Precinct G). CPHR notes, Figure 7 of the 2024 RSRPMP confirms these areas are to be either revegetated and/or rehabilitated as part of that plan.

CPHR's is of the opinion the relocation of the Spine Road, the increased development footprint and the proposed infrastructure within the Conservation Area will increase the impacts on biodiversity values greater than those approved by the CPA, indicating the development is not substantially the same as the project to which the CPA relates, and so does not satisfy Schedule 2 Clause 3BA(5)(b) or (c) of the STO Reg.

CPHR Recommendation

5. All proposed infrastructure be removed from all conservation areas and land affected by 2010 and 2024 RSRPMPs.

The CPA MOD seeks to intensify approved land use in areas of known TECs and threatened species habitat.

While the development footprint has been amended to retain an additional area of lowland rainforest TEC identified in the 2024 RSRPMP as RA6, the ECPP and LMP identify this area is to be retained as public open space.

The conservation value of RA6 is further enhanced as the REA 2024 confirms it contains numerous threatened plants and is the known habitat for the southern pink underwing moth. RA6 is also nominated for restoration as part of the 2024 RSRPMP.

Similarly, while RA3 (refer to 2024 RSRPMP) contains threatened flora and fauna, and forms part of a pre-existing threatened species offset area (refer to Figure 16 of 2010 RAE), the CPA MOD proposes part of RA3 to be used as public open space.

CPHR is of the opinion all vegetation communities containing TEC's, areas containing threatened flora and fauna, areas that form part of an offset area and/or areas affected by the RSRPMP qualify as Conservation Areas rather than open space.

We note, that Section 3.2.1 of the 2010 RSRPMP excluded residents from entering the environmental protection areas (Conservation Areas) of the development. The current proposal to identify these areas as public open space and create pathways in them is inconsistent with this previous commitment.

Section 4.2 of the MCPR and the ECPP propose changes to the existing zoning of parts of the development site. Importantly, the MCPR recommends increasing the extent of E2 (now C2) zoned land to better reflect the extent of the land affected by the 2024 RSRPMP. CPHR supports application of the C2 zone to protect these areas.

Currently, the proposed C2 Zoning does not include Rehabilitation Area (RA6), while only a portion of RA3 is to be zoned C2. The CPA MOD proposes to retain the existing R1 Zone over RA 6 and part of RA3. CPHR does not support this outcome.

CPHR Recommendation

6. The MOD application be modified to ensure all areas affected by an updated RSRPMP form part of the conservation area. All areas affect by the updated RSRPMP be zoned C2.

The CPA MOD has changed the long-term ownership and management requirements of the restoration areas

Sections 3.2.1 and 4 of the 2010 RSRPMP and the applicant's Key Commitment No. 11 of the approved CPA confirm the land affected by the 2010 RSRPMP was to be managed and funded in perpetuity under a Community Title Scheme (CTS).

In contrast, the CPA MOD intends to dedicate this land to the Tweed Shire Council. It is unclear, whether Council is willing to accept ownership and management of the subject land in perpetuity.

Given, the proposed level of the threatened flora and TEC removal associated with the development and as the 2010 and 2024 REA's rely on the restoration areas contained within the RSRPMP to conclude the development will not have a significant impact on the recorded threatened entities, CPHR considers it imperative the funding and long-term management of these areas is resolved prior determination of the CPA MOD.

CPHR Recommendation

7. Prior to the determination of the MOD the long-term ownership, funding and management of the restoration areas be resolved.

The historical commitments of the CPA for restoration activities require consideration

To mitigate the impact of the development on threatened flora, Section 5.1.3.4 of the 2010 REA confirmed conservation areas consisting of 44 RA's were to be established across the subject site. as shown in Figure 8 below.

Appendix 1 of the 2010 RSRPMP again confirmed the vegetation communities depicted by the purple polygons in Figure 8 below form part of the overall rehabilitation package.

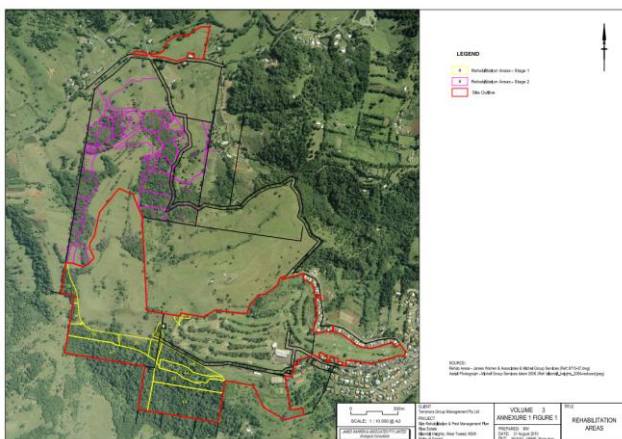


Figure 8: Map highlights the restoration areas to be rehabilitated by the development. Yellow and purple polygons represent RAs1-44.

The 2024 RSRPMP has removed the figure and the requirement for the applicant to rehabilitate these areas. CPHR expects that vegetation restoration commitments in the CPA would be upheld by the CPA MOD.

The 2010 REA also confirmed the subject areas would be rehabilitated over a 10-year period in accordance with the 2010 RSRPMP. In contrast, the 2024 RSRPMP has reduced the restoration period by the developer to 5 years. CPHR does not support this reduction in the operation timeframe of the RSRPMP.

We note the 2010 RSRPMP provided conflicting information on when restoration activities would commence within RA 1- 44 as Appendix 1 confirms the restoration areas depicted by the purple

polygons would be rehabilitated when a development application was lodged for the proportion of the site. In contrast, Table 5 in Annexure 7 of the 2010 RSRPMP confirms restoration works in RA's 1-44 would be undertaken between years 2-10 of the project.

CPHR notes:

- the revised development will now impact over 400 threatened flora individuals
- the 2024 REA tests of significance rely on the ongoing persistence of the threatened flora growing within RA1-44 to conclude the development will not have a significant impact on those species; and
- the Spine Road which is located immediately adjacent to RA1-44 forms part of the Stage 1 application.

In addition, the RA's largely depicted by the purple polygons (RAs 1-44) were subject to the Remediation Work Notice referenced in DGs EAR.

While the Remediation Work Notice required the areas that were subject to the Notice to be weed free after 5 years, Figure 8 and Sections 3.3.2.6 and 3.3.2.8 of the 2024 REA maps the majority of these areas as camphor laurel dominated vegetation communities. Consequently, it appears the landowner has not achieved the required outcomes of the Remediation Work Notice.

As detailed in the 2024 REA, weed infestations and degradation of rainforest habitat are key threats for most threatened flora to be impacted by the development. Consequently, without intervention through the restoration program, habitat degradation would be ongoing for these ecologically important areas.

CPHR Recommendation

8. The 2024 RSRPMP be updated to include restoration of the vegetation communities identified as Rehabilitation Areas (RA) 1-32 in the approved 2010 RSRPMP. All restoration works affected by the updated RSRPMP to be undertaken concurrently.

The approved timing and sequencing of restoration works are proposed to be delayed..

CPHR notes, the 2024 RSRPMP confirms:

- the restoration program affects 38.28 ha of land separated into six (6) RAs
- rehabilitation works will be completed on a precinct-by precinct (termed elsewhere in the RSRPMP as RA) basis; and
- restoration works in each precinct will commence after bulk earthworks have been completed.

The Indicative Staging and Sequencing Plan in the ECPP confirms most of the RAs are associated with Stages 4 and 5 of the development, noting the development has six (6) stages. The ECPP also confirms the delivery of open space precincts (this includes RAs) will follow the timing of adjoining residential allotments and this may involve sub-staging Precinct C. Precinct C includes RAs 1-5.

In contrast, the restoration works associated with the approved 2010 RSRPMP were time-based and not linked to residential development triggering the commencement of restoration activities. CPHR notes, Table 5 of the 2010 RSRPMP confirms all restoration activities would commence within the first 2 years.

Given restoration works within each RA are to be undertaken over several years and as the proponent proposes to dedicate these areas to Council CPHR does not support the delaying of restoration activities until the latter stages of the development. As mentioned previously, we do not support reducing the operational life of the 2024 RSRP from 10 years to 5 years.

CPHR Recommendation

9. The 2024 RSRPMP be amended to:
 - a. ensure restoration activities commence prior to undertaking any earthworks at the site, and
 - b. restoration activities within each RA are undertaken for a minimum period of 10 years.

Restoration methods have been changed compared to those originally approved.

According to Section 3.8.6 of the 2024 RSRPMP, to offset the loss of threatened flora within the development footprint a minimum of 2,295 threatened plants (offsetting in the ratio 5:1) will be planted throughout the 6 RA's.

The 2024 RSRPMP confirms offset planting material will be sourced from cuttings and/or seed material from either plants that are to be impacted by the development, populations growing near the subject site or if unavailable, from nurseries if they can prove local provenance. The RSRPMP only provides limited information on where 2,295 threatened plants are to be planted. The RSRPMP needs to provide further clarity on the suitability and location of threatened species planting sites.

Given the large number of threatened plants to be removed, it is possible that translocation may be a viable approach to mitigate the impact of the development on threatened flora. In addition, it would be important to prioritise the collection of propagation material from plants that are to be removed to facilitate the development. The collection of threatened flora propagation material and the translocation of threatened plants needs to occur before the bulk earthworks commence, which appears out of step with the proposed sequence of work.

Section 3.8.5 of the RSRPMP provides a planting schedule for the RA's. Our review indicates the species list and planting densities do not comply with standard restoration procedures for restoring rainforest vegetation communities. In this regard, the RSRPMP requires revision to comply with the document titled "*Subtropical Rainforest Restoration -a practical manual for Landcare groups land managers and rainforest regenerators*" prepared by Big Scrub Landcare, dated 2019.

Under the 2010 RSRPMP maintenance inclusive of weed control works was to be undertaken every 3 months until canopy closure was achieved. In contrast, the 2024 RSRPMP identifies secondary weeding is to occur 6 months after primary weeding has occurred, with weed monitoring (not control) occurring every 4 months after that. To ensure the RA's are appropriately rehabilitated, the timing of weed control works contained in the 2024 RSRPMP requires revision to comply with those contained within the 2010 RSRPMP.

Section 3.9 of the RSRPMP confirms plot-based data collection is to be used to monitor the success of the restoration program. Whilst this is welcomed, it is unclear how many plots are to be established within each RA. CPHR is of the opinion the RSRPMP needs to be amended to address this issue.

When referring to actions, the RSRPMP uses the non-definitive term "*should*", which does not make the recommended actions mandatory. To address this issue, the RSRPMP needs to be revised to replace "*should*" with "*will*" throughout the document.

CPHR Recommendation

10. The 2024 RSRPMP be updated to ensure:
 - a. it assesses the suitability and location of threatened species planting sites
 - b. the species list and planting densities comply with the document titled "*Subtropical Rainforest Restoration -a practical manual for Landcare groups land managers and rainforest regenerators*" prepared by Big Scrub Landcare, dated 2019

- c. the timing of weed control works comply with the 2010 RSRPMP
- d. prior to bulk earthworks commencing at the site a translocation and propagation program is implemented for threatened plants growing within the development footprint. The translocation program to be undertaken in accordance with the document titled “Guidelines for the translocation of threatened plants in Australia. Third Edition. Australian Network for Plant Conservation, Canberra”.

The scope of the proposed Feral Animal Control Program has been reduced compared to that in the CPA

The 2010 RSRPMP included a defined feral animal control program that was to be organised and funded by the Body Corporate in perpetuity. In contrast the 2024 RSRPMP, proposes to implement a monitoring/control program for a period of 5 years. It appears that after this period feral animal control will be the responsibility of the Council, but there is no evidence of Council accepting to undertake and fund this task.

CPHR Recommendation

11. Prior to the determination of the MOD the long-term ownership, funding and management of the feral animal program be resolved.

The CPA MOD will likely require further changes to the BAR 2024

The BAR 2024 does not appear to have considered the actions proposed in the 2024 RSPMP. In certain areas perimeter roads have not been provided adjacent to TEC's, threatened species habitats and/or proposed restoration sites and some slopes that contain such features fall outside the acceptable solutions of Table 1.12.3 PBP2019, requiring performance solutions to determine bushfire asset protection zone (APZ) setbacks. In addition, proposed locations for bushfire trails required by the BAR 2024 have not been clearly provided.

Amendments to the BAR 2024 have the potential to impact retained TEC's, threatened species habitats and/or impact on proposed restoration sites set out in the 2024 RSRPMP.

CPHR Recommendation

12. The Bushfire Assessment Report prepared by Bushfire Certifiers, dated 17 November 2024 (BAR 2024) be amended to depict the location and size of all required perimeter roads, bushfire trails and asset protection zones (APZ) required for the development.
13. The amended BAR is to have regard for restoration works contained in an updated RSPMP. The biodiversity impacts of the updated BAR to be included in an updated ecological assessment for the project.

The Landscape Master Plan (LMP) requires amendments to address inconsistencies

Our review of the LMP confirms it contains several inconsistencies and/or conflicts with the CPA as set out below. -

- Page 7 identifies that Area 7 (Conservation Area) is open space that includes APZs, and a vegetated swale adjacent to the road. These development components are not compatible with the Conservation Area.
- Page 7 identifies that Area 8 which is required to be rehabilitated to provide a buffer to adjacent threatened species and TEC's is proposed to be landscaped and managed to comply with Planning for Bushfire Protection. This will reduce the effectiveness of the vegetation buffer.
- Section 9.2 contains a list of plants under the title of “*Ecological Buffer*”. However, landscaping plans do not depict the location of the Ecological Buffer area. In addition, the

plant list contains species not suitable for the site such Screw Pine (*Pandanus tectorius*) and black she-oak (*Allocasuarina littoralis*).

- Page 29 appears to indicate the Conservation Zone adjacent to the southern road (Road 22) will be devoid of vegetation. This is inconsistent with the requirements of the DGs EAR 2010 approval and the 2010 RSRPMP. CPHR notes, Figure 7 of the 2024 RSRPMP confirms these areas are instead to be either revegetated and/or rehabilitated.

CPHR Recommendation

14. The Landscape Master Plan prepared by RPS, dated 19 November 2024 (LMP 2024) be amended to address the range of inconsistencies within that plan.

Primary CPHR Recommendation

Based on the evidence presented in **Attachment 1** of this submission, CPHR recommends:

- a. The Minister for Planning (or their delegate) determines the proposed amendments to the approved concept plan do not satisfy the provisions that allow for the ongoing use of section 75W of the EP&A Act.

Instead, consideration be given to listing the 'Elysian' project site on Schedule 2 - State significant development – identified sites of the State Environmental Planning Policy (Planning Systems) 2021 to enable contemporary assessment of the likely biodiversity impacts of the proposed amendments via a modification application, supported by a Biodiversity Development Assessment Report (BDAR).

If these recommendations above are accepted, CPHR looks forward to BDAR review.

- b. If the project remains as a 75W modification, we recommend that the applicant addresses the biodiversity issues raised throughout this response prior to determination.