

8 October 2020

Mr Jim Betts

Secretary

Department of Planning, Industry & Environment

By email: [REDACTED]

Dear Mr Betts,

RE: DRAFT CUMBERLAND PLAIN CONSERVATION PLAN – OBJECTION & SUBMISSION

I am writing on behalf of my parents [REDACTED] who own and live at [REDACTED] Orchard Hills. Under the recently released Draft Cumberland Plain Conservation Plan, their property is proposed to be rezoned E2 (Environmental Conservation) from its current zoning of RU4 (Primary Production Small Lots).

This letter is to raise objection to the proposed E2 rezoning and to express concern for the manner in which this Plan has been prepared.

Objection to the proposed E2 rezoning is based on the following:

1. No site inspection was undertaken of the property by members of the Department or ecological specialists in forming the view that the site met the criteria for E2 zoning. This was confirmed to me by a Department of Planning representative who confirmed that all mapping and assessment of my parents' property and the adjoining properties was conducted from desktop analysis only. As a result of using a desktop only analysis, the Department has incorrectly attributed an E2 zone to this land. It is inconceivable to me that such a significant zoning change can be proposed without a site inspection or ecological assessment.
2. An ecological report commissioned by my parents has confirmed that there is no basis for applying an E2 zoning over the land as it does not contain high ecological values. His assessment is attached to this submission and states that *"The land use planning has failed to adequately undertake the appropriate studies / investigations to warrant such "downzoning". The land does not contain "High Ecological Values" to warrant an E2 "Conservation" Zoning."*
3. Based on the ecological assessment, the property does not meet the definition of Avoided Land as set out in the Plan and should not have been proposed for E2 zoning.

On the basis of the above, there is simply no justification for the proposed E2 zoning to be applied to my parents' property. Further, there is no justification for not treating this land, and the neighbouring properties, in the same way as other residential land in the vicinity, which has almost entirely been identified as 'urban capable' zoning.

I would also like to raise concern about the process taken in preparing this draft Plan. My parents were not consulted nor notified about the preparation of the Plan, despite the Department's website stating:

“The department has been working to develop the Draft Cumberland Plain Conservation Plan through early engagement with community, local councils, industry and other key stakeholders since 2018. Your feedback was considered in developing the Draft Cumberland Plain Conservation Plan.”

In my parents’ discussions with neighbours they too advised that they had had no engagement or consultation on this Plan.

Further, my parents heard about the release of the Plan and the zoning changes via email from a neighbour on 30 August, following the release of the Plan on 26 August. This caused, and still causes, them great concern and anxiety. They did not receive direct notification about this from the Department until 1 September.

Given the significant negative impact of an E2 zone on property owners, it is unacceptable for my parents to have not been consulted about the Plan at some point during the 2-3 years of its preparation and to not have been notified of this before it being made public.

Further detail to support this objection is set out in the attachments to this letter.

I would like to request a meeting with you to discuss this matter and to seek confirmation on how the Department intends to proceed, given this submission and the site specific ecological assessment attached herein.

I will contact your office to arrange a time to meet. Should you wish to contact me, my details are

[REDACTED]

Yours sincerely

[REDACTED]

[REDACTED]

On behalf of [REDACTED]

[REDACTED] Orchard Hills.

Attachments:

1. Supporting Justification & Information
2. Enviro Ecology Ecological Assessment
3. Letter from the Department dated 22 September 2020

Cc: Elizabeth Irwin, Director Conservation & Sustainability, DPIE,

[REDACTED]

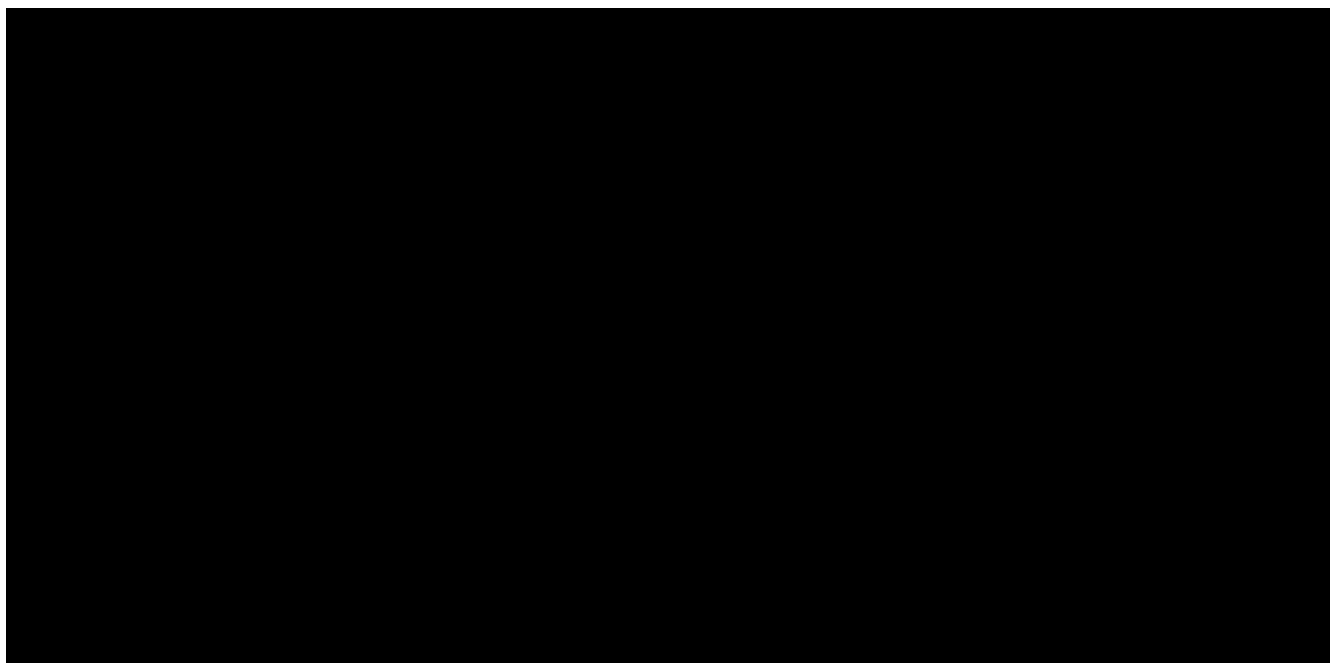
Attachment 1 – Supporting Justification & Information

1. Background

On 26 August 2020 the Draft Cumberland Plain Conservation Plan was released to the public. Under the Draft Plan, my parents' property at [REDACTED] Orchard Hills is proposed to be rezoned E2 (Environmental Conservation) from its current zoning of RU4 (Primary Production Small Lots).

My parents' property is one of 16 neighbouring properties that have been uniquely singled out for E2 zoning, whilst the majority of the land around it has been identified as 'urban capable' zoning, other than the Commonwealth Defence Lands which have Existing Environmental Conservation classification. (Refer to Figures 1 and 2).

Figure 1: Location of [REDACTED] and neighbouring proposed E2 zoned area (pink boundary). Commonwealth Defence Lands Existing Environmental Conservation Area (blue boundary)

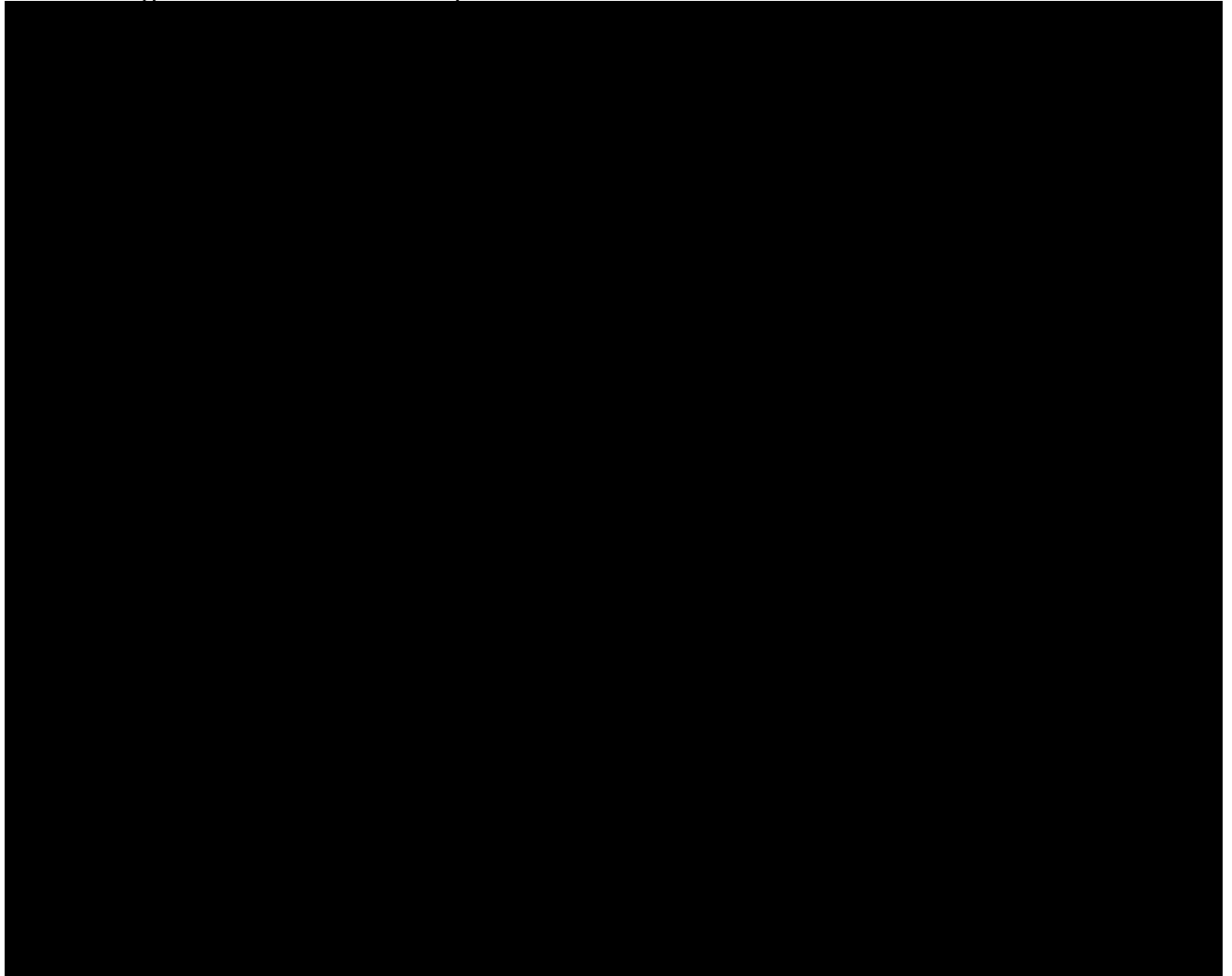


The property of my parents and their neighbours are substantially disturbed, with houses, sheds, swimming pools, mown lawns and landscape gardens. Photos of [REDACTED] Orchard Hills are provided below (refer to photos 1- 5). There are scattered trees present, some of which form part of the Cumberland Plain Woodland community, however given the uses on the site there is an absence of biodiversity features that would make the site of high ecological value for the Cumberland Plain Woodland community (this is explained further in the report by Enviro Ecology) or capable of having future high ecology value.

The presence of trees does not create a high value ecological area that is deserved of being retained any more than other areas in the vicinity that are instead being zoned as urban capable. You can see the extensively zoned 'urban capable' areas around this small group of sixteen E2 zoned properties at Figure 2.

Figure 2: Extracted from Draft Cumberland Plain Conservation Plan

Location of [REDACTED] Orchard Hills is shown by the yellow circle. Urban capable zoning is shown in light pink colour. The expansive Commonwealth Defence Existing Environmental Conservation Area is shown in brown colour. Proposed E2 zoning of the 16 properties is shown in green on and around the yellow circle.



Photos of [REDACTED] Orchard Hills

Photo 1: View south from rear of house

Photo 2: View south from rear of house

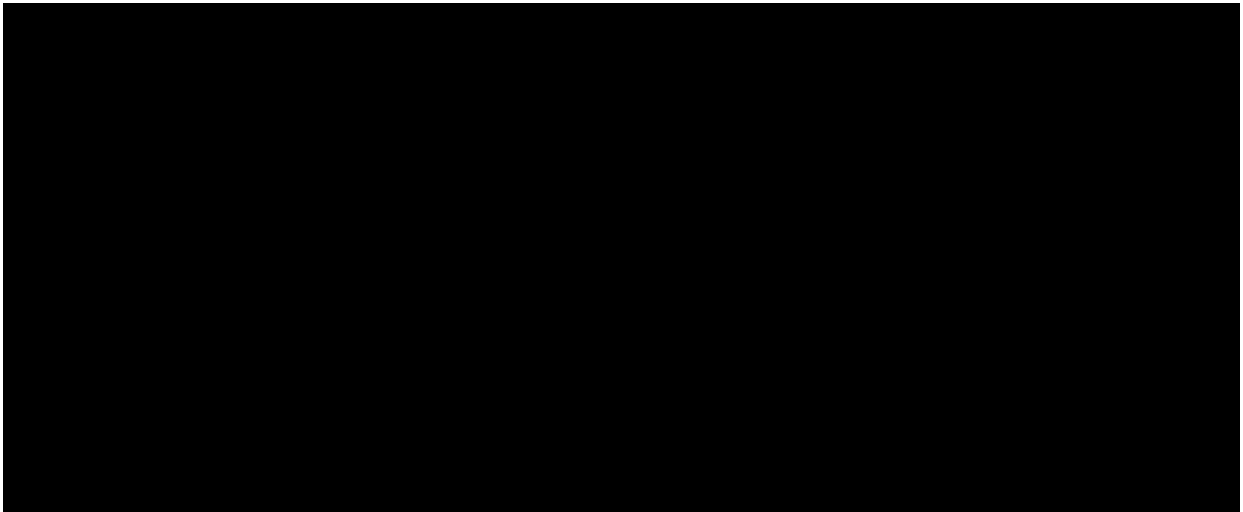


Photo 3: View east from house side

Photo 4: View from front of house towards

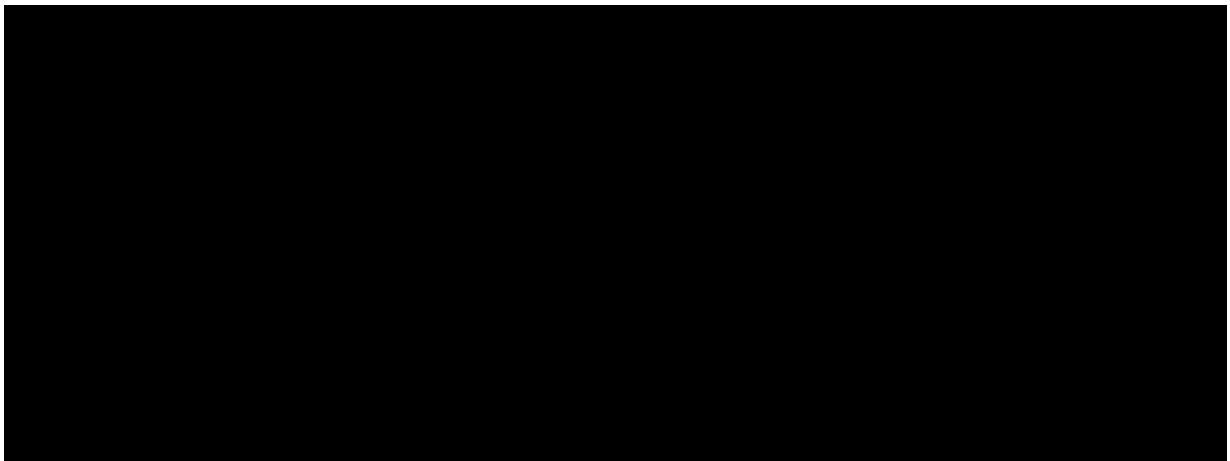


Photo 5: View towards the front of the house



2. Ecological Assessment

In my discussion with the Department's representative, I was advised that the E2 (Environmental Conservation) zoning has been proposed for land identified as having **high biodiversity value** for the critically endangered ecological community of Cumberland Plain Woodland. This was reconfirmed, with the word 'important' inserted in front of 'high value' in a subsequent letter from the Department to my parents dated 22 September and received by them on 25 September (refer Attachment 3).

I was also advised by the Department's representative that the vegetation mapping undertaken for my parents' property and the neighbouring lots was by desktop review and aerial photography and not from onsite inspection. It was from this 'desktop only' assessment that it was determined that there was 'high biodiversity value', not having ever been to site.

It is inconceivable to me that such a significant zoning change can be proposed without a site inspection or ecological assessment. Had a simple site inspection been undertaken, it would have been observed that the site is highly disturbed and does not contain high biodiversity value.

Notably, many other properties in the locality that have Cumberland Plain Woodland mapped on them have been identified for 'urban capable' zoning and not environmental conservation.

In order to address the omission of a site specific investigation, my parents commissioned an ecological report, with site investigation, a copy of which is provided at Attachment 2.

The assessment concludes that **the land does not contain high ecological values to warrant an E2 conservation zoning.**

The ecological assessment was undertaken using the Biodiversity Assessment Method (BAM), which identified that the Cumberland Plain Woodland present within the property was in low condition due to the absence of biodiversity features including but not limited to: no hollow-bearing trees; low species richness; low species diversity; high weed invasion; and low percentage native vegetation cover.

As a result of using a desktop only analysis, the Department has incorrectly attributed an E2 zone to the property.

The Draft Plan identifies the approach to be taken to make an informed decision on the ecological and biodiversity values of properties impacted by the Plan. Using this approach further confirms that an E2 zoning is not appropriate to the property.

In accordance with the Plan (page 20) Avoided Land is defined as: *"is avoided from development due to identified biodiversity values on the site, or because the land cannot legally or feasibly be developed due to its topography or due to an environmental feature such as a riparian corridor."* The Plan further expands on this definition (page 47) to state;

"More generally, land has been avoided from the certification process because it is:

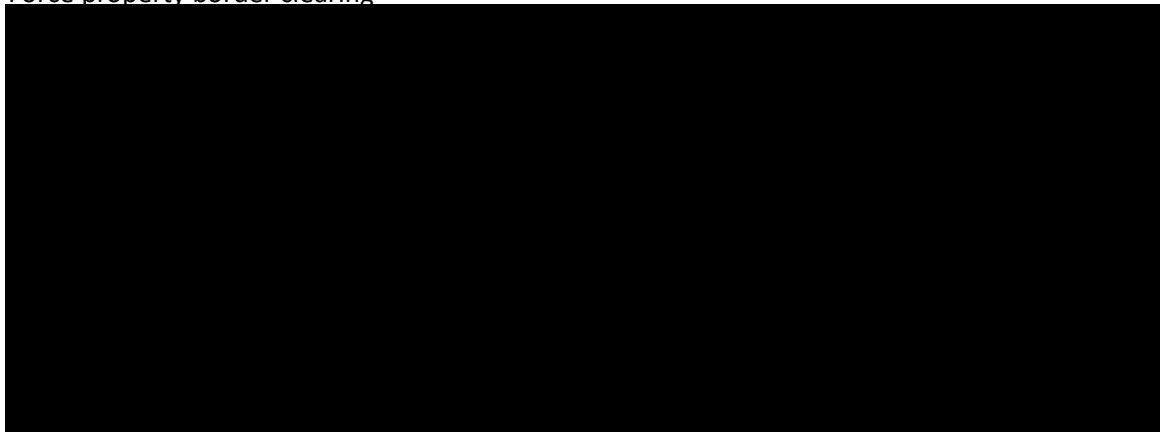
- 1. of high biodiversity value (defined through the criteria listed in 'Appendix B. The Plan's avoidance criteria'*
- 2. not suitable for development because it is a riparian corridor and is regulated under Water Management Act 2000 or it is too steep for development (any land with a slope greater than 18 degrees)*

3. *excluded from the area covered under the Plan (excluded land) including because it is existing protected land, is Commonwealth land, or is land that is already developed (e.g. existing urban areas)*
4. *in the nominated areas and already assessed as part of another development approval (such as Bingara Gorge), or is progressing through an alternative development assessment (such as Mount Gilead and Menangle Park)”*

Immediately we can rule out items 2, 3 and 4 as they do not apply to [REDACTED] Orchard Hills. The site is not subject to the Water Management Act, nor is it an Excluded land and it has no other Development Approvals applied to it. According to the Plan, the property must therefore be of ‘high biodiversity value’. As per the ecologist report the property as assessed under the Biodiversity Assessment Method is of ‘Low Condition’ therefore not meeting the intended ‘high biodiversity value, nor meeting the Plan’s goals of ‘Ecological Restoration’ and ‘Biodiversity Stewardship’.

The Property has been a residential estate for more than 30 years, and prior to that was farm land. This cultural history has removed any potential for value that the Plan sought to gain as identifying it as Non-Certified – Avoided for Biodiversity. The site is also bounded on the southern side by major Electricity Transmission lines, that supply electricity to Sydney. These transmission lines ensure there is, and will continue to be, a significant clearance corridor (>60m), where no biodiversity of value exists. Additionally, the Defence Force (on the connecting boundaries) are required to patrol their fence lines with vehicles, requiring clearances to be maintained which also serve as fire-breaks. The Defence Force boundaries have 2.5m high chain-wire exclusion fencing along the perimeter. All of these attributes of the land lead to ‘Low Conditions’ for biodiversity value both now and into the future. (Refer to Photos 6 and 7)

Photos 6 and 7: View across southern fence to Electricity Transmission Line easement and Defence Force property border clearing



The Plan also defines (pages 89-91) how ‘Avoidance’ is calculated. As noted earlier in this letter, there were only desktop studies undertaken for the property and neighbouring properties. The desktop review assumed the site as having high ecological value Cumberland Plain Woodland. This has been refuted by the site based ecological assessment by Enviro Ecology.

Applying an E2 zoning to [REDACTED] Orchard Hills would go against the stated goals of the Plan and against the methodology proposed by the Plan for assessing ecological value and Avoided Land, and would be inconsistent with the approach taken to other land in the Plan. As such an E2 zoning can not be justified for this property.

3. Consultation & Notification Process

I would also like to raise concerns about the lack of consultation and notification associated with the Plan's preparation and release.

It would appear that email notifications were sent out by the Department on 26 August 2020 advising that the Draft Plan was on public exhibition, presumably to those on a Department email database. My parents did not receive any notification at that time.

On 30 August 2020, my parents were forwarded a copy of the Department's email notification from a nearby resident who highlighted the E2 rezoning issue to them. My father, who has heart problems and needs to avoid stressful situations, became extremely distressed by this news.

I contacted the Department on 31 August to seek further information and advise that my parents had not been notified of the Plan's release. I was informed by the Department's representative on 1 September that the letters had been posted on the same day as the public release (ie 26 August) and that my parents should receive their letter soon. Letter notification was subsequently received on 1 September.

The Department's website states:

"The department has been working to develop the Draft Cumberland Plain Conservation Plan through early engagement with community, local councils, industry and other key stakeholders since 2018. Your feedback was considered in developing the Draft Cumberland Plain Conservation Plan."

My parents inform me that at no time were they consulted, nor was any material sent to them, nor were they notified that a Cumberland Plain Conservation Plan was being prepared and would include their property. In their recent discussions with neighbours, none of the neighbours were aware of the preparation of the Plan either.

Given the significant negative impact of an E2 zone on property owners, it is unacceptable for my parents to have not been consulted about the Plan at some point during the 2-3 years of its preparation and to not have been notified of the impact to their property prior to the public release.

The 'surprise' they received when learning about the Plan and the impact to their property has, and continues, to be extremely distressing to them and is impacting on their well-being.

Conclusion

For all the reasons outlined in this submission, and supported by an ecological assessment, it is clear that [REDACTED] Orchard Hills does not meet the criteria for E2 zoning.

Further, the draft Plan notes the following for 'Calculating avoidance outcomes; (page 92):

"During public exhibition, landholders may seek to have the urban capable boundary amended prior to the finalisation of the Plan. The urban capable land boundary will only be updated in line with this Criteria, namely if:

- 1. creeks and water features are mapped incorrectly, in which case they must be updated to match the topography and vegetation indicating movement of water through the landscape*
- 2. on-site data collected by accredited assessors supports updating the boundaries*
- 3. there is no net change to impact of threatened ecological communities, SAI entities or vegetation in an intact condition state*
- 4. there is no impact on an identified landscape corridor*

5. *authorised clearing has occurred. (The relevant Council will review cleared areas and determine if the clearing was permitted. The urban capable land boundary will not be changed if the clearing was unauthorised.)”*

In respect of items 2, 3 and 4 we note the following:

- An accredited assessor (refer Enviro Ecology report at Attachment 2) has confirmed that the E2 classification is not appropriate and the biodiversity is ‘Low condition’ and therefore low value. In order to remain consistent with the Goals of the Plan the urban capable boundary can therefore be amended to capture the property.
- Given the low biodiversity value of the site, together with the ongoing impacts from the current and surrounding uses (including transmission line clearances, defence patrol clearances, roads and residential maintenance and landscaping of the site), there won’t be any net impact to threatened ecological communities, SAI entities or intact vegetation by extending the urban capable boundary to include the property.
- The site is bounded by defence activities, transmission line clearances, fire-break clearances, roads, and other like residential estates including a large school adjacent to one end of this site. There is no current corridor that would be impacted and restricted by expanding the urban capable boundary to include the property.

Based on consistency of approach and the outcomes of the ecological assessment, it would be more appropriate for the Department to include the property as urban capable rather than proposing an E2 zoning.

By making this change, the Plan would be able to expand the urban capable land boundary, and in so choosing, where appropriate it could recommend some of the surrounding land to become Certified—Urban Capable Land (as per page 20), where this land could be used as ‘*Ecological Restoration*’ and ‘*Biodiversity Stewardship*’ meeting the true intent of The Plan.

We request that the Department consider this submission and resolve to remove the E2 zoning and instead apply the urban capable land zoning.

7th of October 2020

Attention: [REDACTED]
[REDACTED]
Orchard Hills
NSW, 2748

**SUBMISSION ON THE DRAFT CUMBERLAND PLAIN CONSERVATION
PLAN AT [REDACTED] ORCHARD HILLS NSW**

Dear [REDACTED],

Enviro Ecology (EE) have been engaged by the [REDACTED] to prepare a submission with regards to the Draft Cumberland Plain Conservation Plan (CPCP).

[REDACTED] currently reside at [REDACTED] ORCHARD HILLS Lot/Section/Plan no: [REDACTED]. The site is currently zoned RU4 "Primary Production Small Lots" under the Penrith Local Environmental Plan 2010.

In preparing a response to the draft CPCP EE undertook a site inspection over No [REDACTED] on the 25th of September 2020.

The site is currently mapped under the draft CPCP as containing Cumberland Plains Woodland (CPW) (Figure 1) which listed as a critically endangered ecological community (CEEC) under the *Biodiversity Conservation Act 2016*. The conservation of critically endangered CPW forms part of the draft CPCP.

Mr John Whyte

(B.Bio.Sc Majors Botany & Zoology)

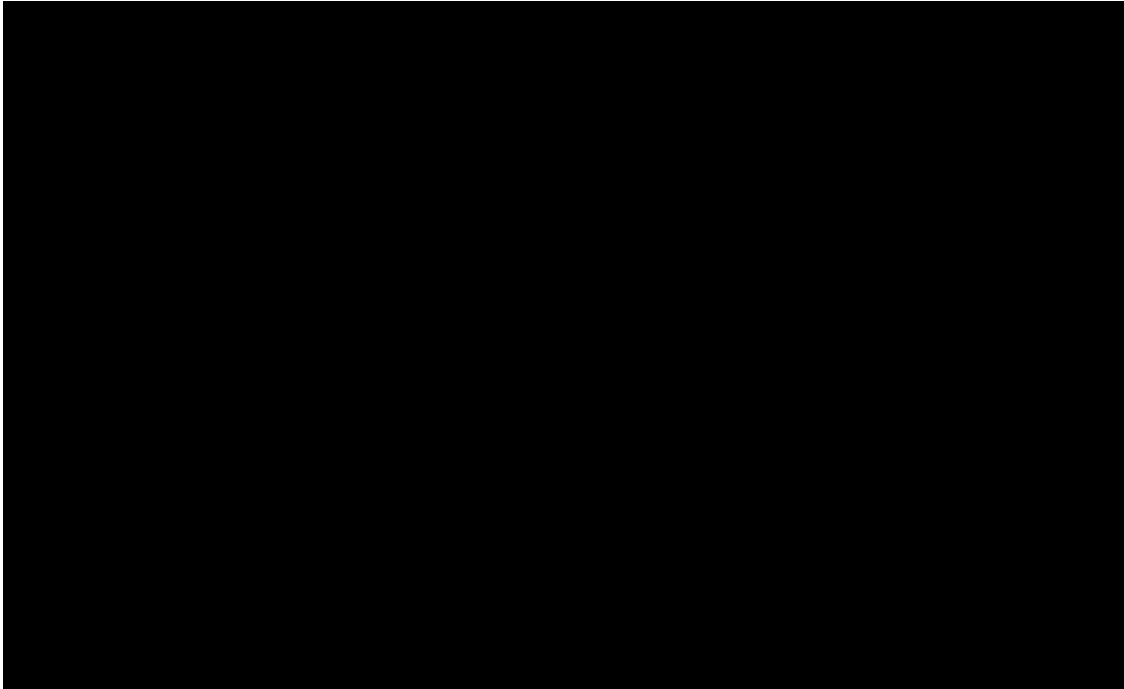
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Practicing Member of Ecological
Consultants Association of NSW (ECA)

Section 132 C Scientific Licence No:
SL100292.

Animal Research Authority: Trim file;
10/1887 DG ACEC

Figure 1 vegetation mapping over the subject property (Extract draft CPCP)



Under the draft CPCP the subject property is proposed to be rezoned from RU4 “Primary Production Small Lots” to E2 “Conservation”. The current objectives and permissible land uses for RU4 zone is presented below.

Extract from LEP 2010 below

1 Objectives of zone

- *To enable sustainable primary industry and other compatible land uses.*
- *To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To ensure land uses are of a scale and nature that is compatible with the environmental capabilities of the land.*
- *To preserve and improve natural resources through appropriate land management practices.*
- *To maintain the rural landscape character of the land.*
- *To ensure that development does not unreasonably increase the demand for public services or facilities.*

2 Permitted without consent

Extensive agriculture; Home occupations

3 Permitted with consent

Agricultural produce industries; Agriculture; Animal boarding or training establishments; Aquaculture; Building identification signs; Business identification signs; Cellar door premises; Cemeteries; Community facilities; Crematoria; Dual occupancies; Dwelling houses; Environmental facilities; Environmental protection works; Farm buildings; Flood mitigation works; Home-based child care; Home businesses; Home industries; Intensive plant agriculture; Information and education facilities; Places of public worship; Plant nurseries; Recreation areas; Recreation facilities (outdoor); Roads; Roadside stalls; Rural supplies; Schools; Secondary dwellings; Tourist and visitor accommodation; Veterinary hospitals

4 Prohibited

Dairies (restricted); Feedlots; Hotel or motel accommodation; Serviced apartments; Any other development not specified in item 2 or 3

The current zoning "RU4" is appropriate for this property, the subject lot currently contains a single dwelling, sheds and mown land which is consistent with the zoning permissibility and zone objectives above.

Under the draft CPCP the land is proposed to be rezoned to E2 'Conservation'. The relevant zone objectives for an E2 zone under the Penrith LEP 2010 are extracted below.

Under an E2 zoning a dwelling cannot be constructed upon the land and the land cannot be utilised in the same capacity that is currently permissible. The land effectively is being "downzoned".

Zone E2 Environmental Conservation

1 Objectives of zone

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*
- To protect, manage, restore and enhance the ecology, hydrology and scenic values of riparian corridors and waterways, wetlands, groundwater resources, biodiversity corridors, areas of remnant indigenous vegetation and dependent ecosystems.*
- To allow for low impact passive recreational and ancillary land uses that are consistent with the retention of the natural ecological significance.*

2 Permitted without consent

Nil

3 Permitted with consent

Environmental facilities; Environmental protection works; Flood mitigation works; Oyster aquaculture; Recreation areas; Roads

4 Prohibited

Business premises; Hotel or motel accommodation; Industries; Multi dwelling housing; Pond-based aquaculture; Recreation facilities (major); Residential flat buildings; Restricted premises; Retail premises; Seniors housing; Service stations; Tank-based aquaculture; Warehouse or distribution centres; Any other development not specified in item 2 or 3

Assessment

In preparing strategic conservation plans detailed investigations should be undertaken to identify as per the E2 zone objectives “*high ecological, scientific, cultural or aesthetic values*”.

The existing allotment contains a residence, sheds, swimming pool, landscape gardens and grazing pasture with scattered trees some of which form part of critically endangered ecological community known as Cumberland Plains Woodland. The presence of an CEEC does not automatically qualify as being “High Ecological Value”.

During the site investigation undertaken on the 25th of September 2020 a biodiversity assessment plot was placed over the subject lot to determine and measure the biodiversity values in accordance with the “Biodiversity Assessment Method” (BAM) an approved methodology under legislation for measuring biodiversity values utilised for the identification of lands with “Good Condition” vegetation.

The BAM plot identified that the CPW present within the subject property was in “Low condition” due to the absence of biodiversity features including but not limited to the following “no hollow-bearing trees”, low species richness, low species diversity, high weed invasion, low % native vegetation cover”.

The land use planning has failed to adequately undertake the appropriate studies/investigations to warrant such “downzoning”. The land does not contain “High Ecological Values” to warrant an E2 “Conservation” Zoning.

If you would like to discuss any of the provided information further or have any queries, please do not hesitate to contact me on [REDACTED]

Yours sincerely

[REDACTED]

John Whyte

Principal Ecologist

Enviro Ecology

[REDACTED]



Planning,
Industry &
Environment

[REDACTED]
[REDACTED]
ORCHARD HILLS
NSW 2748

Tue 22 September 2020

Dear Owner,

Subject: Public exhibition of the Draft Cumberland Plain Conservation Plan

Relevant lot: [REDACTED]

The Draft Cumberland Plain Conservation Plan (the Plan) is on public exhibition to Friday 9 October. The Department of Planning, Industry and Environment (the department) has developed the Plan through a strategic conservation planning process for Western Sydney. The Plan has been prepared in close consultation with other government agencies and in line with other strategic plans, including the Greater Sydney Region Plan and Western Sydney District Plan.

The Plan supports the delivery of infrastructure, housing and jobs in Orchard Hills and the wider Greater Penrith to Eastern Creek Investigation Area by seeking biodiversity approvals under the Biodiversity Conservation Act 2016 (NSW) and the Environment Protection and Biodiversity Conservation Act 1999 (Cth). While facilitating future urban growth, the Plan also proposes to protect important high-value local and regional biodiversity with environmental conservation (E2) zoning.

Community members in Orchard Hills have requested further information therefore the department is writing to you to make you aware of the public exhibition of the Plan and how it may affect your property, and to invite you to provide feedback.

How the Plan affects your land

The Plan has identified your land as non-certified – avoided land. This is the blue or green colour in the map of your property attached to this letter.

What is non-certified – avoided land?

There are two land categories identified as 'avoided land'. These are, avoided for biodiversity purposes (green colour) and avoided due to presence of a riparian corridor or steep slope (blue colour).

Avoided land will not be considered for biodiversity certification and will not be zoned for development under the relevant structure plan, precinct plan or master plan. The Plan proposes zoning avoided land for environmental conservation (E2) to protect biodiversity.

If you would like more information on the proposed conservation zoning, please see the attached factsheet on planning controls and frequently asked questions.

Find out more

I have attached to this letter further information on the Draft Cumberland Plain Conservation Plan (the Plan), including information on the proposed planning controls and a set of frequently asked questions for landholders in the Plan's nominated urban development areas.

You can view your property on our Cumberland Plain Conservation Plan Viewer:

https://webmap.environment.nsw.gov.au/Html5Viewer291/index.html?viewer=CPCP_Exhibition_Viewer

It is an online spatial viewer that provides landholders and the community with detailed information about the biodiversity mapping, land categories, conservation areas and proposed planning controls. This information can be viewed at a property scale to see how the Plan may affect individual landowners. The viewer has tools which allow properties to be located by street address or Lot and DP number. A user guide is also published on the website.

For any further queries please contact the department at:

- **Email:** [REDACTED]
- **Phone:** Between 9am–5pm, Monday to Friday on 1300 305 695.
- **For translating and interpreting service:** If English is not your first language, please call 131 450. Ask for an interpreter in your language and then ask to be connected to our Information Centre on 1300 305 695.
- **If you are deaf or have a hearing speech impairment:** Call us through the National Relay Service

Have your say

The Plan package is on public exhibition until **Friday 9 October 2020**. The department encourages you to view the documents and make a submission on the Plan at:

<https://www.planningportal.nsw.gov.au/draftplans/exhibition/draft-cumberland-Plain-conservation-plan>.

Submissions can also be posted to the Department at:

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

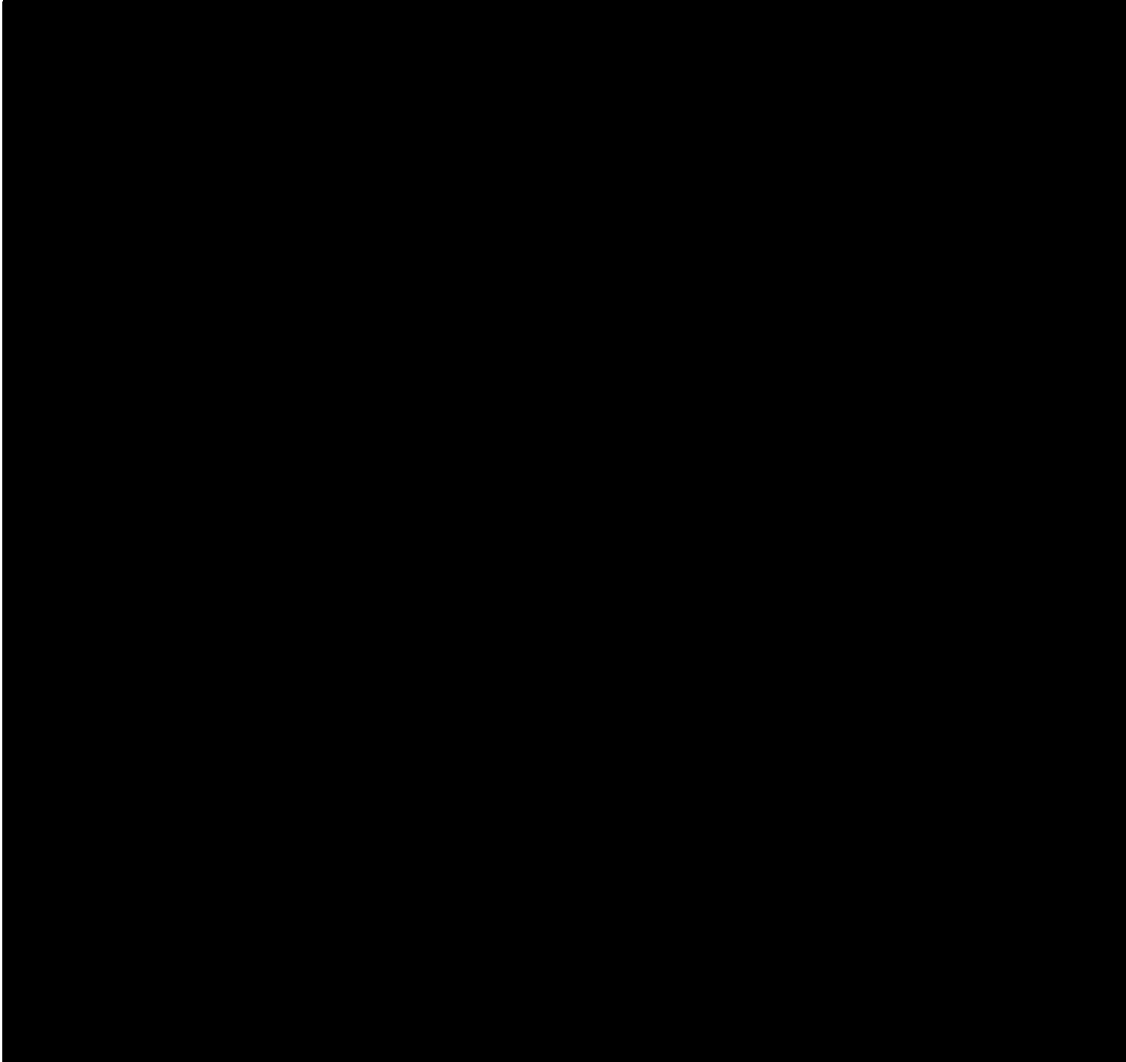
The department will carefully consider all feedback gathered from the submissions in finalising the Plan.

Yours sincerely,



Elizabeth Irwin

Director Conservation and Sustainability
Green and Resilient Places Division
Department of Planning, Industry and Environment



Property Map