

25 September 2020

Mills Oakley
ABN: 51 493 069 734

**BY ELECTRONIC SUBMISSION TO
DEPARTMENT WEBSITE**

Our ref: AJWS/BMSS/3472445

All correspondence to:
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Attention: Steve Hartley
Executive Director
Department of Planning, Industry and Environment
Green and Resilient Places Division
Locked Bag 5022
Parramatta NSW 2124

Contact
Email: [REDACTED]

Partner
Email: [REDACTED]

Dear Mr Hartley

Extension of time for submission in relation to Draft Cumberland Plain Conservation Plan

We act for [REDACTED] (our 'Client'), one of the registered proprietors of [REDACTED] Orchard Hills, legally described as [REDACTED] (our 'Client's Property').

We write on behalf of our Client to request an extension until **14 December 2020** to allow our Client the time needed to make a substantive submission, backed by an expert ecological report, on the Draft Cumberland Plain Conservation Plan (the 'DCPCP'). We are also instructed to write on behalf of our Client's parents, the proprietors of the adjoining property at [REDACTED] Orchard Hills, legally described as [REDACTED] (the 'Adjoining Property'), to request the same extension. The extension is required so as to allow our Client's expert ecologist the time needed to carry out an assessment and prepare a detailed report in respect of the Land which will form the basis for our Client's substantive submission.

The DCPCP proposes to rezone an area of land including at least 50% of the Adjoining Property and almost the entirety of our Client's Property (the 'Land') to E2 – Environmental Conservation as part of an extensive strategic conservation plan for the wider Western Sydney area. Our Client's Property and the Adjoining Property are currently zoned RU4 - Primary Production under the *Penrith Local Environmental Plan 2010* and have a combined area of approximately 4.07ha.

A community engagement panel in relation to the DCPCP was established by the Department of Planning, Industry and Environment (the 'Department') in 2018. The Department's 'What We Heard Report' on early engagement with the DCPCP published in August 2020 indicates that since July 2019, the Department has been actively engaging with the various communities and stakeholders in Western Sydney in respect of the DCPCP.

On 1 September 2020, our client received a notification letter from the Department indicating that the DCPCP would be on public exhibition until 25 September 2020. We are informed that, despite the indications in the Department's various publications in relation to early engagement efforts with affected

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stakeholders and communities, neither our Client nor the proprietors of the Adjoining Property **received any communication or notification** in respect of the DCPCP prior to this date. We note that the exhibition period for the DCPCP has since been extended to 9 October 2020.

We were engaged by our Client on 10 September 2020 to prepare a formal submission in relation to DCPCP.

Our Client's preliminary position is that a decision **should not** be made at this stage on the proposed rezoning affecting the Land without even an onsite inspection or expert assessment. We are informed that a representative of the Department – Ms Leah Tuckie – confirmed that the Land was **never surveyed and assessed as part of the 'strategic conservation planning process'**, despite indication to the contrary in the Department's notification letters to our Client and the proprietors of the Adjoining Property. Rather, the identification of the Land for the purposes of rezoning arose from superficial 'desktop' studies without actual assessment of site-specific considerations relevant to the Land.

We further note that the Department's 'Highlights' publication on the DCPCP dated August 2020 emphasises the importance of such an assessment of site specific considerations, as it provides that '[t]he department will review and, where necessary, update the mapping of urban-capable land and strategic conservation areas following feedback from the exhibition.' Against this background, our Client has now gone to the **cost and effort of engaging an ecological expert** to carry out an assessment and prepare a detailed report in respect of the Land, which will be instrumental in the preparation of the foreshadowed substantive submission.

Subject to the findings of this forthcoming ecological assessment to be undertaken in respect of the Land, our Client anticipates that the comprehensive submission to be submitted to the Department will demonstrate that the Land should **not be rezoned** as currently proposed, including for the following reasons (which we raise for your consideration at a high level now, but expect to substantiate in further detail in the comprehensive submission):

1. the DCPCP, and a number of the Department's publications relating to the DCPCP (including its 'Highlights' paper and 'Explanation of Intended Effect'), indicate that 'avoided land' identified for proposed E2 rezoning is comprised of 'land with high-value biodiversity, riparian corridors and steep slopes'. The proposal to rezone the Land **does not have strategic or site-specific merit** because these environmentally sensitive features the DCPCP is aiming to protect and conserve through rezoning are not present on the Land, for reasons including that:
 - a. The Adjoining Property was **cleared** over 45 years ago for purposes consistent with its zoning and use for primary production, and as a result, it **does not contain any trees**;
 - b. The historic use (and intended future use) of the Land for primary production purposes, has made the Land less than suitable for biodiversity stewardship and/or strategic environmental conservation as promoted by the DCPCP, including, what we understand to be the historical use of pesticides and insecticides on the Land. The vegetation on the

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Adjoining Property, in particular, has been diminished to a significant degree over time for reasons consistent with the use of that land for primary production, including typical traffic from animals and machinery and the use of pesticides and insecticides;

- c. In addition to being devoid of 'high-value biodiversity' features, the Land is neither a steeply sloping site, nor is it located within a riparian corridor, and as a result, should not be mapped as 'avoided land' for the purposes of the DCPCP. We consider the forthcoming ecological assessment will be able to address and confirm this in further detail;
2. Our Client's Property benefits from Development Consent No [REDACTED], which was approved on 11 September 2017 for the construction of a new steel farm shed (which has now been built) in association with the use of that land for primary production purposes. This development relates to the intended future use of our Client's Property for more intensive agricultural production involving both animals and vegetables that would make that land substantially incompatible with the relevant strategic conservation aims of the DCPCP. Our Client is registered for, and is in the early stages of, primary producing. If the Land were rezoned as proposed, this use of the Land would be essentially frustrated – and the **costs and efforts expended in pursuit of this more intensive use will be wasted** – as it would prevent necessary clearing of vegetation. This is despite that the Department's 'Explanation of Intended Effect' of the DCPCP indicates that the rezoning intends to allow existing land uses to continue; and
3. The failure to actually carry out the level of survey and assessment in respect of the Land as claimed to have been carried out in the notification letters issued to the relevant proprietors of the Land (and, more than likely, other land in the locality proposed to be similarly rezoned) impedes the opportunity for not only our Client, but the wider community to make informed submissions on all aspects of the DCPCP, and prevents a proper assessment of the intended effect of the plan, which offends the objects of the *Environmental Planning and Assessment Act NSW 1979* (the 'Act') in respect of community engagement, including under Division 3.3.
4. The failure to carry out the requisite ground truth assessment despite indications to the contrary in the notification letters would likely raise issues of a denial of procedural fairness that may leave the validity of any resulting planning instrument open to challenge. We therefore see it as highly important that our Client be granted the requested extension to allow him the opportunity to carry out the assessment.

In circumstances where our Client has only become aware of the DCPCP in the last three weeks, and has only engaged legal representation to prepare a comprehensive submission and an environmental consultant to carry out the necessary assessment in the last 14 days, an extension of twelve weeks (or, until **14 December 2020**) to prepare and submit a substantive submission is not only reasonable, but necessary to facilitating the refinement and finalisation of the DCPCP consistent with the objectives of

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community engagement in the Act and the anticipated 'next steps' proposed in the Department's publications in relation to the DCPCP.

Having regard to the above, could you kindly respond within **7 days of the date of this letter** to confirm whether the requested extension has been granted.

If you have any questions or require further information, please contact [REDACTED]



[REDACTED]
Partner
Accredited Specialist — Local Government and Planning

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