

29 September 2020

Via Online Portal

Department of Planning, Industry and Environment,
Green and Resilient Places Division,
Locked Bag 5022, Parramatta NSW 2124

Dear Sir/Madam,

Objection to Draft Cumberland Plain Conservation Plan

██████████ Wilton (Lot ██████████)

We act on behalf of our clients, who own ██████████

The following letter sets out our written objection to the draft Cumberland Plain Conservation Plan and proposed State Environmental Planning Policy (SEPP) which will implement significant biodiversity conservation measures for Western Sydney. The primary grounds for objection go to the significant impact the proposed future SEPP zoning of E2 Environmental Conservation will have on our clients' property value in terms of development utility, ongoing maintenance and land value.

Site background – ██████████ Wilton

Our clients, Peter and Annick Leach, both in their 70s, have owned the property (**the site**) for over 30 years, having purchased the lot from Annick's parents, who subdivided the original parcel into four to provide a future investment for Annick and her siblings. Mr and Mrs Leach have dutifully cared for and maintained the lot for many years.

Site Features

The site covers an area of 1.5 hectares and is located to the east of Peel Street, with access provided by laneway adjacent to the northern boundary of the site. The site is square in shape and occupied by a shed with bathroom amenities, water tank, septic tank, gravel driveway access and a dam which was historically used for agricultural and bushfire fighting purposes.

The site slopes gently toward Allens Creek to the east and contains remnant native vegetation, which has been cleared in recent years to accommodate a newly constructed shed and future dwelling house approved under [REDACTED]. The development consent includes approval for a dwelling house, associated septic disposal, shed and garage. Mr and Mrs Leach expected to commence construction on the dwelling house in coming months however the draft Conservation Plan has suspended these plans due to the uncertainty relating to future zoning and potential acquisition.

The site, in the local context is depicted in

Figure 1 with a site detail image depicted in **Figure 2** below.

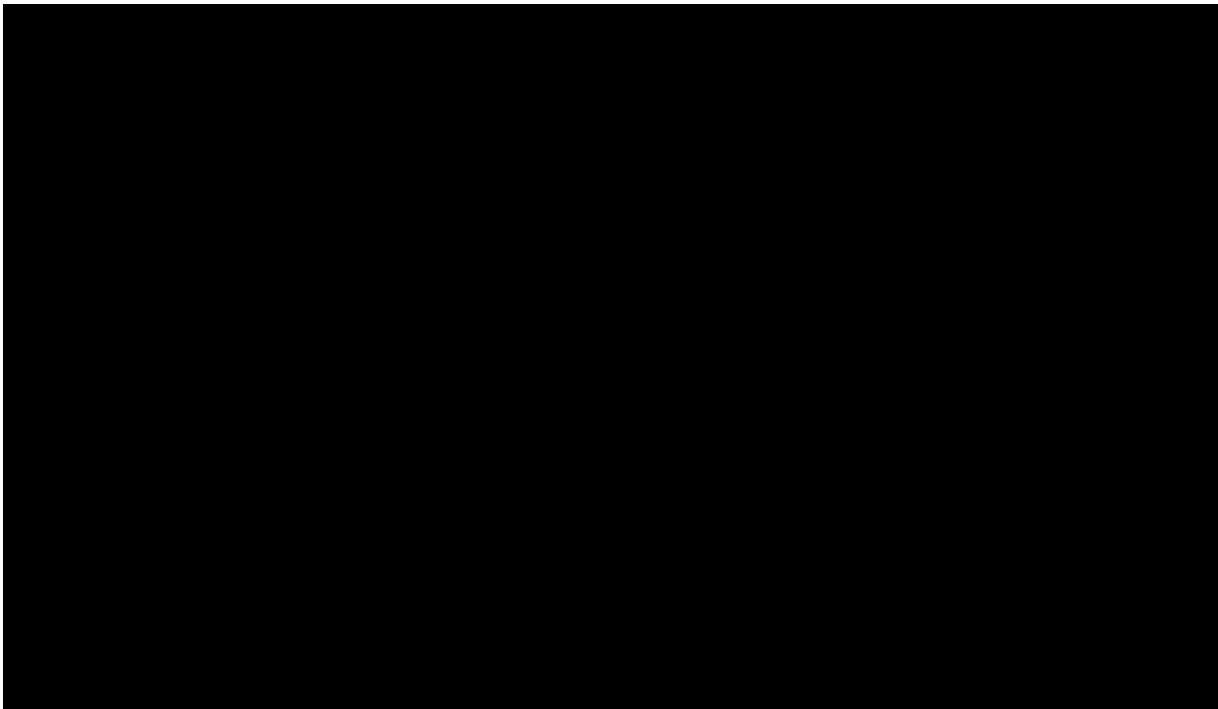


Figure 1 Local context

Source: SixMaps

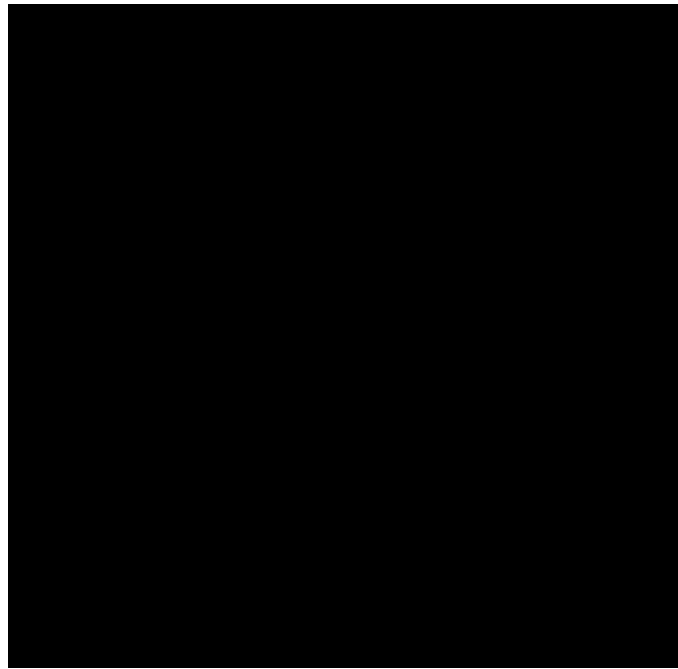


Figure 2 Local context

Source: - NearMap

Current planning context

Wollondilly LEP 2011

The site is currently zoned RU2 Rural Landscape, under the provisions of the Wollondilly LEP 2011. The minimum permissible lot size for subdivision is 16 ha which precludes the site from future subdivision.

Biodiversity Conservation Act 2016 and Native Vegetation Regulatory Map NSW

The site is identified on the 'Biodiversity Values' map under the Biodiversity Conservation Act 2016. It is also identified as possessing 'Sensitive Regulated Land' on the NSW Native Vegetation Regulatory map. The effect of this regulatory legislation, as confirmed by the BOSET Report for the site, is that any proposed future land clearing in excess of 0.5ha would trigger a requirement for a Biodiversity Threshold Assessment undertaken by an accredited assessor. This legislation already imposes a high level of protection to the land, thus the additional imposition of an E2 - Environmental Conservation Zoning, as recommended by the draft conservation plan, is unwarranted.

Wilton 2040 & State Environmental Planning Policy (Sydney Region Growth Centres) 2006

The site is within the South East Wilton Precinct, of the Wilton Priority Growth Area. However, no provisions apply to the site under Appendix 14 of the SEPP (Sydney Region Growth Centres) 2006 or the draft Wilton Growth Area DCP and the site remains covered by the provisions of Wollondilly LEP.

The structure planning process for the Wilton Growth Centre, presented in the Wilton 2040 exhibition material, identified the site as suitable for continued rural residential zoning as described in the Land Use Plan within the *Wilton Land Use and Infrastructure Implementation Plan (LUIIP)*:

Rural residential

*Land with lesser development capability is suitable for large lot rural residential housing to protect environmental values and **provide a transition to the surrounding rural areas or bushland.*** (Emphasis added - Wilton LUIP, p36).

The Land Use Plan within the LUIP is reproduced in Figure 3 below:



Figure 3 Wilton Land Use Plan

Source: Wilton LUIP – page 37

Wilton 2040 was informed by extensive background ecological investigations. The high biodiversity values of the site were confirmed however, the site has up until this point been recommended to retain its rural residential zoning. As stated above, the overarching Biodiversity Conservation Act provisions provide ultimate protection to the land, thus application of an E2 zoning is superfluous which, relevantly, is also reflected in the Wilton Land Use Plan.

Proposed provisions under the Draft Cumberland Plain Conservation Strategy

The property falls within the southern portion of the draft conservation plan region and is identified in Figure 4 below:



Figure 4 Site location within draft Cumberland Plain Conservation Plan region

The draft Conservation Plan has designated our client's property as 'Non-certified – Avoided for Biodiversity' land category as shown in Figure 5 below:

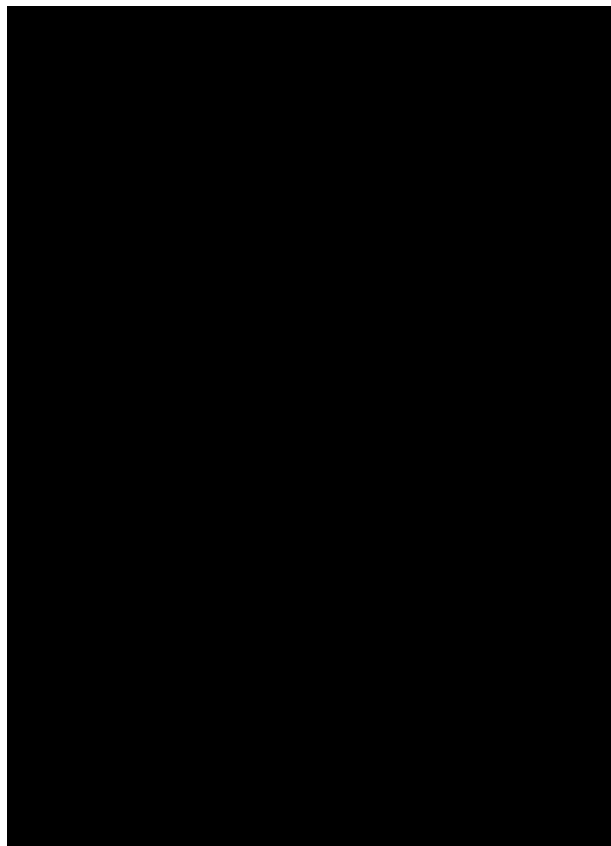


Figure 5 – Non certified – avoided for Biodiversity

The Spatial Viewer mapping identifies the site as 'proposed environmental conservation zoning' denoted by red diagonal hatching:

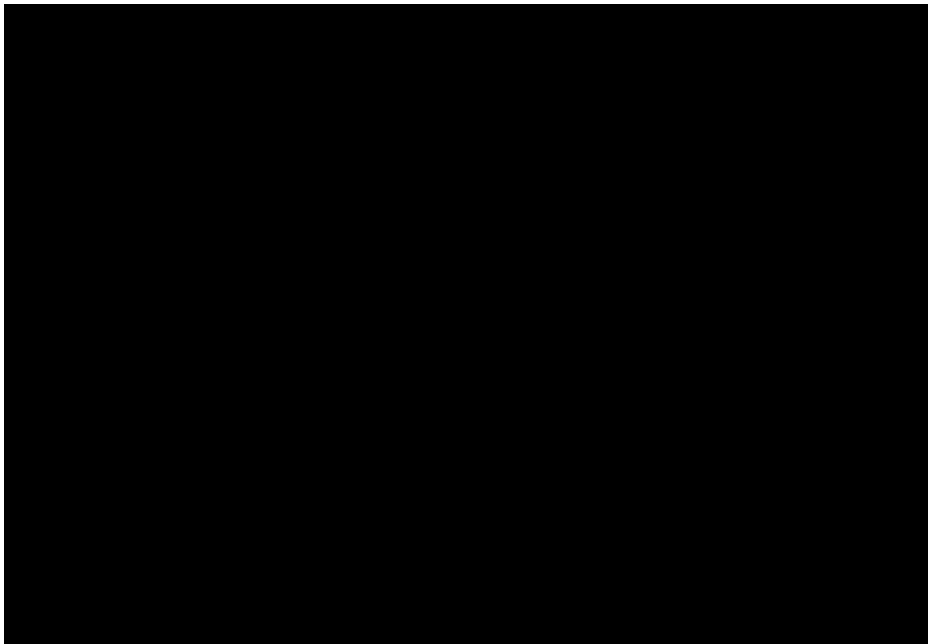


Figure 6 proposed environmental conservation zoning

The draft Cumberland Plain Conservation Plan exhibition document 'State Environmental Planning Policy for Strategic Conservation Planning – Explanation of Intended Effect' confirms at page 5:

Environmental conservation (E2) zones are designed to protect land with important environmental value. Environmental conservation (E2) zones will be applied to areas that are identified in the Plan as non-certified because they are avoided for biodiversity reasons or avoided for other purposes. Environmental conservation (E2) zones will not be applied to land owned by LALCs or under claim by LALCs.

It is envisioned that at some time in the future 'some areas of private land' will be acquired to secure suitable conservation lands:

*To deliver the Plan, the NSW Government proposes to acquire **some areas of private land** in Western Sydney to create new public reserves or national parks, which are integral to the delivery of the Plan and the character and activity in urban environments. These green and open spaces support sustainability, efficiency and resilience within communities.*

*Tenure of land across the Plan Area is mostly freehold, meaning land will need to be **acquired from private landowners over time**. This is subject to available funding and consultation with community and key stakeholders.*

Acquisition clauses will be included in the proposed SEPP to support this process over the life of the Plan. (Emphasis added - Explanation of Intended Effect - Page 11).

The designation of E2 Environmental Conservation significantly impacts upon the development capability and value of the land as well as gives rise to a high level of uncertainty for Mr and Mrs Leach as to whether continue with construction of their dwelling house as approved, given future potential acquisition, as addressed further below.

Summary of objection

In essence, the proposed Cumberland Plain Conservation Plan and future SEPP, in its current form, presents a fundamental problem for our clients as the proposed future zoning sterilises the site's future development potential, imposes an unreasonable expectation for ongoing maintenance of the proposed E2 land and significantly reduces the ultimate value of the site. The State Government's inexplicit plans for future acquisition of E2 Environmental Conservation zoned land, very clearly stated to be unfunded at this stage, will likely result in a costly and complicated land compensation claim drawing on the provisions of the Land Acquisition (Just Terms Compensation) Act 1991. The following provides our key grounds for objection:

1. Draft E2 Environmental Conservation zone is not identified for acquisition

The proposed E2 Environmental Conservation zoning retains, in private ownership, non-certified land that is identified for future acquisition at an undisclosed time in the future (SEPP – Explanation of Intended Effect, p11). The application of the E2 Environmental Conservation zoning without providing certainty of future acquisition is manifestly unreasonable for several reasons including:

- The proposed zoning and undefined plans for acquisition have triggered a high level of uncertainty and loss of security for our clients who are elderly and intend to construct the approved dwelling and sell the property to assist with their ongoing retirement. Whilst it is acknowledged the property will benefit from existing use rights, the application of an E2 Environmental Conservation zoning is a significant deterrent to any would-be purchasers of the site due to the restrictive nature of the zoning.
- It is not satisfactory to suggest that the landowner is responsible for maintenance, weed control, bushfire hazard reduction of the site, at their own cost, time and effort until such time that the government wishes to acquire the land (the funding timeframe of which has not been announced). The expectation placed on the landowner to maintain the land, prevent vandalism, illegal dumping and potentially risk action from Council for not adequately maintaining significant biodiversity land is a major concern and burden for our clients;
- The E2 Environmental Conservation zone is highly restrictive permitting the following uses only:
Artificial waterbodies; Environmental facilities; Environmental protection works; Flood mitigation works; Roads.

The permitted uses would appear to be solely for uses usually associated with a 'public purpose'. It is therefore unconventional that land identified for long term conservation by the State Government would remain in the control of an external body such as a private landowner, with no timing prescribed for acquisition.

2. Personal and human value of the property:

The subject site is one of four lots which originated from a single holding owned by our client's parents who purchased the land in 1953. Our clients have owned and cared for No 51 Peel Street for over 30 years and have a strong personal attachment to the property. They have maintained the land, mitigated bushfire risk and stimulated the regrowth of large portions of the site. They have never sought or received financial or physical assistance to maintain the vegetation on the property and the result of their long term commitment to its upkeep is now evident by the presence of high quality biodiversity attributes on the site and consequent environmental conservation zoning.

Historically speaking, Wilton was established as an agricultural township characterised by a small town centre supporting agricultural land holdings on the outskirts. The township has demonstrated ongoing commitment to the management of edge effects and has successfully separated the urban and rural land uses from the riparian corridor and the large tracts of remnant bushland surrounding the township. It is our clients' position that the harmony currently enjoyed between urban and rural land uses and surrounding bushland can continue in a controlled manner. Land use restrictions on subdivision, land clearing and permitted uses can equally be imposed by application of an E4 Environmental Living zone over the site.

3. Bushfire risk

Mr and Mrs Leach hold significant concern regarding ongoing bushfire risk and efforts to mitigate that risk. The site falls within a bushfire prone area and until recently, qualified for the RFS 10/50 exemption to clear vegetation. Mr Leach has successfully cleared permitted vegetation for a number of years to reduce fuels loads and provide greater protection for the eastern face of the Wilton township.

The RFS has recently amended the provisions of the 10/50 exemption and the site is no longer eligible for exempt clearing due to being identified as "*Land mapped as a Critically Endangered Ecological Community and provided by the Office of Environment and Heritage*" (source: RFS online 10/50 tool). As outlined above, the approval pathways for land clearing is already multi layered, and the addition of an E2 zoning is simply, unnecessary.

Proposed recommendation to rectify objections

It is recommended that the proposed E2 Environmental Conservation zoning be considered for E4 – Environmental Living zoning, which serves to accommodate low impact residential development yet maintain special environmental and scenic values.

As stated above, there is existing biodiversity conservation legislation in place (Biodiversity Conservation Act) to provide a high level of protection to the site, and as such, the double layering of planning controls it is not necessary.

Conclusion

The proposed E2 Environmental Conservation zoning, coupled with the potential for future acquisition, has resulted in Mr and Mrs Leach experiencing significant stress and worry about their future. The potential impact of the E2 zoning on the functionality, usability and future potential land uses of the lot, will most likely result in a significant compensation claim from Mr and Ms Leach (Land Acquisition (Just Terms Compensation) Act 1991), if and when the government commences the acquisition process.

Ultimately, the provisions of the Biodiversity Conservation Act 2016 and other related legislation that provides protection to the potential biodiversity values on the site, provide a guarantee that the site will continue to be protected. The application of the E2 zoning will strip Mr and Mrs Leach's land of all development utility, enforce an ongoing expectation for them to maintain the vegetation and significantly reduce the land's market value.

I am available on [REDACTED] at your convenience, should you require any clarification in relation to the above.

Yours faithfully,

[REDACTED]

Edwina Nelson
Director
(BTP UNSW (Hons))

[REDACTED]

[REDACTED]

[REDACTED]

The Gap,
QLD 4061

██████████
WILTON NSW 2571

Email: ██████████

Ph: ██████████

Ph: ██████████

4 September 2020

The Secretary
Department of Planning and Environment
PARRAMATTA NSW
By email via Portal

Dear Sir/Madam

Re: Impact of Draft Cumberland Plain SEPP and Proposed Rezoning and effect on landowners who will be affected

We wish to make a submission with regards to the Draft Cumberland Conservation Plan which will affect our property.

We have had ownership of Lot ██████████ for over ██████ years . It has a dam and some cleared area. In 2017 we applied for a Development Application (DA) to build a dwelling and shed with three (3) phase power and town water supply which is currently connected. There is provision for future phone connection. The DA ██████████ was subsequently approved and we have since built a shed according to approved specifications at a cost of approximately ██████. The shed includes a 22,500 litre water storage tank according to the mandatory requirement capacity of 20,000 litres as well as the fittings in accordance with the current NSW Rural Fire Service and Wollondilly Shire regulations. The shed also includes a shower and toilet and we have also recently had an envirocycle system installed at significant cost. It is our intention to now proceed with building of the dwelling.

In respect to the proposed rezoning from RU2 Rural Landscape to E2 as per the Draft Cumberland Conservation Plan we wish to raise the following issues:-

1. THE SUBJECT PROPERTY – LOT ██████████

As stated, the current zoning for this land is RU2 Rural Landscape under Wollondilly LEP 2011. Our land, will be affected by this rezoning. The land and other land on the eastern side of Peel Street was subdivided in to small allotments for dwelling purposes for well over 100 years. These allotments also act as a buffer between the more naturally vegetated land east in the creek valley.

The subject property has an approved Development Application for a dwelling and shed, the shed having been erected in 2019 (see above opening paragraph). We (Peter and Annick Leach) have owned this land for over 35 years. The land has been used for agricultural purposes for over 70 years and we have also used the land for this purpose for much of the time of our ownership. We have maintained this land throughout this time with thought to the surrounding ecology (e.g. eradicating weeds) whilst ensuring that we minimise the risk of bush fires which

have been prevalent in this vicinity for countless years. By rezoning the land from its current RU2 Landscape to E2, there appears to be 100% thought to the ecological value placed on the land and 0% thought given to the current human use, occupation and heritage.

2. OBJECTION TO THE PROPOSED ZONE OF 2

a. Personal and human value of the property

Despite your department's best intentions for Conservation and Biodiversity there are other significant factors that must be considered, such as human life, existing development patterns, existing infrastructure such as the power lines through the Sydney Water Corridor. This property (Lot 87) is an allotment of the original property (of which there were four allotments) owned by Annick's parents who purchased the land in 1953. This family were akin to pioneers having migrated from France in 1952, purchasing this land and owner-building a house (on Lot 89) which we believe should be of heritage value having been constructed in the 1950's. Three of these allotments were subsequently purchased by two of the children in later years, with Annick's brother and wife building a dwelling and associated outbuildings on Lot 86.

Annick and Peter have owned and cared for this allotment (Lot [REDACTED] for over 35 years. Therefore, there is a strong personal attachment to this land. We have preserved this land, and mitigated bushfire risk in an area prone to bushfire to such a degree it is now deemed 'critical habitat'. This maintenance was not carried out by Council, or Government, or Landcare or by any environmental consultants. It was us, the landowners, who have respected and still respect the local fauna and flora in this locality. This land is our heritage.

b. Historical value

This land is part of the historic Wilton township and which was part of a grant taken up by the famed explorer Major Mitchell. The town was established in 1840, originally to control local bushrangers, a public school was built in 1871 and a post office in 1872. Wilton had sufficient population in 1885 to be declared a town due to the influx of workers on the Upper Nepean water supply scheme. Part of this engineering feat was the construction of a tunnel about 8 kilometres long which passes under Wilton and joins weirs at Pheasant's Nest and Broughton Pass towards Appin from whence water is carried through another tunnel eventually linking up to Prospect Reservoir. The sandstone vents which pass by a neighbouring allotment to ours are historic indicators of its existence.

We have found items such as old bottles, jars, horseshoes etc on our property which we believe may have belonged to people who inhabited the land at the time the tunnel was being constructed, and who may have had a workers cottage on the property at the time when workers who were associated with the building of the water tunnel lived close to the work.

The development of Wilton was historically, as boundaries on maps of the township show, drawn up to allow land ownership for the purpose of dwelling and light agricultural purposes. We believe that this can continue in a controlled manner where environmental values can be maintained and any agriculture minimised. Thus, we believe rezoning to E4 rather than E2 is more appropriate.

c. Bushfire risk

This allotment, as is the surrounding allotments are in a designated fire prone area. In the 70 years our family has lived in Wilton, this area has suffered many bushfires, with our having

been evacuated from our family home [REDACTED] Lot [REDACTED] several times when bush fires came up through Allen's Creek to the back of the family sheds and home. Our land has a dam which was put in by the family owning Lot [REDACTED] in the 1950's, has been useful in past years for providing water to assist in fighting these fires. It has also provided shelter for wildlife driven up from the creek at these times.

The RFS 10-50 rule was introduced in recent times due to bush fire risk. We have taken our obligations towards mitigating bushfire risk seriously. Peter has, with approved permits from Wollondilly Shire Council, regularly carried out hazard reduction on the property due to this risk, as have our neighbours. Peter was an active and experienced member of the Wilton Rural Fire Service (RFS) for over 34 years. The proposed E2 will effectively prevent the RFS from adequately protecting our property. Given the increased risk of fire due to climate change, and the recent catastrophic fires that raged through Buxton, Bargo, Couridjah, Colo Vale etc late last year/early this year, the proposed E2 zoning will only exacerbate the threat of uncontrolled vegetation coming right up to the town fringe on the opposite side of Peel Street, and which has recently seen increased dwellings on smaller parcels of land.

3. SUGGESTED ZONE FOR LOT [REDACTED] AND OTHER LANDS IN PEEL STREET WILTON UNDER DRAFT SEPP

The proposed rezoning of the eastern side of Peel Street from RU2 Landscape to E2 will effectively 'lock up' the land. By limiting the use of the land under 'existing use rights' the land will eventually become unmanaged vegetation.

Taking into consideration the recent devastating personal and economic cost from the local bushfires over the last December/January period, the Department's proposed new zone and 'critical habitat' classification will deprive the current land owners to avail themselves of the Rural Fire Services 10-50 rule which applies to other RU2 land, but not here. This will effectively prevent the land owners on the eastern side of Peel Street of protection against bushfires and in turn protecting residential zoned land on the opposite side.

Our suggestion is that :-

- a. The land on the eastern side of Peel Street should be zoned E4 with a minimum allotment of 1 ha. This will not encourage significant development potential.
- b. Allow residential development in a Controlled manner within the town footprint, rather than a 'lock out' which will have serious impact from bushfire hazards.

By adopting these suggestions a rural living zone that has a focus on environmental protection can be maintained where landowners are not deprived of their principal asset but there is a continued demonstration of an ability to, maintain the land collectively in a highly effective and sustainable manner.

Yours faithfully,

Peter and Annick Leach